

MINUTES OF SPECIAL CONVOCATION

Friday, 10th July, 1992
9:00 a.m.

PRESENT:

The Treasurer (Allan Rock), Bastedo, Bellamy, Bragagnolo, Brennan, Campbell, Carter, R. Cass, Cooper, Cullity, Curtis, Elliott, Epstein, Feinstein, Finkelstein, Goudge, Henderson, Hill, Howie, Howland, Kiteley, Lamek, Lamont, Lawrence, Lax, McKinnon, Manes, Murphy, Murray, Peters, Somerville, Strosberg, Thom, Topp and Weaver.

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MOTION

SPECIAL COMMITTEES AND APPOINTMENTS

It was moved by Mr. Somerville, seconded by Mr. Murray THAT for 1992-93, the members of the Special Committees and Special Appointments be as indicated in the attached list.

Carried

(see list in Convocation file)

Ms. Bellamy asked that her name be removed from the Special Committee on Court Reform.

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FINANCE AND ADMINISTRATION COMMITTEE

Mr. Howie presented the Report of the Finance and Administration Committee of its meeting on June 11th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs to report:

Your Committee met on Thursday, the 11th of June, 1992 at three o'clock in the afternoon, the following members being present: J.J. Wardlaw (Vice-Chair in the Chair), D.E. Bellamy (Vice-Chair), P.G. Furlong, S. Lerner, and P.B.C. Pepper. Also in attendance were D.A. Crosbie, D.E. Crack and D.N. Carey.

B.
ADMINISTRATION

1. FINANCIAL STATEMENTS - HIGHLIGHTS MAY 31, 1992

A highlights memorandum from the Director, together with financial statements for each of the General Fund/Lawyers' Fund For Client Compensation and the Errors and Omissions Fund was before the Committee. [pg. 9 - 16]

Approved

2. FINANCING ARRANGEMENTS - PROPOSED INTEREST RATE SWAP AGREEMENT

One option for fixing the long-term financing for the building addition and related matters was to enter into an "Interest Rate Swap" agreement. Essentially this form of financing arrangement allows a borrower to take advantage of another borrower's fixed rate of interest payment obligation. This is accomplished through an agreement with a chartered bank, in our case the Toronto-Dominion Bank. The bank charges a "stamping fee" for this service.

When the Law Society entered into its borrowing arrangements with the Toronto-Dominion Bank, the bank's offer of financing proposed an interest rate swap in response to the Law Society's request for the option to lock in part of the borrowing at a desirable fixed rate.

As noted in the attached letter [pg. 17 - 19] dated May 14, 1992 from Terence Hall of Osler, Hoskin & Harcourt, the Toronto-Dominion Bank requested the Law Society to provide a legal opinion that the Law Society has the capacity of a natural person and the corporate power and capacity to execute the swap agreement and perform its obligation under it. Subsequent to the May 14, 1992 letter, Terence Hall has confirmed that he has concluded that subject to the passing by Convocation of the resolution set out below the Law Society does have such capacity and power, and that Osler, Hoskin & Harcourt will be able to give the requested form of opinion letter to the bank should the Law Society proceed with the interest rate swap agreement.

The Committee was asked to approve the following resolutions:

"That the Committee approves the entering of an interest rate swap agreement with The Toronto-Dominion Bank as contemplated by the term sheet governing the borrowings which financed the building addition for the purpose of "exchanging" a portion of the Society's floating rate interest obligation for a fixed rate interest obligation considered to be advantageous and authorizes and directs any two of the Treasurer, Under Treasurer, Director of Finance and Administration, Deputy Director of Finance, Chair of the Finance and Administration Committee, Vice-Chair of the Finance and Administration Committee and benchers who are members of the Finance and Administration Committee to execute and deliver such an interest rate swap agreement, and such other documents and instruments pertaining thereto, in such form as they may approve and at such time as they may consider such swap transaction to be advantageous (and such execution shall be conclusive evidence of such approval and determination)."

Approved

3. ANNUAL FEES - RELIEF FOR MEMBERS ON PARENTING LEAVE

Background

In March your Committee received a report from the Women in the Legal Profession Committee which recommended adoption of a policy for providing relief for members on parenting leave. The specific recommendations were as follows:

- 5.1. For the purposes of determining fees, leaves from employment for reasons of maternity, paternity and adoption should be treated identically.
- 5.2. The annual fee for any year in which a member wishes to take advantage of a special fee for reasons of maternity, paternity or adoption, should be calculated on a monthly basis, one month's fee being equal to one-twelfth of the annual fee.
- 5.3. Any member (female or male) who has been practising the law of Ontario (category 1) and who, for purposes of
 - (i) preparing for the birth or adoption of a child, and/or
 - (ii) caring for a new-born or newly-adopted child,ceases to practise the law of Ontario, shall be entitled to maintain membership in the Society without payment of the monthly membership fee, for a period not exceeding six months.
- 5.4. Any member (female or male) who has been gainfully employed but not practising the law of Ontario (category 2) and who, for purposes of
 - (i) preparing for the birth or adoption of a child, and/or
 - (ii) caring for a new-born or newly-adopted child,ceases to be gainfully employed, shall be entitled to maintain membership in the Society without payment of the monthly membership fee, for a period of not exceeding six months.

Discussion

The Director of Finance has reviewed the recommendations of the Women in the Legal Profession Committee with senior staff and the following concerns were raised:

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- (1) The proposed policy would treat members on parenting leave more favourably than members who are unemployed in that it provides for complete exemption from annual fees for up to six months (versus a 25% fee for unemployed members). After some discussion it was suggested that members on parenting leave should pay the same fee while on leave as unemployed members (ie. Category 3 fee).
- (2) In order to ensure that all members are treated equally, it was suggested that members whose fee category changed during the year for any reason (including but not limited to parenting leave) would be subject to a pro rata reduction or increase in their annual fee for the period of time, in months, that such change continued.

Recommendations

The following recommendations were proposed to replace those of the Women in the Legal Profession Committee.

- (i) For the purposes of determining fees, leaves from employment or practice for reasons of maternity, paternity or adoption should be treated identically.
- (ii) Members in Categories 1 and 2 taking such leave shall be entitled to a pro rata reduction in annual fees to the Category 3 level for the period of time, in months, that such leave is requested.
- (iii) Members already in Category 3 (ie. unemployed) shall not be entitled to any additional reduction in annual fees.
- (iv) Members in Categories 1 and 2 who cease practising or become unemployed shall be entitled to a pro rata reduction in annual fees to the Category 2 or 3 level, as appropriate, for such period as the change in status continues.
- (v) Correspondingly, members in Categories 2 and 3 who commence practising or become employed shall be required to pay a pro rata increase in annual fees to the Category 1 or 2 level, as appropriate, for such period as the change in status continues.
- (vi) A letter describing this policy will be mailed to each member with the Annual Fees Notice.
- (vii) Members who wish to take advantage of this policy to obtain a reduction in annual fees will be required to make application in writing to the Society.

Based on a projected number of members expected to avail themselves of this program, the cost is estimated to be approximately \$45,000, and that amount has been included in the budget.

Approved

4. ARREARS OF FEES

(a) A member has requested that the Committee consider rescinding the requirement that he pay his annual fees for the years 1983 - 1991, which had accrued when his membership was under suspension. He states that the basis for his request is that payment is based on an administrative policy which in his view:

- i. is outdated and fails to reflect the economic realities of the past decade;

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- ii. unduly discriminates against Bar Admission graduates of limited financial means;
- iii. will continue to discriminate against all Bar Admission graduates who are unable to immediately pursue a traditional legal practice upon their call to the Bar;
- iv. may well encourage law school graduates NOT to pursue their call to the Bar unless they have guaranteed employment in the legal field IN ONTARIO.

(b) In a letter dated May 7, 1992, a member has made a petition to the Committee that:

"the outstanding fees in the amount of \$7,178 be waived to the extent that they exceed the fees which would be paid by a practising member of another Bar in Canada seeking to transfer and obtain membership in the Bar of Ontario."

The Committee recommended that the Treasurer be asked to strike a committee to examine this issue and that these two requests be tabled until the committee reports back.

5. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 37 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 37 cases all or part of the late filing fee has been outstanding four months or more. The 37 members owe \$52,640 of which \$13,560 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 37 members be suspended on June 26, 1992 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 142

6. SUSPENSION OF MEMBERS - ARREARS OF ANNUAL FEES

The following member has not paid her annual fees which were due on 1st October, 1991.

Paulah Jean Edwards North Vancouver, B.C.

The Committee was asked to recommend that the rights and privileges of this member be suspended by Convocation on 26th of June 1992, if the annual fees remain unpaid on that date.

Approved

Note: Motion, see page 142

7. MEMBERSHIP UNDER RULE 50 - Retired Members

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

Evan Carroll Black	Kingston
Gerald David Stone	Parry Sound
Richard Devere Thrasher	Amherstburg
Elijah Carter	Niagara-on-the-Lake
William John Eric Beverley	Toronto
Stephen Zahumeny	North York

Approved

8. RETURN TO ACTIVE PRACTICE

The following member retired under the incapacitated section of Rule 50 on the 27th of March 1989. He now submits an application for the termination of his retirement and submits medical evidence attesting to his ability to practice law. His application is in order and it is recommended that it be approved.

George Charles Conn Toronto

Approved

C.
INFORMATION

1. ADVOCATES' SOCIETY INSTITUTE MONTHLY REPORT - APRIL 1992

The Advocates' Society Institute reports the following statistics:

	Current Month		Year to Date	
	<u>Actual</u>	<u>Budget</u>	<u>Actual</u>	<u>Budget</u>
Revenue	\$27,483	\$32,111	\$58,884	\$60,139
Expenditures	<u>\$23,099</u>	<u>23,099</u>	<u>66,241</u>	<u>\$66,241</u>
Net Income (Loss)	<u>\$ 4,384</u>	<u>\$ 9,012</u>	<u>\$(7,357)</u>	<u>\$(6,102)</u>
Cash - End of Month	\$20,180			
a) Operating	<u>\$5,063</u>			
b) Trust & Restricted	<u>\$15,117</u>			

April revenues are made up of \$14,920 in tuition fees, \$12,500 from the Advocates' Society (their first two quarterly instalments for 1992) and \$63 in bank interest.

Expenditures include the majority of expenditures for the Arnup Cup Competition.

The Director of Finance will further report to the Committee in September.
Noted

2. LSUC EXCESS PROFESSIONAL LIABILITY INSURANCE

A memorandum from the Director of Insurance to the Director of Finance and Administration is attached. [pg. 20]

Noted

3. LIFE MEMBERS

Pursuant to Rule 49, the following are eligible to become Life Members of the Society with an effective date of June 18th, 1992:

Bradford Hugh Blaikie Bowlby	Toronto
Patrick Martin Draper	Consecon
Arthur Lyman Meredith Fleming	Toronto
Leo John Gent	Dorchester
Sydney Malcolm Harris*	Toronto
Robert Vyvyan Hicks	Toronto
Robert Doan Hill	Toronto
Thomas Owen Jones	Ridgeway
Gilbert Dunstan Kennedy	Victoria, BC
Donald Forbes McDonald	Toronto
Frederick Lawrence Miller	St. Catharines
John Albert Mullin	Mansfield
George Theodore Rogers	Don Mills
Sylvester Perry Ryan	Omeme
Charles Joseph Seagram	Barrie
Harold Leslie Van Wyck	Owen Sound
Edmund Joseph Walters	Malaga, Spain
Joseph Kenneth Williams	Weston
Arnold David Wilson	Ottawa

* see also Membership Restored

Noted

4. CHANGES OF NAME

(a) Members

<u>From</u>	<u>To</u>
Eva Lake Rodan	Eva <u>Lake</u> (Birth Certificate)
Wendy Barbara Parker	Wendy Barbara <u>Stevens</u> (Divorce Petition)
Richard Carty	Richard <u>Brydone</u> Carty (Birth Certificate)
Jonathan Scott Keene	Jonathan Scott <u>Brunet</u> (Marriage Certificate)

Noted

5. MEMBERSHIP RESTORED

The following members gave notice under section 31 of The Law Society Act that they have ceased to hold judicial offices and wish to be restored to the Rolls and records of the Society.

Effective Date:

Francis Costello
(Ontario Court General Division)

26th June 1992

10th July, 1992

Sydney Malcolm Harris* 22nd June 1992
(Ontario Court Provincial Division)

* see also Life Membership

Noted

6. ROLLS AND RECORDS

(a) Deaths

The following members have died:

Keith Emerson Eaton Called September 20th 1956
Mahone Bay, NS Died April 28th 1992

John Alexander Gordon Called June 28th 1956
Toronto Died May 2nd 1992

Harriet Anna Laura Clark Called September 18th 1947
Toronto Died May 9th 1992

Arthur William Mulock Kirkpatrick Called September 18th 1941
Toronto Died May 19th 1992

John Thomas Carvell Called June 29th 1949
St. Simons Island, USA Died May 19th 1992

George Brian Thomas Clements Called March 23rd 1966
Chatham Died June 2 1992

Noted

(b) Membership in Abeyance

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

Angus Donald King MacKenzie Called March 21st 1969
Brampton Appointed to the Ontario Court of
Justice
(General Division)
May 6th 1992

Gerald Francis Day Called April 10th 1964
Toronto Appointed to the Ontario Court of
Justice
(General Division)
May 6th 1992

Frank Kelso Roberts Called March 26th 1965
Toronto Appointed to the Ontario Court of
Justice
(General Division)
May 6th 1992

David Samuel Crane Called March 25th 1966
Hamilton Appointed to the Ontario Court of
Justice
(General Division)
May 6th 1992

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John Ross Belleghem Brampton	Called March 17th 1967 Appointed to the Ontario Court of Justice (General Division) May 6th 1992
Peter Bertram Chapman Hockin London	Called March 23rd 1973 Appointed to the Ontario Court of Justice (General Division) May 6th 1992
William Lawrence Whalen Sault Ste Marie	Called March 20th 1975 Appointed to the Ontario Court of Justice (General Division) May 6th 1992
John David McCombs Toronto	Called March 21st 1975 Appointed to the Ontario Court of Justice (General Division) May 6th 1992
Janet Myra Wilson Toronto	Called April 10th 1981 Appointed to the Ontario Court of Justice (General Division) May 6th 1992

Noted

7. LEGAL MEETINGS AND ENTERTAINMENT

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

June 8, 1992	Judges' Reception Convocation Hall
June 16, 1992	Judges' Dinner Convocation Hall
June 24, 1992	International Law Clerks Convocation Hall

Noted

8. STAFF CHANGES

The Director reported that 5 employees have left the employ of the Law Society and 6 have joined. No new positions have been created and staff complement is now at 340 as at May 31, 1992.

Noted

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"K. Howie"
Chair

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

- B-Item 1 - Memorandum from Mr. David Crack to the Chair and Members of the Finance Committee dated June 8, 1992 re: May 1992 Financial Statement Highlights. (Numbered 9 - 16)
- B-Item 2 - Letter from Mr. Terence D. Hall to Mr. David E. Crack dated May 14, 1992 re: The Law Society of Upper Canada-Proposed Swap (The Toronto-Dominion Bank) Our File No. 8464283. (Numbered 17 - 19)
- C-Item 2 - Memorandum from Mr. Lin Whitman, Director of Insurance to Mr. David Crack, Director of Finance dated June 11, 1992 re: LSUC Excess Professional Liability Insurance. (Number 20)

It was moved by Ms. Kiteley, seconded by Ms. Bellamy that Convocation adopt the recommendations from the Report of the Women in the Legal Profession regarding members on parenting leave as set out in Item 3 under Administration.

Lost

THE REPORT WAS ADOPTED

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

It was moved by Mr. Howie, seconded by Ms. Bellamy THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from June 26th, 1992 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list on Convocation file)

MOTION TO SUSPEND: FAILURE TO PAY ANNUAL FEES

It was moved by Mr. Howie, seconded by Ms. Bellamy THAT, having not paid her annual fees for the period July 1st, 1991 to June 30th, 1992, the rights and privileges of the member listed below be suspended for a period of one year from June 26th, 1992 and from year to year thereafter, or until her fees are paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Paulah Jean Edwards

North Vancouver, B.C.

