

MINUTES OF CONVOCATION

Friday, 27th November, 1998
8:30 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, Carter, R. Cass, Chahbar, Copeland, Cronk, Crowe, Curtis, DelZotto, Epstein, Farquharson, Feinstein, Gottlieb, Harvey, Jarvis, Krishna, Lamek, Lamont, Lawrence, MacKenzie, Manes, Miller, Murphy, Murray, Ortved, Puccini, Robins, Ross, Stomp, Swaye, Topp, Wardlaw, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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The Treasurer announced that Harriet Sachs had been appointed a Judge in the Ontario Court (General Division).

Motion - Appointment

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that Nancy Backhouse be appointed Chair of the Admissions and Equity Committee effective immediately to replace Harriett Sachs who has been appointed to the Bench.

Carried

MOTION - REPORTS TAKEN AS READ

It was moved by Mr. DelZotto, seconded by Mr. Lamek that the Draft Convocation Minutes for October 22nd and 23rd, 1998 and the Reports of the Acting Director of Education and Addendum and Legal Aid Committee be adopted.

Carried

Draft Minutes of Convocation - October 22nd and 23rd, 1998

THE DRAFT MINUTES WERE ADOPTED

(see Draft Minutes in Convocation file)

Report of the Acting Director of Education and Addendum

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Acting Director of Education asks leave to report:

B.
ADMINISTRATION

B.1. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, November 27th, 1998:

Valda May Connell-Woodward
Kalanithi Somanader Gnanasegaram
David Richard Kaufman
Michael Joseph Russell Mould
Michael Paul Reed
Paul Anthony Edward Scotland
David Michael Shoemaker
Philippe Alexandre Ugnat

B.1.3. (b) Transfer from another Province - Section 4

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, November 27th, 1998:

Mitra Golnaraghi	Province of British Columbia
Dunniela Rebecca Kaufman	Province of British Columbia
Brian Sherwin Sussman	Province of Alberta

B.1.5. (c) Full-Time Members of Faculties of Approved Ontario Law Schools

B.1.6. The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under sec. 5 of Regulation 708 on November 27th, 1998. He has filed the necessary documents and complied with the requirements of the Society:

Hamish Campbell Stewart	University of Toronto, Faculty of Law
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B.2. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

B.2.1. The following former member applies for readmission and has met all the requirements in that regard:

Stuart Muir	<u>Called:</u>	February 8th, 1993
	<u>Resigned:</u>	November 29th, 1996

B.3. MEMBERSHIP UNDER RULE 50

B.3.1. (a) Retired Members

B.3.2. The following members are at least sixty-five years of age and fully retired from the practice of law, and request permission, under Rule 50 made under the Law Society Act, to continue their membership in the Society without payment of annual fees:

Gerald Ellis	Toronto, ON
Reginald Joseph Dutrizac	North York, ON
Charles Edmund Evans	Toronto, ON
Irving Feldman	North York, ON
Earl Stanley Marlin	Kingston, ON
Frances Myers Smookler	Toronto, ON

B.3.3. (b) Termination of Rule 50

The following member wishes to terminate his retirement under Rule 50 and return to active status:

Maurice Kole Olanick Etobicoke, ON

B.3.4. (c) Incapacitated Members

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

David Terrence O'Connell North Bay, ON

B.4. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.4.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

1. Arie Lucien Benaich of Toronto, Ontario was called to the Bar on February 9, 1993 and has not practised law since October 1996.

2. Nora Elizabeth Bynoe of Vancouver, British Columbia was called to the Bar on February 7, 1996 and has not practised law since September 1997.
3. Claire Melinda Russell Church of Perth, Ontario was called to the Bar on February 19, 1997 and has never practised Ontario law. The member's rights and privileges have been suspended since June 1, 1998 for non-payment of the annual fee.
4. Anne Marie Margaret Delorey of Victoria, British Columbia was called to the Bar on March 29, 1989 and has never practised Ontario law.
5. Sarah Louise Murphy of Vancouver, British Columbia was called to the Bar on February 8, 1994 and has not practised law since December 1994. The member's rights and privileges have been suspended since May 1, 1997 for non-payment of the annual fee.
6. Austin Garry O'Neill of St. Catharines, Ontario was called to the Bar on March 26, 1965 and practised Ontario law from March 29, 1965 to December 31, 1997.
7. Howard Allen Slawner of London, Ontario was called to the Bar on February 5, 1996 and has practised Ontario law from February 6, 1996 to September 1, 1997.
8. Jacqueline Mary Burton Stubbs of Hamilton, Bermuda was called to the Bar on March 22, 1991 and practised Ontario law from August 1991 to June 1995.

C.
INFORMATION

C.1. CHANGE OF NAME

C.1.1.	<u>From</u>	<u>To</u>
	Cristina Dina <u>Pallotta</u>	Cristina Dina <u>De Caprio</u> (Marriage Certificate)

C.2. ROLLS AND RECORDS

C.2.1. (a) Deaths

The following Members have died:

George Francis Denison Goldring Ridgeville	Called: November 17, 1938 Died: December 30, 1992
Gerald David Stone Parry Sound	Called: June 20, 1946 Died: July 20, 1995
Wilfred Wolman Toronto	Called: January 16, 1930 Died: November 25, 1996

George Arthur Addy Ottawa	Called: April 16, 1942 Died: August 3, 1997
James Neville Doyle Westmount	Called: June 21, 1951 Died: April 6, 1998
Charles Walter Donaldson Windsor	Called: November 18, 1937 Died: June 20, 1998
Robert Gordon Waldie Toronto	Called: June 19, 1947 Died: July 27, 1998
Aatto Arthur Kajander Thunder Bay	Called: June 16, 1938 Died: August 1, 1998
Fergus Patrick Walsh Toronto	Called: September 18, 1941 Died: September 7, 1998
Harry Lipton Willowdale	Called: June 25, 1959 Died: September 7, 1998
Robert Bruce Savage Concord	Called: March 24, 1972 Died: October 6, 1998
William Deneau Lyon Toronto	Called: June 29, 1950 Died: October 11, 1998
Robert Basil Edgar St. Catharines	Called: June 25, 1959 Died: October 19, 1998
Harold George Blanchard Thunder Bay	Called: September 19, 1940 Died: October 28, 1998
William Mathieson Henderson Colvin Thornhill	Called: January 15, 1953 Died: October 29, 1998

C.2.2. (b) Permission to Resign

C.2.3. 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:

Richard Alexander Sutton Toronto	<u>Called:</u> April 6, 1979 <u>Permitted to Resign:</u> October 22, 1998
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C.2.4. (c) Disbarments

C.2.5. The following member was disbarred from the Society and his name has been removed from the rolls and records of the Society:

David Joseph Colman Toronto	<u>Called:</u> February 9, 1993 <u>Disbarred:</u> October 22, 1998
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C.2.6. (d) Membership in Abeyance

C.2.7. Upon their appointments to the offices shown below, the memberships of the following members have been placed in abeyance under Section 31 of the Law Society Act:

Peter Douglas Griffiths
Brockville

Called: April 8, 1976
Appointed to Ontario Court
of Justice
(Provincial Division)
June 1, 1998

Fern Marla Weinper
Newmarket

Called: April 10, 1981
Appointed to Ontario Court
of Justice
(Provincial Division)
July 6, 1998

John Maxwell Evans
Ottawa

Called: March 16, 1979
Appointed to the Federal
Court of Canada
July 28, 1998

Natalie Jane Wilson
Renfrew

Called: April 16, 1980
Appointed to Ontario Court
of Justice
(Provincial Division)
November 2, 1998

ALL OF WHICH is respectfully submitted

DATED this the 27th day of November, 1998

REPORT OF THE ACTING DIRECTOR OF EDUCATION

27TH NOVEMBER, 1998

ADDENDUM

B.
ADMINISTRATION

B.1. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary

B.5. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.5.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

- (1) David Anthony D'Angela of Mississauga, Ontario was called to the Bar on February 7, 1992 and practised law in Ontario from February 7, 1992 to July 1997.
- (2) William Alexander Brock Myles of St. Johns, Newfoundland was called to the Bar on April 6, 1982 and practised law in Ontario from February 1993 to April 1998.
- (3) Kathleen Elizabeth Naylor of Dartmouth, Nova Scotia was called to the Bar on April 6, 1982 and has not practised Ontario law since January 1993.
- (4) Jane Theresa Stoyles of Toronto, Ontario was called to the Bar on February 26, 1998 and has never engaged in the practice of Ontario law.

C.
INFORMATION

C.1. LIFE MEMBERS

C.1.1. Pursuant to Rule 49 made under the Law Society Act, the following members have become Life Members of the Society, having been called to the Bar on or before November 18, 1948:

John William Francis Griffin	Toronto
Adrian Thomas Hewitt	Ottawa
Joseph Knight Pearce	Napanee

THE REPORT AND ADDENDUM WERE ADOPTED

Report of the Legal Aid Committee

Meeting of November 11, 1998

Legal Aid Committee
November 11, 1998

Report to Convocation

Nature of Report: Information

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Area Committee Appointments..... 1

Financial Reports - September 1998 - Appendix A

The Legal Aid Committee met on November 11, 1998. In attendance were:

Committee members: Neil Finkelstein (Acting Chair), Heather Ross (Vice Chair), Bob Armstrong, Tamara Stomp, Allan Lawrence, Rich Wilson, Tom Carey and Derry Millar.

Senior Management of OLAP: Bob Holden, Provincial Director, Deputy Directors George Biggar, Ruth Lawson and David Porter, Clinic Funding Manager, Joana Kuras.

Other OLAP Staff: Elaine Gamble, Communications Coordinator and Felice Mateljan, Executive Assistant.

The following items are for your information:

1. Area Committee Appointments

The Committee approved one new appointment to Area Committees as recommended by the Provincial Director: Cynthia Anne Harper in Middlesex.

Financial Reports - September 1998

The financial reports for September 1998 are attached.

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

Copy of the Ontario Legal Aid Plan Financial Reports for September 1998

THE REPORT WAS ADOPTED

MOTION - APPOINTMENT

It was moved by Mr. DelZotto, seconded by Mr. Lamek that Tamara Stomp be appointed to the Family Rules Committee pursuant to s. 67(2)(k) of the Courts of Justice Act effective immediately and to expire September 30, 1999.

Carried

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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Report of the Professional Regulation Committee

Meeting of November 11, 1998

Ms. Cronk presented the Report of the Professional Regulation Committee on the proposed 1999 spot and focussed audit program.

Report to Convocation

Purpose of Report: Decision and Information

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II. INFORMATION

STATUS OF REVIEWS OF DRAFT REGULATIONS, RULES AND BY-LAWS PURSUANT TO THE LAW
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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on November 11, 1998. In attendance were:
 - Eleanore Cronk (Chair)
 - Neil Finkelstein (Vice-Chairs)
 - Gavin MacKenzie

 - Paul Copeland
 - Marshall Crowe
 - Gary Gottlieb

 - Staff: Elliot Spears, Richard Tinsley, Jim Varro, and Jim Yakimovich

2. This report contains the Committee's

- ◆ proposal for the conduct of spot and focussed audits in 1999 in accordance with the program approved by Convocation
- ◆ update on the status of reviews of draft regulations, rules and by-laws pursuant to the *Law Society Amendment Act, 1998*.

I. POLICY

PROPOSED 1999 SPOT AND FOCUSSED AUDIT PROGRAM

A. BACKGROUND

3. James Yakimovich, Director, Audit and Investigations, provided the Committee with an outline of the scope and expenses associated with the proposed 1999 spot and focussed audit program, a continuation of the program commenced on a pilot project basis in 1998.¹
4. The following is the Committee's report on that information, followed by its proposal for the planned program in 1999.

B. BUDGET ISSUES

5. The 1998 Law Society budget provided for a fee levy of \$75.00 per member to provide money for a spot and focussed audit program in 1998, which was approved by Convocation at the end of 1997, as noted above, on a pilot project basis. The fee levy accumulated \$1,750,000.00. The money is segregated and earmarked for these two audit programs.
6. As earlier indicated, 1998 was the inception year for these audits. The Finance Committee adopted a phased-in approach to the introduction of the spot audit program in order to provide sufficient opportunity to study the results achieved and to adjust the program based on experience. The phased-in approach will result in approximately \$1,000,000 remaining unspent in the segregated account at the end of 1998.
7. The proposed 1999 budget for the Law Society is anticipated to include a fee levy of \$35.00 per member in order to provide sufficient money to replenish the segregated account to a total amount of \$1,750,000.00 for spot and focussed audits to be conducted in 1999.

C. OBJECTIVE OF THE 1999 SPOT AUDIT AND FOCUSSED AUDIT PROGRAMS

Spot Audit Program

8. It is proposed that the 1999 spot audit program be conducted on a "continuous stream" basis during the course of 1999, i.e. about 100 spot audits each month, to a total of approximately 1200 audits. This objective contrasts with the 1998 spot audit program, which was conducted in "start/stop" cycles.
9. The spot audits will be proactive in nature and selected based on four criteria:

¹In December 1997, Convocation made a commitment to a spot, or "random", and focussed audit program, on a pilot project basis. Benchers directed that once in place, the auditing program should be reviewed and an assessment of its operations be brought back to Convocation in two years.

- random selection,
 - the failure to file a financial report with the Law Society (Private Practitioner's Report),
 - follow up spot audits on firms previously subject to a spot audit where the nature or frequency of the inadequacies identified in the course of the previous spot audit supports a follow up audit to ensure continuing compliance, and
 - on the basis of information which is derived from financial reports filed with the Society.
10. The 1999 spot audit program will continue to emphasize a remedial resolution approach to record keeping inadequacies which are minor in nature.

Focussed Audit Program

11. The primary objective of the 1999 focussed audit program is to conduct detailed audits on law firms which meet the criteria approved by Convocation with respect to the focussed audit program in order to detect conduct which may warrant resolution through remedial efforts or which may require a more detailed investigation for purposes of a disciplinary complaint.

Consolidated Results of Spot Audits Completed to Date

12. A consolidated summary of the results of the two cycles of spot audits completed to date, which number 297 audits, discloses the following results:
- Findings of a serious nature which require a further, detailed investigation in order to determine whether or not a disciplinary complaint should be considered: 19 firms or 6.4% of the total number of audits.
 - Findings of a nature that merit a future follow up audit or enquiry by the Law Society to ensure continuing compliance, although no further investigative activity is warranted: 51 firms or 17.2% of the total number of audits.
 - Findings minor in nature for which no further follow up activity is recommended and for which the law firm received on-site advice of a remedial nature: 173 firms or 58.2% of the total number of audits.
 - No inadequacies found: 54 firms or 18.2% of the total number of audits.

Projected Number of Audits To Be Completed in 1999

13. Between 150 and 200 focussed audits will be performed. Approximately 1,200 spot audits will be conducted. This projection is based on an average cost of \$1,000.00 for each spot audit and the expectation that about \$1,250,000.00 will be available for professional fees to conduct spot audits in 1999.
14. It is proposed that employing the continuous stream basis for conducting spot audits will result in 300 spot audits being completed during each calendar quarter for 1999. The results of completed spot audits will be reported to the Committee at the end of each calendar quarter.

The Committee's Discussion and Proposal

15. The consensus at Committee was that the proposed program, as outlined above, is appropriate and workable within the budget proposed.
16. The suggestion was made during discussion that the number of spot audits should be reduced in favour of an increase in the number of focussed audits which, it was submitted, are a better vehicle for addressing the problems and issues for which the audit programs were designed.

17. Discussion of focussed audits disclosed that they cost two to three times more than spot audits, and require a dedicated complement of Law Society staff (the spot audit function is out sourced to a number of accounting firms). An increase in the number of focussed audits on any significant scale would require a corresponding and costly increase in the number of staff to do the required work. Further, if, as an alternative, the focussed audits were out sourced in the same manner as the spot audits, the costs would also increase dramatically.
18. As a final point, it was noted that the spot audit division of the program essentially involves a focussed audit component, to the extent that three of the four criteria discussed earlier in this report as the basis for the spot audits target a certain "profile" in the membership. This is akin to, but obviously not as extensively constructed as, the profile for members subject to the actual focussed audit division of the program.
19. Accordingly, based largely on the resource question, with acknowledgement of the encouraging results from the spot audits conducted in 1998, the majority of the Committee endorsed the 1999 program as proposed in the earlier part of this report.

