

MINUTES OF CONVOCATION

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

PRESENT:

The Treasurer (Allan M. Rock), Arnup, Bastedo, Bellamy, Brennan, Campbell, R. Cass, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Graham, Hill, Kiteley, Lamont, Lawrence, Lax, Legge, Levy, McKinnon, Manes, Mohideen, Murphy, Murray, O'Brien, D. O'Connor, Palmer, Pepper, Peters, Scott, Sealy, Somerville, Strosberg, Thom, Wardlaw and Weaver.

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IN PUBLIC

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CALL TO THE BAR

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

- Michael Peter Bury 34th Bar Admission Course
- Bernd Stephen Christmas 34th Bar Admission Course
- James Michael Cooper 34th Bar Admission Course
- Jan-Marie Divok 34th Bar Admission Course
- Sian Myfanwy Evans 34th Bar Admission Course
- Cheryl Gaster 34th Bar Admission Course
- Ernest Guiste 34th Bar Admission Course
- Susan Margaret Hutton 34th Bar Admission Course
- Andrew Pui-Lam Ip 34th Bar Admission Course
- Thomas Franklin Ludwig Jakobsh 34th Bar Admission Course
- Miriam Kagan 34th Bar Admission Course
- Joo Yung Kang 34th Bar Admission Course
- John Harold Kieffer 34th Bar Admission Course
- Yun Chung John Lee 34th Bar Admission Course
- John Lo Faso 34th Bar Admission Course
- Zino-Ignazio Macaluso 34th Bar Admission Course
- Philip William Morgan 34th Bar Admission Course
- Michael Gilmour Morris 34th Bar Admission Course
- Oded Orgil 34th Bar Admission Course
- Yuval Ornoy 34th Bar Admission Course
- Helen Sygney Posluns 34th Bar Admission Course
- Suzanne Rosart 34th Bar Admission Course
- Nadir Abidhusein Gulamhusein Sachak 34th Bar Admission Course
- Ravinder Pal Sawhney 34th Bar Admission Course
- Fern Ann Stark 34th Bar Admission Course

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IN CAMERA

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IN PUBLIC

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MOTIONS

It was moved by Casey Hill, seconded by Don Lamont -

THAT Julaine Palmer, Stephen Goudge and James Wardlaw be added as members of the Heritage Committee.

THAT Michael Hennessy be added as a non-Bencher member to the Libraries and Reporting Committee.

Carried

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 Andrew Bishop Tulk, 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 25th day of January, 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;

26th March, 1993

CONVOCATION HEREBY ORDERS that Andrew Bishop Tulk be suspended for a period of six (6) months, such suspension to take effect the 25th day of February, 1993.

DATED this 25th day of February, 1993.

"Kenneth 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 Richard Paul Ranieri, of the City of Toronto, a Barrister and Solicitor

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 13th day of 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 Richard Paul Ranieri be suspended for a period of six (6) months, such suspension to commence on the 24th day of September, 1992.

DATED this 28th day of January, 1993.

"Allan Rock"
Treasurer

(SEAL-The Law Society of Upper Canada)

"Richard F. Tinsley"
Secretary

Filed

26th March, 1993

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Gregory Peter Linton Vanular, of the Town of Pickering, 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 Majority of the Discipline Committee dated the 7th day of January, 1993 and the Dissent of the Minority dated the 7th 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 Gregory Peter Linton Vanular be suspended for a period of nine (9) months, such suspension to commence the 13th day of February, 1993 and thereafter until the judgment is paid and he pay the costs of the Law Society in the amount of \$2,500.00.

DATED this 28th day of January, 1993.

"Allan 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 Phillip Cameron Upshall, of the City of Brampton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 28th day of November, 1992, in the presence of Counsel for the Society and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

26th March, 1993

CONVOCATION HEREBY ORDERS that Phillip Cameron Upshall 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 28th day of January, 1993.

"Allan 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 Christopher MacDougall Reid, 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 8th 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 conduct unbecoming and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Christopher MacDougall Reid be Reprimanded in Convocation.

DATED this 28th day of January, 1993.

"Allan Rock"
Treasurer

(SEAL-The Law Society of Upper Canada)

"Richard F. Tinsley"
Secretary

Filed

26th March, 1993

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Anthony William Klymko, 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 4th 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 Anthony William Klymko be reprimanded in Convocation and pay costs to the Law Society in the amount of \$500.00.

DATED this 28th day of January, 1993.

"Allan 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 Gerald Bruce Fox, of the Town of Newmarket, 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 6th 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;

26th March, 1993

CONVOCATION HEREBY ORDERS that Gerald Bruce Fox be suspended for a period of three (3) months commencing the 5th day of February, 1993 and indefinitely until his 1991 filings are made and that he pay costs levied at \$1,500.00 payable within nine (9) months from the date of his suspension.

DATED this 28th day of January, 1993.

"Allan 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 Yaroslav Mikitchook, 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 9th day of September, 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 Yaroslav Mikitchook be reprimanded in Convocation and that he pay costs in the amount of \$3,000.

DATED this 28th day of January, 1993.

"Allan Rock"
Treasurer

(SEAL-The Law Society of Upper Canada)

"Richard Tinsley"
Secretary

Filed

26th March, 1993

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Meyer Feldman,
of the Town of Thornhill, 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 18th day of December, 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 Meyer Feldman:

1. be suspended indefinitely until such time as he has completed all his filings to the satisfaction of the Law Society, and paid in full all fees and other monies owing to the Law Society.
2. that upon reinstatement of the Solicitor's rights and privileges after completion of his filings and payment of fees and other monies owing, the Solicitor's rights and privileges shall be suspended for a further period of three months,
3. that upon reinstatement of the Solicitor's rights and privileges following this three month suspension, the Solicitor be authorized to practice subject to the following conditions:
 - a) that he give an Undertaking that, without the express approval of Convocation, he will not practice on his own but only as an employee of another member of the Law Society in good standing who will assume responsibility for the books, records and accounts relating to the Solicitor's practice.
 - b) that he give an Undertaking to use his best efforts to repay, within a reasonable time after resuming practice, the monies owing to Ettore Milani pursuant to the April 23, 1983 judgment against the Solicitor.

DATED this 28th day of January, 1993.

"Allan Rock"
Treasurer

(SEAL-The Law Society of Upper Canada)

"Richard F. Tinsley"
Secretary

Filed

26th March, 1993

The following ORDER for readmission was also filed with Convocation.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;
AND IN THE MATTER OF John Richard Cirillo, of the City of North York;

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Admissions Committee, in the presence of Counsel for the Society, Counsel for the applicant, and the applicant for readmission, wherein the applicant was considered for readmission and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the said John Richard Cirillo be readmitted to the practice of law in Ontario, on the following condition:

- a) that he comply with the recommendation of the Professional Standards Committee of the Law Society of Upper Canada with respect to any educational or other conditions which might be required to ensure that he will provide adequate service to the public.

DATED this 29th day of January, 1993.

"Allan Rock"
Treasurer

(SEAL-The Law Society of Upper Canada)

"Richard F. Tinsley"
Secretary

Filed

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COMMITTEE REPORTS TO BE TAKEN AS READ

It was moved by Susan Elliott, seconded by Denise Bellamy THAT the Reports listed in paragraph 3 of the Agenda (Reports to be taken as read) be adopted.

Carried

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

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

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SPECIAL COMMITTEE ON BENCHER ELECTIONS

Mr. Scott presented the Report of the Special Committee on Bencher Elections.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

REPORT

THE SPECIAL COMMITTEE ON BENCHER ELECTIONS

Your Committee begs leave to report:

1 THE SPECIAL COMMITTEE ON BENCHER ELECTIONS

1.1 Your Committee was appointed at Convocation in September 1992 to consider whether Convocation should implement a system for the regional election of Benchers. The Committee has considered a number of options generated by previous Committees which grappled with this difficult issue. It has also considered new ideas proposed by members of the present Committee. The Law Society has considered regional bencher elections a number of times in its history. The recent history of the issue is outlined in a background paper prepared for the Committee at Attachment A to this Report.

2 MEETINGS OF THE COMMITTEE

2.1 Your Committee has met six times on the following dates: October 23, 1992, December 16, 1992, January 14, 1993, February 10, 1993, February 25, 1993 and March 10, 1993.

3 MEMBERSHIP OF THE COMMITTEE

- 3.1 The Bencher members of the Special Committee on Bencher elections are: David Scott (Chair), Susan Elliott, Neil Finkelstein, Paul Lamek, Fatima Mohideen and Ross Murray.
- 3.2 The following are non-Bencher members of the Committee: Michael Bernstein (The Ontario Crown Attorneys' Association), Brian Brock (County of York Law Association), Igor Ellyn (Canadian Bar Association - Ontario) and Marty Murphy (County and District Law Presidents' Association).
- 3.3 Richard Tinsley, Secretary of the Law Society, attended meetings of the Committee. Simon Hodgett, Staff Lawyer - Research, acted as Secretary to the Committee.

4 TERMS OF REFERENCE AND COMPOSITION OF THE COMMITTEE

- 4.1 Convocation appointed the Special Committee on Bencher Elections on September 24, 1992. The Terms of Reference of the Committee are as follows:

I To make specific recommendations concerning the following questions:

(a) Should Convocation reaffirm the November 1990 reform as the appropriate long-term procedure for Bencher elections?

(b) If the November 1990 reform is not appropriate as a permanent procedure,

(i) should the present method (i.e., the method employed in Bencher elections to and including the 1991 election) be preserved?

(ii) if we are to move to regional elections should we use the judicial regions or adopt different regions?

(iii) if we are to move to regional elections, should all lawyers throughout the Province have the right to vote for all candidates, or should they be entitled to vote only for candidates in their region? Should some combination be adopted?

