

MINUTES OF CONVOCATION

Friday, 26th February, 1993  
9:00 a.m.

PRESENT:

The Treasurer, (Allan M. Rock), Bastedo, Bellamy, Brennan, Campbell, Cullity, Curtis, Elliott, Epstein, Finkelstein, Hickey, Hill, Howie, Howland, Kiteley, Krishna, Lamek, Lamont, Lawrence, Legge, Mohideen, Murphy, Palmer, Pepper, Peters, Ruby, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Weaver and Yachetti.

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The Treasurer advised Convocation that The Honourable Pierre Blais, Minister of Justice and Attorney General of Canada would be called to the Bar in a special ceremony at 3:30 p.m.

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MOTION -COMMITTEE REPORTS TAKEN AS READ

It was moved by Lloyd Brennan, seconded by Susan Elliott that the Reports listed in paragraph 3 of the Agenda (Reports to be taken as read) except for Legal Aid and Item A-A.1. of the Certification Board Report, be adopted.

Carried

The following Reports were adopted except for specific items in certain of the Reports noted as requiring separate debate and consideration by Convocation.

Admissions (2 Reports)  
Certification  
Clinic Funding  
Communications (2 Reports)  
County and District Liaison  
Discipline Policy  
Equity in Legal Education and Practice  
Finance and Administration  
French Language Services  
Insurance  
Investment  
Lawyers Fund for Clients Compensation  
Legal Education  
Legislation and Rules  
Libraries and Reporting  
January Convocation Minutes  
Professional Conduct  
Professional Standards  
Research and Planning  
Unauthorized Practice  
Women in the Legal Profession

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26th February, 1993

ADMISSIONS COMMITTEE

Meetings of February 11th and 25th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993 at 9:30 a.m., the following members being present: Mr. Brennan (Chair), Messrs. Goudge and Lamont.

Also present: M. Angevine, D. Cushing, C. Shaw and P. Gyulay.

A.  
POLICY

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A.1.           There were no items to report at this time.

B.  
ADMINISTRATION

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B.1.           1993/94 BUDGET PROPOSALS FOR THE ADMISSIONS/RECORDS DEPARTMENT

The 1993/94 budget proposals were before the Committee for its consideration and approval prior to submission to the Finance Committee at its next meeting.

B.2.           DIRECT TRANSFER - COMMON LAW - REGULATION 4(1)

B.2.1.       The following candidates have met all the requirements to transfer under Regulation 4(1):

B.2.2.       Murray Norman Marshall  
Diane Elizabeth Sokolyk

Approved

B.3.           DIRECT TRANSFER - QUEBEC - REGULATION 4(2)

B.3.1.       Anne McLernan (B.A. 1977, B.C.L. 1981 and LL.B. 1982, all from McGill University was called to the Bar of the Province of Quebec on the 17th day of November 1983 and practised in that province from the 18th November, 1983 to the 1st March, 1992. Ms. McLernan presented a Certificate of Good Standing and asked to proceed under Regulation 4(2).

26th February, 1993

- B.3.2. Ms. McLernan's LL.B. degree is now 10 years old. Her LL.B. degree falls 2 years outside the 8 year boundary set out in the Memorandum to the Admissions Committee of September, 1983 which states: "Candidates qualified to proceed under Regulation 4(2) and who have obtained an approved LL.B. degree within the eight years preceding their application may be taken to have satisfied the requirements of subparagraph (d) which reads - passes a comprehensive examination on the common law of Ontario."
- B.3.3. Ms. McLernan filed a petition dated the 20th January, 1993 asking for exemption from the common law examination. She stated that from November, 1983 to March, 1992 she practised commercial and corporate law, advising many clients doing business in Quebec and in other provinces, particularly Ontario. She also stated that she had been in regular contact with lawyers from Ontario and has had the opportunity to discuss legal matters with them. Ms. McLernan indicates she has studied the provisions of the new Personal Property Security Act and related statutes in detail in order to advise clients selling equipment in Ontario on how to best protect their interests.
- B.3.4. She requested an exemption from the common law examination in light of the fact that her LL.B. degree was only two years beyond the eight year limit and on the basis of the nature of the work she has performed since her call to the Quebec Bar.
- B.3.5. Ms. McLernan's petition and supporting documentation was before the Committee for consideration.
- B.3.6. The Committee granted Ms. McLernan's Request for exemption.
- B.4. CALL TO THE BAR AND CERTIFICATE OF FITNESS
- B.4.1. Special Call - Honourary Membership
- B.4.2. The Honourable Pierre Blais is the Minister of Justice and Attorney General of Canada and Minister of State for Agriculture. He entered federal politics in 1984, when he was elected to the House of Commons as a member of Parliament for the Quebec Riding of Bellechase.
- B.4.3. He graduated in law from Laval University in 1976 and, before his election, was a partner in a law firm in Montnagny, Quebec.
- B.4.4. On January 4th, 1993, Mr. Blais became Minister of Justice and Attorney General of Canada, in addition to keeping his post as Minister of State for Agriculture.
- B.4.5. The Committee was asked to approve his application for call to the Bar as an honourary member at Regular Convocation on February 26th, 1993 pursuant to the Barristers Act, s.1.

Approved

26th February, 1993

B.5. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.5.1. Transfer from Another Province - Regulation 4(1)

B.5.2. The following candidate having successfully completed the Statutes and Procedure in Ontario examination, filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on February 26th, 1993:

Kenneth David Klein

Province of Manitoba

Approved

B.6. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.6.1. BAR ADMISSION COURSE

B.6.2. The following candidates having successfully completed the 34th Bar Admission Course and having deferred their call to the Bar now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on February 26th, 1993:

Edith Cohen  
Tanneke Brunilde Heersche  
Timothy Scott Henderson  
Robin Lynn Martin

Approved

C.  
INFORMATION

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C.1. There were no items to report at this time.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"R. Carter"  
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 25th of February, 1993 at 9:30 a.m., the following members being present: Mr. R. Carter (Chair), Ms. F. Mohideen (Vice-Chair) and Ms. C. Curtis

Also present: M. J. Angevine

B.  
ADMINISTRATION

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B.1.        EXTENSION OF EIGHTEEN MONTH LIMIT

B.1.2.       Flora Pearl Eliadis was approved to proceed under Regulation 4(2) in February 1992 and exempted from writing the common law examination on the strength of the approved LL.B. degree she had received within the eight years immediately preceding her application to transfer.

B.1.3.       The eighteen month period within which a transfer candidate must enter an option of transfer will expire, in the case of Ms. Eliadis, at the end of August, 1993.

B.1.4.       Ms. Eliadis had planned to sit a July 1993 Statutes and Procedure examination. As a result of the new transfer examinations, the Statutes and Procedure examination will be offered for the last time in April 1993.

B.1.5.       In light of the fact that the new scheduling of the transfer examinations has affected her plans, the candidate has requested, in a letter dated the 24th February, 1993, an extension of the eighteen month limit, by one month, to allow her to sit the new transfer examinations in September 1993.

Approved

B.2.        CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.2.2.       BAR ADMISSION COURSE

B.2.3.       The following candidate having successfully completed the 34th Bar Admission Course and having deferred his call to the Bar now has filed the necessary documents and paid the required fee and applies to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on February 26th, 1993:

John Alexander Paterson

Approved

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"R. Carter"  
Chair

THE REPORTS WERE ADOPTED

26th February, 1993

CERTIFICATION BOARD

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 11th of February, 1993 at twelve-thirty in the afternoon, the following members being present: R.D. Yachetti (Chair), R.D. Manes (Vice-Chair), J. Callwood, E.J. Levy, M.L. Pilkington, G.P. Sadvari and D.W. Scott. S. Thomson, of the Law Society, was also present.

Since the last report, Specialty Committees have met as follows:

The Criminal Litigation Specialty Committee met (in person/conference call) on Friday, the 29th of January, 1993 at one o'clock in the afternoon.

The Family Law Specialty Committee met on Monday, the 8th of February, 1993 at three-thirty in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 9th of February, 1993 at eight-thirty in the morning.

A.  
POLICY

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A.1.        Internal Record of Specialist Applicants - Distribution of Information

A.1.1.      Certification staff are currently checking applicants' Law Society records, including Discipline, Complaints, Professional Standards, Audit, Lawyers' Fund for Client Compensation and Errors and Omissions Insurance records.

A.1.2.      Although Specialty Committees are asking for internal record details to assist in assessing applicants' qualifications, your Board is of the view that the Certification Board alone should be provided with information about applicants' internal records, and it will be in the final stages of the assessment at the Board level that this information will have bearing on the outcome of the application.

Note: Item deferred

A.2.        Certification and the Practice Review Programme

A.2.1.      The Board has noted the concern of the Professional Standards Committee (January 1993 Report) following the referral of a lawyer to the Practice Review Programme after that lawyer had been certified as a Specialist.

A.2.2.      The Board will review all matters pertaining to Law Society internal information and the certification of Specialists and will consider how procedures can be improved and whether revisions to the Standards are required.

B.  
ADMINISTRATION

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B.1.        Civil Litigation Specialty Committees - 1993 Membership

- B.1.1.      Your Board recommends that Civil Litigation Specialty Committee membership for 1993 be approved as follows:

CHAIR:       Peter Webb (of Toronto)  
              Kathryn Chalmers (of Toronto)  
              William J. Festeryga (of Hamilton)  
              Mary Anne Sanderson (of Toronto)  
              M. James O'Grady (of Ottawa) - NEW MEMBER  
              David B. Williams (of London) - NEW MEMBER

B.2.        Certification Program Brochure

- B.2.1.      The Board considered draft text and illustration for the Certification Program Brochure, both of which require some revision.
- B.2.2.      Following approval of the text and illustration, a French translation will be prepared and the brochures will be printed.
- B.2.3.      The brochures will be targeted at a public audience. A certain number of complimentary brochures will be distributed to all certified Specialists annually. Specialists will be able to provide clients or potential clients with a brochure and extra copies may be obtained from the Certification Program office at an appropriate charge.
- B.2.4.      Brochures will also be placed in high-traffic areas including reception areas at the Law Society, County and District Law Libraries, Legal Aid offices, and as recommended by the Communications Department or the Certification Board.

B.3.        Lists of Certified Specialists - Description of Practice

- B.3.1.      To assist users, the Board will invite Specialists to include a 25-30-word informational 'description of practice' beside their names on the lists of Certified Specialists. The description will be particularly helpful for users of the long list of Civil Litigation Specialists. Guidelines on acceptable wording will be prepared, and 'descriptions of practice' received over the next few months will be reviewed to determine whether the additional information will be truly useful.

C.  
INFORMATION

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C.1.        Report of the Education Sub-Committee

- C.1.1.      The Education Sub-Committee, with the assistance of some experts in legal education, will review cost-effective alternatives to the ambitious proposals of the Sub-Committee as set out in its Report of January 1992. The move to a Specialist preparatory program and a more objective system of assessment continue to be objectives of the Certification Board.

26th February, 1993

C.2.        Certification of Specialists

- C.2.1.      The Board is pleased to report the certification of the following lawyer as a Criminal Litigation Specialist:

Brian W.D. Jones (of Toronto)

C.3.        Promotion of the Certification Program to the Profession

- C.3.1.      The Administrator operated a Certification Program promotional booth at the following program:

January 28-30/93:       Canadian Bar Association - Ontario,  
Annual Institute

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"R. Yachetti"  
Chair

Item A-A.1. re: Internal Record of Specialist Applicants, was deferred.

THE REPORT WITH THE EXCEPTION OF A-A.1. WAS ADOPTED

CLINIC FUNDING COMMITTEE

Meetings of February 18th and 20th, 1993

To:    Robert Holden, Esq.,  
        Provincial Director,  
        The Ontario Legal Aid Plan.

The Clinic Funding Committee met on February 18, 1993. Present were: Philip Epstein, Q.C., Chair, Joan Lax, Jim Frumau, Thea Herman and Pamela Giffin. The Committee met again on February 20, 1993, via conference call. Present were: Philip Epstein, Q.C., Chair, Jim Frumau, Thea Herman and Pamela Giffin. Also present: Joana Kuras, Clinic Funding Manager.

A.  
POLICY

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Nil



B.  
ADMINISTRATION

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1. Applications to the Clinic Funding Committee

a. Supplementary Legal Disbursements

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved allocations for supplementary legal disbursements as set out in Schedule A.

b. Training

The Committee approved an application for funds to establish a province-wide clinic committee to deal with housing matters, in an amount up to \$7,460.

2. Summer Students 1993

The Clinic Funding Committee reviewed and approved funding for the employment of summer law students in 1993, pending the designation of the clinic funding budget for 1993/94 by the Attorney General, as follows:

Correctional Law Project (4 students) - up to	\$ 28,000
Parkdale Community Legal Services (20 students) - up to	136,000
Legal Assistance of Windsor (12 students) - up to	82,000
Kensington-Bellwoods Community Legal Services (12 students) - up to	<u>82,000</u>
Total	<u>\$328,000</u>

3. Analysis of Grant Adjustments

The Committee approved increases in standard allocations to clinics for bookkeeping costs, up to \$30,000; and for statutory benefits calculated at 7% of personnel funds, up to \$80,000. These adjustments are required because of increased costs.

The Committee also approved the purchase of 40 fax machines, currently leased, at a cost of up to \$14,000.

The Committee reviewed an initial decision to allocate funds for capital purchases of automobiles, air conditioners, photocopier upgrades, 10 new fax machines, one new telephone system and software which are necessary to maintain clinic operations. The Committee approved the allocation of funds in an amount up to \$81,545.

4. 1993/94 Budget

The Clinic Funding Committee considered and approved the draft budget for 1993/94. The Committee is required to submit an estimate of the money needed for the community legal clinic system for the next year. The 1993/94 budget provides for personnel funding according to the established funding grid, and an overall 2% increase to cover anticipated increases in operating costs. The budget is attached as Schedule B.

5. Capital Purchases

The Clinic Funding Committee reviewed and approved an initial decision to provide funding to clinics for office equipment, and necessary office improvements, in an amount up to \$98,129. Allocations are attached as Schedule C.

In order to improve the computerization of clinics and the efficiency of existing technology, the Clinic Funding Committee reviewed and approved an initial decision to allocate funds for personal computers, workstations and other hardware, in an amount up to \$155,292, as set out on Schedule D.

6. GST

Effective November 1, 1992, Revenue Canada amended the earlier ruling on the application of GST to the operation of community legal clinics in Ontario. The new provisions state that payments to clinics are not taxable. Clinics will no longer receive a 100% rebate of GST paid but are now eligible to receive a rebate of 50% of GST paid as non-profit corporations. The Clinic Funding Committee is now liable for 50% of GST paid by clinics, which represents a new operating cost for 1992/93 in the amount of \$75,000.

7. Special Legal Education/Outreach Funds

The Clinic Funding Committee has approved the allocation of funds for special outreach projects in clinics, in an amount up to \$76,998. Allocations are attached as Schedule E.

C.  
INFORMATION

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Clinic News

Peterborough Community Legal Centre is acting for eight mentally disabled residents of a nursing home who received notifications in January, 1993 to vacate the nursing home by March 1, 1993. The nursing home operator can realize higher profits by providing luxury retirement accommodation to seniors. There is no suitable alternative accommodation in the community and some of the mentally disabled residents may be moved to a men's hostel which provides temporary shelter for employable men.

26th February, 1993

The Landlord and Tenant Act contains a series of exemptions for institutions which provide accommodation, subject to various statutes regulating the care of seniors, the mentally handicapped and the mentally disabled. The Act also exempts accommodation occupied for therapeutic purposes, or for the purpose of providing care. The clinic will seek a declaration that the exclusionary provisions in the Act are contrary to sub-sections 7 and 15 of the Canadian Charter of Rights and Freedoms. It is anticipated that a number of groups representing the disabled will seek intervenor status.

ALL OF WHICH is respectfully submitted

"P. Epstein"  
Chair

February 22, 1993

Attached to the original Report in Convocation file, copies of:

B-Item 1.a.	Copy of Supplementary Legal Disbursements 1992/93.	(Schedule A)
B-Item 4	Draft budget for 1993/94.	(Schedule B)
B-Item 5	Proposed Capital Purchases.	(Schedule C)
B-Item 5	Proposed Computer Hardware Purchases 1992/93.	(Schedule D)
B-Item 7	Special Legal Education/Outreach Funds.	(Schedule E)

THE REPORT WAS ADOPTED

COMMUNICATIONS COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993, the following members being present: Denise Bellamy (Chair), Tom Bastedo, Susan Elliott, Allan Lawrence, Ross Murray, Julaine Palmer, Stuart Thom and Roger Yachetti. Also in attendance: Carolyn Ateah, Richard Tinsley, Theresa Starkes, and Gemma Zecchini.

