

MINUTES OF CONVOCATION

Friday, 28th May, 1993  
9:00 a.m.

PRESENT:

The Treasurer (Allan M. Rock), Bastedo, Bellamy, Bragagnolo, Brennan, Campbell, R. Cass, Copeland, Cullity, Epstein, Farquharson, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Howland, Jarvis, Kiteley, Krishna, Lamek, Lamont, Lawrence, Lax, Legge, McKinnon, Manes, Mohideen, Murphy, Murray, D. O'Connor, Palmer, Pepper, Peters, Richardson, Ruby, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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IN PUBLIC

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The Treasurer informed Convocation of his recent visits to a number of county law associations and community legal clinics. He also reported on the Legislative Reform Package and advised that the matter would be left to the new Treasurer.

The Treasurer announced his resignation and advised that a candidates' forum would be held on Wednesday, June 9th before Meeting Day.

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MOTION

It was moved by Clay Ruby, seconded by Lloyd Brennan that power be given to the Treasurer to appoint 2 additional Benchers to the French Language Services Committee.

Carried

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MOTION - COMMITTEE REPORTS TO BE TAKEN AS READ

It was moved by James Wardlaw, seconded by Don Lamont that the Reports listed in paragraph 3 of the Agenda be adopted with the exception that Item A.-A.1 of the Legal Education Report be moved from category 5 to category 6 and that Item C.1 of the Clinic Funding Report be moved to category 5.

Carried

Admissions  
April Convocation Minutes  
Clinic Funding  
Communications  
Discipline Policy  
Equity in Legal Education and Practice

Finance and Administration  
French Language Services  
Insurance  
Investment  
Janjua Reasons  
Lawyers Fund for Client Compensation  
(2 Reports - 1 in camera)  
Legal Aid  
Legal Education  
Legislation and Rules (1 of 2 Reports)  
Libraries and Reporting  
Professional Conduct  
Professional Standards  
Research and Planning  
Specialist Certification Board  
Unauthorized Practice  
Women in the Legal Profession  
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REPORTS TAKEN AS READ

APRIL CONVOCATION MINUTES

Draft Minutes of April 22nd and 23rd, 1993

Approved

(see draft Minutes in Convocation file)

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of May 13th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993, at 11:30 a.m. The following members attended the meeting: Ms. Patricia Peters, Q.C. (Chair), Ms. K.J. Palmer (Vice-Chair), Mr. V. Krishna, Q.C., Mr. P. Copeland. Staff representation: Ms. H. Harris, Ms. Gemma Zecchini, Ms. C. Wackermann (Secretary). Special representation: Mr. R. Paquette (AJEFO), Mr. T. Keith (CBAO), Ms. G. Cortis (Legal Aid).

A.  

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POLICY

No items were discussed.

B.  
ADMINISTRATION

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No items were discussed.

C.  
INFORMATION

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1. Discussion on draft human resources policy

Your committee began discussion of a complete human resources policy on French Language Services. The committee hopes to submit this policy for approval to Convocation in June.

The meeting was adjourned at 12:40 p.m.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"P. Peters"  
Chair

AUX MEMBRES DU CONSEIL DU BARREAU DU HAUT-CANADA

RÉUNIS EN ASSEMBLÉE

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

Le Comité s'est réuni le jeudi 13 mai 1993 à 11 h 30. Étaient présents, en qualité de membres du Conseil, M<sup>c</sup> Patricia Peters, c.r. (présidente), M<sup>c</sup> K. J. Palmer (vice-présidente), M<sup>c</sup> V. Krishna, c.r. et M<sup>c</sup> P. Copeland, en qualité de membres du personnel, M<sup>c</sup> H. Harris, M<sup>me</sup> Gemma Zecchini et M<sup>me</sup> C. Wackermann (secrétaire) et, à titre d'invités spéciaux, M<sup>c</sup> R. Paquette (AJEFO), M<sup>c</sup> T. Keith (ABCO) et M<sup>me</sup> G. Cortis (aide juridique).

A.  
POLITIQUE

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Rien à signaler.

B.  
ADMINISTRATION

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Rien à signaler.

28th May, 1993

C.  
INFORMATION

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Version provisoire de la politique des ressources humaines

Le Comité a commencé à discuter de la politique globale des ressources humaines sur les services en français. Il espère la soumettre à l'approbation du Conseil en juin.

La séance a été levée à 12 h 40.

FAIT le 28 mai 1993.

"P. Peters"  
présidente,

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of May 13th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993 at two-thirty in the afternoon, the following members being present: Messrs. Wardlaw (Chair) and Feinstein. Staff members present were David Crack and David Carey. Also present were Messrs. Rowland Bell and John Seagram of Martin, Lucas & Seagram Limited.

B.  
ADMINISTRATION

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1. Investment Report

The Deputy Director of Finance presented to the Committee an investment report summary for the various Law Society Funds for the month ended April 30, 1993 (Schedule A.)

Approved

2. Other Matters

i) It was recommended to invest short term Lawyers' Fund for Client Compensation monies to offset the 1994 and 1995 outstanding claims. The amounts invested will be \$1,800,000 for 1994 and \$2,700,000 for 1995. This will not affect the ability of the fund to meet current obligations.

Approved

28th May, 1993

ii) It was recommended that future long term investments for the Errors and Omissions Insurance Fund be made based upon the pay-out pattern as detailed in the actuary's reports, which are prepared effective December 31st each year.

Approved

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"J. Wardlaw"  
Chair

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

B - Item 1 - Investment Report Summary at April 30, 1993.

(Schedule A)

THE REPORT WAS ADOPTED

JANJUA REASONS

The Reasons prepared by Earl Levy in respect of the Moeen Mahmood Ahmad Janjua discipline matter was heard by Convocation on March 25th, 1993 were filed.

IN THE MATTER OF THE LAW SOCIETY ACT

- and -

IN THE MATTER OF MOEEN MAHMOOD AHMAD JANJUA

REASONS BY CONVOCATION

The solicitor appeared before Convocation unrepresented on March 25th, 1993 and made no submissions with respect to the findings of the Committee.

The issue of penalty was addressed. The Committee recommended that the solicitor be reprimanded in Convocation for his failure to file; that he should be suspended for two months with respect to the charge of swearing false oaths; and that he be suspended indefinitely thereafter until his filings were completed.

Although the Society's position before the Committee was that the solicitor be suspended for a period of three to six months for swearing the false oaths, the Society, represented by Ms. Budweth, adopted before Convocation the Committee's decision except that she urged Convocation to impose a cost order in the amount of \$1,500.00.

Convocation was advised that to the knowledge of the Society there are no criminal proceedings on-going or contemplated with respect to the false oaths by the solicitor.

28th May, 1993

The solicitor submitted that in the circumstances the false oaths were a technical impropriety and referred to them as being universally done by most lawyers in out-lying areas. He further submitted that he was under very great financial strain at the present time and argued against costs being imposed. He advised that he co-operated fully with the investigation and that he was well on his way to completing his filings.

There were four motions before Convocation: one to adopt the decision of the Committee, another motion which was similar except that the definite suspension would be for a period of three months; a third motion that the definite suspension be for six months and a fourth motion that the solicitor be required to pay costs in the amount of \$1,500.00.

In Convocation's view the Committee's decision calling for a two month suspension for swearing false oaths was much too low and gave overdue weight to the mitigating circumstances. There were eleven occasions when the solicitor swore false affidavits knowing them to be false, thereby committing criminal offences. The solicitor committed fundamental breaches of the Society's rule of integrity and did it repeatedly. The Society must express its denunciation of the Solicitor's conduct in a way which is a meaningful deterrence and to maintain its credibility as a body concerned with the protection of the public. It is Convocation's view that the period of suspension should be increased to six months. If it had not been for the mitigating circumstances as pointed out by the Committee the penalty would be more severe.

The decision of Convocation therefore is that with respect to the solicitor's failure to file he should be reprimanded in Convocation; with respect to the swearing of the false oaths he should be suspended for a period of six months, that period to commence April 1st, 1993; and that the solicitor be suspended indefinitely thereafter if his filings have not been brought up to date.

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LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE (in camera)

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IN CAMERA Content Has Been Removed

LEGISLATION AND RULES COMMITTEE

Meeting of May 13th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993, at 10:30 a.m., the following members being present: J. Palmer (Vice-Chair: in the Chair), R. Cass, the Hon. A. Lawrence, S. Lerner, S. Thom.

Also present: A. Brockett.

A.  
POLICY

No matters to report

B.  
ADMINISTRATION

B.1. RULES MADE UNDER SECTION 62(1) OF THE LAW SOCIETY ACT: AMENDMENT OF PART OF RULE 50: TRANSFER MEMBERS: EXAMINATION FEES

B.1.1. Recommendation

B.1.1.1. That in the part of Rule 50 entitled "TRANSFER MEMBERS" the words "or subsequent" be added after the word "second" in the penultimate line, and the words "Bar Admission Course" be deleted from the final line, so that that part of the rule will read:

TRANSFER MEMBERS

Upon becoming a member of the Society under the Transfer Regulations, payable upon filing application	\$ 101
Upon sitting the Common Law examination	\$ 500
Upon sitting the Common Law examination a second <u>or subsequent</u> time	\$500
Upon sitting the Transfer examinations	\$ 600

(Added text underlined.)

B.1.1.2. That the French Language Services Committee be asked to arrange for a French translation of the amended rule.

B.1.2. Explanation

B.1.2.1. The part of Rule 50 (Fees) entitled "Transfer Members" currently reads:

TRANSFER MEMBERS

Upon becoming a member of the Society under the Transfer Regulations, payable upon filing application	\$ 101
Upon sitting the Common Law examination	\$ 500
Upon sitting the Common Law examination a second time	\$ 500
Upon sitting the Bar Admission Course Transfer examinations	\$ 600

B.1.2.2. Candidates may take the Common Law examination more than twice. The same fee is charged on each occasion. It is therefore proposed that the words "or subsequent" be added after "second" in the penultimate line of the part of the rule set out above.

B.1.2.3. The words "Bar Admission Course" have been dropped from the title of the examination taken by transfer candidates from other jurisdictions in Canada. It is proposed that the rule be amended to reflect this change.

B.2. RULES MADE UNDER SECTION 62(1) OF THE LAW SOCIETY ACT: AMENDMENT OF PART OF RULE 50: STUDENT MEMBERS

B.2.1. Recommendation

B.2.1.1. That in the third paragraph of that part of Rule 50 entitled "STUDENT MEMBERS" the words "Subsection 22(9) of Regulation 573" be deleted and the words "subsection 23(11) of Regulation 708 of the Revised Regulations of Ontario, 1990" be substituted, so that the paragraph will read:

In the event of late filing of an application, late payment of tuition fees, or late filing of any of the documentation required by subsection 22(11) of Regulation 708 of the Revised Regulations of Ontario, 1990, a late filing fee of \$50 is payable. For late tuition fees, an additional late filing fee of \$5 is payable for each day late to a maximum of \$200 per fee.

B.2.1.2. That the French Language Services Committee be asked to arrange for a French translation of the amended rule.

B.2.2. Explanation

B.2.3. The third paragraph of the part of Rule 50 (Fees) entitled "STUDENT MEMBERS" reads:

In the event of late filing of an application, late payment of tuition fees, or late filing of any of the documentation required by Subsection 22(9) of Regulation 573, a late filing fee of \$50 is payable. For late tuition fees, an additional late filing fee of \$5 is payable for each day late to a maximum of \$200 per fee.

B.2.4. The reference to Regulation 573 (R.R.O. 1980) needs to be up-dated to refer to Regulation 708, R.R.O. 1990. The subsection number also needs to be corrected: subsection 22(9) of Regulation 573 is now subsection 23(11) of Regulation 708.

C.  
INFORMATION

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C.1. LAW SOCIETY ACT: AMENDMENT TO PROVIDE THAT NO PERSON BE ELIGIBLE TO BE TREASURER WHO HAS NOT BEEN ELECTED AS A BENCHER IN THE MOST RECENT ELECTION

C.1.1. Your Committee has considered various proposals for amendment of the *Law Society Act* to give effect to Convocation's resolution of February 26, 1993, that no person be eligible to be Treasurer who has not been elected a bencher in the most recent bencher election. The matter is complicated by the fact that the current wording of the act gives "all the rights and privileges of an elected bencher" to the Treasurer, to each former Treasurer who remains a member, and to each lay bencher.

C.1.2. The Committee will give further consideration to the matter at its June meeting.

C.2. LAW SOCIETY ACT: SECTION 50: BILL 115: GOVERNMENT PROPOSAL TO EMPLOY THE WORD "THEMSELF": REPLY FROM THE ATTORNEY GENERAL

C.2.1. As reported by your Committee in January, section 5 of Bill 115 (*An Act to confirm and correct the Statutes of Ontario as revised by the Statute Revision Commissioners*) (First Reading, December 10, 1992), will amend clause 50 (1) of the *Law Society Act* to read:

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

(a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themselves out as or represent themselves to be a barrister or solicitor or practise as a barrister or solicitor; and (Underlining added.)

C.2.2. On the recommendation of your Committee, Convocation resolved to ask the Government of Ontario to amend Bill 115 so that the proposal to employ the word "themselves" would be replaced by "himself, herself or itself". The Treasurer wrote accordingly to the Attorney General.

C.2.3. The Attorney General has sent a reply which indicates an intention to keep the word "themselves". The relevant portion of the Minister's letter reads:

With regard to your comments on the proposed amendments to clause 50 (1) (a) of the Law Society Act, "themselves" is now used in legislative drafting in Ontario as a singular pronoun, as one of a number of ways to achieve gender neutrality without sacrificing readability. This usage is a logical extension of the use of "they" and "their" as a singular. As Webster's Dictionary of English Usage points out, the singular "they" and "their" have been used continuously for six centuries.

C.2.4. Your Committee reports this matter for information but does not propose any further action.

28th May, 1993

C.3. LAW SOCIETY ACT: SECTION 35: BILL 115: REPLY FROM ATTORNEY GENERAL

C.3.1. In its January report, your Committee also commented upon a further provision of Bill 115 which will amend s. 35 of the *Law Society Act* to read as follows:

35. If a member has been found pursuant to any Act to be mentally incompetent or mentally ill, or has been found after due inquiry by a committee of Convocation incapable of practising law as a barrister and solicitor by reason of physical or mental illness including addiction to alcohol or drugs, or any other cause, Convocation may by order limit or suspend the person's rights and privileges as a member for such time and on such terms as it considers proper in the circumstances. (Amendment underlined.)

C.3.2. On the recommendation of the Committee, Convocation resolved to ask the Government of Ontario to amend Bill 115 so that the words "the member's" would be used instead of "the person's". The Treasurer wrote to the Attorney General accordingly.

C.3.3. The Attorney General has replied that, if Bill 115 is referred to Committee before receiving third reading, she will give serious consideration to having section 35 rewritten completely to avoid what she refers to as "the existing awkwardness".

C.3.4. Your Committee reports this matter for information but does not propose any further action.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"M. Cullity"  
Chair

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of May 13th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993, at 9:00 a.m., the following members being present:

D. Murphy, (Chair), R Topp (Vice-Chair), A. Feinstein, K. Golish, M. Hennessy, M. Hickey, and B. Pepper. G. Howell also attended.

A.  
POLICY

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No items

B.  
ADMINISTRATION

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1. Ontario Reports - Bilingual Format - French Language Services

Patricia Peters, Chair of the French Language Services Committee, had written to Mr. Murphy about "the English only format" of the Ontario Reports. Ms. Peters had previously received two letters from Jacques McLaren of Ottawa, requesting that "at least the generic information be published in a bilingual format".

The Committee decided to defer the matter until the June meeting when a draft bilingual format for the top half of the cover page of the Ontario Reports will be presented. Jacques McLaren will be invited to attend the June 10th meeting.

2. Great Library - Usage by Bar Admission Course (BAC) Students during office hours

A student-at-law wrote to the Chair of the Committee about the Great Library's policy on access for BAC students during office hours (week days from 9:00 a.m. to 5:00 p.m.). The student requested a change in policy and made a suggestion for a new sign to be posted in the Great Library. The Great Library sign had already been amended by the addition of a third paragraph that served to clarify access provisions for BAC students needing to do legal research. The Committee recommends that the current policy and signage be maintained.

3. Great Library & County Libraries - Treasurer's suggestion for a Conference on Library Technology

The Treasurer had written to the Chair of the Committee, as well as the Under-Treasurer and the Chief Librarian, on his concerns about "Law Libraries of the Future". The Treasurer suggested that the Law Society organize and host a Conference on Library Technology, which would have the purpose of

- defining the library challenge, in terms both of its nature and scope;
- learning about advances in information technology and the electronic dissemination of research resources;
- exploring the ways in which these innovations can be applied to the law library; and
- developing some idea of the cost of doing so.

The Treasurer proposed that an initial list of invitees and a draft agenda for the conference be developed.

The Committee agreed with the Treasurer's concerns (particularly those relating to the ongoing cost of books) and felt that the conference theme should be broadened to encompass publishing technology and a possible role for the Law Society in publishing practice materials for the profession using modern technology. The Committee recommends that a Sub-Committee of the Libraries & Reporting Committee be established to determine the parameters of the conference and to assist the Under-Treasurer and Chief Librarian in organizing the conference.

4. Ontario Reports - Free Distribution of Weekly Parts to Judges

The Chair of the Committee and Chief Librarian had previously met with the Assistant Deputy Attorney General for Courts Administration, and conveyed the Society's concern with government cutbacks in Law Society funding and in accommodation for county libraries. The Chair referred to the Law Society's practice of distributing the weekly parts of the Ontario Reports to the Judges of the Ontario Court of Appeal and the Ontario Court of Justice (General Division), free of charge to the courts and to the government. The Chair asked the government representative to consider a contribution to offset the cost of this free distribution. The government official reported back to the Chief Librarian that a meeting had been held with Chief Justice Dubin, who expressed dismay at any idea of Law Society discontinuance of the practice of distributing OR weekly parts to superior court judges.

The Committee recommends that the matter of a government contribution to pay for the distribution of the OR weekly parts to Ontario's judges be deferred until the tender documents for the renewal of the Ontario Reports publishing contract are released in September 1994. Notice would be given to the government that free distribution of OR weekly parts to the judges would not be expected of the publisher unless a contribution was forthcoming from the government.

C.  
INFORMATION

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1. Ontario Reports - French Language Judgment - Common Use of Professor Castel's translation by Butterworth and Canada Law Book

The judgment in Regina v. Vincent, a decision of the Ontario Court of Appeal, has been delivered in French by Mr. Justice Lacourciere. The French Language Consulting Editor for the Ontario Reports, Professor J-G Castel, Q.C., has selected and translated the Reasons for Judgment for inclusion in the Ontario Reports. The decision had now been selected by Canada Law Book for inclusion in its Canadian Criminal Cases. At the recommendation of Mr. Justice Lacourciere, there will be a common usage of Professor Castel's translation of the Reasons for Judgment in both the O.R.'s and the C.C.C.'s. The cost of the translation will be shared by the two publishers. Authorizations for the shared use have been exchanged.

2. County Libraries - Property and Liability Insurance Coverage - Policy Renewal through the Law Society's Broker, H.B. Bennett

Property insurance on the books, equipment and office contents of the county libraries, as well as liability insurance for the officers and employees of the county law associations, is being renewed at the same premium as the prior year, with the deductible being lowered from \$1,000 to \$500.

28th May, 1993

3. County Libraries - Photocopying (& Fax) Services

The President of the County of York Law Association had written to the Chair of the Committee, citing the Society's receipt of a cease and desist letter regarding the photocopying service which the Great Library offers to lawyers. The letter stated, "The County of York Law Association offers a similar service to its members through the Court House Library. Would you please confirm that we should continue to operate our service in the same manner as the Great Library."

The Committee instructed the Chief Librarian to advise the County of York Law Association that it should continue to offer its photocopying and fax service for the benefit of its members.

ALL OF WHICH is respectfully submitted

Dated this 28th day of May, 1993

"D. Murphy"  
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of May 13th, 1993

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 13th of May, 1993 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Cullity (Vice-Chair), Elliott, Finkelstein, Goudge, Hickey, McKinnon, Rowe and Scott.

A.  
POLICY

1. PROPOSED RULE 28 TO ADDRESS DISCRIMINATION -  
THE INITIATIVE OF THE EQUITY COMMITTEE

Paragraph 5 of the Commentary under Rule 13 addresses the subject of discrimination. It reads:

The lawyer shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, creed, sex, sexual orientation, age, marital status, family status, or handicap in the employment of other lawyers or articulated students, or in dealings with other members of the profession or any other persons.

28th May, 1993

The Equity Committee concluded (and the Professional Conduct Committee concurred) that given the importance of the subject a new and expanded rule should be created so as to give greater direction to the legal profession. This approach was taken with respect to sexual harassment where a new rule (Rule 27) was passed by Convocation on July 10, 1992.

Mr. Goudge, the Chair of the Equity Committee, reported to the Professional Conduct Committee and invited Committee members to comment on the draft that had been prepared by his Committee. These comments will assist in the preparation of a better draft for consideration by both Committees in June.

The Professional Conduct Committee will be reporting to Convocation on a proposed new rule on this subject in June.

The Committee discussed but did not resolve the question as to whether the profession should be invited to make written comments in advance of the enactment of a new rule by Convocation.

While the Committee has no specific recommendation for Convocation's consideration this month, it was thought appropriate to advise that this was in the offing.

2. FEDERATION OF LAW SOCIETIES COMMITTEE  
ON THE MARTIN V. GRAY CASE (CONFLICTS  
CREATED BY THE MIGRATING LAWYER)

The Professional Conduct Committee had before it at its January meeting a copy of the draft rule designed to address the problems created by the migrating lawyer (numbered 1 - 7).

The Federation's Committee met again on April 26th in Montreal. Mr. Campbell and the Committee's Secretary were present at the meeting. The draft rule is now being revised to address some of the concerns that had been raised. The new rule will be shorter and simpler. It should be available for discussion at the Committee's June meeting.