(iv) how many Benchers should be elected from each region?

(v) should Metro Toronto be divided into regions for the purposes of regional Bencher elections?

II To report to Convocation not later than February 26, 1993; and

III To consult with the County and District Law Presidents' Association, the Canadian Bar Association (Ontario) and other appropriate professional groups.

- 4.2 By the initial motion in Convocation the Bencher-members as named in paragraph 3.1 were appointed to the Committee.

- 4.3 At the Convocation on September 24, 1992, there were a number of motions concerning the Special Committee on Bencher elections. The following motion was passed:

It was moved that there be 1 non-Bencher member appointed to the Special Committee on Bencher Elections from the County and District Law Presidents' Association, 1 non-Bencher member from the County of York Law Association and such other members from other professional organizations as the Committee deemed appropriate.

Convocation voted in favour of non-Bencher members having a vote on the Special Committee on Bencher Elections.

- 4.4 In accordance with the motions passed on September 24, 1992, representatives of the County of York and the County and District Law Presidents' Association were appointed to the Committee. Brian Brock, President of the County of York Law Association, represented his Association on the Committee. Marty Murphy, President of the Peterborough County Law Association, represented the County and District Law Presidents' Association.

5 CHANGES TO THE TERMS OF REFERENCE AND COMPOSITION OF THE COMMITTEE

- 5.1 At the December 16, 1992 meeting of the Committee, the Committee resolved to request that the Treasurer extend its time to report. The Committee was of the view that the deadline set in its current terms of reference provided insufficient time to properly advertise and canvass submissions.
- 5.2 This request for an extension was forwarded to the Treasurer and the date for reporting to Convocation was extended to March 26, 1993.
- 5.3 At Convocation on January 29, 1993, the following motion was carried:

That a representative of the Canadian Bar Association and the Crown Attorneys' Association be added to the Special Committee on Bencher Elections.

In accordance with this resolution Michael Bernstein, representing The Ontario Crown Attorneys' Association, and Igor Ellyn, representing the Canadian Bar Association - Ontario, joined the Committee as of its February 10, 1993 meeting.

6 SUBMISSIONS

- 6.1 Past Committees considering Bencher Elections have extensively canvassed the views of the profession. The Ferguson Committee (1989-1990), in particular, reviewed extensive submissions from members of the profession. That Committee also sent a questionnaire to all members in good standing and placed advertisements in the *Ontario Reports* and *The Lawyers Weekly*. The Ferguson Committee received 316 responses to these calls for submissions.
- 6.2 Your Committee did not propose to redo the work of the Ferguson Committee, neither was there time to carry out such an extensive effort. The Committee did, however, wish to consult with the profession to some extent and particularly those organizations which in the past have shown an interest in the issue.
- 6.3 The Committee made the following efforts to canvass the views of the profession:
- 6.3.1 Letters were sent to professional organizations with an interest in the issue. A list of those organizations is found at Attachment B to this Report.

6.3.2 Notices were placed in the October *Benchers Bulletin* and the January 22, 1993 edition of the *Ontario Reports* calling for submissions.

6.4 A list of organizations and individuals who responded to the call for submissions is at Attachment C to this Report.

7 THE FERGUSON AND TOPP COMMITTEES

7.1 As appears from the Background Paper (Attachment A), on November 23, 1990, Convocation adopted the Report of the Ferguson Committee subject to the Law Society obtaining the necessary power to implement the electoral scheme through amendments to sections 15(2), 15(3) and 62(16) of the *Law Society Act*. The Legislation and Rules Committee in its report to Convocation on April 24, 1992 included proposed amendments to the *Law Society Act* to accommodate the Ferguson scheme, but these were deleted from the Report as a result of Convocation's tabling of the Report of the Topp Committee.

Note: Amendment, see page 80

7.2 The Topp Committee, which was established in September 1991, reported to Convocation on the 24th of April 1992. It sought clarification of its mandate and asked Convocation whether it wished to delay the legislative change dictated by the Ferguson scheme. A motion to proceed with the implementation of the Ferguson Report was lost and ultimately the Report of the Topp Committee was tabled. The result was the creation of your present Committee by the Treasurer in September 1992.

7.3 A copy of the Ferguson Committee Report is attached as Attachment D. The Report essentially recommends the establishment of regional representation based on eleven electoral regions. Seven of the eleven regions would correspond to the seven judicial regions outside Metropolitan Toronto. Metropolitan Toronto would be divided into four electoral regions consisting of the City of Toronto; the Borough of East York and the City of Scarborough; the City of York and the City of Etobicoke; and the City of North York.

7.4 The Ferguson Committee did not recommend so-called "full regionalization," where all 40 benchers would be elected from their regions and only voters from each region would vote for candidates from that region. Instead the Ferguson Report contemplated the election of one Bencher as a "regional representative" from each of the eleven electoral regions. Those eleven regional representatives would be elected only by the votes of voters within their own regions. The remaining 13 Benchers from outside Metropolitan Toronto and the remaining 16 Benchers from within Metropolitan Toronto would be elected by all voters as at present. Thus, as at present, 20 Benchers would be elected from outside Metropolitan Toronto (7 regional Benchers and 13 Benchers elected at large), and 20 benchers from within Metropolitan Toronto (4 regional benchers and 16 elected at large).

8 THE COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION

- 8.1 The County and District Law Presidents' Association (hereinafter "CDLPA") has been actively involved from the outset in the matter of Benchers election reform. It has consistently advocated that regionalization or regional representation is the way of the future and that the future is now. At the time of the release of the Ferguson Report, the CDLPA was prepared to support the Ferguson scheme provided that (i) regional representation outside Metropolitan Toronto be increased from one to two Benchers per region, and (ii) that there be a commitment to review the whole electoral scheme after the 1991 election had taken place. Both of these conditions, increasing regional representation and undertaking to review the Ferguson scheme, were put to Convocation at the time of the presentation of the Report. Both ideas were rejected.
- 8.2 Since the Ferguson Committee's Report, the CDLPA has studied the matter and continues to favour so-called "full" regionalization, utilizing the existing judicial regions with representation being proportional to the number of members in that region but with a minimum of 2 benchers elected from each judicial region. This was the position adopted by a unanimous vote of the CDLPA in its last plenary session in November 1992, and was advanced by the CDLPA through its representative on your Committee.

9. OPTIONS CONSIDERED BY THE COMMITTEE

- 9.1 During the deliberations of your Committee, the full panoply of options for electoral reform was considered. Strong views were expressed on all fronts. Apparently no one is indifferent on the subject. Some Committee members supported the *status quo* on the basis that governance of the profession is a province-wide matter. Most of the issues dealt with by Convocation in the course of its work are not regional. This is said to be so because the public interest is the principal criterion for the work of the Law Society. The public interest is not best served by regional representation which, it is argued, would alter the focus of our work and responsibilities from the public interest to the interest of particular constituencies. Those in favour of the *status quo* argue that empirical evidence shows that Benchers do not presently defend positions dictated by regional agenda, and that this demonstrates that most issues are Province-wide in scope. In short, there is no real need for local representation.
- 9.2 Support for the above argument for the *status quo* or modifications of it came in the form of written submissions received by the Committee from the County of York Law Association and the Committee for Benchers Accountability.
- 9.3 Concerns were also expressed that regionalization might lead to a Bench which is less representative of the diverse make-up of today's profession. At present the pooling of votes province-wide arguably opens the possibility for various interests, particularly women and minorities, to be represented more fully at Convocation. The Women's Law Association in its written submission expressed concerns based on this argument about regional elections.

- 9.4 At the other end of the spectrum, full regionalization was vigorously promoted by some. The scheme envisioned is that all Benchers would be elected by regions, and no Bencher would be elected at large. For that part of the Province lying outside of Metropolitan Toronto, the scheme has the strong support of the CDLPA. As might be expected, it was also supported by most of the Association members of the CDLPA who made submissions in writing to your Committee. Full regionalization contemplates Benchers elected to represent the lawyers of the Province being drawn from regional pools of candidates. The result, it is argued, would be meaningful representation in the sense that members in particular regions would be represented by Benchers of their choice rather than the choice of others from outside their region.
- 9.5 Proponents argue that if the system were changed, the regionally elected Benchers would inevitably be directly identified with their region. The presence of a strong constituency within the profession in favour of full regionalization is evidence of alienation between Convocation and the profession at large. There is, of course, the added impetus for regionalization which flows from the fact that such a scheme would guarantee that all areas of the Province would be represented in Convocation. Some areas of the province, for example the North West Region, have been represented in Convocation only intermittently.
- 9.6 Opponents of full regionalization argued that there were two major difficulties with it. First, they argued that Benchers do not deal with regional issues, and therefore regional constituencies are inappropriate. Second, they argued that the likely effect of limiting constituencies by region would be to attenuate the number of women, ethnic groups, etc., who are presently elected in Province-wide elections.

10 CONCLUSIONS OF THE COMMITTEE

- 10.1 While persuasive arguments were developed during our deliberations in favour of the *status quo*, it became obvious, as must have been the case for the Ferguson Committee, that some form of regionalization must be developed, however modest a first step, if the concerns of the profession are to be considered.
- 10.2 The argument against full regionalization as contemplated by the CDLPA is that its adoption would place at risk the benefits of the present system, which negate the idea of the pre-eminence of local or parochial concerns and permit the elected Bencher to focus more effectively on the public interest. Accountability to the public is more likely to be the driving force than accountability to a particular constituency.
- 10.3 On the other hand, a modicum of regionalization, it was felt, ought to be considered to meet the needs of the membership of the profession and to assess the impact, over time, of such a scheme on the work of the Law Society. The Ferguson Committee, quite obviously motivated by a similar concern, opted for a scheme which would involve the election of a single Bencher for each judicial district outside Metropolitan Toronto and the four electoral districts inside Metropolitan Toronto. This was not regionalization as contemplated by the CDLPA, but was a form of regionalization which, it seems clear, was regarded as a substantive expression of the idea in the interests of assessing its impact and reacting to the concerns of the community of lawyers in the Province.