A.  
POLICY

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1. Dial-A-Law Options Paper

At the request of the Priorities and Planning Sub-Committee the Communications Committee was asked to evaluate Dial-A-Law (DAL) with a view towards reducing programme expenses. An options paper was prepared outlining the various measures available for reducing costs. The paper explored the impact each option would have on issues such as access and advertising. After detailed consideration of the costs and benefits of each option, the Communications Committee recommends that the following initiatives be undertaken in order to save approximately \$140,000 in fiscal 1993-1994.

Note: Item deferred

*Immediate Options*

*Reducing DAL Hours of Operation*

DAL is currently available 24 hours per day, seven days per week to callers with touch tone telephone service and 9 am to 5 pm, Monday to Friday to rotary dial callers.

In order to effect a saving of approximately \$40,000, it is recommended that the hours of service be restricted to 8 am to 6 pm, 7 days a week.

*Reducing Wats Lines*

Since 1985 when the DAL service was first offered province-wide on a toll-free basis, the Law Society has maintained nine wats lines for access by users outside the Metropolitan Toronto and the local 613 area. In order to decrease costs by a further \$100,000, the Committee recommends disconnecting approximately three Wats lines.

A test pilot is currently underway to determine whether eliminating three access lines will yield the projected \$100,000 savings. Data confirming this projection will be available in late March.

*Long Term Options*

*Pay for Call Service (1-900)*

Once Bell Canada receives CRTC licensing for its 1-900 service, the Committee will recommend that DAL operate on a cost recovery basis. It is anticipated that the 1-900 service will be operational some time in 1994 and would, if implemented, require DAL callers throughout the province to assume a modest charge on their phone bill for accessing the service. The Law Society would realize modest revenue from Bell to offset the costs of its local lines.

C.  
INFORMATION

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1. Media Activity

A summary of the media activity for the month of January indicates the following list of popular media issues in order of priority: discipline, legal aid, complaints, and other miscellaneous topics.

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2. Call Statistics

Dial-A-Law call statistics from January 1, 1993 indicate 33,724 calls or 1,088 calls per day. The Lawyer Referral Service calls totalled 14,061 or 703 calls per day.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"D. Bellamy"  
Chair

It was moved by Tom Bastedo, seconded by Mary Weaver that Item A-1 re: Dial-A-Law Options Paper, be deferred to the April Convocation.

Carried

THE REPORT WITH THE EXCEPTION OF A-1 WAS ADOPTED

Meeting of February 19th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Monday, the 19th of February, 1993, the following members being present: Denise Bellamy (Chair), Tom Bastedo, Fran Kiteley, Allan Lawrence, Ross Murray, Julaine Palmer, and Roger Yachetti. Also in attendance: Theresa Starkes, and Gemma Zecchini.

A.  
POLICY

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1. Communications Budget

The Committee reviewed and approved the Communications budget for fiscal 1993-1994.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"D. Bellamy"  
Chair

THE REPORT WAS ADOPTED

26th February, 1993

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February 1993 at 11:30 a.m., the following members being present: R. Bragagnolo (Chair) and A. Feinstein. The following members of the County and District Presidents' Law Association Executive were also in attendance: H. Arrell, N. DiGiuseppe, S. Foley, R. Gates, M. Hebert, M. Hennessy, M. Hornseth and M. O'Dea. Staff in attendance were: M. Angevine and A. John (Secretary).

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1. DRAFT BUDGET 1993 - 1994

The Committee reviewed the preliminary budget estimates and approved them for submission to the Finance and Administration Committee.

2. CORRIGENDUM

The Report to Convocation for January 1993, incorrectly reported on page 3 that the Motion with respect to the Rules of Professional Conduct and Conflict of Interest was a Resolution of the County and District Law Presidents' Association Plenary of November 1992. This Motion was only tabled at the Plenary and will be the subject of debate at the May 1993 Plenary.

3. BENCHER REPRESENTATION ON THE COUNTY AND DISTRICT LIAISON COMMITTEE

The Committee unanimously supported a recommendation that more Benchers be appointed as members of the County and District Liaison Committee and that the present Bencher members be encouraged to attend the monthly meeting as often as possible.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"R. Bragagnolo"  
Chair

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE

Meeting of February 11th, 1993

Mr. Strosberg spoke to those Items of the Report regarding Suspended Members and Whether Reprimands in Committee should be in public.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993 at three o'clock in the afternoon, the following members being present:

H. Strosberg (Chair), D. Bellamy, N. Finkelstein, C. Hill, R. Murray, J. Palmer, P. Peters, C. Ruby, S. Thom, and R. Topp.

D. Crosby, S. Kerr, G. MacKenzie, M. O'Connor, D. Robertson, J. Yakimovich and S. Hodgett also attended.

A.  
POLICY

A.1. SUSPENDED MEMBERS

- A.1.1. At the Meeting of the Committee on January 14, 1993, the Committee requested that the staff consider measures to decrease the number of members in private practice who become suspended for administrative reasons and thereby become subject to complaints for practising while suspended. The Committee seeks ways to prevent these complaints from consuming a disproportionate amount of staff resources.
- A.1.2. The Committee was of the view that the large numbers of members who allow themselves to become suspended indicates that many of those members do not regard suspension as a serious matter. The Committee seeks to deter such members from allowing themselves to become suspended for administrative reasons.
- A.1.3. This matter was considered by a staff Committee and the report of the staff Committee is found at Attachment A to this Report. The staff committee set out a number of possible approaches to the problem:
1. a letter could be sent to the suspended member setting out the consequences of the suspension (see pages A-6 to A-9);
  2. a list of suspended members could be sent to all County and District Law Associations and Libraries;
  3. a list of suspended members could be published in major newspapers;
  4. an article could be published in the Discipline Digest to increase members' awareness of the repercussions of a suspension;

5. the Society could allow fees and levies to be paid by credit card;

6. a reinstatement fee could be charged.

A.1.4. The Committee discussed the recommendations of the staff committee. The Committee is of the view that a letter outlining the consequences of suspension should be sent to suspended members and a re-instatement fee should be instituted.

A.1.5. Your Committee recommends:

1. Upon suspension for administrative reasons, a letter from the Secretary should be sent to the suspended member stating in forceful terms the consequences of suspension from the Society;

2. A reinstatement fee should be instituted as follows:

(a) if the fee or levy is paid within 10 days of suspension - \$150;

(b) if the fee or levy is paid after 10 days from the date of suspension - \$400.

3. The Director of Finance should have the discretion to waive the reinstatement fee in cases of hardship. The correspondence notifying the member of the suspension should include a reference to this discretion.

A.1.6. Your Committee is mindful that there exists the possibility that the institution of a reinstatement fee may have a disproportionate effect on members of the profession who take parental and other leaves and allow their memberships to become suspended. The Committee invites the Women in the Legal Profession Committee to consider this aspect of the issue.

Note: Motion, see page 231

A.2. AWARDS OF COSTS OF THE LAW SOCIETY PURSUANT TO S. 40 OF THE LAW SOCIETY ACT

A.2.1. The Law Society, as a result of a recommendation of the Discipline Policy Committee, has a policy that discipline counsel are to ask for the Society's costs in all appropriate cases. The policy did not outline how the costs of the Society are to be calculated.

A.2.2. At present the costs for the Society are estimated based on the time spent by discipline counsel, auditors and investigators on the discipline investigation and hearing. The time of auditors and investigators is costed at a rate of \$50/hr, and the time of discipline counsel is costed at a rate of 100/hr (\$150/hr for the Senior Counsel Discipline). In addition, disbursements, including expert witness fees if any, are also taken into account. While these figures provide guidance, the costs asked for by discipline counsel are generally conservative.



A.2.3. Your Committee considered this issue and was of the view that the costs which were being requested did not adequately reflect the true costs incurred by the various departments involved in a discipline case. The Committee was of the view that the costs requested should be increased to more adequately reflect the costs of the investigation and prosecution of complaints.

A.2.4. The Committee requested that the Senior Discipline Counsel develop a tariff which more adequately reflects the costs incurred. The Committee also requested that there be a monthly report to the Chair of Discipline of the costs recovered pursuant to orders of costs.

A.3. WHETHER REPRIMANDS IN COMMITTEE SHOULD BE IN PUBLIC

A.3.1. Convocation has adopted a policy whereby there is a presumption that reprimands in Convocation are to be in public. The issue of whether a reprimand in Committee should presumptively be in public arose in a recent discipline hearing.

A.3.2. The Special Committee on Discipline Procedures (The Yachetti Committee) in its Final Report recommended the following (at 21):

(C) YOUR COMMITTEE RECOMMENDS THAT ALL ADMONITIONS AND REPRIMANDS ARE TO BE DELIVERED IN PUBLIC WHERE THE HEARING HAS BEEN HELD IN PUBLIC. FURTHER, IN THE CASE OF REPRIMANDS, THESE SHALL BE PUBLISHED;

(D) YOUR COMMITTEE RECOMMENDS THAT ANY REPRIMAND OR ADMONITION ARISING FROM AN IN-CAMERA HEARING SHALL BE DELIVERED IN PUBLIC UNLESS CAUSE CAN BE SHOWN IN THE ORDINARY WAY WHY IT SHOULD BE DELIVERED IN-CAMERA.

The Yachetti Committee report was adopted by Convocation, without amendment to this recommendation, in September, 1990.

A.3.3. Your Committee recommends to Convocation that there be a presumption that reprimands in Committee be held in public.

B.  
ADMINISTRATION

B.1. BUDGETS

B.1.1. Your Committee considered draft proposed budgets for the Audit, Complaints and Discipline Departments. The Committee approved the budget figures for Audit, Complaints and Discipline for consideration by the Finance and Administration Committee.

B.2. DISCIPLINE MANAGEMENT PROCEDURES

B.2.1. Your Committee is pleased to report that Maurice Cullity, Q.C. has agreed to serve as the Procedural Management Benchers.

B.2.2. Your Committee recommends that Convocation appoint Mr. Cullity the Procedural Management Benchers pursuant to the Discipline Management Procedures.

26th February, 1993

C.  
INFORMATION

C.1. AUTHORIZATION OF DISCIPLINE CHARGES

C.1.1. Once a month, the Chair and/or one or both of the Vice-Chairs of your Committee meet with the Complaints and Discipline staff to consider requests for formal disciplinary action against individual lawyers.

C.1.2. The following table shows the number of requests made by Discipline, Complaints and Audit staff for the month of February 1993.

	<u>Sought</u>	<u>Obtained</u>
<u>February</u>		
Discipline	15	15
Complaints	20	15
Audit	5	4
Total:	34	

Total number of complaints authorized for 1993:

January	39
February	34
Total:	73

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"H. Strosberg"  
Chair

Attached to the original Report in Convocation file, copies of:

A-Item A.1 - Memorandum from Mr. J. Yakomovich, Director, Audit & Investigation to the Discipline Policy Committee, Chair, H. Strosberg, Q.C. dated February 5, 1993 re: Suspended Members. (Attachments A - A-5)

A-Item A.1.3. - Draft letter to suspended members. (Attachments A-6 - A-9)

It was moved by Tom Bastedo, seconded by Denise Bellamy that Item A-A.1. re: Suspended Members, be referred back to the Finance Committee.

Carried

THE REPORT WITH THE EXCEPTION OF A-A.1. WAS ADOPTED

26th February, 1993

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February 1993, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, David Scott, Dean Jeff Berryman, April Burey, Edmund Clarke, Stien Lal, Andrew Ranachan, Donald Crosbie, Mimi Hart and Alexis Singer.

A.  
POLICY

No items.

B.  
ADMINISTRATION

No items.

C.  
INFORMATION

1. Report on Employment Equity Program

The services of Omnibus Consulting have been retained to advise and assist in interviewing focus groups, conducting sensitizing sessions and carrying out surveys of staff.

2. Employment Equity Rule of Professional Conduct

Work is proceeding on researching the law on employment equity with a view to developing an information brief similar to the one developed in respect of sexual harassment.

3. Educational Program for Foreign-Trained Lawyers

Proposals for a two stage program to meet the educational requirements of foreign-trained lawyers seeking to qualify in Ontario have been referred to the Ministry of the Attorney General. A meeting of the committee chair, Stephen Goudge, Dean James MacPherson, Deputy Attorney General, George Thomson and Deputy Minister of Citizenship, Naomi Alboim, is to be held to review the proposed program and to determine the extent of government support for it.

26th February, 1993

The program recommends that the government fund and the law schools accept an additional 30 students who wish to attend law school in 1993 in order to meet the Joint Committee on Accreditation educational requirements. This will provide time in which to develop an alternative educational program for 1994 and subsequent years.

4. Access to Articles and Employment

- a) The committee is addressing the problem of student members who are unable to obtain articling positions, or who having found articling positions, lose them when the firm collapses or breaks up.

At present, there are 15 known student members who commenced the Bar Admission Course in 1991 or 1992 who do not now have articling positions. Of the 15 students, 10 are equity students.

Efforts are being made in cooperation with the Ministry of the Attorney General and several government agencies to find available articling positions or funds to create articling positions. Some short-term solutions appear possible but the need for a more comprehensive and longer term program is apparent.

The problem may become more acute when the students entering the 1993 Bar Admission Course become available for articling this summer. As of February 1, 1993, there were 155 student members from the 1993 Bar Admission Course without articling positions. Of this number, it was estimated that 26 were equity students.

- b) Meetings are being arranged with partners responsible for engaging articling students and employing lawyers to discuss an equity employment program. The information received at these meetings will assist in the design of the longer term program required to deal with the recruitment of equity students and lawyers.
- c) The subcommittee addressing these issues hopes to have a report to Convocation in April 1993.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February 1993

"S. Goudge"  
Chair

THE REPORT WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of February 11th, 1993

Mr. Bastedo spoke to Item B-2 re: the 1993/94 Budget.

Mr. Howie spoke to Item B-3 re: Report of the Subcommittee on payment of Arrears of Fees.

26th February, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February 1993 at three o'clock in the afternoon, the following members being present: K.E. Howie (Chair), A. Feinstein (Vice-Chair), J.J. Wardlaw (Vice-Chair), T.G. Bastedo, D. Bellamy, R.C. Bragagnolo, D.H.L. Lamont, R.D. Manes, D.J. Murphy, R.W. Murray, P.B.C. Pepper and M.P. Weaver. Also in attendance were D.A. Crosbie, D.E. Crack, M.A. Angevine and D.N. Carey.

A.  
POLICY

1. MEMBERSHIP MATTERS - TRANSFER TO ADMISSIONS AND MEMBERSHIP COMMITTEE

The transfer of certain Admissions and Membership items from the Finance and Administration Committee report to the Admissions and Membership Committee report has been discussed at several meetings of the Committee but not approved pending further input from the Secretary.

The Admissions and Membership committee approved the transfer in October.

The Committee was advised that this change will ensure that the Committee responsible for Admissions and Membership functions will be the Committee that reports these matters to Convocation.

It is recommended that all items pertaining to membership, including life members, changes of name, restoration of membership, changes to rolls and records, deaths, membership in abeyance, be transferred to the Admissions and Membership Committee Report. Suspension of members, resignations, applications under Rule 50, and members returning to active practice, will remain on the Finance Committee report, but be reported, for information purposes, to the Admissions and Membership Committee.

This matter will be referred to the Legislation and Rules Committee to ensure that the necessary changes are made to the Rules.

Approved

B.  
ADMINISTRATION

1. FINANCIAL REPORT

A highlights memorandum for the three Law Society Funds for the six months ended December 31, 1992 was before the meeting. (pages 9 - 14)

Approved

2. 1993/94 BUDGET

(a) Departmental Budgets

Budgets for Finance and Accounting, Information Systems and Human Resources were before the Committee and discussed briefly but not approved. The Director is to provide further detail on several items but include the budgets for the purpose of preparing the consolidated budget for presentation on March Committee day. All committee budgets will be reviewed by the Priorities and Planning Subcommittee so that a full draft of the budget together with an estimate of the annual fees for the fiscal year commencing July 1, 1993 may be presented to the committee for consideration.

(b) Priorities and Planning Committee

The Chair proposed that the Priorities and Planning Subcommittee function as a budget subcommittee over the next two months. The purpose of the subcommittee is not in any way to usurp the ultimate responsibility of the entire Finance Committee but to provide assistance to management in both reviewing the budgets of the individual Committees and, if necessary, setting priorities.

3. REPORT OF SUBCOMMITTEE ON PAYMENT OF ARREARS OF FEES

The current policy on annual fees is that they accrue during the period the member is suspended. Furthermore, there is no limit on the length of time a member can remain suspended. This policy has not been the subject of a comprehensive review since the adoption of Classes of Membership. The subcommittee was struck to consider whether the policy continues to be appropriate.

The Society has received several letters from suspended members complaining about the current policy. The following concerns have been expressed:

- i. that the policy is outdated;
- ii. that it constitutes a financial barrier to reentry into the profession;
- iii. that it systemically discriminates against women;
- iv. that suspended members, who have been in practice in another jurisdiction and wish to return to Ontario, are in a worse position than applicants for transfer.