Carried

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SPECIAL COMMITTEE ON CONTINGENT FEES

Mr. Howie presented the Report of the Special Committee on Contingent Fees.

10th July, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON CONTINGENCY FEES begs leave to report:

This Committee composed of Messrs. Howie (Chair), Carter, Furlong, Ms. Richardson and Mr. Rock is making its third report to Convocation.

The Committee thinks it important to review the approach it has taken. Its first task was to consider the general question: are contingency fee arrangements between lawyers and clients in litigious matters desirable?

The History (leading up to Convocation's decision in May 1988)

The Committee, after deliberating for almost a year, sent a report to Convocation which concluded that contingency fee arrangements are desirable. It is helpful to set out the Committee's recommendations as amended and adopted by Convocation in May 1988:

The Special Committee recommends to Convocation:

- (1) that it approve in principle the introduction into Ontario of contingency fees in litigation matters other than in:
 - (a) a court or administrative proceeding where the remedy sought is other than damages or other pecuniary compensation; (deleted by Convocation May 27, 1988)
 - (b) matrimonial proceedings save in cases where proceedings have been commenced to collect arrears in support payments;
 - (c) criminal proceedings;
- (2) that if it approve in principle of contingency fees that it instruct the Special Committee to work out a detailed scheme for consideration and debate at a later Convocation;
- (3) that the Attorney General be approached with a request that the Solicitors Act be amended to permit contingency fees after Convocation has completed a twofold procedure, namely adopting in principle the idea of contingency fees and a detailed scheme as to how they could be put into operation in Ontario.

The Special Committee recommends to Convocation that the Attorney General be urged to permit contingency fee arrangements based on the perceived need for greater accessibility to legal services by members of the public.

In its original report, the Committee did not recommend a specific contingent fee scheme because it thought it important that the principle of contingency fees be considered separately.

Once Convocation accepted contingency fees in principle, the Committee embarked upon a consideration of the type of contingency contract, as might be suited to the needs of the Ontario consumer, to recommend to Convocation.

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The Committee sent a second report to Convocation in October 1990. It recommended a particular standard form contract be required for any contingency fee arrangement to be of any force and effect. Convocation sent back to the Committee the standard form contract, largely because it was too detailed.

Present Recommendations

The Committee recommends as follows:

1. The Committee is unanimously of the view that a contingency arrangement, which in effect excludes the operation of the costs system in Ontario, may be unfair, either to the solicitor or to the client, and that in this jurisdiction, it would be wiser to adopt a system which would provide the plaintiff's solicitor with party and party costs plus the contingency directed to the actual recovery with respect to the claim. In this way, the ultimate recovery of fees will be a fairer reflection of the work done by the solicitor to earn the fee. SEE APPENDIX "A"
2. Because the agreement would involve collection of costs plus the contingency, it is obvious that historic, and perhaps even notorious, contingency rates of 25% to 50% would be unreasonable. Accordingly the Committee is of the view that it is necessary to cap the percentage contingency at 20%, but subject to the leave of the Court to permit increased contingency percentages at the time of retainer. SEE APPENDIX "B"
3. There should be a written contract signed by the parties that would embody the terms of the contingency fee agreement. The Committee chooses not to recommend a specific form of contract leaving that up to the lawyer and the client.
4. The Committee rejected the suggestion that the agreement should be registered with the Court having jurisdiction in the case. The Committee notes that some jurisdictions that required registration have abolished this requirement.
5. The issue of whether or not disbursements should be subject to the contingency, or should be paid by the client in any event, should be a matter left to be agreed upon between the lawyer and the client. Whatever is agreed upon should be embodied in the contingency fee agreement contract.
6. There are three safeguards that the Committee recommends which should provide appropriate protection for the client:
 - (a) The contingency contract would be enforceable as between the parties if there is a written contract. If there is no written contract, the lawyer will not be entitled to render an account if the client lost. If the client were to win, the lawyer could only charge the client on a quantum meruit basis.
 - (b) The client should be entitled to ask for a review by the Court, if so advised, when the case is finished, to determine whether or not the contingency fee arrangement was a reasonable one at the time the contract was entered into. This entitlement needs to be written either into the Rules of Practice or in the Solicitors Act.

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- (c) The Committee is of the view that a further review should also be available to the client by the Court as to whether or not, in the final result, regardless of whether or not the contingency arrangement was a reasonable one at the time the contract was entered into, the ultimate fee turned out to be unconscionably high.

Again, such a safeguard would need to be written into either the Rules of Practice or the Solicitors Act.

7. It is intended by the Committee that review of (b) and (c) above should be conducted by a Judge of the Court, rather than an Assessment Officer or a Master.
8. If this report is approved as amended, it is the desire of the Committee, subject to the direction of Convocation, to meet with the Attorney General to try to achieve Government agreement to these principles for the necessary amendments to legislation which would be followed by alteration to the Rules.

ALL OF WHICH is respectfully submitted

DATED this 28th day of February, 1992

"K. Howie"
Chair

APPENDIX "A"

THE COSTS PLUS PRINCIPLE

The Committee is unaware of any jurisdiction in which what is being proposed here has been attempted. Most contingency fee arrangements in other jurisdictions simply lump the recovery of claims and costs (where appropriate) and to that gross total apply the percentage of contingency.

It is apparent that in cases in which recovery is made with relatively small amounts of work by the solicitor, the party and party costs to be awarded will be relatively small.

On the other hand, there are cases in which enormous amounts of work are required to be done by the solicitor which are subsequently reflected in very large amounts for party and party costs.

We are aware of a case recently in our Courts in which the Judgment recovered by the Plaintiff, after a very lengthy trial, was in the neighbourhood of \$600,000.00. The taxed party and party costs, it is our understanding, exceeded \$300,000.00. If a "normal" contingency, on let's say 25%, was applied to the gross amount recovered, including party and party costs, the recovery of 25% of the total of \$900,000.00, or \$225,000.00, would be less than the amount of the assessed party and party costs.

To the extent then that party and party costs have some reference to the amount of work done by the solicitor, it is fairer, both to the solicitor and to the client, that the contingency fee arrangement should involve costs plus the percentage, rather than a flat percentage of the claim, including all of the costs.

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This is particularly important in Ontario where the level of party and party costs is significantly higher than almost every other jurisdiction in Canada, and of course quite different from the U.S. experience, which basically does not involve the collection of party and party costs.

One issue that needs to be dealt with is of course an award of solicitor and client costs. The Committee is of the view that any solicitor and client costs awarded over and above the party and party costs would of course belong entirely to the client, and would have no reference to the contingency contract arrangement.

APPENDIX "B"

PERCENTAGE CAP

In the early stages of the study, the Committee was of the view that it would be unwise to attempt to cap the contingency rate. One fear that the Committee had was that by expressing a cap, immediately that would be the generally accepted contingency rate. We are strongly of the view contingency percentage rates should vary from case to case, and to even suggest a cap would be to legitimize that percentage rate in every case.

On the other hand, the Committee was also mindful that there may well be cases in which a contingency percentage as high as 50% might well be warranted and reasonable, and the Committee was particularly mindful of the difficult cases of minority shareholder actions and the like.

In the final result, however, the Committee was anxious to depart from the standard contingency rates in the U.S. particularly, but also in Canada, to almost a minimum of 25% to a maximum of as much as 50%. In order to ensure that that principle would not occur in this jurisdiction, the Committee unanimously decided that a cap of 20% was necessary. At the same time, the Committee was forced to recognize that there may be cases where costs plus a higher contingency percentage could be justified and it left that issue to be determined by a Court at the time the contract is entered into.

It was moved by Ms. Curtis, seconded by Mr. McKinnon that the Report be amended to exempt all matrimonial law areas from contingency contracts.

Carried

It was moved by Ms. Kiteley, seconded by Ms. Elliott that the Report be referred back to the Committee to draft a proposed contingent fee contract.

Lost

THE REPORT AS AMENDED WAS ADOPTED

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LEGAL EDUCATION COMMITTEE

Mr. Lamek presented the Report of the Legal Education Committee of its meeting on June 11th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of June, 1992. The following members were present: Paul Lamek (Chair), Maurice Cullity (Vice-chair), Thomas Bastedo, Denise Bellamy, Lloyd Brennan, Philip Epstein, Abraham Feinstein, Vern Krishna, Colin McKinnon, Ross Murray. Representing the law schools was: Dean Berryman. Representing the Bar Admission Advisory Committee was: Jan Divok. Staff in attendance were: Barbara Dickie, Brenda Duncan, Holly Harris, Mimi Hart, Alexandra Rockes, Alan Treleaven, Paul Truster.

A.

POLICY

1. PRINCIPAL APPLICATION: ALLEGATIONS AGAINST AN ARTICLING PRINCIPAL MADE BY STUDENT

The Articling Subcommittee, in the course of approving members' applications to serve as articling principals, is faced with a procedural concern on which it seeks the advice of the Discipline Policy Committee.

Specifically a matter has arisen in the context of a member's application to serve as an articling principal for the 1992-93 articling year. A student has made allegations of general and sexual harassment against this particular member. The incidents allegedly occurred during the 1991-92 articling year.

The member has applied to serve as a principal for the 1992-93 articling year. The member by written response has denied most of the allegations. The nature of the sexual harassment allegations include unwanted touching (hugging) of the student and derogatory or degrading language of a sexual nature directed at the student as well as other women. The general (non-sexual) harassment allegations include a rude and abusive manner.

The Subcommittee believes the allegations may be so serious that, if made out, the member may be guilty of professional misconduct or conduct unbecoming a barrister and solicitor. The Subcommittee considered the matter at considerable length at its March 27 and May 29, 1992 meetings. The Subcommittee believes this is an appropriate matter on which to ask direction. The Subcommittee has deferred a decision on the member's application.

Section 4.0 (pages 1 - 3) of the Proposals for Articling Reform (the "Proposals") specifies who may act as an articling principal. The Proposals start from the proposition that to serve as a principal is a privilege, not a right.

The Proposals at page 5 state:

In all cases, the decision by the Articling Subcommittee whether to permit a member to serve as an articling principal will be governed by the policy that the principal serves as an exemplar. Articling students are taught as much by example as they are by instruction. The Law Society's objective must be to ensure that all principals share a dedication to professional excellence and an awareness of and commitment to the highest standards of ethical behaviour...

4.2.2 Competence

The Articling Subcommittee must be satisfied that those who would serve as principals maintain a standard of practice that is appropriate for a professional who will be teaching by example and inculcating methods, habits and attitudes that will remain with students into their practicing years. In that regard, the Articling Subcommittee may consider any relevant information... (emphasis added).

The Proposals do not provide for a hearing before the Articling Subcommittee regarding an application to serve as an articling principal. The Subcommittee does not believe that its present mandate includes a comprehensive hearing process, similar to the Discipline Committee's, when allegations of this nature are made. However, the serious nature of the allegations may mean they are potentially disciplinable.

After a lengthy discussion, the Subcommittee decided to request the advice of the Discipline Policy Committee.

It is recommended that the Chairs of the Discipline Policy Committee and the Legal Education Committee designate members of their respective Committees to meet as a joint subcommittee to make recommendations to the Discipline Policy Committee and the Legal Education Committee.

Note: Amendment, see page 153

2. ARTICLING PLACEMENT

The Legal Education Committee has informally asked the Articling Subcommittee to consider what action the Law Society might take in the event that there are insufficient articling positions for the number of students seeking articles in the 1992-1993 articling year. The Articling Subcommittee has appointed a Placement Policy Group to review the situation and to make recommendations to the Articling Subcommittee. The Placement Policy Group comprises two members of the Articling Subcommittee: Mr. Jay Rudolph (Shibley, Righton) and Ms. Victoria Colby (articling student member), and Ms. Mimi Hart, the Director of Financial Aid and Placement for the Law Society.

The Placement Policy Group is developing a report for presentation to the Articling Subcommittee at its June 26 meeting. It is anticipated that the Articling Subcommittee will in turn report to the Legal Education Committee with recommendations in September. For information purposes a preliminary draft report reflecting the work of the Placement Policy Group to date is attached. (pages 4 - 16)

Issues of particular interest the Legal Education Committee include:

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- a) Whether the Law Society should assume an obligation to ensure that each student wishing to be called to the bar in Ontario procures an articling position. In dealing with this issue, it is important to consider whether all students who have not secured a position would be treated similarly, taking into account factors such as: apparent ability of the student to articulate effectively, academic record, the student's own efforts to secure a position, disabilities, and the flexibility of the student to accept articles in various situations and geographic locations within the province.
- b) In addition to students who have been unable to secure a position, the Society is aware of students who were scheduled to commence articles with a particular firm but who have lost their articling positions due to restructuring and financial problems at the firms. Two such students are presently asking the Society for special assistance in securing alternate positions. This request raises additional issues respecting a lawyer's right to terminate the services of an articling student or to withdraw from the commitment to act as an articling principal:
- i) Does the existing Policy Statement on a Principal's Obligations (page 17) go far enough?
 - ii) Should principals be required to involve the Law Society in any termination or withdrawal of commitment? (Under the Recruitment Procedures, students and principals are obliged to inform the Director of Placement for the Law Society of any situation in which a release from the Match is sought (pages 18 -21). In the Articling Handbook, it is recommended that students and principals considering termination of the articling relationship consult with the Articling Director for the Law Society.)
 - iii) Are there circumstances in which termination of an articling student or withdrawal of the commitment to act as principal might be disciplinable?

It is recommended that:

1. The Law Society inform members of the profession, in writing, that a number of students have not secured an articling position for the 1992-1993 articling term and request that firms contact the Law Society Placement Office if they can offer an additional articling position.
2. If the situation is not remedied by August 1, 1992, the Law Society contact members and firms directly to request assistance in resolving the problem in the current year.
3. The number of students seeking articles for the 1992-1993 year who register with the Law Society's Placement Office and who continue to seek articles as of September, 1992 be reported to the Legal Education Committee at its September meeting with recommendations as to the course of action to be taken in each case. The recommendation will include all information the Director of Placement has procured which is relevant to the individual's difficulty in securing employment (e.g., academic standing, personal effort to secure a position, and any special circumstances).

4. The Articling Subcommittee continue to monitor the articling placement situation through the Law Society's Placement Office (including collecting data early in the New Year which will identify the number of law students without articles) and report this information and any preliminary recommendations to the Legal Education Committee.
5. The Articling Subcommittee review the conditions under which termination of an articling student or withdrawal of the commitment to act as an articling principal is permissible or might be disciplinable.

C.

INFORMATION

1. PAUL TRUSTER

Paul Truster joined the staff of the Law Society's Continuing Legal Education Department as its new Program Lawyer on May 4, 1992.

Mr. Truster graduated with his B.A. degree from York University in 1978 and his LL.B. degree from Osgoode Hall Law School in 1981. Mr. Truster was called to the Ontario Bar in 1983. Following his call to the Bar, Mr. Truster was employed with Butterworths Canada Ltd., and in 1987 rose to the position of Manager, Research and Development. In 1988 Mr. Truster moved to the private practice of law with the Mississauga firm of Anderson, Sinclair, and in 1990 moved to the Brampton firm of Simmons, Da Silva & Sinton. In private law practice, Mr. Truster's focus was principally in corporate-commercial transactions and in litigation research. Mr. Truster has continued to publish extensively in The Lawyers' Weekly and to serve as a volunteer Instructor in the Bar Admission Course.

2. ARTICLING SUBCOMMITTEE

The Articling Subcommittee met on Friday, May 29, 1992. In attendance were Marc Somerville (Chair), Denise Bellamy (Vice-chair), Maurice Cullity, Stephen Goudge, Janne Burton and Victoria Colby. Staff members attending were Marilyn Bode, Deborah Brown and Barbara Dickie.

The Subcommittee considered and granted six abridgment petitions. The Subcommittee further considered a second request from an individual who had been granted an abridgment to six months to be exempted from Phase One. The individual's request had first been considered at the April meeting of the Subcommittee in conjunction with a number of other applications. The Subcommittee recommended a new policy to the Legal Education Committee in May, which was approved at Committee and at Convocation. Under that policy, this individual's request must be denied. The Subcommittee reconsidered the request and denied it.

The Subcommittee gave conditional approval to a further approximately twenty-six prospective articling principals for the 1992-93 articling year. To date, approximately 960 members of the profession have applied. The application of one member with a significant negative history with the Law Society was reviewed. The application was denied. Another member of that lawyer's firm will be invited to serve as a principal.