- 10.4 During the deliberations of your Committee, forms of regionalization were discussed. For example, under one scheme, the emphasis would be on regional representation but not on regional voting. Thus, one Bencher would be elected from each of the seven judicial regions outside Metropolitan Toronto and one Bencher from the Ferguson electoral districts in Metropolitan Toronto, all electors, wherever situate, would have the right to vote for all Benchers as at present. It was argued that this would guarantee that each electoral district would have a minimum of one Bencher elected, although the required Bencher would not necessarily be elected on the basis of votes cast in the electoral district in which that Bencher resided. Concern was expressed that this idea would not meet the interests of those who favoured regional representation in its fullest sense.
- 10.5 There was unanimity in the Committee that if regionalization was to be adopted, in whole or in part, the existing judicial regions should be utilized. On the other hand, it was felt that the concept of four judicial regions in Metropolitan Toronto ought to be discarded in favour of two.
- 10.6 Your Committee questioned whether four geographical areas could be effectively delineated in Metropolitan Toronto without substantial overlapping. More importantly the Committee was of the view that the four regions proposed in Ferguson would result in a severe representational imbalance between the City of Toronto and the three other proposed regions. The regional bencher for each of the three regions outside the City of Toronto would represent far fewer lawyers than the bencher for the City of Toronto. This imbalance can be diminished by reducing the regions within Metropolitan Toronto to two: The City of Toronto and areas of Metropolitan Toronto outside of the City of Toronto.
- 10.7 The Committee was of the view that the address used to determine whether a member is eligible to be elected as the regional bencher for outside the City of Toronto should be the office address. It is possible that many members whose addresses on the records of the Law Society are outside the City of Toronto, in fact, practise within the City of Toronto. Should such a member be elected as the regional bencher from outside the City of Toronto, it would defeat the purpose of having a regional bencher to represent the non-downtown practice.
- 10.8 It is clear that the subject of Bencher elections attracts strong and entirely legitimate views on all sides. The *status quo* has much to recommend it. Yet, from the work of the Ferguson Committee and your own Committee, it is clear that the profession wants some form of regionalization.
- 10.9 There are inherent dangers in toying with the existing system. This is because it is a matter of speculation as to what consequences intended or unintended might flow from the introduction of a system of regionalization. The result is almost inevitably a choice in the direction of modified regionalization.

26th March, 1993

11 RESOLUTION

For these reasons, after extensive discussion and a close vote, your Committee recommends that,

SUBJECT TO CHANGING THE FOUR ELECTORAL DISTRICTS TO TWO ELECTORAL DISTRICTS WITHIN METROPOLITAN TORONTO CONSISTING OF THE CITY OF TORONTO AND THE METROPOLITAN AREA OUTSIDE THE CITY OF TORONTO, CONVOCATION OUGHT TO REAFFIRM THE NOVEMBER 1990 REFORM (AS ARTICULATED IN THE REPORT OF THE FERGUSON COMMITTEE) AS THE APPROPRIATE LONG TERM PROCEDURE FOR BENCHER ELECTIONS.

- 11.1 Having settled upon this recommendation, it is unnecessary for your Committee to address the remaining questions outlined in the mandate found on page 2 of this Report.

Note: Amendment, see page 80

12 IMPLEMENTATION

- 12.1 As outlined in the background paper, the April 24, 1992 Report of the Legislation and Rules Committee contained proposed amendments to the *Law Society Act* for the implementation of the regional elections. These amendments would allow the Law Society to make Rules providing for regional representation in accordance with the recommendation made in this Report. Your Committee is of the view that, if the Report of your Committee is accepted, these amendments should proceed at the earliest opportunity and recommends that,

CONVOCATION REQUEST THAT THE LEGISLATION AND RULES COMMITTEE SUBMIT FOR APPROVAL AS SOON AS POSSIBLE AMENDMENTS TO THE *LAW SOCIETY ACT* TO ALLOW FOR REGIONAL ELECTION OF BENCHERS.

- 12.2 During the work of the Committee, it became obvious that it is one thing to identify a scheme as appropriate and another to ready it for implementation. Accordingly, Convocation might consider the desirability of establishing a committee to identify the detailed process which would be necessary in order to implement this, or any other, change in the electoral system.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"D. Scott"
Chair

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

- Item 1.1 Background paper on the Special Committee on Bencher Elections dated October 5, 1992. (Attachment A - A-6)
- Item 6.3.1 List of submissions from organizations. (Attachment B)
- Item 6.4 List of organizations and individuals who responded with submissions. (Attachment C)
- Item 7.3 Ferguson Committee Report (1990). (Attachment D - D-25)

An amendment was made by Mr. Scott that in Item 7.1 of the Report section 62(16) should read "62(6)".

It was moved by James Wardlaw, seconded by Dan Murphy that Benchers within Toronto be elected on the basis of the Ferguson Report as set out at attachment D-4 of the Report.

Lost

ROLL-CALL VOTE

Arnup	Against
Bastedo	Against
Bellamy	Against
Brennan	Against
Campbell	Against
Elliott	Abstain
Epstein	Against
Feinstein	Against
Finkelstein	Against
Graham	Against
Hill	Against
Kiteley	For
Lamont	Against
Legge	Against
Levy	Against
McKinnon	Against
Manes	Against
Mohideen	For
Murphy	For
Murray	Against
O'Brien	Against
Palmer	Against
Peters	For
Scott	Against
Sealy	Against
Somerville	Against
Strosberg	Against
Thom	Against
Wardlaw	For
Weaver	Against

It was moved by Brendan O'Brien, seconded by Marc Somerville that the Report be amended by adding the following sentence numbered 11.2:

If Convocation adopts the report, it must not be taken to have acknowledged that regional representation will mean that Benchers elected under the new system will be any less responsible than are the Benchers elected under the present system for the protection of the public interest as a whole and the interests of all lawyers in the province.

The Chair accepted the amendment.

The Scott Report as amended by Mr. O'Brien was adopted.

ROLL-CALL VOTE

Arnup	For
Bastedo	For
Bellamy	Against
Brennan	For
Campbell	For
Elliott	For
Epstein	For
Feinstein	For
Finkelstein	For
Graham	Against
Hill	For
Kiteley	For
Lamont	Against
Legge	For
Levy	Against
McKinnon	For
Manes	Against
Mohideen	Against
Murphy	For
Murray	For
O'Brien	For
Palmer	For
Peters	Against
Scott	For
Sealy	For
Somerville	For
Strosberg	Against
Thom	For
Wardlaw	For
Weaver	Against

It was moved by Fatima Mohideen, seconded by Patricia Peters that Bencher elections be held in the form of regional representation as per the Ferguson Report, however that the voting be done on a province-wide basis for all candidates.

Not Put

.....

ADMISSIONS COMMITTEE

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of March, 1993 at 9.30 a.m., the following members being present: Ms. Mohideen (Chair), Messrs. Brennan and Lamont.

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

A.
POLICY

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

B.
ADMINISTRATION

B.1. REINSTATEMENT AFTER SUSPENSION - PETITION EXAMS WAIVED

B.1.2. Dawn Maruno was called to the Ontario Bar on the 6th of April, 1979. She was suspended for non-payment of the annual fee on the 25th of September, 1987. Ms. Maruno now seeks to be reinstated without being required to sit the requalification examinations.

B.1.3. In her affidavit dated the 4th March, 1993, Ms. Maruno outlined the nature of the work she has performed since the time of her suspension.

B.1.4. She stated that from September 1988 to March 1992 she was employed by a Canadian chartered bank in Toronto as a Country Risk Analyst responsible for the Asia/Pacific region. In that capacity she did research and analysis of the economic, political and business environment and the risk of doing business in the Asia/Pacific region.

B.1.5. From November 1992 to the present, she has been employed as a Senior Policy Analyst with the Ontario Ministry of Consumer and Commercial Relations, Policy and Planning Branch. Ms. Maruno states that in this capacity she provides advice to senior executives of the Ontario government on legislative and policy initiatives related to consumer protection and business regulation. She further states that while her current position does not involve the practice of law, her legal training is a significant asset to her carrying out her responsibilities.

B.1.6. The applicant was not employed for the periods of September 1987 to August 1988 and from March 1992 to October 1992.

B.1.7. Ms. Maruno believes that there may be future opportunities to work in a legal capacity within the Ontario government and for that reason seeks to be reinstated.

B.1.8. Your Committee recommends that the applicant be reinstated conditional upon:

(a) the member signing a letter of undertaking that she will not return to private practice without first notifying the Society and, in the Society's discretion, completing some form of requalification at that time; and

(b) payment of arrears of fees.

B.2. COMMON LAW EXAMINATION

- B.2.1. In October 1992 the Admissions Committee considered the estimated cost of having the common law syllabus updated and a third common law examination set by professors at the Faculty of Law, the University of Toronto.
- B.2.2. The Committee instructed the Deputy Secretary to approach the University of Toronto about accepting a block amount for updating the syllabus rather than being paid at an hourly rate. Professor Scane, liaison between the Law Society and the University has not yet reported.
- B.2.3. The Committee further instructed the Deputy Secretary to consult with the Director of Education and investigate the possibility of the Department of Education Faculty setting the new common law examination. The Director received copies of the two existing common law examinations as well as the syllabus relating to those examinations.
- B.2.4. Mr. Treleaven advised the Deputy Secretary that he did not think that the Department of Education Faculty has the reasonable capacity to take over the suggested projects for reasons outlined in a memorandum of the 26th February, 1993.
- B.2.5. Mr. Treleaven attended the meeting and provided information on suggested alternatives.
- B.2.7. Your Committee requested that the Deputy Secretary and the Director of Education further explore these alternatives and bring forward a proposal to the Committee at a future meeting.