APPLICATION OF THE CURRENT POLICY

Suspended members have no rights and privileges, but are required to complete the annual filings throughout the period of suspension. They may be reinstated on application, and payment of all outstanding fees and levies. These include the annual fee, the E & O levy for periods when the member was practising, and the late filing fee. Only the late filing fee has, on occasion, been waived.

Currently, suspended members who apply for reinstatement have their arrears of fees determined by the fee category applicable during the period of suspension, which is not necessarily the fee category they were in when suspended. If financial hardship is a barrier to reinstatement, the suspended member may arrange with the Director of Finance for a series of instalment payments, generally over a period of one to two years.

26th February, 1993

The Committee also had before it details of policies of other Provincial Law Societies with respect to this issue.

The Committee recommends that the following policy be adopted:

POLICY RE: SUSPENDED MEMBERS

PART I

- i. That members who are suspended after this policy is adopted be reinstated upon payment of all outstanding fees and levies for the year of suspension, together with a reinstatement fee. On reinstatement, the member will be billed for the fees and levies for the current year.
- ii. That this policy not be applied retroactively. Members currently suspended who apply for reinstatement will be required to pay the arrears which have accrued to the date the policy is adopted by Convocation.
- iii. That arrangements for financial assistance continue to be made available.
- iv. That notice be sent to all members, including those currently suspended, informing them of this policy and outlining the rights and obligations of members, suspended members and former members.

PART II

- i. That Convocation may by order cancel the membership of any member suspended pursuant to Section 36 who fails to bring his or her membership into good standing within 12 months of
  - a) the date of suspension or
  - b) the date on which this policy is adopted by Convocation, whichever is later.
- ii. That on application for readmission, individuals whose membership has been cancelled in accordance with this policy, be required to pay all fees and levies outstanding at the date of suspension or at the date the policy is adopted by Convocation, whichever is later, together with a readmission fee.

The Committee was advised that Part II of the proposed policy will require legislative amendment prior to implementation as Convocation does not at present have the authority to cancel an individual's membership other than in a discipline proceeding. The Committee should also note that by requiring an order of Convocation to cancel the membership of a suspended member, it will preclude the automatic cancellation of a membership where the member is or may be involved in a discipline proceeding.

Approved

4. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 39 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 39 cases all or part of the late filing fee has been outstanding four months or more. The 39 members owe \$115,210 of which \$8,860 has been owing for more than four months.

26th February, 1993

The Committee was asked to recommend that the rights and privileges of the 39 members be suspended on February 26, 1993 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 242

5. MEMBERSHIP UNDER RULE 50

(a) Retired Members

The following members who are sixty-five years of age and fully retired from the practice of law, have requested permission to continue their membership in the Society without payment of annual fees:

James Harper Hall	Ottawa
William Kaspro	Thornhill
Gerald Alastair Nash	Welland
Victor Louis Paskaleff	North York

(b) Incapacitated Member

The following member is incapacitated and unable to practise law and has requested permission to continue membership in the Society without payment of annual fees:

John Douglas Ferguson                      Mitchell

Their applications are in order and the Committee was asked to approve them.

Approved

6. RESIGNATION - REGULATION 12

The following members have applied for permission to resign their membership in the Society and have submitted Declarations in support. These members have requested that they be relieved of publication in the Ontario Reports.

(a) Anita Marie Bennett of Toronto was called to the Bar on March 22, 1991 and has never engaged in the practice of law. Her annual filings are up to date.

(b) Paul Terence Clarke of Saskatoon, Saskatchewan was called to the Bar on March 26, 1990. He declares that he practised law for a period of only eight months as junior solicitor in a small firm. He did not handle trust funds or other clients' property. Arrangements were made to have clients' papers returned to them or to other barristers and solicitors. All files, books and records remain in the possession of his former firm. He declares that he is not aware of any claims against him. His rights and privileges as a member were suspended on March 6, 1992 for failure to pay the 1991/92 annual fees. Arrears of fees now total \$997.24. His annual filings are up to date.



26th February, 1993

(c) Susan Denise Bernstein of Thornhill was called to the Bar on April 10, 1984 and practised with the firm Birenbaum, Koffman, Steinberg until May 1987. She declares that all trust funds and other clients' property were in the name of the firm and all files were transferred to another member of the Society at that time. She is not aware of any claims against her. Her rights and privileges as a member were suspended on December 1, 1992 for failure to pay the 1992/93 annual fees. Arrears of fees now total \$615.25. Her annual filings are up to date.

(d) James Wilmoth Baribault of Embrun was called to the Bar on March 24, 1972 and practised law for twenty years until July 31, 1992. He no longer wishes to practise and has taken work in another field. The law firm Baribault, Campbell, Martel which he founded continues to function under the control of the remaining partners and associates. He declares that all trust funds and client's property has been accounted for and remain in the firm's control or have been returned to the client. He claims that all clients matters have been completed and disposed of and arrangements made to have their files returned or turned over to other members of the Society. He is not aware of any claims against him. His annual filings are up to date.

Their Declarations are in order and the Committee was asked to approve them.

Approved

C.  
INFORMATION

1. LAW FOUNDATION FUNDING

In a letter dated February 2, 1993 from the Chair of the Law Foundation the Society has received confirmation concerning future funding that:

"based on the assumption that the revenue of the Law Foundation in each of the years 1993, 1994, and 1995 will be at least \$14 million (of which \$3.5 million will be available for grants to the Law Society, the law schools and others), the Trustees are committed to making an omnibus grant of \$2.25 million to the Law Society for each of 1993, 1994, and 1995, to be awarded and utilized for purposes of the Society falling within the objects of the Foundation following submission of the usual annual applications."

Noted

2. LIFE MEMBERS

Pursuant to Rule 49, the following is eligible to become a Life Member of the Society with an effective date of February 18th 1993:

Donald Lane Campbell                      Port Hope

3. CHANGES OF NAME

(a) Members

From

To

Sharon Louise Anderson

Sharon Louise Anderson-Olmstead  
(Married Name)

Evia Ausma Berzins

Evia Ausma Berzins Golde  
(Married Name)

26th February, 1993

Monica Helene Grygier

Monica Helene Wolf  
(Birth Certificate)

Michael David Walker

Michael David Nakao Walker  
(Change of Name Certificate)

(b) Student Members

From

To

Sharon Lavine

Sharon Elise Rochelle Lavine  
(Birth Certificate)

Shu Tai Cheng

Shu-Tai Cheng  
(Citizenship Certificate)

Alexandra Jean Campbell Fraser

Sacha Campbell Fraser  
(Change of Name Certificate)

Kar Big Ruby Ching

Ruby Kar Big Ching  
(Citizenship Certificate)

4. ROLLS AND RECORDS

(a) Deaths

The following members have died:

James Andrew Allan  
Scarborough

Called March 26, 1971  
Died June 1, 1991

Randa Jean Cooke  
Vancouver, BC

Called February 7, 1992  
Died July 5, 1992

Henri Proulx  
Gloucester

Called September 15, 1932  
Died September 1, 1992

John Stuart Dietrich  
Windsor

Called February 18, 1966  
Died September 21, 1992

D'Arcy Blair  
Toronto

Called June 18, 1931  
Died December 18, 1992

Donald McKinnon Pringle  
Toronto

Called June 29, 1948  
Died December 18, 1992

Sandra Margaret Suzanne Oosterhoff  
London

Called March 25, 1966  
Died January 12, 1993

John Arthur Hoolihan  
Toronto

Called June 24, 1954  
Died January 25, 1993

(b) Permission to Resign

The following member was permitted to resign his membership in the Society and his name has been removed from the rolls and records of the Society:

Adi Mullan Raman	Called March 22, 1968
Toronto	Permitted to Resign
	December 31, 1992

(c) Disbarments

The following member has been disbarred and struck off the rolls and his name have been removed from the rolls and records of the Society:

Philip Cameron Upshall	Called March 21, 1969
Brampton	Disbarred
	January 28, 1993

(d) Membership in Abeyance

Upon their appointments to the offices shown below, the membership of the following members has been placed in abeyance under section 31 of The Law Society Act:

Deborah Joyce Austin	Called April 7, 1982
Sarnia	Appointed to the Ontario Court of Justice
	(Provincial Division)
	December 1, 1992

John Frederick Casey	Called March 20, 1975
Toronto	Appointed to the Ontario Court of Justice
	(Provincial Division)
	December 21, 1992

Hugh Knox Atwood	Called March 20, 1975
Etobicoke	Appointed to the Ontario Court of Justice
	(Provincial Division)
	January 4, 1993

Margaret Florence Woolcott	Called April 6, 1979
Waterloo	Appointed to the Ontario Court of Justice
	(Provincial Division)
	January 4, 1993

Geraldine Norma Sparrow	Called April 6, 1979
Toronto	Appointed to the Ontario Court of Justice
	(Provincial Division)
	January 15, 1993

Jennifer Anne Blishen	Called April 9, 1979
Ottawa	Appointed to the Ontario Court of Justice
	(Provincial Division)
	January 15, 1993

Jane Mary Kerrigan Brownridge	Called April 10, 1980
Brampton	Appointed to the Ontario Court of Justice
	(Provincial Division)
	January 15, 1993

26th February, 1993

William James Blacklock  
Brampton

Called March 29, 1977  
Appointed to the Ontario Court of Justice  
(Provincial Division)  
January 25, 1993

Maryka Joyce Omatsu  
Toronto

Called September 16, 1977  
Appointed to the Ontario Court of Justice  
(Provincial Division)  
February 1, 1993

5. LEGAL MEETINGS AND ENTERTAINMENT

Pursuant to the authority given by the Finance Committee, the Secretary reported that permission has been given for the following:

February 16, 1993	Judges Dinner Convocation Hall
February 22, 1993	Min. Attorney General Convocation Hall
February 25, 1993	Lawyers Club Dinner Convocation Hall
February 27, 1993	Gale Moot Dinner Convocation Hall
March 3, 1993	M.L. Lamont Dinner Convocation Hall
March 4, 1993	Criminal Lawyers Barristers Lounge
March 5, 1993	Phi Delta Phi Dinner Convocation Hall

ALL OF WHICH is respectfully submitted

DATED this 26th day of February 1993

"K. Howie"  
Chair

Attached to the original Report in Convocation file, copies of:

- B-Item 1. Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated February 8, 1993 re: Financial Statements Highlights - December 31, 1992.  
(pages 9 - 14)

THE REPORT WAS ADOPTED

26th February, 1993

MOTION TO SUSPEND: FAILURE TO PAY LATE FILING FORM 2/3

It was moved by Ken Howie, seconded by Tom Bastedo THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from February 26, 1993 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993 at 11:30 a.m. The following members attended the meeting: Bencher representation: Ms. P.J. Peters (Chair), Ms. K.J. Palmer (Vice-Chair), Mr. M. Hickey. Staff representation: Mr. D.A. Crosbie, Mr. A. Treleaven, Ms. H. Harris, Ms. M. Farrell, and Ms. D. Paquet (Secretary). Special representation: Mr. T. Keith, CBAO, Mr. R. Paquette, AJEFO and Ms. G. Cortis, Legal Aid.

B.

ADMINISTRATION

1. Appointment of Law Society's Representative to CBAO's Joint French Continuing Legal Education Sub-Committee

The appointment of Ms. Julaine Palmer to the Joint French Continuing Legal Education Sub-Committee of the Canadian Bar Association - Ontario (CBAO) was confirmed by your Committee. Ms. Palmer has kindly agreed to serve.

2. Preliminary 1993-94 Budget - French Language Services Programme

The preliminary 1993-94 budget proposed for the French Language Services Programme was approved as submitted.

3. Bilingual Staffing - Designated Bilingual Positions

Your Committee reviewed the bilingual staffing report submitted by the Human Resources Department for the quarter ending December 31, 1992. The number of position filled since the submission of the Dec. 31, 1992 report has increased from 73% to 90%.

26th February, 1993

The progress made in the area of bilingual staffing in the past five months is very encouraging. Your Committee is satisfied that the Human Resources Department has worked diligently, in consultation with the French Language Services Office, to meet the French Language Services Policy's requirements.

4. Recruitment and Hiring of Bilingual Communicator

The Law Society is in the process of recruiting and hiring a bilingual communicator who will have two major responsibilities, one as an integral member of the communications team and the other as the Coordinator of the French Language Services Program.

The Under Treasurer undertook to consult with the Chair of the French Language Services Committee on the final selection of the candidate for the position.

The meeting was adjourned at 12:45 p.m.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"P. Peters"  
Chair

AUX MEMBRES DU CONSEIL DU BARREAU DU HAUT-CANADA

RÉUNIS EN ASSEMBLÉE

LE COMITÉ DES SERVICES EN FRANÇAIS a l'honneur de faire son rapport.

Votre Comité s'est réuni le jeudi 11 février 1993 à 11 h 30. Étaient présents, en qualité de membres du Conseil, M<sup>re</sup> P.J. Peters (présidente), M<sup>re</sup> K.J. Palmer (vice-présidente) et M<sup>re</sup> M. Hickey, en qualité de membres du personnel, M<sup>re</sup> D.A. Crosbie, M<sup>re</sup> A. Treleaven, M<sup>re</sup> H. Harris, M<sup>me</sup> M. Farrell et M<sup>me</sup> D. Paquet (secrétaire) et, à titre d'invités spéciaux, M<sup>re</sup> T. Keith de l'ABCO, M<sup>re</sup> R. Paquette de l'AJEFO et M<sup>me</sup> G. Cortis de l'aide juridique.

B.  
ADMINISTRATION

1. Représentante du Barreau au Sous-comité mixte sur la formation permanente en français de l'ABCO

Votre Comité a confirmé la nomination de la conseillère Julaine Palmer au Sous-comité mixte sur la formation permanente en français de l'Association du Barreau canadien - Ontario (ABCO). M<sup>re</sup> Palmer a eu la gentillesse d'accepter.

2. Budget provisoire de 1993-1994 - Programme des services en français

Le budget provisoire de 1993-1994 qui a été proposé pour le Programme des services en français a été adopté tel quel.

26th February, 1993

3. Dotation en personnel bilingue - postes désignés bilingues

Votre Comité a étudié le rapport sur la dotation en personnel bilingue que le Service des ressources humaines lui a présenté pour le dernier trimestre de 1992. Le pourcentage des postes effectivement pourvus depuis la présentation du rapport du 31 décembre 1992 est passé de 73 % à 90 %.

Les progrès accomplis au cours des cinq derniers mois sont très encourageants. Votre Comité constate avec satisfaction que le Service des ressources humaines s'est employé, en consultation avec le Bureau des services en français, à satisfaire aux exigences de la politique des services en français.

4. Recrutement d'un agent ou d'une agente bilingue des communications

Le Barreau recrute présentement un agent ou une agente bilingue des communications qui exercera deux fonctions principales, l'une à titre de membre à part entière de l'équipe des communications et l'autre, à titre de coordonnateur ou coordonnatrice des services en français.

Le trésorier adjoint s'est engagé à consulter la présidente du Comité des services en français sur la personne dont la candidature sera finalement retenue pour le poste.

La séance a été levée à 12 h 45.

FAIT le 26 février 1993

La présidente

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE

Meeting of February 11th, 1993

Mr. Campbell spoke to Item 1 re: the Director's Monthly Report.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993 at 1:30 in the afternoon, the following members being present: Messrs. Bragagnolo (Chair), Hickey, Feinstein, Epstein, Scace, Howie, Cass, Wardlaw, Somerville, and Ms. Elliott.

Also in attendance were Messrs. Whitman, O'Toole and Crack.

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ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director reported that as at December 31, 1992 liabilities exceeded capital and surplus by \$23,869,479 compared to \$22,337,000 at the end of December 1991. This has resulted from a higher than projected cost of new claims reported during 1992, and a reduction in the amount of anticipated investment income due to falling interest rates. A supplemental levy was introduced in 1992 to eliminate the deficit by December 1996. Your Committee does not recommend increasing the supplemental levy because of these developments, but rather recommends continuing the supplemental levy for an additional twelve months to eliminate the deficit by December 1997.

The Director reported that claims totalling \$1,277,000 were reported during the month of January 1993 compared to \$2,357,500 for January 1992, and remains cautiously optimistic that the continuing trend towards an overall reduction in claim costs will be sustained through 1993. Should the trend not continue however, it may be necessary to increase the Errors & Omissions levy for the second half of 1993 to avoid any deterioration in the current deficit situation. The Director will continue to monitor the frequency and severity of new claims, and will report to your Committee in this regard.

2. INSURANCE SUBCOMMITTEE OVERVIEW

For the benefit of Insurance Committee members who joined the Committee after the creation of the Insurance Subcommittee, the Director provided an overview of the Subcommittee's mandate; to consider and make specific recommendations on short and long-term loss prevention initiatives, and to review the entire Mandatory Professional Liability Insurance Program including the policies governing the Errors & Omissions levy rating structure.