The Federation's Committee is considering what future work it should undertake. The issue of spousal connection as a possible conflict has been addressed in a redraft of the rule. There was before the Committee the issue of acting against a former client and material on point from the English Law Society, the American Bar Association and the various law societies in Canada.

David Hashey, Q.C. of New Brunswick, who chairs the Federation's Committee, asked those attending the meeting on April 26th to determine if there would be support from their respective law firms for continuing the Committee's work on conflicts issues.

The Committee wishes the Federation's Committee to continue its work in the conflicts field. The Federation's work will be of assistance to the Special Committee that is undertaking a revision of the Rules of Professional Conduct.

28th May, 1993

The Committee asks Convocation to support the continued work of the Federation's Committee on the conflicts issue.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"M. Somerville"  
Chair

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

A-Item 2. - Draft Rule - Federation of Law Societies Conflicts of Interest Committee, Conflicts Arising as a Result of Transfer Between Law Firms.

(Pages 1 - 7)

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of May 13th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, at 11:30 a.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice Chair), N. Graham, L. Legge, M. Trofimenko; Bencher S. Goudge also attended.

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

B.  
ADMINISTRATION

B.1. PRACTICE REVIEW PROGRAMME - FILE CLOSURES

B.1.1. Two Practice Review files were closed by the Committee based on recommendations from staff, because the members were unwilling to participate in the Programme. These files are being referred to Senior Counsel, Discipline pursuant to Committee policy.

B.1.2. Two Practice Review files were closed by the Committee on the basis of the members' successful completion of the Practice Review Programme. The first member was authorized for participation in the Programme in April of 1992 due to the nature of the complaints against him. The member implemented the recommendations made in the course of the Programme. There have been no complaints or claims made against the member since his authorization. The second solicitor was authorized for participation in November 1989 based on the solicitor's lengthy complaints record. Due to the nature of the

member's practice, an intensive remedial programme was implemented. The Committee is now satisfied that the member has made significant changes to the practice. It appears that both members have improved the quality of their practices and have benefitted from the Practice Review Programme.

- B.1.3. The fifth Practice Review file was closed on the basis that the member is no longer practising law and has not been for over two years. The member's participation in the Programme began in June 1989 and continued until November 1991 when the member ceased practising law. The member's file will be monitored by staff in the event that the member returns to practice, at which time the file may be re-opened if it is appropriate to do so.

C.  
INFORMATION

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C.1. REVIEW OF THE RULES OF PROFESSIONAL CONDUCT - RULE 2

- C.1.1. In response to an invitation from Marc Somerville, Chair of the Special Committee to Review the Rules of Professional Conduct, the Committee as a whole was struck as a Working Group to review the adequacy of Rule 2 (Competence and Quality of Service). The Working Group met on March 31, 1993, on Committee day in April, 1993, and again on Committee day in May, 1993.

- C.1.2. In the course of its deliberations, the Working Group reviewed comparable rules from other jurisdictions in North America. It also took into consideration the concerns raised by the Ontario Legal Aid Plan with respect to competence, the anticipated impact of the proposed reforms to the *Law Society Act*, and the recommendations expected to be made in the Martin report. The Working Group attempted to give effect to the outline of rules of conduct provided by Professor Nancy Moore at the Strategic Planning Conference.

- C.1.3. The Working Group has adopted a model similar in format to the Draft Code of the Law Society of Alberta, wherein a general principle is stated, specific requirements are spelled out, and then a commentary follows. The Committee recognizes that this format may be subject to change by the Special Committee.

- C.1.4. A draft of revised Rule 2 was considered by the Committee, and further revisions proposed. These revisions will be incorporated into the draft, after which the draft will be circulated to all members of the Committee for review. A copy of the draft will be provided to the Special Committee as well. The Committee anticipates that the review of Rule 2 will be completed at its June meeting.

C.2. REVIEW OF THE RULES OF PROFESSIONAL CONDUCT - RULE 3

- C.2.1. The Committee was also invited by the Chair of the Special Committee to Review the Rules of Professional Conduct to undertake the review of Rule 3 (Advising Clients). The Committee has accepted the invitation, and has again struck the Committee as a whole as the Working Group for the review. A special meeting of the Working Group will be called in order to commence the review process.

C.3. DRAFT REPORT OF THE JOINT SUB-COMMITTEE ON REQUALIFICATION

C.3.1. The Committee considered the draft report prepared by the Joint Sub-Committee on Requalification. The Committee commends the members of the Joint Sub-Committee on their efforts to date. The Committee suggests that, at page 3 of the report, paragraph #9, it may be more appropriate for the Professional Standards Committee, rather than the Admissions Committee, to monitor a member's compliance with the steps prescribed in the pre-emptive regime, given the framework available for doing so that is already in place in the Professional Standards Department through its Practice Review Programme. Using these existing resources may assist in reducing the administrative impact of the recommendations contained in the draft report.

C.3.2. Committee members have also been invited to communicate directly to the Chair of the Joint Sub-Committee, Stephen Goudge, any additional comments or issues they may wish to raise; it is noted that the Joint Sub-Committee is seeking such submissions no later than May 21, 1993.

C.3. DEPARTMENTAL REPORT - PROFESSIONAL STANDARDS

C.3.1. Efforts are now underway to advertise the new staff lawyer position in the Department. It is hoped that the position will be filled effective July 1, 1993; a lawyer with a solicitor's practice background is being sought.

C.3.2. In April, an additional 7 lawyers were authorized for participation in the Programme. As a result, there are now 121 open files in the Practice Review Programme. In the month of April, staff attended at the offices of 13 lawyers across the province, ranging from Toronto to Timmins, in order to provide remedial assistance.

C.3.3. A review panel was held in April, variously constituted of Benchers Laura Legge, Colin McKinnon and Mary Weaver. Three lawyers participating in the Programme appeared before this panel, and further remedial measures have been agreed to by all three lawyers.

C.3.4. Enrolment in the Start-Up Workshop continues to exceed the limit originally imposed of 20 members per session. The Workshop is therefore now little like a workshop in format, but rather consists of lectures on a range of topics, including books and records, office systems, the pitfalls of practice, fees and billings, and similar pragmatic issues.

C.3.5. Judi Singleton, the Law Society's Systems Adviser, has become the Society's appointed member on the board of the Canadian Society of the Advancement of Legal Technology (or, as it is more succinctly known, CSALT).

C.4. PRACTICE ADVISORY SERVICE - STATUS REPORT

C.4.1. A statistical analysis was provided for the month of March, 1993, giving extensive information about the use of the Practice Advisory Service, and the nature of enquiries received. The Director reviewed the report, and highlighted the following aspects of it:

28th May, 1993

- a total of 654 enquiries were responded to in March alone, the highest monthly volume of calls received by the Service since its inception in 1980

- 69% of the calls received originated from members practising within Metro Toronto, although only 53% of the profession is located in this jurisdiction

- 39% of the calls come from sole practitioners; sole practitioners comprise 33% of the membership

- 38% of enquiries come from members called to the Bar in the past 5 years; 21% come from members called in the 5 years between 1984 and 1988; 17% from members called 1979 to 1983, inclusive; 10% from members called 1974 to 1978; and 14% from members in practice 20 years or more

- many of the calls arise, directly or indirectly, because of financial issues, in areas such as solicitors' liens, bankruptcy, and trust defalcations; the majority of calls concern issues arising under the Rules of Professional Conduct; and conflict of interest is the primary question thereunder.

C.4.2 The high volume of calls is probably attributable to the increasing visibility of the Practice Advisory Service, particularly among members recently called to the Bar; the economy; and the speed at which the Service responds to enquiries, now that it is at its full complement of staff.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"C. McKinnon"  
Chair

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of May 13th, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 13th of May 1993 at 11:30 a.m., the following members being present: S. Elliott (Chair), T. Bastedo, S. Goudge and J. Monaghan.

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

A.  
POLICY

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No matters to report.

B.  
ADMINISTRATION

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No matters to report.

C.  
INFORMATION

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C.1.           DRAFT REPORT ON REQUALIFICATION

C.1.1.       Your Committee had before it the draft Report on Requalification.

C.1.2.       At its September meeting, the Committee expressed concern regarding the possible disproportionate impact of requalification requirements upon women in the profession. As a consequence of these concerns, the Committee recommended that one of its members be appointed to the Joint Subcommittee considering requalification. Convocation adopted this recommendation and Susan Elliott, the Chair of the Committee, served upon the Joint Subcommittee.

C.1.3.       The Committee was asked to consider the extent to which the earlier expressed concerns had been addressed in the current draft report. The Committee concluded that the measures outlined will be helpful to women who leave the profession temporarily in order to raise children or take non-traditional employment by providing less arbitrary procedures for members to leave and re-enter the profession.

C.1.4.       The Committee has been informed that the draft report will be considered further after comment by the profession. Your Committee approves the substance of the report.

C.2.           DISCUSSIONS CONCERNING MERGER OF THE WOMEN IN THE LEGAL PROFESSION AND EQUITY COMMITTEES

C.2.1.       Your Committee discussed the possibility of merging the Women in the Legal Profession Committee and the Equity in Legal Education and Practice Committee.

C.2.2.       There are a number of areas where the issues dealt with by the two Committees are closely related. The Committee was of the view, however, that there is still a role for two separate Committees. Issues facing women and those facing minority groups, aboriginals and disabled persons are related, but not always identical.

- C.2.3. The Committee is of the view that there should be an increased exchange of information between the two Committees. In the short term this could take the form of an exchange of agendas prior to Committee Day. The Women in the Legal Profession Committee would also like to arrange a number of joint-meetings between the two Committees throughout the year.
- C.2.4. The Committee was of the view that an exchange of agendas might be useful on a broader scale. Your Committee will request that the Research and Planning Committee consider ways in which benchers may become aware, prior to Meeting Day, of matters on the agendas of Committees of which they are not members.
- C.3. GUIDELINES FOR ARTICLING INTERVIEWS
- C.3.1. The Committee reviewed a progress report from the Interview Guidelines Project. The guidelines will attempt to discourage inappropriate questions during articling interviews. The Chair will be requesting that a representative of the Women in the Legal Profession Committee be appointed to the Subcommittee of the Equity Committee which will be drafting the guidelines.
- C.4. SEXUAL HARASSMENT QUESTIONNAIRE
- C.4.1. The Committee had before it a copy of the final version of the questionnaire concerning the *Recommended Personnel Policy Regarding Employment-Related Sexual Harassment*.
- C.4.2. The questionnaire was distributed to over 2000 law firms (offices with 2 or more lawyers) in Ontario during the week of April 19, 1993. The deadline for the return of the questionnaire is May 17, 1993. The Committee will receive a report about the results of the survey at its June meeting.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"S. Elliott"  
Chair

THE REPORT WAS ADOPTED

CALL TO THE BAR

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

Ann Knowlton Lambert	31st Bar Admission Course
Lisa Madelon Campbell	34th Bar Admission Course
Serge Douzdzian	34th Bar Admission Course
Eugene Hector Fraser	34th Bar Admission Course
Karen Ellen Galpern	34th Bar Admission Course
Ronald Joseph Marcus Mercier	34th Bar Admission Course
Pamela Denice Owen-Going	34th Bar Admission Course
Willis Reginald Pye	34th Bar Admission Course
Vincenzo Scaramuzza	34th Bar Admission Course
Jimmy Massimo Soldatich	34th Bar Admission Course

Kien-Chen Patrick Sun	34th Bar Admission Course
Sharon Helen Tessier	34th Bar Admission Course
Flora Pearl Eliadis	Special, Transfer, Quebec
Darcia Ann Colleen Kohuch	Special, Transfer, Manitoba

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ITEMS SPOKEN TO

DISCIPLINE COMMITTEE

Meeting of May 13th, 1993

Mr. Strosberg spoke to Item A.-A.1. re: Request re: Support Group for Lawyers in Discipline Process.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993, at three o'clock in the afternoon, the following members being present:

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

R. Tinsley, S. Kerr, G. MacKenzie, G. Macri, D. Robertson, C. Shaw and S. Hodgett also attended.

A.  
POLICY

A.1. REQUEST RE: SUPPORT GROUP FOR LAWYERS IN DISCIPLINE PROCESS

A.1.1. Your Committee considered a request from a psychologist, Dr. Joanne Rovet, who wishes to create a support group for lawyers who are either facing disciplinary proceedings or who are trying to cope with the consequences of disciplinary proceedings. Dr. Rovet's specific request is that the Society provide her with the names of lawyers who are under investigation. She considers it to be important that lawyers be identified as early as possible, as the lawyers who would benefit most from contact with a support group are those who become involved at as early a stage as possible.

A.1.2. The Society's policy is that the identity of lawyers who are under investigation is to remain confidential until the issuance and service of a formal complaint of professional misconduct. The only exception is that if the fact that a complaint has been made to the Society becomes public because of information released to the media by the complainant, the lawyer under investigation, or the lawyer's firm, the Society will confirm that it is conducting an investigation, but will release no further information.

28th May, 1993

- A.1.3. After a formal complaint is sworn and served the Society will release a copy of the complaint upon request, but will provide no other information. A list of hearings scheduled for the forthcoming month is released to news organizations and others who request the list monthly. Lawyers who are disciplined by Convocation are identified in a press release and in the Discipline Digest, which is published approximately six times a year.
- A.1.4. Your Committee considered the matter and concluded that some care must be exercised. It is not appropriate for the Law Society, the disciplinary body, to become too closely involved or identified with a support group for lawyers facing discipline. On the other hand the Society should not stand in the way of a non-profit support program for members who are experiencing difficulties.
- A.1.5. For these reasons your Committee recommends the adoption of the following policies:
1. The Law Society will not sponsor such a support group;
  2. The Law Society will not disclose names to such a program during the investigative stages of the discipline process;
  3. While not identifying the Law Society with the program, the staff may have available pamphlets for Dr. Rovet's program or any similar program in appropriate cases;
  4. Law Society staff should not take an active role in informing members under investigation of the program nor should any Law Society department act as a liaison to the program.

A.2. AWARDS OF COSTS OF THE LAW SOCIETY PURSUANT TO SECTIONS 34 AND 40 OF THE LAW SOCIETY ACT

- A.2.1. Mr. MacKenzie outlined the issues for the Committee.
- A.2.2. The Law Society, as a result of a recommendation of the Discipline Policy Committee, has a policy that discipline counsel are to ask for the Society's costs in all appropriate cases. The authority for asking for costs is found in s.40 of the Law Society Act. Section 40 reads as follows:
40. A person whose membership or student membership has been cancelled or whose rights and privileges as a member or student member have been suspended or who has been reprimanded may be ordered to pay the expense, or part of the expense, incurred by the Society in the investigation or hearing of any complaint in respect of which the person has been found guilty.

The section does not indicate how the costs of the Society are to be calculated.

- A.2.3. In a report of a discipline hearing panel dated November 25, 1992 one of the members of the panel, Brendan O'Brien, Q.C., dissented from the recommendation of the majority of the panel that the Solicitor be reprimanded in Convocation and required to pay \$1000 for costs. Mr. O'Brien agreed that the Solicitor should be reprimanded in Convocation, but was of the view that neither section 40 nor section 34 of the Act (which empowers Convocation to impose certain penalties or to "make such other disposition as it considers proper in the circumstances") authorizes discipline hearing panels to require solicitors to pay costs other than out of pocket disbursements.
- A.2.4. When the report was considered by Convocation in January 28, 1993, the issue of the authority of discipline hearing panels and Convocation to require solicitors to pay costs was fully argued by the Society's counsel, and Convocation ordered that the Solicitor be reprimanded in committee and ordered to pay costs in the amount of \$1000. Convocation has not issued reasons for its decision to date. Convocation suggested that the Discipline Policy Committee consider how the costs of the Society should be calculated.
- A.2.5. The matter was considered by the Discipline Policy Committee in February 1993. At that time the Committee was informed that at present the costs for the Society are estimated based on the time spent by discipline counsel, auditors and investigators on the discipline investigation and hearing. The time of auditors and investigators is costed at a rate of \$50/hr, and the time of discipline counsel is costed at a rate of \$100/hr (\$150/hr for the Senior Counsel-Discipline). In addition, disbursements, including expert witness fees if any, are also taken into account.
- A.2.6. The Committee, at its February meeting, expressed the view that the current rates for calculating costs are overly conservative, and asked staff to submit an updated tariff to the Committee for approval. The Committee also asked staff to consider certain related issues, such as whether interest should be paid on cost awards.
- A.2.7. In a letter dated April 26, 1993 to Gavin MacKenzie, Senior Counsel-Discipline, Mr. O'Brien wrote that notwithstanding Convocation's decision he remains of the view that discipline hearing panels and Convocation lack authority to award costs. He has suggested that the Society should urge the Legislature to amend the Law Society Act to make it clear that costs may be awarded. The draft legislation that has been prepared as a result of the efforts of the Yachetti and O'Connor Committees contains the following provision:
- "The costs of and incidental to the investigation and hearing of a discipline complaint are within the discretion of a Discipline Hearing Panel, and the panel may determine by whom and to what extent the costs should be paid, and the date by which the costs shall be paid."
- A.2.8. The question for the Committee was what course of action should be followed in the interim until the legislation is amended.
- A.2.9. Your Committee recommends that discipline counsel continue to ask for costs and Convocation and discipline committees continue to award costs in appropriate cases.

A.2.10. On the advice of staff, your Committee recommends that the following tariff be adopted for the calculation of costs:

Senior Counsel-Discipline	\$200/hour
Discipline Counsel	\$150/hour
Staff Lawyers (Complaints and Investigations)	\$125/hour
Auditors and Investigators	\$100/hour
Examiners, Paralegals, and Complaints Officers	\$ 50/hour

A.2.11. Your Committee also recommends that the following steps be taken to promote the more effectual enforcement of cost awards:

(a) At present Convocation issues formal orders when members are disciplined. In cases in which members are ordered to pay costs the order should specify the amount awarded, the date by which the costs are payable, and the interest payable in the event of default. Discipline hearing panels should issue similar orders. Draft orders are attached at pages A-1 and A-2. The postjudgment interest rate applicable in civil proceedings should be applicable to such orders.

(b) In cases in which discipline hearing panels recommend that a member be disciplined in Convocation and ordered to pay costs, the member should be required to tender a cheque for the full amount of the costs awarded on or before the date on which the report is considered by Convocation.

Note: Amendment, see page 354

(c) In cases in which orders requiring the payment of costs are not honoured in a timely way, the orders should be filed in the Ontario Court (General Division) and enforced as orders of that Court pursuant to section 19(1) of the Statutory Powers Procedure Act, which reads as follows:

"A certified copy of a final decision or order of a tribunal in any proceeding may be filed in the Ontario Court (General Division) by the tribunal or by a party, and, if it is for the payment of money, it may be enforced at the instance of the tribunal or of such party in the name of the tribunal in the same manner as an order of that court, and in all other cases by an application by the tribunal or by such party to the court for such order as the court may consider just."

A.3. PARTICIPATION OF THE CHAIR AND VICE-CHAIRS OF DISCIPLINE IN DISCIPLINE CONVOCATION

A.3.1. The Chair raised this matter for the Committee's consideration. At present, the Chair and Vice-Chairs of the Discipline Committee participate in the deliberations at Discipline Convocation to the extent that they move the adoption of a committee report and provide advice, when requested, concerning procedural matters.

- A.3.2. This role has caused the Chair some discomfort, because it is not entirely reconcilable with the other role of the Chair and Vice-Chairs in the authorization of complaints. The principle that there should be a separation of prosecutorial and adjudicative functions may lead to the conclusion that those who authorize complaints should take no part in the deliberative process.
- A.3.3. The argument for the continuation of the present function of the Chair and Vice-Chairs is that they are a source of information as to the proper procedures for discipline.
- A.3.4. Your Committee recommends that the Chair and Vice-Chair of the Discipline Committee not participate in Discipline Convocation.
- A.3.5. Your Committee further recommends that this matter be placed on the November 1993 agenda for reconsideration by this Committee in light of experience.

B.  
ADMINISTRATION

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B.1. APPLICATION TO AMEND AN UNDERTAKING

- B.1.1. Your Committee considered a request to amend an undertaking from Donald Zaldin. Mr. Zaldin provided the undertaking to the Society on May 3, 1988 in connection with a discipline proceeding. The 1988 undertaking allows Mr. Zaldin to practise law only as an in-house counsel to a corporation or government body. Mr. Zaldin wishes to be allowed to engage in private practice, but is willing to undertake to practise only as an employee of a firm under the supervision of a member in good standing, and not as a sole practitioner.
- B.1.2. The history of the matter is as follows:
  - (a) 1982 - Discipline Proceedings
- B.1.3. Mr. Zaldin was called to the bar in 1975. In 1982, he was found guilty of professional misconduct. The discipline hearing panel found that on two occasions he had misled clients concerning the status of litigation, that he had failed to maintain required books and records, and that he had failed to file forms 2 and 3. The panel received psychiatric evidence to the effect that Mr. Zaldin was suffering from a serious depressive illness that affected his conduct.
- B.1.4. The discipline hearing panel recommended that Mr. Zaldin be reprimanded in Convocation and that a committee be struck pursuant to section 35 of the *Law Society Act* to consider his competence to continue to practise.
- B.1.5. In December 1982, Convocation struck a section 35 committee, but adjourned its consideration of the recommendation of the discipline hearing panel until it had the benefit of the report of the section 35 committee.

(b) 1983 Competency Proceedings

- B.1.6. In early 1983, pursuant to Convocation's December 1982 order, a section 35 committee heard evidence concerning Mr. Zaldin's competence to resume practice. Dr. Andrew Malcolm was retained by the Society to assess Mr. Zaldin, and he testified at the hearing. The committee recommended that Mr. Zaldin be limited to practising other than in private practice.
- B.1.7. In September 1983 Convocation considered the reports of the 1982 discipline hearing panel and the 1983 section 35 panel. Convocation ordered that Mr. Zaldin be suspended for two years, and that a further section 35 hearing be held prior to September 22, 1985 to determine whether Mr. Zaldin was capable of resuming practice.