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The Subcommittee considered the response of an applicant to serve as principal in the 1992-93 articling year. The applicant had been invited by the Subcommittee to respond to allegations of sexual and general harassment made by an articling student in the 1991-92 year. After lengthy discussion and debate, the Subcommittee decided to recommend to the Legal Education Committee that, on a no-names basis, the advice of the Discipline Policy Committee of the Law Society be obtained (see item A-1 above). As this process may take a few months, the Subcommittee has deferred a decision on the member's application to serve as an articling principal. In the meantime, the Subcommittee is inviting another member of the applicant's firm to apply to serve as an articling principal for the 1992-93 articling year.

Attached for information (pages 22 - 30) is a copy of an Evaluation Form developed by the Articling Subcommittee. It is to be completed by students at the mid and end points of the articling year. The identical form will be printed for principals with changes as appropriate.

The next meeting of the Subcommittee will be at 8:00 a.m. on June 26, 1992.

3. CONTINUING LEGAL EDUCATION SUBCOMMITTEE

The Chair and members of the Continuing Legal Education Subcommittee, together with a number of other Benchers and members of staff, attended the May 14, 1992 meeting hosted by the County and District Law Presidents' Association. The day-long meeting dealt with the implications of introducing Mandatory Continuing Legal Education in Ontario. The key-note speaker was Mr. Frank Harris, Director of Continuing Legal Education for the State Bar of Minnesota. (Minnesota was the first state to feature Mandatory Continuing Legal Education.) Other speakers were Mr. Garry Watson of Blake, Cassels and Graydon and Mr. Paul Perell of Weir & Foulds. The session was chaired by Mr. Marc Bode of the County and District Law Presidents' Association.

The next meeting of the Continuing Legal Education Subcommittee will focus on the issue of Mandatory Continuing Legal Education.

4. COMMUNICATIONS COMMITTEE REPORT

The Communications Committee through its Chair, Colin McKinnon, requests by Memorandum of May 4, 1992 (page 31) that the Legal Education Committee consider whether there are matters arising from the report entitled "Public and Lawyers' Perceptions of and Attitudes Toward the Law Society of Upper Canada, Communications, Programs and Policy Issues" which should be brought to the attention of the Communications Committee.

The Director of Education has reviewed the Report and has noted that it has application to the programs of the Department of Education in two respects:

1. In section one, a survey of the public, there is a report on how the public rates the effectiveness of lawyers in communicating with clients. This information will be used by the Bar Admission Course and the Continuing Legal Education Department in future program planning.
2. Both the public (at page P-33) and the profession (at pages L-25 and L-26) support an increase in emphasis on alternate dispute resolution in the delivery of legal services. This information supports the work of the Dispute Resolution Subcommittee, chaired by Lloyd Brennan, as it works with the Department of Education to enhance the alternate dispute resolution components in the Bar Admission Course and in Continuing Legal Education programs.

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The Director of Education does not have suggestions or recommendations to make to the Communications Committee regarding future courses of action by the Communications Committee. The information contained in the Report, as it stands, will be helpful in developing Bar Admission Course and Continuing Legal Education programming.

The Director was asked to write to the Communications Committee to explain how its Report will be of assistance in the Bar Admission Course and Continuing Legal Education programming but that the Legal Education Committee does not request further information beyond what is contained in the Report.

5. NATIONAL CONFERENCE ON PROFESSIONAL RESPONSIBILITY

The National Conference on Professional Responsibility, which had been scheduled to take place from October 29 to October 31, 1992 at the Palliser Hotel in Calgary, Alberta, has been postponed. No new date has been fixed. The Director of Education, however, has been informed by the Alberta Planning Committee that the Conference will likely be rescheduled for the first weekend of October, 1993. The Director of Education will provide further information when it is available.

6. CONTINUING LEGAL EDUCATION DEPARTMENT COURSES

a) Special Lectures: The Special Lectures will take place on Friday, November 6, 1992, and Saturday, November 7, 1992. The Special Lectures are being co-chaired by Dennis O'Connor and Philip Anisman, and are on the subject of Administrative Law: Practice, Principles and Pluralism. Brochures will be distributed to the profession at the end of June.

b) The Continuing Legal Education Department's monthly Report on Courses is attached. (pages 32 - 34)

7. CONTINUING LEGAL EDUCATION REPORT: OTTAWA

The Report is attached. (page 35)

ALL OF WHICH is respectfully submitted

DATED this 26 day of June, 1992

"P. Lamek"
Chair

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

- A-Item 1 - Section 4.0 of the Proposals for Articling Reform. (Marked 1 - 3)
- A-Item 2 - First Draft - Articling Placement Strategy (1992). (Marked 4 - 16)
- A-Item 2 - Policy on Articling Obligations. (Marked 17)
- A-Item 2 - Policy on Termination of Articles. (Marked 18 - 21)
- C-Item 2- Copy of Form - Student Evaluation of Education Plan 1992/93 Articling Term. (Marked 22 - 30)

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C-Item 4 - Memorandum from Mr. Colin McKinnon, Chair, Communications to the Committee Secretaries dated May 4, 1992 re: Member and Public Surveys. (Marked 31)

C-Item 6(b) Monthly Report - Continuing Legal Education: Report on Courses. (Marked 32 - 34)

C-Item 7 Report - Continuing Legal Education Programs - Ottawa. (Marked 35)

Mr. Lamek accepted an amendment to Item 1 under Policy that the joint sub-committee also include members of the Women in the Legal Profession Committee in addition to Discipline and Legal Education.

THE REPORT AS AMENDED WAS ADOPTED

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Convocation adjourned for a short recess.

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Convocation resumed in public.

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LEGAL AID COMMITTEE

Report on the Tariff Recommendations of the Legal Aid Committee

Ms. Kiteley presented the Report on the Tariff Recommendations of the Legal Aid Committee.

Convocation also had before it copies of the Reports of the Legal Aid Committee of its meetings on May 14th and June 11th, 1992, together with two letters from Mr. George Thomson, Deputy Attorney General dated June 23rd and 24th, 1992 and a copy of the dissent of Mr. Clay Ruby.

Ms. Kiteley asked that #2 (Increased Levy by the Profession) of the Recommendations of the Criminal Law Tariff Review Sub-Committee and Recommendation #6 of the Family Law Tariff Review Sub-Committee (offset of 5% statutory deduction against levy) be deferred.

It was moved by Ms. Kiteley, seconded by Ms. Curtis that the Recommendations of the Criminal, Family and Immigration Law Tariff Review Sub-Committees as amended be adopted.

It was accepted by Ms. Kiteley that the words "wherever possible without jeopardizing the public interest" be added to Recommendations #14 and #20 of the Criminal Law Recommendations.

It was moved by Mr. Strosberg, seconded by Mr. Brennan that the following be deleted from the Family Law Recommendations:

3(a) - standardizing court procedures throughout the province

(f) - unifying family jurisdiction into one court

Carried

Lost

(g) - introducing caseflow management throughout the judicial system

Mr. Strosberg accepted an amendment to 3(g) to his motion that the words "for family law matters" be added after the word "management".

Carried

It was moved by Mr. Bastedo, seconded by Mr. Carter that the fee caps set out in Recommendation #11 of the Criminal Law Recommendations be extended to all areas of legal aid.

Carried

Ms. Kiteley's motion to adopt the Recommendations as amended was carried.

Ms. Bellamy and Mr. Hill did not vote.

THE REPORT AS AMENDED WAS ADOPTED

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Ms. Kiteley thanked publicly the participation of a number of members including Mr. Bruce Durno.

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The Treasurer extended luncheon invitations to Mr. Bruce Durno and Ms. Maureen Silcoff, both members of the Legal Aid Committee.

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

.....

CONVOCATION RECONVENED AT 2:00 P.M.

.....

PRESENT:

The Treasurer, Bastedo, Bellamy, Brennan, Carter, R. Cass, Cullity, Curtis, Elliott, Epstein, Feinstein, Finkelstein, Hill, Howland, Kiteley, Lamek, Lamont, Lawrence, McKinnon, Manes, Murphy, Murray, Peters, Somerville, Strosberg, Thom, Topp and Weaver.

.....

LEGAL AID COMMITTEE

Meeting of May 14, 1992)

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992 at two o'clock in the afternoon, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Brennan, Bond, carter and Copeland, Ms. Campbell, Ms. Cohen, Ms. Curtis, Messrs. Durno, Koenig, Panico and Petiquan.

A.
POLICY

1.(a) REPORTS OF THE STEERING COMMITTEE

The Legal Aid Committee recommends the adoption of the Report of the Steering Committee on the subject of Vouchers for Transcripts in Criminal Matters which is attached hereto as SCHEDULE (A).

The Legal Aid Committee recommends the adoption of the Report of the Steering Committee on the subject of Uncontested Divorce Disbursements Voucher Accounts which is attached hereto as SCHEDULE (B).

(b) REPORT OF THE IMMIGRATION TARIFF SUB-COMMITTEE

The Immigration Tariff Sub-Committee was formed in the spring of 1991 to create a specific tariff for immigration matters.

The Legal Aid Committee recommends the adoption of the Report of the Immigration Tariff Sub-Committee which is attached hereto as SCHEDULE (C).

(c) REPORT OF THE FAMILY LAW TARIFF SUB-COMMITTEE

The Family Law Tariff Sub-Committee was reconstituted in January 1992, has met on seven occasions and the Chair of the Sub-Committee presented the Report to the Legal Aid Committee.

After a lengthy debate, there were three Motions before the Committee and a vote was taken on each.

Motion #1:

Under the heading "Quality of Service Concerns in Staff Offices", the second sentence to read: "Where a staff office is not community directed and where the containment of costs is the motivating factor for establishing such office, it will have inherent problems which tend to erode service standards over time."

MOTION #1 DEFEATED by a vote of seven to three with two abstentions.

Motion #2:

That the Report should not be based on a comparison of the Criminal and Civil Legal Aid Tariffs and should not use the Criminal Tariff as a reason for increasing the Civil Tariff.

MOTION #2 DEFEATED by a vote of seven to four with one abstention.

Motion #3:

That the Report of the Family Law Tariff Sub-Committee be adopted.

MOTION #3 CARRIED by a vote of six to three with three abstentions.

The Legal Aid Committee recommends the adoption of the Family Law Tariff Sub-Committee Report which is attached hereto as SCHEDULE D.

10th July, 1992

B.
ADMINISTRATION

1.(a) REPORT OF THE PROVINCIAL DIRECTOR FOR THE TWELVE MONTHS ENDED MARCH 31, 1992

The Director's report for the twelve months ended March 31, 1992 is attached hereto as SCHEDULE (E).

(b) REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR APRIL, 1992

The Report on the Payment of Solicitors Accounts is attached hereto as SCHEDULE (F).

(c) REPORT ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS DEPARTMENT FOR APRIL, 1992

The Report on the Status of Reviews in the Legal Accounts Department is attached hereto as SCHEDULE (G).

(d) AREA COMMITTEES - APPOINTMENTS

Dufferin

Joan Bates, insurance broker
Peter N. Bourque, solicitor
Lorna M. Paradis, solicitor

Muskoka

Mary Ellen McIntyre, solicitor
James W. Waters, solicitor

Oxford

Shirley M. Julian, office manager

ALL OF WHICH is respectfully submitted

"F. Kiteley"
Chair

May 29, 1992

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

- A-Item 1(a) - Steering Committee Report to the Legal Aid Committee re: Vouchers for Transcripts in Criminal Matters. (Schedule (A), 2 pages)
- A-Item 1(a) - Steering Committee Report to the Legal Aid Committee re: Uncontested Divorce Disbursements Voucher Accounts. (Schedule (B))
- A-Item 1(b) - Summary of the Report of the Immigration Tariff Sub-Committee. (Schedule (C), 2 pages)
- A-Item 1(c) - See separate Report entitled Equal Justice for Women & Children, May 1992 (Schedule (D))

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- B-Item 1(a) - Report - Ontario Legal Aid Plan, Statement of Income and Expenditures, Twelve Months Ended March 31, 1992 (\$000).
(Schedule (E), 2 pages)
- B-Item 1(b) - Report on Final Accounts Paid, Month of April, 1992.
(Schedule (F), 2 pages)
- B-Item 1(c) - Monthly Report, Legal Accounts Department, April 30, 1992.
(Schedule (G))

Meeting of June 11, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of June, 1992 at two o'clock in the afternoon, the following members being present: Frances P. Kiteley, Chair, Messrs. Brennan, Bond, Carter and Copeland, Ms. Cohen, Ms. Curtis, Mr. Durno, Ms. Fuerst, Ms. Kehoe, Messrs. Lalande and Panico.

Also present: Maureen Silcoff, representing the Refugee Lawyers Association.

A.
POLICY

1. CRIMINAL TARIFF SUB-COMMITTEE
FAMILY LAW TARIFF SUB-COMMITTEE
IMMIGRATION TARIFF SUB-COMMITTEE

The Legal Aid Committee considered the reports of the Criminal Tariff Sub-Committee. Discussions ensued with respect to the reports of all three Tariff Sub-Committees. Following a lengthy debate, there were four motions before the Committee and a vote was taken on three of the four:

MOTION #1

It was moved by Ms. Curtis and seconded by Ms. Kehoe that the Preface and the penultimate sentence on page 9 of the Criminal Tariff Sub-Committee Report be deleted.

In Favour: 4
Opposed: 7

MOTION #1 DEFEATED

MOTION #2

It was moved by Mr. Durno and seconded by Mr. Carter that the Report of the Criminal Tariff Sub-Committee be adopted.

In Favour: 9
Opposed: 1
Abstention: 1

MOTION #2 CARRIED

MOTION #3

It was moved by Mr. Copeland and seconded by Mr. Bond that the Report of the Legal Aid Committee to Convocation will request the adoption of the Recommendations by Convocation. The reports of all three Sub-Committees will be attached. Convocation will be asked only to adopt the Recommendations contained in the three sub-committee reports.

In Favour: 11
Opposed: 0

MOTION #3 CARRIED

MOTION #4

It was moved by Mr. Copeland and seconded by Mr. Bond that the Legal Aid Committee's approval of the Family Law Tariff Sub-Committee Report and the Immigration Tariff Sub-Committee Report be reconsidered.

MOTION #4 WITHDRAWN

The Legal Aid Committee recommends that Convocation adopt the Recommendations of the three Tariff Review Sub-Committees as set out in the Reports which are attached hereto as SCHEDULE (A). The Recommendations are set out below for Convocation's information.

RECOMMENDATIONS OF THE CRIMINAL LAW TARIFF REVIEW SUB-COMMITTEE

Increasing Revenues

1. Increased Statutory Deduction
For a period of eighteen months the statutory deduction on accounts rendered in criminal cases will be increased from 5% to a 10% pursuant to the Regulations under the Legal Aid Act with the Regulation to specify that at the conclusion of the eighteen month period all certificates will revert to a 5% statutory deduction.
2. Increased Levy the Profession
The annual levy paid by all practising lawyers in the province to Legal Aid should be increased. Those who participate in the Plan should be permitted to offset the levy by the statutory deduction on accounts rendered.
3. Law Foundation Revenue
The Law Society should ensure that the maximum possible interest rate be obtained on lawyers' trust accounts in order to increase the funds available for the Plan.

Changing the Tariff

4. Type 1 Block Fees
Where an accused is charged with one or more indictable offenses (Type 1) and a guilty plea is entered to any offense or included offense, the fee payable should be \$442, regardless of whether or not a Type 1 indictable offense is withdrawn. The \$442 should include up to one half day in court plus up to four hours preparation.

- 5. **Alternative Measures**
Fees payable for successful alternative measures applications under the Young Offenders Act should be paid at the lower rate for guilty pleas instead of the higher rate paid for trials or withdrawals.
- 6. **Consent Detention Orders**
Where the accused consents to a detention order at a bail hearing the fee payable should be \$126 unless the total time required is over three hours including preparation and court appearance.
- 7. **Pre-Trial Conferences - Adult Cases**
Pre-trial conferences involving attendances with a judge and Crown Attorney should be paid a block fee of \$132.