D. DECISION FOR CONVOCATION

Request for Convocation's Approval of the 1999 Spot and Focussed Audit Program

20. Based on the above information, the Committee seeks Convocation's approval to utilize 1999 budget money of approximately \$1,750,000.00 to:
 - a. Conduct between 150 and 200 focussed audits in 1999, with each audit subject to prior regulatory approval as provided by Regulation 708, section 18, and
 - b. Conduct approximately 1,200 spot audits on a "continuous stream" basis in 1999, on a selection basis as outlined under the section "Objective of the 1999 Spot Audit and Focussed Audit Programs", above, with each audit subject to prior regulatory approval as provided by Regulation 708, section 18.

II. INFORMATION

STATUS OF REVIEWS OF DRAFT REGULATIONS, RULES AND BY-LAWS PURSUANT TO THE *LAW SOCIETY AMENDMENT ACT, 1998*

21. The Committee is continuing with its review of draft regulations, by-laws and rules of practice and procedure, prepared by staff in connection with the operational implementation of the legislative reforms and in preparation for review by the Legislative Reform Implementation Task Force, which will oversee all aspects of implementation of matters relating to the *Law Society Amendment Act, 1998*.
22. To date, a sub-group of the Committee has completed an initial review of draft regulations on Hearings by Hearing Panels and the Complaints Resolution Commissioner. The Chair has directed that all Committee members provide any comment on the draft to her by the end of November, prior to finalizing the text for the next stage of review.
23. It is anticipated that rules of practice and procedure, currently being drafted by staff, dealing with conduct hearings will be available for review by the Committee at its next meeting, which has been scheduled for mid-December. By-laws on financial record keeping/ financial trust obligations and the Proceedings Authorization Committee should also be available for the December review.

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It was moved by Mr. Gottlieb, seconded by Mr. Aaron that the Law Society conduct 600 spot audits and that costs saved be devoted to focussed audits.

Lost

ROLL-CALL VOTES

Aaron	For
Adams	Against
Arnup	Against
Backhouse	Against
Banack	Against
Bobesich	For
Carter	Against
Cronk	Against
Crowe	Against
Curtis	Abstain
DelZotto	For
Feinstein	Against
Gottlieb	For
Krishna	Against
Lamek	Against
MacKenzie	Against
Millar	Against
Murphy	Against
Murray	Against
Puccini	Against
Robins	Against
Ross	Against
Stomp	Against
Swaye	Against
Wilson	Against
Wright	Against

Vote 21 - 4 - 1 Abstention

It was moved by Mr. Cronk, seconded by Mr. MacKenzie that the 1999 Spot and Focused Audit Program be approved as follows:

- a. conduct between 150 and 200 focussed audits in 1999, with each audit subject to prior regulatory approval as provided by Regulation 708, section 18, and
- b. conduct approximately 1,200 spot audits on a "continuous stream" basis in 1999 with each audit subject to prior regulatory approval as provided by Regulation 708, section 18.

Carried

ROLL-CALL VOTE

Aaron	Against
Adams	For
Arnup	For
Backhouse	For
Banack	For
Bobesich	Against

Carter	For
Cronk	For
Crowe	For
Curtis	Abstain
DelZotto	Abstain
Feinstein	For
Gottlieb	Against
Krishna	For
Lamek	For
MacKenzie	For
Millar	For
Murphy	For
Murray	For
Puccini	For
Robins	For
Ross	For
Stomp	For
Swaye	For
Wilson	For
Wright	For

Vote 21 - 3 -2 Abstentions

First Interim Report-Task Force on Review of the Rules of Professional Conduct

Mr. MacKenzie reported on the status of initiatives undertaken to date.

Report to Convocation
November 27, 1998

First Interim Report of the Task Force on
Review of the Rules of Professional Conduct

Purpose of Report: Information

INTRODUCTION

1. The Task Force on Review of the Rules of Professional Conduct ("The Task Force"), in keeping with the terms of reference approved by Convocation on June 26, 1998, has commenced its work, and is reporting on:
 - the status of initiatives undertaken to date, and
 - a proposal for the policy review phase and Convocation's ultimate deliberations on a restructured and, in part, redrafted code of conduct.
2. The Task Force is composed of benchers Gavin MacKenzie (co-chair), Derry Millar (co-chair), Heather Ross and Mr. Justice John I. Laskin.

SUMMARY OF THE WORK TO DATE

3. The Task Force has held five meetings, and has undertaken the following work.

Initial Tasks

4. The Task Force has:

- undertaken a review of material produced by the Special Committee to Review the Rules of Professional Conduct (the Somerville Committee)¹, flowing from information provided in the minutes of Convocation;
- reviewed the codes of conduct of other jurisdictions, including Alberta, British Columbia and the American Bar Association's Model Rules and earlier Model Code;
- reviewed a compilation of rule-related issues that have been considered by various committees or Convocation within the past few years;
- noted other initiatives underway at the Law Society connected with a review of the Rules. These include a number of reviews of individual Rule issues through the Professional Regulation Committee, the work of the Futures Task Force Working Group on Multi-Discipline Partnerships, and the Competence Task Force.

Requests for Input

5. With respect to obtaining the profession's input on issues related to the Rules, the Task Force has taken the following steps:

- letters have been sent to various groups representing different constituencies within the legal profession, for example, the Advocates' Society and the Criminal Lawyers' Association, asking for input on issues they feel should be addressed in a review of the rules of conduct;
- letters have been sent to the chief justices of the Court of Appeal for Ontario and the Ontario Court (General Division) similar to those sent to lawyer groups described above, asking for input from the judiciary;
- a notice has been placed in the October 30, 1998 edition of the *Ontario Reports* (and two editions following), the current issue of the *Ontario Lawyers Gazette* and on the Law Society's website inviting submissions from the profession on issues relating to the rules of conduct;
- instructors and the examination team for the Bar Admission Professional Responsibility Course are being contacted for input;
- key regulatory and advisory staff within the Law Society are being consulted and asked for their views on the current rules and issues or concerns arising from their application in the Law Society's processes.

6. The letters and notices provide that submissions are to be received by the Law Society before the end of December, 1998.

Drafting Expertise

7. The Task Force decided that while it would have responsibility for making policy proposals about what the code of conduct should include, and the issues which flow from that exercise, a legislative drafter or similar individual, external to the Law Society and preferably a lawyer, should be engaged to assist in drafting amended or new rules within a newly-formatted code.

¹In 1992, this Special Committee, chaired by Marc Somerville, began a rule-by-rule review of the code of conduct. Although the Special Committee did not complete its mandate, the Task Force felt it appropriate to review what was accomplished to the date of its last report to Convocation in 1993.

8. To this end, a request for proposal for drafting expertise was sent to three individuals, in accordance with Law Society operational policies. The Task Force hopes to be in a position to decide on who will be engaged by the end of November.

Interface with Professional Regulation Committee and Implementation Committee for the Multi-Discipline Partnerships Report

9. As noted above, the Task Force acknowledged the need to inform the Professional Regulation Committee ("PRC") of its work on an ongoing basis, given the PRC's responsibility for the Rules of Professional Conduct. As Gavin MacKenzie serves as a vice-chair of the PRC, reports to the PRC will be made through him from time to time.
10. The Task Force also acknowledged that implementation of the model of multi-discipline partnerships (MDPs) adopted by Convocation on September 25, 1998 may have implications for the work of the Task Force. Accordingly, the work on implementation will be monitored by the Task Force, through Jim Varro as a staff liaison between the Task Force and the group working on MDP implementation.

Assessment of Current Rules

11. As a first step in review of the texts of the Rules and commentaries, in an effort to more rationally organize the rules and "tidy up" the code prior to the start of policy discussions, the Task Force reviewed material prepared by staff, as instructed, comprised of a collection of the existing rules under eight suggested "chapter" headings (see Appendix 1 attached). This material will be provided to the individual engaged for the drafting exercise.
12. The Task Force will use this material as a basis for discussions on common themes in the rules, how overlap and redundancies, if any, can be eliminated and identification of ethical concepts and principles in the current code of conduct.

APPROACH TO POLICY REVIEW OF THE CURRENT RULES

13. As a preliminary matter, the Task Force considered how it could best achieve its objective of presenting Convocation with revised draft rules of professional conduct for policy discussion within the time frame within which it is working. The Task force concluded that it should arrange for amended rules to be drafted based on policy direction from the Task Force, so that Convocation will have the benefit of examining the proposed rules as whole when considering the policy choices to be made.
14. The Task Force emphasizes that Convocation must be prepared to devote the time necessary for an in depth policy review and discussion once the re-drafted code of conduct is presented next spring with the underlying policy proposals of the Task Force.

NEXT STEPS

15. With respect to rule review tasks, the Task Force has begun a focussed review of those which will require specific attention in terms of policy review. To date, these include Rules 2, 4, 5, 9*(in part), 10, 12*(in part), 16, 18*, 21, 23* (in part), 24, 26 and 30.
(* these rules are also the subject of review through other Law Society committee/working group initiatives)
16. The immediate focus is on Rules 2, 4, 10, and 16, and members of the Task Force have each been assigned a Rule in preparation for the policy discussions at upcoming meetings.
17. The Task Force plans to report to Convocation again in early 1999.

APPENDIX 1

POSSIBLE RULE AMALGAMATIONS

- “INTEGRITY, ETHICS AND PROFESSIONALISM”
Includes Rules 1, 8, 10 (part in Competence rule), 11, 13, 14, 17, 18 (part in Conflicts rule), 21, 24 (suggested deletion), 25, 27, 28
- “THE COMPETENT LAWYER”
Includes Rules 2, 3, 6, 10 (part only), 26, 30 (part in Conflicts rule)
- “CONFIDENTIALITY”
Rule 4
- “CONFLICTS OF INTEREST AND MAINTAINING INDEPENDENCE”
Includes Rules 5, 7, 15, 18 (part only), 23, 29, 30 (part only)
- “FEES AND DISBURSEMENTS”
Rule 9
- “ADVERTISING & MARKETING”
Rule 12
- “THE UNAUTHORIZED PRACTICE OF LAW”
Includes Rules 16, 19, 20
- “INTERPROVINCIAL LAW FIRMS”
Rule 22

.....

Report - Law Society Out of the Cold Program

Ms. Backhouse reported on the expansion of the Program and that a clinic is being organized to provide legal services to the homeless by volunteer lawyers.

27th November, 1998

MEMORANDUM

TO: Report to Convocation
FROM: Nancy Backhouse
DATE: November 11, 1998
RE: Law Society Out of the Cold Program

The Law Society Out of the Cold Program has expanded. Weekly breakfasts (with bag lunch) have been held since May 1998. In October, 1998, we began holding Wednesday dinners. We average 125 people at the breakfasts and dinners with a high of 165 and a low of around 100.

We are grateful to the Law Society staff for their cooperation. The cooperation between our program and the existing Law Society food services has been wonderful. Anna Holloran, who is in charge of the cafeteria, has been incredible. Yasser Quhawish has been very cooperative.

There have been no "incidents".

There has been no interference with the bar admission course students, some of whom have volunteered at the breakfasts and the dinners. Some of the funds raised for the program have been used to improve the cafeteria kitchen. A new grill has been installed. We have acquired a potato peeling machine, pots, replaced an electric cutting machine which was inadequate and put in an commercial sized toaster. This equipment is available to be used by the Law Society.

Fundraising for the program has come from the Bar and from clients of lawyers. We expect no problem fundraising particularly when the Law Foundation amends its Charter so as to be in a position to provide charitable receipts. There has been no difficulty in recruiting volunteers who come from the ranks of judges, lawyers, articling students, bar admission course students, law school students, legal secretaries and family and friends of the above. The enthusiasm and consistent support of the Provincial Court Judges is very much appreciated.

Our guests are very grateful. The feedback from them and other Out of the Cold workers is that our program is considered to offer up some of the highest quality meals in the city.

We will be monitoring attendance to see what develops when the other Out of the Cold programs begin in November. Depending on our attendance, we may consider expanding the program to one further breakfast in January, 1999.

LEGAL CLINIC

We are organizing the providing of legal services to operate in conjunction with the Wednesday dinners in the cafeteria. The Law Foundation has provided funding to create a manual on issues particularly relevant to homeless people to be a resource for volunteer lawyers. We are aiming to have the manual available for January 6, 1999, which is our target start up date. We are in the process of completing a questionnaire to get a handle on the number of people who attend the dinners who may require legal assistance and in what areas. We anticipate volunteer lawyers will provide, with the assistance of the manual, summary advice, practical advice, referrals or, if the volunteer wishes, take on a pro bono matter.

SPECIAL EVENTS

The Out of the Cold Barbeque/Picnic which was held on the grounds of Osgoode Hall on August 15, 1998, was an overwhelming success with approximately 400 guests fed without incident including children who were entertained by a clown/magician, otherwise a practicing lawyer, and musicians, also practicing lawyers. A Thanksgiving dinner was incorporated into the ongoing weekly dinners and was held on October 14, 1998. We are planning a special Christmas dinner on Wednesday, December 23, 1998 as part of our regular dinners.

We have continued to benefit from the ongoing participation of volunteers from the Metropolitan Toronto Police Force and from the generous contributions of corporate sponsors.

Media interest has abated as our program has expanded.

.....

Ms. Ross thanked Ms. Backhouse and the many volunteers for their assistance.

MOTION - APPOINTMENT

It was moved by Ms. Backhouse, seconded by Ms. Cronk that Heather Ross be appointed a Vice-Chair of the Admissions and Equity Committee.

Carried

CALL TO THE BAR (Convocation Hall)

The candidates listed in the Report of the Acting Director of Education and the Addendum were presented to the Treasurer and called to the Bar and then presented by Mr. Lamont to Madam Justice Denise Bellamy to sign the Rolls and take the necessary oaths.

Valda May Connell-Woodward	Bar Admission Course
Kalanithi Somanader Gnanasegaram	Bar Admission Course
Rachel Katherine Verrier Jones	Bar Admission Course
David Richard Kaufman	Bar Admission Course
John Michael Mercury	Bar Admission Course
Michael Joseph Russell Mould	Bar Admission Course
Michael Paul Reed	Bar Admission Course
Paul Anthony Edward Scotland	Bar Admission Course
David Michael Shoemaker	Bar Admission Course
Joseph Jean Marc Turgeon	Bar Admission Course
Philippe Alexandre Ugnat	Bar Admission Course
Mitra Golnaraghi	Transfer, Province of British Columbia
Dunniela Rebecca Kaufman	Transfer, Province of British Columbia
Brian Sherwin Sussman	Transfer, Province of Alberta
Hamish Campbell Stewart	University of Toronto, Faculty of Law

.....

SUSPENSIONS

It was moved by Mr. Krishna, seconded by Mr. DelZotto THAT the rights and privileges of each member whose name appears on the attached list, and who has not paid the Errors and Omissions Insurance Levy as of Friday, November 27, 1998 (5:00 p.m.), be suspended effective Monday, November 30, 1998 (9:00 a.m.) and until their levy is 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)

Report of the Finance and Audit Committee

Meeting of November 16, 1998

1999 BUDGET

Mr. Krishna presented the 1999 Budget for the Law Society of Upper Canada - General Fund and Lawyers Fund for Client Compensation.

Finance and Audit Committee
November 16, 1998

Report to Convocation

Purpose of Report: Decision Making

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on November 16, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Lamont, T. Stomp, G. Swaye, J. Wardlaw, R. Wilson, and B. Wright. Staff members in attendance were J. Saso, W. Tysall, D. Carey, K. Corrick, F. Grady, and R. White.

- The Committee has one matter that requires Convocation's approval:
 - the 1999 Budget for the Law Society of Upper Canada - General Fund and Lawyers Fund for Client Compensation. This document is provided under separate cover.
- The 1999 Budget process began in February of 1998 with the Committee reviewing several "operational" departments of the Law Society. During this review it became apparent that the administrative and support costs of the Law Society have never been correctly or fully allocated to the operational departments. Therefore, in June

of 1998, the Committee, along with the Treasurer’s agreement, determined that the 1999 Budget would be prepared under “full indirect cost allocation”. A full discussion of the former and new method of indirect cost allocation is included in the budget at Tab 7.