(c) 1984 Application for Early Termination of Suspension

- B.1.8. In 1984, Mr. Zaldin applied under section 47 of the *Law Society Act* for an order terminating his suspension and restoring his rights and privileges. Convocation appointed a committee of benchers to sit pursuant to both section 35 and section 47 of the Act, to consider whether Mr. Zaldin was competent to practise and whether his suspension should be terminated.
- B.1.9. The Committee received in evidence a further report of Dr. Malcolm, who expressed the opinion that Mr. Zaldin's condition had improved considerably, and that he could be a credit to the Society if he were to practise as an employed lawyer.
- B.1.10. The committee recommended that Mr. Zaldin's rights and privileges be restored on the condition that he practise as an employee of another member of the Society. On November 23, 1984, Convocation accepted the committee's recommendation.

(d) 1988 Discipline Proceedings

- B.1.11. In 1988, Mr. Zaldin was again charged with professional misconduct. In the only particular in the complaint it was alleged that between August 1985 and October 1987 Mr. Zaldin misled a client as to the status of legal proceedings he had been instructed to commence.
- B.1.12. Mr. Zaldin provided an undertaking to the committee that he would practise law only as an in-house counsel to a corporation or government body. It is that undertaking that Mr. Zaldin seeks to amend.

On the basis of his undertaking, the complaint was withdrawn.

- B.1.13. Your Committee had the following materials before it:

1. Letter dated November 30, 1992 from Mr. Zaldin to the Society;
2. Letter dated August 30, 1990 from Mr. Jack McGuire to the Society;
3. Letter dated August 20, 1992 from Mr. McGuire to the Society;
4. Letter dated September 14, 1992 from Dr. Malcolm to the Society;

5. Letter dated February 11, 1993 from Ronald Zaldin to the Society; and
  6. Letter dated April 28, 1993 from Dr. Malcolm to the Society.
- B.1.14. Your Committee considered the history of this member and the materials before it and recommends that Convocation amend the undertaking to allow Mr. Zaldin to enter into private practice on the condition that he practise only as an employee of a firm, not as a sole practitioner, and under the supervision of a member in good standing.
- B.2. REGULATION 708: SECTIONS 15.1, 15.2 AND 18
- B.2.1. Your Committee considered a memorandum from the staff requesting its views on a possible amendment to the regulation 708, R.R.O. 1990 made pursuant to the *Law Society Act*.
- B.2.2. Sections 15.1 and 15.2 require the keeping of certain books, records and accounts in respect of mortgages held in trust and client funds which are invested and secured by mortgage. Subsection 18(1) of the regulation gives specific power to the Chair or Vice-Chair of the Discipline Committee to require that an investigation be made of a member's books and accounts for the purpose of ascertaining and reporting "whether sections 14, 15 and 16 have been and are being complied with by such member..." No reference to Sections 15.1 or 15.2 is included in Subsection 18(1). If Sections 14, 15 and 16 are specifically mentioned in Subsection 18(1) it is anomalous that Sections 15.1 and 15.2 are not also mentioned.
- B.2.3. Your Committee recommends that Convocation request that the Legislation and Rules Committee draft amendments to the regulations to correct this anomaly.

C  
INFORMATION

- C.1. PLEADING OF EVIDENCE IN COMPLAINTS
- C.1.1. Mr. Topp raised this issue of concern before the Committee. He was of the view that it is of the utmost importance that when a complaint is authorized that no evidence be pleaded in the giving of particulars of the complaint. There is a need for particulars, but in no case should unproven facts, apart from those necessary for particulars of the offence, be contained in the complaint or released to the press. To allow such unproven evidence to come into the public domain violates the principles of fairness and may permanently damage the reputation of a solicitor based on unsubstantiated facts.
- C.1.2. Your Committee considered the matter and agreed with the principle that evidence should not be pleaded in complaints. Mr. Topp will review a number of recent complaints in order to ascertain whether further guidance is required from this Committee.

28th May, 1993

C.2. AUTHORIZATION OF DISCIPLINE CHARGES

C.2.1. Once a month, the Chair and/or one or both of the Vice-Chairs of your Committee meet with the Complaints and Discipline staff to consider requests for formal disciplinary action against individual lawyers.

C.2.2. The following table shows the number of requests made by Discipline, Complaints and Audit staff for the month of May 1993.

<u>May</u>	<u>Sought</u>	<u>Obtained</u>
Discipline	4	4
Complaints	28	25
Audit	19	19
Total:		48

Total number of charges authorized to date for 1993:

January	39
February	34
March	34
April	38
May	48
Total:	193

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"H. Strosberg"  
Chair

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

A-Item A.2.11. - Draft Orders re: Costs.

(Marked A-1 - A-2)

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of May 13th, 1993

Mr. Goudge spoke to Item C.-1. re: Proposed Professional Conduct Rule on Discrimination and Item C.-3 re: Access to Legal Education by Foreign-Trained Lawyers.

28th May, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 13th of May 1993, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, Paul Copeland, Nora Richardson, David Scott, April Burey, Bernd Christmas, Edmund Clarke, Andrew Ranachan, Adella Rodriguez, Joanne St.Lewis, Donald Crosbie, Mimi Hart, Ron Jourard, Alexis Singer and Alan Treleaven.

A.

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POLICY

No items.

B.

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ADMINISTRATION

No items.

C.

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INFORMATION

1. Proposed Professional Conduct Rule on Discrimination

1.1 The committee considered a further draft of the proposed professional conduct rule to deal with discrimination.

1.2 It was noted that the rule may in a few respects go beyond the requirements of the Human Rights Code and the issue, therefore, arose as to how best to reflect this fact in the draft since specific reference is made to the provisions of the Human Rights Code.

1.3 Three issues arose concerning the responsibility or liability of a member in respect of discrimination by other members of the firm:

a) It was concluded that an employed lawyer or associate in a firm should not be required to take reasonable positive steps to deal with discrimination by a partner.

b) It was agreed that a member of a firm who is a partner should be required to take positive steps to deal with other partners' discrimination.

c) No conclusion was reached about how to deal with liability for vicarious acts of discrimination, for example, where an employee of the firm discriminates and the partners could not reasonably be expected to have known about the discrimination. This issue arises since the Code holds employers, for example, liable for discrimination without their knowledge by those they control. In the discussion, a distinction was made between the unintentional discrimination by a member for which the member may be personally liable and the vicarious responsibility for discrimination that might arise by reason of being a partner in a firm. It was decided that further consideration of this issue was necessary.

1.4 The draft rule sets out various factors to be considered in assessing the seriousness of violations of the rule. There was discussion as to whether it was appropriate to provide this material with arguments being made on both sides of the issue. It was noted that most Benchers who may be called upon to deal with this rule, may not have had much experience with discrimination issues or the Human Rights Code. In these circumstances, it was suggested that inclusion of the factors to be taken into account in determining the penalty was appropriate and would be useful.

1.5 It was agreed that the subcommittee meet again to continue its consideration of the appropriate content of the rule.

2. Commission on Systemic Racism in the Ontario Criminal Justice System

The committee considered a request from the Treasurer that it undertake the preparation of a formal written submission to the Commission on Systemic Racism in the Ontario Criminal Justice System with respect to the matters that the Commission is studying. The committee agreed that it would be appropriate for it to do so and the Chair was authorized to appoint a subcommittee to work on the submission.

3. Access to Legal Education by Foreign-Trained Lawyers

A draft proposal was distributed to the committee outlining the issues giving rise to the need to provide alternative education resources for foreign-trained lawyers and suggesting a preliminary study of these issues. It is intended that the Ontario government be approached to see whether it has funding for such a study.

4. Subcommittee on Access to Articles and Employment

The subcommittee has held focus group meetings in Toronto, Ottawa, London and Hamilton. The subcommittee will be reporting to the Equity Committee in June.

5. Minority Students Seeking Articles

A detailed report on this matter was postponed until the June meeting of the committee.

6. Recommendation on Employment Equity From Strategic Planning Conference

The recommendation from the Strategic Planning Conference on Employment Equity was that the committee consider the proposition that all law firms of a certain size be required to file an Employment Equity Plan for lawyers. There was not sufficient time to start a discussion on this important issue and it has been postponed to the June meeting of the committee.

7. Need for an Equity Coordinator in the Law Society

The Treasurer asked the committee to consider whether it was appropriate to have a summer student or a full-time appointment as Equity Coordinator in the Law Society. It was noted that this position might be located in one of three positions, namely, the Equity Committee, the Human Resources Department or the Bar Admission Course of the Legal Education Department. There was not an extended discussion of the matter and it has been referred over to the June meeting of the committee.

8. Cooperation with the CBAO

The Under Treasurer was directed to reply to a letter from the President of the CBAO welcoming the offer of cooperation in equity issues and advising her of the initiatives taken to date.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May 1993

"S. Goudge"  
Chair

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of May 13th, 1993

Mr. Ruby spoke to Item A.-1. re: Publicity Campaign for the Lawyers Fund for Client Compensation.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 13th of May, 1993, at 11:45 a.m. the following members being present: C. Ruby (Chair), N. Finkelstein (Vice-Chair), L. Brennan, K. Howie, S. Lerner, T. McClenaghan and S. Thom; J. Brooks, S. Hickling, and H. Werry also attended.

A.  
POLICY

1. PUBLICITY CAMPAIGN FOR  
THE LAWYERS FUND FOR CLIENT COMPENSATION

The Committee continued the discussion on the newsprint advertising proposals presented by Chiat Day, an advertising firm.

28th May, 1993

Your Committee recommends that the process of drafting surveys and making copy ready advertisement presently under way should proceed to completion so the Committee will have something concrete to examine in the near future. At that time, concerns about the proposal can be discussed in a real context. This matter will be returned to Convocation before any advertisements are authorized for publication.

Deferred from March Convocation

2. BUDGET PLANNING 1993/1994

The Director of Finance presented an analysis of the claims history and a projection into 1997. The total amount of outstanding claims is \$46,644,423. and with claimant limits applied the total amount is \$20,454,422. Of this amount, it is anticipated at least \$3,010,418. will be paid by other sources leaving the exposure of the Lawyers Fund for Client Compensation conservatively at approximately \$17,444,000. With the present balance in the Fund at approximately \$30,000,000., the Director of Finance is of the opinion that the Fund has an adequate financial surplus to continue at the \$1. levy for at least another year.

Your Committee recommends that there be no increase in the levy for the next fiscal year. However, the Committee is of the view that the membership should be alerted to the fact that claims have increased dramatically during the last two years and the \$1. annual levy for the Fund cannot be expected to continue indefinitely.

Deferred from March Convocation

B.  
ADMINISTRATION

No items

C.  
INFORMATION

1. REFEREE REPORTS AND AN ASSISTANT SECRETARY'S MEMOS

The Referee Reports and Staff Memoranda that were approved by the Review Sub-Committee were before the Committee for information purposes only with the grants to be paid from the Fund shown on Schedule "A" of this report.

2. A copy of the Financial Summary as of March 1993 and graphs showing claims made and grants paid are attached. (Pgs. C1 - C4)

28th May, 1993

3. Accounts approved by Assistant Secretaries in April amounted to \$39,821.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"C. Ruby"  
Chair

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

C-Item 1. - Referee Reports and Staff Memoranda - May 13, 1993. (Schedule "A")

C-Item 2. - Financial Summary for the Period July 1, 1992 - March 31, 1993. (Marked C1 - C4)

THE REPORT WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of May 13th, 1993

Ms. Kiteley spoke to Item A.-1.(e) re: Refugee Pilot Project Sub-Committee and Item A.-1.(f) re: Family Law Pilot Project Design Sub-Committee.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993, at two-thirty o'clock in the afternoon, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Bond, Brennan, Ms. Campbell, Ms. Cohen, Mr. Durno, Ms. Fuerst, Ms. Kehoe, Messrs. Koenig and Petiquan.

Note: Mr. Copeland was present on May 13th.

A.  
POLICY

1.(a) THE ROLE OF THE LEGAL AID COMMITTEE

As reported to Convocation in April 1993, the Legal Aid Committee intended to reserve a special occasion to enable it to examine in detail its statutory and regulatory role and its relationship with Convocation, and to establish long-term goals and objectives for the Legal Aid Plan. In the April Report to Convocation the Legal Aid Committee indicated its intention to engage a consultant to facilitate that process. At the request of a Bencher, that item on the Legal Aid Committee Report was transferred to the April list at Convocation which would enable debate. Due to the length of the agenda at the April Convocation, the item was not addressed.

At the May meeting, the Legal Aid Committee received a draft Request for Proposals prepared by Laura Nashman, Ontario Legal Aid Plan's Human Resources Manager. On motion by James Bond, seconded by Michael Koenig, the Legal Aid Committee approved the Request for Proposals to be circulated to potential consultants subject to the input of Convocation with respect to the previous (outstanding) Report of the Legal Aid Committee. The Request for Proposals is attached as SCHEDULE (A).

1.(b) REPORT OF THE APPOINTMENTS SUB-COMMITTEE

Appointments to the Legal Aid Committee are made by the Attorney General, the Treasurer of the Law Society, and the Student Legal Aid Societies of Ontario. The Attorney General makes appointments of five lay members, each for a three-year term. The Treasurer appoints the Chair of the Committee for a three-year term, and appoints four other Benchers and five other non-Bencher lawyers. In the case of the Benchers, the term is at the pleasure of the Treasurer. In the case of the non-Bencher lawyers, the term is for three years. The Student Legal Aid Societies appoint at one year intervals.

The Legal Aid Committee had earlier struck a sub-committee consisting of Judy Campbell (Chair), Frances Kiteley and Bob Holden to review the appointments process, with a view to considering a means whereby appointments from a variety of sources at different intervals would continue to address the need to have broad representation by varied individuals and groups on the Legal Aid Committee.

The sub-committee reported to the Legal Aid Committee on its deliberations, including its review of the appointment of non-Bencher lawyers to Law Society committees. The report is attached as SCHEDULE (B). The report was adopted by the Legal Aid Committee.

1.(c) STUDENT LEGAL AID SOCIETIES

Convocation had received the report in January 1993 with respect to the Student Legal Aid Societies. That report contained a number of recommendations. Those recommendations fell into two categories. The majority of the recommendations (1 to 4) related to the administration of the Student Legal Aid Societies. The fifth recommendation involved the issue of the extent to which Student Legal Aid Societies could choose those individuals and groups whom they wished to represent. At Convocation in January 1993, the debate focused on the fifth recommendation. Convocation referred the entire report back to the Legal Aid Committee with a view to further consideration of the fifth recommendation.

Subsequently, a transcript of the debate in Convocation was made available to some members of the Legal Aid Committee. David Scott had forwarded a letter dated February 9, 1993 reflecting an elaboration of the views which he had expressed in Convocation. A copy of his letter dated February 9, 1993 is attached as SCHEDULE (C). The Legal Aid Committee was advised that the Law Society is presently reviewing all of the Rules of Professional Conduct, including the Rule with respect to discrimination.

The Legal Aid Committee expressed a concern that the administrative recommendations contained in the report should be approved and implemented. Moved by James Bond and seconded by Michael Koenig that Convocation be asked to approve recommendations 1 to 4 of the report previously submitted; and that James Bond (Chair of the Student Legal Aid Societies Sub-committee) be directed to forward to the Chair of the Professional Conduct Committee a letter requesting that the issues raised in the fifth recommendation be part of the deliberations of the Professional Conduct Committee in reviewing that Rule. The motion was carried.

A copy of the report by the Sub-committee on the Student Legal Aid Societies is attached as SCHEDULE (D).

1.(d) RESPONSE TO THE ABT REPORT

The Federal Government has the right to commission a review of each of the Provincial/Territorial Legal Aid Plans. In 1989/90/91, the review was conducted by ABT. The report became available to the Legal Aid Committee in the summer of 1991. The Legal Aid Committee devoted part of every meeting for approximately one year to review in depth the report and the recommendations made by ABT. As a result of its review, the Legal Aid Committee prepared a response to the ABT Report. A copy of the response is attached as SCHEDULE (E).

The ABT Report itself is voluminous. Copies can be obtained by Benchers on request to the Provincial Director at 979-0935.

1.(e) REFUGEE PILOT PROJECT SUB-COMMITTEE

In the summer of 1992, a concern was raised as to whether the Legal Aid Plan should consider the delivery of law in the area of refugee practice through a staff model. Subsequently, the Legal Aid Committee canvassed groups and individuals involved in that area of practice. It became apparent that there was some concern about the quality of service being extended in some areas.

In an effort to address these concerns, the Legal Aid Committee struck a Sub-committee consisting of Ruth Lawson (Deputy Director - Appeals - Ontario Legal Aid Plan), Lorne Waldman, Greg James, Gianvito Panico, Bruce Ally, Lloyd Brennan, Karen McCullough, Peter Showler, Joyce Chan and Jim Raitlon.

That committee has met on several occasions. Its final meeting had occurred in April. The report of the Refugee Pilot Projects Sub-committee will be available to the Legal Aid Committee at its June meeting. The report will likely recommend a pilot project based upon a staff model of delivery under the auspices of the Provincial Director of the Ontario Legal Aid Plan.

1.(f) FAMILY LAW PILOT PROJECT DESIGN SUB-COMMITTEE

In 1992, Convocation indicated that the Legal Aid Committee and Clinic Funding Committee should investigate the prospects of delivery of family law through a staff model. Subsequently, a Steering Committee was created consisting of representatives of the Ministry of the Attorney General, together with representatives of the Clinic Funding Committee (Phil Epstein and Joanna Kuras (Executive Director) and of the Legal Aid Committee (Fran Kiteley and Bob Holden (Provincial Director)). That Pilot Project Steering Committee further created a Family Law Design Committee. Appointments were made to the Design Committee from a broad cross-section of lawyers and users. The Design Sub-committee has met extensively. Its report is in the drafting stages. The Legal Aid Committee is optimistic that the report will be available for its consideration in June 1993.

B.  
ADMINISTRATION

1.(a) REPORT OF THE DEPUTY DIRECTOR, FINANCE  
FOR THE TWELVE MONTHS ENDED MARCH 31, 1993

The preliminary Report of the Deputy Director, Finance for the Twelve Months Ended March 31, 1993 was presented to the Committee and is attached as SCHEDULE (F).

28th May, 1993

1.(b) REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS  
FOR THE MONTH OF APRIL, 1993

The Legal Aid Committee received the Report on the Payment of Solicitors Accounts for the month of April 1993 which is attached as SCHEDULE (G).

1.(c) REPORT ON THE STATUS OF REVIEWS IN THE LEGAL  
ACCOUNTS DEPARTMENT FOR THE MONTH OF APRIL, 1993

The Legal Aid Committee received the Report on the Status of Review in the Legal Accounts Department for the month of April 1993 which is attached as SCHEDULE (H).

1.(d) AREA COMMITTEES - APPOINTMENTS

APPOINTMENTS

Halton

John Pichell, solicitor  
Catherine Dawn Kidd, youth programme co-ordinator

Manitoulin & Sudbury

Phil Barbeau, pharmaceutical sales representative

C.  
INFORMATION

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1.(a) MINISTRY OF THE ATTORNEY GENERAL NEWS RELEASE

The Legal Aid Committee received a copy of the Press Release from the Ministry of the Attorney General concerning the creation of a new clinic, which is attached hereto as SCHEDULE (I).

1.(b) COMMISSION ON SYSTEMIC RACISM IN THE  
ONTARIO CRIMINAL JUSTICE SYSTEM

The Legal Aid Committee received a copy of the Booklet prepared by the Commission on Systemic Racism in the Ontario Criminal Justice System. The Chair asked Paul Copeland to make further inquiries as to the role which the Legal Aid Committee might play in responding to the request for submission by the Commission.

1.(c) LEGAL AID BUDGET FISCAL YEAR 1993/94

Attached as SCHEDULE (J) is a copy of a memo dated May 5, 1993 from the Provincial Director to the members of the Legal Aid Committee summarizing the effect on the budget of the Ontario Legal Aid Plan with respect to the announcement made by the Treasurer of Ontario on April 23, 1993.

ALL OF WHICH is respectfully submitted

May 20, 1993

"F. P. Kiteley"  
Chair

28th May, 1993

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

- A-Item 1.(a) - Draft Request for Proposals - Effectiveness of the Legal Aid Committee. (Schedule (A), pages 1 - 2)
- A-Item 1.(b) - Report of the Appointments Sub-Committee. (Schedule (B), pages 1 - 4)
- A-Item 1.(c) - Copy of letter from Mr. David W. Scott to Ms. Frances Kiteley dated February 9, 1993 re: Student Legal Aid Societies. (Schedule (C), pages 1 - 4)
- A-Item 1.(c) - Report of the Sub-Committee on Student Legal Aid Societies - June 1992. (Schedule (D), pages 1 - 12)
- A-Item 1.(d) - The Legal Aid Committee's Response to the Recommendations in the ABT Report. (Schedule (E), pages 1 - 8)
- B-Item 1.(a) - Report of the Deputy Director, Finance for the Twelve Months Ended March 31, 1993. (Schedule (F), pages 1 - 2)
- B-Item 1.(b) - Report of the Payment of Solicitors Accounts for the month of April 1993. (Schedule (G), pages 1 - 2)
- B-Item 1.(c) - Report on the Status of Reviews in the Legal Accounts Department for the Month of April, 1993. (Schedule (H))
- C-Item 1.(a) - Copy of News Release by the Ministry of the Attorney General dated April 29, 1993 re: Anti-Racism Initiatives. (Schedule (I), pages 1 - 2)
- C-Item 1.(c) - Copy of a memo from Mr. Robert L. Holden, Provincial Director to the Members of the Legal Aid Committee dated May 5, 1993. (Schedule (J), pages 1 - 2)

LEGAL EDUCATION COMMITTEE

Meeting of May 13th, 1993

Mr. Lamek spoke to Item C.-C.7 re: Articling Placement update and Mr. Epstein spoke to Item C.-C.12 re: Continuing Legal Education Subcommittee.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 13th of May, 1993, at 10:30 a.m.