3. CLAIMS INVOLVING SEXUAL IMPROPRIETY / MISCONDUCT

The Chair of the Lawyers Fund for Client Compensation Committee queried the possibility of obtaining insurance coverage to indemnify members in the event of a suit, claim or criminal charge involving sexual improprieties with clients. Pursuant to a request by the Chair of the Insurance Committee, the Director has inquired about the availability and cost of such insurance coverage, and advised your Committee that preliminary indications from the Society's Brokers are that insurance coverage is accessible. Upon receipt of additional information from the Brokers the Director will report on the availability, details, and cost of such coverage.



26th February, 1993

4. OUTSTANDING ITEM

a) Your Committee has considered the Director's proposal to extend the definition of professional services under the LPIC policy wording to provide coverage for claims against insureds arising out of their activities as fiduciaries. Your Committee, concerned that the proposal would broaden coverage to include claims arising out of an insured's performance of non-legal services, does not recommend changing the LPIC policy wording. See Appendix "A".

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"C. Campbell"  
Chair

Attached to the original Report in Convocation file, copies of:

Item 4 Proposed wording of the LPIC policy. (Appendix "A", pages 1 - 2)

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993 at two-thirty in the afternoon, the following members being present: Messrs. Wardlaw (Chair), Feinstein and Bragagnolo. Staff members present were David Crack and David Carey.

B.  
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee an investment report summary for the various Law Society Funds together with supporting documentation for the month ended January 31, 1993 (Schedule A).

Ratified

26th February, 1993

2. Other Matters

The Deputy Director of Finance was instructed to begin extending the Errors and Omissions Insurance Fund long term investments, eleven years through to and including seventeen years in order to match the longer tail on the claims reserves. There will be enough short term funds and incoming levies to meet the short term requirements.

Noted

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"J. Wardlaw"  
Chair

Attached to the original Report in Convocation file, copies of:

B-Item 1 Investment Report Summary for the month ended January 31, 1993.  
(Schedule A)

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENTS COMPENSATION COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993, at 11:45 a.m. the following members being present: C. Ruby (Chair), L. Brennan, K. Howie, C. Chouinard, and T. McClenaghan; D. Crack, J. Brooks, S. Hickling and H. Werry also attended.

A.  
POLICY

1. PUBLICITY CAMPAIGN FOR  
THE LAWYERS FUND FOR CLIENT COMPENSATION

Two representatives from the advertising firm, Chiat Day, outlined some samples of advertisements about the Fund as a limited experiment for the print media and suggested Ottawa as the most appropriate location to launch the publicity campaign. The purpose of the campaign would be to increase the public's awareness of the Fund; it would, incidentally, improve public opinion about lawyers by making it known that lawyers, on their own, assume this obligation for the benefit of the public. The Committee after some discussion decided to defer the matter to the next meeting in order to give the members time to consider the idea fully and discuss it with colleagues.

26th February, 1993

B.  
ADMINISTRATION

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1. BUDGET PLANNING 1993/1994

The Committee discussed what would be an appropriate levy for the Fund for next year. The Director of Finance presented an analysis of the claims history and a projection into 1997. On the assumption that present claims would be disposed of by 1997 and would result in a total liability of \$20 million he anticipated there would be roughly \$12 million left in the Fund by 1997 if the levy remained at one dollar. In spite of recent increases in claims Mr. Crack indicated the Fund was financially sound. The Committee asked Mr. Crack to try and incorporate some new variables in his analysis for the next meeting. There was also a discussion of whether the levy should be increased to at least \$5.00 or \$10.00 as a signal to our members that the claims to the Fund have increased sharply in recent years and as a reminder of their obligation in that regard. The final recommendation on the levy will be made at the next meeting.

C.  
INFORMATION

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1. REPORT OF REFEREE

The Report of a Referee that was approved by the Review Sub-Committee was before the Committee for information purposes only with the grants to be paid from the Fund shown on Schedule "A" of this report.

2. A copy of the Financial Summary and Activity Report as of December 1992 is attached. (Pgs. C1 - C3)

3. Accounts approved by Assistant Secretaries in January amounted to \$40,042.32.

4. DEPARTMENT BUDGET - OUTSIDE COUNSEL FEES ACCOUNT

It was reported that the account for Outside Counsel Fees at February 3, 1993 was \$123,753. The amount allocated to this account in the budget for this fiscal year 1992/1993 is \$30,000. It is anticipated that the outside counsel fees account for the next six months will be substantial resulting in an additional over-budget amount. The increase is due primarily to one matter involving approximately 200 claimants and over \$5,000,000 in claims. There are potential negligence issues as well. It is expected that the matter will continue well into 1993/1994. The Committee authorized a budget increase for the 1992/1993 fiscal year of \$250,000 for the Outside Counsel Fees account and will budget \$300,000 for this item in 1993/94.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"C. Ruby"  
Chair

26th February, 1993

Attached to the original Report in Convocation file, copies of:

- C-Item 1. Report of a Referee. (Schedule "A")
- C-Item 2. Copy of the Financial Summary and Activity Report as of December 1992. (pages C1 - C3)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of February 11th, 1993

Mr. Lamek spoke to those Items regarding the Computer Education Facility, Department of Education 1993-4 Budgets and Employment Placement Statistics.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 11th of February, 1993, at 10:30 a.m.

The following members were in attendance: Paul Lamek (Chair), Philip Epstein (Vice-chair), Donald Lamont (Vice-chair), Thomas Bastedo, Lloyd Brennan, Stephen Goudge, Casey Hill, Colin McKinnon, Ross Murray, Louis Radomsky (non-Bencher member), Marc Somerville, and Roger Yachetti. An invited guest was: Peter Clausi. Representing the law schools were: Dean Jeffrey Berryman and Dean Donald McRae. Staff in attendance were: Deborah Brown, Marilyn Bode, Brenda Duncan, Holly Harris, Mimi Hart, Linda Johnston, Alexandra Rookes, and Alan Treleven.

A.

POLICY

No items to report this month.

B.

ADMINISTRATION

No items to report this month.

C.

INFORMATION

C.1. COMPUTER EDUCATION FACILITY

- C.1.1 The Law Society's Computer Education Facility, located in the Law Society premises in Toronto and in the University of Ottawa premises in Ottawa, offers computer education programming.

- C.1.2 The Computer Education Facility, under the auspices of the Law Society's Continuing Legal Education Department, in attempting to offer programming on a break-even basis, faces a number of significant obstacles, including the following:
- 1) out-dated equipment which requires replacement,
  - 2) ongoing revision of the curriculum to keep programming current with new developments,
  - 3) competition from private education offerors, and
  - 4) the recession.
- C.1.3 A decision must be made as to the investment of the money and time necessary to update the equipment and revise the curriculum on an ongoing basis.
- C.1.4 The Committee discussed the matter at its January 14 and February 11 meetings.
- C.1.5 The Committee considered the financial outlay required to upgrade and maintain the Toronto facility. The Committee's deliberations were made in light of proposed 1993-94 Continuing Legal Education and Computer Education budgets that cumulatively anticipate revenues sufficient to cover the financial outlay.
- C.1.6 The Committee decided to recommend to the Finance Committee that the upgrading of the Toronto facility be approved on the basis that all the financial outlay is accounted for in the 1993-4 Continuing Legal Education and Computer Education Facility budgets.
- C.1.7 The ongoing involvement of the Law Society in the University of Ottawa computer education facility does not require resolution for purposes of finalizing and approving the 1993-4 budget, but ought to be dealt with by the Law Society in co-operation with the University of Ottawa once a final decision is made by Convocation with respect to the Toronto facility.
- C.2 DEPARTMENT OF EDUCATION 1993-4 BUDGETS
- C.2.1 Draft budgets for the Bar Admission Course, Continuing Legal Education, and the Computer Education Facility were considered by the Legal Education Committee.
- C.2.2 The draft Bar Admission Course budget includes the recommendations made by the Bar Admission Course Financial Issues Subcommittee both in relation to proposed revenue increases and expenditure reductions. The most current information from the Law Foundation was taken into account. For 1993-4 the Legal Education Committee recommends a 7 percent tuition increase, and that any budgeted excess of expenditures over revenues that remains after the Law Foundation grant allocation is finalized be covered from the Law Society's general revenues. The amount required from the Law Society's general revenues can only be ascertained once the Law Foundation makes its grant and the shortfall, if any, has been allocated among the Bar Admission Course, Bar Admission Course translation, and the libraries.

- C.2.3 The draft Continuing Legal Education and Computer Education Facilities budget in combination show a very modest surplus after taking into account proposed expenditures for the upgrade of the Toronto Computer Education Facility.
- C.2.4 The Legal Education Committee approved the budgets and is referring them to the Finance Committee.
- C.3 BAR ADMISSION COURSE APPLICATION FEE
- C.3.1 Rule 50 made under the Law Society Act sets the Application Fee as follows:
- Upon filing an application for admission as a student member of the Society -- Non-refundable Application Fee.... \$101.
- C.3.2 The Bar Admission Course Financial Issues Subcommittee has recommended that the Application Fee be increased from \$101 to \$125, as a means of generating increased revenue for the Bar Admission Course.
- C.3.3 The Legal Education Committee approved an Application Fee increase from \$101 to \$125, and is referring its recommendation to the Finance Committee and to the Legislation and Rules Committee.
- C.4 BAR ADMISSION COURSE FINANCIAL ISSUES SUBCOMMITTEE
- C.4.1 The Bar Admission Course Financial Issues Subcommittee held its fourth meeting on Thursday, January 28, to consider in particular the 1993-4 Bar Admission Course budget in light of funding information received from the Law Foundation. The following members were in attendance: Paul Lamek (Chair), Thomas Bastedo, Lloyd Brennan, Dean Donald McRae, and Ross Murray. The following members of staff were in attendance: Erika Abner, Deborah Brown, David Crack, Donald Crosbie, Holly Harris, Margaret McSorley and Alan Treleaven.
- C.4.2 The Subcommittee discussed the likely impact of the anticipated Law Foundation grant for the Law Society. The grant is to be shared among the Bar Admission Course, Bar Admission French language translation and the law libraries. The Subcommittee endorsed an option presented by the Under Treasurer, Donald Crosbie, that a shortfall to the Law Society be made up by further savings found in Law Society budgets and from general revenues.
- C.4.3 The Subcommittee also considered briefly whether further reductions in Bar Admission Course expenses beyond those already approved by the Subcommittee could be achieved for the 1993-4 budget year. Mr. Treleaven explained that the Bar Admission Course budget had already been significantly reduced, and that a number of staff and faculty positions currently remain vacant as a part of the expenditure reduction process. Mr. Treleaven went on to explain that it would not be possible to make further meaningful expenditure cuts for 1993-4 without severely altering the nature of the Bar Admission Course educational program.

- C.4.4 The fifth meeting of the Subcommittee took place on Friday, February 5 at 11:00 a.m. in Ottawa, to enable further decisions to be made for the purposes of drafting the 1993-4 Bar Admission Course budget. The following members were in attendance: Paul Lamek (Chair,) Thomas Bastedo, Lloyd Brennan, and Dean Donald McRae. Staff in attendance were: Deborah Brown, Holly Harris, Margaret McSorley, and Alan Treleaven.
- C.4.5 The Subcommittee continued to discuss the draft Bar Admission Course 1993-4 budget. It was confirmed again that the budget should include the expenditure reductions agreed to at the previous meeting. It was also decided to include a tuition increase of 7 percent for Phase Three. (The 7 percent figure reflects a level of increase currently being levied by the universities.)
- C.4.6 The Chair asked the Director and staff to identify for the Subcommittee a range of valid options for the longer term future of the Bar Admission Course. The Subcommittee will begin to examine options at its next meeting.
- C.4.7 The next meeting is scheduled on Friday, March 12 at 8:00 a.m.
- C.5 LEGAL EDUCATION COMMITTEE AND ONTARIO LAW DEANS MEETING AND DINNER
- C.5.1 The annual meeting and dinner of the Legal Education Committee and Ontario Law Deans will take place on Thursday, March 11 in Convocation Room. The meeting will begin at 4:00 p.m., with dinner to follow at 7:00 p.m.
- C.5.2 At this meeting, the Legal Education Committee and the Deans will discuss educational matters of common interest to the Ontario law schools and to the Law Society.
- C.5.3 All members of the Legal Education Committee are encouraged to attend, and are asked to confirm whether they can attend with Alexandra Rookes at 416-947-3414 as soon as reasonably possible.
- C.6 BAR ADMISSION COURSE SECTION HEADS AND LEGAL EDUCATION COMMITTEE ANNUAL MEETING AND DINNER
- C.6.1 The annual meeting and dinner of the Legal Education Committee and Bar Admission Course Section Heads, including Senior Instructors from London and Ottawa, will take place on Thursday, June 10. The meeting will begin in Convocation Room at 4:00 p.m., with dinner to follow in the Benchers' Dining Room at 7:00 p.m.
- C.6.2 The meeting is being held to discuss current and future directions for the Bar Admission Course. The dinner is being held to thank the Section Heads and Senior Instructors for their generous contribution to the Bar Admission Course.
- C.6.3 All members of the Legal Education Committee are encouraged to attend, and are asked to confirm whether they can attend with Alexandra Rookes at 416-947-3414 as soon as reasonably possible.

C.7      ARTICLING SUBCOMMITTEE

- C.7.1      The Subcommittee had two meetings in January. It met on January 14 and 29, 1993. In attendance at its January 14 meeting were: Marc Somerville (Chair), Stephen Goudge, Jay Rudolph, Janne Burton and Victoria Colby. Staff members in attendance were: Marilyn Bode, Deborah Brown, Barbara Dickie and Mimi Hart. The January 29 meeting was held to consider the balance of the Subcommittee's agenda for its January 14 meeting.
- C.7.2      At its January 14 meeting, the Subcommittee gave conditional approval to a further 27 applications from prospective articling principals for the 1992/93 articling year. To date, approximately 1200 members of the profession have applied. The Subcommittee also gave conditional approval to 193 applications from prospective articling principals for the 1993/94 year.
- C.7.3      The Subcommittee deferred its decision on the approval of one principal until its next meeting. The member had a substantial number of complaints since 1989 and was authorized to participate in the Peer Review Program in June of 1992. The Subcommittee will ask the member for written submissions as to why he should be approved to serve as a principal notwithstanding his history with the Law Society.
- C.7.4      The Subcommittee considered the application for 1993/94 of a member with some negative history with the Law Society. The Subcommittee approved the member as a principal subject to the submission of regular progress reports.
- C.7.5      The Subcommittee considered several information items. The Chair updated the Subcommittee on the discussions of the Legal Education Committee at its January 14 meeting regarding whether articling students should be permitted to appear on bail hearings. There was another discussion about the rights of appearance distinction for students inside and outside of Metropolitan Toronto on simple contested interlocutory matters. Mr. Somerville will speak to the Treasurer about this matter.
- C.7.6      Mimi Hart updated the committee on the status of the eight students without positions for the 1992/93 articling year and the efforts of the Equity Committee to assist a number of them.
- C.7.7      The Articling Subcommittee met again on Friday, January 29, 1993 at 8:00 a.m. In attendance were Marc Somerville (Chair), Stephen Goudge, Janne Burton and Jay Rudolph. Staff members attending were Deborah Brown, Barbara Dickie and Mimi Hart. The Subcommittee considered the draft report of the Joint Subcommittee on Sexual Harassment in detail. The Articling Subcommittee requested that the Joint Subcommittee meet again to consider the following questions: 1) the discretionary powers with the Articling Director in deciding whether a matter should be referred to Discipline; 2) whether a complainant should be advised that the Law Society owns the complaint; 3) the reporting of complaints by the Articling Director to the Articling Subcommittee; 4) whether Rule 27 of the Professional Conduct Handbook should be amended to specifically mention harassment against articling students; 5) whether there might be a sanction for a malicious complaint by students; and 6) whether the Law Society would take action if the alleged harasser is a client of the firm.



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C.7.8 The next meeting of the Subcommittee will be at 8:00 a.m. on February 26, 1993.

C.8 JOINT SUBCOMMITTEE ON SEXUAL HARASSMENT

C.8.1 The Joint Subcommittee is meeting again at the request of the Articling Subcommittee to consider questions raised by the Articling Subcommittee at its January 29 meeting. The Joint Subcommittee has scheduled a meeting for February 17 at 12:00 noon. It is hoped that a final report of the Joint Subcommittee will be presented to the Legal Education Committee in March.