3. The 1999 Budget was prepared on a “break-even” basis with the following objectives:
 - provide funding to allow for compliance with Executive Limitations,
 - preparation of the Budget under “Full Indirect Expense Allocation”,
 - provide sufficient monies to continue funding the Osgoode Hall Capital Fund that will ensure the Society’s physical assets will not be subject to improper wear and tear and allow for sufficient maintenance to ensure the historical integrity of the building is not impaired,
 - establish a fund for new Committee initiatives and task forces,
 - reduce the annual membership fee charged to members as much as is reasonably possible.

6. Several new initiatives and changes from the 1998 Budget are included in the 1999 Budget. These are detailed in Tab 1 of the 1999 Budget document.

7. The 1999 Budget recommendations include two items will require rule changes. These are as follows:
 - a. Changing the fee paying categories from the current 100%, 50% and 25% fee levels to two fee paying categories -- 100% fee and a nominal fee paying \$100 per year. Tab 9 of the 1999 Budget document addresses in more detail the issues surrounding the changes to the fee categories. The Society’s Secretary will provide the appropriate amendments of the Rules to Convocation,

 - b. Special Assistance Fund - the budget recommends changing the purpose of this fund, formerly known as the Insurance Levy Waiver Fund. It is recommended that the Fund be directed to assist those members and student members requiring assistance in meeting the obligations of fees, insurance levies, and tuition. Further information can be found in Tab 9 of the 1999 Budget document. The Society’s Secretary will provide amendments of the appropriate Rules to Convocation.

8. A schedule that details the the year over year changes to the Finance and Audit Committee’s “Recommended 1999 Budget” as well as three other options of the budget is shown on page 1 of Tab 2 in the 1999 Budget document.

9. The Finance and Audit Committee recommends to Convocation that the 1999 Budget be approved setting the fee at \$1,243 and that the Rule changes to the fee paying categories and the Special Assistance Fund be adopted.

Finance and Audit Committee
November 16, 1998

Report to Convocation

Purpose of Report: Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on November 16, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. Cronk, E. DelZotto, D. Lamont, T. Stomp, G. Swaye, J. Wardlaw, R. Wilson, and B. Wright. Staff members in attendance were J. Saso, W. Tysall, R. Tinsley, D. Carey, K. Corrick, F. Grady, and R. White.

1. The Committee is reporting on the following matters:

- Unaudited September 30, 1998 Financial Statements for the General Fund and Lawyers Fund for Client Compensation,
- Investment report for the None Months Ended September 30, 1998
- the 1998 and 1999 Spot and Focussed Audit Program.

2. Enclosed on pages 8 - 14 are the unaudited financial statements for the General Fund and the Lawyers Fund for Client Compensation for the nine months ended September 30, 1998,

3. Enclosed on pages 15 - 25 is the Investment Report for the General Fund and the Lawyers Fund for Client Compensation for the nine months ended September 30, 1998.

4. Ms. Cronk and Mr. Tinsley attended a portion of the meeting to discuss issues surrounding the 1998 and 1999 Spot and Focussed Audit program.

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

- (1) Copy of the Unaudited financial statements for the General Fund and the Lawyers Fund for Client Compensation for the nine months ended September 30, 1998. (pages 8 - 14)
- (2) Copy of the Investment Report for the General Fund and the Lawyers Fund for Client Compensation for the nine months ended September 30, 1998. (pages 15 - 25)

A debate followed with questions from the Bench.

It was moved by Ms. Curtis, seconded by Ms. Ross that the Rule re: fee paying categories be tabled to January 1999.

Carried

It was moved by Mr. Crowe, seconded by Ms. Puccini that there be no increase over 1999 in the Bar Admission Course tuition fee.

Withdrawn

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that the Bar Admission Course not be subsidized by the general membership.

Lost

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	Against
Arnup	Abstain
Banack	For
Bobesich	For
Carpenter-Gunn	Against
Chahbar	Against
Copeland	Against
Cronk	Against
Crowe	Against
Curtis	Abstain
DelZotto	Against
Epstein	Against
Feinstein	Against
Gottlieb	For
Harvey	Against
Krishna	Against
MacKenzie	Against
Manes	Against
Millar	Against
Murphy	Against
Murray	For
Ortved	Against
Puccini	Against
Robins	Against
Ross	Against
Stomp	Abstain
Swaye	For
Topp	Against
Wilson	Against
Wright	Against

Vote 22 - 7 - 3 Abstentions

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that the Finance and Audit Committee be directed to study the issue of a differential levy based on income.

The Gottlieb/Aaron motion was ruled out of order.

DISCIPLINE

The following discipline matter was adjourned on November 26th to today's date.

RE: David Mark MARCOVITCH - Toronto

Ms. Catherine Braid appeared for the Society and Ms. Robin Bell appeared on behalf of the solicitor who was present.

Messrs. Topp, Feinstein, Wilson and Copeland, Ms. Cronk and Ms. Curtis did not participate.

Mr. Braid advised that the solicitor had not delivered to the Society all of the documents requested.

Ms. Bell advised that another day or two would be needed to obtain the remaining documents.

The matter was adjourned to the Discipline Convocation in January 1999 peremptory to the solicitor.

RESUMPTION OF THE BUDGET DEBATE

It was moved by Mr. Topp, seconded by Mr. Banack that the law library levy be increased to \$200.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	Against
Armstrong	Against
Arnup	Abstain
Banack	For
Bobesich	Against
Carpenter-Gunn	Against
Chahbar	For
Copeland	For
Cronk	For
Crowe	Against
Curtis	For
DelZotto	For
Epstein	For
Feinstein	For
Gottlieb	For
Harvey	Against
Krishna	Against
MacKenzie	Against
Manes	Against
Millar	For
Murphy	For
Murray	For
Ortved	Against
Puccini	For
Robins	For
Ross	For

Stomp	Against
Swaye	For
Topp	For
Wilson	Abstain
Wright	Against

Vote 18 - 12 - 2 Abstentions

It was moved by Ms. Cronk, seconded by Ms. Ross that lawyers who are now in the 50% fee category continue in the 50% fee category for the year 1999.

Carried

It was moved by Mr. Krishna, seconded by Mr. DelZotto that the 1999 Budget as amended be adopted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

The Treasurer announced that the 1999 Annual Fee before discount is set at \$1,322.

Interim Report - Competence Task Force

Mr. Armstrong presented the Interim Report of the Competence Task Force.

Competence Task Force
November 27, 1998

Interim Report

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TERMS OF REFERENCE

- a) The Task Force and its Mandate
 - 1. The second Competence Task Force was established by Convocation in June 1998. This followed the work of the first Competence Task Force, which developed a definition of competence unanimously approved by Convocation in November 1997.
 - 2. The mandate of the second Competence Task Force is “to develop, for Convocation’s approval, an holistic blueprint for the Law Society’s role in developing, maintaining, improving, and enforcing competence”. The blueprint is to be developed in the context of assessing:
 - a) the existing Law Society programs that touch on competence;
 - b) the mandate assumed in the role statement;
 - c) the requirements of the *Law Society Act* and amendments;
 - d) the processes being developed through Project 200;
 - e) cost implications for taking certain approaches;
 - f) relationships with and initiatives of other organizations, such as LPIC, CBAO, CDLPA, the Advocates’ Society, Criminal Lawyers’ Association, Family Lawyers’ Association and others; and
 - g) how each aspect of the blueprint will tie into the definition of competence.

3. The Task Force members are Bob Armstrong (Chair), Eleanore Cronk, Elvio DelZotto, Mary Eberts, Malcolm Heins, Harriet Sachs, John Saso, and Vern Krishna. Staff to the Task Force are Sophia Sperdakos and Jim Varro. The Task Force has also been assisted by Derry Millar, a member of the Task Force on the Review of the Rules of Professional Conduct, by Janet Brooks, Scott Kerr, Sue McCaffrey, Felecia Smith, Elliot Spears, Richard Tinsley, and Alan Treleaven of the Law Society, and by Karen Bell and Caron Wishart at the Lawyers' Professional Indemnity Company.
4. The Task Force has met on 8 occasions. Members have been provided with seven detailed background papers setting out the scope of the issues the Task Force must analyse and a range of questions for consideration.¹
5. In October 1998, the Task Force prepared a draft report and consulted with the Admissions and Equity, Professional Development and Competence, Professional Regulation, and Finance and Audit committees. As a result of feedback it received the Task Force has had further discussions that have led to this interim report.
6. The purpose of the interim report is to:
 - a) provide Convocation with background information on the Law Society's competence-related work;
 - b) set out the principles underlying the Task Force's proposed approach;
 - c) set out the components of the Task Force's proposed approach; and
 - d) seek Convocation's direction regarding the Task Force's next steps.
7. If Convocation endorses the Task Force's principles and approach the Task Force proposes to provide a full report to Convocation in early 1999.

BACKGROUND TO THE ISSUE

8. In considering the Law Society's role in ensuring members' competence the Task Force examined:
 - a) the current Law Society approach to competence;
 - b) the need for change recognized in the *Law Society Amendment Act, 1998* and Project 200;
 - c) the work of the first Competence Task Force in 1997; and
 - d) other competence-related initiatives that are relevant to the Task Force's work.
9. This consideration provides the context within which the Law Society can continue to develop a proactive approach to competence that will meet its obligations to govern in the public interest, facilitate the public's ability to locate lawyers who can address their particular needs, and foster the Law Society's unique position to support members in their pursuit of competence.
 - a) Current Law Society Approach to Competence

¹The background papers, which are available on request, are as follows:

- a. "Competence and Quality Assurance";
- b. "Competence and Law Society Statutory Obligations";
- c. "Statutory Role in Competence: Pre-Call Licensing and Post-Call Professional Development";
- d. "Memorandum - Limited Licensing";
- e. "Possible Approaches to Lawyer Competence";
- f. "LPIC's Perspective on Competence and Quality Assurance"; and
- g. "Active Competence: A New Approach to Professional Governance".

10. The word competence does not appear anywhere in the current *Law Society Act*. It appears only occasionally in the rules or regulations arising out of the *Act*. Yet much of the activity with which the Society concerns itself addresses the issue in some form.
11. The Law Society's role statement, adopted by Convocation on October 27, 1994 states that the Law Society exists "to govern the legal profession in the public interest by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, *competence*, and professional conduct". (emphasis added)
12. Rule 2 of the Rules of Professional Conduct imposes a duty on lawyers to be competent and a standard by which to measure the duty:
 - a) *The lawyer owes the client a duty to be competent to perform any legal services undertaken on the client's behalf.*
 - b) *The lawyer should serve the client in a conscientious, diligent, and efficient manner, and should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation and should avoid unsatisfactory professional practice.*

In assessing whether lawyers have acted competently in a matter the Law Society has traditionally relied on the common law standard developed in case law.

13. The Law Society currently operates a number of programs and activities that have competence-related components. Those programs are set out in Appendix 1. Although the individual programs have components that address preventive, remedial, supportive, educational, and enforcement issues, the Law Society has not previously undertaken a thorough evaluation of its overall approach to competence. So, for example, there has been no assessment of what the Law Society's goals for competence should be or how those goals should translate into activities or programs, no determination of competence criteria and objectives against which to measure programs, and no method for determining whether there is a gap in the Law Society's competence-related activities and how to fill it.
 - b) The Need for Change: The *Law Society Amendment Act, 1998* and Project 200
14. Law Society complaints statistics indicate that approximately 60% of all complaints relate primarily to client dissatisfaction with the quality of legal services they receive. The resolution of such complaints is not effectively handled through the current discipline stream. Designed to deal more with dishonesty and lack of integrity than with competence issues, the discipline approach has proven to be an ineffective tool for introducing remedial measures to improve poor lawyer performance. The practice review program, established to address the gaps left by the discipline stream, assists in helping lawyers improve their performance, but is hindered by the fact that it is not a mandatory program. The current legislative structure provides no express authority for the Law Society to articulate standards against which performance will be measured.
15. The inflexibility in dealing with competence problems and the gaps in authority over competence that exist in the current *Law Society Act* have long been recognized by Convocation and by staff who deal with members on a daily basis. The *Law Society Amendment Act, 1998* represents Convocation's recognition of the need for a marked departure from an approach that views competence as an implicit, but not explicit foundation for Law Society actions and policies. Although the *Act* creates a framework for regulating competence, however, it remains for the Law Society, through the development of by-laws, to turn the framework into action. It is essential that the Law Society approve the necessary policies upon which by-laws will be based.
16. The most significant additions to the Law Society's authority over competence-related aspects of professional life, which are included in the *Law Society Amendment Act 1998*, include:
 - a) the general articulation of a standard of competence;

- b) authority for mandating practice reviews;
 - c) authority to make competence orders;
 - d) the creation of a Proceedings Authorization Committee to authorize all matters for hearing relating to conduct, competence, and capacity;
 - e) authority to require members to requalify; and
 - f) authority to require mandatory continuing legal education.
17. It is particularly important to note Section 41 of the proposed *Act*, which states:
- A member fails to meet standards of professional competence for the purpose of this Act if*
- (a) *there are deficiencies in,*
 - (i) *the member's knowledge, skill, or judgment,*
 - (ii) *the member's attention to the interests of clients,*
 - (iii) *the records, systems or procedures of the member's practice, or*
 - (iv) *other aspects of the member's practice; and*
 - (b) *the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.*
18. Appendix 2 summarizes the competence-related provisions in the *Act*. The wide range of provisions demonstrates the comprehensive framework the Law Society has put in place for its proactive role in the competence of the profession.
19. Recognizing that the Law Society's organizational approach to competence issues needed to be improved and adapted to the new legislation, the Project 200 ("P200") Professional Regulation Redesign includes reorganization and redesign of the operational functions of the Law Society's regulatory departments, which consist of Audit and Investigations, Complaints, Discipline, Practice Advisory Service, Professional Conduct, and Professional Standards.
20. The Project 200 regulatory redesign will include a number of approaches to deal more effectively with member problems, many of which arise out of competence or service issues. These will include
- a) remedial/diversion initiatives such as
 - (i) the expanded use of ADR to resolve a broad range of issues;
 - (ii) developing remedial options to address specific problems giving rise to complaints², and
 - (iii) pre-disposition reports to assist panels in determining appropriate and flexible remedies, while at the same time maintaining an effective discipline process for cases involving serious misconduct.
 - b) integration of the practice review program into the regulatory processes such that it becomes one of the regularly available remedial options; and
 - c) expanding the role and purpose of authorization meetings to include authorizing remedial approaches to problems that may not require the discipline track.
21. The new approach will integrate more effectively than ever before remedial and preventive aspects of regulation with the more formal approaches necessarily in place to deal with serious discipline issues.

²These will include educational forums for those whose ethical judgment or management of their practices fall below acceptable levels.

c) The Definition of Competence

22. The first Competence Task Force was established to develop an approach to competence that is consistent with the Law Society's priorities and capable of being interpreted in a consistent and coherent manner. In particular, it was noted that there was no sufficiently useful definition of competence from which the Law Society could work to meet its obligation to the public, or from which the members of the legal profession could assess their compliance with requirements placed upon them by the Law Society. A clear definition of competence, developed with a view to the context within which the Law Society operates, could provide clarity, guidance, and consistency to the profession, benchers, staff, and the public.

23. The first Competence Task Force's priority was to develop such a definition. Convocation unanimously approved the following definition of competence in November 1997.

Definition of the Competent Lawyer

A competent lawyer has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client. These include:

- i. knowing general legal principles and procedures, and the substantive law and procedure for the areas of law in which the lawyer practices;
 - ii. investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate course(s) of action;
 - iii. implementing the chosen course of action through the application of appropriate skills including:
 - (a) legal research,
 - (b) analysis,
 - (c) application of the law to the relevant facts,
 - (d) writing, and drafting,
 - (e) negotiation,
 - (f) alternative dispute resolution,
 - (g) advocacy, and
 - (h) problem solving abilities as each matter requires;
 - iv. communicating in a timely and effective manner at all stages of the matter;
 - v. performing all functions conscientiously, diligently, and in a timely and cost effective manner;
 - vi. applying intellectual capacity, judgment, and deliberation to all functions;
 - vii. complying in letter and in spirit with the Rules of Professional Conduct;
 - viii. recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
 - ix. managing one's practice effectively;
 - x. pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
 - xi. adapting to changing professional requirements, standards, techniques, and practices.
24. Currently, the definition is contained in the Foreword to the Rules of Professional Conduct. Although Convocation approved a recommendation that the definition inform all the competence-related work the Law Society undertakes, a process for implementing that principle has not yet been developed.

d) Other Competence-Related Initiatives

25. The shift in focus and approach to competence that has begun with P200 and the proposed *Law Society Amendment Act, 1998* is also evident in questions currently being explored concerning the approaches and goals of current programs and the development of new initiatives. Appendix 3 contains an outline of some of those initiatives and questions, which include a re-examination of the rules of professional conduct, the review of the specialist certification program and the lawyer referral program with a view to enhancing their ability to serve the public and the profession, and the development of a new model of delivery of county library services.