The following members were in attendance: Paul Lamek (Chair), Philip Epstein (Vice-chair), Donald Lamont (Vice-chair), Thomas Bastedo, Lloyd Brennan, Susan Elliott, Stephen Goudge, Vern Krishna, Laura Legge, Colin McKinnon, Dean Donald McRae (representing the law schools), Ross Murray, Louis Radomsky (non-Bencher member), and Marc Somerville. Bencher Shirley O'Connor also was in attendance. Staff in attendance were: Marilyn Bode, Brenda Duncan, Holly Harris, Mimi Hart, Susan McCaffrey, Alexandra Rookes, and Alan Treleven.

A.  
POLICY

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A.1 ISSUES RELATED TO EXAMINATION ADMINISTRATION IN THE BAR ADMISSION COURSE

A.1.1 The following section of the Requirements for Standing governing Phase Three of the Bar Admission Course provides staff with discretion to modify examination procedures for disadvantaged students:

Students who are disadvantaged in the examination process by a personal circumstance beyond their control ... may apply in writing to the Registrar for permission to satisfy the Examination requirement according to procedures which will minimize the disadvantage as much as reasonably possible. The request must be made in sufficient time before the Examination to enable adjustments to be made in the Examination procedure.

A.1.2 In instances where students can reasonably establish that they are disadvantaged in the examination process by a learning disability, medical disability, physical disability or psychological disability, students are permitted to satisfy the examination requirement with appropriate modifications to the normal procedures. The appropriate modification depends on the individual facts, and typically results in the examination being written with an extension of time, written in a private or alternate location, or taken orally. The intention is that students will be able, with an appropriate modification in the examination procedures, to demonstrate their lawyering ability.

A.1.3 Recently a few students have requested extra time to write examinations, on the basis that their first language is neither English nor French, and that this results in their being disadvantaged in the examination process. The Bar Admission Course is being asked in such situations to grant extensions of time to account for the language disadvantage.

A.1.4 The Legal Education Committee considered whether an extension of time in an examination should be permitted for students who assert that they are disadvantaged because neither English nor French is their first language. The Committee considered whether such an accommodation should be made, and included in its deliberations a discussion of whether passing an appropriate language pre-test would be required in order for students to obtain an extension of time for writing examinations. The Committee concluded that superior proficiency in either English or French is an essential skill for the effective practice of law, and that accordingly students would not be granted an extension of time in writing examinations, or any other accommodation, solely on the basis of their being at a disadvantage in either English or French.

A.1.5 Recommendation: It is recommended that students not be granted an accommodation in the Bar Admission Course process when the request for such an accommodation is made solely on the basis of the student being at a disadvantage in either English or French.

Note: Amendment, see page 369

B.  
ADMINISTRATION

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No items to report this month.

C.  
INFORMATION

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C.1            MANDATORY CONTINUING LEGAL EDUCATION

C.1.1        A draft report of the Continuing Legal Education Subcommittee entitled "Mandatory Continuing Legal Education: Should It Be Introduced in Ontario?" was distributed for comment and possible revision to those past and present members of the Continuing Legal Education Subcommittee who have been involved in considering the issue of implementing mandatory continuing legal education in Ontario. Colin McKinnon, as Chair of the Subcommittee that considered mandatory continuing legal education, subsequently provided a revised draft report to the Legal Education Committee for consideration.

C.1.2        The Legal Education Committee will consider the revised draft report at its June 10 meeting.

C.2            AMENDMENT TO REGULATION 708, SUBSECTION 23 (7)

C.2.1        Subsection 23 (7) to Regulation 708 made under the Law Society Act reads as follows:

Every student-at-law must complete the Bar Admission Course within the ten-year period commencing at graduation from a law course in a university in Canada approved by Convocation.

C.2.2        Section 23, including subsection 23 (7), does not indicate whether or how long students who have commenced the Bar Admission Course may interrupt the Course before its completion.

C.2.3        The Director of Education recommended revising section 23, including subsection 23 (7), to reduce the time which can elapse unconditionally before commencing the Bar Admission Course and to allow for only a prescribed limited delay between the phases of the Bar Admission Course. The Director recommended, however, that the revised section 23 be drafted and approved in a form that does not retroactively affect the rights of persons who have to-date graduated with a Canadian common law degree or have obtained a Certificate of Qualification from the Joint Committee on Accreditation.

C.2.4        The Director was authorized to draft and present to the Legal Education Committee and then the Legislation and Rules Committee amendments to section 23 of Regulation 708 to limit the time for completion of the Bar Admission Course, but so as not to affect persons who currently hold a Canadian LL.B. degree or a Certificate of Qualification issued by the Joint Committee on Accreditation.

C.3 BAR ADMISSION COURSE INSTRUCTOR EXPENSES

C.3.1 The Bar Admission Course budget includes funds to pay an honorarium of \$32 per hour to lawyers who volunteer to serve as Instructors in the Bar Admission Course. The \$32 per hour is payable for the scheduled teaching hours and one-half hour of scheduled meeting time on each teaching day. Instructors are not reimbursed for preparation or travel time or for out-of-pocket expenses.

C.3.2 A lawyer from beyond regular commuting distance, who teaches in Toronto, has requested that he be reimbursed for his travel time and out-of-pocket expenses. Current policy entitles him to receive \$768 plus GST for honorarium only. If he is compensated for his travel time, parking, mileage, one night of hotel and minor incidental expenses, his payment would increase to \$1249.29.

C.3.3 While it is highly desirable to encourage lawyers from beyond regular commuting distances to teach in the Bar Admission Course, payment of additional honoraria and reimbursement of expenses would place a strain on an already very tight Bar Admission Course budget.

C.3.4 The Legal Education Committee decided that the Bar Admission Course would not pay an increased honorarium and out-of-pocket expenses for lawyers who teach in the Bar Admission Course but travel further than regular commuter distances. The Director of Education was, however, given a discretion to authorize payment of out-of-pocket expenses in exceptional circumstances.

C.4 APPROVAL AS AN ARTICLING PRINCIPAL

C.4.1 The Articling Subcommittee at its April 23 meeting reconsidered the application for principal approval for the 1992/93 and 1993/94 articling years from a member who has been called to the bar for approximately one year.

C.4.2 The Subcommittee had denied the member's application at its March 1993 meeting as the member had not practised law for the minimum three year requirement.

C.4.3 The member requested a reconsideration of the decision of the Articling Subcommittee. The reasons cited by the member for the reconsideration include that the member wishes to hire two minority students who are having difficulties procuring articles, and that the three year practice requirement for the approval of a member's application to serve as an articling principal is arbitrary.

C.4.4 The Articling Subcommittee had previously received the permission of the Legal Education Committee to make exceptions in appropriate cases for members who do not have three years of practice experience. However, considering this member's credentials, the Subcommittee concluded that this application should be denied.

C.4.5 The Articling Subcommittee obtained the following advice from the Legal Education Committee:

- a) In considering whether to make an exception in a particular case to the three year practice experience requirement, the Articling Subcommittee is permitted to take into account experience other than law-related experience.

- b) The law-related experience of this member is not sufficient to grant the exception to the three year practice requirement.
- c) In considering whether to make an exception in a particular case from the general requirement, the Articling Subcommittee may not base the exception on the fact that the student seeking to article with the principal is a visible minority student.

C.5 DRAFT REPORT ON REQUALIFICATION

C.5.1 The Joint Sub-committee on Requalification has prepared a draft report for consideration by the Committees to which it reports. Sue McCaffrey, Secretary to the Professional Standards Committee, asked that the draft report be considered by the Legal Education Committee and that the Committee advise her of any comments, concerns or questions arising out of the draft report.

C.5.2 The Legal Education Committee approved those provisions in the draft report that call specifically for the involvement and decision of the Legal Education Committee and the Department of Education staff.

C.6 BAR ADMISSION COURSE FINANCIAL ISSUES SUBCOMMITTEE

C.6.1 The Bar Admission Course Financial Issues Subcommittee met on April 7 and May 12. The Subcommittee continued to explore whether there are alternatives to the current Spence model that would generate substantial savings while fulfilling the Law Society's educational mandate. The Subcommittee in this context considered proposals and developments elsewhere in Canada, in the United Kingdom, and in the United States.

C.7 ARTICLING PLACEMENT UPDATE

C.7.1 Mimi Hart, Director of Financial Aid and Placement, reports as of May 14 that the Placement Office has identified 85 students (approximately five percent of Phase One enrolment) without articling positions. A survey, conducted with the assistance of the Law Deans, provides the Placement Office with specific information about the unplaced students including locations where they are able to accept articles and practice areas in which they would like to gain experience. The Placement Office becomes involved in assisting unplaced students on an individual basis when they attend Phase One.

C.8 ARTICLING PROCEDURES REVIEW SUBCOMMITTEE

C.8.1 The Articling Procedures Review Subcommittee, chaired by Philip Epstein, met on Tuesday, April 13. Elliott Peranson attended on behalf of National Matching Services.

C.8.2 Mr. Peranson provided the Subcommittee with up-to-date statistics on the 1993 Match. As of April 13, 1993, 81 firms were enroled offering a total of 461 positions. Last year at this time, 95 firms had enroled offering a total of 503 positions. National Matching Services is aware of 78 other firms offering a total of 168 positions that are not in the Match.

C.8.3 The Subcommittee then discussed the merits of the Match, and in particular heard from representatives of firms that are outside of the Match in Toronto.

- C.8.4 The Subcommittee decided to survey the students entering Phase One of the Bar Admission Course in 1993 to determine their views on the current articling recruitment system.
- C.8.5 The Subcommittee met again on Wednesday, May 12. The Subcommittee reviewed and finalized a draft survey to be administered to the current Phase One students. The survey is designed to gather data and opinions on the effectiveness of articling recruitment procedures, including but not limited to the effectiveness of the Match.
- C.8.6 The Subcommittee intends to carry on with its review of the articling recruitment procedures to determine how their effectiveness can be enhanced, with a particular focus on the Match.
- C.8.7 The Subcommittee intends to report to the Legal Education Committee early in the fall of 1993.
- C.9 ARTICLING INTERVIEW GUIDELINES PROJECT
- C.9.1 The Law Society continues to receive reports that prospective articling students are on occasion asked questions in their articling interviews which make them uncomfortable and raise the perception of bias. Mimi Hart, Director of Financial Aid and Placement, is working with a subcommittee of the Equity Committee, chaired by Denise Bellamy, to produce guidelines for the profession to ensure the interview process is free of discrimination. An interim report summarizing the work undertaken to date was distributed to the Legal Education Committee.
- C.10 ARTICLING SUBCOMMITTEE
- C.10.1 The Articling Subcommittee met on April 23 1993. In attendance were Marc Somerville (Chair), Maurice Cullity, Stephen Goudge, Janne Burton, Victoria Colby, Jay Rudolph, and Dora Nipp. Staff members attending were Marilyn Bode, Deborah Brown, and Mimi Hart.
- C.10.2 The Subcommittee gave conditional approval to a further 45 applications from prospective articling principals for the 1992/93 articling year. To date, approximately 1317 members of the profession have applied. The Subcommittee also gave conditional approval to an additional 100 applications from prospective articling principals for the 1993/94 year. To date, approximately 800 members have applied to serve as principals for the 1993/94 articling year.
- C.10.3 The Subcommittee approved the applications of three other members applying for approval for the 1992/93 articling year, and one member for the 1993/94 articling year. Each member had some negative history with the Law Society. The Subcommittee did not consider the history sufficiently negative to deny the members' applications. The applications were approved.
- C.10.4 The appeal of an abridgment application from the decision of the Articling Director was considered. The applicant had been granted an abridgment to nine months by the Articling Director. The applicant appealed, requesting an abridgment to six months. The applicant had just under 3 years of law-related experience working in government employment. The Subcommittee denied the appeal.
- C.10.5 The Subcommittee considered two policy matters. One was the termination of an articling student by a principal. The principal

sent a fax to the student while the principal was out of the country, suspending the student's employment "indefinitely" based on a poor report about the student's performance. The other lawyer in the office had no difficulties with the work of the student. The student advised the Articling Director that the student considered this to be in effect a termination of the articling relationship. The student and principal mutually agreed on the principal's return to the office to terminate the articling relationship. The Articling Director spoke to the lawyer about the situation. The Articling Subcommittee decided to add a clause to the Articles of Clerkship document requiring principals to notify the Articling Director when they are contemplating terminating a student. Principals normally contact the Articling Director in such circumstances. However, this would highlight the seriousness of such a decision to members of the profession.

- C.10.6 The second policy item relates to a sole practitioner who has offered a position to a student for the 1993/94 articling year. The issue is one of space: The lawyer practises law out of home, and has a tiny office. The lawyer has advised the Articling Director that there is no space to accommodate a desk or even a chair for the student. The lawyer is prepared to hire the student if the student works out of the student's home or the library for the articling year. The lawyer would be available by telephone every day and would meet with the student, at a minimum, every Monday morning at 9 a.m. No articling student has ever been hired on this basis. Approving this request would set a precedent. The Subcommittee has requested further information from the articling principal about the extent of contact between the articling principal and student during the year. The matter will be reconsidered.
- C.10.7 The Subcommittee considered three information items. The first item related to a recent article in the Law Times from an articling student writing under the pseudonym of Miranda Clarke. The Subcommittee was advised of the response of the Treasurer in a letter to the editor.
- C.10.8 The second item related to the Rights of Appearance of articling students issue. The Committee has previously considered the existing distinction for students inside and outside Metropolitan Toronto on simple contested interlocutory matters. The issue is that some judges in Metropolitan Toronto will not hear from anyone who is not gowned. Marc Somerville advised the Subcommittee that the Treasurer met with the Chief Justice on April 21 to discuss the issue. The Chief Justice is very sensitive to the issue. He believes articling students should receive experience appearing in the courts prior to their call to the bar. He has requested a suggested list of civil law matters on which it would be appropriate to permit students to appear. A letter is being sent to the Heads of Section for Civil Litigation, Family Law, and Criminal Procedure.
- C.10.9 The Subcommittee received an update from Mimi Hart on the placement of articling students issue. The Subcommittee was further advised of the work underway to consider the types of question that are inappropriate in an articling interview context.

28th May, 1993

C.11 BAR ADMISSION COURSE SECTION HEADS AND LEGAL EDUCATION COMMITTEE ANNUAL MEETING AND DINNER

C.11.1 The annual meeting and dinner of the Legal Education Committee and Bar Admission Course Section Heads, including Senior Instructors from London and Ottawa, will take place on Thursday, June 10. The meeting will begin in Convocation Room at 4:00 p.m., with dinner to follow at 7:00 p.m.

C.11.2 The meeting is being held to discuss current and future directions for the Bar Admission Course. The dinner is being held to thank the Section Heads and Senior Instructors for their generous contribution to the Bar Admission Course.

C.11.3 All members of the Legal Education Committee are encouraged to attend, and are asked to confirm whether they can attend with Alexandra Rookes at 416-947-3414 as soon as reasonably possible.

C.12 CONTINUING LEGAL EDUCATION SUBCOMMITTEE

C.12.1 The new Chair of the Continuing Legal Education Subcommittee, Susan Elliott, has informally invited Lloyd Brennan and Abe Feinstein to join the Continuing Legal Education Subcommittee. The Continuing Legal Education Subcommittee will be expanding its membership, and intends to focus in particular on the following matters:

- a) Initiatives in the County of Carleton in the cooperative offering of continuing legal education programming through the joint work of the Law Society, the Canadian Bar Association Ontario, the County of Carleton Law Association, and the University of Ottawa Faculty of Law.
- b) Substantial enhancement of the Law Society's continuing legal education programming throughout the province, with a particular emphasis on how to work effectively with each County and District Law Association and other interested persons and organizations.
- c) The development of a curriculum-based approach to continuing legal education programming.

C.13 CONTINUING LEGAL EDUCATION REPORT ON COURSES

C.13.1 The Report is attached. (pages 1 - 3)

C.14 CONTINUING LEGAL EDUCATION REPORT: OTTAWA

C.14.1 The Report is attached. (page 4)

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"P. Lamek"  
Chair

28th May, 1993

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

- C-Item C.13 - Report on Course - Continuing Legal Education. (Pages 1 - 3)
- C-Item C.13.1 - Continuing Legal Education Report: Ottawa. (Page 4)

RESEARCH AND PLANNING COMMITTEE

Meetings of April 8th and May 13th, 1993

Mr. Brennan spoke to Item C.-C.2. re: Index and Digest of Policy Matters Considered by Convocation in 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 8th of April, 1993, at 8:00 a.m, the following members being present: T. Bastedo (Chair), L. Brennan, M. Cullity, S. Elliott, A. Feinstein, J. Herbert, C. Hill, the Hon. A. Lawrence, R. Manes, F. Mohideen, M. Somerville.

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

Your Committee also met on Thursday, the 13th day of May, 1993, at 8:00 a.m, the following members being present: T. Bastedo (Chair), L. Brennan, S. Elliott, A. Feinstein, J. Herbert, P. Lamek, the Hon. A. Lawrence, R. Manes, M. Somerville.

Also present: S. O'Connor (Bencher), R. Tinsley, S. Hodgett, A. Brockett.

A.  
POLICY

A.1. STRATEGIC PLANNING CONFERENCE: CONCLUSIONS AND RECOMMENDATIONS

A.1.1. At its April meeting, your Committee received and adopted a report on the conclusions and recommendations from the 1992 Strategic Planning Conference. The report was compiled from the recommendations submitted by each of the conference discussion groups. The document was initially developed at a meeting of the Strategic Planning Conference Subcommittee and was subsequently edited by Mr. John Claydon, Professor Marilyn Pilkington and Mr. Garry Watson who had served as Group Facilitators at the conference.

A.1.2. The report will be found at Attachment A.

A.1.3. RECOMMENDATION

Your Committee recommends that Convocation adopt the report of the Strategic Planning Conference, 1992, together with its conclusions and recommendations.

A.2. NON-BENCHER REPRESENTATION ON LAW SOCIETY COMMITTEES

- A.2.1. On September 24, 1992, Convocation asked the Research and Planning Committee to prepare recommendations concerning the membership of non-benchers on committees of Convocation. The recommendations were to be formulated in light of the arrangement under which eight non-benchers had been selected to serve on Standing Committees for the period September 10, 1992 through June 30, 1993.
- A.2.2. A Subcommittee comprising Abraham Feinstein (Chair), Susan Elliott, Jacinth Herbert and Ronald Manes was appointed. A draft report was discussed by your Committee in March, 1993, and a further report was received in April.
- A.2.3. The version of the Subcommittee's report dated April 8, 1993, which was included with the Convocation agenda for April 23, 1993 (but not reached by Convocation at its April meeting), recommended the appointment of fifteen non-bencher members. It was subsequently brought to the attention of your Committee that the April report was incorrect because the number fifteen erroneously included the non-bencher members of the Equity in Legal Education and Practice Committee, a committee which had been excluded from the provisions of the proposed policy. At its May meeting, your Committee corrected this mistake. The revised report of the Subcommittee (Attachment B) proposes the appointment of twelve non-bencher members.
- A.2.4. The reduction in the number of non-benchers to be appointed under the proposed policy does not reduce the overall number of non-benchers who will serve on committees of Convocation. On the contrary, by excluding the Equity Committee from its provisions, the policy makes possible the appointment of a greater number of non-bencher members to that particular committee (and hence, overall) than would have been possible if the committee were subject to the constraints of the policy.
- A.2.5. The report of the Subcommittee confines itself to the appointment of non-benchers who are members of the Law Society. It does not address the appointment of non-lawyers, a matter which will be before the Committee in September, 1993.

A.2.6. RECOMMENDATIONS

Your Committee has adopted the report of its Subcommittee and accordingly makes the following recommendations to Convocation:

- A.2.6.1. That non-bencher members of the Law Society continue to sit on committees of Convocation.
- A.2.6.2. That the Law Society adopt the following Statement of Purpose:

*The Law Society seeks members of the profession to serve on committees of Convocation for the following purposes:*

- *to allow members to bring points of view to the committees which would not otherwise be represented;*
- *to have the benefit of expertise found in the profession;*

- *to enhance communication between the Society and its members.*

- A.2.6.3. That an application package be compiled which will include the Statement of Purpose, background information and an application form.
- A.2.6.4. That the information package and application form be sent to members of the profession who applied to serve during this committee year.
- A.2.6.5. That a Selection Committee be established by the Treasurer
- to decide which Standing Committees of Convocation should have non-bencher members;
  - to consider applications for positions on the committees; and
  - to recommend to Convocation the names of non-benchers to be appointed to committees.
- A.2.6.6. That the following criteria be used by the Selection Committee in choosing non-bencher members of committees:
- A.2.6.6.1. *The extent to which the applicant would bring a new point of view to a committee. The following factors may be considered:*
- gender and minority representation;
  - representation of different practice areas;
  - geographical representation;
  - representation of a cross-section of the profession based on the number of years at the bar.
- A.2.6.6.2. *Whether the applicant will bring to the Law Society knowledge or expertise which will be especially useful to a particular committee.*
- A.2.6.6.3. *Other criteria particular to committees upon which non-bencher members have applied to serve. These selection criteria should be developed by the Selection Committee in consultation with the Chairs of committees to which members are to be appointed.*
- A.2.6.7. That before recommending an appointment, the Selection Committee should satisfy itself that the prospective appointee is a member of the Law Society in good standing.
- A.2.6.8. That members be appointed only to committees in which they have expressed an interest.
- A.2.6.9. That applications of members who are not selected for appointment to committees of Convocation be retained on file and that the applicants be considered as potential members of Special Committees and subcommittees which are formed from time to time on specific topics.