C.9 EMPLOYMENT PLACEMENT STATISTICS

C.9.1 Recent Graduate Placement: Mimi Hart, Director of Financial Aid and Placement, reported the preliminary results of an informal Student Employment Survey conducted in December. The results pertain to students who have just completed the Bar Admission Course. The following is excerpted from the survey results:

BAC Phase Three Enrolment (at December 15, 1992)	1,206
Responses to Questionnaire (Toronto, Ottawa, London)	490
% Response	40.63%

Employment Arrangements Question (n = 488):

Number Returning to Articling Employer	203	41.59%
Number Hired by other than Articling Employer	71	14.54%
Number Starting Own Practice or joining others in practice (approximate)	19	3.89%
Total With Employment Arrangements at December 15, 1992	293	60.04%
Number Without Employment Arrangements at December 15, 1992	195	39.95%

Of Those with jobs (n = 293):

Entering Private Practice	237	80.9%
Entering Practice with Government	19	6.5%
Entering Practice in a Company Legal Department	6	2.0%
Opening own practice or entering practice with others as partner/ associate	24	8.2%
Employed in a Community Legal Clinic	0	0%
Employed outside the practice of law	7	2.4%

Location of Employment (n = 293):

Metropolitan Toronto	185	63.1%
Central Ontario (all 416 telephone exchanges outside Metropolitan Toronto)	20	6.8%
Eastern Ontario (all 613 exchanges)	34	11.6%
Southwestern Ontario (all 519 exchanges)	35	12%
Northern/Northwestern Ontario (all 705 and 807 exchanges)	9	3%
Outside Ontario	11	3.75%

26th February, 1993

- C.9.2 The average over a seven year period from 1985 to 1991 is 64 percent with and 36 percent without employment at the conclusion of the Bar Admission Course.
- C.9.3 Further, as at January 20, 1993, the Law Society's records indicate that 89.3 percent (n = 1,010) of 1992 graduates who have remained in Ontario are registered with the Society in a category which indicates they are gainfully employed. Further information is being sought concerning the 10.69 percent remaining to determine the number who may have chosen not to enter the workforce in 1992 as they are pursuing other opportunities, such as a Master's Degree.
- C.9.4 The Legal Education Committee is concerned that the 40.63 percent response rate to the December, 1992 questionnaire may not provide reliable statistics, because it cannot be known whether the responses include a disproportionate number of employed or unemployed students. Moreover, the extent to which the employment rate has improved since December 15, 1992 cannot be ascertained. Accordingly, the Legal Education Committee has asked the staff to initiate for the next Bar Admission Course a survey process that will generate a fuller response so that more reliable statistics will be available for analysis.
- C.9.5 Articling Placement: A review of the 1,145 applications received from students entering the 35th Bar Admission Course this Spring (approximately 95 percent of expected enrolment) reveals that 990 (86.46 percent) have secured an articling position for the 1993 - 1994 articling year. There were 155 students (13.53 percent) who did not respond to the question on the application which asks where they will article.
- C.9.6 There were 101 students (9.6 percent) who did not respond to the same question in February 1, 1992, at which time 1,051 applications had been received.
- C.10 CONTINUING LEGAL EDUCATION REPORT ON COURSES
- C.10.1 The Report is attached. (pages 1 - 3).

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"P. Lamek"  
Chair

Attached to the original Report in Convocation file, copies of:

C-Item C.10 - Continuing Legal Education: Report on Courses. (pages 1 - 3)

THE REPORT WAS ADOPTED

26th February, 1993

CALL TO THE BAR

The following candidates were presented to the Treasurer and Convocation and were called to the Bar, and the degree of Barrister-at-Law was conferred upon each of them by the Treasurer.

Edward Paul Chan	34th Bar Admission Course
Edith Cohen	34th Bar Admission Course
Tanneke Brunilde Heersche	34th Bar Admission Course
Timothy Scott Henderson	34th Bar Admission Course
Robin Lynn Martin	34th Bar Admission Course
John Alexander Paterson	34th Bar Admission Course
Kenneth David Klein	Special, Transfer, Province of Manitoba
Rosemary Lea Cairns Way	Professor, Faculty of Law, University of Ottawa

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LEGAL AID COMMITTEE

Meeting of February 11th, 1993

Ms. Kiteley presented the Report of the Legal Aid Committee.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993, the following members being present: Frances P. Kiteley, Chair, Messrs. Brennan, Bond, Ms. Campbell, Ms. Cohen, Mr. Durno, Ms. Fuerst, Ms. Kehoe, Messrs. Koenig, Lalande, and Petiquan.

Also present, Colin D. McKinnon, Q.C., Chair of the Law Society Professional Standards Committee.

A.  
POLICY

1.(a) LEGAL AID BUDGET 1993/94

The key issues arising from the budget as drafted are as follows:

- an increase in funding from the Provincial Government of 3.4% will be required.
- an increase in the legal aid levy through the Law Society will not be necessary.
- certificate account costs are expected to decrease by 3.7% overall due in large part to the expected decrease in the costs in the area of refugee law.
- the Law Foundation is actively negotiating with chartered banks for an increase in the interest rate of funds held in mixed trust accounts.
- the salary increases for staff were budgeted at less than the anticipated salary increase for Law Society staff.

- the Legal Aid Committee should make a recommendation as to whether (and if so, to what extent), the tariff should be increased.

Following a presentation by the Deputy Director (Finance), the Legal Aid Committee engaged in debate with respect to the following motions:

MOTION #1 - Moved by Mr. Bond and seconded by Mr. Koenig

"That the Legal Aid budget reflect:

- a civil tariff increase of 5%.
- a criminal tariff amendment consistent with the previously approved report of the Criminal Tariff Review Committee (namely that all indictable trial matters should be billed at \$300. per half day).
- increased revenues from the Law Foundation consistent with perceived levels of expectation."

MOTION #2 - Moved by Ms. Cohen and seconded by Mr. Lalande

"That the Legal Aid budget reflect:

- a civil tariff increase of 25%.
- if motion #1 is defeated, a criminal tariff amendment consistent with the previously approved report of the Criminal Tariff Review Committee (namely that all indictable trial matters should be billed at \$300. per half day)."

MOTION #3 - Moved by Ms. Kehoe and seconded by Mr. Brennan

"That the expected savings in refugee certificate costs be applied to increase the civil tariff".

Following discussion and debate with respect to all motions, voting was undertaken as follows:

Motion #1                      6:4 in favour

Motion #2                      Not put in view of the result of the vote on motion #1

Motion #3                      9:1 in favour

On the basis of these results, a final motion was received:

MOTION #4 - Moved by Mr. Brennan and seconded by Mr. Lalande

"That, subject to the results of motion #1 and #3, the budget is approved."

Motion #4 was carried.

The Budget attached as Schedule "A" to this report reflects the amendments noted above.

Note: Motion, see page 263

1.(b) SUBCOMMITTEES FOR STANDARDS IN CRIMINAL FAMILY AND REFUGEE LAW

The Chair introduced Colin McKinnon, Chair of the Professional Standards Committee of the Law Society of Upper Canada. The following is a summary of relevant events on the subject matter:

- during the course of the review by the Tariff Review Committee, the members of the Committees became concerned about the quality of service provided to some legally aided clients.
- as a result of those concerns, the following statement was included in the report of the Criminal Tariff Review Committee at page 23:

"When examining the larger amounts billed to the Plan by a very small number of counsel, the Subcommittee considered the issue of quality of service. While acknowledging that there is likely a point where a lawyer's case volume would result in a reduced quality of service, it was beyond the mandate of the Subcommittee to assess this issue. Factors such as the lawyer's experience level and jurisdictional differences would have to be included in any such analysis. The Legal Aid Committee will be examining this issue with the assistance of the Law Society. Section 27 of the Regulations under the Legal Aid Act provides for the establishment of standards of professional practice, training and experience for entry to and retention on any Legal Aid panel. It is anticipated that the preparation of these standards will include an analysis of the quality of service issue."

This report was adopted by Convocation on July 10, 1992.

- by statute, the Provincial Director has the authority to remove a lawyer from a Legal Aid panel. The Legal Aid Regulation provides that the Law Society will establish standards of professional practice, training and experience for entry on or retention on the panel. The Law Society has not established such standards.
- at its meeting in September, 1992, the Legal Aid Committee approved the creation of the Standards of Professional Practice Subcommittee with the following terms of reference: to determine whether the Plan should establish standards of professional practice for entry on or retention on criminal legal aid panels.

This recommendation was adopted by Convocation in September, 1992.

- the Standards of Professional Practice Subcommittee met consisting of Bruce Durno (Chair), Paul Copeland, Michelle Fuerst, Robert J. Carter, Dean Paquette and Jack Gemmell. The Chair of the Subcommittee initiated contact with the Ministry of the Attorney General with a view to implementing the recommendations of the Criminal Tariff Review Committee. And the Subcommittee prepared a notice to the profession seeking input, which notice was circulated in three consecutive cheque runs from Legal Aid. Considerable response was received including a concern that the membership of the Subcommittee should be expanded to be more representative; that standards might be adopted by the Legal Aid Committee for lawyers of clients who are legally aided while no comparable standards would exist for lawyers whose clients were not legally aided; and that once standards were adopted, they would be enforced by the Law Society.

26th February, 1993

- the membership of the Standards of Professional Practice Subcommittee in Criminal Law was expanded to include representative input from experienced lawyers across Ontario.
- at its meeting on November 12, 1992, the Legal Aid Committee received an oral report from the Standards of Professional Practice Subcommittee in Criminal Law. The Legal Aid Committee adopted the following recommendation:

"That the name of the existing Subcommittee be changed to The Subcommittee to Explore the Feasibility of Standards in criminal Law Practice and that the text of the term of reference be altered slightly as follows: To make recommendations to the Legal Aid Committee as to whether standards of professional practice in criminal law should be established for purposes of entry on and retention on the Legal Aid panel.

That a further Subcommittee be appointed to Explore the Feasibility of Standards in Family Law Practice and that the terms of reference will be: To make recommendations to the Legal Aid Committee as to whether standards of professional practice in family law should be established for purposes of entry on and retention on the Legal Aid panel.

That a further Subcommittee be appointed to Explore the Feasibility of Standards in Immigration Law Practice and that the terms of reference will be: To make recommendations to the Legal Aid Committee as to whether standards of professional practice in immigration law should be established for purposes of entry on and retention on the Legal Aid panel.

A summary of the discussion was included in the report to Convocation in November 1992. (See Schedule "B" for the summary submitted to Convocation at that time).

- In view of the concern about uniformity of standards for all lawyers, the Treasurer suggested that the existing Legal Aid Committee initiative be broadened to ensure the involvement of the Professional Standards Committee. Toward that end, a memo was sent by the Treasurer to the Chair of the Legal Aid Committee and the Chair of the Professional Standards Committee, a copy of which memorandum is attached as Schedule "C". The memorandum outlines the establishment of three Committees to prepare draft standards reporting jointly to the Professional Standards Committee and the Legal Aid Committee with an expectation that the report of those Committees would be available in April, 1993.

That memorandum was received and approved by Convocation in November 1992.

26th February, 1993

- the expanded Standards of Professional Practice Subcommittee in Criminal Law met on January 12, 1993 as previously planned. The Subcommittee included two representatives from Ottawa specifically at the request of the Chair of the Professional Standards Committee. The Subcommittee agreed that Standards should be developed in criminal law. It became apparent that the work of the Subcommittee in drafting the standards would require finances to enable meetings and research to be undertaken. Consistent resources would be necessary for the work of the Family Standards Subcommittee and Refugee Standard Subcommittee. As a result, on January 14, 1993, the Legal Aid Committee and the Professional Standards Committee were both asked to approve a budget (see Schedule "D"). The Legal Aid Committee approved the budget. The Professional Standards Committee did not approve the budget in the absence of funds being available for the current fiscal year.

for reasons of efficiency and cost, a decision was made to create smaller Subcommittees to undertake the drafting process with a commitment to wide consultation with criminal, family and refugee lawyers before decisions would be made by the Legal Aid Committee and the Professional Standards Committee.

- two meetings have been held at the Ministry of the Attorney General at the invitation of the Deputy Attorney General. Representatives from the Law Society and the Legal Aid Plan were Allan Rock, Colin McKinnon, Fran Kiteley, Bob Holden and Bruce Durno. Brian Greenspan attended in this capacity as the President of the Criminal Lawyers' Association. The Deputy Attorney General outlined the government's initiatives in the criminal justice area including the development of systems to promote early disclosure by Crowns to defence counsel, access to meaningful Pre-Trials, and the availability of Senior Crown Attorneys to facilitate early pleas. It is apparent that the existing concern of the Legal Aid Committee and of the Law Society will converge with those initiatives of the Attorney General and will lead to the development of standards for both Crown Attorneys and defence counsel.
- in keeping with the decision to create a working group to develop standards in each of criminal, family and refugee law, the Legal Aid Committee and the Professional Standards Committee were asked to approve the appointment of lawyers to the three joint Committees. A memo from the Provincial Director to the Chairs of the Legal Aid Committee and the Professional Standards Committee was circulated to the Legal Aid Committee. While it had been delivered to the Law Society, the memorandum did not come to the attention of the Professional Standards Committee during the course of its meeting on February 11, 1993.
- the Chair of the Professional Standards Committee reported the concerns of the Committee including; the mandate of the Committees should be further defined; the members of the Committee should be considered; the anticipated completion date of April, 1993 was unduly optimistic.
- the Legal Aid Committee received and considered the memorandum from the Provincial Director. A copy is not attached pending the confirmation of the names of the individual lawyers. A list of all individuals will be reported to Convocation as soon as the Professional Standards Committee has had an opportunity to consider it.

26th February, 1993

The Legal Aid Committee considered the concerns of the Professional Standards Committee. The memorandum of the Provincial Director indicates the mandate of the joint Subcommittees as follows:

"The Committees will develop standards and report to both the Professional Standards Committee and the Legal Aid Committee. Prior to reporting, the Committees will consult with interested persons and organizations. In addition, the Criminal Standards Committee will consult with the members of the former Standards of professional Practice Subcommittee of the Legal Aid Committee."

The Legal Aid Committee received the following motion by Ms. Kehoe, seconded by Ms. Campbell:

"That the three Subcommittees be struck as described in the memorandum (criminal, family, refugee) and the members listed be endorsed, subject to the authority of the Chair of the Legal Aid Committee and the Chair of the Professional Standards Committee to add further individuals and subject to the expeditious agreement with the Professional standards Committee as to the mandate of the Subcommittees."

The foregoing motion was passed 7:2.

1.(c) ROLE OF THE LEGAL AID COMMITTEE AND IMPROVED INTRA COMMITTEE COMMUNICATIONS

As a result of remarks by some members of the Legal Aid Committee at its meeting on January, 1993, the Chair intended at the February meeting to create an opportunity to discuss the role of the Legal Aid Committee and how members could be kept advised in order to ensure thoughtful and informed debate. Due to the lengthy debate on other matters, this matter was deferred to the March, 1993 meeting.

1.(d) RESPONSES TO THE ABT REPORT

The Legal Aid Committee received the response to the Abt Report but due to the lengthy debate on the Legal Aid Budget the response to the Abt Report was deferred to the March, 1993 meeting.

1.(e) FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY POLICY FOR THE ONTARIO LEGAL AID PLAN

The Committee received the Freedom of Information and Protection of Privacy Policy for the Ontario Legal Aid Plan, but due to the lengthy debate on the Legal Aid Budget, the Policy was deferred to the March, 1993 meeting.

B.  
ADMINISTRATION

(a) AREA COMMITTEES - APPOINTMENTS AND RESIGNATIONS

APPOINTMENTS

Kenora

David James Elliott, solicitor



26th February, 1993

Waterloo

Marilyn Jacobi, psychologist

Lester Norman Orth, retired human resources officer

RESIGNATIONS

Kenora

L.P. Compton

C.

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ADDENDUM

In 1991, and again in 1992, the Legal Aid Committee and Convocation recommended that the civil tariff be restructured to be more compact and reasonable and user-friendly. The Legal Aid Committee has pursued the adoption of a Regulation which will effect the changes recommended so long ago. Following the Legal Aid Committee meeting on February 11, 1993, a draft Regulation was received from the Ministry of the Attorney General. That Regulation is attached for information of Convocation and execution by the Treasurer.

ALL OF WHICH is respectfully submitted

"F. Kiteley"  
Chair

February 16, 1993

Attached to the original Report in Convocation file, copies of:

A-Item 1.(a)	Legal Aid Budget 1993/94.	(Schedule A, pages (5))
A-Item 1.(b)	Portion of the Legal Aid Report of its meeting on November 12th, 1992 re: Standards of Professional practice Subcommittee.	(Schedule B, pages (2))
A-Item 1.(b)	Memorandum from Mr. Allan M. Rock to Ms. Fran Kiteley and Mr. Colin McKinnon dated November 25, 1992 re: Standards of Practice.	(Schedule C, pages (3))
A-Item 1.(b)	Budget of the Standards Subcommittees.	(Schedule D, page (1))
Item C	Draft Regulation - Regulation to Amend - Regulation 710 of Revised Regulations of Ontario, 1990 made under the Legal Aid Act.	(Schedule E, pages (5))

It was moved by Carole Curtis, seconded by Clay Ruby that the budget be amended to provide a 25% increase in the civil tariff rather than the recommended 5% increase.