Pre-trial conferences involving scheduled meetings with Crown Attorneys to discuss cases should be paid at hourly rates in addition to block fees.

- 8. **Pre-Trial Conferences - Young Offenders**
All pre-trial conferences in young offender cases should be paid according to a block fee of \$132 for up to one and one half hours, after which the hourly rate would apply.
- 9. **Indictable Trial Counsel Fees**
All indictable trial matters should be billed at a rate of \$300 per half day.

- 10. **Summary Conviction Appeals**
Summary conviction appeals should be paid at a block fee of \$1,000 for conviction and sentence appeals and \$870 for appeals involving sentence alone.

Capping Fees

- 11. **Fee Cap**
Individual lawyers who net the following fees paid by the Legal Aid Plan would be required to contribute the following amounts by way of statutory deduction:

0 - \$275,000	5% (10% if the Recommendation to increase the statutory deduction is implemented)
\$275,001 - \$300,000	an additional 10% on the amount in this range
\$300,001 - \$325,000	an additional 20% on the amount in this range
\$325,001 - \$350,000	an additional 30% on the amount in this range
\$350,000+	an additional 60% on the amount in this range

- 12. **The Role of Duty Counsel**
No change to role of duty counsel
The Sub-Committee recommends that the present function of Duty Counsel as established in the Act and regulations be maintained.

- 13. **Improving the Administration of Justice**
Charge Screening
An experienced Crown Attorney should screen all charges before the first court appearance. Where such a system is implemented a legal aid certificate would be issued to cover only those charges that remain after screening has taken place.

14. **Bail Variations**
The Attorney General for Ontario and the Federal Justice Minister should instruct prosecutors to facilitate bail variations.
15. **Disclosure**
The Attorney General for Ontario and the Federal Justice Minister should take all measures to facilitate disclosure including the following:
 - allowing disclosure to be made available by mail or picked up by an agent
 - ensuring that all pre-trial conferences are scheduled after the disclosure date when an order for disclosure is made
 - providing disclosures without fee
16. **Facsimile Transmissions of Court Documents**
Service and filing of all court documents should be permitted by facsimile transmission.
17. **Consent Orders and Court Attendance**
Courts should be encouraged to permit consent orders to be obtained by filing the material with the written consent, in which case the order could be granted without a court appearance unless required by a judge.

Initiatives to be Pursued by the Provincial Government
18. **Young Offenders**
The current judicare method of legal service delivery for young offenders should be retained.
19. **Alternative Measures**
The Attorney General should expand the offenses for which alternative measures can be granted.
The Attorney General should provide Crown Counsel with a comprehensive set of alternative measures guidelines to improve consistency across the province.
Once alternative measures have been approved and completed neither the youth nor counsel should be required to attend court for the dismissal of the charge.
20. **Toxicologist Reports**
The Attorney General should instruct Crown Attorneys to consent to the admission of toxicology reports in cases of driving with excess alcohol provided the report sets out in detail the hypothetical fact situation upon which the opinion is based. These reports should be permitted from any toxicologist provided his/her qualifications are provided and the report filed two weeks in advance of the trial date.
21. **Pre-Trial Release from the Police Station**
The police should be encouraged to release accused persons from the police station wherever possible without jeopardizing the public interest.
22. **Service of Subpoenas on Northern Reserves**
The Ontario Provincial Police should be permitted to serve subpoenas on defence witnesses residing on northern reserves.

Initiatives to be Pursued by the Federal Government
23. **Expand Number of Hybrid Offences**
The Minister of Justice should examine all federal criminal legislation and expand the number of hybrid offenses.

24. **Release Orders from the Police Station**
The Criminal Code should be amended to permit the officer in charge of a police station to release an accused person with conditions.
25. **Alternative Measures**
The Minister of Justice should implement a plan for alternative measures for young offenders charged with minor narcotics offenses.
26. **A Renewed Commitment by the Federal Government**
The Federal Government has abrogated its responsibilities to the people of Ontario by freezing transfer payments despite its commitment to the Legal Aid Plan. The Federal Government has directly increased the costs of the Legal Aid Plan and ignored its responsibilities to the partnership it shares with the province and members of the Ontario bar.

We respectfully urge the Federal Government to renew its commitment and obligations to Legal Aid.

RECOMMENDATIONS OF THE FAMILY LAW TARIFF REVIEW SUB-COMMITTEE

1. The effects of the Legal Aid tariff require that the family law and criminal tariffs be treated separately.
2. No changes should be made in the judicare method of service delivery. The right of the individual client to freely choose her counsel is fundamental to ensuring adequate access to legal services.
3. Ongoing effort to rationalize and streamline the court and administrative procedures in the practice of family law should be intensified. The Sub-Committee believes that very significant savings to the Legal Aid Plan and the public at large could be realized by changes in court procedures, namely:
 - a) standardizing court procedures throughout the province
 - b) not requiring lawyers to appear in court on motions where notice is not required
 - c) not requiring attendance of counsel on consent orders and consent adjournments
 - d) staggering court times and scheduling afternoon lists in all courts
 - e) adopting a "continuing record" format for motion records in all courts
 - f) unifying family jurisdiction into one court
 - g) introducing caseflow management throughout the judicial system
 - h) reversing the rules requiring factums in all General Division Courts dealing with family law cases so as to require them only when a judge so orders
 - i) amending the Rules of the Provincial Division Courts to allow for a form of summary judgment in order to simplify the court process
 - j) requesting and ordering costs more often in family law cases.
4. The Report of the Civil Tariff Committee approved in June 1991 should be implemented. The report recommended several cost saving measures (one fee reduction in addition to proposals to maximize administrative efficiencies). It also recommended changes in the tariff which would result in only nominal increases to the cost of delivering Legal Aid in family law. (See charts "Re-Examination of the Recommendations of the 1991 Civil Tariff Sub-Committee Report" in Report attached as SCHEDULE (A) page 12 and 13).
5. The hourly rate in the family law tariff should be substantially increased.

6. If the Legal Aid levy collected by the Law Society is to be increased, those solicitors accepting Legal Aid certificates should be permitted to offset the levy with the 5% statutory deduction.

RECOMMENDATIONS OF THE IMMIGRATION LAW TARIFF REVIEW SUB-COMMITTEE

1. A specific section dealing exclusively with immigration matters should be created in the legal aid tariff.
2. The first paragraph in the immigration section should address hearings held before the Immigration and Refugee Board, including those hearings held before the Refugee Division and those hearings held before the Appeals Division of the Board.

Inquiries, Credible Basis Hearings and Applications, Hearings and Appeals Before the Immigration and Refugee Board

- a) Preparation
 - i) The maximum before the first day is 20 hours
 - ii) A further 5 hours is allowed for each subsequent day of hearing.
- b) Attendances at Hearings and Adjournments
 - i) Paid hourly for the actual time spent including waiting time
- c) Matters Subsequent to the Hearings
 - i) A maximum of 3 hours is allowed for the preparation of an application for landing by a successful refugee claimant and for all other matters
3. Applications and appeals to the Federal Court relating to immigration proceedings should be addressed separately in the tariff from those proceedings in the Federal Court relating to other matters.
4. The following tariff provisions should apply to matters before the Federal Court.

Application and Appeals to the Federal Court

- a) Leave to Appeal/Apply
 - i) The maximum preparation is 20 hours, subject to paragraph (c) below.
 - ii) For attendance on the leave application, a minimum of 1 hour is allowed.
- b) Appeal/Application
 - i) The maximum preparation is 20 hours, subject to paragraph (c) below.
 - ii) For attendance on the appeal, a minimum of 1 hour is allowed.
- c) Leave to Appeal/Apply and Appeal/Application
 - i) The total preparation allowed is 30 hours.
- d) Extension of Time of File Notice of Motion for Leave or to File Memorandum and Affidavits in Support of Leave Application.
 - i) The maximum for preparation is 10 hours.
- e) Application to Stay Deportation
 - i) The maximum for preparation is 10 hours.
5. A provision should be added to the tariff to address detention reviews. Review of an individual's detention is held before an adjudicator within 48 hours of an individual's detention and thereafter every 7 days. The following tariff provisions should apply:

Detention Reviews

- a) Preparation
 - i) The maximum for preparation for the initial detention review is 5 hours.
 - ii) The maximum for preparation for subsequent detention reviews is 2 hours.
- b) Attendance
 - i) Paid hourly for actual time spent including waiting time.

- 6. A tariff provision should be added to address application for humanitarian and compassionate consideration.

Applications for Humanitarian and Compassionate Consideration

- a) The maximum for preparation is 10 hours.

- 7. The following provision should apply to travel time in the immigration tariff.

Travel Time

- a) Fee
 - i) Travel is paid at the hourly rate of \$43 plus experience increase.
 - ii) Travel will be allowed when a solicitor travels more than 10 km. one way from his or her office for an appearance as a counsel at a tribunal, hearing or adjournment or to interview a client or witness where necessary.

- 8. The scale of fees allowed by the tariff for law clerks should be reviewed. The sub-committee was of the view that the Legal Aid Plan should increase the fees paid to law clerks, possibly through allowance for experience or by an increase in the hourly rate from \$23 to \$34. The sub-committee concluded that, if an increase in the hourly rate were matched with a similar change in the manner in which maximums were calculated for law clerk hours, the cost to the Plan likely would be neutral or could result in savings.
- 9. Block fees should not be introduced into the immigration tariff provisions.
- 10. A small working group of immigration lawyers and representatives of the Plan should be constituted to assist in developing policy in matters regarding immigration disbursements.
- 11. The statutory deduction should not be raised from 5% to 10% in immigration matters.

B.

ADMINISTRATION

1.(a) FRENCH TRANSLATION OF REGULATION 59/86

The Legal Aid Committee approved the French translation of Regulation 59/86 made under the Legal Aid Act.

10th July, 1992

(b) 1992/93 STATISTICS RE. FORECASTING

The Report concerning the 1992/93 Statistics re. Forecasting outlining the percentage increase of certificates issued over the previous year is attached hereto as SCHEDULE (B).

(c) AREA COMMITTEES - APPOINTMENTS & RESIGNATIONS

APPOINTMENTS

FRONTENAC

Susan W. Miklas, solicitor

SIMCOE

June Bell, solicitor

John Rogers, solicitor

WATERLOO

Robert W. Young, solicitor

YORK COUNTY

Roselyn Zisman, solicitor

Sharon Grosman, chartered accountant

Barbara Thurston, solicitor

William Bassel, solicitor

Irving Kumer, solicitor

Carol Catell, owner/operator Paralegal Associates

Juanita Wislesky, solicitor

Archibald McGugan, teacher

Stephen Hebscher, solicitor

Daniel Brodsky, solicitor

Ann Marie Hart, solicitor

Ella Bernard, solicitor

Richard Press, law student

Catherine Bruce, law student

RESIGNATIONS

ALGOMA

W. Larry Whalen

FRONTENAC

D. Forbes

P. Ryan

10th July, 1992

YORK COUNTY

Eric Hood
Peter Morden
Gary Segal
David Medland
Stephen Ireland
Hyla Wallace
Adrian Hill
Richard Vanderkooy
J. David McCombs
Elliot Posen

ALL OF WHICH is respectfully submitted

"F. Kiteley"
Chair

June 26, 1992

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

- A-Item 1 - Separate copy of bound Report entitled Tariff on the Tariff Recommendations of the Legal Aid Committee of the Law Society of Upper Canada, June 1922. (Also copy of The Dissent to the Report of the Criminal Law Tariff Review Sub-Committee, June 1992 by Clay Ruby. (Schedule (A))
- B-Item 1(b) Report of 1992/93 Statistics re. Forecasting. (Schedule (B))

It was moved by Ms. Kiteley, seconded by Ms. Curtis that the Reports of the Legal Aid Committee of its meetings on May 14th and June 11th, 1992 be adopted.

Carried

Convocation dealt briefly with the question of a response to the two letters from the Attorney General's office as a result of the Tariff Recommendations.

It was moved by Mr. Strosberg, seconded by Mr. Lamek that the Treasurer be authorized to determine from the Attorney General further specifics of the proposals outlined in the Ministry's letter dated June 23rd, 1992 and the speech of June 9th, 1992 and that the Treasurer make it clear that the Law Society strongly endorses the present judicare system.

Carried

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REASONS

The Reasons prepared by Joan Lax, Neil Finkelstein and Netty Graham in respect of the Karla Kathleen Gower discipline matter which was heard by Convocation on April 23rd, 1992 were filed.

IN THE MATTER OF THE LAW SOCIETY ACT
R.S.O. 1990, C. L.8

AND IN THE MATTER OF KARLA KATHLEEN GOWER,
OF THE CITY OF TORONTO, BARRISTER AND SOLICITOR

Appearances: B. Bellmore for the Solicitor
 G. MacKenzie for the Law Society

REASONS FOR DECISION OF CONVOCATION

INTRODUCTION

Karla Kathleen Gower ("Ms. Gower") is 34 years old, single and was born, raised and educated in Meaford, Ontario, a small town in the Georgian Bay area. Prior to the misconduct which gave rise to these proceedings, she led an exemplary, if sheltered life, centred around her family, her friends and her community. She excelled academically and grew up with many friends, both male and female. She is described by those who know her as "kind, cheerful, quiet mannered"; "a caring, friendly and trusting person"; and, "bright and hard-working".

Following her attendance at university and her graduation from law school, Ms. Gower was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on April 10, 1984. She practised first as an employee of Angela Costigan in Toronto until August, 1990 and then as a sole practitioner. As of September 30, 1991, she had completed the winding down of her practice and has not practised law since that time. She has no prior disciplinary record.

In September 1987, Ms. Gower, who was then 30 years old, met Robert Krueger. Their meeting and subsequent relationship had disastrous consequences for her which ultimately led to the very serious professional misconduct in which she engaged. At the time of their meeting, Ms. Gower was inexperienced and naive. She had never had a serious and intimate relationship with a man. Krueger was a 29 year old real estate agent who was "street smart" and had been a professional boxer. He was a "hustler". They met at a health club and began dating. Several months later, they were living together in Ms. Gower's apartment and she assumed responsibility for his living and business expenses. Although the period of their co-habitation was brief, they continued both an intimate and social relationship for the next three and one half years. The relationship continued even after Ms. Gower learned in the summer of 1988 that Krueger had resumed a relationship with a previous girlfriend. Their intimate relationship ended in January, 1990. Shortly thereafter, Krueger disappeared. It was during the period of their relationship that the events giving rise to all but one of the allegations of professional misconduct arose.

THE PROFESSIONAL MISCONDUCT

There are three incidents of professional misconduct, each concerned with a real estate transaction, in which Robert Krueger was directly involved. The fourth incident of misconduct concerns a personal injury claim and did not involve Mr. Krueger directly. All of the real estate transactions were structured so as to result in a financial benefit to Krueger. In two of the transactions, Ms. Gower facilitated this by making false representations which permitted Krueger to obtain inflated mortgage financing. In the third transaction, Ms. Gower acted for both the vendor, an elderly man of doubtful mental competence, and the purchaser who was Krueger. The misconduct arising from these three transactions occurred between September, 1988 and June, 1989. The fourth incident of misconduct, ("Diener"), did not involve Krueger and occurred over an eighteen month period subsequent to the termination of their relationship.

10th July, 1992

Ms. Gower was retained by Giselle Diener in September, 1989 to act on her behalf in recovering damages for injuries sustained in a motor vehicle accident which occurred on January 12, 1988. Although the retainer arose in September, 1989, Ms. Gower did not actually receive the file from Ms. Diener's previous solicitor until January, 1990. She reviewed the file at the end of that month, but by this time, the limitation period had expired. Instead of reporting to her insurer and informing her client, Ms. Gower engaged in a deceptive and dishonest course of conduct which was intended to have her client believe that the action was progressing to trial when in fact no action had been commenced. The deceptions included: (1) providing the client with copies of a fictitious statement of claim and falsified affidavit of service; (2) informing the client that examinations for discovery had been scheduled when they had not been scheduled; (3) informing the client that a date had been set for trial when no date had been set; and (4) forwarding a letter to the client which purported to be an offer of settlement from the law firm representing the defendant's insurer. The letter was prepared on letterhead and signed by a Mr. Ron Hammond of Madigan & Associates at 100 Richmond Street West, Toronto. The lawyer, the law firm and the settlement offer were entirely fictitious.