A.2.6.10. That, subject to the exceptions outlined in A.2.6.11 below, there be twelve non-bencher members, chosen by the selection process recommended in this report and appointed to Standing Committees of Convocation.

A.2.6.11. That the number of twelve non-benchers not include the following non-bencher members of committees:

- non-bencher members of the Legal Aid Committee appointed under Rule 47;
- non-bencher members of the County and District Liaison Committee;
- non-bencher members of the Clinic Funding Committee;
- non-bencher members of the Certification Board;
- the Law Deans who serve on the Legal Education Committee;
- non-bencher members of the French Language Services Committee;
- non-bencher members of the Equity in Legal Education and Practice Committee.

A.2.6.12. That in cases where the Chair of a committee wishes to have a non-bencher member in addition to one of the twelve referred to in recommendation A.2.6.10, the following should be the policy of Convocation:

A.2.6.12.1. As in the case of all committee appointments, the appointment of a supernumerary non-bencher will be subject to approval by Convocation.

A.2.6.12.2. The committee in question should make provision for the expenses of the supernumerary non-bencher member in its committee budget.

A.2.6.12.3. In selecting supernumerary non-bencher members, the committee should consult the application forms submitted by applicants in response to the advertisements for non-benchers to serve on Committees.

A.2.6.13. That non-bencher members of committees be appointed for a term of two years, commencing in September.

A.2.6.14. That, upon their appointment to a committee, non-benchers be given a brief orientation to the Law Society and the work of Convocation and its committees, and that they be supplied with an information package which contains:

- a statement of the Law Society's purpose in appointing non-bencher members to committees;
- information regarding the roles of the various Law Society committees;

- a statement to clarify the fact that the work of Law Society committees is confidential until the committee makes a report to Convocation;
- an outline of the procedures for reimbursement of expenses;
- the designation of a contact person at the Law Society;
- other information which will help non-benchers to work effectively as members of committees of Convocation.

A.2.6.15. That the Law Society adopt a policy whereby, if a non-bencher member misses three consecutive Meeting Days, the Chair of the committee may discuss with the member whether he or she wishes to continue as a member of the committee.

A.2.7. Financial Impact

A.2.7.1. Of the twelve non-bencher committee memberships recommended above, it is assumed that six will come from outside Toronto. The total cost of reimbursing expenses for these six committee members from outside Toronto is estimated at \$15,000. However, this does not represent \$15,000 of new expenditure. During the current fiscal year (1992-1993), the expenses of five non-benchers from outside Toronto are being met from the funds budgeted for benchers' disbursements. The estimate of total expenses for these five non-benchers in the current fiscal year is \$12,500. If Convocation adopts the recommendation to appoint twelve non-bencher members to committees, the additional expenditure, over and above what is likely to be incurred during the current fiscal year, will be \$2,500 per annum.

B.  
ADMINISTRATION

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No matters to report.

C.  
INFORMATION

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C.1. SURVEY OF HOURS SPENT BY BENCHERS ON LAW SOCIETY BUSINESS

C.1.1. In November, 1991, Convocation adopted a recommendation from the Research and Planning Committee that benchers be asked to keep a record of the hours spent on Law Society business over the period January 1 to April 30, 1992. The recommendation arose from the work of the Benchers' Responsibilities Subcommittee which had conducted an "after the fact" survey of bencher hours in the summer of 1990. The rationale for the 1992 survey was that, if there were to be a further study of matters pertaining to bencher workload, there was a need for data that were more precise.

- C.1.2. The survey was conducted between January 1 and April 30, 1992. Preliminary findings were discussed by your Committee in June and October, 1992.
- C.1.3. Accompanying this report (as Attachment C) is the final report of the survey results. From page C-5 it will be seen that the median time spent on Law Society business, as reported by benchers who responded to the survey, was 47.5 hours per month. This may be compared with the median figure of 46 hours per month reported from the 1990 survey.
- C.1.4. Your Committee wishes to point out that:
- because complete monthly reports were not received from every bencher who participated in the survey, the results are based upon an analysis of responses from only twenty-one benchers;
  - there is considerable variation in the number of monthly hours reported by different benchers;
  - the conditions under which the survey was conducted would probably not satisfy the requirements of statistical reliability.
- C.1.5. For these reasons, while reporting the results to Convocation for information, your Committee cautions that the figures ought not to be relied upon as giving a true picture of the monthly hours spent by benchers as a whole over the period January to April, 1992.

C.2. INDEX AND DIGEST OF POLICY MATTERS CONSIDERED BY CONVOCATION IN 1992

- C.2.1. With a view to assisting the work of Convocation and its Committees, your Committee has commissioned the preparation of an index to the Minutes of Convocation which gives a brief digest of all policy matters considered by Convocation during the calendar year 1992. The index was prepared by Ms. Elliott Spears with advice from Reference Librarians in the Great Library and the staff of the Archives Department.
- C.2.2. Copies of the index will be available outside Convocation Room on May 28, 1993.
- C.2.3. Your Committee proposes that the index be sent to all benchers, to the Great Library and to the County Law Libraries. Copies will also be kept in Convocation Room and in the Archives Department.
- C.2.4. The index will continue to be produced for the 1993 meetings of Convocation and will be reviewed by the Committee in September, 1993.
- C.2.5. Your Committee has also asked the staff to prepare a separate, retrospective index of major reports received by Convocation in recent years.

C.3. VOLUNTARY PRO BONO PROJECT

C.3.1. On the recommendation of the Research and Planning Committee, Convocation has approved a Pro Bono Lawyer Referral Service pilot project which is being conducted in Hamilton and Middlesex. By means of the Lawyer Referral Service, eligible non-profit organizations in the two areas are put in touch with lawyers who are willing to offer their services on a *pro bono* basis.

C.3.2. Although adequate numbers of lawyers in the two areas have agreed to offer their services, difficulties have been encountered in making the service known to non-profit organizations and in assessing the eligibility of the organizations that apply. Demand for the service has therefore been limited.

C.3.3. Ronald Manes, Chair of the Voluntary Pro Bono Subcommittee, has met with representatives of the United Way of Greater Toronto. The United Way has proposed a scheme under which it would make known to its member agencies the fact that there are lawyers willing to make their services available on a *pro bono* basis. The United Way would also screen and assess requests for legal assistance from its member agencies.

C.3.4. Under the United Way proposal, the responsibility of the Law Society would be to "recruit" lawyers who would

- provide *pro bono* legal assistance;
- conduct workshops, *pro bono*, for United Way funded agencies; and
- write articles for United Way publications.

C.3.5. The proposal raises questions as to how the Law Society's obligations under such a scheme could be implemented and administered. The matter was discussed by your Committee. It was noted that an additional part-time staff member would be needed if the Law Society were to administer the scheme but questions were raised as to whether it was properly the role of the Law Society to assume such administrative responsibilities.

C.3.6. Your Committee will consider the matter further.

C.4. SUBCOMMITTEE ON THE ROLE OF THE LAW SOCIETY

C.4.1. Your Committee received a draft Interim Report from its Subcommittee on the Role of the Law Society.

C.4.2. It was agreed that a revised Interim Report would be circulated to benchers for comment.

C.5. REPORT OF THE DISPUTE RESOLUTION SUBCOMMITTEE

C.5.1. An Implementation Subcommittee has been established to oversee implementation of the Report of the Dispute Resolution Subcommittee adopted by Convocation in February, 1993.

28th May, 1993

C.5.2. Lloyd Brennan and the Hon. Allan Lawrence have agreed to serve on the Implementation Subcommittee. Fatima Mohideen, Julaine Palmer and one other bencher will also be invited to serve.

C.6. RULES OF PROCEDURE FOR THE ANNUAL MEETING

C.6.1. Abraham Feinstein and Susan Elliott have been appointed members of a subcommittee to report on appropriate rules of procedure for the Annual Meeting of the Law Society. One other bencher will be invited to join the subcommittee.

C.6.2. It is expected that the recommendations of the Subcommittee will be presented to Convocation before the Annual Meeting in November, 1993.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"T. Bastedo"  
Chair

ATTACHMENT A

THE LAW SOCIETY OF UPPER CANADA

STRATEGIC PLANNING CONFERENCE - 1992: CONCLUSIONS AND RECOMMENDATIONS

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

INTRODUCTION

On September 25-26, 1992, the benchers of the Law Society held a strategic planning conference on the subject "Professionalism in the 90's: Responding to Social and Ethical Change." The conference was organised by a subcommittee of the Research and Planning Committee whose members were: Tom Bastedo, Colin Campbell, Abraham Feinstein (Joint Chair), Stephen Goudge, Ronald Manes, Marilyn Pilkington (Osgoode Hall Law School) and David Scott (Joint Chair). The purpose of the conference was:

To consider

- the changes that have taken place over the past twenty-five years in professional values and standards and the informal mechanisms by which they are enforced,
- whether such changes result from changes in the nature of the practice of law or merely reflect broader social developments,

- future developments that can be expected, and
- the impact of these changes upon the concept of the lawyer as a professional, the capability of the profession to meet the public need for legal services and the manner in which the Law Society regulates the profession.

To recommend

- action to be taken by the Law Society in response to these changes;
- whether the Rules of Professional Conduct should be elaborated to provide more detailed guidance to the profession.

The conference commenced with a panel discussion of changes in the practice of law over the past twenty-five years as they affect shared professional values and standards, the informal mechanisms by which they are enforced, and the capability of the profession to meet the need for legal services. Participants in the panel discussion were: Harry Arthurs (President Emeritus, York University), Mary Lou Dingle, Q.C. (Martin & Martin, Hamilton), Ian Scott Q.C. (Gowling, Strathy & Henderson, Toronto), Kendra Coats (Ross & McBride, Hamilton) and Graeme Mew (Smith, Lyons, Torrance, Stevenson & Mayer, Toronto). The panel was moderated by James M. Spence, Q.C. (Tory, Tory, DesLauriers & Binnington, Toronto).

Following the panel discussion, Professor John Hagan (Faculty of Law and Department of Sociology, University of Toronto) spoke on the broader social context of changes in the profession and the practice of law and the implications of this broader context for the task of enhancing professional responsibility. Professor Nancy Moore (Rutgers School of Law, New Jersey) addressed the topic of elaborating standards of professional conduct.

The Conference Keynote Address was delivered by John J. Curtin, Jr. (Bingham, Dana & Gould, Boston, Massachusetts; 1990-1991 President of the American Bar Association) under the title "Professionalism - The Spirit of Public Interest."

Participants in the conference each took part in one of four discussion groups, as follows:

- Confidentiality, Conflicts of Interest and Business Activities.  
Facilitator: Garry Watson, Q.C. (Blake, Cassels & Graydon, Toronto).
- The Practice of Law: Can Professionalism Survive Commercialism?  
Facilitator: Marilyn Pilkington (Professor, Osgoode Hall Law School, York University).
- The Independence of the Legal Profession: Regulation, Competence, Accountability and Specialization.  
Facilitator: John Claydon (Osler, Hoskin & Harcourt, Toronto).
- The Ethics of Representation.  
Facilitator: Robert Sharpe (Dean, Faculty of Law, University of Toronto).

Conclusions and recommendations from each of the discussion groups were reported to a final plenary session of the conference. They were subsequently combined in a single document which was edited by the conference subcommittee and the group facilitators. The document was discussed by the Research and Planning Committee at its meeting on April 8, 1993.

Your Committee presents the conclusions and recommendations of the conference under the following headings:

- A. Professionalism and the Challenge of Commercialism: Implications for Regulation.
- B. Employment Equity.
- C. Professional Conduct.
- D. Standards and Competence.
- E. Communicating Professional Values.

A PROFESSIONALISM AND THE CHALLENGE OF COMMERCIALISM:

IMPLICATIONS FOR REGULATION

One of the main themes of the Strategic Planning Conference was the impact of the pressure for profit-maximization on the profession's capacity to:

- serve the interests of clients effectively
- maintain professional standards
- respond effectively to the public need for legal services
- enhance satisfaction of lawyers with the practice of law
- maintain public confidence in the profession, and
- justify the continued independence of the profession.

In contrast to the tradition that "this is a profession, not a business" there is now increasing pressure on members of the profession to "remember that this is a business". Although concern with the profitability of the practice of law has no doubt been exacerbated by the current recession, it appears that the changes are systemic rather than temporary. The Law Society must seek to understand the forces which undermine traditional professionalism and seek ways to strengthen a new conception of professionalism.

Commercialism in the legal profession has been a positive influence to the extent that client expectations of cost-effective services impose greater accountability in an area where the lawyer's and law firm's own interest may not correspond with that of the client. Such accountability provides incentives for firms to develop efficiencies in practice, to undertake more systematic analysis of the quality of legal services their members provide, and to develop more systematic programs for enhancing lawyer competence and effectiveness.

On the other hand, the emphasis on cost-effectiveness has resulted in less client loyalty and more competition for profitable legal work. The pressures of such competition may strain the capacity of a lawyer to place professional values ahead of client interests. In addition, the growing group of in-house counsel whose roles are closely identified with one client, do not have the independence assumed in professional conduct standards. The drive for profit-maximization also interferes with the mentoring of junior lawyers as a means of inculcating professional values.

Further, profit-maximization constitutes a disincentive to providing service in less profitable areas of practice and may discourage lawyers from undertaking *pro bono* work. There is a danger that law firms and lawyers may lose sight of the profession's role in making legal services broadly available. The burden of this role is not equally distributed among members of the profession. It is important for the Law Society to consider to what extent its members have an obligation to provide access to legal services, and the relationship between this obligation and self-government of the profession.

The focus on profitability has also led to pressures on lawyers, particularly young lawyers, which can be limiting and, in some cases, oppressive. Not only may these pressures interfere with personal aspirations to lead a rounded life, but they limit the lawyer's capacity to contribute to professional, community and public affairs.

Implicit in the entitlement of the profession to govern itself is the assumption that any developments which undermine professionalism will be addressed. In a time of significant social and economic change, the profession must not lose sight of its public obligations. A primary role of the Law Society is to ensure that its members understand and fulfil their responsibility to pursue the profession of law in the public interest. In addition to regulating its members individually, the Law Society has a responsibility to influence the broad legal culture in which lawyers practise, including the policies and practices of law firms.

#### A.1 Establishment of Special Committee

Your Committee recommends that a Special Committee be established to examine and report to Convocation on the impact of commercialism on the practice of law. In particular, your Committee recommends that the Special Committee be asked to report on:

- A.1.1 The extent to which the need for legal services among the public at large is being met by various sectors of the profession, the extent to which *pro bono* work is undertaken by various sectors of the profession, and whether there should be an annual requirement to provide *pro bono* services.
- A.1.2 The extent to which the profession is obliged to make legal services available, the extent to which access to legal services is a public responsibility, and the implications for the independence of the legal profession.
- A.1.3 Whether there is a need for the Law Society to regulate the role, responsibilities and practices of law firms in
  - the provision of legal services, and
  - their compliance with appropriate employment standards, including equity standardsand, if so, what regulation would be appropriate.
- A.1.4 The extent to which client concerns about costs have affected the capacity of law firms to provide professional development experiences for junior lawyers, and the alternative means by which such development is being facilitated.

- A.1.5 The expectations which law firms have of junior lawyers and the effects of these expectations upon client service, professional development, family responsibilities, personal aspirations and public service by lawyers.
- A.1.6 The consequences, for members of the public and members of the profession, of the practice of establishing annual billing targets.
- A.1.7 The extent to which commercialism and profitability have had an impact on the independence of the profession and on standards of professional conduct.
- A.1.8 Whether in-house counsel and other lawyers employed by one client should be regulated by standards different from those which are applied to other members of the profession predicated on their independence from clients. Further, if the profession has an obligation to make legal services accessible, what are the obligations of in-house counsel?

B

EMPLOYMENT EQUITY

In February, 1991, Convocation adopted the report of its Special Committee on Equity in Legal Education and Practice which concluded that the Law Society should establish a program to encourage and assist persons to become lawyers from aboriginal and visible minority groups under-represented in the legal profession in Ontario. The report also recommended that attention be given to addressing the needs of persons with disabilities.

One of the recurrent themes of the Strategic Planning Conference was the duty owed by a self-governing profession to the public. It can be argued that this duty requires the taking of positive steps to ensure that the composition of the profession reflects the composition of the society which it serves.

- B.1 Your Committee recommends that the Equity in Legal Education and Practice Committee consider the proposition that all law firms of a certain size should be required to file an employment equity plan for lawyers. Such plans should be designed to open up the full range of opportunities in the profession to people from groups hitherto under-represented, so that the profession will reflect the diversity of the community in Ontario.

C

PROFESSIONAL CONDUCT

The increasing commercialization of law practice raises a series of issues concerning how our standards of ethical conduct are formulated, enforced and communicated. Although it is necessary to consider the causes of unethical behaviour with a view to eliminating them (and, consequently, the need to discipline) as far as possible, it is clear that the need for a workable and enforceable set of Rules of Professional Conduct will remain, in the new competitive environment, one of the Law Society's top priorities.

The current standards, in many areas, lack precision or are silent altogether. For example:

- The Rules of Professional Conduct do not deal adequately with potential conflicts of interest in multiple representation contexts, such as the situation where a lawyer is engaged to establish (or restructure) a business and act as its counsel. Consideration should be given to amending the conflict rule to prohibit acting for more than one party in any commercial transaction unless the interests are the same.
- The rules need to be revised to give guidance to lawyers on the issue of who "speaks for" a corporation or other institutional client.
- More work needs to be done to implement the principles arising from the Supreme Court of Canada decision in *Martin v. Gray* through strengthening the effort of the Federation of Law Societies to prevent disclosure of confidential information by lawyers who are "migrating" from one law firm to another.
- The current rules do not indicate with precision what conduct amounts to "professional misconduct" or "conduct unbecoming".

To be effective, reform of the Rules of Professional Conduct must be carried out in a comprehensive fashion rather than on an *ad hoc* basis. It should be borne in mind, however, that the more detailed formulations required to guide lawyers in their actions may also run the risks of diminishing ethical aspirations and generating divisiveness, and any reform must guard against this happening. It is also important to make rule formulations comprehensible to a lay person, so that clients and the public will understand what is ethical conduct and how their interests are being protected.

The revised rules should be kept up to date so that lawyers and others are made aware of existing and changing obligations. Ways in which this could be done include elaborations resulting from discipline decisions, and regular, formal review of the currency and relevance of the rules.

The independence of the profession will be at risk if its disciplinary procedures are not perceived as fair and effective. Consequently, a component of any reform of the rules should be examination of the processes for their enforcement. Is there an inherent conflict in the Society's roles of defending errors and omissions claims and prosecuting lawyers for misconduct? Should there be a stricter separation of the judicial and policy-making roles, perhaps through the establishment of an independent discipline process? These important questions must be addressed.

#### C.1 Policy Statement

Your Committee recommends that Convocation adopt the following statement of policy:

*The Law Society will*

- *ensure that the Rules of Professional Conduct set out the ethical principles and rules by which lawyers should govern themselves in fulfilment of their responsibilities to the public;*
- *review the rules regularly, to ensure their currency and relevance;*
- *take all steps necessary to ensure compliance with the rules by all members of the profession.*

C.2 Review of the Rules of Professional Conduct: General Principles

Your Committee notes that Convocation has established a Special Committee to Review the Rules of Professional Conduct and accordingly recommends:

C.2.1 That the Special Committee give careful consideration to the need for greater detail and precision in the rules. One possible structure would be to elaborate each particular topic at one of three levels:

- Level 1: Ethical standards are conveyed in broad, general statements of ideals to which the profession aspires.
- Level 2: More stringent language is employed to permit enforcement of a standard of conduct.
- Level 3: The minimally tolerable behaviour expected of a lawyer is spelled out with the clarity and detail of codified law. At this level the particular rule takes on the characteristics of law rather than of ethical principle.

C.2.2 That, where minimum standards are prescribed, they should be realistic and not of such a nature that many lawyers are unlikely to comply.

C.2.3 That the revised rules should be clear and concise.

C.2.4 That the revised rules should not assume that readers will necessarily be familiar with professional ethics.

C.2.5 That in revising the rules, an attempt should be made to use language that will be clear to clients who have no legal background.

C.2.6 That in revising the rules, particular attention should be given to the situation of lawyers who are not litigators. Many of the current rules appear to be litigation-oriented.

C.2.7 That consideration should be given to keeping the rules current by means of regular up-dates reporting the decisions of Convocation in discipline cases.

C.3 Review of the Rules of Professional Conduct: Particular Rules

Some of the recommendations made by discussion groups at the conference related to particular rules. Your Committee will transmit these specific recommendations to the Special Committee to Review the Rules of Professional Conduct.

C.4 Class Proceedings

Your Committee recommends that a committee be struck to deal with the issues of professional conduct raised by the *Class Proceedings Act, 1992*. These issues include advertising, the regulation of the lawyer/client relationship, control of the financing of class proceedings and the possible restriction of class proceedings practice to lawyers certified as entitled to conduct such litigation. The need for Continuing Legal Education in relation to class proceedings should also be reviewed.

C.5 Ensuring compliance with appropriate standards of professional conduct

Your Committee recommends:

- C.5.1 That the Policy Section of the Discipline Committee be asked to consider the circumstances which give rise to the more common forms of professional misconduct to determine whether structural changes in the regulation of the profession might reduce the opportunities for professional misconduct.
- C.5.2 That the Policy Section of the Discipline Committee, in co-operation with the Professional Conduct Committee and the Professional Standards Committee, consider the possibility of special programs for the assistance of lawyers who have been found guilty of professional misconduct.
- C.5.3 That the Policy Section of the Discipline Committee and the Professional Conduct Committee reconsider the proposal (considered but not recommended by the 1990 Special Committee on Discipline Procedures) that there should be definitions of the terms "professional misconduct" and "conduct unbecoming". It is suggested that the terms are vague and that definition would provide useful guidance for the profession and the public.