B.3. SPECIAL PETITION FOR TRANSFER UNDER THE REGULATION s. 4(1)

- B.3.1. John Hinds is a graduate of University College, London, England, LL.B. (Honours) - June, 1989. In July, 1989, he commenced employment as an articling student with the law firm of Bennett Jones Verchere, in the firm's Calgary office.
- B.3.2. In August, 1990 he was called to the Alberta Bar. He immediately moved to Ontario and commenced employment as an assistant to the then Attorney General, Ian Scott. From the election of September 1990 until November, 1992, he was employed as Mr. Scott's Executive Assistant in his position as MPP and opposition critic for native and constitutional affairs. Part of Mr. Hind's job involved assisting the Leader of the Opposition and Liberal caucus with Justice issues. Mr. Hinds also assisted Mr. Scott in his tenure as Laskin Professor at Osgoode Hall for the academic year 1991-92.
- B.3.3. Mr. Hinds has two possible routes to admission to the Bar in Ontario:

1. He may apply pursuant to the transfer provisions and if he satisfies all the requirements, be called to the Bar; or
2. He may apply for admission to the Bar Admission Course and upon satisfactorily completing the course, be called to the Bar.

B.3.4. Because Mr. Hinds does not have an LL.B degree from an approved Canadian law school he is not entitled as of right to enter the Bar Admission Course. To gain admission to the BAC he must first obtain a Certificate of Qualification from the Joint Committee on Accreditation. Mr. Hinds has applied to the Joint Committee for assessment of his degree and has been advised that he will be required to study for a further year at a Canadian law school to obtain a Certificate of Qualification.

B.3.5. Mr. Hinds would then have to complete the requirements of the BAC to gain admission. In view of this, he has elected to pursue the transfer route.

[Note: The Committee was reminded that Alberta is the only common law province of Canada which does not use the Joint Committee to assess its foreign-trained applicants.]

B.3.6. Mr. Hinds' statutory declaration dated the 7th of October, 1992, setting out the nature of the legal services which he has performed while in Mr. Scott's employ, was before the Committee for its consideration. (Appendix A)

B.3.7. Mr. Hinds requests that the Committee accept the work he was engaged in with Mr. Ian Scott, as satisfying the requirements under Regulation 708 s. 4(1), thus allowing him to proceed under that regulation.

B.3.8. Your Committee was asked to consider the following questions:

1. Does the work described in Mr. Hinds' declaration constitute the active practice of law; and
2. Is Mr. Hinds' experience sufficient to satisfy the Regulation which requires three years of active practice within the last five?

B.3.9. Your Committee concluded that Mr. Hinds does not meet the requirement of three years of active practice within the last five. Accordingly your Committee recommends that Mr. Hinds' petition be denied. In light of its response to question 2 your Committee does not consider it necessary to deal with question 1.

- B.4. DIRECT TRANSFER - COMMON LAW - THE REGULATION s.4(1)
- B.4.1. Thane A. Campbell (MBA and LL.B. in 1986 both from Dalhousie University) was called to the Bar of the Province of Prince Edward Island on the 12th day of June, 1987 and practised there from the 12th June 1987 until October 1990.
- B.4.2. From October 1990 until June 1991 Mr. Campbell worked in a non-legal capacity with Metropolitan Life in Ottawa. From June 1991 until January 1992, he worked as in-house counsel with Metropolitan Life on a contract basis which allowed him to travel to PEI to finalize cases.
- B.4.3. From January 1, 1992 to March 1, 1992, he worked for Metropolitan Trust, a subsidiary of Metropolitan Life, reporting on a major litigation file, while still living in Ottawa.
- B.4.4. From March 1992 to the present he has been assistant counsel with Metropolitan Trust in Edmonton, Alberta where his responsibilities include any litigation involving the Trust Company.
- B.4.5. Mr. Campbell asks whether the time he worked in Ontario as in-house counsel would be taken as the active practice of law for the purposes of meeting the requirement of 3 years of practice.
- B.4.6. If considered to meet the 3 year requirement, Mr. Campbell will make formal application for transfer with plans to sit the new examinations in September 1993.
- B.4.7. Mr. Campbell's affidavit of 5 March, 1993 was before the Committee for information.
- B.4.8. Your Committee recommends that Mr. Campbell's application be approved.

B.5. BAR ADMISSION COURSE

- B.5.1. 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 March 26th, 1993:

James Michael Cooper
Susan Margaret Hutton
Andrew Pui-Lam Ip
Zino-Ignazio Macaluso

Approved

B.6. GOOD CHARACTER

- B.6.1. An applicant for admission into the 36th Bar Admission Course has written to the Law Society of Upper Canada to ask if an incident which occurred during her undergraduate studies would prevent her being called to the Ontario Bar.
- B.6.2. The applicant was suspended from the University of British Columbia for four months, from May to August 1989, as a penalty for substantial plagiarism. At the time of the incident she was undergoing tremendous emotional and medical stress related to serious family matters.
- B.6.3. The applicant's letter to the Secretary dated the 25th February, 1993, as well as copies of all documents relevant to the academic suspension and a copy of the applicant's letter to the Admissions Committee at the Faculty of Law, the University of Windsor, all of which were submitted with her application to law school, were before the Committee for consideration.
- B.6.4. Having considered the material before it your Committee recommends that the incident described should not prevent the applicant being called to the Bar.

C.
INFORMATION

C.1. LIFE MEMBERS

- C.1.1. Pursuant to Rule 49, the following is eligible to become a Life Member of the Society with an effective date of March 18, 1993:

William George Brown	Hamilton
----------------------	----------

Noted

C.2. CHANGES OF NAME

- C.2.1. (a) Members

<u>From</u>	<u>To</u>
Marianne Gail <u>Emig</u>	Marianne Gail Emig <u>Munro</u> (Married Name)
Tracey Lee <u>Langlois</u>	Tracey Lee <u>McCann</u> (Married Name)
Mary Margaret <u>Meany</u>	Mary Margaret <u>Picard</u> (Married Name)
Colleen Covert <u>Ruttenberg</u>	Colleen <u>Glenn Covert</u> (Birth Certificate)

Georgina Carolyn Starkman

Georgina Carolyn Danzig
(Married Name)

Deborah Rachel Popielnik-Levy

Deborah Rachel Popielnik Levy
(Married Name)

Theresa Mary MacPherson

Theresa Mary Walsh
(Birth Certificate)

Julia Kelly Hoey

Julia Kelly Hermant
(Married Name)

C.2.2. (b) Student Members

From

To

Anne Louise Lawrence

Anne Louise Lawrence Harrop
(Married Name)

Cynthia Teresa Verwoerd

Cynthia Teresa Mancia
(Married Name)

Jean-Paul Daniel Boivin

Joseph Paul Daniel Boivin
(Birth Certificate)

Noted

C.3. ROLLS AND RECORDS

C.3.1. (a) Deaths

The following members have died:

Michael Mortimer St. Joseph Kelly
Toronto

Called February 7, 1992
Died December 27, 1992

William Cyril Henry Terry
Toronto

Called October 18, 1928
Died January 4, 1993

Allan Dickson Houston
Windsor

Called March 26, 1965
Died January 28, 1993

C.3.2. (b) Membership in Abeyance

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

Gregory Alan Pockele
Stratford

Called March 22, 1974
Appointed to the Ontario Court
(Provincial Division)
November 2, 1992

26th March, 1993

James Robert MacKinnon
Newmarket

Called March 26, 1971
Appointed to the Ontario
Court of Justice
(General Division)
January 29, 1993

James MacDonald Spence
Toronto

Called March 22, 1968
Appointed to the Ontario
Court of Justice
(General Division)
February 1, 1993

Noted

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"R. Carter"
Chair

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

B-Item B.3.6. Statutory Declaration of Mr. John Charles Hind.
(Appendix A, pages (3))

THE REPORT WAS ADOPTED

CERTIFICATION BOARD

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 11th of March, 1993 at twelve o'clock noon, the following members being present: R.D. Yachetti (Chair), J. Callwood, G.P. Sadvari and D.W. Scott. S. Thomson, of the Law Society, was also present.

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

The Intellectual Property Law Specialty Committee met (in person/ conference call) on Wednesday, the 3rd of March, 1993 at four-thirty in the afternoon.

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

A.
POLICY

- A.1. Internal Record of Specialist Applicants - Distribution of Information
- A.1.1. Certification staff are currently checking applicants' Law Society records, including Discipline, Complaints, Professional Standards, Audit, Lawyers' Fund for Client Compensation and Errors and Omissions Insurance records.
- A.1.2. Although Specialty Committees are asking for internal record details to assist in assessing applicants' qualifications, your Board is of the view that the Certification Board alone should be provided with information about applicants' internal records, and it will be in the final stages of the assessment at the Board level that this information will have bearing on the outcome of the application.