THE PROCEEDINGS BEFORE THE DISCIPLINE COMMITTEE

The complaints of misconduct were heard in the first instance by a committee of Convocation ("the Discipline Committee") comprised of Robert J. Carter, Q.C., Chair, David W. Scott, Q.C. and Mrs. L. Nora Angeles Richardson. The misconduct was admitted and found to have been established. The hearing proceeded on the basis of an agreed statement of fact, psychiatric which were filed, and the viva voce evidence of Ms. Gower. The sole purpose of the hearing was to determine the appropriate penalty for the misconduct.

Counsel for the Society submitted that the case warranted the termination of the solicitor's membership. He took no position as to whether this ought to be accomplished by an order for disbarment or by permitting her to resign. Counsel for Ms. Gower urged the Discipline Committee to recommend the latter and less severe penalty. The Discipline Committee noted that Ms. Gower had received no financial benefit from the transactions and was satisfied that her conduct was as a result of the influence of Krueger and as a result of her mental and emotional condition. It concluded that the end of justice would be served by permitting her to resign and so recommended to Convocation.

THE PROCEEDINGS BEFORE CONVOCATION

The Report and Decision of the Discipline Committee and its recommendation as to penalty was first before Convocation on March 26, 1992. Ms. Gower appeared with her counsel. Following submissions, Convocation retired to deliberate the question of penalty. During the deliberations, a motion for disbarment was put by a member of the bench. In accordance with the practice of Convocation, no vote was taken on the motion, the solicitor was advised of the motion and an adjournment of the matter was granted. It was agreed that the members of the bench who had heard the matter on March 26, 1992 were not seized.

On April 23, 1992, the solicitor attended a second time before Convocation, accompanied by counsel. Convocation received the Report of the Discipline Committee, heard submissions from counsel for the solicitor and from counsel for the Society. It also heard evidence viva voce from Dr. Beatrice M. Boracchia, a qualified medical doctor and the solicitor's psychiatrist, and received character evidence in letter form.

Counsel for the Society renewed the submissions which he had made before the Discipline Committee and at the previous Convocation. Although the thrust of the submissions made by Mr. Bellmore was to urge Convocation to permit her to resign he invited Convocation to consider a lesser penalty. In the result, Convocation declined to accept the recommendation of the Discipline Committee. Instead, it imposed a penalty of a one year suspension from April 23, 1992, and thereafter, until such time as the solicitor is certified, by a psychiatrist acceptable to both the Law Society and to the solicitor, as capable of resuming the practice of law.

THE PSYCHIATRIC AND CHARACTER EVIDENCE

The psychiatric evidence was in the form of both written reports and the viva voce testimony of Dr. Boracchia who appeared before Convocation on April 23, 1992. Ms. Gower was referred to Dr. Boracchia by her family physician. When first seen by her on June 20, 1992, she was severely depressed, borderline psychotic. In the opinion of Dr. Boracchia, she had been in this state for at least the previous ten months. Dr. Boracchia considered hospitalizing her. Instead, she was treated with intensive psychotherapy and a regime of anti-psychotic and anti-depressant medication over the next eight months.

The psychiatric evidence had several weaknesses. First, Ms. Gower was first seen by Dr. Boracchia some eighteen months after the termination of her relationship with Krueger. It is therefore difficult for Dr. Boracchia to express an opinion based on her observations of her patient during the period in which the misconduct involving the real estate transactions occurred. Second, Dr. Boracchia wrote on August 12, 1991 that Ms. Gower was "practising law in an ethical way" and "that she is a good individual who has clear discernment of right and wrong". At that time, Ms. Gower was persisting in her deception of her client, Ms. Diener. Indeed, the fictitious letter from Ron Hammond of Madigan & Associates setting out the terms of the "settlement offer" is dated August 30, 1991.

In his submissions, counsel for the Society pointed out that even if Convocation were to accept that Ms. Gower's conduct in the real estate transactions was as a result of clouded judgment arising from her relationship with Krueger, the same could not be said for her dealings with Ms. Diener. He pointed out that this conduct had arisen during an eighteen month period subsequent to the termination of her relationship with Krueger and could not be explained by clouded judgment. Convocation was invited to find that Ms. Gower had committed deliberate acts of dishonesty which warranted the termination of her membership.

Although Mr. MacKenzie's argument was persuasive, accepting it required Convocation to conclude that Ms. Gower was a dishonest, manipulative and deceptive person and to reject the psychiatric evidence. That evidence established a casual connection between Ms. Gower's behaviour and her psychiatric illness and is supported by the character evidence.

In an unsolicited letter to benchers, a former classmate and former Discipline Counsel with the Law Society wrote:

"to say that I was shocked after learning of Karla's discipline hearing would be a gross understatement. If there were five people in my law school and Bar Ad classes least likely to commit a dishonest act, Karla was one of them. Karla's actions are totally out of character with the person I know.... Her character is at the polar extreme to that of a person who is calculating, malicious and manipulative. If she has a fault it would be that she may be susceptible to be manipulated by someone who garnered her trust."

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Others who wrote on her behalf including members of her community, friends of long-standing, employers and co-employees, offered similar testimonials.

Although the Discipline Committee, which had the opportunity to hear evidence from Ms. Gower did not in its Report express an opinion on her character, its recommendation and reasons are consistent with Dr. Boracchia's opinion and with the letters attesting to Ms. Gower's good character.

In her evidence, Dr. Boracchia emphasized two points. First, that the grievous psychological injury to Ms. Gower would require a lengthy period of recovery. It therefore did not surprise her that Ms. Gower was engaged in a deceptive scheme to cover up the missed limitation period even after the termination of the relationship with Krueger. Indeed, her opinion was that Ms. Gower was unable to function and near psychotic from at least September 1990, and perhaps from an earlier time. Second, that at her core, Ms. Gower was a person of good moral character. Although Dr. Boracchia's evidence was at times incomplete, at times inconsistent, and at times, inaccurate, Convocation can only act on the basis of the evidence which is presented to it. Whatever its frailties, the uncontradicted evidence of Dr. Boracchia was that Ms. Gower's terror of losing her relationship with Krueger so disrupted her emotional well-being, that she lost the ability to exercise independent and reasoned judgment.

Ms. Gower's deception of Ms. Diener is inexplicable, unless one concludes either that Ms. Gower is calculating, dishonest and manipulative or that her ability to exercise sound and reasoned judgment was seriously impaired. The first deception of Ms. Diener arose in January, 1990 in the aftermath of her relationship with Krueger and his subsequent disappearance. It culminated some eighteen months later with the fictitious letter from Madigan & Associates. A person behaving rationally would have realized that this kind of deception would inevitably be revealed. The "settlement offer" in the amount of \$102,500.00 could never have been implemented. Although this kind of conduct is consistent with conduct which might be engaged in by a manipulative and calculating lawyer, it is equally consistent with that of a person acting with distorted judgment and diminished capacity. The weight of the evidence supports the latter view and Convocation finds this to be the more plausible explanation for Ms. Gower's behaviour.

THE PENALTY

In assessing penalty, Convocation must first have regard to the seriousness of the conduct. This should be measured against the purpose of the discipline process. Discipline proceedings are not intended to exact retribution, but are principally designed to protect the public from further harm. In view of this, like cases may not necessarily attract similar penalties and mitigating circumstances may be taken into account in arriving at a penalty which is relevant to recurrence. Nevertheless, there may be cases where the conduct is so grievous that mitigating factors are accorded little or no weight. For example, disbarment has inevitably been the result of cases involving fraud or theft to ensure that any risk of recurrence is entirely eliminated. (see G. MacKenzie, Law Society Discipline Proceedings, March 16, 1992, unpublished.) There may well be other kinds of cases which have not normally attracted the penalty of disbarment in which the conduct is so reprehensible that the ultimate penalty of disbarment ought to be imposed.

There can be little doubt that the professional misconduct in this case is serious. Although this is not a case of misappropriation, it is arguable that lawyers who engage in dishonest and deceptive conduct should prima facie be subject to the Society's most severe penalty, even where the risk of recurrence is remote. Such a penalty would send a clear message to the public and to the profession that such conduct is not to be tolerated in a profession which is obliged to maintain the highest ethical standards. If there should be a

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presumption of disbarment in cases of flagrant dishonesty and deception, there should also be the opportunity to displace the presumption with appropriate evidence. Factors which have frequently been weighed in assessing the seriousness of a solicitor's misconduct include the extent of any injury, the solicitor's blameworthiness, and penalties which have been imposed previously for similar misconduct. (MacKenzie, G. Law Society Discipline Proceedings, supra). The evidence in this case should be examined against these factors in order to arrive at an appropriate penalty.

The first factor to be considered is the extent of the injury. Who was harmed by the misconduct? In two of the real estate transactions ("King Township" and "Byng Road"), it is clear that there was no financial loss to third parties as a result of Ms. Gower's dishonesty. The third transaction involving the property owned by Mr. Katz on Queen Street raises different concerns and it is therefore desirable to summarize the evidence in greater detail.

Mr. Katz was a man of doubtful mental competence. He was befriended by Krueger and agreed to sell the Queen Street property to him for less than one-third of its value. Shortly after the agreement of purchase and sale was signed, Mr. Katz was certified incompetent by a physician. However, the physician's opinion was qualified by a statement that Mr. Katz, although suffering from cognitive impairment, retained sufficient capacity to dispose of assets by gift to a named charity. The property in question was vacant, derelict, subject to vandalism, and required a considerable sum of money to be rentable. It also had twenty outstanding work orders. Mr. Katz did not wish to put any more money into the property. The agreement for the sale of the property was made between Katz and Krueger, independently of Ms. Gower. In May, 1989, Ms. Gower interviewed Katz alone at length and was satisfied that he understood the transaction. She advised Katz to obtain independent legal advice which he declined. Katz and Krueger acknowledged in writing the solicitor's conflict of interest in acting for both of them. As in the other transaction, Ms. Gower received no financial benefit, although Krueger did. The evidence is ambiguous as to Katz's motivation in conveying the property to Krueger and the extent, if any, of his loss.

Turning finally to Ms. Gower's conduct in Diener, Convocation was made aware that Ms. Diener has brought an action for damages for negligence against Ms. Gower. It is reasonable for Convocation to conclude that Ms. Diener will ultimately be compensated for the losses she suffered as a result of Ms. Gower's misconduct in her case.

The second factor to be considered is the solicitor's blameworthiness. The psychiatric and character evidence reveal a capable and conscientious solicitor who had the misfortune of falling in love with an unscrupulous person who manipulated her and used her for his own personal gain. She cannot be held entirely accountable for her actions. They were influenced, directly or indirectly, by her misguided desire to maintain a regrettable relationship with an unsavoury man. She gained nothing from this relationship or indeed from her misconduct. She has suffered extreme embarrassment which was exacerbated when the very personal details of this case were reported in a series of articles in a major Toronto newspaper, including a front page story. Convocation does not excuse Ms. Gower's conduct. This is not a case of insanity. But, it is a case where matters passed out of the solicitor's control. Her blameworthiness must be viewed in the light of the psychiatric evidence which makes clear that there is a causal connection between her state of mind and her behaviour at the relevant times.

The third factor to be considered is the penalties which have been imposed previously for similar misconduct. Convocation was referred to the so-called "Oklahoma cases". These 1989 cases arose from the "Greymac affair", and are cases where solicitors assisted unscrupulous clients to realize substantially larger financial benefits than are at issue here. The most severe penalty imposed in these cases was a nine month suspension.

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In Dalrymple, a 1990 case, the solicitor was given permission to resign for conduct which was unquestionably more serious than the conduct of Ms. Gower. In that case, the Discipline Committee had recommended disbarment and found that there was not sufficient evidence to support a conclusion that the solicitor's actions were caused by a psychiatric condition.

In Rovet, a 1992 decision, Convocation imposed a one year suspension in circumstances where the solicitor had no prior disciplinary record, was of good character, but had stolen money from his partners and had engaged in a scheme of deception to mislead an administrative tribunal. In that case, no psychiatric or other evidence was offered to explain the misconduct. In the opinion of Convocation, the misconduct of Ms. Gower, serious as it was, falls short of the misconduct described in the above cases.

In assessing the three factors together, Convocation is satisfied that this is not case which warrants the ultimate penalty of disbarment. Nor is it a case in which it is fitting or desirable to stigmatize this solicitor by permitting her to resign. Both these penalties are disproportionate to the seriousness of the conduct, when viewed in light of all the evidence.

Convocation concludes that the objects of the discipline process will be met by a suspension of one year and a continuing suspension thereafter. That is not to say that Convocation condones the conduct of the solicitor or that disbarment or permission to resign would not be the appropriate penalty in a subsequent case of egregious dishonesty. However, for all the above reasons, we believe that the penalty which we have imposed is the appropriate penalty in this case.

June 11, 1992

J. L. Lax

N. Finkelstein

N. Graham

.....

SPECIAL COMMITTEE ON COURT REFORM

It was moved by Ms. Kiteley, seconded by Mr. McKinnon that the Special Committee on Court Reform be deferred to the September Convocation.

Carried

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PROFESSIONAL CONDUCT COMMITTEE

Mr. Somerville presented the Reports of the Professional Conduct Committee of its meetings on May 14th and June 11th, 1992.

Meeting of May 14th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992 at three o'clock in the afternoon, the following members being present: Messrs. Somerville (Chair), Cullity, Finkelstein and Spence.

A.
POLICY

1. LAW SOCIETY'S RESPONSES TO THE
DRAFT CONSUMER AND BUSINESS PRACTICES
CODE - DO THEY CONSTITUTE AN ADEQUATE
RESPONSE TO THIS LEGISLATION?

The Treasurer asked the Professional Conduct Committee to review the submissions that have been sent to Judith Wolfson, the Deputy Minister of Consumer and Commercial Relations concerning the draft Consumer and Business Practices Code.

Under the proposals in the Ministry's consultation draft, the provision of legal services (other than legal services where the client has retained the lawyer "for business purposes") would be subject to the provisions of the Consumer and Business Practices Code. For purposes of the Code, lawyers would be "suppliers", clients would be "consumers", and a retainer would be a "consumer agreement". It appears that among the consequences of making the Code apply to legal services could be the following:

- retainers would have to be in writing;
- retainers would have to state the fee or the method of calculating the fee;
- retainers would have to specify a date by which the services will be performed or indicate that no estimate of time can be given;
- failure to perform services within three weeks of the date specified would entitle the client to cancel the retainer and receive a refund of any deposit paid;
- where no time is specified, the client would have greater rights to cancel the retainer;
- a wide range of practices (constituting professional misconduct for lawyers) would constitute "unfair practices" under the Code, entitling the client to remedies and making the lawyer liable for commission of an offence;
- clients would be given expanded rights of action against lawyers;
- in particular, clients would have greater rights to cancel retainers and to receive a refund of all moneys paid on deposit.

The Treasurer in responding to Ms. Wolfson pointed out that the standard of service prescribed by the Code was very basic and that our Rules of Professional Conduct required a much more rigorous and detailed standard of service. Hence it would "appear unnecessary to make lawyers subject to a code which imposes a lesser standard". He went on to describe the Law Society's commitment to investigating consumer complaints and where appropriate prosecuting lawyers in breach of the Rules. The Treasurer noted the new procedure to address unsatisfactory professional service and the use of telephone mediation to resolve disputes. Attention was also drawn to the significant role of consumer protection in both the errors and omissions insurance policy and in the fund for client compensation.

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In response to the Treasurer's letter, the Ministry asked for further details of the recommendations of the Special Committee on Complaints Procedures and the Society's errors and omissions insurance scheme. Details were sent in a letter dated April 16th, 1992 (numbered 13 - 17), pointing out the variety of ways in which the interests of clients will be further protected by the implementation of the recommendations of the Special Committee on Complaints Procedures. Emphasis was laid upon the introduction of the concept of "Unsatisfactory Professional Practice", the creation of the office of Complaints Resolution Commissioner, and the scheme for speedy compensation of minor negligence claims. Statistics were also sent, demonstrating the very high rate of settlement of insurance claims under \$5,000.