D

STANDARDS AND COMPETENCE

Maintaining and enforcing professional competence go to the root of the Law Society's responsibilities and its right of self-regulation. On the basis that the delivery of legal services requires special expertise, the Law Society is authorized to license those who are qualified to practise and to exclude others. On the basis of its special expertise and its enforcement of standards of professional conduct, the profession is authorized to regulate itself. The monopoly of the profession and its right to self-government are thus based on its special competence. Vulnerable clients who rely on the competence of lawyers are often not in a position to evaluate professional competence. Accordingly, the Law Society should develop standards and procedures to assure the continuing competence of its members.

D.1 Policy Statement

Your Committee recommends that Convocation adopt the following statement for dissemination to the profession and the public:

*The Law Society is committed to the establishment, maintenance and enforcement of the standards of competence which the public has a right to expect of a self-governing profession. Convocation is prepared to accord a high budgetary priority to the implementation of this commitment.*

D.2 Recommendations for action by Standing Committees

Your Committee recommends:

- D.2.1 That the Professional Standards Committee consider the establishment of a scheme to ensure that all new lawyers have access to a mentor who can assist them in developing an understanding of the standards of practice required of professionals.

- D.2.2 That the Professional Standards Committee and the Professional Conduct Committee take steps to remind the profession that where a lawyer is not competent to deal with a particular matter there is a duty to refer the client to another lawyer who has the necessary competence. The communication should encompass both the negative duty (not to take on work for which one is not competent) and the positive duty (to make sure that the client is referred to a lawyer who is competent).
- D.2.3 That the Discipline Policy Committee take positive steps to enforce Rule 2 of the Rules of Professional Conduct (Competence and Quality of Service), particularly in respect of the duty to refer the client to another lawyer where the lawyer is not competent to deal with a matter.
- D.2.4 That the Professional Standards Committee work with the Policy Section of the Discipline Committee and the Insurance Committee to establish a procedure for assisting and regulating the practice of those members who are subject to multiple complaints and/or multiple errors and omissions claims.
- D.2.5 That the Professional Standards Committee address the responsibilities of the Law Society in respect of lawyers facing financial difficulties. In particular, that the Committee consider enhancing the financial counselling aspects of the Practice Advisory Service.
- D.2.6 That the Insurance Committee, in co-operation with the Professional Standards Committee, develop loss-prevention programs which recognize the diversity of types of practice within the profession.
- D.2.7 That the Communications Committee and the Professional Standards Committee review the legal services provided to the public through the Lawyer Referral Service to ensure that they are of an appropriate professional standard.

E

COMMUNICATING PROFESSIONAL VALUES

The Strategic Planning Conference was held to consider the implications of social change for professionalism. Much of the value of the conference will be lost if its conclusions are not communicated to the members of the profession. Indeed, one of the conclusions emerging from the conference is that communication between the profession and its governing body on matters of ethics, standards and professionalism is vital.

One of the discussion groups at the conference recommended that in communication with the profession on matters of professionalism, the emphasis should be hortatory rather than disciplinary. The approach adopted in publishing the Recommended Personnel Policy on Employment-Related Sexual Harassment was cited as an example that might be followed in such matters.

Another of the groups emphasised the need for the Law Society to enhance its understanding of public perceptions of the legal profession.

E.1 Policy Statement

Your Committee recommends that Convocation adopt the following statement for dissemination to the profession and the public:

*The Law Society has a responsibility*

- *to keep constantly before the attention of its membership the nature of the public obligations that rest upon all lawyers as members of a self-governing profession;*
- *to encourage continuing ethical discourse within the profession;*
- *to make known to the public the ethical standards by which the profession has agreed to conduct and govern itself.*

E.2 Communicating the Conclusions of the Conference

Your Committee recommends that Convocation communicate to all members of the Law Society the major conclusions and recommendations of this report.

E.3 Other communication to the profession

Your Committee recommends:

- E.3.1 That the Legal Education Committee discuss with the Canadian Bar Association--Ontario ways of making professional ethics a component of all Continuing Legal Education courses offered by the Law Society and the CBA-O, in recognition of the principle that there is a need to encourage consideration of ethical issues throughout professional life.
- E.3.2 That the Professional Conduct Committee and the Professional Standards Committee consider the feasibility of publishing, for the information of the profession, summaries of the advice given in response to questions of ethics and practice received by the Law Society.
- E.3.3 That the Professional Conduct Committee and the Policy Section of the Discipline Committee take steps to ensure that members of the Law Society are aware that the commentaries in the Rules of Professional Conduct are more than guidelines and that they have the force of law in matters of professional conduct.

E.4 Communication beyond the profession

Your Committee recommends:

- E.4.1 That when the Subcommittee on the Role of the Law Society has submitted its report, the Communications Committee consider ways of communicating to the public a better understanding of the role of the Law Society.
- E.4.2 That the Professional Standards Committee seek the assistance of the Communications Committee in communicating to the public the commitment of the Law Society to appropriate standards of competence.

28th May, 1993

- E.4.3 That the Legal Education Committee and the Professional Conduct Committee discuss with the Ontario Law Deans ways in which professional ethics might be given greater emphasis in the law school curricula.
- E.4.4 That the Policy Section of the Discipline Committee seek the assistance of the Communications Committee in communicating more information to the public about the rationale for discipline decisions of Convocation and the effects of those decisions.
- E.4.5 That the Communications Committee consider publishing information for the public on the questions which clients should ask their lawyers about fees and billing.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

Chair

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

- A-Item A.2.3. - Revised report of the Research and Planning Subcommittee on Non-Bencher Representation on Law Society Committees.  
(Attachment B - B12)
- C-Item C.1.3. - Final Report re: Survey of Hours spent by Benchers on Law Society Business January 1 - April 30, 1992 dated November 29, 1992.  
(Attachment C - C9)

CLINIC FUNDING COMMITTEE

Meetings of April 15th and May 19th, 1993

Mr. Epstein spoke to Item C.1 re: Anti-Racism Clinic Proposal.

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 21, 1993 be adopted.

28th May, 1993

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

ALL OF WHICH is respectfully submitted

Robert L. Holden,  
Director,  
Legal Aid.

May 21, 1993

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

The Clinic Funding Committee met on April 15, 1993. Present were: Philip Epstein, Q.C., Chair, Joan Lax, Jim Frumau, Thea Herman and Pamela Giffin. Also present: Joana Kuras, Clinic Funding Manager. The Committee met again on May 19, 1993. Present were: Philip Epstein, Q.C., Chair, Joan Lax, Jim Frumau, Thea Herman and Pamela Giffin. Also present: Joana Kuras, Clinic Funding Manager.

A.  
POLICY

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Nil

B.  
ADMINISTRATION

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1. Supplementary Funds

a. Community Legal Services (Ottawa-Carleton)

The Clinic Funding Committee has approved the allocation of up to \$2,950 for additional personnel funds.

2. Summer Students 1993

The Clinic Funding Committee previously recommended, and Convocation approved, funding for summer students in an amount up to \$328,000. An increase in the cost of benefits requires an additional allocation of funds. The Clinic Funding Committee recommends Convocation's approval of an additional \$5,000.

3. Incorporations

a. Rexdale Community Legal Clinic

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.

4. Legal Disbursements

The Clinic Funding Committee has approved the allocation of legal disbursements to various clinics for 1993/94 as set out on Schedule A.

C.  
INFORMATION

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1. Anti-Racism Clinic Proposal

On April 29, 1993, the Attorney General, Marion Boyd, announced several anti-racism initiatives, including funding of a legal clinic. It appears that the press release and media may have misconstrued the proposal. The Chairman will discuss this issue with Convocation.

ALL OF WHICH is respectfully submitted

Philip Epstein, Q.C.  
Chair  
Clinic Funding Committee

May 21, 1993

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

B-Item 4 - Proposed Legal Disbursement Expenditures 1993/94 Fiscal Year.  
(Schedule A)

THE REPORT WAS ADOPTED  
.....

REPORTS OR SPECIFIC ITEMS REQUIRING CONSIDERATION AND APPROVAL BY CONVOCATION

ADMISSIONS COMMITTEE

Meeting of May 13th, 1993

Item A.-A.1. re: Three Year Rule, was stood over to the June Convocation.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993 at 9.30 a.m., the following members being present: Mr. Lamont (Chair), Messrs. Brennan, Goudge and Lerner.

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

A.  
POLICY

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- A.1. THREE YEAR RULE - REQUIREMENTS FOR TRANSFER FROM COMMON LAW PROVINCES
- A.1.1. At its January, 1993 meeting your Committee had before it for consideration the decision of the Quebec Superior Court in Richards v. Barreau du Quebec. The issue in this case was whether the requirement of three years practice in another Canadian jurisdiction in order to be eligible to transfer to Quebec is unconstitutional.
- A.1.2. Section 4 (1)(a) of Regulation 708 provides that an applicant may be called to the Bar and admitted as a solicitor who has been engaged in the active practice of law in one or more common law provinces or territories of Canada for a period or periods totalling at least three years within the five-year period immediately preceding the application.
- A.1.3. The Society retained Counsel to provide an opinion as to the validity of the requirement of three years of active practice to be eligible to transfer to Ontario from another Canadian jurisdiction in light of the Richards decision. The opinion was before the Committee at its February 1993 meeting for consideration.
- A.1.4. The opinion provided that, in essence, the Society can require transfer applicants to comply with standards for admission which are equivalent to those imposed upon students proceeding through the Bar Admission Course.
- A.1.5. Your Committee also considered the following: 1) transfer requirements of the other common law provinces; 2) the nature of their pre-call training; and 3) the draft Protocol prepared by the Federation of Law Societies Committee on Interjurisdictional Practice.
- A.1.6. The Committee discussed the matter at both the March and April meetings and requested that a draft proposal be prepared for the May meeting which distilled the views articulated during the various discussions of the issues.
- A.1.7. In considering what criteria transfer applicants should be required to meet, your Committee was mindful of the fact that Ontario at present has, if not the most, at least one of the most onerous pre-call training programmes in Canada.
- A.1.8. Your Committee concluded that one year of post-call practice experience in another Canadian common law jurisdiction would, in most cases, put transfer applicants on an equivalent basis with individuals who had completed the pre-call training in Ontario.
- A.1.9. Your Committee recommends that the transfer requirements be revised as follows:

28th May, 1993

Applicants for transfer to practice in Ontario from another common law jurisdiction in Canada must establish:

1. good character and professional standing;
2. an approved LL.B. degree or a Certificate of Qualification issued by the Joint Committee on Accreditation;
3. one year in the last three years engaged in the active practice of law or professional training equivalent to that provided in the Bar Admission Course;
4. successful completion of examinations testing knowledge of Ontario statutes and procedure.

A.1.10. Your Committee recognizes that its recommendation, if adopted by Convocation, will make it more onerous than is now the case for foreign-trained lawyers who are called in Alberta to transfer to Ontario. (Alberta is the only province which does not use the Joint Committee to assess its foreign trained applicants.) At present, such applicants are not required to obtain a Certificate of Qualification from the Joint Committee on Accreditation provided they can establish the requisite three years of active practice. Under the new proposal such applicants will be required to submit to assessment by the Joint Committee regardless of their practice experience.

A.1.11. Your Committee was of the view that this approach is consistent with the direction proposed by the Federation's Committee on Interjurisdictional Practice and as well, will ensure that all foreign trained lawyers applying for call to the Bar in Ontario will be held to the same standard.

(Attachment A)

Note: Item deferred

B.  
ADMINISTRATION

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B.1. REINSTATEMENT AFTER SUSPENSION - PETITIONS EXAMS WAIVED

B.1.2. Barbara Lynn Beak was called to the Ontario Bar on the 10th of April, 1980. She was suspended for non-payment of the annual fee on the 26th February, 1988. Ms. Beak now seeks to be reinstated without being required to sit requalification examinations.

B.1.3. In her affidavit dated the 6th May 1993, Ms. Beak states that she first contacted the Law Society in March 1993 to investigate the lifting of her suspension. She brought her filings up to date on March 30, 1993, and subsequently contacted the Admissions Department to determine the procedure for reinstatement.

- B.1.4. Ms. Beak states that from 1987 to 1993 she has been employed by the Ontario Women's Directorate as Manager, involved in the areas of policy analysis and development, public education, training, research and program development. Policy analysis has included the areas of family law, including child support guidelines, mediation, and custody and access; employment equity; pay equity; wife assault criminalization initiative; social assistance reform; and employment law. Public education has included workshops on women's legal rights in the workplace, family law, sexual harassment, human rights, employment equity and pay equity. Research has included co-authoring a chapter on legal issues facing native women in the Community Legal Education Ontario's publication "Assaulted Women: A Manual for Advocates".
- B.1.5. Ms. Beak remains employed by the Ontario Women's Directorate but wishes to prepare for the possibility of practice in the future. She requests that she be reinstated upon payment of the arrears of fees, but without the necessity of writing requalification examinations, on the basis that she initiated enquiries only one month after the five year limitation and that she has not been totally divorced from the practice of law in the intervening years.
- B.1.6. Ms. Beak's petition was before the Committee for information.
- Your Committee recommends that she be reinstated without the necessity of completing any requalification programme.
- B.1.7. Dorothy Elizabeth Thoms (LL.B. 1969 and LL.M. 1971 both from The London School of Economics, England and LL.B. 1974 from the University of Windsor) was called to the Bar on the 8th of April 1976.
- B.1.8. Following her call to the Bar, Ms. Thoms taught at Osgoode Hall Law School for one year. She then remained at home to care for her two children who both have severe physical problems and learning disabilities. Because of the exceptional burden imposed by the children's needs she could not afford to continue paying the annual fee and elected to be suspended. The 25th February, 1987 is the date of her suspension.
- B.1.9. Since 1987 Ms. Thoms has been teaching at Seneca College in The School of Legal and Public Administration. In her affidavit dated the 11th May, 1993, the applicant outlines the courses she has taught or is currently teaching. She states that membership in the Law Society is an important part of the credibility of the teaching faculty and because of the changes being made regarding those members who are or become suspended she seeks to be reinstated.

28th May, 1993

B.1.10. The petitioner asks to be reinstated without examination and states that she intends to continue working as a full-time teacher of law.

B.1.11. Ms. Thoms' affidavit was before the Committee for information.

Your Committee recommends that the applicant be reinstated conditional upon her signing a letter of undertaking that she will not return to private practice without first obtaining the Society's permission and, in the Society's discretion, completing its requirements for requalification at that time.

B.2. DIRECT TRANSFER - COMMON LAW - SECTION 4(1) - SPECIAL PETITIONS

B.2.1. Alexander J. Black ( B.A. 1982 from Lakehead University; LL.B 1984 and Diploma in Petroleum Law 1985 both from the University of Dundee, LL.M. 1988 from the University of British Columbia) was called to the Bar of the Province of Alberta on September 19th, 1986.

B.2.2. Mr. Black practised in Alberta from October 1986 to July 1987. Since August 1988 he has been a lecturer in Commercial Contracts and Environmental Law at the University of Glasgow School of Law.

B.2.3. Mr. Black is currently visiting professor at Cornell Law School teaching Real Property, Comparative Regulatory Policy and Energy Trade.

B.2.4. Mr. Black applied to the Joint Committee on Accreditation in 1984 and was advised that he would need to complete two years at an approved Canadian law school before being eligible to enter the Bar Admission Course in Ontario. In December 1990 he again applied to the Joint Committee and was advised that he would need to complete three courses; Taxation, Evidence and Civil Procedure.

B.2.5. Mr. Black does not have the three years of active practice to satisfy the transfer requirements of section 4(1), and he does not have an approved Canadian LL.B or a Certificate of Qualification from the Joint Committee on Accreditation to satisfy the requirements of section 23.

B.2.6. In previous correspondence with the Law Society Mr. Black was advised that his application for admission could not be considered until he had fulfilled the necessary requirements.

B.2.7. In his letter of April 28, 1993 Mr. Black requests that the Committee review his application for admission on the basis of his membership of the Alberta Bar, and his five years of university law teaching and published legal writing. In support of his application he has submitted examples of his published material which were available to the Committee on request.

28th May, 1993

- B.2.8. Mr. Black's letter of the 28th April, 1993, his curriculum vitae and a list of his publications were before the Committee for information.

Your Committee recommends that Mr. Black's petition be denied. He does not fall within either sec. 4(1) or sec. 5 of the Regulation and there is no discretion in the Admissions Committee to grant his petition on any other basis.

- B.2.9. Barbara Jean Hendrickson (B.A. 1975 from the University of Winnipeg; M.A. 1977 from the University of Manitoba; and LL.B. 1982 from the University of Calgary) was called to the Bar of the Province of Alberta on the 16th day of July, 1984 and to the Bar of the Province of Manitoba on 26th day of June, 1986.

- B.2.10. Ms. Hendrickson practised in Manitoba from June 1986 to November 1986 when she left private practice to work for the Manitoba Government.

- B.2.11. In a petition dated the 10th May, 1993 Ms. Hendrickson outlines the positions she held from November 1986 to August 1992 with the Manitoba Government as a Legal Research Officer with the Department of Justice, Government of Manitoba (November 1986 - June 1989); as a special legal advisor to the Deputy Minister of Labour, the Department of Labour, Government of Manitoba (June 1989 - April 1990); and as legal counsel with the Manitoba Law Reform Commission (April 1990 - August 1992).

- B.2.12. The applicant is currently enrolled in the LL.M. program at the University of Toronto and expects to graduate in October this year.

- B.2.13. Ms. Hendrickson requests that her legal experience with the Manitoba Government be accepted as fulfilling the requirement of 3 years of practice within the last five years to allow her to proceed under sec. 4(1).

- B.2.14. Ms. Hendrickson's petition as well as a letter from the Executive Director, Management Services Division of the Manitoba Government were before the Committee for consideration.

Your Committee recommends that she be allowed to proceed under sec. 4(1).

B.3. DIRECT TRANSFER - QUEBEC - SECTION 4(2) & 3(1) - SPECIAL PETITION

B.3.1. Joseph Leo Gilles LeVasseur (B.Admin. 1981, Certificate of Industrial Relations 1982, LL.L. 1984, B.Soc.Sc. 1986, and LL.B. [course completed - degree to be conferred upon him - 5th June 1993] all from the University of Ottawa; MBA 1987 from Laval University; LL.M. 1988 from the University of Montreal; Certificate of International Law 1989 from the University of Hague; and Diploma in International Humanitarian Law 1990 from the University of Strasbourg) was called to the Bar of the Province of Quebec in May 1987.

B.3.2. Mr. LeVasseur has served in a legal capacity with various departments of the Federal Government of Canada from June 1987 to the present. The applicant submits a Certificate of Standing, seeks to proceed under section 4(2) and 3(1) of Regulation 708 made under the Law Society Act and asks permission to be excused from writing the common law examination according to the interpretation of section 4(2) as set out in the Memorandum to the Admissions Committee of September, 1983 which states: "Candidates qualified to proceed under Regulation 4(2) and who have obtained an approved LL.B. degree within the eight years preceding their application may be taken to have satisfied the requirements of subparagraph (d) which reads - passes a comprehensive examination on the common law of Ontario."

B.3.3. Mr. Levasseur would like to become enrolled in Phase III of the Bar Admission Course commencing in September and, mindful of the time constraint, has applied to the Admissions Committee for permission to proceed in advance of the LL.B. degree being conferred upon him in June this year.

Approved

B.4. SPECIAL PETITION TO BE CALLED WITHOUT EXAMINATION

B.4.1. Inderpaul Singh Chandhoke (B.A. and LL.B. 1974 from Meerut University, India) moved to Canada in July 1974 and worked for two years with an investment company in the legal department and then with the law firm of Gordon A. Macartney for three years until his appointment in 1979 to the Ontario Court (Provincial Division) as a presiding Justice of the Peace. Mr. Chandhoke continues in that position.

B.4.2. In his petition dated 30th April, 1993, Mr. Chandhoke outlines specific details of his career as a Justice of the Peace, as well as outlining the law courses he has taken at both the College and University levels; the teaching experience he has gained in the courtroom through the direction of law students, agents and lawyers; and the educational seminars and lectures he has given on various aspects of law and procedure.

28th May, 1993

B.4.3. Mr. Chandhoke petitions that, in light of his job experience, legal education, and teaching experience both within the court room and through giving seminars and lectures, he be granted the privilege of being called to the Bar without examination similar to the privilege given law professors who apply for admission under sec. 5 of Regulation 708. The petitioner states: "I undertake to continue to preside at the Ontario Court of Justice (Provincial Division) as a full time Justice of the Peace and do not intend to become a member of the Law Society to practice law only."

B.4.4. Mr. Chandhoke's petition was before the Committee for consideration.

Your Committee recommends that Mr. Chandhoke's petition be denied. Section 5 of Regulation 708 is very specific and limited in its application. Mr. Chandhoke does not fall within the specific provisions and there is no discretion in the Admissions Committee to extend the application of this section to grant Mr. Chandhoke's petition.

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

B.5.1. BAR ADMISSION COURSE

B.5.2. The following candidates having successfully completed the 34th Bar Admission Course and having deferred their call to the Bar now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on May 28th, 1993:

Eugene Hector Fraser  
Rosemin Keshvani  
Ronald Joseph Marcus Mercier

Approved

B.5.3. The following candidates having successfully completed the 34th Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on May 28th, 1993:

Lisa Madelon Campbell  
Serge Douzjian  
Karen Ellen Galpern  
Maureen Patricia Hartney  
Willis Reginald Pye  
Vincenzo Scaramuzza  
Jimmy Massimo Soldatich  
Kien-Chen Patrick Sun  
Sharon Helen Tessier

Approved

- B.5.4. The following candidate expects to complete the 34th Bar Admission Course by mid May, 1993, and wishes to be called to the Bar and granted a Certificate of Fitness, at Regular Convocation on May 28th, 1993:

Pamela Denice Owen-Going

Your Committee recommends that this application be approved conditional upon the candidate successfully completing the course, filing the necessary documents and paying the required fee prior to May 28th, 1993.