B.
ADMINISTRATION

- B.1. Program Name Change
- B.1.1. To clarify the meaning of "certification" for the assistance of the public, your Board recommends that the Certification Program be hereafter named the "Specialist Certification Program".
- B.1.2. It is recommended that the Board be hereafter named the "Specialist Certification Board".
- B.2. Specialty Areas Sub-Committee
- B.2.1. Your Board recommends the establishment of a new permanent Sub-Committee, named the Specialty Areas Sub-Committee.
- B.2.2. The mandate of the Committee will be:
- B.2.2.1. - to establish criteria for the implementation of new Specialty areas;
- B.2.2.2. - to review sub-specialties of civil litigation and consider whether the public would be better served by identifying civil litigation sub-specialists;
- B.2.2.3. - to consider requests from individual lawyers or specialty groups within the bar or from members of the public who would like to see certification in particular specialty fields;
- B.2.2.4. - to consider whether there ought to be a "Generalist" Specialty.
- B.2.3. A list of priority Specialty areas, to be added to the Program on a cost-effective basis, would be prepared.

26th March, 1993

- B.2.4. It is recommended that the initial Sub-Committee should be composed of four Board members: D.W. Scott (Chair), J. Callwood, E.J. Levy and R.D. Yachetti. Additional membership is recommended as follows: Canadian Bar Association - Ontario: one member (from the Young Lawyers Division); Advocates' Society: one member; a law school representative (to be appointed by the Law Deans of Ontario): one member.

C.
INFORMATION

C.1. Certification of Specialists

- C.1.1. The Board is pleased to report the certification of the following lawyer as a Civil Litigation Specialist:

J. Stephen Cavanagh (of Ottawa)

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

Carter C. Hoppe (of Toronto)

- C.1.3. The Board is pleased to report the certification of the following lawyers as Intellectual Property (Patent, Trade-Mark & Copyright) Law Specialists:

Joseph A. Day (recently of St. John, N.B.)
Ronald E. Dimock (of Toronto)
John S. Macera (of Ottawa)
Colleen Spring Zimmerman (of Toronto)

- C.1.4. The Board is pleased to report the certification of the following lawyer as an Intellectual Property (Patent & Trade-Mark) Law Specialist:

W. Charles Kent (of Ottawa)

- C.1.5. The Board is pleased to report the certification of the following lawyer as an Intellectual Property (Trade-Mark) Law Specialist:

Cynthia Rowden (of Toronto)

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"R. Yachetti"
Chair

THE REPORT WAS ADOPTED

26th March, 1993

CLINIC FUNDING COMMITTEE

Meeting of March 22, 1993

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 March 23, 1993 be adopted.

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

ALL OF WHICH is respectfully submitted

"R. L. Holden"
Robert L. Holden,
Director
Legal Aid.

March 23, 1993

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

The Clinic Funding Committee met on March 22, 1993 via conference call. Present were: Joan Lax, Jim Frumau, Thea Herman and Pamela Giffin. Also present: Joana Kuras, Clinic Funding Manager.

A.
POLICY

Nil

B.
ADMINISTRATION

1. Legal Disbursements

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved an application for supplementary legal disbursements as follows:

Sudbury Community Legal Clinic - up to \$1,000

2. Capital Purchases

The Committee reviewed an initial decision to provide funding to various clinics for capital purchases, as follows:

16 fax machines, currently leased - up to \$16,000

6 PCs - up to \$10,000

Office equipment for Sudbury Community Legal Clinic - up to \$1,722

3. Supplementary Funding

The Committee also reviewed and approved applications for supplementary funding, as follows:

Durham Community Legal Clinic - additional operating expenses - up to \$1,500

Community Legal Services (Ottawa-Carleton) - additional personnel funds - \$2,700

Renovations to clinic premises - up to \$15,000

4. Public Legal Education/Outreach

The Clinic Funding Committee approved the allocation of funds, in an amount up to \$89,310, to the Advocacy Centre for the Elderly for a public legal education/outreach project. The clinic will develop a manual and training program for persons who would be involved in longterm care advocacy for residents in nursing homes, homes for the aged, hospitals, and retirement homes that offer care services.

ALL OF WHICH is respectfully submitted

"P. Epstein"
Philip Epstein, Q.C.,
Chair,
Clinic Funding Committee

March 23, 1993

THE REPORT WAS ADOPTED

26th March, 1993

COMMUNICATIONS COMMITTEE

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of March, 1993, the following members being present: Denise Bellamy (Chair), Julaine Palmer, Carolyn Ateah, Allan Lawrence, Ross Murray, Roger Yachetti, Susan Elliott, Frances Kiteley. Also in attendance: Nancy Bath and Gemma Zecchini.

A.
POLICY

No items to report.

B.
ADMINISTRATION

No items to report.

C.
INFORMATION

1. Lawyer Referral Service. The membership drive to recruit members of the Lawyer Referral Panel has exceeded its target with revenue reported at \$143,750 as at March 3rd based on a panel membership of some 2,800 lawyers. It is expected, according to revised projections, that the service will generate approximately \$160,000. (Attached C-1)
2. Lawyer Referral Service Marketing Plan. The Committee approved the implementation of a marketing strategy to promote the LRS to certain target markets in Ontario. The strategy consists of a combination of print advertising in community newspapers and brochures targeted to intermediary professional and social service organizations.
3. Dial-A-Law. The Committee discussed Convocation's response to the cost reduction measures proposed for the Dial-A-Law wats program. The Committee resolved to provide Convocation with a budget for the DAL program recommending that full funding for the service be maintained for the 1993-94 fiscal year. Should Convocation require cost reductions be undertaken, the Committee will provide Convocation with the options it approved to reduce costs, together with a justification for why those options were preferred over others it had considered in the course of the program's review these past few months.

26th March, 1993

4. Program statistics.

Lawyer Referral. A total of 14,955 calls were received by the LRS during the month of February, representing a 2% increase over the same month last year.

Dial-A-Law. A total of 27,977 calls were received by the DAL program during the month of February, representing an increase of 26% over the same month last year.

Media statistics. The Communications Department responded to 49 media calls in the month of February. The majority of calls related to requests for information or comment on discipline matters and legal education/bar admission call matters.

ALL OF WHICH is respectfully submitted

DATED this 26th of March, 1993

"D. Bellamy"
Chair

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

C-Item 1 Lawyer Referral Service Lawyers by County or Judicial District.
(Marked C-1)

THE REPORT WAS ADOPTED

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

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

26th March, 1993

1. LIBRARIES AND REPORTING COMMITTEE

Your Committee was advised that there will be a reduction of \$155,000 in the grant expected from the Law Foundation of Ontario for County libraries. The Libraries and Reporting Committee are discussing both the effect and possible alternatives and will report back in April.

2. COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION REPRESENTATION ON THE LEGAL AID COMMITTEE

The County and District Law Presidents' Association referred to a Resolution from the November 1992 Plenary concerning non-bencher representation on the Legal Aid Committee. Inquiries will be made about the process by which appointments are made by the Attorney General.

3. FAMILY LAW CHECK LIST

The County District Law Presidents' Association requested copies of the draft Family Law Check List for distribution prior to the May 1993 Plenary.

4. LEGAL AID SUBCOMMITTEE ON CRIMINAL LAW STANDARDS

The County and District Law Presidents' Association would like information on the mandate and membership of this Subcommittee. The County and District Law Presidents' Association has asked for representation on this Committee.

5. PLENARY SET FOR MAY 13 AND 14, 1993

The guest speakers will include: Peter MacDonald, lawyer and author; and The Honourable Marion Boyd, Attorney General for Ontario.

Your Committee agreed to provide appropriate speakers to address the following issues:

1. Revision of Rule 5 of the Rules of Professional Conduct,
2. the present state of the Errors and Omissions Insurance Plan, and
3. the C.I.B.C. Mortgage/Home Purchase Package.

ALL OF WHICH is respectfully submitted

DATED the 26th day of March, 1993

"R. Bragagnolo"
Chair

THE REPORT WAS ADOPTED

26th March, 1993

DISCIPLINE COMMITTEE

Meeting of March 11, 1993

Mr. Strosberg spoke to Item A-A.1 re: Subsection 57(1) of the Law Society Act and Credit Unions and Caisses Populaires.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of March, 1993 at 1.30 in the afternoon the following members being present:

H. Strosberg (Chair), D. Bellamy, N. Finkelstein, N. Graham, J. Klotz, J. Lax, J. Palmer, D. Scott, S. Thom, R. Topp, and R. Yachetti.

D. Crosbie, S. Kerr, G. MacKenzie, J. Yakimovich, M. Bode, S. Jenkins, G. Macri, S. Hodgett and C. Shaw also attended.

A.
POLICY

A.1. SUBSECTION 57(1) OF THE LAW SOCIETY ACT AND CREDIT UNIONS AND CAISSES POPULAIRES

A.1.1. The government of Ontario has proposed that subsection 57(1) of the *Law Society Act* be amended to include credit unions and caisses populaires among the deposit taking financial institutions in which lawyers are permitted to deposit their clients' mixed trust funds. At present, the subsection limits these financial institutions to banks, trust corporations and the Province of Ontario Savings Offices. The Deputy Attorney General has asked whether the Law Society would be opposed to the government proceeding in this way.

A.1.2. Your Committee had before it a memorandum from the Under Treasurer, Mr. D.A. Crosbie, which surveyed the past and current situation surrounding this issue. This memorandum is at Attachment A. Your Committee considered the conclusions and recommendations contained Mr. Crosbie's memorandum and makes the following recommendation.

A.1.3. Your Committee recommends that the Law Society acknowledge and convey to the Attorney General:

1. That it does not have the information necessary to permit it to accurately judge the financial soundness of any financial institution.
2. That in view of its inability to judge the financial soundness of any financial institution, the Law Society cannot directly or by implication accept the responsibility for the list of financial institutions included in subsection 57(1).
3. That the Law Society is depending on the Ontario government to determine which classes or specific financial institutions are appropriately included in subsection 57(1).