PRINCIPLES UNDERLYING THE TASK FORCE'S PROPOSED APPROACH

26. All of the various competence policies and programs outlined in the previous section have come into being with Convocation's approval and direction. They illustrate Convocation's appreciation of the scope and range of its competence-related responsibility and Convocation's acceptance of a proactive role. The Task Force is not required to create a blueprint from scratch, but rather to integrate the many strands that already exist or are in progress, identify the gaps, and recommend a process for moving forward.
27. Certain fundamental principles underlie the approach the Task Force proposes to take. Before it fully develops its approach with those principles in mind the Task Force is requesting that Convocation endorse those principles.
28. Briefly summarized, the principles are:
- a) Quality of service should be a major element of the Law Society's interest in competence.
 - b) Lawyers are primarily responsible for their own competence.
 - c) The profession as a whole has a stake in the competence of each member.
 - d) The Law Society's mandate should and does include a responsibility to ensure that the public is served by competent lawyers.
 - e) The Law Society's approach to its competence mandate should be proactive and wide-ranging.
 - f) The clear articulation of competence standards is an essential component of the Law Society's mandate.
 - g) The competence definition underlies the development of standards and competence-related activities.
29. Taken together, these principles reflect a view that the competence of the profession is the combined responsibility of individual lawyers, the profession as a whole, and the Law Society as the regulator that governs the profession in the public interest. Although the governing body has ultimate responsibility to ensure that those called to the bar are competent and that the public is served by competent lawyers, members of the profession, both individually and collectively, must make a fundamental commitment throughout their careers to quality service and ethical conduct. The governing body should set the standards for the profession, take a proactive role in the development, maintenance, and enhancement of competence, and intervene with remedial efforts or, if necessary, discipline when lawyers fail to meet the responsibility to maintain competence. A successful approach to competence is one in which the voluntary acceptance and compliance with standards is significantly higher than the requirement to enforce them.
- a) Quality of service should be a major element of the Law Society's interest in competence
30. In its involvement with the issue of competence the Law Society's focus must be on the quality of service rendered by members to their clients. In addressing the issue of "quality" in a paper written in 1983, David Stager noted that the dictionary defines competence as a matter of ability, and quality as degree of excellence, and stated:

It is particularly important to distinguish the ability to perform a task from how well it is actually performed. Lawyers who are incompetent to deal with certain issues will certainly provide poor quality service, but quite competent lawyers may produce equally poor quality work under certain conditions.

31. The definition of competence approved by Convocation in November 1997 identifies the professional *abilities* that every lawyer should have regardless of year of call, location and nature of practice, or size of firm. But the definition goes a step further to link competence to quality by stating that:

A competent lawyer has *and applies* relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client.

32. It is probably also fair to say that regardless of the perspective from which the issue of lawyer competence is considered the goals are similar: to create a state of affairs in which,

- a) members provide quality service to the public and work within the ethical framework that underlies the legal profession;
- b) members meet the acceptable level of service, professionalism, and ethical conduct;
- c) those who fall below the acceptable standard are detected and remediated quickly and efficiently; and
- d) those who are unable or unwilling to change are removed from positions in which they can do harm.

33. Competent service is not a panacea that can be touted as the solution to all the pressures inherent in the practice of law at the end of the twentieth century. But, it is increasingly clear that lawyers who provide quality service, recognize their limitations, understand the need to improve constantly on skills and abilities and do so, and run their professional lives efficiently and ethically may withstand those pressures with some fair degree of success.

- b) Lawyers are primarily responsible for their own competence

34. An essential feature of a self-governing profession is that each of its members accepts primary responsibility for his or her own competence. The personal commitment that underlies this responsibility is a significant one. It cannot be assumed that clients and the public in general are always in a position to assess whether a lawyer is acting in a competent manner in any given instance. Quality of service as opposed to actionable incompetence may be even more difficult to assess because there may be a subtle line between what is passable and what is good.

35. It is neither possible nor advisable for the Law Society to assume the primary responsibility for individual competence. Governance is not a substitute for personal accountability, nor are there sufficient resources to make such an approach feasible even if it were desirable. The expectation that members assume such responsibility includes, on the one hand, a commitment by members to life long professional development and, on the other hand, the regulator's appreciation that it should not over-regulate in the area of competence.

- c) The profession as a whole has a stake in the competence of each member

36. While each member is responsible for his or her own competence, all members have a collective interest in the competence of the profession as a whole. It is not sufficient to take the view, as some do, that market forces will drive out of business those who fall below certain levels of competence. While the regulator's attention may often be focused on dealing with those who fall below appropriate levels of performance, the profession at its best represents something essential and positive in the community. Because of this significant role in society, the profession has a collective interest in each member striving to improve throughout his or her career.

- d) The Law Society's mandate should and does include a responsibility to ensure that the public is served by competent lawyers

37. A self-governing profession has a critical role to play in holding its members to high standards of ethical and honest behaviour. The disciplinary branch of the Law Society must protect the public from members who ignore or stray from ethical responsibilities and professional conduct.

38. The Law Society's role statement also makes it clear, however, that the Law Society has an equal responsibility to promote a learned profession whose members provide competent service to the people of Ontario. This responsibility extends to both pre-call licensing requirements and post-call service to the public. What is critical to note is that competence and professional conduct do not exist in isolation from each other. A proactive approach to competence should not lead to the perception that compliance with and enforcement of professional conduct rules is any less integral to the Law Society's role.
- e) The Law Society's approach to its competence mandate should be proactive and wide-ranging
39. It is not sufficient for the Law Society to restrict its interests to disciplining dishonest lawyers. To do so would be to ignore the vast majority of the Law Society's members and squander the unique ability the Law Society has to be a positive resource for the profession. The *Law Society Amendment Act, 1998* introduces a framework for a proactive approach to competence. The elements of the Law Society's approach should:
- a) include prevention, enhancement, remediation, and, when necessary, discipline;
 - b) embrace the promotion of "wellness" as part of competence. Competence is not only about the proficient application of legal knowledge and practice skills, but also about developing resources to manage personal and professional stress;
 - c) include mechanisms directed at ensuring that members of the public can locate lawyers who can address their particular needs; and
 - d) include a focus on both pre-call and post-call competence. In keeping with its role statement, the Law Society must direct its attention to its responsibilities to call to the bar qualified and competent candidates and ensure that the public is served by members who are competent.
- f) The clear articulation of competence standards is an essential component of the Law Society's mandate
40. The Law Society is no stranger to the application of standards to members' conduct. In the discipline context, the Law Society as regulator has developed many policies and statements concerning appropriate professional conduct, which are accepted as evidence by discipline panels. In some cases these standards are relevant not only to professional misconduct issues but to competence in general and will continue to be relevant. Any process by which a member's conduct is evaluated results in the use of measurement tools. These are essential for ensuring compliance with professional conduct requirements and rules, and as they develop they come to represent established norms.
41. Under the *Law Society Amendment Act, 1998* basic standards of competence are articulated for the first time in the legislative scheme. As can be seen in Appendix 2 the competence provisions are detailed and the potential consequences to members against whom competence orders are made are significant. Fairness requires that the Law Society be clear in enunciating what the general standard set out in the *Act* will mean. To do otherwise has the potential to undermine a proactive approach to competence. Through education and awareness of standards, members are given the opportunity to take the necessary steps to maintain competence and thereby avoid situations that could lead to professional competence hearings.
- g) The competence definition underlies the development of standards and competence-related activities
42. The Task Force considers Convocation's November 1997 decision to have the competence definition inform all of the Law Society's competence-related work to be more than a statement of general intent. In developing proactive approaches to competence, developing and enforcing standards of competent performance, and proceeding against incompetent members, the definition must form the core of any approach or inquiry.

COMPONENTS OF THE TASK FORCE'S PROPOSED APPROACH

43. The Task Force's proposed approach reflects a consideration of four main objectives for the Law Society's competence-related activity:
 - a) to articulate competence standards so that members will clearly know what is expected of them;
 - b) to have in place the mechanisms to deal promptly with members who are incompetent to practice or who require remedial activities to improve;
 - c) to facilitate members' efforts to maintain and enhance their competence; and
 - d) to find effective mechanisms through which members of the public can locate lawyers who can address their particular needs.
44. Speaking at a broad level, a blueprint that integrates these factors would reflect a balance between what the regulator requires and what it encourages members to do voluntarily. The Law Society is, of course obliged to ensure that members comply with rules and requirements. But it should use its unique position, as well, to disseminate information and provide opportunities for growth and acceptance of improvement. A successful approach to competence is one in which the voluntary acceptance and compliance with standards is significantly higher than the requirement to enforce them. Members of the profession should be given the means to further their own competence and assess their own performance.
45. Tools created for one purpose or aspect of the blueprint should be available for and integrated into other aspects of the blueprint. Findings in a discipline proceeding or professional competence hearing will have a minimal impact if they are considered relevant only to that proceeding. Such findings may provide insights into what should be taught at the pre-call stage, incorporated into professional standards and practice advisory functions, communicated to the profession through CLE or alert bulletins, and emphasized in requalification.
46. At the same time the Law Society should make it clear that it holds its members responsible not just for ethical conduct, but for delivering competent services to the public in whose interest it regulates. Fairness requires that the blueprint emphasize the importance of communicating to the profession the standards to which members will be held, ensuring that the standards are appropriate, helping lawyers to meet that standard, and then dealing promptly with those members who fall below the standard.
47. The Law Society must so incorporate into its thinking this proactive approach to competence that it becomes natural to ask how any given action furthers the competence of the profession. This requires the Law Society to evaluate what it currently does and propose where it wants to improve its approach.
48. Over the coming months the Task Force proposes to develop for Convocation's consideration an approach that integrates the principles enunciated earlier in this report, builds on initiatives currently underway, and answers a number of questions that arise as the Law Society moves in a proactive direction.
49. Briefly summarized the components of the proposed approach are:
 - a) The Law Society should clarify the competence-related obligations of members under the *Law Society Amendment Act, 1998* and in particular, the competence sections of Part II of the *Act*.
 - b) The Law Society should support lawyers in their efforts to meet their responsibility to maintain competence.
 - c) The Law Society should take an interest in members of the public having a satisfactory way to locate lawyers who can address their needs.
 - d) The Law Society should assess the efficacy of its range of activities, programs, and initiatives that have a substantial competence component.
- a) The Law Society should clarify the competence-related obligations of members under the *Law Society Amendment Act, 1998* and in particular, the competence sections of Part II of the *Act*

50. The articulation of standards of competence is the essential foundation of a regulatory organization with a competence focus and a critical first step. While it is clear in section 41 of the *Law Society Amendment Act, 1998* that the Law Society has articulated a broad standard of competence, much still needs to be done to ensure that members have a clear understanding of what is expected of them. In its preliminary analysis of this issue the Task Force is of the view that the Law Society should
- a) begin the process by articulating general standards rather than detailed checklists;
 - b) at least initially, refrain from articulating standards for each practice area, continuing to rely instead on the well-developed common law standard that has been articulated in case law; and
 - c) focus its immediate efforts on articulating standards under subsection 41(a)(ii): "the member's attention to the interests of clients" and 41(a)(iii) "the records, systems or procedures of a member's practice".
51. Over the coming months the Task Force will assess this preliminary view and in particular consider,
- a) What guidance on standards development and articulation is available from other jurisdictions?
 - b) What process for articulating standards should the Law Society follow for the next 12 months and thereafter?
 - c) Development of which by-laws will best advance the Law Society's ability to deal with competence?
 - d) How will the competence components of the legislation foster the remedial aspect of a proactive approach?
- and
- e) What other steps are necessary to prepare members for what is expected of them under section 41?
- b) The Law Society should support lawyers in their efforts to meet their responsibility to maintain competence
52. The competence of the profession is the combined responsibility of individual lawyers, the profession as a whole, and the Law Society as the regulator that governs in the public interest. It is in the public interest for the Law Society to support lawyers in their efforts to meet their responsibility to maintain competence. This is a commitment to interweave preventive regulation with what, in certain circumstances, is the necessarily reactive response of discipline. Over the coming months the Task Force will consider the elements that might be part of this commitment, in particular
- a) elaborating on the role that pre-call and post-call education should play and in particular focusing on the educational continuum that should exist from law school through the bar admission course and throughout a member's career;
 - b) considering the role of technology in advancing member competence and education; and
 - c) considering the ongoing role of a strong practice advisory service.
- c) The Law Society should take an interest in members of the public having a satisfactory way to locate lawyers who can address their needs
53. Part of the Law Society's mandate is to ensure that the public is served by lawyers who meet high standards of learning, competence, and professional development. The Task Force considers an aspect of that mandate to ensure that members of the public have effective mechanisms by which to locate lawyers who can address their particular needs in given circumstances.
54. In the coming months the Task Force will consider
- a) what effective resources or mechanisms exist or should be developed to assist the public in locating lawyers who can address their particular needs;
 - b) how such resources should be developed; and
 - c) who should develop such resources.

- d) The Law Society should assess the efficacy of its range of activities, programs, and initiatives that have a substantial competence component
55. As can be seen in Appendices 1 and 3 the Law Society is currently operating a number competence-related programs, as well as undertaking a number of initiatives with competence components. In the course of developing its proactive approach to competence the Law Society should assess the efficacy of the current range of programs and activities. It should also develop a process for ensuring that future initiatives address a consistent set of questions or criteria so that the approach to competence remains integrated.
56. In the coming months the Task Force proposes to consider how the Law Society should assess the efficacy of its current range of programs. At a preliminary level the Task Force considers that such an assessment should include consideration of:
- a) what aspects of the competence definition are being addressed in each program;
 - b) where gaps in coverage exist;
 - c) the objectives of the various competence activities;
 - d) how effectively the mandate, design, or operation of a program contributes to the accomplishment of its objectives; and
 - e) how the ongoing effectiveness of programs should be measured.
57. To the extent that there are other initiatives or Task Force inquiries currently under way that have competence-related components, the Competence Task Force proposes that those initiatives should take this range of questions into consideration, as well as the role that the competence definition plays in their work. This will pave the way for new initiatives to come to Convocation with the Law Society's proactive approach underlying them.

REQUEST TO CONVOCATION

58. In order for the Task Force to continue its work, Convocation is requested to answer the following questions:
- a) Does Convocation endorse the principles underlying the Task Force's proposed approach as set out at pages 10 to 15 and summarized as
 - i) Quality of service should be a major element of the Law Society's interest in competence.
 - ii) Lawyers are primarily responsible for their own competence.
 - iii) The profession as a whole has a stake in the competence of each member.
 - iv) The Law Society's mandate should and does include a responsibility to ensure that the public is served by competent lawyers.
 - v) The Law Society's approach to its competence mandate should be proactive and wide-ranging.
 - vi) The clear articulation of competence standards is an essential component of the Law Society's mandate.
 - vii) The competence definition underlies the development of standards and competence-related activities.
 - b) Does Convocation agree with the Task Force's proposed approach as set out at pages 15 to 20 and summarized in the following components as:
 - i) The Law Society should clarify the competence-related obligations of members under the *Law Society Amendment Act, 1998* and in particular, the competence sections of Part II of the *Act*.
 - ii) The Law Society should support lawyers in their efforts to meet their responsibility to maintain competence.
 - iii) The Law Society should take an interest in members of the public having a satisfactory way to locate lawyers who can address their needs.
 - iv) The Law Society should assess the efficacy of its range of activities, programs, and initiatives that have a substantial competence component.