The thrust of the Law Society's position is that there are sufficient safeguards in place now for the consumer of legal services that make it unnecessary for the Code to apply to these services. Is this response as set out in the two letters from the Law Society adequate? The following materials are enclosed:

- (a) Ms. Wolfson's letter to the Secretary dated January 28th 1992; (numbered 1 - 3)
- (b) the Treasurer's response to Ms. Wolfson of February 13th 1992; (numbered 4 - 12)
- (c) the Secretary's follow-up letter of April 16th to Ms. Wolfson (please noted that the reports of the various Committees referred to on page 1 of the letter are not appended). (numbered 13 - 17)

The Committee agrees with the submissions that have been made to date but is of the opinion that the next response should state unequivocally that the draft Code is unnecessary because the Law Society is a self-governing profession and has in place the appropriate mechanisms to address the concerns of the consumers of legal services.

The Committee is reporting this item to Convocation because of the potential consequences were the Business Practices Code to include legal services.

The Committee asks Convocation to adopt its position.

2. REQUEST FOR ADVICE - LAW FIRM WISHES TO
MAKE ITS SERVICES KNOWN TO A CONSULTING
COMPANY WHICH IN TURN WOULD DISSEMINATE
THE AVAILABILITY OF ITS SERVICES TO THIRD PARTIES

A law firm has a proposal for the Committee's consideration. It involves making known to third parties through the vehicle of a consulting company the range of its legal services. Set out below is the letter from the law firm:

Further to our telephone conversation, I am writing to outline the proposed program that we would like to participate in.

10th July, 1992

Virtual Corporation is a company that we have done some work with. This company proposes to provide consultants with a variety of services that because they are on their own they would not otherwise be able to obtain. These would include reduced telephone rates, purchasing power in relation to computer hardware, software, telephones, fax machines etc. In addition they are negotiating on behalf of their customer base for an affinity card with one of the banks or trust companies and reduced insurance rates with various insurers. One of the other services that they wish to provide is access to legal education seminars and law firms which provide an expertise in contract law, employment law etc.

We would agree to provide seminars to their client base and in turn our firm, amongst others, would receive recognition with their customer base as a supplier of seminars to the group and our expertise in various areas of the law would be brought to the attention of their customers. There would be no requirement that their clients use our firm nor would there be any preferential treatment in relation to fees with their customers.

As I indicated to you, Virtual Corporation has received a proposal from X & Y to provide this kind of service and we likewise would like to be able to make a proposal to them, but with the assurance that this would not offend any of the Law Society's rules.

The Committee is of the opinion that the proposal is legitimately informational. Moreover, it is not exclusive to one law firm.

The Committee asks Convocation to adopt this position.

C.
INFORMATION

1. CIBC MORTGAGE PACKAGE/CIBC HOME
PURCHASE PACKAGE - OPINION OF COUNSEL

The Committee discussed the opinion of counsel. The issue needs further consideration. The Society's Insurance Committee is to be consulted. A further report will be made to Convocation in June.

2. PROFESSIONAL CONDUCT OPINIONS - DOES
THE COMMITTEE BELIEVE THEY ARE IN
ADEQUATE FORM SO THAT INTERESTED MEMBERS
OF THE PROFESSION MAY OBTAIN COPIES?

The Committee deferred consideration of this question. Every member of Convocation will receive a copy of the Opinions and be invited to make submissions before the Committee as a whole discusses it.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"M. Somerville"
Chair

10th July, 1992

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

- A-Item 1 - Letter from Ms. Judith Wolfson, Deputy Minister to Mr. Richard Tinsley dated January 28, 1992 together with Appendix 1 - Unfair practices and warranty provisions: Applicability to professional services. Letter from Mr. James Spence, Treasurer to Ms. Judith Wolfson, Deputy Minister dated February 13, 1992 together with Appendix A attached. Letter from Mr. Richard Tinsley to Ms. Judith Wolfson, Deputy Minister dated April 16, 1992 re: Consumer and Business Practices Code with a Report on the Errors and Omissions Insurance Statistics with respect to claims valued at \$5,000 or less - July 1, 1989 to January 1, 1992. (pages 1 - 11)

THE REPORT WAS ADOPTED

Meeting of June 11th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of June, 1992 at three o'clock in the afternoon, the following members being present: Campbell (in the Chair), Cullity, Elliott and Mohideen.

A.
POLICY

1. SEPARATE RULE OF PROFESSIONAL CONDUCT
TO ADDRESS SEXUAL HARASSMENT

The Committee discussed a draft Rule sent to it by the Committee on Women in the Legal Profession and concluded that a separate Rule of Professional Conduct was in order. Some of the terms used in the basic sexual harassment policy adopted by Convocation in January 1992 are to be found in the Rule. Convocation decided in March 1991 that the existing Rules of Professional Conduct should be amended to address the issue of sexual harassment.

Sexual Harassment

Rule 27

Sexual harassment of a colleague, of staff, of clients, or of other persons, in a professional context, is professional misconduct.

COMMENTARY

1. Sexual harassment is defined as one or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature

- (i) when such conduct might reasonably be expected to cause insecurity, discomfort, offence or humiliation to another person or group; or

- (ii) when submission to such conduct is made implicitly or explicitly a condition for the provision of professional services; or
- (iii) when submission to such conduct is made implicitly or explicitly a condition of employment; or
- (iv) when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, matters of promotion, raise in salary, job security and benefits affecting the employee); or
- (v) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile or offensive work environment.

2. Types of behaviour which constitute sexual harassment include, but are not limited to:

- sexist jokes causing embarrassment or offence, told or carried out after the joker has been advised that they are embarrassing or offensive, or that are by their nature clearly embarrassing or offensive
- leering
- the display of sexually offensive material
- sexually degrading words used to describe a person
- derogatory or degrading remarks directed towards members of one sex or one sexual orientation
- sexually suggestive or obscene comments or gestures
- unwelcome inquiries or comments about a person's sex life
- unwelcome sexual flirtations, advances, propositions
- persistent unwanted contact or attention after the end of a consensual relationship
- requests for sexual favours
- unwanted touching
- verbal abuse or threats
- sexual assault.

3. Sexual harassment can occur in the form of behaviour by men towards women, between men, between women or by women towards men.

The Committee asks Convocation to adopt this Rule.

10th July, 1992

2. CIBC MORTGAGE PACKAGE/CIBC HOME
PURCHASE PACKAGE - OPINION OF COUNSEL

The Law Society retained John Nelligan, Q.C. of Ottawa to review the CIBC Mortgage Package and the CIBC Home Purchase Package.

Mr. Nelligan has submitted his opinion. This opinion is attached (numbered 1 - 3).

The matter was discussed at the May meeting and put over for further discussion at the June meeting.

The Committee agrees with the conclusion reached by its counsel and asks Convocation to adopt its position.

In addition, the Committee recommends to Convocation that a summary of Mr. Nelligan's opinion be published in the Proceedings of Convocation.

Note: see Motion, page 179

C.
INFORMATION

1. ERS AND DEPARTMENTS OF
NATIONAL DEFENCE

Some practitioners have expressed concern with the role played by ERS (a company involved in employee relocation) which has been hired by the Department of National Defence to assist employees who are being transferred and relocated across Canada.

Mr. Nelligan has given an opinion on this operation.

The Committee wishes to obtain more information before reaching a conclusion. Some concern was expressed about whether the level of service required would meet the requirements provided for in Rule 2 of the Rules of Professional Conduct.

A decision on this matter will be made at a future meeting of the Professional Conduct Committee.

2. SUB-COMMITTEE ON MARTIN V. GRAY CASE
(CONFLICTS OF INTEREST)

The Professional Conduct sub-committee on the Martin v. Gray case chaired by Colin Campbell has deferred reaching a conclusion until the Federation of Law Societies' Special Committee has reached a conclusion.

The Special Committee held its first meeting on May 15th in Montreal which was attended by Mr. Campbell and the Committee's Secretary. A second meeting is scheduled for June 22nd and it is expected that a consensus may emerge from that meeting.

Mr. Campbell will be presenting a brief report to update Convocation on June 26th.

10th July, 1992

3. LETTER FROM THE TREASURER TO THE
PROFESSION ON CONFLICTS OF INTEREST AND
THE NEED TO REVISE THE EXISTING RULE 5

A letter from the Treasurer was sent out to every lawyer in Ontario in late May inviting responses to a number of suggestions concerning the adequacy of Rule 5. A copy of the Treasurer's letter is attached (numbered 4 - 18). To date close to 50 responses have been received and it is anticipated that there will be many more. These will be synopsisized and a special meeting of the Professional Conduct Committee devoted exclusively to the issues raised will be arranged sometime over the summer.

4. SUB-COMMITTEE ON RULE 13, PARAGRAPH
1 OF THE COMMENTARY (REPORTING
WRONGDOING TO THE PROFESSION)

The sub-committee studying the vexing issue of when a lawyer must report a fellow lawyer to the Law Society as opposed to the situation where the lawyer has a discretion whether to make a report, invited submissions from the profession. To date only 22 responses have been received. Given the importance of this issue and the need to proceed carefully before reaching a definitive conclusion, a broader sampling of the views of the profession should be obtained.

5. SPECIAL COMMITTEE TO REVIEW THE
RULES OF PROFESSIONAL CONDUCT

This committee under the chairmanship of Colin Campbell has yet to be constituted. The work being done on Rule 5 and the Martin v. Gray case will serve as a useful introduction to this exercise because of their critical importance. It is expected that the beginning of this undertaking will occur in the fall.

6. POSSIBLE RULE OF ETHICS THAT WOULD
ADDRESS THE PROBLEMS FACING A LAWYER
WHEN THE CLIENT'S CAPACITY IS IN QUESTION

The Canadian Bar Association - Ontario has a committee chaired by Bruce MacDougall that is looking at the capacity issue. This committee has drafted a Rule of Conduct (based on an American Bar Association rule) that it would like to see implemented.

Mr. MacDougall has written the President of the Canadian Bar Association. Attached is a copy of the letter to the President and the draft rule (numbered 19 - 21).

No action by the Law Society is required at this time.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"M. Somerville"

Chair

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

- A-Item 2 - Opinion from Mr. John Nelligan, Nelligan, Power to the attention of Mr. Stephen E. Traviss, Senior Counsel, Professional Conduct dated May 1, 1992 re: Law Society re: CIBC Mortgage Package/CIBC House Purchase Package. (pages 1 - 3)
- C-Item 3 - Letter from Mr. James Spence, Treasurer to all members in Ontario dated May 11, 1992 re: Conflicts of Interest and the need to revise the existing Rule 5. (pages 4 - 18)
- C-Item 6 - Letter from Mr. D. Bruce MacDougall, Chair, Representation Committee to Mr. J.J. Camp, President, Canadian Bar Association dated April 1, 1992 re: Rule of Representation together with copy of the Draft Rule of Ethics. (pages 19 - 21)

Mr. Somerville asked that Item 2 under Policy re: CIBC Mortgage Package, be deferred.

It was moved by Mr. Lamont, seconded by Mr. Murphy that Item 2 be put over for further review until September.

Carried

It was moved by Ms. Elliott, seconded by Ms. Bellamy that the position put forward by Mr. Nelligan in Item 2 be adopted.

Not Put

THE REPORT WITH THE EXCEPTION OF A-ITEM 2 WAS ADOPTED

.....

MATTERS RAISED BY THE DEFENCE COUNSEL ASSOCIATION OF OTTAWA IN RELATION TO THE UNIVERSITY OF OTTAWA STUDENT LEGAL AID SOCIETY BY THE SPECIAL COMMITTEE APPOINTED BY THE TREASURER IN CONVOCATION ON OCTOBER 12, 1990.

Mr. Bastedo presented the two Reports dated November 6th, 1991 and June 26th, 1992.

(see Report in Convocation file)

It was moved by Mr. Lamek, seconded by Mr. McKinnon that the Reports be received and forwarded to the interested parties in Ottawa and the Reports be referred to the Professional Conduct Committee for further consideration and to report back to Convocation following the September retreat on the question of whether the profession should receive further direction.

Carried

It was moved by Ms. Peters but failed for want of a seconder that the Somerville Report be adopted.

THE REPORTS WERE RECEIVED

.....

LEGISLATION AND RULES COMMITTEE

Mr. Cullity presented two Reports of the Legislation and Rules Committee of their meetings on June 11th and July 10th, 1992.

10th July, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of June, 1992, at 2:30 p.m. the following members being present:

M. Cullity (Chair), S. Elliott (Vice-Chair), R. Cass and S. Lerner; P. Bell also attended.

A.
POLICY

No items

B.
ADMINISTRATION

1. INCORPORATION OF LAW PRACTICES

It was reported that Convocation on May 29th, 1992 adopted the Report of the Special Committee on Incorporation of Law Practices. The report contains draft amendments to Regulation 573 and several matters (including a Review of the Rules) that will be referred to Standing Committees for consideration and recommendations. After discussing the Report, the Committee decided to recommend to Convocation that the amendments to Regulation 573 that appear on Schedule "A" be approved to implement the recommendations of the Special Committee on the incorporation of law practices.

2. AMENDMENT OF SECTION 36 OF THE LAW SOCIETY ACT

Convocation on June 21st, 1991 adopted a Report of the Finance Committee changing the grace period for paying of annual fees from four months to thirty days. This Committee drafted the amendment and Convocation adopted the report on September 27th, 1991. The amendment was then sent to Queen's Park to be enacted.

Convocation on May 29th, 1992, adopted a Report of the Finance Committee changing the grace period in Section 36 of the Law Society Act to two months.

IT IS RECOMMENDED that Section 36 be amended to read as follows:-

36. If a member fails to pay any fee or levy payable to the Society within two months after the day on which payment is due, Convocation may by order suspend the person's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances. R.S.O. 1990, c. L.8, s. 36.

10th July, 1992

3. AMENDMENT TO SECTION 50(1) OF THE LAW SOCIETY ACT

By an amendment to Section 50(1) of the Law Society Act in November 1991 concerning temporary members the wording was edited at Queen's Park by removing reference to the word "itself" referring to corporations. The Committee decided to add the words "or law corporation" after the word member and to add the words "or itself" after the word herself.

IT IS RECOMMENDED that Section 50(1) of the Law Society Act be amended to read as follows:-

50.-(1) Except where otherwise provided by law,

- (a) no person, other than a member or law corporation whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold himself or herself or itself out as or represent himself or herself or itself to be a barrister or solicitor or practise as a barrister or solicitor; and
- (b) no temporary member shall act as a barrister or solicitor or practise as a barrister or solicitor except to the extent permitted by subsection 28a(3).

4. DEPARTMENT BUDGET

The Secretary of the Committee reported to the Committee on this matter on Meeting Day.

C.
INFORMATION

No items

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"M. Cullity"
Chair

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

- B-Item 1 - Copy of "Schedule "A" - Specific Recommendations for amendments to Regulation 573. (Attachments A - A-7)
- B-Item 1 - Copy of "Schedule "B" - Special Committee on the Incorporation of Law Practices, Report as amended and adopted by Convocation May 29, 1992. (Attachments B - B-8)

10th July, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Friday, the 10th of July, 1992, at 9:00 a.m. the following members being present:

M. Cullity (Chair), A. Lawrence and S. Thom; P. Bell also attended.

A.
POLICY

No items

B.
ADMINISTRATION

1. RULE 50

Convocation on May 29, 1992, adopted the Report of the Finance and Administration Committee that Rule 50 be amended so that the billing date for the annual fee would be July 1st, to coincide with the beginning of the fiscal year. The annual fees of members would be due on August 1st, 1992, rather than October 1st as in previous years.

IT IS RECOMMENDED that Rule 50 be amended as follows:

ANNUAL

Unless otherwise exempted every member of the Society shall pay an annual fee, to include a Lawyers Fund for Client Compensation levy, for each financial year of the Society in an amount to be determined by Convocation. The annual fee shall be due and payable on the 1st day of August in each financial year or, if a member is admitted, readmitted or restored to membership on a date subsequent to the 1st day of August, the annual fee is due and payable on the date on which the member is admitted, readmitted or restored. Student members who are admitted during the financial year in which they complete the Bar Admission Course are not required to pay the annual fee for the financial year in which they are called to the bar and admitted as a Solicitor.

10th July, 1992

C.
INFORMATION

No items

ALL OF WHICH is respectfully submitted

DATED this 10th day of July, 1992

"M. Cullity"
Chair

THE REPORTS WERE ADOPTED

.....