B.5.5. TRANSFER FROM ANOTHER PROVINCE - SECTION 4(1)

- B.5.6. The following candidate having completed successfully the Statutes and Procedure in Ontario examination, filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, May 28th, 1993:

Darcia Ann Colleen Kohuch

Province of Manitoba

Approved

B.5.7. TRANSFER FROM QUEBEC - SECTION 4(2)

- B.5.8. The following candidate having completed successfully the Statutes and Procedure in Ontario examination, filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, May 28th, 1993:

Flora Pearl Eliadis

Province of Quebec

Approved

C.  
INFORMATION

C.1. PERMANENT RESIDENCY STATUS APPROVED

- C.1.1. In January, 1993, the Admissions Committee recommended to Convocation that Anthony John Devir who had successfully completed the 34th Bar Admission Course be permitted to be called to the Ontario Bar upon signing a letter of undertaking to continue to pursue his application for permanent residency subject to various terms and conditions.

28th May, 1993

C.1.2. The student was subsequently called to the Bar in February 1993. Mr. Devir has since sent a letter dated the 22nd April, 1993 stating that his application for permanent residency in Canada has been approved and enclosed a copy of his landed immigrant documents for our records.

Noted

C.2. CHANGES OF NAME

C.2.1. (a) Members

From

To

Melinda Giselle Starrett

Melinda Giselle Voros  
(Maiden Name)

Catherine Margaret Meechan

Catherine Margaret Motz  
(Married Name)

Noted

C.3. ROLLS AND RECORDS

C.3.1. (a) Deaths

The following members have died:

Dawn Audrey Adams  
Toronto

Called April 13, 1978  
Died January 11, 1993

George Takakazu Tamaki  
Toronto

Called June 15, 1979  
Died February 19, 1993

William Bazil Bulger  
Ottawa

Called June 23, 1955  
Died March 4, 1993

Vincent Jerome Bartlett  
Toronto

Called April 10, 1986  
Died March 26, 1993

Francis Charles Askwith  
Ottawa

Called March 17, 1967  
Died March 28, 1993

Christopher Lloyd Wardle  
Toronto

Called April 13, 1987  
Died March 30, 1993

Archibald Burnside Whitelaw  
Toronto

Called September 16, 1948  
Died March 31, 1993

Rajesh Ahluwalia  
Ottawa

Called April 13, 1981  
Died April 8, 1993

Richard Tay Johnston  
Toronto

Called March 23, 1973  
Died April 22, 1993

Noted

28th May, 1993

C.4. Disbarments

C.4.1. The following member has been disbarred and struck off the rolls and his name has been removed from the rolls and records of the Society:

Gerald Grupp Downsview	Called March 22, 1968 Disbarred - Convocation April 22, 1993
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Noted

C.5. Membership in Abeyance

C.5.1. 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:

John Cyril Wilkins Toronto	Called March 22, 1968 Appointed to the Ontario Court of Justice (General Division) April 1, 1993
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Frederick Edward Gibson Ottawa	Called June 22, 1960 Appointed to the Federal Court of Canada April 2, 1993
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Ronald Aubrey Minard Timmins	Called April 10, 1981 Appointed to the Ontario Court (Provincial Division) April 5th, 1993
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Noted

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"R. Carter"  
Chair

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

A-Item A.1.11. Decision of the Quebec Superior Court in Richards v. Barreau du Quebec. (Attachment A - A-28)

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

COMMUNICATIONS COMMITTEE

Meeting of May 13th, 1993

Ms. Bellamy presented the Report of the Communications Committee and spoke to Item A.-1. re: French Translation - Lawyer Referral Service.

28th May, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993, the following members being present: Denise Bellamy (Chair), Susan Elliott, Fran Kiteley, Allan Lawrence, Ross Murray, Julaine Palmer and Stuart Thom. Also in attendance: Carolyn Ateah, Dominique Picouet, Theresa Starkes and Gemma Zecchini.

A.  
POLICY

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1. French Translation - Lawyer Referral Service

The Law Society's senior translator, Dominique Picouet, recommended to the Communications Committee that the French translation of the Lawyer Referral Service be changed from "Service de reference aux avocats" to "Assistance-avocat". Ms. Picouet was of the view, supported by her consultations, that "Service de reference aux avocats" was ambiguous and both grammatically and semantically incorrect. The recommended phrase is more idiomatic and conveys a more accurate description of the service offered by the program. The Communications Committee concurred with Ms. Picouet recommendations. Therefore, Convocation is asked to approve "Assistance-avocat" as the new French title for the Lawyer Referral Service.

B.  
ADMINISTRATION

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1. Dial-A-Law (DAL) Activities

The budget for the Communications Department was approved at the last Convocation. The budget for DAL has been approved at \$100,000 for fiscal 1993-94. In order to reduce DAL's increasing Wats charges the following cost cutting measures have been undertaken:

- \* Six Wats access lines were eliminated. There are now only three Wats access lines.
- \* The DAL menu system which was approximately 60 seconds in length was reduced to approximately 30 seconds; thus shaving 30 seconds off each Wats call.

Dial-Law (DAL) Activities

- \* The 15 most popular DAL scripts were reviewed and shortened to a maximum of 5.5 minutes from an average of 7.7 minutes.
- \* Callers are restricted to two tapes per call rather than three thus reducing the number of call minutes generated by each call.

28th May, 1993

- \* By May 30th DAL's hours of operation will be restricted to 8 am to 6 pm, 7 days per week for callers with touch tone telephones. Callers with rotary dial service can still access DAL from 9 am to 5 pm, Monday to Friday.
- \* Information is being obtained regarding placing a local system in the London Bar Admission office. The local system would decrease calls on the Wats lines from London and the local 519 area.
- \* A "call blocking" feature is being purchased from Bell Canada to block callers from the local 416 area and the local 613 area from accessing the 1-800 lines when the local lines are busy.

C.  
INFORMATION

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1. Lawyer Referral Article

The Committee reviewed an article from the American Bar Association's publication entitled, "Lawyer Referral Network".

2. Call Statistics

Call statistics from January 1, 1993 to the April 30, 1993 for the Dial-A-Law service indicate 128,098 calls or 1,069 calls per day and the Lawyer Referral Service statistics for the same period totalled 62,327 calls or 742 calls per day.

3. Media Activity

A summary of the media activity for the month of April indicates the following list of popular media issues in order of priority: discipline, lawyers general, lawyers advertising, Law Society budget and access to the legal profession, attorney general, law day, law schools, Law Society image, Lawyer Referral Service policy, legal aid, legal clinics, paralegals, pre-paid legal services, self regulation and sexual harassment.

4. Lawyer Referral Service Fees Generated from Referrals

A report detailing the fees generated for Lawyer Referral Service panel members for the months of January, 1993 to March, 1993 indicated that the Lawyer Referral Service conservatively generated \$2.5 million dollars.

5. Canadian Bar Association Letter

The Committee reviewed a letter from Linda Manning, Executive Director, Canadian Bar Association - Ontario regarding the Law Society bulletins. Ms. Manning states: "I don't know who gets the credit for the ideas, but these are the best communications that I have seen come out of the Law Society in my far too many years at the CBAO, and you are to be congratulated! Presumably you have had a fair amount of favourable comment for the profession also; they couldn't help but be impressed".

28th May, 1993

6. Lawyer Referral Service Policy Subcommittee

A Subcommittee has been formed to review the Lawyer Referral Service (LRS) long-standing policy of refusing referrals based on sex, race or ethnic background. Originally, the policy decision was based on the Law Society's wish to avoid gender-discrimination against women on the LRS panel. The policy was last re-affirmed in May 1991.

The Communications Committee discussed this issue briefly and determined that the Subcommittee membership should be expanded to include a member from the Women and the Legal Profession Committee and the Equity Committee. The Subcommittee plans to meet when the new membership is in place.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"D. Bellamy"  
Chair

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE

Meeting of May 13th, 1993

Mr. Strosberg presented the Report of the Discipline Committee and asked for Convocation's approval on Item A.-A.2. re: Awards of Costs and Item A.-A.3. re: Participation of the Chair and Vice-Chairs of Discipline in Discipline Convocation.

The Chair accepted an amendment in Item A.-A.2.11 (b) that the words "a cheque" be deleted and the word "payment" be inserted so that the sentence would then read:

"In cases in which discipline hearing panels recommend that a member be disciplined in Convocation and ordered to pay costs, the member should be required to tender payment for the full amount of the costs awarded on or before the date on which the report is considered by Convocation."

THE REPORT AS AMENDED WAS ADOPTED

Mr. Strosberg informed Convocation that Gavin MacKenzie, Senior Counsel-Discipline was resigning at the end of June 1993. Mr. Strosberg commended Mr. MacKenzie on the excellent work he had done for the Society.

.....

FINANCE AND ADMINISTRATION COMMITTEE

Meetings of May 13th and 27th, 1993

Mr. Howie presented the Reports of the Finance and Administration Committee of its meeting on May 13th Items B.-2 & 3 and its meeting on May 27 Item B-1. re: Suspension of Members.

28th May, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993 at three o'clock in the afternoon, the following members being present: K.E. Howie (Chair), A. Feinstein (Vice Chair), J.J. Wardlaw (Vice Chair), D.H.L. Lamont, S. Lerner, R.D. Manes, R.W. Murray, and P.B.C. Pepper. Also in attendance were D.A. Crosbie D.E. Crack and D.N. Carey.

B.  
ADMINISTRATION

1. FINANCIAL REPORT

A highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the nine months ended March 31, 1993 was before the meeting. [pages 3 - 7]

Approved

2. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 12 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 12 cases all or part of the late filing fee has been outstanding four months or more. The 12 members owe \$18,700 of which \$17,130 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 12 members be suspended on May 28, 1993 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 358

3. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

There are many members who have neither paid their Errors and Omissions Insurance Levy nor filed a claim for exemption for the period January 1 to June 30, 1993. Two notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on May 28, 1993 effective on June 1, 1993 if the members have not complied with the requirements of the Errors and Omissions Insurance Plan on that date.

Approved

Note: Motion, see page 358

28th May, 1993

4. MEMBERSHIP UNDER RULE 50

(a) Retired Members

The following member who is sixty-five years of age and fully retired from the practice of law, has requested permission to continue his membership in the Society without payment of annual fees:

John Edward Sampson          Kingston

(b) Incapacitated Members

The following members are incapacitated and unable to practise law and have requested permission to continue their membership in the Society without payment of annual fees:

John Francis Brady                  Whitby  
Robert Alexander Kelly Brown      Thunder Bay

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

Approved

C.  
INFORMATION

1. LEGAL MEETINGS AND ENTERTAINMENT

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

May 27, 1993	Lawyers' Club Dinner Convocation Hall
May 28, 1993	Judges' Reception Convocation Hall
June 2, 1993	Judges' Dinner Convocation Hall
June 3, 1993	B. Greenspan Reception Convocation Hall
June 10, 1993	Court Reform Dinner Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 28<sup>th</sup> day of May, 1993.

"K. Howie"  
Chair

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

28th May, 1993

B-Item 1 - Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated May 13, 1993 re: March 1993 Financial Statement Highlights. (Pages 3 - 7)

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 27th of May, 1993 at 6:30 o'clock in the evening, the following members being present: Messrs. Wardlaw (Chair), Brennan, Feinstein and Murray.

R.  
ADMINISTRATION

1. SUSPENSION OF MEMBERS - N.S.F. CHEQUE - ANNUAL FEES

The following members paid their annual fees with a cheque which was subsequently dishonoured by the bank.

Daniel Mark Avard Kleiman	Toronto
David Mark Marcovitch	Toronto
Larry Anklewicz	Thornhill
Warren Arnold Singer	Toronto
Philip Gregory Evans	Toronto
Peter Joseph Brown	Kitchener
Christina Marie Langlois	Toronto
Maureen Lynne Tucker	Willowdale
Donald John Cosway	Scarborough
Angelina Marie Codina	Toronto
Peter Michael Maloney	Mississauga
Douglas Edward Rollo	Toronto

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on June 1, 1993 if the annual fees remain unpaid on that date.

Approved

Note: Motion, see page 358

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"K. Howie"  
Chair

THE REPORTS WERE ADOPTED

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

It was moved by Ken Howie, seconded by James Wardlaw 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 May 28, 1993 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND: FAILURE TO PAY E & O INSURANCE LEVY

It was moved by Ken Howie, seconded by James Wardlaw THAT the rights and privileges of each member who has neither paid the Errors and Omissions Insurance levy which was due on January 1, 1993 nor filed an approved application for exemption from coverage and whose name appears on the attached list, be suspended from June 1, 1993 for one year and from year to year thereafter or until an application for exemption has been approved or the necessary levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND: N.S.F. CHEQUES - ANNUAL FEES

It was moved by Ken Howie, seconded by James Wardlaw THAT the rights and privileges of the following members who paid the second instalment of their Annual Fees for the period July 1st, 1992 to June 30th, 1993 with cheques which were subsequently dishonoured by the bank be suspended from May 28th, 1993 for one year and from year to year thereafter until the necessary fees have been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Daniel Mark Avard Kleiman	Toronto
David mark Marcovitch	Toronto
Larry Anklewicz	Thornhill
Warren Arnold Singer	Toronto
Philip Gregory Evans	Toronto
Peter Joseph Brown	Kitchener
Christina Marie Langlois	Toronto
Maureen Lynne Tucker	Willowdale
Donald John Cosway	Scarborough
Angelina Marie Codina	Toronto
Peter Michael Maloney	Mississauga
Douglas Edward Rollo	Toronto

Carried

.....

INSURANCE COMMITTEE

Meeting of May 13th, 1993

Mr. Campbell presented the Report of the Insurance Committee and asked for Convocation's approval on Item 3 re: E & O Levy for the Second Half of 1993.

28th May, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of May, 1993 at 1:30 in the afternoon, the following members being present: Messrs. Hickey (Chair), Feinstein, Epstein, Howie, Cass, Somerville and Ms. Elliott.

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

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ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director reported that the net cost of new claims reported during the first four months of 1993 is \$11,050,277 compared to \$12,110,463 for the same period in 1992. Though the incidence of newly reported claims is higher for the first four months of 1993, the trend towards a decrease in the overall cost of new claims continues.

The Director also reported that \$1,271,891 in individual members' deductibles was recovered during the first four months of 1993 compared to \$558,262 for the same period in 1992. This is largely the result of changes to the E&O Department deductible recovery procedure implemented in January 1993. See Appendix "A".

2. DIRECTOR'S BUDGET RECONCILIATION REPORT

The Director reported that the E&O Department operating expenditures for the first four months of 1993 are within the 1993 calendar year budgetary limitations. See Appendix "B".

3. E&O LEVY FOR THE SECOND HALF OF 1993

The Director advised that though the cost of new claims reported during the last quarter of 1992 and the first four months of 1993 is in line with projections, the discount factor used to estimate the ultimate cost of 1993 claims has since been adjusted downwards to reflect such factors as the impact of lower interest rates. The result is a projected \$6,589,000 shortfall in 1993 revenues.

If the shortfall in revenues is not offset by an appropriate adjustment in the E&O levy the deficit will increase, jeopardizing the Society's objective to completely eliminate the deficit by December 31, 1997.

The Director advised your Committee that a one-time additional levy for the second half of 1993 in the amount of \$400 per member would offset the revenue shortfall. An alternative to this would be to implement an additional supplemental levy of \$100 per member for each of the next four Fund years. This alternative, however, would further compound the agreed objective of deficit elimination within a fixed time frame, particularly given the inherent difficulty in predicting claims activity over the next few years.

28th May, 1993

With a view to balancing the need to eliminate the deficit as scheduled and the economic difficulties faced by the profession, your Committee recommends increasing the levy for the second half of 1993 by \$200 with the remaining \$200 to be levied in the first half of 1994.

4. OUTSTANDING ITEMS

(a) American Home Assurance Company

The Director reported on the latest developments involving American Home Assurance Company, the insurer of the Mandatory E&O Program from January 1, 1982 to July 1, 1989. The Society and the insurer have conflicting views on whether or not adjuster fees, one of several claim related expenses, accrue towards each respective individual Fund Year Stop Loss limit and continue to dialogue on this subject.

Recently the Chair, and the Director met with Mr. Victor Smith, the previous Director of Insurance, to discuss this subject further. The Director advised your Committee that though the meeting was productive no new information was uncovered.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"C. Campbell  
Chair

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

- Item 1. - Director's Monthly Report - Deductible Recovery Activity Update.  
(Appendix "A")
- Item 2. - Director's Budget Reconciliation Report - Errors & Omissions General Expense Budget, The Three Month Period Ending March 31, 1993.  
(Appendix "B")

It was moved by Mr. Wardlaw but failed for want of a seconder that the levy be increased by \$400 in this year.

THE REPORT WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of May 13th, 1993

Ms. Kiteley presented the Report of the Legal Aid Committee and asked that the Report be amended to indicate that Mr. Copeland was present at the meeting on May 13th.

Item A.-1.(a) re: The Role of the Legal Aid Committee

It was moved by Mr. Topp, seconded by Ms. Peters that Item A.-1.(a) be deleted.

Lost

ROLL-CALL VOTE

Bellamy	Abstain
Bragagnolo	Against
Brennan	Against
Copeland	Against
Cullity	Against
Feinstein	Against
Finkelstein	Against
Goudge	Against
Graham	Against
Hickey	Against
Howland	Against
Kiteley	Against
Lamek	Against
Lamont	For
Lax	Against
Legge	Against
McKinnon	Abstain
Manes	Against
Mohideen	Against
Murray	Against
Palmer	Against
Peters	For
Richardson	Against
Ruby	Against
Scott	For
Sealy	Against
Somerville	Against
Thom	For
Topp	For
Wardlaw	For
Weaver	For
Yachetti	For

Convocation took a brief recess and resumed at 11:15 a.m. to continue with the Legal Aid Report.

Item A.-1.(b) re: Report of the Appointments Sub-Committee

It was moved by Ms. Kiteley, seconded by Mr. Copeland that Item A.-1.(b) be adopted.

Carried

Item A.-1.(c) re: Student Legal Aid Societies

It was moved by Ms. Kiteley, seconded by Mr. Copeland that the Recommendations numbered 1 to 4 set out in Schedule D be adopted.

Carried

Item A.-1.(d) re: Response to the ABT Report

It was moved by Ms. Kiteley, seconded by Mr. Copeland that Item A.-1.(d) be adopted.

Carried

THE REPORT WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meetings of April 8th and May 13th, 1993

Mr. Brennan and Mr. Feinstein asked for Convocation's approval on the following Items in the Research and Planning Committee Report.

Item A.-A.1. re: Strategic Planning Conference

It was moved by Mr. Howie, seconded by Ms. Peters that the words "a high budgetary priority" be deleted from the last paragraph under the heading Policy Statement, on attachment A-11.

It was moved by Mr. Scott, seconded by Mr. Yachetti that an amendment made to Mr. Howie's motion to delete the word "budgetary" only. Mr. Howie accepted the amendment.

Lost

Item A.-A.2. re: Non-Bencher Representation on Law Society Committees

Mr. Feinstein accepted an amendment that the word "is" be deleted and the words "may be confidential" be inserted in the fourth paragraph under Item 12. on attachment B-10 of the Report so that the sentence would then read:

"A statement to clarify the fact that the work of Law Society Committees "may be confidential" until the Committee makes a report to Convocation."

THE REPORT AS AMENDED WAS ADOPTED

The Treasurer thanked Ms. Holly Harris for her service as Regional Director of the Bar Admissions Course in Ottawa.

.....

SPECIALIST CERTIFICATION BOARD

Meeting of May 13th, 1993

Mr. Yachetti presented the Report of the Specialist Certification Board and asked Convocation's approval on the item re: Recertification Procedure.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 13th of May, 1993 at twelve o'clock noon, the following members being present: R.D. Yachetti (Chair), R.D. Manes (Vice-Chair), J. Callwood, D.W. Scott and G.P. Sadvari. S. Thomson, of the Law Society, was also present.

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

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 13th of April, 1993 at eight-thirty in the morning.

The Criminal Litigation Specialty Committee met (conference call) on Friday, the 30th of April, 1993 at one o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 11th of May, 1993 at eight-thirty in the morning.

On behalf of the Immigration Law Specialty Committee, the Committee Chair met (conference call) with the Program Administrator on Monday, the 17th of May, 1993 at nine-thirty in the morning.

A.  
POLICY

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A.1.           RECERTIFICATION PROCEDURE

A.1.1.           Over 200 Specialist Certificates will expire on August 24, 1993. All Specialist Standards state the following, or a close variation thereof: "Certificates of specialty shall have currency for a period of five years from their date of issue, after which they shall automatically lapse. Applications for recertification shall be governed by the same standards then applicable for certification."

A.1.2.           In its April 23, 1993 Report, the Board recommended a revision to the recertification procedure for the "grandfathered" Specialists (those certified between August 25, 1988 and February 28, 1989), with a view to considering over the coming months whether the revision should be made permanent for all Specialists.

A.1.3.           The recommended revision to recertification requirements for "grandfathered" Specialists was defeated in Convocation. The Board has considered this matter further and has concluded that any revision to the recertification Standards must be applicable to all Specialists.

A.1.4.           The Board now recommends that the present "Currency of Certificate" section of all Specialty Standards be divided into two sections and be revised as follows:

A.1.4.1.                   "CURRENCY OF CERTIFICATE

A.1.4.1.1.               Certificates of Specialty shall have currency for a period of five years from their date of issue, after which they shall automatically lapse."