4. That the Law Society does not have the information required to determine on a rational basis whether credit unions and caisses populaires should or should not be included in subsection 57(1) and that it, therefore, neither supports nor opposes the government's proposal to so amend subsection 57(1) to include them.

A.2. REPORT OF THE JOINT SUB-COMMITTEE ON SEXUAL HARASSMENT

- A.2.1. Your Committee had before it the Report of the Joint Sub-Committee on Sexual Harassment. This Sub-Committee was asked to consider the appropriate response to sexual harassment complaints from articling students against their principals. The Sub-Committee was made up of members of the Discipline Policy Committee, the Legal Education Committee and the Women in the Legal Profession Committee. The Report of the Sub-Committee is at Attachment B to this Report. Ms. J. Lax and Mr. N. Finkelstein presented the Report to the Committee.
- A.2.2. The Committee commended the Sub-Committee on its Report and thoroughness with which it dealt with this difficult issue. The Committee discussed a number of points.
- A.2.3. One member of the Committee expressed concern that Commentary 1 of Rule 13 of the Rules of Professional Conduct is unclear as to whether or not there is a duty to report. At page 10 of the Sub-Committee's Report paragraph 4.e. states that the Articling Director will advise the caller of a possible duty to report the matter to the Law Society. The member of the Committee was of the view that this statement was not clear enough to give guidance to a caller, but recognized that this problem may be due to the broader problem surrounding Commentary 1 to Rule 13. The Sub-Committee was of the view that in serious matters there would be an obligation to report sexual harassment, since it is covered in the Rules of Professional Conduct in Rule 27 (Sexual Harassment).
- A.2.4. The issue of ownership of a complaint was discussed. The question was asked as to why the Sub-Committee dealt with ownership since it has the potential to shut out articling students who wish to proceed with a complaint when the Law Society does not elect to do so. The Sub-Committee spent the greater portion of its time on this issue and felt that, particularly in serious cases, there may be an overriding public interest which can only be addressed by placing ownership of the complaint with the Law Society.
- A.2.5. On page 8 of the Report of the Sub-Committee recommendation 3.e.ii. states that the Articling Director may inform the student of the option of "laying an information" under the Criminal Code (in appropriate cases). The Committee was concerned that laying an information might leave a student open to a civil suit for malicious prosecution. The Committee was of the view that this statement should be amended to state that the student should be advised that there is an option to report the incident to the police (in appropriate cases).
- A.2.6. Your Committee discussed at length the Articling Sub-Committee's role as outlined at page 10 of the Report. At paragraph 5.c. options are outlined of which the Articling Sub-Committee may choose one or more. These options include:

ii. invite the member of the profession, or the student, or both to attend before the Articling Sub-Committee to resolve credibility issues;

iv. refer the matter to Discipline.

A.2.7. Members of the Committee expressed concern that it may be a violation of natural justice to make a finding of credibility and then to refer the matter to Discipline. It was resolved that the word "credibility" should be replaced by the word "factual", and that a provision should be added that the findings of the Articling Sub-Committee should not be admissible in the Discipline process. The provision should not preclude the use of evidence and information gathered at the Articling Sub-Committee stage in the Discipline process.

A.2.8. Your Committee adopted the recommendations of the Joint Sub-Committee on Sexual Harassment subject to the following amendments to the report:

1. That Recommendation 3.e. ii be deleted and replaced with wording to the effect that the student be advised that there is an option to report a matter to the police (in appropriate cases);
2. That Recommendation 5.c. ii be deleted and be replaced with "invite the member of the profession, or the student, or both to attend before the Articling Sub-Committee to assist in resolving factual issues";
3. That Recommendation 5.e. ii be amended to replace the word "credibility" with "factual" in the second sentence.
4. That Recommendation 5 be amended to include a provision stating that the findings and decision of the Articling Sub-Committee are not admissible in any other Law Society proceedings.

Note: Item deferred

B.
ADMINISTRATION

B.1. GUIDELINES FOR EMPLOYMENT PURSUANT TO RULE 20

B.1.1. At its meeting on November 12, 1992, the Committee discussed Rule 20 applications. Rule 20 of the Rules of Professional Conduct states that a lawyer must have the express approval of Convocation before employing a lawyer who has been disbarred, struck off the Rolls, suspended or permitted to resign as a result of disciplinary action. In the course of the discussion, concerns were expressed about the lack of consistent documentation and criteria for the determination of these applications. The view was expressed that criteria should be formulated in order to promote consistency in the process.

B.1.2. The staff was asked to review Rule 20 applications and report back to the Committee. The Committee had before it a staff memorandum for discussion concerning this issue. The memorandum outlined a possible procedure for Rule 20 applications.

B.1.3. Your Committee recommends that Rule 20 applications be made under oath and that the staff continue to develop a more formalized procedure for these applications.

C.
INFORMATION

C.1. SUBCOMMITTEE ON RECORDING AND ACCESS TO COMPLAINTS INFORMATION - INTERIM REPORT

C.1.1. Your Committee had before it the Interim Report of the Sub-Committee on Recording and Access to Complaints Information (Attachment C). Your Committee is of the view that given the proliferation of stored information and its use at the Law Society, this issue warrants a comprehensive examination.

C.1.2. For this reason, the Chair of your Committee will be making a request to the Treasurer that he appoint a Special Committee to consider the recording, use and access to information kept by the Law Society.

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 February 1993.

	<u>Sought</u>	<u>Obtained</u>
<u>February</u>		
Discipline	5	5
Complaints	17	14
Audit	15	15
Total:	34	

26th March, 1993

Total number of complaints authorized for 1993:

January	39
February	34
March	34
Total:	107

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"H. Strosberg"
Chair

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

- A-Item A.1. Memorandum from Mr. Donald A. Crosbie from Mr. Harvey T. Strosberg, Q.C. dated March 4, 1993 re: Subsection 57(1) of the Law Society Act and Credit Unions and Caisses Populaires. (Attachment A - A-3)
- A-Item A.2. Report of the Joint Sub-Committee on Sexual Harassment. (Attachment B, pages (19))
- C-Item C.1. Memorandum from the Subcommittee on Recording and Access to Complaints Information to the Members of the Discipline Policy Committee re: Interim Report. (Attachment C - C-7)

Item A-A.2. re: Report of the Joint Sub-Committee on Sexual Harassment was deferred to the April Convocation.

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

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 11th of March 1993, the following persons being present: Stephen Goudge (Chair), Denise Bellamy, David Scott, April Burey, Edmund Clarke, Bernd Christmas, Andrew Ranachan, Donald Crosbie, Mimi Hart, Alexis Singer and Alan Treleaven.

A.
POLICY

No items.

B.
ADMINISTRATION

No items.

C.
INFORMATION

1. Report on Employment Equity Plan for Law Society Staff

Staff are working with the consultant Omnibus Consulting Inc. in the conducting of staff surveys and educational programs.

From a meeting with the Employment Equity Commissioner, it appears that the government's legislation may not be available until early 1994.

The policy issues arising out of the staff plan will be brought before the Equity Committee in May 1993.

2. Professional Conduct Rule on Employment Equity

A first draft of a proposed rule has been prepared for discussion. This work will be consistent with the work on the general review of the Rules of Professional Conduct and the report on the proposed rule will be completed for consideration by Convocation in April or May 1993.

3. Access to Legal Education: Foreign-Trained Lawyers

The Ontario government has now advised that funds are not available for our proposed two-phase program. The first phase was to be an increase by 30 in the number of foreign-trained lawyers admitted by the law schools. The second phase was the development of an education program to provide an alternative to law schools. There was some suggestion that some funds for developing phase two might be available but this has not been confirmed.

In light of these developments, the proposals are being reassessed.

4. Access to Legal Education and Practice

Committee members met with a focus group of representatives from some of the larger Toronto firms to discuss their policies on recruiting minority articling students and lawyers. The results were positive and encouraging. Further meetings with similar focus groups in Ottawa, London and Hamilton and from black and aboriginal groups of lawyers are planned over the next six weeks.

The information from these meetings will guide the Equity Committee in designing a program to encourage more recruitment from minority and aboriginal groups.

26th March, 1993

5. Urban Alliance on Race Relations Conference

A two-day conference sponsored by the Urban Alliance starting on Friday evening, March 26, 1993, will be held in Osgoode Hall. Benchers are encouraged to take part, especially in the reception and opening ceremonies on Friday evening.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March 1993

"S. Goudge"
Chair

THE REPORT WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of March 11, 1993

Mr. Bastedo spoke to Item B-2 re: Budget Update.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs to report:

Your Committee met on Thursday, the 11th of March, 1993 at three o'clock in the afternoon, the following members being present: J.J. Wardlaw (Vice Chair in the Chair), A. Feinstein (Vice Chair), T.G. Bastedo, D. Bellamy, R.C. Bragagnolo, S. Elliott, P.G. Furlong, D.H.L. Lamont, D.J. Murphy, R.W. Murray, P.B.C. Pepper and M.P. Weaver. Also in attendance were D.E. Crack, M.J. Angevine 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 seven months ended January 31, 1993 was before the meeting. (pages 5 - 9)

Approved

2. BUDGET UPDATE

Mr. Bastedo, Chair of the Priorities and Planning Subcommittee briefed the Committee on the progress of the budget preparation and explained that the next stage was for the Priorities and Planning Subcommittee to meet with the Chairs of several committees to discuss certain initiatives and associated costs. Those meetings are to be held on March 25, 1993 so that the results can be assessed, and action taken in order that the final budget be before Finance Committee in April.

Noted

3. REINSTATEMENT FEE

This item has been deferred pending the Report of the Requalification Committee to Convocation in the spring of 1993.