Carried

ROLL-CALL VOTE

Bastedo	For
Bellamy	Abstain
Brennan	Against
Campbell	For
Curtis	For
Elliott	For
Epstein	For
Finkelstein	Against
Hickey	For
Hill	Abstain
Howie	Against
Howland	Abstain
Kiteley	Against
Krishna	For
Lamek	Against
Lamont	Against
Legge	For
Mohideen	For
Murphy	For
Palmer	For
Peters	For
Ruby	For
Scott	For
Sealy	For
Somerville	For
Strosberg	For
Thom	Abstain
Topp	For
Weaver	For
Yachetti	Against

Convocation adjourned for a brief recess.

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Convocation continued with the Legal Aid Report.

Ms. Kiteley spoke to the Standards issue and the recent newspaper reports on the timeliness of the payment of accounts.

Additional material with regard to the Report was distributed to Convocation.

- (a) Report on Final Accounts Paid for Month of October, 1992. (pages 1 - 7)
- (b) Copy of the Regulation to Amend - Regulation 710 of Revised Regulations of Ontario, 1990 made under the Legal Aid Act. (pages 1 - 9)
- (c) Ontario Legal Plan 1993/94 Budget Notes - revised second page.

THE REPORT AS AMENDED WAS ADOPTED

26th February, 1993

LEGISLATION AND RULES COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993, at 10:30 a.m., the following members being present: M. Cullity (Chair), the Hon. A. Lawrence, J. Palmer, S. Thom.

Also present: A. Brockett.

A.  
POLICY

A.1      RULES MADE UNDER s. 62(1) OF THE LAW SOCIETY ACT: AMENDMENT OF RULE 50: FEES PAYABLE BY LAW CORPORATIONS

A.1.1      Recommendations

A.1.1.1      That Rule 50 be amended by the addition of the following words immediately before the part of the Rule headed "INDEMNITY FOR PROFESSIONAL LIABILITY":

LAW CORPORATIONS

The following fees are payable by a law corporation:

Fee to be paid upon making application for a  
certificate of authorization . . . . . \$250

Annual corporate filing fee to be paid upon  
filing the annual certificate of compliance . . . . . \$125

Penalty payable for failure to file a  
Form 2 or Form 3 within the time prescribed  
by the regulation . . . . . \$10 per day  
for each day of default  
to a maximum of . . . . . \$1,500 for each filing period.

A.1.1.2      That the amendment come into force on the day that Part II of the *Law Society Act* is proclaimed in force.

A.1.2      Explanation

A.1.2.1      At its meeting on January 29, 1993, Convocation adopted a recommendation from the Finance and Administration Committee that the fees set out in paragraph A.1.1.1 above be payable by law corporations. Fees payable to the Law Society are prescribed in the Rules.

- A.1.2.2 The express power to make a rule prescribing fees to be paid by law corporations is given under s. 72(1) of the *Law Society Act*, a provision of Part II of the act not yet in force. Your Committee has therefore recommended that the amendment come into force on the day that Part II of the *Law Society Act* is proclaimed in force.

B.  
ADMINISTRATION

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B.1 REGULATIONS 708 AND 709: FRENCH VERSIONS

B.1.1 Recommendation

That the French Language Services Committee be asked to consider the proposed text of the French versions of Regulations 708 and 709 and, if satisfied that the translations are accurate, to recommend their approval by Convocation.

B.1.2 Explanation

- B.1.2.1 As reported in item C.1 below, Regulations 708 and 709 of R.R.O. 1990, are the successor regulations to Regulations 573 and 574 of R.R.O. 1980. At present, Regulations 708 and 709 exist only in the English language.

- B.1.2.2 Over recent months, the staff of the French Language Services Department of the Law Society, in co-operation with French Legislative Services counsel from the office of the Chief Legislative Counsel, have been preparing a French translation of the two regulations. The French version is to be considered by the French Language Services Committee in the near future.

- B.1.2.3 Your Committee understands that if French language versions of the regulations are sent to Convocation by the French Language Services Committee and approved by Convocation, the French versions will have been "made" by Convocation under the power granted by section 63 of the *Law Society Act* and, when approved by the Lieutenant Governor in Council, the French versions will have the same force and effect as the English versions.

- B.1.2.4 Under Rule 46, the Legislation and Rules Committee is responsible to Convocation "for all matters related to the *Law Society Act*, the Regulations and the Rules...". The standard practice is therefore for all proposed regulations to be considered by the Legislation and Rules Committee before being "made" by Convocation. However, it cannot be assumed that the Legislation and Rules Committee will always be competent to review regulations in French. Your Committee has therefore decided to adopt the practice of delegating to the French Language Services Committee (on a case by case basis) its authority to consider, and make recommendations to Convocation concerning, regulations in the French language.

B.2 NEW REGULATION UNDER THE LAW SOCIETY ACT: O. REG. 771/92: CLASS PROCEEDINGS: LETTER TO THE ATTORNEY GENERAL

B.2.1 Recommendation

That, if it is established that no notice was given to the Law Society before O. Reg. 771/92 was filed by the Provincial Government, the Treasurer be asked to write to the Attorney General requesting that in future the Society be given notice of any regulation to be made under the *Law Society Act*.

B.2.2 Explanation

B.2.2.1 On December 17, 1992, Ontario Regulation 771/92 (made under the *Law Society Act*) was filed. It came into force on January 1, 1993 and appeared in the *Ontario Gazette* on January 2, 1993.

B.2.2.2 The regulation is entitled "Class Proceedings". It is an independent regulation, not being part of Regulations 708 or 709 of the R.R.O. 1990. It is assumed that the regulation was made by the Lieutenant Governor in Council under the power granted by section 59.5 of the *Law Society Act*.

B.2.2.3 The regulation sets out the procedures by which parties to class proceedings can apply to the Class Proceedings Committee for financial assistance under sections 59.3 and 59.4 of the *Law Society Act*. The regulation affects the Law Foundation of Ontario but does not appear to affect the responsibilities of the Law Society in any way.

B.2.2.4 Law Society staff have brought the regulation to the attention of the Law Foundation of Ontario.

B.2.2.5 Although the regulation was made under the *Law Society Act*, your Committee is not aware that any formal notification was given to the Law Society before the regulation was filed and published in the *Ontario Gazette*. Your Committee considers it an important principle that the Law Society should be given advance notice of any regulation to be made under the *Law Society Act*.

C.  
INFORMATION

C.1 REGULATIONS 708 AND 709, REVISED REGULATIONS OF ONTARIO 1990

C.1.1 The two regulations made under the *Law Society Act* (Regulations 573 and 574 of R.R.O. 1980) were revoked on November 16, 1992. They have been replaced by Regulations 708 and 709, R.R.O. 1990, which came into force on November 16, 1992. On the same date, the five amending regulations to Regulation 573 which had been filed on September 21, 1992, were revoked and replaced by versions which conform to the conventions of R.R.O. 1990.

C.1.2 The revised regulations are worded in gender-neutral language. A number of minor editorial changes have also been made. Your Committee is satisfied that no changes of a substantive nature have been introduced in the revised regulations.

26th February, 1993

- C.1.3        There are three apparent mistakes in Regulation 708:
- In subsection 3(2), the verb "to practise" is spelled "to practice". The convention in the regulation and the act is to spell the verb "practise" and the noun "practice".
  - In subsection 9(3), the clause "who are not benchers by virtue of his or her office" should probably be: "who are not benchers by virtue of their office" (as at the end of subsection 9(5)).
  - In subsection 23(6), there is an incorrect reference to subsection (4a) which should properly be a reference to subsection (5).
- C.1.4        Your Committee has authorized the staff to bring the apparent mistakes to the attention of Chief Legislative Counsel with a view to their being corrected.
- C.1.5        Copies of a consolidated version of Regulations 708 and 709, as at January 26, 1993, will be available outside Convocation Room on February 26, 1993. Copies are also available on request from the Society's Research Director.
- C.2           DISCIPLINE MANAGEMENT PROCEDURES
- C.2.1        On January 29, 1993, Convocation adopted the recommendations of the Policy Section of the Discipline Committee concerning new management procedures for disciplinary hearings. The staff are currently considering whether the procedures should be prescribed by regulation. This matter will be the subject of a future report to your Committee.
- C.3           COMMITTEE BUDGET FOR 1993-1994
- C.3.1        Your Committee approved a proposed budget for 1993-1994 for submission to the Finance and Administration Committee.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"M. Cullity"  
Chair

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

26th February, 1993

Your Committee met on Thursday, the 11th of February, 1992 , at 9:00 a.m., the following members being present:

D. Murphy (Chair), R Topp (Vice-Chair), R. Bragagnolo, M. Cullity, G. Farquharson, A. Feinstein, M. Hickey, B. Pepper, P. Peters, M. Weaver, R. Lalonde, K. Golish, A. Rock (Treasurer), D. Crosbie, and G. Howell also attended.

A.  
POLICY

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1. Copyright in Judgments

The Chair, the Treasurer, and Mr. Henderson all addressed the Committee. After a full discussion amongst all members of the Committee, it was decided that the Chair would appoint a Sub-committee to consider the matter of an Advisory Council for Law Reporting and that the Committee would review this agenda item at its next meeting in March.

B.  
ADMINISTRATION

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1. County Libraries - Cost of Books

The Committee reviewed the letters received from Carswell, Butterworth, and Canada Law Book in response to the Law Society's expression of concern at the high cost of several subscriptions. The Committee also reviewed a letter received from the Chair of the County & District Law Presidents' Association expressing concern about possible Law Society actions impacting on the autonomy of county law associations. The Chair re-iterated that county libraries have full local autonomy to select and retain various library materials, within the constraints of budgets and funding. The matter of a Law Society response to the law publishers' letters was deferred to the next Committee meeting.

2. Other matters

Due to the length of the discussion on the above items, the Committee was unable to discuss the following agenda matters:

- a) Law Society approval of QL Systems' requested price increase
- b) 1993 Budget for the County Library System
- c) 1993-94 Budget for the Committee

ALL OF WHICH is respectfully submitted

Dated this 26th day of February, 1993

"D. Murphy"  
Chair

THE REPORT WAS ADOPTED

26th February, 1993

JANUARY 28TH AND 29TH, 1993 CONVOCATION MINUTES

Adopted

PROFESSIONAL CONDUCT COMMITTEE

Meeting of February 11th, 1993

Mr. Somerville spoke to Item A-1 regarding Lawyers in the Yellow Page Listings.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, 1993 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Cullity (Vice-Chair), Elliott, Finkelstein, Hickey and Rowe (Non-Bencher).

A.  
POLICY

1. The following item appeared on the September 1992 agenda:

LAWYERS IN YELLOW PAGE LISTINGS -  
LAWYERS PUTTING AN "A" IN FRONT OF  
THE NAME OF THEIR LAW OFFICE SO THAT  
THEY CAN GET TO THE FRONT OF THE LINE

A number of lawyers in Metropolitan Toronto have been advertising in the Yellow Pages by placing an "A" before their name or firm name. Attached are five pages from the Yellow Pages (numbered 1 - 5). You have several firms starting with AA.....A Action Law to AAA Accident and Injury Law Division of Monforton Robitaille Ducharme & Skipper. The use of the "A" has been designed to get the lawyer as close to the front of the line as possible.

The Law Society some months ago spoke to Tele-Direct and suggested that lawyers should be listed according to their surname. Tele-Direct has suggested subsequently that this is no business of the Law Society.

The Committee is asked to determine:

- (1) Is this practice in conformity with Rule 12?
- (2) Assuming it is not in conformity with Rule 12, is the Rule sufficiently clear? If it is not clear should the Rule be amended to address the Yellow Pages issue?

The Committee was concerned with what was being done but thought that a letter should go out to the lawyers concerned with the request that they respond, if they cared to, to the suggestion that the apparent queue jumping was misleading, inaccurate and in bad taste.



26th February, 1993

Mr. Varro, a staff lawyer, wrote to the lawyers concerned. Some indicated they would change their listing to whatever the Law Society deemed appropriate. A number of others took a different position and said that their advertising was in order and that the Law Society's attempt to interfere with what they were doing constituted a breach of their right of commercial free speech under the Charter of Rights and Freedoms. The responses of these lawyers are attached (numbered 6 - 35).

Mr. Varro was present to assist the Committee with this matter.

The Committee's Secretary was contacted by Tele-Direct which expressed interest in what was happening. James Sweeney, Director of Communications and Cindy Kennedy, Manager - Marketing Sales Support, of Tele-Direct met with Mr. Varro, Mr. Kerr and Mr. Traviss with a view to listening to the respective concerns of Tele-Direct and the Law Society.

The Tele-Direct representatives appreciated the Law Society's concerns. They had the ultimate authority to refuse any listing or advertisement but there were factors such as the motivation of sales people to sell listings, competition from other directories and the tough economy which worked against doing so. Mr. Sweeney pointed out that there are surveys that indicate that in the world of advertising this type of queue jumping does not produce the advantage it is perceived to have. The Law Society's staff recognized that the Law Society had no jurisdiction over Tele-Direct and that we would have to persuade some of our members to discontinue their present advertising.

The Committee concluded that Rule 12 as presently worded does not address the alphabetical listing of lawyers names. The Committee will ask the Special Committee conducting a review of the Rules to address the listing question when it examines Rule 12 on advertising.

The Committee asks Convocation to accept its position.

2. WORK OF THE FEDERATION OF LAW SOCIETIES  
COMMITTEE STUDYING THE MARTIN V. GRAY CASE

The Committee of the Federation of Law Societies studying the Martin v. Gray case (conflicts of interest created by the migrating lawyer) has after 4 days of deliberations agreed upon a draft rule that hopefully will be of assistance to the Bench, the legal profession and the public in addressing problems created by the migrating lawyer.

At the mid-winter meeting of the Federation on the 16th and 17th of February in Toronto the representatives of all the Canadian law societies will be asked to refer the proposed rule to their respective law societies in order that it can be considered and debated by their respective memberships.

A copy of the Federation's draft rule is attached (numbered 36 - 42). The Federation's Committee is still labouring on the spousal and related person issue.

It is hoped that the same or a similar rule will be adopted by all the law societies in Canada.

The Committee agrees with this approach so the views of the Ontario lawyers can be sought.

Convocation is asked to approve the publication of this draft rule so that the views of the profession can be obtained.

B.  
ADMINISTRATION

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1. BUDGET 1993-1994

The Committee discussed its budget for 1993-1994 and will continue this discussion in March.

2. REQUEST FOR PERMISSION TO BE SHOWN ON THE  
LETTERHEAD OF CANADA INTERNATIONAL SOCCER GROUP

Paragraph 5(b) of Rule 12 of the Rules of Professional Conduct reads as follows:

The lawyer shall not:

- (b) while in private practice permit the lawyer's name to appear on the letterhead of a company as being its solicitor or counsel of a business, firm or corporation, other than the designation of honorary counsel or honorary lawyer on the letterhead of a non-profit or philanthropic organization which has been approved for such purpose by the Professional Conduct Committee;

Mr. Anthony Rosato sent a request to be shown on the letterhead of Canada International Soccer Group as legal advisor (numbered 43 - 45).

The Committee's Secretary sent a letter to Mr. Rosato asking for more information.

Mr. Rosato has sent a further letter to the Law Society (numbered 46 & 47).

Canada International Soccer Group is not a non-profit organization but all the net proceeds from a year long Canada Cup International Tournament will be paid to three named charities.

The Committee was of the opinion that the lawyer's name could appear on the letterhead of the organization in connection with any correspondence pertaining to the Canada Cup International Tournament.

The Committee will ask the Special Committee undertaking a revision of the Rules of Professional Conduct to inquire into this provision in Rule 12 to determine if it is outdated.

C.  
INFORMATION

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1. SPECIAL COMMITTEE TO REVIEW THE  
RULES OF PROFESSIONAL CONDUCT

The Chair updated the Committee as to what was being done.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"M. Somerville"  
Chair

Attached to the original Report in Convocation file, copies of:

- A-Item 1. Lawyers' responses regarding yellow page listings. (pages 6 - 35)
- A-Item 2. Copy of draft rule re: conflicts of interest created by the migrating lawyer. (pages 36 - 42)
- B-Item 2. Letter from Mr. Anthony J. Rosato to Mr. Stephen E. Traviss dated November 19, 1992 re: Request for Permission to be included on Letterhead of Canada International Soccer Group. (pages 43 - 45)
- B-Item 2. Further letter from Mr. Anthony J. Rosato to Mr. Stephen E. Traviss dated January 26, 1993 re: Request for Permission to be included on Letterhead of Canada International Soccer Group. (pages 46 - 47)

It was moved by Clay Ruby but failed for want of a seconder that Item A-1 re: Lawyers in Yellow Page Listings, be referred back to the Committee to deal immediately with the specific issue rather than waiting for the review of the Rules of Professional Conduct.

Mr. Campbell spoke to Item A-2 re: the Work of the Federation of Law Societies Committee.