A.1.4.2.                   "RECERTIFICATION

A.1.4.2.1.               Successful applicants for recertification will meet the following requirements:

A.1.4.2.1.1.            i)     be a member in good standing of the Law Society of Upper Canada;

A.1.4.2.1.2.            ii)    have a satisfactory professional standards record over the currency of the Specialist Certificate (the past five years);

- A.1.4.2.1.3.           iii) demonstrate continued substantial involvement in the Specialty field, consistent with the present Certification Standards;
- A.1.4.2.1.4.           iv) demonstrate satisfactory participation in continuing legal education or other forms of professional development over the past five years;
- A.1.4.2.1.5.           v) comply with the usual peer review requirements;
- A.1.4.2.1.6.           vi) be subject to the usual application, administrative and annual fees.
- A.1.4.2.2.           The Specialist Certification Board reserves the right, at the request of the assessing Specialty Committee, to require an applicant for recertification to attend for an interview.
- A.1.4.2.3.           The Specialist Certification Board reserves the right to request an applicant for recertification to submit an application to a Specialty Committee other than the one to which the original application was submitted, should the Board consider that certification in another Specialty would be more appropriate, having regard to the nature of the applicant's current practice."
- A.1.5.                A reapplication form, based on the above requirements and including an amendment to Part 2 as previously proposed by the Professional Standards Department, has been prepared (APPENDIX "A").

A.2.                CRIMINAL LITIGATION SPECIALTY STANDARDS - PRACTICE EXPERIENCE REQUIREMENTS

- A.2.1.               It has been brought to the Criminal Litigation Specialty Committee's attention that some lawyers have been discouraged from applying for Specialist certification because of the apparent requirement of appeal experience:
  - A.2.1.1.            "As a general rule, the Board will expect that during the five years of recent experience ... applicants for certification as specialists in criminal litigation will have:
    - A.2.1.1.1.        i. acted as lead counsel in at least 40 trials and/or appeals; ..."
- A.2.2.               The Criminal Litigation Specialty Committee has not based a negative recommendation solely on lack of appellate experience; however, to make this clear, the Committee and the Board recommend the following amendment to the Standards:
  - A.2.2.1.            ii. acted as lead counsel in at least 40 trials and, if applicable, appeals; ..."

B.  
ADMINISTRATION

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B.1.           SPECIALIST CERTIFICATION ANNUAL FEES - COLLECTION

B.1.1.           On October 23, 1992, the following item was approved in Convocation:

B.1.1.1.           "The Certification Program's first annual fees will be collected in the Spring of 1993. The Board approved the proposal of the Law Society's Finance Department that, as at July 1, 1993, Certification annual fees expected in the 1993-94 fiscal year should be included on a Specialist's Law Society Annual Fees Notice, whenever during the fiscal year the member is billed.

B.1.1.2.           Steps will be taken to amend the Annual Fees Notice to include the Certification Program Annual Fee."

B.1.2.           Law Society staff have recently revisited the inclusion of Specialist Certification Fees on the Annual Fees Notice. Because Specialist Certification Annual Fees (currently \$100.00 per Specialty) are payable on a yearly basis from the date of certification, which dates are scattered throughout the year, it was concluded that collection of all Specialist Certification Annual Fees with the Law Society Annual Fees may cause confusion, and that Specialist Certification Annual Fees should be collected on a monthly basis by the Specialist Certification Program office.

B.1.3.           Specialist Certification Annual Fees will not be included on the Law Society's Annual Fees Notice.

B.2.           SPECIALIST CERTIFICATION ANNUAL FEES - PENALTY FOR LATE OR NON-PAYMENT

B.2.1.           The Board recommends that Specialists should be sent reminder notices twice during the four months following the billing date and if a Specialist fails to pay fully the Specialist Certification Annual Fee four months after the fee due date, the member's name will be removed from the list of Currently-Certified Specialists and Convocation will be so notified.

B.2.2.           In order to have a name added again to the list of Currently-Certified Specialists, it is recommended that a \$50.00 fee will be imposed.

B.2.3.           At the present time, the Board does not recommend revocation of the Specialist Certificate for non-payment of Specialist Certification Annual Fees, but this matter will be brought forward when revocation procedures are addressed in detail by the Board.

B.3. LEGAL AID INFORMATION ON LISTS OF SPECIALISTS

- B.3.1. On May 4th, the Administrator received a call from P. Gordon, Director of Parkdale Legal Services, who had seen the list of Specialists in the Law Times and wondered whether the Board would consider including on the list an indication of whether each Specialist accepts Legal Aid. Ms. Gordon was of the view that the list would be extremely helpful for referrals if this information were included.
- B.3.2. The suggestion has been discussed with Robert Holden, Director of Legal Aid, who has agreed that this information may be helpful to the consumer and is of the view that the inclusion of this information on the lists should pose no problem.
- B.3.3. The Board recommends that an indication of whether each Specialist accepts Legal Aid should be included on all lists of Currently-Certified Specialists.

B.4. LEGAL AID/PRO BONO SUB-COMMITTEE

- B.4.1. The Board recommends the establishment of a Legal Aid/Pro Bono Sub-Committee of the Specialist Certification Board, to be composed of members R. Manes (Sub-Committee Chair) and J. Callwood.
- B.4.2. The Sub-Committee will establish a definition of pro bono work, and will consider whether, as a community service, Certified Specialists should be required to provide (for example) 50 hours of pro bono and Legal Aid work annually.

C.  
INFORMATION

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C.1. CERTIFICATION OF SPECIALISTS

- C.1.1. The Board is pleased to report the certification of the following lawyers as Civil Litigation Specialists:

Richard M. Bogoroch (of Toronto)  
Francis A. DeSantis (of Hamilton)  
John S. McNeil (of Toronto)  
Pasquale Santini (of Ottawa)

- C.1.2. The Board is pleased to report the certification of the following lawyer as an Immigration Law Specialist:

Frank N. Marrocco (of Toronto)

28th May, 1993

C.2. PROGRAM FRENCH TRANSLATION CHANGES

- C.2.1. Since the Program name has been changed to the Specialist Certification Program, it has been recommended by the French Language Services Department that the French translation of the Program should be: Programme d'agrement des specialistes; and the Board will be: le Conseil d'agrement des specialistes.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"R. Yachetti"  
Chair

- A-Item A.1.5. - Reapplication form for Recertification with amendment to Part 2.

(Appendix "A", pages 1 - 11)

Item A.-A.1. re: Recertification Procedure

It was moved by Mr. McKinnon, seconded by Mr. Howie that Part 2: Membership & Professional Standards of the application form be deleted.

Lost

Mr. Yachetti agreed to report to Convocation in October or November on the administrative impact of the recertification procedure.

THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of May 13th, 1993

Mr. O'Connor presented the Unauthorized Practice Committee Report and spoke to Item B-3. re: Tripartite Committee.

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 13th of May, 1993 at 10:30 a.m., the following members were present: M. Hickey (Acting Chair), P. Peters (Vice Chair), R. Cass, P. Copeland, N. Finkelstein and N. Graham. Also in attendance was: A. John.

28th May, 1993

B.  
ADMINISTRATION

1. COMPLAINTS/INVESTIGATIONS

Three new investigations were authorized.

2. PARALEGAL CORPORATION - JOINT VENTURE WITH LAWYERS

Your Committee reviewed a letter from a member proposing the establishment of a corporation along with a paralegal which would provide paralegal services to the public. Your Committee is of the view that the matter should be dealt with by the Professional Conduct Committee as the issues relate to Rule 16 of the Rules of Professional Conduct.

Deferred from April 1993 Report to Convocation

3. TRIPARTITE COMMITTEE

The Law Society's response to the Ianni Task Force on Paralegals June 1992, recommended that the Attorney General establish a Tripartite Committee to determine the parameters of paralegal practice. The members of the Committee were to be drawn from paralegal organizations, the office of the Attorney General and from the Law Society. At the end of March 1993, the Treasurer met with the Attorney General, who indicated support for the establishment of the Tripartite Committee. Your Committee recommends that there be representation from the Law Society on any such committee.

ALL OF WHICH is respectfully submitted

DATED the 28th day of May, 1993

"D. O'Connor"  
Chair

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

Item 3 - Copy of Current Prosecutions.

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of May 13th, 1993

Mr. Lamek presented the Report of the Legal Education Committee and asked Convocation's approval on the following item.

Item A.-A.1 re: Issues related to Examination Administration in the Bar Admission Course

It was moved by Mr. Goudge, seconded by Ms. Sealy that the recommendation be sent back to the Committee for further study.

Lost

ROLL-CALL VOTE

Bastedo	Against
Bragagnolo	Against
Brennan	Against
Campbell	For
Copeland	Against
Cullity	Against
Epstein	Against
Feinstein	For
Finkelstein	Against
Goudge	For
Graham	For
Hickey	Against
Howie	For
Howland	For
Kiteley	For
Krishna	Against
Lamek	Against
Lamont	Against
Lax	Against
Legge	Against
McKinnon	For
Mohideen	For
Murphy	For
Murray	Against
D. O'Connor	For
Palmer	For
Peters	For
Ruby	For
Scott	Against
Sealy	For
Somerville	For
Strosberg	For
Thom	Against
Topp	Against
Wardlaw	For
Weaver	Against
Yachetti	Against

The Chair, due to the closeness of the vote of the motion put by Mr. Goudge agreed to have the matter reconsidered by the Committee.

It was moved by Mr. Strosberg, seconded by Ms. Lax that in the discretion of the Director an accommodation may be made having regard to an applicant's deficiency in French or English.

Lost

It was moved by Ms. Kiteley that Item A.-A.1 and Item C.-C.4.5 re: Approval as an Articling Principal go back to Committee for review and involvement of the Equity Committee.

Ms. Kiteley's motion was ruled out of order by the Treasurer as Item C.-C.4 had already been approved by Convocation.

THE REPORT AS AMENDED WAS ADOPTED

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

.....

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Bastedo, Bragagnolo, Brennan, Campbell, R. Cass, Copeland, Cullity, Epstein, Finkelstein, Graham, Hickey, Howie, Jarvis, Kiteley, Lamek, Lamont, Lax, McKinnon, Mohideen, Murphy, Murray, D. O'Connor, Palmer, Richardson, Ruby, Scott, Somerville, Strosberg, Thom and Wardlaw.

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LEGISLATION AND RULES COMMITTEE

Meetings of May 18th and 20th, 1993

Mr. Cullity presented the Report of the Legislation and Rules Committee of its meetings on May 18th and 20th.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

On May 18 and May 20, 1993, correspondence was exchanged by fax or mail between the Secretary (R. Tinsley) and the following members of your Committee: M. Cullity (Chair), R. Cass, the Hon. A. Lawrence, S. Lerner, J. Palmer, S. Thom.

A.  
POLICY

A.1. RULES MADE UNDER SECTION 62(1) OF THE LAW SOCIETY ACT: AMENDMENT OF RULE 19.2: ELECTION OF TREASURER: ADVANCE VOTING

A.1.1. Background

A.1.1.1. Subrule 19.2 provides that any bencher who is unable to be present at the Convocation at which the Treasurer is to be elected may vote at an advance poll on Meeting Day immediately preceding such Convocation.

A.1.1.2. The wording of the rule provides for advance voting in the first ballot only. It does not allow for advance voting in second or subsequent ballots when there are more than two nominees.

A.1.1.3. The existing rule dates from 1984. Prior to that, a provision had existed for write-in votes in second and subsequent ballots but the procedure was cumbersome and entailed significant delay in the election process.

A.1.1.4. On May 17, 1993, the Secretary informed your Committee that an argument had been made that if Convocation was willing to grant the right of advance voting on the first ballot, the right should be extended so as to apply in second and subsequent ballots.

A.1.1.5. Your Committee recommends that the right of advance voting should apply to second and subsequent ballots and that Rule 19.2 should be amended as set out in A.1.3. below.

A.1.2. The existing rule

Rule 19.2 reads as follows:

POLL

19.2 (1) The Secretary shall, at the Convocation immediately preceding the Convocation fixed for the election of Treasurer, read the names of those nominated together with the names of the benchers moving and seconding the nominations and shall immediately after Convocation send a list of the nominees to each bencher entitled to vote at the bencher's address as shown on the records of the Society.

(2) Each bencher who is entitled to vote and is present at the Convocation at which the Treasurer is to be elected may vote for only one nominee on each ballot.

(3) Any bencher, who is entitled to vote and is unable to be present at the Convocation at which the Treasurer is to be elected, may vote for only one nominee at an advance poll on Meeting Day immediately preceding such Convocation, by completing a ballot and depositing it in a ballot box in the presence of the Secretary or the Secretary's nominee. The Secretary shall at the Convocation at which the Treasurer is to be elected remove such ballots from the ballot box and place them with the ballots collected on the first ballot.

(4) When each ballot is completed, the Secretary shall collect the ballots and withdraw and open the ballots in the presence of the retiring Treasurer, or the delegate of the Treasurer, who together shall scrutinize and count the ballots.

(5) The results of the ballots shall forthwith be announced in Convocation.

(6) On any ballot a nominee receiving more than fifty percent of the votes shall be declared elected Treasurer.

(7) If there are three or more nominees and no nominee receives more than fifty percent of the votes on the first ballot, the name of the nominee receiving the fewest number of votes on the first ballot shall be removed from subsequent ballots; further balloting shall take place until there are only two nominees remaining and then a final ballot shall be taken and the candidate receiving the greater number of votes shall be declared elected Treasurer.

(8) In the event of a tie vote on any ballot the Treasurer, or if the Treasurer is a nominee in the election, the Chair shall have a casting vote or casting votes as may be needed to determine which name is to be dropped from succeeding ballots, or to determine the election as the case may be.

A.1.3. Recommendation

A.1.3.1. That Rule 19.2 should be amended so that it reads as follows (words to be deleted from the existing rule are struck through; words to be added are underlined):

POLL

19.2 (1) The Secretary shall, at the Convocation immediately preceding the Convocation fixed for the election of Treasurer, read the names of those nominated together with the names of the benchers moving and seconding the nominations and shall immediately after Convocation send a list of the nominees to each bencher entitled to vote at the bencher's address as shown on the records of the Society.

(2) Each bencher who is entitled to vote and is present at the Convocation at which the Treasurer is to be elected may vote for only one nominee on each ballot.

(3) Any bencher, who is entitled to vote and is unable to be present at the Convocation at which the Treasurer is to be elected, may vote ~~for only one nominee~~ at an advance poll on Meeting Day immediately preceding such Convocation, by completing an advance ballot and depositing it in a ballot box in the presence of the Secretary or the Secretary's nominee. If there are three or more nominees for Treasurer, the ballots used for the advance ballot shall be of a colour distinct from the ballots to be used at Convocation and shall allow benchers to rank the nominees in order of preference. The Secretary shall at the Convocation at which the Treasurer is to be elected remove ~~such~~ the advance ballots from the ballot box and place them with the ballots collected ~~on the first ballot~~ at Convocation.

(4) When each ballot is completed, the Secretary shall collect the ballots and withdraw and open the ballots in the presence of the retiring Treasurer, or the delegate of the Treasurer, who together shall scrutinize and count the ballots. A nominee shall be allocated one vote for each advance ballot on which the nominee ranks first in order of preference.

(5) The results of the ballots shall forthwith be announced in Convocation.

(6) On any ballot a nominee receiving more than fifty percent of the votes shall be declared elected Treasurer.

(7) If there are three or more nominees and no nominee receives more than fifty percent of the votes on the first ballot, the name of the nominee receiving the fewest number of votes on the first ballot shall be removed from subsequent ballots; further balloting shall take place until there are only two nominees remaining and then a final ballot shall be taken and the candidate receiving the greater number of votes shall be declared elected Treasurer.

(7.1) On any second or subsequent ballot, each of the nominees whose names have not been removed from the ballot shall be allocated one vote for each advance ballot on which the nominee ranks first in order of preference among, or between, such nominees.

(8) In the event of a tie vote on any ballot the Treasurer, or if the Treasurer is a nominee in the election, the Chair shall have a casting vote or casting votes as may be needed to determine which name is to be dropped from succeeding ballots, or to determine the election as the case may be.

28th May, 1993

A.1.3.2. That the French Language Services Committee be asked to arrange for a French translation of the amended rule.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1993

"M. Cullity"  
Chair

It was moved by Mr. Epstein, seconded by Mr. Scott that the casting vote of the Treasurer in the event of a tie be deleted.

Mr. Epstein's motion was ruled out of order as no prior notice of motion was given.

It was moved by Mr. Cullity, seconded by Ms. Palmer that Rule 19.2 as amended in the Report be adopted.

Carried

THE REPORT WAS ADOPTED

The Treasurer advised that if there was time Convocation would come back to the matter of the challenge to the Chair's Ruling on the motion made by Mr. Epstein.

ORDERS

The following Discipline Orders were filed with Convocation.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF The Law Society Act;

AND IN THE MATTER OF Farouq Mallal;  
of the City of Ottawa, a Barrister and  
Solicitor (hereinafter referred to as "the  
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 11th day of March, 1993, in the presence of Counsel for the Society, the Society and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

28th May, 1993

CONVOCATION HEREBY ORDERS that Farouq Mallal be granted permission to resign his membership in The Law Society of Upper Canada, such resignation to take effect the 25th day of March, 1993.

DATED this 25th day of March, 1993.

"Allan M. Rock"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 30th day of December, 1992 in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Mario Giangio

ppo be disbarred as a Barrister and that his name be struck off the Roll of Solicitors and that his membership in the Society be cancelled.

DATED this 25th day of March, 1993.

"Allan M. Rock"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

28th May, 1993

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Moeen Mahmood Ahmad Janjua,  
of the City of Mississauga, a Barrister and  
Solicitor (hereinafter referred to as "the  
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada having read the Report and Decision of the Discipline Committee dated the 26th day of February, 1993, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Moeen Mahmood Ahmad Janjua be Reprimanded in Convocation respecting his failure to file; that he be suspended for a period of 6 months respecting the charge of swearing false Statutory Declarations; and that he be suspended indefinitely thereafter until his filings are brought up to date and complete, such suspension to commence the 1st day of April, 1993.

DATED this 25th day of March, 1993.

"Marc Somerville"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Brian Alan Whyte,  
of the City of Gloucester, a Barrister and  
Solicitor (hereinafter referred to as "the  
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of March, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

28th May, 1993

CONVOCATION HEREBY ORDERS that Brian Alan Whyte be:

- a) suspended for a period of four months, such suspension to commence March 25, 1993,
- b) for a period of one year following completion of the term of suspension, the Solicitor is to practise only under the supervision of a solicitor approved by the Law Society;
- c) the Solicitor is to pay the costs of the Society's investigation in the amount of \$2,500.00; and
- d) the Solicitor is to undertake to the Society that he will continue in treatment with Dr. Cattan and the undertaking is to include Dr. Cattan's agreement to notify the Society if he has concerns as to the Solicitor's ability to practise.

DATED this 25th day of March, 1993.

"Allan M. Rock"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 2nd day of March, 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

28th May, 1993

CONVOCATION HEREBY ORDERS that William Palamar be Reprimanded in Convocation and ordered to pay the costs of the Law Society's investigation in the amount of \$500.00.

DATED this 22nd day of April, 1993.

"Allan M. Rock"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Richard Michael Hugh Power,  
of the City of Toronto, a Barrister and  
Solicitor hereinafter referred to as "the  
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 5th day of November, 1992, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Richard Michael Hugh Power be Reprimanded in Convocation and ordered to pay the costs of the Law Society's investigation in the amount of \$1,000 and that he be suspended from March 25, 1993 until such time as his Form 2/3 for the years 1990 and 1991 are brought up to date to the satisfaction of the Law Society.

DATED this 25th day of March, 1993.

"Marc Somerville"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

28th May, 1993

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Roderick grant MacGregor,  
of the City of North York, a Barrister and  
Solicitor (hereinafter referred to as "the  
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 29th day of January, 1993, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Roderick Grant MacGregor be suspended for a period of five (5) months, such suspension to commence on the 30th day of May, 1993.

DATED this 22nd day of April, 1993.

"K. Howie"  
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Gerald Grupp,  
of the City of North York, a Barrister and  
Solicitor (hereinafter referred to as "the  
Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of March, 1993, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

28th May, 1993

CONVOCATION HEREBY ORDERS that Gerald Grupp be disbarred as a Barrister and that his name be struck off the Roll of Solicitors and that his membership in the said Society be cancelled.

DATED this 22nd day of April, 1993.

"Allan M. Rock"  
Treasurer

(SEAL-The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Frances Lewis Reilly,  
of the City of St. Catharines, a Barrister  
and Solicitor (hereinafter referred to as  
"the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 16th day of February, 1993, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Francis Lewis Reilly be suspended for a period of one (1) month and that this suspension continue thereafter until:

1. the Solicitor has fulfilled his obligation to produce for inspection to the Law Society his books and records;
2. the Solicitor provides a response to the Society regarding the complaint by Audrey Davies; and

28th May, 1993

- 3. the Solicitor pay costs of the Society's investigation in the amount of \$1,000.00.

DATED this 22nd day of April, 1993.

"Allan M. Rock"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

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IN CAMERA

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IN PUBLIC

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The Secretary read the nominations for Treasurer.

Paul Lamek nominated by Philip Epstein, seconded by Harvey Strosberg.

Colin McKinnon, nominated by Neil Finkelstein, seconded by Netty Graham.

Marc Somerville nominated by Ken Howie, seconded by Susan Elliott.

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IN CAMERA Content Has Been Removed

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IN PUBLIC  
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NOTICE OF MOTION BY P.B.C. PEPPER, Q.C.

Convocation confirms the following policy:

1. The Treasurer is the only person who may travel with a spouse at the expense of the Society.
2. No other person, whether a Bencher or a member of the staff of the Society, may travel with a spouse at the expense of the Society unless the Treasurer, in advance of the travel, authorizes in writing to the Chairman of Finance the reimbursement of the spouses expenses.
3. Nothing herein is intended to affect the normal travel arrangements of Benchers and staff travelling alone.

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Ms. Kiteley thanked the Treasurer for his assistance during the past year.

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CONVOCATION ROSE AT 4:00 P.M.

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Confirmed in Convocation this      day of                      1993.

Treasurer