4. BAR ADMISSION COURSE APPLICATION FEE

In February, the Legal Education Committee had the following item on its report:

"Rule 50 made under the Law Society Act sets the Application Fee as follows:

Upon filing an application for admission as a student member of the Society -- Non-refundable Application Fee.... \$101.

The Bar Admission Course Financial Issues Subcommittee has recommended that the Application Fee be increased from \$101 to \$125, as a means of generating increased revenue for the Bar Admission Course.

The Legal Education Committee approved an Application Fee increase from \$101 to \$125, and is referring its recommendation to the Finance Committee and to the Legislation and Rules Committee."

The Committee was asked to approve this increase in the Application Fee.

Approved

5. ONTARIO ASSOCIATION OF CHIEFS OF POLICE CONFERENCE 93 - REQUEST FOR DONATION

The O.A.C.P. is requesting a donation from the Law Society to help fund a conference on the need for action on issues such as violent crimes, drug abuse, crime prevention and other critical issues.

A letter dated February 17, 1993 from the Commissioner of the Ontario Provincial Police and the President of the O.A.C.P. along with a reply dated March 1, 1993 from the Under Treasurer was before the meeting

The Committee was asked to consider this request. Ms. Bellamy did not participate in the discussion or vote.

Denied

6. SUBCOMMITTEE ON COUNSEL FEES

The Chair will request a representative of each of the Insurance, Discipline, Lawyers' Fund For Client Compensation, Libraries and Reporting, and Finance Committees to form a joint subcommittee which will consider the establishment of fee guidelines for outside counsel retained on Law Society matters.

26th March, 1993

7. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 30 members who have not complied with the requirements respecting annual filing and who have not paid their late filing fee.

In all 30 cases all or part of the late filing fee has been outstanding four months or more. The members owe \$39,530 of which \$15,370 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 30 members be suspended on March 26, 1993 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see page 107

8. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

The following member has neither paid the Errors and Omissions Insurance Levy nor filed a claim for exemption for the period July 1 to December 31, 1992. Three notices have been sent.

Thomas Holyoake Box Aurora

The Committee was asked to recommend that the rights and privileges of the member be suspended by Convocation on March 26, 1993 if the member has not complied by that date.

Approved

Note: Motion, see page 107

9. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

Beverley Price Davies Port Colborne
Irwin Wenus Downsview

(b) Incapacitated Member

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

George Warren Footit Toronto

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

Approved

10. RESIGNATION - REGULATION 12

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

(a) Richard John Lane of Calgary was called to the Bar on March 22, 1974. The member has not practised law in Ontario since 1978 and has no intention of returning to Ontario to recommence practice. He declares that all trust funds or clients' property have been accounted for and he has not handled trust funds or other clients' property since he left Ontario in 1978. He declares that all clients' matters were completed and disposed of to the clients' satisfaction. He is not aware of any claims made against him. His annual filings are up to date.

(b) Margot Anne Lettner of Toronto was called to the Bar on April 9, 1984. She declares that she practised as a sole practitioner and as an associate of Stockwood, Blair, Spies and Ashby from 1984 to 1986. She then worked from 1986 to 1988 as a research lawyer, and has not been in active practice since 1988. She has been employed as a policy advisor with the Workplace Policies and Practices Branch of the Ontario Ministry of Labour since 1990. She declares that all trust funds and clients' property have been accounted for and paid over to those entitled to them. She has not handled trust funds or clients' property since 1986. She declares that all clients' matters have been completed and disposed of to the clients' satisfaction. Clients with active files were referred to other lawyers. She is not aware of any claims made against her.

Their Declarations 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:

- March 16, 1993 Judges' Dinner
 Dining Room
- March 19, 1993 Judges' Reception
 Convocation Hall
- April 8, 1993 Criminal Lawyers
 Barristers Lounge

26th March, 1993

April 15, 1993 Lawyers' Club
 Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"K. Howie"
Chair

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

B-Item 1 Memorandum from Mr. David Crack to the Chair and Members of the
 Finance and Administration Committee dated March 11, 1993 re:
 January 1993 Financial Statement Highlights.

(Pages 5 - 9)

THE REPORT WAS ADOPTED

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

It was moved by James Wardlaw, seconded by Abraham Feinstein 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 names appear on the attached list be suspended from March 26, 1993 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

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

It was moved by James Wardlaw, seconded by Abraham Feinstein THAT the rights and privileges of the following member who has neither paid the Errors and Omissions Insurance levy which was due on July 1, 1992 nor filed an approved application for exemption from coverage be suspended from March 26, 1993 for one year and 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.

Thomas Holyoake Box

Carried

Mr. O'Brien abstained from voting on the suspensions.

.....

26th March, 1993

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of March, 1993 at 11:30 a.m. The following members attended the meeting: Bencher representation: Ms. K.J. Palmer (Chair), Mr. R.C. Topp (Vice Chair). Staff representation: Ms. H. Harris, Ms. D. Paquet (Secretary) and Ms. D. Picouet-Bhatt (Senior Translator). Special representation: Mr. T. Keith, CBAO, Mr. R. Paquette, AJEFO. Special Guest: Ms. C. Wackermann.

B.
ADMINISTRATION

1. Regulations 708 and 709 under the Law Society Act

The Legislation and Rules Committee asked that your Committee review the French version of Regulations 708 and 709 under the Law Society Act.

The French version of these regulations was updated and revised by the Law Society's in-house translators in Toronto and Ottawa, in consultation with the Office of the Legislative Counsel. Your Committee is satisfied that this version can be submitted to Convocation for approval.

Congratulations are in order for the fine work of our two translators, Ms. Dominique Picouet-Bhatt and Mr. Nicolas Joly, on this project.

2. Lawyer Referral Service - French Language Skills of Lawyers with Bilingual Status

Your Committee reviewed the statement included in the Lawyer Referral Service Application Form - under General Information - where participating bilingual lawyers are asked to confirm their ability to practise law and represent clients in French.

The statement currently reads as follows: "I hereby declare that I am able to communicate with clients, provide legal service in French and conduct actions in French."

Recognizing that the level of proficiency in French varies from one practitioner to the other and to reinforce the responsibility and accountability of lawyers delivering such services in French, your Committee suggests that an addendum be made and the statements be reformulated in French as follows:

A. [Translation] "I hereby certify that I can communicate with clients in French, and provide legal counsel in French."

26th March, 1993

B. [Translation] "I hereby certify that I can communicate with clients in French, provide legal counsel in French and conduct actions in French."

3. Carswell's Advertisements on Ontario Statutes

The President of the Association des juristes d'expression française (AJEFO) asked that the Law Society support their concern about Carswell's recent advertisements on Ontario Statutes. It was felt that the English-only references represented a bias against the French language version of Ontario Statutes and its status of equal authority.

Your Committee was advised by the Canadian Bar Association - Ontario's representative, Mr. Tony Keith, that in a recent letter, Carswell's President acknowledged the inappropriateness of the advertisements and expressed his regrets. He gave assurance that the situation would be corrected, which is satisfactory to your Committee.

C.
INFORMATION

1. Quorum Attainment

A quorum was not attained today but your Committee Chair proceeded nevertheless with the meeting. This situation has occurred before.

Your Committee would ask that consideration be given to appointing an additional bencher to the French Language Services Committee, or that quorum rules be relaxed so that meetings can be held as planned.

2. New French Language Services Coordinator

Your Committee Chair was pleased to introduce and welcome Ms. Christine Wackermann who will join the Law Society on April 5th, 1993 as French Language Services Coordinator. Her curriculum vitae is attached to this report for the information of Benchers.

The meeting was adjourned at 12:35 p.m.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"P. Peters"
Chair

AUX MEMBRES DU CONSEIL DU BARREAU DU HAUT-CANADA

RÉUNIS EN ASSEMBLÉE

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

Votre Comité s'est réuni le jeudi 11 mars 1993 à 11 h 30. Étaient présents, en qualité de membres du Conseil, M^c K.J. Palmer (présidente) et M^c R.C. Topp (vice-président), en qualité de membres du personnel, M^c H. Harris, M^{me} D. Paquet (secrétaire) et M^{me} D. Picouet-Bhatt (traductrice principale), à titre d'invités spéciaux, M^c T. Keith de l'ABCO, M^c R. Paquette de l'AJEFO et M^{me} C. Wackermann.

B.
ADMINISTRATION

1. Règlements 708 et 709 pris en application de la Loi sur le Barreau

Le Comité de la législation et de la réglementation a demandé à votre Comité de revoir la version française des Règlements 708 et 709 pris en application de la Loi sur le Barreau.

La version française des règlements a été révisée et mise à jour par les deux traducteurs du Barreau à Toronto et à Ottawa, en consultation avec le Bureau des conseillers législatifs. Votre Comité estime que cette version peut être présentée au Conseil aux fins d'approbation.

Il convient de féliciter les deux traducteurs, M^{me} Dominique Picouet-Bhatt et M^c Nicolas Joly, pour leur beau travail.

2. Service de référence - Connaissance du français des juristes bilingues

Votre Comité a examiné la déclaration figurant dans la formule anglaise d'adhésion au Service de référence à la rubrique III - renseignements généraux. Les avocates et avocats bilingues sont priés de confirmer qu'ils sont capables de pratiquer le droit et de représenter leurs clientes et clients en français.

Voici ce qu'on peut lire présentement : [TRADUCTION] «Je déclare par les présentes que je peux communiquer avec mes clientes et clients, leur offrir des services juridiques et les représenter en justice en français».

Conscient du fait que la connaissance du français varie d'une personne à l'autre et soucieux de renforcer la responsabilité des avocates et avocats fournissant des services en français, votre Comité propose d'insérer un addenda et de remplacer la formulation actuelle par les questions suivantes en français :

A. «Je certifie par les présentes que je peux communiquer avec mes clientes et clients et leur fournir des conseils juridiques en français.»