It was moved by Mr. Epstein, seconded by Mr. Brennan that the following Reports be taken as read.

Carried

CLINIC FUNDING COMMITTEE

Meetings of April 27th and May 21st, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Legal Aid begs leave to report:

CLINIC FUNDING

The Clinic Funding Committee submitted a report to the Director recommending funding for various projects.

The Director recommends to Convocation that the report of the Clinic Funding Committee dated May 22, 1992 be adopted.

Attached is a copy of the Clinic Funding Committee's report.

ALL OF WHICH is respectfully submitted

Robert L. Holden
Director
Legal Aid

May 22, 1992

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

10th July, 1992

The Clinic Funding Committee had a discussion via conference call on April 27, 1992, and met on May 21, 1992. Present were: Philip Epstein, Q.C., Chair, Joan Lax, Jim Frumau, Thea Herman and Pamela Giffin.

A. DECISIONS

1. Family Law Clinics

The Clinic Funding Committee discussed the possible establishment of family law clinics as pilot projects. The Committee decided to support the establishment of family law staff offices and is prepared to administer such offices on a pilot project basis.

2. Legal Disbursements 1992/93

Attached as Schedule A is the allocation of legal disbursement funds to community Legal clinics for 1992/93.

3. Additional Staff 1991/92

The Clinic Funding Committee reviewed the Initial Decision of the clinic funding staff with respect to additional staff. In accordance with its policies and procedures, the Committee also received requests for leave to appeal from nine clinics whose applications for additional staff were denied. After discussion, the Committee denied all requests for leave to appeal and recommends Convocation's approval for additional staff, as follows:

Advocacy Resource Centre for the Handicapped - 1 lawyer
Algoma Community Legal Clinic - 1 lawyer
Brampton Community Legal Services - 1 lawyer
Brant County Legal Services - 1/2 lawyer
Clinique juridique Grand Nord - 1 support staff
Community Legal Services of Niagara South - 1/2 support staff
Community Legal Services (Ottawa-Carleton) - 1 support staff
Georgina Community Legal Services - 1 lawyer
Injured Workers Consultants - 1 support staff
Jane Finch Community Legal Services - 1 CLW
Kensington-Bellwoods Community Legal Services - 1 support staff
Metro Tenants Legal Services - lawyer or 1 CLW
Metro Toronto Chinese & Southeast Asian Legal Clinic - 1 CLW
Northumberland Community Legal Centre - 1 lawyer
Rainy Rover District Community Legal Clinic - 1 lawyer

4. Capital Purchases

The Clinic Funding Committee approved the following capital purchases/renovations out of 1991/92 funds:

Kinna-aweya Legal Clinic - up to \$6,000 for renovations to Armstrong office

Parkdale Community Legal Services - up to \$1,000 for capital purchases

Keewaytinok Native Legal Services - up to \$5,000 for renovations to lawyer's premises

West End Legal Services - up to \$3,000 for dictating equipment, telephone extensions, filing cabinets and anti-glare screens.

10th July, 1992

5. Incorporation - Pay Equity Advocacy & Legal Services

Pursuant to the direction of Convocation, the Clinic Funding Committee has reviewed, as to name and objects, an application for incorporation from the above-named clinic. The Committee recommends Convocation's approval of this application.

6. Regulation 59/86

The Clinic Funding Committee reviewed and approved the French translation of Regulation 59/86 made under the Legal Aid Act. Part 3 of the Regulation, titled Clinic Funding Committee, governs the composition and function of the Clinic Funding Committee.

ALL OF WHICH is respectfully submitted

"P. Epstein"
Chair

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

A-Item 2 - Copy of the allocation of 1992/93 Legal Disbursements for the period
April 1992. (Schedule A (2 pages))

THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of May 14th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992 at 10:30 a.m., the following members were present: R.J. Carter (Chair), M. Hickey (Vice-Chair), R. Cass, N. Graham, D. Scott. Also in attendance were: A. John and J. West.

B.
ADMINISTRATION

1. COMPLAINTS/INVESTIGATIONS

Your Committee authorized two prosecutions and further investigation in four matters.

10th July, 1992

2. NEWSPAPER ADVERTISING

The Law Society was notified that some Toronto newspapers are accepting advertising from independent paralegals who are offering legal services in violation of S. 50 of the Law Society Act. This is contrary to an understanding reached between the Law Society of Upper Canada and major newspapers in 1990. Your Committee will seek to discuss the issue with publishers in and around the Metropolitan Toronto area.

C.
INFORMATION

Attached hereto is a list of current prosecutions.

ALL OF WHICH is respectfully submitted

DATED the 29th day of May, 1992

"P. Epstein"
for Chair

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

C - Copy of Current Prosecutions. (page 2)

THE REPORT WAS ADOPTED

COMMUNICATIONS COMMITTEE

Meeting of June 11th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of June, 1992, the following members were present: Colin McKinnon (Chair), Tom Bastedo, Fran Kiteley, Ross Murray, Julaine Palmer, Stuart Thom and Roger Yachetti. Also in attendance: Theresa Starkes, and Gemma Zecchini.

A.
POLICY

1. Revisions to Lawyer Referral Service Application Form

The Committee was asked to review the standard Lawyer Referral Service Application Form (A-1) to approve certain changes if considered appropriate. The recommended changes were:

10th July, 1992

Change #1:

From:

4. A member must accept as a client anyone referred by the Society requiring legal assistance in the branches of law indicated on this form.

To:

4. A member will accept as a client anyone referred by the Society requiring legal assistance in the branches of law indicated on this form subject to the provisions of Rule 12, commentary 5 of the Rules of Professional Conduct. (See Rule 12 attached. A-2)

Change #2:

From:

I agree to accept these conditions of membership and to accept as a client anyone referred to me by the Lawyer Referral Service provided that there is no conflict of interest, and it is not otherwise improper.

To:

I agree to accept these conditions of membership and to accept as a client anyone referred to me by the Lawyer Referral Service provided that there is no conflict of interest, and it is not otherwise improper under the provisions of Rule 12, commentary 5 of the Rules of Professional Conduct.

Change #3:

From:

A Lawyer Referral Service member will be removed from the panel when:

3. The Lawyer Referral Service member voluntarily joins the Practice Review Program.

To:

A Lawyer Referral Service member will be removed from the panel when:

3. The Lawyer Referral Service member has been invited to participate in the Practice Review Program. The member will be restored to the Lawyer Referral Service panel upon successful completion of said program.

Revisions to the Lawyer Referral Service Applications Form Continued

The Committee approved Change No. 3 with an amendment so that Change No. 3 would now read:

A Lawyer Referral Service member will be removed from the panel when:

3. The Lawyer Referral Service member has been invited to participate in or voluntarily joins the Practice Review Program. The member will be restored to the Lawyer Referral Service panel upon successful completion of said program.

With respect to recommended changes Nos. 1 and 2, the Committee noted that the issues raised by the suggested changes are the very issues being addressed by the Special Sub-Committee of Convocation charged to deal with the Ottawa Student Legal Aid issue. Furthermore, the same issue is on the agenda for discussion at the Benchers Retreat to be held in the early fall.

Consequently, it was the view of the Committee that it would be premature to implement these recommended changes when the very policy underlying them was under review by Convocation in other circumstances. The Committee decided to defer further discussion about recommended changes Nos. 1 and 2 until Convocation has made a policy decision with respect to the proper conduct of lawyers underlying Rule 12, Commentary 5 of the Rules of Professional Conduct (see Rule 12 attached A-2).

10th July, 1992

C.
INFORMATION

1. Media Activity

A summary of media activity for the months of April and May are attached (C-1).

2. Call Statistics

Call statistics for Dial-A-Law and the Lawyer Referral Service are attached (C-2).

3. Public and Membership Surveys

A copy of the Law Society's public and membership surveys have been distributed to all Committee Secretaries.

An advertisement will be placed in the Ontario Reports inviting lawyers to order copies of these surveys from the Communications Department.

4. Lawyer Referral Service Visitation Programme

In an effort to increase our understanding of the services provided by Community Legal Clinics, the Lawyer Referral Service Client Service Representatives will visit the clinics over the next few months.

Lawyer Referral Service Visitation Programme Continued

These visits (see list below) will provide our Representatives with the opportunity to tour a specific clinic and receive from the clinic staff background information on the clinic services provided. This information will enable the LRS to make only the most appropriate referrals to the clinics. In addition, our LRS Representative will provide the clinic staff with details about our services and answer related questions.

The LRS staff have already set up appointments with the following clinics: Advocacy Centre for the Elderly, Advocacy Resource Centre for the Handicapped, Bloor Information and Legal Services, Canadian Environmental Law Association, Centre for Spanish Speaking Peoples, Landlords Self Help Centre, Metro. Tenants Legal Services, and Parkdale Community Legal Services.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"P. Epstein"
for Chair

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

A-Item 1 - Copy of Lawyer Referral Service - Application Form. (Marked A-1)

A-Item 1 - Copy of Rule 12. (Marked A-2, (7 pages)

10th July, 1992

C-Item 1 - Copy of Summary of media activity for months of April and May 1992.
(Marked C-1)

C-Item 2 - Copy of statistics for Dial-A-Law and Lawyer Referral Service.
(Marked C-2)

THE REPORT WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meetings of May 14th and June 11th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992, at 7:30 a.m, the following members being present: T. Bastedo (Chair), the Treasurer, L. Brennan, P. Copeland, C. Curtis, S. Elliott, A. Feinstein, S. Goudge, R. Manes, C. McKinnon, D. Scott, R. Smith.

Also present: R. Tinsley, S. Hodgett, A. Brockett.

A.
POLICY

No matters to report.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. STRATEGIC PLANNING CONFERENCE, SEPTEMBER 25 - 26, 1992

C.1.1. Plans for the Strategic Planning Conference to be held at Osgoode Hall Law School on Friday, September 25 and at the University of Toronto, Faculty of Law on Saturday, September 26, are well in hand. The topic is "Professionalism in the 90's: Responding to Social and Ethical Change." Invitations have been sent to panellists, speakers and group facilitators. Participants will be divided into discussion groups. Each group will be given a defined topic and will be asked to frame recommendations for action by Convocation.

10th July, 1992

C.1.2. The proposal to commence the conference on Thursday evening, September 24, has been dropped. The conference will start at 8:30 a.m. on Friday, September 25.

C.1.3. Details of the program will be reported to Convocation at its June meeting.

C.2. THE ROLE OF THE LAW SOCIETY AND THE DETERMINATION OF LAW SOCIETY PRIORITIES

C.2.1. Over recent months, your Committee has discussed issues relating to the role of the Law Society, the respective responsibilities of benchers, staff, and committees, and the means by which priorities are determined.

C.2.2. The issues have been considered by various committees in the past. Your Committee has reviewed the following documents:

Preliminary report of the Special Committee on Convocation (the "Arthurs Committee"), December 16, 1980.

Extracts from a Review of the Secretariat of the Law Society of Upper Canada (the Peat Marwick Report), March 1981.

Report of the Benchers Ad Hoc Committee on the Peat Marwick Report, May 15, 1981.

Extracts from the Minutes of Convocation, July 16, 1981.

Proposals on Committee Structure and Management as amended and adopted by the Research and Planning Committee on August 30, 1990.

Final Report of the Benchers' Responsibilities Subcommittee, May 1991.

C.2.3. The following questions were posed for consideration:

C.2.3.1. Should the Research and Planning Committee develop a statement for Convocation, defining the limits of the proper role of the Law Society, the statement to serve as a standard against which all activities of the Law Society, and all proposals for new activities, can be measured to determine their respective priorities?

C.2.3.2. Should the Research and Planning Committee recommend to Convocation that the Rules of the Law Society be amended to provide for an Executive Committee which will be responsible for determining the political and financial priorities of the Law Society?

C.2.3.3. Should the Research and Planning Committee prepare a proposal for Convocation setting out the respective responsibilities of the Treasurer, Convocation, the Executive Committee, Standing Committees, benchers and staff?

10th July, 1992

C.2.4. At its meeting on May 15, your Committee debated the first two questions at length and decided to consider, at its June meeting, proposals

- for developing a statement on the role of the Law Society and,
- for studying an appropriate structure for the determination of Law Society priorities.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"P. Epstein"
for Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of June, 1992, at 8:00 a.m, the following members being present: T. Bastedo (Chair), the Treasurer, L. Brennan, P. Copeland, S. Elliott, A. Feinstein, the Hon. A. Lawrence, R. Manes, F. Mohideen, D. Scott, R. Smith.

Also present: A. Brockett, S. Hodgett, E. Spears.

A.
POLICY

No matters to report.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. STRATEGIC PLANNING CONFERENCE, SEPTEMBER 25-26, 1992:
PROFESSIONALISM IN THE 90'S: RESPONDING TO SOCIAL AND ETHICAL
CHANGE

C.1.1. Attached (Attachment A) is a copy of the June 10 draft of the program for the Strategic Planning Conference.

- C.1.2. Each conference participant will be a member of a discussion group. Each discussion group will be assigned specific topics and will be asked to prepare a set of recommendations for action by the Law Society. The intention is that all recommendations arising from the conference should be considered by the Research and Planning Committee at its meeting in October 1992 with a view to their being presented for subsequent debate in Convocation.
- C.2. STATEMENT CONCERNING THE ROLE OF THE LAW SOCIETY
- C.2.1. Your Committee has decided to draft, for consideration by Convocation, a statement on the role of the Law Society. The decision arises from discussions during the past year concerning the respective responsibilities of benchers, staff and committees, and the determination of priorities. A subcommittee, to consist of Paul Copeland and two other members, is to prepare a draft for the September 1992 meeting of the Committee.
- C.2.2. In drawing up the statement, the subcommittee has been asked to consult the governing bodies of the legal profession in other jurisdictions, both in Canada and abroad.
- C.3. THE DETERMINATION OF LAW SOCIETY PRIORITIES
- C.3.1. As a further consequence of the discussions referred to in paragraph C.2.1., your Committee has appointed a subcommittee, to consist of Tom Bastedo, Abraham Feinstein, Ronald Manes and one other, to recommend a structure for the determination of Law Society priorities. It is expected that the subcommittee will present its recommendation to the Research and Planning Committee in the late fall of 1992.
- C.4. COMMITTEE REPORTS: NUMBERING SYSTEM
- C.4.1. As part of a proposal for standardizing reports prepared for Convocation, your Committee intends to propose to the Chairs and Secretaries of all Standing Committees that the numbering system employed in this report be adopted by all committees.
- C.5. DISPUTE RESOLUTION SUBCOMMITTEE
- C.5.1. On the advice of the Law Society's Director of Communications, the Dispute Resolution Subcommittee has postponed distribution of the glossary and other material approved by Convocation at its April 1992 meeting. The Subcommittee has concluded that it should first seek comment from the profession on the subject of alternative dispute resolution and the Position Statement approved in April. The Subcommittee has also concluded that there is a need to prepare information on ADR which will put the glossary and other materials in context.
- C.5.2. On June 9, 1992, the Dispute Resolution Subcommittee hosted a joint meeting with members of the CBAO ADR Committee.

10th July, 1992

C.6. SURVEY OF HOURS SPENT BY BENCHERS ON LAW SOCIETY BUSINESS

C.6.1. Your Committee has received a preliminary analysis of the responses to the survey of hours spent by benchers on law society business over the months January through April 1992. A summary of the responses will be prepared for the September 1992 meeting of Convocation.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

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

C-Item C.1.1. - Copy of draft of program for Strategic Planning Conference.
(Attachment A - A10)

THE REPORTS WERE ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of May 14th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 14th of May, 1992, at 11:30 a.m., the following members being present: D. Bellamy (in the chair), T. Bastedo, P. Copeland, S. Goudge, and D. Scott.

Also present: A. Brockett, S. Hodgett, G. Logan and S. Traviss.

A. _____
POLICY

No matters to report.

B. _____
ADMINISTRATION

No matters to report.

C. _____
INFORMATION

10th July, 1992

C.1. DRAFT RULE OF PROFESSIONAL CONDUCT ON THE SUBJECT OF SEXUAL HARASSMENT

C.1.1. In March 1991, Convocation resolved that the Professional Conduct Committee should address the issue of sexual harassment and, if it so decided, recommend a change to the Rules of Professional Conduct. It was subsequently agreed that the Women in the Legal Profession Committee would draft a rule for consideration by the Professional Conduct Committee.