Appendix 1: Competence-Related Law Society Programs

Program	Category	Description
Articling	prescriptive, preventive, educational	The Law Society provides articling principals and students with guidelines for the skills and knowledge that students should acquire during articling. It prescribes requirements for both students and principals.
Audit	prescriptive, preventive, supportive, educational, remedial, disciplinary	This department monitors member compliance with financial requirements and investigates and audits members' records and practices.
Bar Admission Course (BAC)	prescriptive, preventive, educational	Students take a 19 day skills-based program before articles. They complete assessments in six defined skills areas: professional responsibility and practice management; interviewing; legal research; legal writing and drafting; negotiation; and advocacy. Following articling they take prescribed courses in seven areas of law and professional responsibility, and write exams.
BAC Entrance Requirements	prescriptive, preventive, educational	The Society is authorized to prescribe entrance requirements to the BAC.
Complaints	preventive, educational, remedial, disciplinary	This department is regularly involved in the review of members' competence, be it in practice management, knowledge of substantive law, client communication and other skills, and ethical behaviour.
Continuing Legal Education	preventive, supportive, educational, remedial	The CLE department organizes and offers educational courses and written materials intended to enhance the competence of members through ongoing professional learning.
Discipline	prescriptive, remedial, educational, disciplinary	This department handles member breaches of the rules of professional conduct and other matters of professional misconduct.
Lawyer Referral Service		The service provides a list of names to prospective clients seeking lawyers who practice in particular areas of the law. The program does not currently assess members' competence before they are eligible to be on the list, but could do so.
Libraries - Osgoode Hall and Counties	preventive, supportive, educational	These sources are intended to provide members with the research tools they require to maintain their professional competence.

LINK	preventive, supportive, remedial	This is a confidential counselling service to help combat lawyer stress which, if left unchecked, may lead to personal and professional problems including incompetent practice. The Law Society is one of the sponsors of the LINK program.
Loss Prevention Education Program	preventive, supportive, educational	The Professional Standards Department, in conjunction with County and District Law Associations, has implemented a pilot project whose goal is to provide a practice management education program as a proactive loss prevention measure.
Ontario Lawyers Gazette	preventive, supportive, educational	This Law Society publication provides members with information in the areas of ethics, practice advice, practice management, professional standards and client complaints to assist members to practise more competently.
<i>Ontario Reports</i>	preventive, supportive, educational	The ORs serves both as a case reporting service and a vehicle for Notices to the Profession in practice-related areas.
Practice Advisory Service	preventive, supportive, educational, remedial	PAS responds to lawyers' questions on substantive law practice issues, ethics, practice management, and personal difficulties. The service also operates a mentoring service whereby volunteer members are available to speak with members seeking advice on specific questions or issues.
Practice Review Program	supportive, educational, remedial, preventive	The Professional Standards Department identifies members whose competence to practice is in question, invites those members to participate in an assessment of their abilities and practices, recommends a range of remedial action for the members to take, monitors compliance, and assists with the implementation of the recommendations. Although there is no current legislative authority to compel members to participate, this will change under the <i>Law Society Amendment Act, 1998</i> .
Practice Standards-Development	preventive, supportive, educational, remedial	Subcommittees of the Professional Standards Department have in the past prepared checklists for use by the profession in specific practice areas such as real estate, family law, wills and estates, and criminal law. These are not intended to be performance standards, but aids to practice.
Professional Conduct Advice	preventive, educational, supportive	This service advises members and the public on questions relating to the interpretation of the Rules of Professional Conduct.
Specialist Certification	prescriptive, preventive, supportive, educational	Members who meet the criteria prescribed by the specialty area committees receive a Specialist Designation. The criteria include educational requirements, practice standards, and experience level.

Staff Trustee	prescriptive, supportive, disciplinary	This department handles member bankruptcies and interruptions of practices during suspensions.
Start-Up Workshops	preventive, supportive, educational, remedial	The Professional Standards Department and the Practice Advisory Service offer joint workshop programs every month to assist members entering private practice to set up a well-organized, efficiently managed, continuously viable business.

Appendix 2: List Of Competence-Related Provisions In The *Law Society Amendment Act, 1998*

(boldface section numbers within the text of a paragraph refer to sections identified in the list)

- s. 34 conduct applications authorized by the Proceedings Authorization Committee (“PAC”) [leading to hearings and s. 35 orders]

- s. 35 conduct orders
 - s. 35(1)6. order for member/student participation in legal education or professional training/other programs “to improve professional competence”
 - s. 35(1)9. order to co-operate in a review of the member’s practice under s. 42 and implement recommendations of the Secretary
 - s.35(1)15. member must give notice to certain people of orders under this section, including partners and clients

- s. 41 outlines circumstances where member fails to meet standards of professional competence

- s. 42 practice reviews
 - s. 42(1) to be conducted in accordance with the by-laws, for the purpose of determining if the member is meeting professional competence standards
 - s. 42(2) but only if required under s. 49.4, or the member is required by order under s. 35 to co-operate with a review, or the member consents
 - s. 42(4) Secretary may include recommendations (as permitted by (3)) in a proposal for an order

- s. 43 professional competence application
 - s. 43(1) Society, with PAC authorization, may apply to the Hearing Panel for a determination of a member’s failure to meet standards of professional competence [leading to hearings and s. 44 orders]

- s. 44 professional competence orders
 - s. 44(1) orders can include suspension, institution of new practices and procedures in a member’s practice, professional advice, retaining of an administrator for the practice, counselling, programs of education or professional/other training

- s. 45 suspension for failure to comply with order
 - s. 45(1) on application, Hearing Panel may order suspension of member for failure to comply with competence orders

- s. 49 suspension relating to CLE
 - s. 49(1) elected benchers may order suspension of member for failure to comply with by-laws respecting CLE

- s. 49.1 failure to make use of legal skills
 - s. 49.1(1) elected benchers can make order prohibiting member from practising law if the member has not made substantial use of legal skills as per by-laws

 - 49.1(3) if Secretary certifies member has met requalification requirements in by-laws, the order ceases to have effect subject to any terms/conditions imposed by the Secretary

 - 49.1(4) member can apply to Hearing Panel if secretary refuses to certify

- s. 49.4 mandatory reviews of professional competence
 - 49.4(1) chair/vice-chair of standing committee responsible for professional competence can direct a s. 42 review if circumstances in the by-laws exist

 - 49.4(2) power to enter premises, require production of documents and require the member to provide information

- s. 49.6 professional competence of benchers
 - 49.6(1) Treasurer exercises authority of chair/vice chair in s. 49.4 for purposes of professional competence of benchers

- s. 49.10 order for search and seizure
 - s. 49.10(1)(a) Society can apply to court for search and seizure (contents of order specified in (2)) if there are reasonable grounds for an investigation under s. 49.4, documents/other things exist in specified locations relating to the investigation and order is necessary because of urgency and other authority (s. 49.4(2)) is not effective or has not been effective

 - s. 49.10(5) order can be made without notice

- s. 49.14 appointment of Complaints Resolution Commissioner ("CRC")

- s. 49.15 functions of CRC - to review, resolve, investigate complaints in accordance with by-laws

s. 49.20 Proceedings Authorization Committee ("PAC")

s. 49.20(2) reviews matters referred to it in accordance with by-laws [including matters relating to s. 43]

s. 49.23 hearings

s. 49.23(1) applications to be determined after a hearing [ss. 35, 44 and 45 applications/orders]

s. 49.32 appeals to appeal panel

s. 49.32(1) a party to a proceeding before a Hearing Panel may appeal a final decision

s. 49.32(3) person subject to ss. 49 and 49.1 order may appeal

s. 49.33 grounds for appeal

s. 49.33(1) party other than LSUC can appeal on any grounds

s. 49.33(2) LSUC restricted to questions not questions of fact alone, except for costs award (any grounds)

s. 49.36 stay

s. 49.36(1) appeal does not stay order, unless on motion the appeal panel orders otherwise

s. 49.38 appeals to Divisional Court

s. 49.38(1) a party can appeal final order of appeal panel if proceeding commenced *inter alia* under ss. 34 and 49.42 (but *not* s. 43)

s. 49.39 grounds [same as in s. 49.33]

s. 49.41 stay [same as in 49.36]

s. 49.42 application for reinstatement/readmission

s. 49.42(1) on application, Hearing Panel may make order discharging or varying order for suspension (member/student) or restriction of practice (member) on fresh evidence or material change in circumstances

s. 49.42(2) not applicable to ss. 49 or 49.1 orders

s. 49.42(4) on application, Hearing Panel may make order readmitting member/student

s. 49.42(6) terms and conditions may be included in the orders, including requirement for member/student to pass exams, not practice, or practise law as restricted

s. 49.45 grounds for freezing/trusteeship order

- s. 49.45(1) on application by the LSUC to the court, order may be made for property in possession/control of member if, *inter alia*, the member is suspended or restricted in practice [property not to be dealt with without leave of the court (s. 49.46) or to be held in trust by a trustee (s. 49.47); either order may be made without notice (s. 49.49)]

s. 61.2 rules

- s. 61.2(1) Convocation may make rules or practice and procedure for proceedings before hearing and appeal panels and orders under, *inter alia*, ss. 49 and 49.1

s. 62(0.1) by-laws

- s. 62(0.1)11. guidelines for professional competence
- s. 62(0.1)16. payment by members/students of costs of investigation, review, search and seizure
- s. 62(0.1)23. legal education, including the BAC
- s. 62(0.1)24. CLE, prescribing CLE requirements for members
- s. 62(0.1)27. libraries
- s. 62(0.1)40. circumstances re a direction made under s. 49.4 for a review under s. 42
- s. 62(0.1)42. appointments for reviews
- s. 62(0.1)45. criteria for determining substantial use of legal skills respecting s. 49.1(1)
- s. 62(0.1)46. requalification requirements

s. 62(1) by-laws

- s. 62(1)10. establishment of standing committees, including that for professional competence

Appendix 3: Catalogue Of Initiatives And Questions

Initiatives/Programs	Questions/ Issues	Competence Task Force's Relationship to Other Initiatives
<p>Task Force on the Review of Rules of Professional Conduct To examine and revise the rules of professional conduct</p>	<p>Terms of Reference state that the Task Force is to consider how the Law Society's ethical rules, which must exhibit and maintain a level of regulation and safety that protects the public, can be drafted in a way that will not unnecessarily impede the creative practice of law and will assist the profession to remain competitive.</p>	<p>The discussion of a competence blueprint raises the question of how the rules can address themselves to a proactive approach to competence.</p>
<p>Legislative Reform Implementation Task Force To ensure that all steps necessary to implement the legislative amendments are taken; to assist in the transition to the new legislation</p>	<ol style="list-style-type: none"> 1. Must articulate policy issues to be addressed by Convocation to implement amendments to the <i>Law Society Act</i>. 2. Obtain the approval for and drafting of regulations, by-laws, and rules of practice and procedure necessary to implement the amendments. 	<p>The blueprint requires that the necessary tools be in place under the <i>Law Society Amendment Act</i> to enable the adoption of a proactive approach. There needs to be co-ordination with respect to a number of areas including the drafting of standards (guidelines), procedures under the sections relating to professional competence orders, requalification, practice reviews and other competence related components of the <i>Act</i>.</p>
<p>Post - Call Learning Liaison Group Emerging from the Report on post-call learning this group is developing post-call planning proposals for Convocation's review and considering the role of post-call learning in ongoing competence.</p>	<p>How can post-call learning best be approached, delivered, and embraced by the profession?</p>	<p>As part of a preventive approach to competence, issues related to post-call learning take on particular significance.</p>
<p>Lawyer Referral Service Two committees have been considering the future of the service and whether it should be eliminated, whether it should be altered to require members to meet certain standards of performance, or whether it should be left as is.</p>	<ol style="list-style-type: none"> 1. What is the purpose of a lawyer referral service? 2. Can such a service meet an access need of the public? 3. Should competence standards be part of such a service? 4. Should this be a service of the regulator or some other organization? 5. Is such a service compatible with a proactive approach to competence? 	<p>Considerations affecting the service should be done with the competence blueprint in mind.</p>

<p>Bar Admission Reform Task Force A review of the Law Society's role in entry requirements to the bar.</p>	<p>1. What abilities do newly-called lawyers need? 2. What components of competence should be addressed in the bar admission course? 3. How should these be taught and assessed?</p>	<p>Standards development is relevant to the BAC. Entry level competence is the first phase of a proactive approach to competence to be drawn from and expanded upon throughout the post-call experience.</p>
<p>Future Delivery-County Library Services The working group's report, approved by Convocation in October, discusses, among other important issues, the role of libraries in maintaining and enhancing lawyer competence.</p>	<p>Convocation has approved the creation of a library "system" and has authorized the working group to develop a model for Convocation's future consideration.</p>	<p>The report links competence and libraries directly and considers that the definition of competence should underlie the development, administration, and analysis of county libraries.</p>
<p>Requalification policy Arises out of the legislative amendments to the <i>Law Society Act</i>. Will permit the drafting of by-laws to require members to requalify. Educational modules are being developed in anticipation of the program.</p>	<p>1. Who should be required to requalify? 2. What considerations underlie the policy? 3. What areas of concern should the Law Society canvass in developing the program? 4. What standards should be met?</p>	<p>The program will consider quality of service issues as it develops educational modules for those who have been out of practice for a significant time. The approach proposed by the Competence Task Force will be relevant to the development of the program.</p>
<p>Specialist Certification Working Group A review of the specialist certification program has been going on for some time, to consider issues related to how such a program can better address the goals it was intended to pursue.</p>	<p>1. What is the goal of specialist certification? 2. Is such a program for the benefit of the public or the profession? 3. Is such a program an important part of a proactive approach to competence? 4. What are the appropriate standards for such a program? 5. Should certification be a developmental program or one that simply recognizes those who have already attained expertise? 6. What are the options for delivery of such a program?</p>	<p>The Competence Task Force considers a broad ranging approach to competence at all stages of the professional's career. It articulates the needs for standards and it considers it important to address the public's requirement to be able to locate lawyers to address their needs. All of these issues overlap with a review of certification.</p>
<p>Multi-Disciplinary Partnerships A Task Force has been examining the issue of MDPs. Its report was approved at September Convocation.</p>	<p>The Task Force examined the essential characteristics of being a lawyer and the impact of those on the appropriateness of MDPs.</p>	<p>To the extent that MDPs are permissible, it becomes important to ensure that competence remains an ethical requirement of those firms.</p>

<p>Regulation of Paralegals The provincial government is meeting with paralegal and lawyer representatives to consider issues of governance and jurisdiction.</p>	<p>Competence-related issues will be important.</p>	<p>To the extent that paralegals and lawyers will continue to overlap in certain areas of work, considering the interplay between the LSUC's proactive approach to competence and regulated paralegal standards becomes important.</p>

It was moved by Mr. Armstrong, seconded by Ms. Cronk that the principles underlying the Task Force's proposed approach as set out in paragraph 58 be adopted.

Carried

Report of the Clinic Funding Committee

Meeting of November 12, 1998

Clinic Funding Committee
November 24, 1998

Report to Convocation

Nature of Report: Decision-Making

THE CLINIC FUNDING COMMITTEE met on November 12, 1998. In attendance were:

Committee members: W.A. Derry Millar, Chair, Tamara Stomp, Vice-Chair,
Pamela Mountenay-Cain, Mark Leach, Gordon Wolfe

Joana Kuras, Clinic Funding Manager

This report contains:

- Funding decisions that require Convocation's approval.

1. Training Funds 1998/99

The Clinic Funding Committee provides funding for regular regionalized training for clinic staff on relevant substantive law topics. Regional and provincial work study groups hold regular training meetings in the three major areas of clinic work. The Committee therefore recommends funding as follows:

Regional Training

Northern Region	66,000
Eastern Region	44,000
Southwest Region	20,000
Toronto Region	10,000

Provincial Networks

Legal Clinic Housing Issues Committee	13,210
Steering Committee on Social Assistance	10,000
Workers' Compensation Network	10,000
Reseau Francophone	<u>12,000</u>
 Total Funding Recommended	 <u>\$185,210</u>

ALL OF WHICH is respectfully submitted

W. Derry Millar, Chair
Clinic Funding Committee

November 24, 1998

It was moved by Mr. Millar, seconded by Mr. Armstrong that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

Treasurer's Report on Certificates issued by the Law Society

Treasurer's Report on Certificates issued by the Law Society
November 27, 1998

In signing the Law Society's L.L.D. certificates earlier this year I noted the phrase "known to all men." I gave instructions to amend the certificate to read "known to all persons."

Similarly, in signing certificates for the Bar Admission Course I noted the phrase "in the year of our Lord." Given this phrase is not ecumenical I consider it appropriate to instruct staff to delete it from the text of the Bar Admission Course certificate.