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of February, at 11:30 a.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice Chair), M. Weaver (Vice Chair), N. Graham, S.C. Hill, R. Manes, D. Murphy, M. Trofimenko.

Also Present: N. Amico, M. Devlin, S. Kerr, S. McCaffrey, P. Rogerson, F. Smith.

A.  
POLICY

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A.1.        JOINT SUB-COMMITTEES ON CRIMINAL LAW, FAMILY LAW AND REFUGEE/IMMIGRATION STANDARDS

A.1.1       The Chair reported to the Committee on the proposed composition of the Joint Sub-Committees with the Legal Aid Committee on Standards in Criminal Law, Family Law and Refugee/Immigration Law. The Committee expressed the view that the appointment of Sub-Committees was premature. The Committee directed the Chair to develop terms of reference for the work of the Sub-Committees prior to their appointment. The Chair informed the Committee that he would consult with the Chair of the Legal Aid Committee and the Treasurer, and would attempt to arrange a further meeting of the Committee prior to Convocation.

A.2        SPECIAL COMMITTEE TO REVIEW THE RULES OF PROFESSIONAL CONDUCT

A.2.1.       Marc Somerville, Chair of the Special Committee to Review the Rules of Professional Conduct, has written inviting the Professional Standards Committee to convene a Working Group on Rule 2 (Competence and Quality of Service). The Working Group has been requested to report in response to the following questions:

1.       Does the rule set forth a standard of conduct that is appropriate for lawyers as members of a self-governing profession, when considered from the standpoints of:
  - i)       the public; and
  - ii)      the legal profession?
2.       If the rule does not set forth an appropriate standard, what should that standard be?
3.       Are the structure and wording of the rule adequate to communicate the appropriate standard and to give guidance to members of the profession:
4.       If the structure and wording of the rule are not adequate, how should it be structured and worded?

A.2.2.       A preliminary report is sought no later than April 30, 1993.

A.2.3.       The Committee has accepted the invitation. The Committee therefore recommends that the Committee as a whole be struck as the Working Group for the review of the adequacy of Rule 2.

B.  
ADMINISTRATION

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B.1.           PROFESSIONAL STANDARDS DEPARTMENT BUDGET - FISCAL 1993/94

- B.1.1.       The Professional Standards Department Expense Budget for the upcoming 1993/94 Fiscal year was reviewed and approved by the Committee as amended and will be forwarded to the Finance Committee for its consideration.

B.2.           PRACTICE ADVISORY SERVICE BUDGET - FISCAL 1993/94

- B.2.1.       The Practice Advisory Service Expense Budget for the upcoming 1993/94 Fiscal year was reviewed and approved by the Committee and will be forwarded to the Finance Committee for its consideration.

B.3.           PRACTICE REVIEW PROGRAMME - FILE CLOSURE

- B.3.1.       Discussion of this item has been deferred to the March Committee meeting.

C.  
INFORMATION

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C.1.           COMPLAINTS REVIEW - PRACTICE REVIEW PROGRAMME

- C.1.1.       In her role as Complaints Commissioner, Mrs. Graham recently reviewed a complaint matter concerning a member participating in the Practice Review Programme. Mrs. Graham wishes to address the Committee about this matter. Discussion of this item has been deferred to the March Committee meeting.

C.2.           FAMILY LAW CHECKLIST

- C.2.1.       A final draft of the Family Law Checklist was distributed to the Committee members at the meeting for their review with a view to its approval at the March Committee meeting.

C.3.           CIVIL LITIGATION CHECKLIST

- C.3.1       Discussion of this item was deferred to the March Committee meeting at which time Mr. Manes will address this Committee.

C.4.           PROFESSIONAL STANDARDS DEPARTMENTAL REPORT

- C.4.1.       There are 102 lawyers currently participating in the Practice Review Programme. A review panel was held in Sudbury in late January, 1993, and a remedial programme entered into by the participating solicitor. A letter containing the review panel schedule will be sent to all Benchers in February, requesting their participation in same.

26th February, 1993

- C.4.2. Representatives of the Practice Advisory Service and the Professional Standards Department met recently with one of the Practice Advisors of the Institute of Chartered Accountants of Ontario to discuss programs, policies, problems and solutions.
- C.4.3 The Joint Sub-Committee on Requalification has received over 70 letters, exceeding 300 pages in length, in response to its request to the profession for submissions. The Sub-Committee is meeting three times in February to begin the process of formulating a policy to be recommended to Convocation.
- C.5. PRACTICE ADVISORY SERVICE - STATUS REPORT
- C.5.1. Recent reports of cases on conflict issues, applying the Martin v. Gray decision, have prompted many calls to the Practice Advisory Service. The Service attempts to assist members in assessing their position and determining whether they could satisfy the onus which would be placed upon them if challenged.
- C.5.2. The Service has also experienced an increase in calls from students who have completed the Bar Admission Course, seeking information on the professional implications of space-sharing, agency work and referrals from other lawyers.
- C.5.3. The Director spoke as a guest of the Frontenac County Law Association in January, and is scheduled to speak in March to the Shade's Mill Law Association.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"C. McKinnon"  
Chair

THE REPORT WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of February 11th, 1993

Mr. Brennan presented the Report of the Dispute Resolution Subcommittee, Item A-A.1. of the Report.

(see Report in Convocation file)

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th day of February, 1993, at 8:00 a.m, the following members being present: T. Bastedo (Chair), L. Brennan, S. Elliott, A. Feinstein, J. Herbert, C. Hill, the Hon. A. Lawrence, M. Somerville.

Also present: A. Brockett, S. Hodgett.

A.  
POLICY

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A.1. REPORT OF THE DISPUTE RESOLUTION SUBCOMMITTEE

A.1.1. Recommendation

Your Committee recommends:

That Convocation receive and adopt the report of the Dispute Resolution Subcommittee and all its recommendations.

A.1.2. Accompanying this report is a copy of the Final Report to Convocation (dated February 26, 1993) of the Dispute Resolution Subcommittee. Your Committee considered and adopted the report at its meeting on January 14, 1993, and now presents the report to Convocation for adoption.

A.1.3. The recommendations (which will be found at pages 41-45 of the report) are set out below for convenience:

*General Recommendations*

A.1.3.1. The Law Society should itself set an example of employing alternatives to litigation whenever appropriate. All committees of the Law Society should be asked to keep constantly in mind opportunities for employing alternatives to litigation as means of resolving disputes. Areas where this might be done include:

- (a) implementing mediation for disciplinary, insurance and other professional controversies;
- (b) offering advice concerning dispute resolution through the Practice Advisory Service (particularly in respect of partnership disputes);
- (c) encouraging community legal clinics to use dispute resolution techniques.

A.1.3.2. The various Specialty Committees of the Certification Board should give consideration to ADR techniques when setting out criteria for the certification of specialties in existing areas.

A.1.3.3. The Research and Planning Committee should strike a subcommittee when the current review of the Certification Program has been completed to consider the issue of the certification of arbitrators and mediators in light of changes made in the Certification Program.

*Education Recommendations*

The Bar Admission Course

- A.1.3.4. The Law Society should take steps to include dispute resolution education and awareness in the Bar Admission Course commencing with the 1993-94 teaching term as follows:
- (a) The Legal Education Committee should appoint an ADR advisory group from the practising bar to work with the section heads and staff to design and implement an alternative dispute resolution curriculum.
  - (b) Dispute resolution should receive significant focus in the Civil Litigation, Family Law, and Negotiation courses.
  - (c) An exercise in drafting of dispute resolution clauses should be included at appropriate stages in the Bar Admission Course such as Business Law, Family Law and Legal Writing and Drafting.
  - (d) Materials and precedents used in all courses should be reviewed with a view to ensuring that appropriate use of dispute resolution processes is modelled where suitable.
- A.1.3.5. The following learning outcomes should be used as an initial content guideline for dispute resolution education in the Bar Admission Course:
- 1. *Candidates will develop an appreciation of the role of the lawyer as a problem solver.*
  - 2. *Candidates will demonstrate awareness of a spectrum of dispute resolution mechanisms and the key features of each.*
  - 3. *Candidates will be prepared to advise clients regarding the selection of dispute resolution processes.*
  - 4. *Candidates will understand the key features of mediation and arbitration, and the considerations in determining if and when use of each method is appropriate. Candidates will also have an understanding of how the models may differ in different areas of law such as personal injury litigation, construction disputes, labour disputes, family law and commercial transactions.*
  - 5. *Candidates will be willing and prepared to invoke appropriate dispute resolution methods on behalf of clients.*
  - 6. *Candidates will know how to locate and evaluate third party services appropriate to a given situation.*
  - 7. *Candidates will develop strategies to encourage an opposing party to make use of a dispute resolution mechanism.*



8. *Candidates will understand the procedures used to enforce agreements or decisions reached through arbitration and mediation.*
9. *Candidates will be aware of the relevant statutory provisions governing the use of dispute resolution. (eg. the Arbitration Act and Rules governing the conduct of mediation).*
10. *Candidates will be able to draft and evaluate dispute resolution clauses in contracts or other agreements.*
11. *Candidates will have an understanding of their professional responsibilities when representing clients in dispute resolution processes or when acting as third party neutrals.*
12. *Candidates will be familiar with current developments in the use of dispute resolution mechanisms in Ontario.*

A.1.3.6. The approach to dispute resolution education in the Bar Admission Course should be monitored, evaluated and adjusted in future teaching terms as required.

Continuing Legal Education

A.1.3.7. The Law Society should promote education of lawyers in dispute resolution techniques as follows:

- (a) Continuing Legal Education should develop a series of dispute resolution courses to deliver dispute resolution education to Ontario lawyers. Criteria should be developed for development of future courses.
- (b) In developing these courses and the criteria, the British Columbia Continuing Legal Education Society curriculum for dispute resolution education should be evaluated and adapted as appropriate.
- (c) The Continuing Legal Education Department should work with other organizations and agencies active in the field of dispute resolution education in Ontario to implement education for Ontario lawyers.
- (d) The Legal Education Committee should establish and appoint a Dispute Resolution Advisory Working Group to design and implement Continuing Legal Education in dispute resolution.
- (e) In the planning of Lawyers Education Update courses on every subject, the Continuing Legal Education department should consider whether or not inclusion of material on dispute resolution would be appropriate.

The Law Schools

- A.1.3.8. The Law Society should recognize and encourage dispute resolution education and awareness in Ontario law schools as follows:
- (a) The Legal Education Committee should encourage dispute resolution education by establishing and sponsoring a student essay competition on this subject.
  - (b) The Legal Education Committee should ensure that dispute resolution courses being taught in law schools in this and other jurisdictions (for example, Alternative Dispute Resolution Program, Faculty of Law, University of Alberta) come to the attention of the Deans of the Ontario law schools.
- A.1.3.9. The Legal Education Committee should convene an annual discussion forum for law professors and others who are interested or active in the field of dispute resolution education. The agenda for this forum should include discussion of how to incorporate dispute resolution training into the law school curricula, and an evaluation of the success of dispute resolution training in other jurisdictions with a view to possible implementation in Ontario law schools.

*Professional Conduct Recommendations*

- A.1.3.10. The Commentaries to Rule 3 (Advising Clients) and Rule 10 (The Lawyer as Advocate) should be amended to place a positive obligation on lawyers to inform their clients of alternatives to litigation. Further, an obligation should be placed upon lawyers to respond to proposals for the use of alternative methods of dispute resolution.
- A.1.3.11. A Rule dealing with mediation should require some minimum standards for those who hold themselves out as mediators. This may include the completion of approved courses, as in the British Columbia Rules.
- A.1.3.12. The Rule should continue to require lawyer-mediators to encourage the parties to seek the advice of separate counsel before and during the mediation process. Some consideration should be given as to whether in certain situations the lawyer-mediator is obliged to ensure that the parties are properly represented.
- A.1.3.13. Family Mediation raises unique concerns and should be dealt with in a separate rule from other types of mediation.

*Public Information Recommendations*

- A.1.3.14. The Final Report of the Subcommittee should have the widest possible publicity and distribution. In order to achieve this aim, the Subcommittee recommends that:
- (a) the "Benchers Bulletin" announce the release of the Report and that an Executive Summary of the Report will be distributed to the profession;
  - (b) upon the release of the Subcommittee's Final Report, an Executive Summary be prepared and distributed to all members of the profession.

A.1.3.15. The Dial-a-Law Tapes:

- (a) The existing Dial-a-Law topics should include a reference to Dispute Resolution where appropriate.
- (b) There should be a separate tape on Dispute Resolution.

A.1.3.16. A dispute resolution pamphlet should be developed.

A.1.3.17. The Lawyer Referral Service:

- (a) A separate category should be provided on the form used by lawyers to designate practice areas, to enable them to indicate that they act as counsel or third party neutrals in dispute resolution cases.
- (b) The Lawyer Referral Service should maintain a list of lawyers who have indicated that they provide services as third-party neutrals. This list should be provided to members of the profession upon request.

A.1.3.18. The Network *Canadian Dispute Resolution Directory* will be mentioned in a footnote in the Executive Summary of the Final Report for the information of lawyers as one directory which the Subcommittee found useful.

*Implementation*

A.1.3.19. The Subcommittee recommends that consideration be given to convening an implementation group or subcommittee in order to aid the implementation of the recommendations found in this Report.

A.1.4. Financial Impact

A.1.4.1. The financial impact of accepting the recommendations in the report is set out on pages 35-37. In summary, the costs are:

Printing Executive Summary	\$4,000
Mailing Executive Summary	\$7,000
Dial-A-Law Tape	<u>\$2,500</u>
TOTAL	\$13,500

A.1.4.2. Money to cover this expenditure is available from unspent funds already budgeted for the work of the Dispute Resolution Subcommittee. No expenditure beyond what has already been budgeted by Convocation is required.

A.1.4.3. Acceptance of the recommendations will not commit Convocation to any future expenditure.

B.  
ADMINISTRATION

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No matters to report.

C.  
INFORMATION

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C.1.            STRATEGIC PLANNING CONFERENCE: CONCLUSIONS AND RECOMMENDATIONS

C.1.1.        The drafting of the conclusions and recommendations from the Strategic Planning Conference of September, 1992, is still in progress. The staff hope to have a final document for consideration by your Committee in March, 1993.

C.2.            SUBCOMMITTEE ON THE ROLE OF THE LAW SOCIETY

C.2.1.        The Subcommittee on the role of the Law Society has met to consider the development of a general statement outlining the role of the Law Society. As a first step, the Subcommittee will be preparing an inventory of all current activities of the Law Society.

C.3.            SUBCOMMITTEE ON NON-BENCHER REPRESENTATION ON LAW SOCIETY COMMITTEES

C.3.1.        The Subcommittee on Non-Bencher Representation on Law Society Committees has written to the Chairs of Committees on which non-benchers are serving this year, seeking comment on the experimental scheme of non-bencher representation adopted for 1992-1993. The Subcommittee hopes to report in March, 1993.

C.4.            VOLUNTARY PRO BONO SUBCOMMITTEE

C.4.1.        Representatives of the Law Society will be meeting in late February with representatives of the United Way of Greater Toronto to discuss the possibility of co-operating in a referral service under which non-profit and charitable organizations would be linked with lawyers offering legal services on a *pro bono* basis.

C.5.            INDEX OF PAST REPORTS AND POLICY DOCUMENTS

C.5.1.        As a pilot project, your Committee has arranged for the preparation of an index to policy decisions made by Convocation in 1992. A first draft of the first part of the index was received and discussed.

C.5.2.        The advice of professional staff in the Great Library will be sought.

C.5.3.        Your Committee will also consider the preparation of a separate index of special reports and an index of legal opinions received by the Law Society.

26th February, 1993

C.6. PROPOSED BUDGET FOR 1993-1994

C.6.1. Your Committee approved a proposed budget for 1993-1994 for submission to the Finance and Administration Committee.

C.7. FUTURE BUSINESS: PRIORITY ORDER

C.7.1. Your Committee established the following priority order for future business:

C.7.1.1. Implementation of the recommendations of the Dispute Resolution Subcommittee, especially in relation to the Law Society's own activities.

C.7.1.2. Rules of Order for the Law Society annual meeting.

C.7.1.3. A review of the Rules of Order for Convocation.

C.7.1.4. Consideration of whether life benchers may move and second motions in Convocation.

C.7.1.5. Consideration of the report on expenditures incurred by candidates and law associations in the 1991 Bencher Election (this item to wait until the Special Committee on Bencher Elections has reported).

C.7.1.6. Structure for determining Law Society priorities (this item to wait until after the 1993-1994 budget process has been completed).

C.7.1.7. Keeping the profession informed on technological developments.

ALL OF WHICH is respectfully submitted

DATED this 29th day of January, 1993

"T. Bastedo"

Chair

THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

26th February, 1993

Your Committee met on Thursday, the 11th of February 1993 at 10:30 a.m., the following members being present: D. O'Connor (Chair), P. Peters (Vice-Chair), R. Cass, N. Finkelstein, N. Graham, M. Hickey and M. Weaver. Also in attendance was: A. John (Secretary).