C.1.2. The Committee continued its discussion of a draft version of the rule. The issues of extent of coverage of the rule and concern about the privacy of harassed individuals were discussed. A further draft of the rule will be considered at the next meeting of the Committee.

C.2. ANALYSIS OF TRANSITIONS DATA BY GEOGRAPHIC AREA

C.2.1. This matter will be considered at the June meeting. Fiona Kay, the researcher of the *Transitions Report*, will advise the Committee about what is involved in such an analysis.

C.3. PARENTAL LEAVE POLICY

C.3.1. A subcommittee headed by Joan Lax has been appointed to investigate the formulation of a model parental leave policy.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"P. Epstein"
for Chair

Ms. Bellamy asked that Item C.3.1. under Information, be amended to indicate that "David Scott" not "Joan Lax" had been appointed to head a subcommittee regarding the parental leave policy.

THE REPORT AS AMENDED WAS ADOPTED

Meeting of June 11th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 11th of June, 1992, at 11:30 a.m., the following members being present: D. Bellamy (Chair), P. Copeland, M. Cullity, J. Lax, F. Mohideen and D. Scott.

Also present: A. Brockett, S. Hodgett, L. Johnstone, F. Kay, G. Logan and S. Traviss.

10th July, 1992

A.
POLICY

No matters to report.

B.
ADMINISTRATION

B.1. PARENTAL RESPONSIBILITY SUBCOMMITTEE

- B.1.1. The *Transitions Report* provides a mandate for the consideration of parental responsibilities and their impact on the profession. The committee struck a subcommittee to consider this broad issue. The subcommittee will be chaired by David Scott. Tom Bastedo and Joan Lax will be members.

C.
INFORMATION

C.1. RULE OF PROFESSIONAL CONDUCT ON THE SUBJECT OF SEXUAL HARASSMENT

- C.1.1. In March 1991, Convocation resolved that the Professional Conduct Committee should address the issue of sexual harassment and, if it so decided, recommend a change to the Rules of Professional Conduct. It was subsequently agreed that the Women in the Legal Profession Committee would draft a rule for consideration by the Professional Conduct Committee.
- C.1.2. The Women in the Legal Profession Committee considered drafts of the rule at its last three meetings. This committee is satisfied with the current draft rule, which has now been forwarded to the Professional Conduct Committee for its consideration.
- C.1.3. This draft rule deals with sexual harassment only. The committee recognises that there are many possible types of harassment in the workplace in addition to sexual harassment. The Professional Conduct Committee may want to consider these other areas.

C.2. FIONA KAY ADDRESSED THE COMMITTEE

- C.2.1. Ms. Fiona Kay, the researcher of the *Transitions Report*, addressed the Committee. Ms. Kay was invited to speak about further research or action which she sees as flowing from the *Transitions* data.
- C.2.2. She recommends against pursuing an analysis based on geographic area. On the basis of preliminary analysis, she is satisfied that the variations in the data between different geographical areas will not be statistically significant.
- C.2.3. Ms. Kay does believe, however, that the *Transitions* data may act as a springboard for other initiatives. She suggested the subjects of discrimination, family responsibilities, changes in the structures within the profession and feminization of areas of the profession as four promising areas of further research and action.

10th July, 1992

C.3. THE COMMUNICATIONS SURVEY

- C.3.1. The staff have been asked to consider what matters in the Communications Survey are of interest to this committee. Specific matters of interest will be considered at a future meeting.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"P. Epstein"
for Chair

THE REPORT WAS ADOPTED

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of May 14th, 1992

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of May, 1992 at 11:30 a.m. The following members attended the meeting: Bencher representation: Ms. P.J. Peters (Chair), Mr. R.C. Topp (Vice-Chair), Mr. V.C. Krishna, Mr. M.G. Hickey. Staff representation: Ms. H. Harris, Ms. D. Paquet (Secretary). Special representation: Mr. R. Paquette, Association des juristes d'expression française de l'Ontario (AJEFO), Mr. T. Keith, Canadian Bar Association - Ontario (CBAO).

C.

INFORMATION

1. French Content of Ontario Reports

Your Committee's representatives met with their counterparts from the Libraries and Reporting Committee and the Communications Committee to discuss the motion presented recently in Convocation on the French version of the Proceedings of Convocation summary published in the Ontario Reports. It was agreed that the English version of the summary would be reduced in length and that both English and French versions would receive equal exposure.

It was further agreed that where a special report to Convocation must be reproduced in full in the Ontario Reports, the Law Society would carry the insertion cost for both the English and French versions. Your Committee suggested that consideration be given to distributing these reports under separate cover.

The publication in French of ads and notices to the profession in the Ontario Reports are to be discussed further by the Libraries and Reporting Committee.

10th July, 1992

2. Discipline Hearings in French

The Sub-committee on Discipline Hearings in French tabled its report on discipline hearings in French. Your Committee voted unanimously in favour of the recommendations contained in the report.

Because these recommendations raise issues and policy considerations that are beyond the mandate of the Sub-committee, your Committee has referred the report to the Discipline Policy Committee for review and input.

3. Bar Admission Course - French Section

The Regional Director of Legal Education, Ottawa reported that the Legal Education Centre now has a full complement of French-speaking instructors for the French Bar Admission Course.

Concerns were raised by the Regional Director about the current registration quotas (24 per French class) being too high to provide the quality instruction required. Also of concern is the increasing demand from Bar Admission students who wish to enrol in the French section of the program.

4. Law Society Members and Public Attitude Survey

At the request of the Chair of the Communications Committee, your Committee reviewed the findings of the "Public and Lawyers' Perceptions of and Attitudes Toward the Law Society of Upper Canada" survey. It determined that no matter requires consideration in committee.

The meeting was adjourned at 12:30 p.m.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1992

"P. Epstein"
for Chair

THE REPORT WAS ADOPTED

.....

FRENCH LANGUAGE SERVICES COMMITTEE

Ms. Peters presented the Report of the French Language Services Committee of its meeting on June 11th, 1992.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of June, 1992 at 11:30 a.m. The following members attended the meeting: Benchers representation: Ms. P.J. Peters (Chair), Mr. R.C. Topp (Vice-Chair), Ms. J.K. Palmer (Vice-Chair). Staff representation: Ms. H. Harris, Ms. D. Paquet (Secretary). Special representation: Mr. R. Paquette, Association des juristes d'expression française de l'Ontario (AJEFO), Mr. T. Keith, Canadian Bar Association - Ontario (CBAO).

A.
POLICY

1. Bilingual Staffing - Service to the Profession and the Public

Following the adoption of the French Language Services Policy in June 1989 and in order to ensure the servicing of the profession and the public in French, your Committee recommended in March 1990 the approval of the designation of bilingual positions via the French Language Services Implementation Plan which was approved as submitted. The list of such positions was further approved in October 1990 and updated in September 1991 by your Committee. Copies of the French Language Services Implementation Plan were distributed to all members of senior management and management, as well as key personnel.

Out of a total of 344 positions, 34 positions are currently designated as bilingual, including six (6) in Ottawa. These positions are designated in key areas of the Law Society in order to ensure service to the profession and the public in French.

It came to your Committee's attention in the Fall 1990 and again in the Winter 1991-92 that some of the designated bilingual positions were being filled with non-bilingual staff. At your Committee's request, a status report dated April 23, 1992 was drawn up by the French Language Services Office in consultation with the Human Resources Department.

The report indicates that 12 of the 34 designated bilingual positions became vacant after the formal adoption of the French Language Services Policy and Implementation Plan and have been filled with non-bilingual staff. Eight (8) of these positions report to the Secretariat area, which is key to providing service to both the profession and the public.

Concerns were raised by the Committee by letter dated November 25, 1991 to the Secretary regarding this matter, inter alia, and a reply was received dated January 3, 1992, a copy of which is attached as Appendix I to this report.

Briefly, the Secretary indicated that it was his recollection, and that of the Under Treasurer, that his secretary's position was not designated bilingual but that it was agreed that it would be preferable to have a bilingual secretary at the Senior Management level. Further, since his secretary left at a busy time, the position had to be filled quickly. With respect to the Discipline Department, he indicated that three (3) counsel had been hired during the Spring and Summer of 1991 from a field of 70 applicants, none of whom were bilingual. Also, with respect to the Complaints Department, he indicated that none of the applicants on the last round of hiring were bilingual.

The Secretary was invited by the Committee to attend to discuss the matter at its April meeting and he did so. At that time he reiterated the information in his letter (Appendix I) and noted that there is a bilingual floater support staff in the Secretariat area.

10th July, 1992

Members of the Committee pointed out to the Secretary at the April meeting that the advertisement in the O.R.'s for Discipline counsel (Appendix II attached) did not indicate that bilingual lawyers were being sought and maintained the position that greater efforts must be made to obtain bilingual staff in accordance with the Implementation Plan.

Your Committee is concerned that French-speaking members of the Law Society and the public are not being serviced in accordance with the French Language Services Policy. Furthermore, the continuation of your Committee's work may be hampered by what appears to be the limited application of your policy in certain departments, particularly with respect to bilingual staffing.

C.
INFORMATION

1. Discipline Hearings in French

Your Committee has deferred the decision respecting the Sub-committee's report on French Discipline Hearings to the Fall pending the Discipline Policy Committee's consideration of the said report.

2. Bar Admission Course - French Section

The Regional Director of Education, Ottawa reported that an additional student was allowed to join the French Bar Admission class starting in May, over and above the quota of 24. The ten (10) additional students who were interested in joining the French section of the program, but could not do so because of space unavailability, accepted to take the course in English.

3. Inventory of Law Society Documents in French

Your Committee requests that all enquiries on the availability of Law Society documents in French should be directed to the French Language Services Office in Toronto.

4. National Program for the Integration of the Two Official Languages

The National Program for the Integration of the Two Official Languages (PAJLO) has requested that a written update of Law Society activities in the area of French language services be prepared for their Fall 1992 meeting. The French Language Services Office will prepare same.

The meeting was adjourned at 12:30 p.m.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1992

"P. Epstein"
for Chair

10th July, 1992

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

A-Item 1 - Copy of letter from Mr. Richard Tinsley to Ms. Patricia Peters dated January 3, 1992 and a copy of advertisement for the position of Discipline Counsel.

(Appendix I, 4 pages)

AUX CONSEILLERS ET CONSEILLÈRES DU BARREAU DU HAUT-CANADA

RÉUNIS EN CONSEIL

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

Le Comité s'est réuni le jeudi 11 juin 1992 à 11 h 30. Étaient présents, en qualité de conseillers et conseillères, M^{me} P. J. Peters (présidente), M. R. C. Topp (vice-président) et M^{me} J.K. Palmer (vice-présidente), en qualité de membres du personnel, M^{me} H. Harris et M^{me} D. Paquet (secrétaire) et à titre d'invités spéciaux, M. R. Paquette de l'Association des juristes d'expression française de l'Ontario (AJEFO) et M. T. Keith de l'Association du Barreau canadien - Ontario (ABCO).

A.

POLITIQUE

Dotation en personnel bilingue : service à la profession et au public

Fidèle à la politique des services en français, adoptée en juin 1989, afin de desservir comme il se doit les membres de la profession et du public d'expression française, le Comité a recommandé, en mars 1990, la désignation de postes bilingues. Le plan de mise en oeuvre des services en français, dans lequel figure cette recommandation, a été adopté tel quel par le Conseil. La liste des postes désignés bilingues a été de nouveau approuvée en octobre 1990, puis mise à jour en septembre 1991 par le Comité. Tous les membres de la direction et de la haute direction et certains membres du personnel ont reçu une copie du plan de mise en oeuvre.

Les postes désignés bilingues sont présentement au nombre de 34, dont six à Ottawa, sur un total de 344 postes. Ils se trouvent dans des domaines essentiels à la prestation des services en français, tant pour les membres de la profession que pour le public.

Ayant appris à l'automne 1990, puis de nouveau cet hiver que certains postes désignés bilingues étaient en fait comblés par des unilingues, le Bureau des services en français a rédigé, à la demande du Comité et en consultation avec le Service des ressources humaines, un rapport sur cette question, daté du 23 avril 1992.

Selon ce rapport, 12 des 34 postes désignés bilingues qu'il a fallu combler depuis l'adoption officielle de la politique des services en français et du plan de mise en oeuvre sont présentement occupés par des membres du personnel unilingues. Huit postes dépendent du secrétariat, qui joue un rôle essentiel auprès de la profession et du public.

Le 25 novembre 1991, le Comité a écrit au secrétaire du Barreau pour lui faire part de l'inquiétude qu'il ressentait, entre autres, à ce sujet. Une copie de la réponse, datée du 3 janvier 1992, figure à l'annexe I du présent rapport.

Le secrétaire du Barreau a déclaré qu'autant qu'ils s'en souviennent, le trésorier adjoint et lui, sa secrétaire n'occupait pas un poste désigné bilingue, mais qu'il serait préférable, comme convenu, d'avoir une secrétaire bilingue pour la haute direction. Il avait cependant fallu trouver rapidement une remplaçante, sa secrétaire étant partie lors d'une période de grande activité. Le secrétaire du Barreau a aussi affirmé que les trois avocats embauchés au Service de la discipline au printemps-été 1991 avaient été choisis parmi 70 candidats et candidates unilingues. De même, aucune des personnes retenues à la fin par le Service des plaintes n'était bilingue.

Le Comité a invité le secrétaire à venir discuter de cette question à sa réunion d'avril, ce qu'il a fait. Il y a de nouveau cité les faits indiqués dans sa réponse (annexe I) et a ajouté qu'au secrétariat, un membre «mobile» du personnel de soutien était bilingue.

Les membres du Comité ont relevé à cette occasion que le bilinguisme n'était pas mentionné dans l'annonce, parue dans les «Ontario Reports», en vue de recruter des avocats et avocates au Service de la discipline (annexe II). Le Comité a rappelé que le Barreau devait redoubler d'efforts pour engager du personnel bilingue, conformément au plan de mise en oeuvre.

Le Comité craint que les membres d'expression française du Barreau et du public ne reçoivent pas les services prévus par la politique des services en français. La poursuite de ses travaux pourrait d'ailleurs souffrir de l'application apparemment partielle de cette politique dans certains services, surtout en matière de dotation en personnel.

C. INFORMATION

1. Audiences disciplinaires en français

En ce qui concerne le rapport du sous-comité sur la tenue d'audiences disciplinaires en français, le Comité a décidé de remettre à l'automne sa décision afin de connaître la position du Comité de discipline.

2. Cours de formation professionnelle en français

La directrice régionale de la formation à Ottawa a annoncé qu'une étudiante supplémentaire avait reçu l'autorisation de s'inscrire au cours débutant en mai 1992, malgré le plafond fixé à 24 étudiants et étudiantes. Les dix autres personnes qui n'ont pu être admises par manque de place ont acceptées de suivre le cours en anglais.

3. Liste des documents du Barreau traduits en français

À la demande du Comité, toutes les demandes de renseignements concernant la disponibilité des documents du Barreau en français devront être adressées au Bureau des services en français, à Toronto.

10th July, 1992

4. Programme de l'administration de la justice dans les deux langues officielles (PAJLO)

Le Programme national de l'administration de la justice dans les deux langues officielles (PAJLO) a demandé au Barreau de lui présenter à l'automne un rapport décrivant ses activités en français. Le Bureau des services en français a été rédiger.

La séance a été levée à 12 h 30

FAIT le 26 juin 1992

La présidente,

THE REPORT WAS ADOPTED

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DRAFT MINUTES

The Draft Minutes for May 29th, 1992 were approved.

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The following Reports were deferred.

Professional Standards Committee (May and June Reports)
Libraries and Reporting Committee (May and June Reports)
Discipline Committee (June Report)
Unauthorized Practice Committee (June Report)
Lawyers Fund for Client Compensation Committee (May & June Reports)
County and District Liaison Committee (June Report)
Certification Board (June Report)
Investment Committee (April and June Reports)
Insurance Committee (May Report)
Equity in Legal Education and Practice Committee (June Report)

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CONVOCATION ADJOURNED AT 3:50 P.M.

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Confirmed in Convocation this day of 1992.

Treasurer