I ask Convocation to adopt this report thereby ensuring that in the future the wording "known to all men" and "in the year of our Lord" will not be used in any certificate issued by the Law Society.

.....

It was moved by Mr. Wright, seconded by Mr. Aaron that the Report be adopted.

Not Put

A vote was taken on changing the phrase in the L.L.D. certificates from "known to all men" to "known to all persons". The vote carried 23 - 1.

A roll-call vote was taken on deleting the phrase "in the year of our Lord" from the Bar Admission Course certificates. The vote carried 18 - 8.

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	For
Arnup	For
Banack	For
Bobesich	Against
Carpenter-Gunn	For
Chahbar	For
Copeland	For
Cronk	For
Crowe	Against
DelZotto	Abstain
Epstein	For
Feinstein	For
Gottlieb	Against
Harvey	Abstain
MacKenzie	Against
Manes	Against
Millar	For
Murphy	For
Murray	For
Puccini	Against
Robins	For
Ross	Abstain
Stomp	For
Swaye	Against
Topp	For
Wilson	Against
Wright	For

Vote 18 - 8 - 3 Abstentions

THE REPORT WAS ADOPTED

FOR INFORMATION

CEO'S Second and Third Quarter Report - April - September 1998

I. General Overview of Developments, Initiatives, Results

The information contained within this report summarizes activities, initiatives and results for Law Society's operations for the second and third quarters of 1998 (April 1 to September 30, 1998). The information is not exhaustive and is intended to highlight operational activities. Management's compliance with the executive limitations as prescribed by Convocation is found at Tab 1.

A. Finance

Finance staff spent much of the second quarter preparing the 1997 Annual Report for the General Fund and the Lawyers Fund for Client Compensation, which was delivered to the General Membership in May 1998 along with the 1997 annual audited financial statements.

1998 First Quarter Results. The 1998 first quarter results were presented by the Finance and Audit Committee to Convocation in May. The General Fund's total program expenses were reported at \$4.123 million, or 19.9 per cent of the year's budget.

Suspension of Members. On June 1, 1998, 379 members were suspended for non-payment of their annual fee. As of September 30, 1998, 246 remained suspended.

Osgoode Hall Renovations. Renovations began to the external portion of the Benchers' Wing in the second quarter and continued through the summer. New stairs were installed during the summer. Other work will proceed as planned once the Benchers' Wing has been completed. By the third quarter, the restoration work to the East Portico had been substantially completed, and the scaffolding had been removed. Work commenced on the renovations to the exterior of the South East wing. The contractor is Clifford Restoration. The work is expected to be completed by the end of the year.

1998 Six Months Results. The 1998 six months results were presented to the Finance and Audit Committee in September and reported to Convocation on September 25. The General Fund's total program expenses were reported to date. Total revenues collected were \$20.929 million against a budget of \$20.699 million (a favourable variance of \$230,000). Expenses for the six months ended June 30, 1998 were under budget by approximately \$800,000.

1999 Budget. Looking to 1999, the Finance and Audit Committee requested that the Finance staff prepare a first draft of the budget for presentation to the Committee at their July meetings. Managers from all departments were informed of this fact and prepared a first draft of the budget reflecting the 10 per cent reduction in expenses as one option requested by Convocation. The 1999 budget, for the first time, was prepared using a "Full Indirect Cost Allocation" model that will allocate costs to programs based on the resources they use. "Full Indirect Cost Allocation" will provide information on how effectively resources are consumed. It is planned to further refine the model in time for the year 2000 budget.

A contract has been awarded to Osram Sylvania for the retrofit of all fluorescent strip lighting. Ballasts are to be replaced with high efficiency electronic ballasts and the fixtures will be upgraded and fitted with low power consumption tubes. It is anticipated that the costs of \$85,000 will be recovered within four years through reduced energy consumption.

A search for a new chef was initiated and, until the position was filled, the sous chef and other members of the facilities and catering staff worked to cover off the chef's responsibilities. A replacement chef was hired in October.

A report on the aging condition of the trees on the south lawn has been commissioned and when completed will include recommendations for preventive maintenance and a plan for future replacements. The report should be ready in the fourth quarter.

B. Secretariat

Complaints

Performance Data

	Second Quarter	Third Quarter
Files opened during period:	1,116	707
Files closed during period:	962	746
Files open as of September 30, 1998:	2,997	2,927

Year-to-date comparisons:

Date	No. files opened -- year to date	Decrease from previous year
June 30, 1998	2,094	4.5%
June 30, 1997	2,193	8.0%
June 30, 1996	2,381	11.5%
Sept. 30, 1998	2,991	5.75%
Sept. 30, 1997	3,174	6.75%
Sept. 30, 1996	3,667	11.5%

Authorizations:

	Second Quarter	Third Quarter
• Formal Complaints:	29	27
• Invitations to Attend:	7	3
• Letters of Advice:	3	8
• Referrals to LPIC:	10	8
• Direction to Close File:	11	3

Trends

The decrease in the number of new complaints opened has moderated as a result of the system of new screening initiatives introduced over the last several years. It is expected that the annual number of complaints investigated will moderate this year and that the large decreases observed over the last several years may not be repeated in 1998. Staff are working at capacity in an effort to improve file cycle times while preserving the integrity of the investigations.

Complaints department staff report that complainants are becoming increasingly aware of the Rules of Professional Conduct and the obligations and responsibilities owed to them by their lawyers. This is a result of increased public awareness of the Society's complaints procedures as well as media coverage of a number of high profile cases in recent months. Letters of complaint now often refer to specific rules of conduct or make reference to news reports relating to actions by the Society.

New Initiatives

A "Sexual Misconduct Investigations Group" has been formed to expedite investigation into complaints of this nature. Participating staff will attend extensive training courses to improve their ability to handle complaints of this nature.

The "Preliminary Assessment Unit" within the Complaints Department has been reorganized to provide a broader and more comprehensive structure for receiving and reviewing new complaints, screening out matters that do not fall within Society jurisdiction, conducting preliminary assessments and assigning more substantive matters for full investigations. A team approach has been introduced to help ensure more consistent and timely functioning of this important intake process. The concepts being used will serve as a model for the revised intake structure being adopted under Project 200.

Audit and Investigations

Performance Data:

Number of investigations in progress:

- 1st quarter: 160
- 2nd quarter: 147
- 3rd quarter: 159

Investigations completed:

- 1st quarter: 49
- 2nd quarter: 54
- 3rd quarter: 37

Investigative workloads remain relatively constant as a result of new file intake from the Complaints Department, member self reporting procedures, and substantive matters that are generated from Annual Forms processes.

New Initiatives

By the end of the 2nd quarter, 150 spot audits were completed as Convocation directed. Work continues on a proposal to enhance the MIF (member information form) e-filing program and to develop an e-filing capacity for the PPR (private practitioner's report). The focussed audit program began in the third quarter. Initial results indicate favourable levels of regulatory compliance.

Lawyers Fund for Client Compensation

Performance Data

	Sept. 30/97	Dec. 31/97	Mar. 31/98	June 30/98	Sept. 30/98
Gross Amount of Outstanding Claims	\$35,796,025	\$36,161,433	\$37,845,726	\$34,899,758	\$33,466,421
"At limits" Amount of Outstanding Claims	\$15,641,472	\$15,592,177	\$16,617,377	\$14,981,368	\$14,587,909
Number of Open Claims	342	331	354	316	277

Trends

The value of outstanding claims, with limits applied, has decreased by 6 per cent, both on a year over year basis and when looking at reductions to date in 1998. The number of claims outstanding has decreased by 19 per cent on a year over year basis. Sixteen percent took place during the first three quarters of 1998.

The fund balance of the Lawyers Fund For Client Compensation, at September 30, 1998, was \$24,021,000 compared with \$21,616,000 as of September 30, 1997.

Discipline

Performance Data	2nd Qrt/97	3rd Qrt/97	2nd Qrt/98	3rdQrt/98
•Matters authorized and referred to discipline:	124	67	64	97

[Note: The substantial decrease in authorizations in Q2, 1998 (compared to the year earlier) is related to Forms Services no longer seeking authorizations for failures to file following convocation's approval of the self-reporting forms. The substantial increase in authorizations in Q3, 1998 (compared with the year earlier) reflects the authorization of 53 failures to file.]

The following chart summarizes the number of matters disposed of by Discipline Committees and by Discipline Convocations in the second and third quarters of 1998, and comparisons with the year previous. The decrease from the second quarter of 1997 is caused by the fact that very few failures to file have been prosecuted in the second quarter of 1998. The decrease from the third quarter of 1997 results from only five failures to file being authorized for discipline between September of 1997 and September of 1998.

	April 1 to June 30/97	July 1 to Sept. 30/97	April 1 to June 30/98	July 1 to Sept.30/98
No. of matters/solicitors disposed of by discipline committees	46/45	53/48	30/29	25/24
No. of matters/solicitors disposed of by discipline Convocation	65/46	11/7	49/42	9/7
Total no. of matters/solicitors disposed of by discipline committees and Convocations	111/91	64/55	79/71	34/31

Professional Standards

Performance Data

Total open files:	1998	1997
• Second quarter:	149	156
• Third quarter:	150	154
Existing Caseload:		
• Second quarter:	157	156
• Third quarter:	149	154

New files opened:

- Second quarter: 7 21
- Third quarter: 11 19

Files closed:

- Second quarter: 15 23
- Third quarter: 10 17

Checklists

Total number distributed:

- Second quarter: 121
- Third quarter: 186

(note: checklists are now available to members via the Society’s website)

Practice Advisory and professional conduct

Performance Data

	Second Quarter	Third Quarter
• Number of telephone inquiries:	2,343	2,075
• Percentage of callers by “type”:		
-sole practitioners:	44%	44%
-employees, partners or associates:	37%	37%
-non-members:	19%	18%

Trends

The majority of members who use the practice advisory service have been called to the bar in the last five years. These individuals have often opened their sole practice or are in a space sharing arrangement and have no access to senior counsel who can assist and provide direction. The majority of calls from the membership relate to assistance in interpreting and applying the Rules of Professional Conduct. A substantial number of callers also seek assistance, either procedural or ethical, in relation to family, civil litigation or real estate matters.

Start-up workshops, a full day program dealing with a vast array of issues concerning the opening of one’s practice, continue to take place monthly, at no charge to the profession. The seminar is the joint effort of the Practice Advisory, Professional Standards and Audit departments. Those who attend are bar admission course students, people recently called to the bar and senior members who have been in partnership for years and have now decided to become a sole practitioner. For the first time in its history, the start-up workshop has been advertised to the membership. This strategy resulted in an increase in the number of attendees.

C. Education

Bar Admission Course

Performance Data

- Number called to the bar as of June 30, 1998: 1,158
- Number called to the Bar as of Sept.30, 1998: 1,191
- Number called to the bar in 1997: 1,150

Phase I Enrollment

- Number registered in 1998: 1,182
- Number registered in 1997: 1,107

Phase III Enrollment

- Number expected to register in 1998: 1,286
- Number registered in 1997: 1,143

Trends

In the second quarter significant growth was projected for registrations in Phases I and III, 1998. The actual growth was 0.4 per cent and 6.7 per cent respectively. Many applicants who were eligible to register, did not. The non registrants identified the following reasons for not attending: financial constraints, potential employment opportunities, and the continuation of other educational endeavours. The marginal growth in Phase I is important to note since some university Law Schools have reported declines in their first year enrollment for 1998-99. This will be monitored carefully to determine any potential trends towards lower enrollment in the Bar Admission Course. The 1999 projected Bar Administration Course budget has taken into account a lower enrollment forecast.

Issues and Challenges

The requests for special accommodations from students with disabilities continued to be a dominant issue for the Bar Admission Course. Providing appropriate services to meet students' needs and the costs associated with individualized support have been a challenge. Recent judicial decisions have made it clear that the responsibility of providing reasonable services to persons with disabilities rests with the institution or organization.

With the creation of the new Student Success Centre, financial resources and staffing will need to be provided for specialized services such as real-time-captioning, scribes, text-to-speech, enlarged print capabilities, individual invigilation services, and the appropriate software and hardware for hearing and visibly impaired students. Thus far this year over twenty-five students have been accommodated with specialized services at a cost of \$40,000. The number of requests has increased by 40 per cent over 1997.

New Initiatives

A week long preparatory program for Phase III Aboriginal students was initiated in the last week of August and prior to the start of Phase III. The program, a project initiated by the Student Success Centre, provided mock lectures, seminars, written examinations and detailed strategies for answering examination questions.

The official opening of Student Success Centres in Toronto, London and Ottawa took place in September. Each centre offers students the Peer Support program (students assisting students) and the Lawyer Mentoring program (recent called lawyers volunteering to assist students with strategies for completing Phase III successfully). In addition to these new programs, the Tutoring program has been expanded to include tutoring services to Aboriginal students while they are taking their Phase III courses. This pilot project is being funded by the Ontario Native Affairs Secretariat in cooperation with the efforts of the Student Success Centre.

Another initiative undertaken this year includes the Phase III, Self-Directed and Distance Education Projects in Thunder Bay (five students), Los Angeles (one student) and Timmins (one student). The Thunder Bay project has involved twenty-eight members of the Thunder Bay Law Association and three members of the local judiciary. All have volunteered their time to act as instructors, mentors, advisors and invigilators for the students taking Phase III in that region. The other two students are being supported, as need arises, by the instructor coordinator in Toronto. Course materials, bulletins, updates and lecture videos are sent regularly to the students. Invigilation services and examination facilities have been established with the local colleges in Thunder Bay and Timmins.

Articling

Performance Data

Articling students are asked to provide mid-term and final evaluation of their articling experience. The evaluation serves as a barometer of the perceived value of experience gained by articling students:

Mid Term Evaluation:

- "Good" to "Very Good/Excellent" rating: 85.1 %
- "Unsatisfactory" rating: .8 %
- Other: 14.1 %

Final Evaluation:

- "Good" to "Very Good/Excellent" rating: 88.0 %
- "Unsatisfactory" rating: 1.8 %
- Other: 10.2 %

Articling Placement

For the 1998-1999 articling term, 1,164 students were seeking articles. By the end of the third quarter, 93 per cent indicated they had secured articles, while 6.5 per cent were still seeking a position.

Efforts to assist students to secure an articling position continue. Fifty students enrolled in a program to be paired with a member of the profession who has volunteered to act as an articling placement mentor. As well, 60 students took advantage of resume writing, interview skills training and placement counselling services as a strategy to assist in finding articling positions.

Professional Placement: At the end of the second quarter, 68 career opportunities for recent graduates or lawyers with experience were listed by the placement service -- almost identical to the number listed in the same quarter a year earlier. At the end of the third quarter, there were 52 such positions listed, compared to 35 at the end of the 3rd quarter of 1997.

Financial Aid

In the second quarter, the financial aid office advanced funds to 161 Phase I students through the Ontario Student Assistance Program (OSAP) and assisted 42 students in applying for assistance through the Bank of Montreal and a new student line of credit program established for Bar Admission Course students by the bank. As well, six Phase I students received short or long term loans from the Law Society.

In the third quarter, 243 Phase III students (21 per cent of the class) applied through OSAP for financial aid. Another 59 students sought financial assistance through the Bank of Montreal program, while 12 students were given financial aid loans by the Society.

At September 30, 1998 the Law Society Student Loan program had 82 loans outstanding with a total value of \$168,535 compared to the same quarter a year earlier when 150 loans, worth about \$240,000 were outstanding.

Continuing legal education

Performance Data	2nd Qrt/97	3rd Qrt/97	2nd Qrt/98	3rd Qrt/98
No. live programs:	49	17	42	3
No. video replays:	25	21	45	17
No. registrants:	5679*	809	3575	484
Program revenue (gross):	\$432,742	\$299,372	\$473,029	\$164,330
Publications revenue:	\$ 69,905	\$ 50,395	\$135,484	\$ 98,416
Bursaries:	92	43	117	32
Revenue +/- (over 1997)			+17%	-33%

*includes 2841 registrants for *Title Insurance*

Trends

Demand for CLE remained strong throughout the second and third quarters; once the influence of 1997's *Title Insurance* program is factored in, for the number of registrants in the reporting period exceeds the number for the equivalent period in 1997 by 10 per cent. This is matched almost exactly by an increase in bursaries during the same period. More remarkable, however, is the growth in publications sales, with a cumulative second- and third-quarter dollar increase from 1997 to 1998 of 94 per cent.