B  
ADMINISTRATION

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1. COMPLAINTS/INVESTIGATIONS

Your Committee authorized further investigation on two new files.

2. PARALEGAL PROGRAM AT SENECA COLLEGE

Your Committee was contacted by Seneca College with respect to a new program to train independent paralegals. Your Committee was clearly supportive of the principle that the public must be protected from the provision of inadequate legal services by persons unauthorized to practise law. It is your Committee's position that the Law Society's role is to prosecute violations of Section 50 of the Law Society Act, and not to regulate the education and training of paralegals. Your Committee has asked Seneca College to satisfy itself that the proposed training will not result in contraventions of Section 50.

3. RULES OF PROFESSIONAL CONDUCT REVISION PROJECT

A subcommittee has been appointed by the Chair to draft a revision of Rule 19 and to prepare an interim report by April 30, 1993. The subcommittee intends to discuss the appropriate statutory style for expressing the Rule and to refer to the emerging issues in paralegal practice today. The subcommittee will also examine the duty imposed on Law Society members to report the activity of any person involved in the unauthorized practice of law.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"D. O'Connor"  
Chair

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of February 11th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The WOMEN IN THE LEGAL PROFESSION COMMITTEE begs leave to report:

26th February, 1993

Your Committee met on Thursday, the 11th of February 1993 at 11:30 a.m., the following members being present: S. Elliott (Chair), M. Cullity, S. Goudge, J. Lax, and J. Monaghan.

Also present: C. Ateah, J. Herbert, and S. Hodgett.

A.  
POLICY

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No matters to report.

B.  
ADMINISTRATION

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B.1.           DRAFT PROPOSED BUDGET

B.1.1.       Your Committee considered its draft budget. The proposed budget figures were approved for submission to the Finance and Administration Committee.

C.  
INFORMATION

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C.1.           DRAFT REPORT OF THE JOINT SUBCOMMITTEE ON SEXUAL HARASSMENT

C.1.1.       The draft report of the Joint-Subcommittee on Sexual Harassment was before the Committee for consideration. The subcommittee is made up of one representative from each of the Discipline Policy Committee, the Legal Education Committee and the Women in the Legal Profession Committee. The report contains a number of proposed policies for dealing with complaints from articling students concerning sexual harassment.

C.1.2.       Members of the Committee had a number of comments concerning the draft proposal. These comments will be considered by the Subcommittee in preparing subsequent drafts of the policy.

C.2.           TRANSITIONS FOLLOW-UP

C.2.1.       The Chair reported to the Committee about the progress of a project to address issues raised in the *Transitions Report*. It has been proposed that the Law Society co-operate with other organizations to formulate solutions to problems illuminated by the *Transitions Report*. The Treasurer has written to a number of organizations inviting them to participate in a co-ordinating committee.

26th February, 1993

C.3. "CROSSING THE BAR" - ARCHIVES EXHIBIT ON WOMEN IN THE LEGAL PROFESSION

- C.3.1. On March 25, 1993, an exhibition about the history of women in the legal profession will open in the Museum at Osgoode Hall. The Committee has been consulted by the Archives Department and has endeavoured to provide assistance and suggestions.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 1993

"S. Elliott"  
Chair

THE REPORT WAS ADOPTED

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M.

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CONVOCATION RECONVENED AT 2:45 P.M.

PRESENT:

The Treasurer, Bastedo, Bellamy, Brennan, Carter, Cullity, Curtis, Elliott, Finkelstein, Hickey, Hill, Kiteley, Krishna, Lamak, Lamont, Lawrence, Mohideen, Murphy, Palmer, Peters, Ruby, Scott, Sealy, Somerville, Strosberg, Thom, Topp and Weaver.

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COURT REFORM COMMITTEE

Ms. Kiteley presented the Report of the Court Reform Committee.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COURT REFORM COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 10th of February, 1993, at 4:00 p.m., the following members being present: Fran Kiteley (Chair), Casey Hill, Lloyd Brennan and Colin McKinnon. Also present: Patricia Rogerson (Secretary).

REGRETS: Thomas Bastedo, Ken Howie, Dennis O'Connor, Daniel Murphy, Allan Rock, and Marc Somerville.



A.  
POLICY

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The Sub-Committee was asked to review the Court Administration Report of the Joint Committee on Court Reform. Your Committee concluded that it ought, as a threshold issue, to address whether the Law Society of Upper Canada should either respond to this report or participate in the development of policy and its implementation related to the administration of courts. To assist the Committee in arriving at that threshold decision, the position taken by the Law Society on various matters in the past was examined. The Minutes of Convocation from 1985 to the present day were reviewed in order to ascertain the basis upon which the Law Society has become involved in questions which could be considered political in nature, or otherwise outside the scope of the Society's mandate.

Given that the basis of the Society's jurisdiction is to govern the legal profession in Ontario in the public interest, this review has developed into an enquiry as to how "the public interest" has been developed conceptually by Convocation, and we have attempted to draw from the materials some "tests" which could be used to define the ambit of the term.

The Society has been involved in a number of issues for which it has struck special committees, sometimes without any debate being noted in the Minutes, and it is assumed that on those occasions it was accepted without question that the Society had an interest in participating: for example, in 1988 a Report of the Public Information Committee was adopted which set up an MPP liaison programme in which all MPPs and their staff would be matched to a Benchers for purposes of disseminating information.

In 1985 the McKelvey report on the appointment of Judges was reviewed by the Society at the request of the Federation of Law Societies. No debate was held on whether or not the Society should take part in this report, but nevertheless the Society made recommendations aimed at strengthening the system proposed by the then Minister of Justice.

In August of 1986 the Treasurer appointed the Special Committee on the Courts to assist Justice Zuber whose mandate was to enquire into and make recommendations for the provision of a simpler, more convenient, more expeditious and less costly system of Courts for the benefit of the people of Ontario. The committee reported to Convocation in October of 1986, and concluded that,

The Law Society is not a  
private interest group which  
can argue for a particular  
point of view.

and that therefore the Society had no mandate in the areas covered by Justice Zuber's mandate. The report continued,

Our relationship to this study  
should be restricted to areas  
in which the public interest is  
directly tied to the  
administration of Justice.

(the report is attached to this report as Appendix "A") The committee also concluded that the Law Society does not have any mandate to speak for the profession as a whole and suggested Justice Zuber could better get the views of the profession from the various voluntary legal organisations. This report was adopted by Convocation.

26th February, 1993

The following year (1987), the Treasurer struck a committee to respond to the A.G. on the recommendations contained in the Zuber Report. This Committee noted the previous committee's findings on mandate saying,

... Convocation ... accepted the position that the Law Society has no mandate to debate public policy issues of the kind inherent in the reorganisation of the court system.

Therefore the committee directed its attention to,

... areas where the recommendations of the Zuber Report may have an effect on the way members of the Society deal with, and provide professional services to, their clients.

This was further specified as limiting comments to,

recommendations which may affect the ability of counsel to meet the needs of clients and may affect the relationship between counsel and client.

The committee therefore reviewed only the recommendations which it felt fell into the categories above and made comments on those recommendations. The report was amended in two particulars and adopted as amended. (the report is attached hereto as Appendix "B")

In May of 1989 the issue of Law Society involvement came to the fore again, because by this time the Court Reform Programme had been embodied in a Bill and the Treasurer wanted Convocation to consider whether it should comment on the Bill in response to the A.G.'s request for help with implementation of the Bill once it had become law (not, it should be noted, help with the policy issues surrounding the legislation). To assist Convocation, the Under-Treasurer prepared a memorandum (attached as Appendix "C") in which he commented on past practices of the Society with reference to political issues, noting that in eight examples he had reviewed, the Society had been invited to participate in seven and only on the eighth - the issue of the granting of Q.C.s - did the Society oppose established government policy. The Under-Treasurer concluded that, "whether or not the Law Society is invited to participate does not define its mandate, " and that the strongest argument on mandate he could find was that expressed in the Zuber Report recommendations.

After debate, a Motion was made and carried as follows:

That the Law Society form a committee to study and report to Convocation with respect to:  
(a) implementation of Stage 1 of the proposed legislation referring to Court Reform, and  
(b) with respect to both policy and implementation related to Stage 2 and that the Law Society give the assistance requested by the A.G. with respect to implementation of Stage 1.

(N.B. this is the mandate of this Committee). Since the Attorney General of the day and his successor have not proceeded with Stage 2, the Committee has not had any role to play in that process.

In November of 1989, as a result of a resolution passed at the October Plenary session of the C.D.L.P.A. and a recommendation from the County and District Liaison Committee, it was recommended that the Law society strike a committee to consider the proposed legislation on the Ontario Motorist Protection Plan from the perspective of the public interest. There is no indication in the Minutes of Convocation as to whether the issue of the public interest was debated at that time. However, in January of 1990 the special Committee on Bill 86: The Ontario Motorist Protection Act reported to Convocation. The Committee had obviously grappled with the question of its mandate and rejected the view that legislation is the exclusive business of the Legislature, and that comment or criticism can only properly be made by groups who speak on behalf of vested interests, stating that those who propound this view would argue that the Law Society, as a body whose responsibility is to govern the profession, must stand "above the fray" and refrain from comment lest it be seen as speaking in favour of a narrow interest. Instead the committee suggested the following tests:

It is within the right and responsibility of the Law Society to comment on proposed legislation under certain circumstances:

(i) when, by its nature, the legislation concerns matters of which the legal profession has special knowledge or unique insight; or

(ii) when the nature and purpose of the Law Society's intervention is in the public interest, in the sense that the Society has concluded that a proposed statute will actually harm the public and that the Society's intervention may enhance public debate.

The Report was adopted by Convocation after a failed Motion to have it referred back to the Committee for a report within the narrower mandate of Appendix "A".

26th February, 1993

In September of 1992, Mr. O'Connor's Committee presented to Convocation a Submission to the Attorney General concerning the Ontario Judicial Council. The A.G. had sent to the Law Society an Issues Paper and asked for its views, but the committee limited its responses to those matters which appeared most closely related to the Law Society's responsibilities. The committee did not report on the method by which it determined what those responsibilities were, but it commented and made recommendations on the following areas:

- the proportion of lay participation in the Judicial Council;
- the proportion of Federally-appointed to Provincially-appointed judges on the Council;
- the number of lawyers on the council;
- who the chairman of the Council should be;
- the appointment and selection of Council members generally;
- what assistance and support there is available for lay members;
- the receipt and screening of a complaint;
- a complete reform of the complaints procedure;
- the institution of an interim suspension procedure;
- whether or not hearings should be public or private;
- the publication of reports on an annual basis.

Debate on the report resulted in some changes being made to the detailed recommendations, but no motions were made to question the validity of the Law Society's involvement.

Also in September of 1992 there was consideration of an invitation received from the Standing Committee on the Ombudsman to comment on the possibility of expanding the Ombudsman's jurisdiction to include [in its jurisdiction] certain decisions of the Law Society. Convocation set up a Special Committee to prepare a written submission to the Standing Committee on the Ombudsman based on the position outlined by the Treasurer, and to make an oral presentation to the Standing Committee also.

Without taking the position that the adoption of the Bill 86 Report by Convocation has widened the ambit of the Society's interest in what could be loosely termed "political issues" (but are more properly defined as "public interest issues"), it is possible to summarise from the reports set out above a series of tests to measure the appropriateness of the Society's involvement in these issues.

1. Is the public interest in this matter directly tied to the administration of justice?
2. Might the issue have an effect on the way members of the Society deal with, and provide professional services to, their clients?
3. Might the issue affect the ability of counsel to meet the needs of clients or might it affect the relationship between counsel and client?
4. Might the issue effect significant changes in an area in which lawyers have special knowledge or unique insight?
5. Might significant and traditional rights and remedies of the public be diminished or eliminated if the Society does not intervene in this issue?

This Committee has concluded that it should recommend to Convocation that the Law Society respond to the Court Administration Report of the Joint Committee on Court Reform for the following reasons:

26th February, 1993

1. There has been a movement from not considering the mandate of the Law Society in outside involvements at all, to considering it and making it very narrow, and then to gradually broadening it.
2. All other organizations who participated in or debated the report are professional organizations whose mandate generally is to advance the interests of their members, whereas the, (albeit loosely defined) mandate of the Law Society is to reflect the public interest, and consequently the Law Society should be able to bring a modestly different perspective from that of those who have participated to date.
3. The Report has been mistakenly perceived as enjoying the support of the Law Society of Upper Canada, and the Law Society's name appears on the face of the Report. If in fact the Law Society's view diverges from that of the Report, then that view should be stated.

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This recommendation is not made unanimously, reluctance is expressed in the following ways:

1. that the public interest is not readily identifiable.
2. the Law Society has been discreet historically in becoming involved in areas which have a political focus and should not broaden its approach.

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Although this meeting was arranged well in advance, many members of the Committee were absent. In an effort to determine consensus, this report has been circulated to all members of the Committee prior to its presentation to Convocation. As a result of the circulation of the Report to all members of the Special Committee, the Chair is pleased to report that, while the recommendations are not unanimous, the consensus appears to be in favour of the recommendation set out at the top of page 6 of this report.

ALL OF WHICH is respectfully submitted

DATED this 18th day of February, 1993

"F. Kiteley"  
Chair

Attached to the original Report in Convocation file, copies of:

- |          |   |
|----------|---|
| A-Policy | Extract from the Minutes of Convocation October 24, 1986 re: Report of the Special Committee on the Courts.<br>(Appendix "A", numbered 195 - 200)       |
| A-Policy | Excerpt from the Minutes of Convocation October 23, 1987 re: Report on the Special Committee on the Zuber Report.<br>(Appendix "B", numbered 179 - 183) |
| A-Policy | Excerpt from the Minutes of Convocation May 26, 1989 re: Convocation May 26th, 1989 Trial Court Reform.<br>(Appendix "C", numbered 91 - 96)             |

THE REPORT WAS ADOPTED

26th February, 1993

RESOLUTIONS - ANNUAL GENERAL MEETING

It was moved by Denise Bellamy, seconded Fran Kiteley that effective the next Benchers election that the immediate past Treasurer retain the vote for a period of two years.

It was moved by Casey Hill, seconded by Clay Ruby that Ms. Bellamy's motion be amended to be prospective.

It was moved by Robert Topp, seconded by Clay Ruby that the Resolutions be tabled until the March Convocation.

Lost

MOTIONS RE: RESOLUTIONS

That former and current Treasurers not elected in the most recent election not have a vote in Convocation.

Lost

ROLL-CALL VOTE

Bastedo	For
Bellamy	For
Brennan	Against
Carter	Against
Cullity	Against
Curtis	For
Elliott	Abstain
Finkelstein	For
Hickey	Against
Hill	Against
Kiteley	For
Krishna	Against
Lamek	Against
Lamont	Against
Mohideen	For
Murphy	Against
Palmer	For
Peters	Against
Ruby	For
Scott	Against
Sealy	Against
Somerville	For
Strosberg	Against
Topp	Against
Weaver	Against

26th February, 1993

THAT no person be eligible to be Treasurer who has not been elected as a Bencher in the most recent election.

Carried

ROLL-CALL VOTE

Bastedo	For
Bellamy	For
Brennan	Against
Carter	Against
Cullity	For
Curtis	For
Elliott	For
Finkelstein	Against
Hickey	For
Hill	For
Kiteley	For
Krishna	For
Lamek	Against
Lamont	Against
Mohideen	For
Murphy	Against
Palmer	For
Peters	For
Ruby	For
Scott	For
Sealy	For
Somerville	For
Strosberg	Against
Topp	For
Weaver	Against

The Motions made by Ms. Bellamy and Mr. Hill were tabled.

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MOTION RE: DISPUTE RESOLUTION SUBCOMMITTEE

It was moved by Hope Sealy, seconded by Lloyd Brennan that the Law Society's Complaints Department be asked to consult with mediators experienced in the resolution of complaints against professionals and report back to the Discipline Policy Committee as to the possibilities for extending the use of mediation in the resolution of complaints against lawyers.

The motion was accepted by the Chair of Discipline.

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CONVOCATION ADJOURNED FOR A BRIEF RECESS

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26th February, 1993

CONVOCATION RECONVENED AT 3:30 P.M.

CALL TO THE BAR - THE HONOURABLE PIERRE BLAIS, MINISTER OF JUSTICE AND ATTORNEY-GENERAL OF CANADA

The Honourable Pierre Blais was presented to Convocation and the Treasurer called the Minister to the Bar and conferred upon him the degree of Barrister-at-Law.

The Treasurer then adjourned Convocation and escorted the Minister to Courtroom 1 where the Chief Justice of Ontario, the Honourable Charles Dubin administered the oaths.

Following the ceremony a reception was held in the Benchers Reception in honour of the occasion.

CONVOCATION ROSE AT 4:45 P.M.

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Confirmed in Convocation this       day of       , 1993

Treasurer