Specialist certification

Performance Data	Second Quarter	Third Quarter
No. of specialists certified:	7 (Q2, 1997 = 12)	7 (Q3, 1997 = 15)
No. of specialists re-certified:	3	16
No. of applicants rejected:	0	1
No. of new applicants currently seeking certification:	44 (Q2, 1997 = 59)	46
Total no. of certified specialists:	619	583

D. Libraries

Great Library

Performance Data	Second Quarter	Third Quarter
• Number of requests for research & assistance:	18,857	21,200

QuickLaw searching is now available in the Great Library. Members are able to search using their own password or can pay a \$15 fee for a half-hour flat rate. Twenty-two people used the service during August and September.

New initiatives

A comprehensive user survey of the Great Library is being conducted by the Institute for Social Reform. Preliminary results indicate that sole practitioners make up 20 per cent of library users, associates 28 per cent and articling students 16 per cent. Nearly 40 per cent of users are in the 30 to 39 age group -- the largest age grouping. The library scores high marks for customer service with 97 per cent of respondents indicating they find staff courteous, helpful and knowledgeable.

The reorganization of the main reading room and two adjacent rooms is now complete, facilitating quicker access to library materials.

The government started major work repairs and re-plastering of the Reference Office. It is anticipated that the work will be completed by mid-January. Staff are doing what they can to ensure that service to members is not adversely affected during the construction period.

Archives

Performance Data	Second Quarter	Third Quarter
Research requests:		
-requests for assistance from staff/benchers:	61	92
-requests for assistance from outside sources:	91	80
Public Tours of Osgoode Hall (# of participants):	279	258

Tours of Osgoode Hall included those conducted in conjunction with Arts Week '98, the largest arts festival in Canada. As well, tours were given to a group of judges from the National Judges College of the People's Republic of China, participants at the American Bar Association convention and delegates of the Conference on Courthouse Design sponsored by the American Institute of Architects.

Members of the Archives staff have also been working with the Women's Work Project, which has commissioned a work of art to celebrate women's contribution to the legal profession. The artwork, which will be hung in Osgoode Hall, is expected to be unveiled in November.

E. Human Resources

The daily operations of the Human Resources department provides support to all LSUC employees through a consultative model in the provision of services related to employee relations, recruitment and staffing issues, compensation, benefits, training, and professional development matters. The Human Resources department is a key partner in the implementation of operational changes under the Project 200 initiatives which will deliver improved HR systems that support the organization's ability to change and to respond to employees needs.

Specific Human Resources initiatives taking place during the second and third quarters of 1998 include:

- Job analysis for all Law Society positions commenced, this includes detailed assessment of current and new positions within the organization which will be used to build revised market driven and performance based compensation systems
- Final interview for the position of Equity Advisor took place in the 3rd quarter, hiring for the position will be completed in November
- Recruitment commenced for key leadership positions in Public Affairs, Customer Service and Regulatory

F. Communications

Website -- www.lsuc.on.ca

Performance data

- Number of web pages accessed (2nd quarter): 140,000 (76% higher than Q2, 1997)
- Number of web pages accessed (3rd quarter): 138,964 (91% higher than Q3, 1997)

Ontario Lawyers Gazette

A readership survey was undertaken in the second quarter and additional research has been ongoing through the third quarter, bench marking the Law Society's publication efforts against other professional/regulatory organizations. The study is investigating options for revenue enhancement and cost reductions. The results of the survey and other research will be used to direct the future of the Gazette.

Media Relations

Performance data

Media Inquiries (requests of the Society from news media for information or interviews):

- 2nd quarter: 94
- 3rd quarter: 125

The vast majority of media inquiries arose from reporters seeking information about discipline matters or complaints against members. The dominant issue in the third quarter was the issue surrounding the call to the bar of the group of orally assessed students.

Media Coverage (media reports about the Law Society or issues of interest to the Society):

- 2nd quarter: 339
- 3rd quarter: 265

Given that most media inquiries stem from regulatory issues, it follows that the lion's share of media coverage of the Law Society relates to matters of discipline and complaints. The lower 3rd quarter numbers can be attributed to the slower "news" days during the summer months, although coverage of the group of students called to the bar following the oral assessments accounted boosted coverage in September.

G. Information Systems

The reorganization of the IS (Information Systems) department was completed in the third quarter. Reflecting a "functional" approach, the department is now composed of three teams -- customer service, operations and development. IS has upgraded 118 workstations and installed Windows 95, Corel 8 and the Netscape Browser at staff workstations in preparation for the new member management and case tracking systems scheduled for introduction early next year under Project 200.

The Society's telephone switching system was upgraded successfully as was the voice mail system. A change in the Society's long distance supplier was also undertaken, which will result in considerable cost savings. The AS400 system -- the Society's main data server -- is also now upgraded to ensure year 2000 compliance for the Law Society's financial systems and to meet expected increased demand as a result of changes arising from Project 200. As well, software has been developed by IS to record and analyse the results of the spot & focussed audit programs.

Trends

A request-for-proposal for a member database and case tracking system was distributed to vendors during the reporting period, and work on choosing the appropriate supplier will be completed in the last quarter. The technological solution being sought will provide the structure to consolidate the Law Society's thirty individual databases into one, easy to read and access organization-wide source of member information.

New Initiatives

Technology is very much at the heart of the Society's restructuring initiatives: development of the case tracking and member database system is continuing at a priority pace; an intranet site is being developed and is expected to be operational early in the new year; and the Society's technological ("cable and plant") infrastructure is being redesigned to accommodate the anticipated higher demand for and use of electronic information sharing.

II. compliance with executive limitations

A. Budgeting

1.0 Unless otherwise directed by Convocation, the Chief executive Officer shall not:

⇨ Allow operating expenses to deviate from the budget in any significant way.

In compliance. The 1998 first quarter operating expenses at \$4.123 million is 19.9 per cent of the year's budget. The 1998 second quarter operating expenses at \$10.210 million is 38.7 per cent of the year's budget.

⇨ Allow expenditures to deviate materially from the Society's mission, priorities and programs.

In compliance. Expenditures are monitored internally monthly to ensure there are no material deviations from budget. In addition, expenditure information is reported to the Finance and Audit Committee and Convocation on a quarterly basis.

⇨ Incur debt on behalf of The Law Society of Upper Canada, other than an operating line of credit.

In compliance.

⇒ Present a budget without:

- ◆ a reasonable projection of revenues and expenses.
 - ◆ disclosure of planning assumptions.
 - ◆ disclosure of operating and capital items.
 - ◆ dedicating appropriate human and financial resources to implement Convocation's ends policies.
- In compliance. The 1998 Budget as presented to, and approved by Convocation, included reasonable projections of revenues and expenses, disclosed all assumptions, and disclosed all operating and capital items. The 1998 Budget includes appropriate funds and human resources to accomplish the ends policies as determined by Convocation. Further, the 1999 budget drafts have been prepared within the same parameters.

B. Asset Administration and Acquisition of Services

1.0 Unless directed otherwise, the CEO shall not:

⇒ Allow Society funds to be invested except in accordance with the Society's Investment Policy.

In compliance. Investment reports are presented to the Finance and Audit Committee quarterly detailing compliance and information regarding the investment mix.

⇒ Allow physical assets to be subjected to improper wear and tear or insufficient maintenance or allow the historical integrity of the building to be impaired.

In compliance. A facilities plan has been submitted to the Finance and Audit Committee outlining work that is required and estimated costs. Further, work has been completed on various areas of Osgoode Hall. Architects' reports have been acquired indicating areas of further repair and renovation.

⇒ Operate without adequate insurance.

In compliance. A review was completed by staff and an independent broker which determined the levels of insurance coverage and their costs. A report was included in the January 1998 Finance and Audit Committee meeting material. In the third quarter a review of the current insurance coverage with the Society's insurance broker was completed.

⇒ Make any capital purchases or commit the Society to any capital purchase of a value greater than \$100,000.

In compliance. All payments for purchases of \$100,000 or more must be approved by a Bencher. Policies and procedures have been developed mandating that purchase orders greater than \$100,000 be approved by Convocation.

⇒ Make any purchase:

- ◆ If normally prudent protection against conflict of interest has not been taken.
In compliance. A Business Conduct Policy has been approved by Senior Management.
- ◆ If over \$10,000 without having obtained competitive prices and quality, unless fully justified and documented.
In compliance. The Society requires three written quotations for all purchases in excess of \$10,000.

⇒ Contract for any service that does not comply with the Law Society's policy on retaining services.

In compliance. A central purchasing function is in place that has policies and procedures that must be followed. In the second quarter there was one instance of non-compliance in regard to an acquisition of a service. The manager involved was notified and made aware of the compliance requirements. During the third quarter, there were 13 instances where goods and services were acquired which did not properly follow the compliance requirements.

⇒ Keep books and records, receive, process or disburse funds under controls which are insufficient to meet the Society's auditor's standards.

In compliance. Financial practices and procedures have been developed and adopted by senior management and ensure proper and adequate control. Proper record keeping practices are in place and meet the Society's audit standards. On an ongoing basis these practices and procedures are reviewed in order to ensure compliance.

⇒ Acquire, encumber, or dispose of real property.

In compliance. During the period, no real property was acquired, encumbered or disposed.

2.0 The Chief Executive Officer shall not operate without developing guidelines for hiring outside counsel that ensure that work is fairly allocated among members of the legal profession.

In compliance.

3.0 The Chief Executive Officer shall not operate without examining whether or not the Law Society should develop a contract compliance program that would have the effect of requiring firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.

In compliance.

C. Financial Condition

1.0 The Chief Executive Officer shall protect the financial stability of The Law Society and shall not:

⇒ Allow tax payments or other government ordered payments or filings to be overdue or inaccurately filed.

In compliance. All tax payments and other government ordered payments and filings are prepared and remitted to the respective government department on schedule.

⇒ Fail to monitor changes in legislation or legislative interpretation affecting Law Society finances and take appropriate action to protect the Law Society or each fund from liabilities arising from such changes.

In compliance. All changes to legislation and legislative interpretation are monitored and, when required, action has been initiated to protect the Society.

⇒ Use reserves (except for the Errors and Omissions fund) except as budgeted.

In compliance. Annual audited financial statements and quarterly unaudited financial statements detail the use of reserves.

D. Human Resource Principles

1.0 The Chief Executive Officer shall not operate without:

⇒ Job descriptions and regular performance appraisals for all staff.

In compliance.

1.2 The Chief Executive Officer shall not operate without:

written personnel procedures that clarify personnel rules for staff, provide effective handling of grievances, or protect against wrongful conditions.

◆ job descriptions and regular performance appraisals for all staff.

In compliance.

1.3 The CEO will shall not operate without a workplace harassment policy for staff that

prohibits the harassment of any person on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age.

In compliance.

- 1.4 The Chief Executive Officer shall not operate without a workplace harassment policy for staff that prohibits the harassment of any person on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age.
In compliance.
- 1.5 The Chief Executive Officer shall not operate without being in compliance with all rules of the Law Society of Upper Canada and relevant provincial and federal legislation.
In compliance.

E. Compensation and Benefits

- 1.0 With respect to employment, compensation and benefits to employees, consultants, contract workers and volunteers, the Chief Executive Officer shall not jeopardize the Society's fiscal stability.
In compliance. Budgets are monitored monthly to ensure that employment arrangements do not jeopardize fiscal stability.
- 1.1 The Chief Executive Officer shall not change his/her compensation and benefits.
In compliance. The Director of Human Resources reports that the CEO is compensated according to the terms of his contract which have not been changed.
- 1.2 The Chief Executive Officer shall not establish current compensation and benefits which deviate materially from the geographic or professional market for the skills employed.
In compliance. The review of the Society's compensation, benefits and rewards program continues.
- 1.3 The Chief Executive Officer shall not create compensation obligations that continue over a longer term than revenues can safely be projected.
In compliance. Budget provisions ensure that there are sufficient funds to cover compensation obligations.
- 1.4 The Chief Executive Officer shall not fail to maintain a parental leave policy for staff.
In compliance. The Law Society maintains a parental leave policy.

F. Communication and Support to Convocation

- 1.0 The Chief Executive Officer must provide Convocation with sufficient information and advice so that benchers are reasonably informed. Accordingly, the Chief Executive Officer must not:
- ⇨ Fail to submit monitoring data required by Convocation (see policy on Monitoring Executive Performance) in a timely, accurate and understandable fashion, directly addressing provisions of the policies being monitored.
In compliance.
 - ⇨ Fail to give immediate notice of information which is relevant to the Treasurer, Convocation, or other organs of this body.
In compliance.
 - ⇨ Let Convocation be unaware of:
 - ◆ anticipated adverse media coverage.
 - ◆ material external and internal changes, particularly changes in the assumptions upon which any Convocation policy has previously been established.
 - ◆ lawsuits affecting the Law Society. [note: Following the development of a litigation committee, reporting of matters of lawsuits is now reported to Convocation through the committee's regular report to benchers.]
 - ◆ relevant judicial decisions and pronouncements that create significant change in the law of governance of the legal profession.
 - ◆ hearing reports.

- ◆ relevant legislation, proposed legislation and policy initiatives of government that could compromise the independence of the legal profession.
In compliance.

⇨ Fail to advise Convocation if the benchers are not in compliance with their own policies on Part II: Governance Process and Part III: Board-Staff Relations, particularly in the case of bencher behaviour which is detrimental to the working relationship between the benchers and the Chief Executive Officer.
In compliance.

⇨ Fail to provide Convocation with as many staff and external points of view, issues and options as required to allow Convocation to make fully informed choices and decisions. All policy matters for deliberation by Convocation must address the following components:

- ◆ an analysis of options available.
- ◆ economic and financial impacts on the Law Society, the profession and the public.
- ◆ impact on Law Society staffing.
- ◆ need for legislative change.
- ◆ a summary of consultations that have taken place.
In compliance.

⇨ Present information in unnecessarily complex or lengthy form.
In compliance.

⇨ Fail to deal with Convocation as a whole.
In compliance.

⇨ Fail to report in a timely manner actual or anticipated noncompliance with any policy of Convocation.
In compliance.

2.0 The Chief Executive Officer must not fail to provide Convocation with regular reports on the effectiveness of current and future equity and diversity initiatives.

Non-compliance. [note: compliance has been delayed pending the hire of an equity advisor. Charles Smith assumed that senior management position late in the third quarter of 1998.]

3.0 Convocation has delegated authority to the Chief Executive Officer to implement the policies of Convocation in accordance with the policy entitled "Bencher - Staff Relations: Delegation to the Chief Executive Officer". In the implementation of the Ends policy "Discrimination, Equity, & Diversity in the Legal Profession" the Chief Executive Officer shall not operate without:

⇨ ongoing evaluation of Law Society programs, services, and activities to ensure that they support this Ends Policy, including but not limited to:

- ◆ ensuring that in the Department of Education (Continuing Legal Education, Bar Admissions, Articling):
 - (i) Bar Admissions and Continuing Legal Education materials continue to be designed to increase the profession's understanding of equity and diversity issues and are gender neutral,
 - (ii) with respect to the Bar Admissions and Continuing Legal Education, members of diverse groups continue to be encouraged to participate in design, development, and presentation of materials and courses; and
 - (iii) the administration of and the requirements for articling and bar admissions do not impact disproportionately on the basis of personal characteristics in Rule 28.
- ◆ ensuring that in implementing its requalification policy the Law Society continues to develop a process that is fair and equitable to all members of the profession.
- ◆ monitoring the effectiveness with which the Law Society is discharging its responsibility as a regulator to eliminate discriminatory practices in the legal profession.

- ◆ examining the impact of and the barriers presented by the current annual fee structure and considering options for revising the fee structure, if warranted.
- ◆ continuing to liaise with other groups, including the National Committee on Accreditation, to ensure that the accreditation requirements to enter the profession in Ontario for lawyers with foreign training or Quebec non common law training do not present an unreasonable barrier to entry.
Non-compliance. [Note: again, while there is in many instances compliance within this executive limitation, the absence of an equity advisor -- who will spearhead these initiatives -- has delayed compliance. This has been corrected with the hiring of the advisor late in the third quarter.]

⇒A long-term organizational strategy to implement this Ends Policy, including the dedication of appropriate human and financial resources.

In compliance.

⇒Sufficient research information and data on the changing demographics of the profession and the impact on the profession of barriers experienced by members of the profession for reasons unrelated to competence, so as to inform Convocation's policy making.

Non-compliance. Comprehensive research has not been conducted, however as part of the Project 200 initiative certain "customer" satisfaction surveys are being conducted, and the Government Relations and Public Affairs Committee is exploring the option of conducting research into the opinions and needs of the public and members.

ORDERS

The following Orders were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act:

AND IN THE MATTER OF Joram Gold, of the City of Toronto,
a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Committee of Convocation dated the 13th day of August, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, and having heard counsel aforesaid;

27th November, 1998

CONVOCATION HEREBY ORDERS that Joram Gold's rights and privileges as a member of the Law Society of Upper Canada be suspended until such time as Convocation is satisfied based upon a report of a Committee of Convocation, that he is no longer incapable of practising law by reason of mental illness.

DATED this 24th day of September, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF James Steffoff, of the City of Toronto,
a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 31st day of March, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that James Steffoff be suspended for a period of five months commencing at the conclusion of his current administrative suspension.

DATED this 24th day of September, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Charles Jellett Publow, of the Town of Richmond, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of August, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Charles Jellett Publow be suspended for a period of twelve months commencing at the conclusion of the thirty day suspension ordered by Convocation on April 3, 1997.

DATED this 24th day of September, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Kevin Barry Kierans, of the City of Hamilton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 24th day of June, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Kevin Barry Kierans be suspended for a period of twelve months commencing on May 6, 1998, to run concurrently with his current administrative suspension. The Solicitor is entitled to be reinstated and resume practising at the conclusion of the twelve months only if he has first satisfied the Secretary that he has fulfilled the terms and conditions as set out in his Undertaking to the Law Society dated May 6, 1998.

DATED this 24th day of September, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act,

AND IN THE MATTER of David Jack Moll, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 2nd day of September, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by counsel, H. Reginald Watson, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

1. CONVOCATION HEREBY ORDERS that the Solicitor be suspended from practise for a period of three and one half months, commencing October 3, 1998 to and inclusive of January 18, 1999'
2. CONVOCATION HEREBY ORDERS that Laura Legge, of Legge & Legge, act as a mentor to the Solicitor in the area of Estate Law for a period of one year commencing October 3, 1998, or for such other period as Ms. Legge shall deem appropriate. This will include an initial review of all of the Solicitor's active estate files and his office procedures respecting these files. Thereafter, Ms. Legge will meet with the Solicitor on a monthly basis, or whenever Ms. Legge deems it necessary. In addition, Ms. Legge will be available by telephone as may be required;
3. CONVOCATION HEREBY ORDERS that either Leslie Mason or Peter Neilson, of Shibley Righton, will act as a mentor to the Solicitor in the area of Real Estate Law for a period of one year commencing October 3, 1998, or for such other period as Shibley Righton may deem appropriate. This will include an initial review of all of the Solicitor's active real estate files and his office procedures respecting these files. Thereafter, Shibley Righton will meet with the Solicitor on a monthly basis, or whenever Shibley Righton deems it necessary. In addition, Shibley Righton will be available by telephone as may be required;
4. CONVOCATION HEREBY ORDERS that the Solicitor shall enroll in the Law Society's Practice Review Programme on or before October 3, 1998 on the premise that the Director of the Programme shall be at liberty to rely on

the mentoring to be provided by Ms. Legge and Messrs. Mason or Neilson to provide the practice review and oversight which the Practice Review Programme dictates.

5. CONVOCATION HEREBY ORDERS that in each of the areas of Real Estate Law and Estate Law, the Solicitor will attend at least one continuing education program each year.
6. CONVOCATION HEREBY ORDERS that the Solicitor shall maintain a membership in the Estates and Real Estate sections of the Canadian Bar Association - Ontario.
7. CONVOCATION HEREBY ORDERS that the Solicitor shall register as a mortgage broker.
8. CONVOCATION HEREBY ORDERS that the Solicitor shall not act as lawyer for both the borrower and lender in any private mortgage transactions and shall ensure that he complies fully with the provisions of Rule 23 of the Rules of Professional Conduct.
9. CONVOCATION HEREBY ORDERS that the Solicitor shall pay the costs of these disciplinary proceedings fixed in the amount of \$2,000.00 on or before Tuesday, November 3, 1998.

DATED this 24th day of September, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF William Samuel Painter, of the City of Brantford, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 26th day of June, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

27th November, 1998

CONVOCATION HEREBY ORDERS that William Samuel Painter be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 24th day of September, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Henry Desmond Morgan, of the City of London, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 29th day of June, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Henry Desmond Morgan be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 24th day of September, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Michael Walter Tesluk, of the Town of Pickering, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of August, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by J. Paul Fletcher, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Walter Michael Tesluk be reprimanded in Convocation.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Donald Frederick Morris, of the City of Ottawa, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 4th day of September, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance but represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Donald Frederick Morris be suspended for one month definite and from month to month thereafter until the books and records in connection with his practice in accordance with s.15 of Regulation 708 under the Law Society Act are provided to the Society. The suspension to run concurrently with the suspension the Solicitor is currently under pursuant to the order of Convocation made April 3, 1997.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Micaela Obreanu Borup, of the Town of Unionville, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of May, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Micaela Obreanu Borup be suspended for one day, commencing at the conclusion of the Solicitor's administrative suspension, and continuing day to day thereafter until she has fulfilled the following terms and conditions:

1. supplied evidence satisfactory to the Law Society that she is both mentally and physically well enough to return to the practice of law;
2. satisfactorily fulfilled all of the Law Society's requirements with respect to requalifying herself as a barrister and solicitor at the Ontario Bar;
3. co-operated with the Law Society to the fullest extent possible to resolve the matter of the \$15,000 remaining in Trust with the Law Society and to locate certain former clients of the Solicitor as required by the Staff Trustee;
4. if the Solicitor returns to the practice of law she shall never again practise as a sole practitioner;
5. if the Solicitor returns to the practice of law she shall practise only under the supervision of another solicitor who is a member in good standing with the Law Society, who is, in the opinion of the Law Society, a suitably qualified individual to act in the capacity of supervisor, and who is willing to act in the capacity of supervisor to the Solicitor;
6. if the Solicitor chooses to resign her membership with the Society, she shall comply with the requirements of Section 12 of Regulation 708 under the Law Society Act, and shall continue to be bound by the terms of her undertaking to the Law Society dated April 9, 1998.

27th November, 1998

CONVOCATION FURTHER ORDERS that the reinstatement fee of \$160.50 be waived.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Alexander Mouriopoulos, of the
Town of Dundas, a Barrister and Solicitor (hereinafter referred to
as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 2nd day of September, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Alexander Mouriopoulos be suspended for thirty days, commencing at the conclusion of his administrative suspension and continuing from month to month thereafter until the filings are completed to the satisfaction of the Law Society. convocation further orders that the Solicitor pay costs in the amount of \$300, to be paid prior to his being reinstated.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act:

AND IN THE MATTER OF Panagiota Pat Papadeas, of the City of Windsor, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 4th day of April, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Panagiota Pat Papadeas be suspended for one month, commencing at the conclusion of any administrative suspension and continuing indefinitely thereafter until she has filed. Convocation further orders that she pay Law Society costs in the amount of \$600.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act:

AND IN THE MATTER OF Craig Alexander Stephenson, of the City of Brampton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 3rd day of September, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

27th November, 1998

CONVOCATION HEREBY ORDERS that Craig Alexander Stephenson be suspended for six months effective as of the date of this Order and continuing indefinitely thereafter until his books and records are produced and brought up to date to the satisfaction of the Law Society.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Mary Brenda Anne Dagenais, of the City of Nepean, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of May, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Mary Brenda Anne Dagenais be suspended for two months. The suspension to run consecutively to any administrative and discipline suspension, and to continue from month to month thereafter until her books and records are produced to the satisfaction of the Law Society.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Joseph Colman, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 30th day of August, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that David Joseph Colman be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Bradford Smith, of the Town of Oakville, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 2nd day of September, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

27th November, 1998

CONVOCATION HEREBY ORDERS that David Bradford Smith be suspended for thirty days definite, commencing at the conclusion of any administrative suspension and continuing indefinitely thereafter until he has produced his books and records. Convocation further orders that the Solicitor pay Law Society costs in the amount of \$500 to be paid prior to his being reinstated.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act:

AND IN THE MATTER OF Richard Alexander Sutton, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 13th day of August, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Paul Monahan, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Richard Alexander Sutton be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 22nd day of October, 1998

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF James Douglas Barnett, of
the City of Etobicoke, a Barrister and Solicitor
(hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of April, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by David A. Potts, wherein the Solicitor was found guilty of professional misconduct, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that James Douglas Barnett be suspended for a period of six months commencing July 1, 1998.

DATED this 25th day of June, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"K. Corrick"
Acting Secretary

Filed

Reasons of Convocation

The following Reasons of Convocation were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Henry Desmond Morgan of the City
of London, a barrister and solicitor

REASONS OF CONVOCATION

Glenn Stuart - counsel for
The Law Society of Upper Canada

Not Represented - counsel for the solicitor

On September 24, 1998 Convocation considered the report and decision of the Discipline Committee dated June 29, 1998. Mr. Glenn Stuart appeared as counsel for the Society. Mr. Morgan did not attend and was not represented by counsel.

Convocation accepted the recommendation of the Discipline Committee that Mr. Morgan be disbarred. Convocation adopted many of the reasons advanced by the Discipline Committee in support of that recommendation. In Convocation's opinion, however, two passages in the report and decision of the Discipline require clarification.

Mr. Morgan was found guilty of conduct unbecoming a barrister and solicitor. The following particulars were found to have been established:

Complaint D101/96

- (a) On June 23, 1992 the Solicitor was convicted of the offence that he, on or about the 7th day of March, 1992 at City of London, Ontario, did assault Mary Lynn Morgan, contrary to Section 266 of the Criminal Code.
- (b) The Solicitor had engaged in a pattern of conduct intended to harrass and intimidate his ex-wife following their separation during the period from February 1992 to June of 1992 inclusive.
- (c) On November 16, 1995, at London, Ontario, the Solicitor was found to be in contempt of Court, having failed to comply with the Judgment released by The Honourable Mr. Justice R. J. Haines, on October 16, 1995, for which he was sentenced on December 28, 1995, by The Honourable Mr. Justice E. R. Browne to a six month term of imprisonment.

Complaint D183/96:

- (a) On October 6, 1995, the Member was convicted of the offence that he on or about the 2nd of November 1993, at the City of London, in the Southwest Region did without lawful excuse disobey the lawful order made by His Honour Judge D. W. Phillips of the Ontario Court of Justice (Provincial Division):

File with the local Director of Taxation, Department of National Revenue, at 451 Talbot Street, London, Ontario, N6A 5E5, the following documents:

- (i) Cash receipts and disbursements journal;
- (ii) General Ledger;
- (iii) Copies of statements of receipts and disbursements issued during the period;

- (iv) Accounts receivable listing to include date of billing, and complete names and address.

The requested information in (i), (ii), (iii) and (iv) is to cover the period January 1, 1989 to January 15, 1991 inclusive.

Contrary to Section 238(1) of the Income Tax Act, R.S.C. 1952, Chapter 148 as amended.

- (b) On October 6, 1995, the Member was convicted of the offence that he on or about the 2nd day of November 1993 at the City of London in the Southwest Region did without lawful excuse disobey the lawful order made by His Honour D. W. Phillips of the Ontario Court of Justice (Provincial Division);

File with the local Director of Taxation, Department of National Revenue, at 451 Talbot Street, London, Ontario, N6A 5E5, the following documents:

- (i) A completed and signed Individual Income Tax Return on Form T1 for the taxation year 1987, including a Statement of Assets and Liabilities and a Statement of Income and Expenses;
- (ii) A completed and signed Individual Income Tax Return on Form T1 for the taxation year 1988, including a Statement of Assets and Liabilities and a Statement of Income and Expenses;
- (iii) A completed and signed Individual Income Tax Return on Form T1 for the taxation year 1989, including a Statement of Assets and Liabilities and a Statement of Income and Expenses;
- (iv) A completed and signed Individual Income Tax Return on Form T1 for the taxation year 1990, including a Statement of Assets and Liabilities and a Statement of Income and Expenses.

Contrary to section 238(1) of the Income Tax Act, R.S.C. 1952, chapter 148 as amended.

These findings reflect a deeply troubling pattern of repeatedly flouting the law and disobeying court orders. Both in his acrimonious matrimonial dispute with his wife and in his dispute with Revenue Canada, Mr. Morgan was prepared to defy court orders to the point of going to jail. While it is true that his 1995 convictions for contempt of court and disobeying court orders without lawful excuse were based upon incidents that occurred in 1992 and 1993, it is also true that Mr. Morgan has shown no remorse for his actions since then. In Convocation's opinion, for a member of the legal profession to exhibit repeatedly such a profound disrespect for lawful orders of the court, in the absence of evidence of extenuating circumstances or a changed attitude, is fundamentally incompatible with being a lawyer.

Convocation's conclusion is reinforced by a consideration of Mr. Morgan's discipline record. Between 1988 and 1994 Mr. Morgan was found guilty of professional misconduct on four separate occasions. The allegations of professional misconduct that were established on these occasions included misapplying a client's funds, failing to reply to communications from the Law Society, failing to make payment of his deductible under the mandatory insurance plan, breaching an undertaking, and failing to satisfy a financial obligation, among other things. Mr. Morgan was reprimanded in Committee on three separate occasions, and in 1994 was suspended for three months.

27th November, 1998

This brings us to the first point on which, in Convocation's opinion, the report and decision of the Discipline Committee requires clarification. In the last paragraph at page 42 of the report and decision, the Discipline Committee described Mr. Morgan as "a man who is not only ungovernable by the Law Society, but also by the Courts." The complaints that are before Convocation at present do not involve a refusal to co-operate with the Law Society, which is generally the basis of a finding of ungovernability. Convocation has concluded that Mr. Morgan should be disbarred, not because he is ungovernable by the Law Society, but rather because of his repeated refusal to comply with lawful court orders. Convocation respectfully adopted as part of its reasons the following passage from the report and decision of the Discipline Committee, which follows immediately the sentence quoted above:

"[Mr. Morgan] is a man who, in the end, is not prepared to abide by the rule of the law. As Barristers and Solicitors we are officers of the Court. It is fundamental to the integrity of our profession that our members abide by and adhere to the principles which govern our profession and our system of justice. If a member is not prepared to do this he or she cannot remain a member of our Society. Unfortunately, in our opinion, Mr. Morgan has demonstrated repeatedly that he is not willing to abide by these principles."

The other passage from the report and decision that, in Convocation's opinion, requires clarification is the first paragraph at page 42, in which the Discipline Committee commented upon the report of Dr. Andrew Malcolm. Although it may well be that in his report Dr. Malcolm strayed beyond the permissible scope of expert psychiatric evidence (see *R. v Mohan* (1994), 114 D.L.R. (4th) 419 (S.C.C.)), in Convocation's opinion the report provides no basis for calling into question Dr. Malcolm's professional objectivity, and Convocation wishes to disassociate itself from any implication that may be read into the report and decision of the Discipline Committee to that effect. Convocation would add, in respect of the Discipline Committee's comment that Dr. Malcolm's report "makes little, if any, attempt to analyze Mr. Morgan's behaviour in psychiatric terms", that Dr. Malcolm made it clear at the beginning of his report that there were no indications of any mental illnesses, either functional or organic, in Mr. Morgan's case. The fact that Dr. Malcolm did not attempt to provide a psychiatric explanation for Mr. Morgan's conduct is, in Convocation's opinion, entirely understandable and appropriate in light of this finding.

There was also an issue in Convocation regarding Mr. Morgan's failure to appear before it. The failure of a lawyer to appear before a Discipline Committee or Convocation may not be considered as evidence in support of a complaint or an aggravating factor in imposing penalty. Such a failure nevertheless deprives the Discipline Committee and Convocation of the benefit of any explanation that the lawyer may have for his or her conduct. Mr. Morgan's failure to attend before Convocation in this serious case is particularly regrettable.

For these reasons, Convocation ordered that Mr. Morgan be disbarred.

Dated at Toronto this 6th day of October, 1998

"Gavin MacKenzie"

"Ronald D. Manes"

CONVOCATION ROSE AT 1:30 P.M.

Confirmed in Convocation this 22 day of January 1998

Harvey T. Stussberg

Treasurer