B. «Je certifie par les présentes que je peux communiquer avec mes clientes et clients, leur fournir des conseils juridiques et les représenter en justice en français.»

3. Annonces de Carswell sur les Lois de l'Ontario

Le président de l'Association des juristes d'expression française (AJEFO) a demandé au Barreau de l'appuyer dans le dossier préoccupant des annonces récemment publiées par la maison d'édition Carswell sur les Lois de l'Ontario. La mention de la seule version anglaise a été ressentie comme un parti pris contre la version française des Lois de l'Ontario et l'égalité de statut.

26th March, 1993

Le représentant de l'Association du Barreau canadien - Ontario, M^e Tony Keith, a informé votre Comité que, dans une lettre récente, le président de Carswell avait reconnu le caractère fâcheux des annonces et qu'il en était désolé. Il a formellement promis de remédier à cette situation, ce qui satisfait pleinement le Comité.

C.
INFORMATION

1. Quorum

La présidente de votre Comité a tenu la réunion bien que le quorum n'ait pas été atteint. Ce n'est pas la première fois que cette situation se produit.

Votre Comité souhaiterait qu'on envisage de nommer une ou un membre du Conseil supplémentaire au Comité ou qu'on assouplisse les règles relatives au quorum pour que les réunions puissent se dérouler comme prévu.

2. Nouvelle coordonnatrice des services en français

La présidente de votre Comité a eu le plaisir d'accueillir et de présenter M^{me} Christine Wackermann qui se joindra au Barreau le 5 avril 1993 à titre de coordonnatrice des services en français. Son curriculum vitae est joint au présent rapport à l'intention des membres du Conseil.

La séance a été levée à 12 h 35.

FAIT le 26 mars 1993.

La présidente,

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

C-Item 2. Curriculum Vitae of Ms. Christine Wackermann. (Pages (2))

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE

Meeting of March 11, 1993

Mr. Campbell spoke to Item 3 re: Claims involving Sexual Impropriety/Misconduct.

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 11th of March, 1993 at 1:30 in the afternoon, the following members being present: Messrs. Campbell (Chair), Bragagnolo, and Ms. Elliott.

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

26th March, 1993

ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director reported that the total cost of new claims reported during the six-month period ending February 28, 1993 is \$28,851,090 compared to \$39,596,775 for the six-month period ending February 28, 1992. Though the incidence of newly reported claims is up slightly for the period ending February 28, 1993, the trend towards a decrease in the overall cost of new claims continues.

2. INSURANCE SUBCOMMITTEE

The Director reported that the Subcommittee at its March 10, 1993 meeting responded favourably to the Director's request for authorization to retain Mr. W.C. Moore of the Charlotte, North Carolina based McNeary Insurance Consulting Services Inc. Mr. Moore will, if retained, assist the Committee with respect to its deliberations on (1) creating a variable levy rating structure, (2) the review and analysis of CLIA scheduled for the end of CLIA's first 5 years of operations, and (3) whether the Mandatory Program would be better served by moving the administrative component of the professional liability insurance operations into LPIC. Mr. Moore appears ideally suited to address these subjects in light of his participation in the establishment of many of the U.S. Bar related professional liability insurers, his lengthy career in the North American insurance industry and his propitious recommendation from the Law Society of British Columbia. Your Committee recommends retaining Mr. Moore in this regard.

3. OUTSTANDING ITEMS

a) Claims Involving Sexual Impropriety / Misconduct

The Chair of the Fund For Client Compensation Committee queried the possibility of obtaining insurance coverage for claims against members by clients arising out of sexual improprieties. Pursuant to a request by the Chair of the Insurance Committee, the Director inquired about the availability and cost of such insurance and reported that no such coverage is currently available and that there are no prospects for such coverage in the foreseeable future.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"C. Campbell"
Chair

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 11th of March, 1993, at 11:45 a.m. the following members being present: C. Ruby (Chair), N. Finkelstein (Vice-Chair), L. Brennan, C. Chouinard, and T. McClenaghan; D. Crack, J. Brooks, S. Hickling J. Yakimovich 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, at the meeting of the Committee in February. It was suggested that an industrial middle income town such as Oshawa rather than Ottawa might be a better target area for the campaign. The Chair will follow up with Chiat Day as to the implications of such a change. The staff is to review the text of the advertisement for the next meeting. The Communications Committee will be consulted for its opinion and advice.

Your Committee recommends that the advertising campaign proceed with the details to be worked out at the next meeting.

Note: Item deferred

B.
ADMINISTRATION

1. 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.

Note: Item deferred

26th March, 1993

C.
INFORMATION

1. REFEREE REPORTS AND AN ASSISTANT SECRETARY'S MEMOS

The Referee Reports and Assistant Secretary's Memos 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 January 1993 and graphs showing claims made and grants paid are attached. (Pgs. C1 - C4)

3. Accounts approved by Assistant Secretaries in February amounted to \$4,593.36.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"C. Ruby"
Chair

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

- C-Item 1 Grants approved by the Review Committee and by The Lawyers Fund for Client Compensation Committee Thursday, March 11th, 1993.
(Schedule "A")
- C-Item 2 Financial Summary as of January 1993 and graphs showing claims made and grants paid.
(Marked C1 - C4)

Item A-1 re: Advertising and Item B-1 re: Budget Planning 1993/94 were deferred to the April Convocation.

THE REPORT WITH THE EXCEPTION OF ITEMS A-1 & B-1 WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of March 11, 1993

Ms. Kiteley spoke to Item 1(b) re: Freedom of Information and Protection of Privacy Policy.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of March, 1993 at two-thirty o'clock in the afternoon, the following members being present: Frances P. Kiteley, Chair, Messrs. Ally, Brennan, Bond, Ms. Campbell, Mr. Durno, Ms. Kehoe, Messrs. Koenig, Lalande, Petiquan and Panico.

A.
POLICY

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

In January, 1993 some members of the Legal Aid Committee had expressed the view that communications between sub-committees and the Legal Aid Committee could perhaps be improved. This item had been on the Agenda for the February meeting but due to the lengthy debate on the Budget and other matters it was deferred.

Several Committee members had conducted research into ways by which the Legal Aid Committee might not only improve communication but examine and redefine if necessary the role of the Committee, establish goals and examine the relationship between the Legal Aid Committee and Convocation, including hiring a facilitator to assist in determining the role and goals of the Committee and also a one or two day retreat.

It was agreed that a small committee be struck to examine the various ways by which the Legal Aid Committee might improve communications and also explore the possibility of a retreat to evaluate the role and goals of the Committee.

(b) FREEDOM OF INFORMATION AND PROTECTION OF
PRIVACY POLICY FOR THE ONTARIO LEGAL AID PLAN

The policy for the Ontario Legal Aid Plan with respect to Freedom of Information and Protection of Privacy was developed after consultation with the Commission and also Professor Bill Bogart since Legal Aid is not included in the organizations which are subject to the Freedom of Information and Protection of Privacy Act.

This policy had come before the Committee in June, 1992 and at that time the question was raised about lawyers who write opinion letters and requests for discretionary increases being concerned if that information was released to clients, so the matter was deferred.

After a lengthy debate it was moved by Mr. Bond and seconded by Ms. Kehoe that the Freedom of Information and Protection of Privacy Policy of the Ontario Legal Aid Plan be adopted and that the policy be revisited in one year's time or periodically as the need arises.

This motion was carried unanimously.

The Freedom of Information and Protection of Privacy Policy for the Ontario Legal Aid Plan, together with background information, is attached hereto and marked as SCHEDULE (A).

(c) PROPOSED REFUGEE LAW PILOT PROJECT

Last summer Convocation decided to participate in pilot projects in family law. The Ministry of the Attorney General also intends to proceed with pilot projects in the area of refugee law and officials of the Plan (Phil Epstein, Fran Kiteley and Bob Holden) attended meetings with members of the Ministry and input was sought from various sources involved in refugee law. Copies of the responses are attached hereto and marked as SCHEDULE (B). The matter was brought before the Legal Aid Committee in November and was deferred until after the passing of Bill C86. Information relating to the process under Bill C-86 and a copy of the Newsletter issued by the Immigration and Refugee Board is attached hereto and marked as SCHEDULE (C).

After a lengthy discussion, it was moved by Mr. Ally and seconded by Ms. Kehoe that a Sub-Committee be created to examine the feasibility of delivery of legal aid by a staff model to include not only members of the Legal Aid Committee but representative consultation with members of the profession involved in this delivery.

This motion was carried.

(d) REPORT OF THE STUDENT LEGAL AID SOCIETIES

Convocation returned this Report to the Legal Aid Committee for further consideration however, due to the lengthy debates on other matters this item was deferred until the April meeting.

(e) RESPONSE TO THE RECOMMENDATIONS IN THE ABT REPORT

Due to the lengthy debates on other matters this was deferred until the April meeting.

B.
ADMINISTRATION

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

The Report of the Deputy Director, Finance for the Ten Months Ended January 31, 1993 is attached hereto and marked as SCHEDULE D.

(b) REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS
FOR THE MONTHS OF JANUARY AND FEBRUARY, 1993

The Legal Aid Committee received the Report on the Payment of Solicitors Accounts for the months of January and February, 1993 which is attached hereto and marked as SCHEDULE (E).

(c) AREA COMMITTEES - APPOINTMENTS AND RESIGNATIONS

APPOINTMENTS

Durham

Myrna L. Lack, solicitor

Lennox and Addington

Donna Cowle, bank customer service manager

Peel

Beverly J. Wilkinson, retired U.I.C. employee

Renfrew

Barbara McGonegal, manager, trust office

Bill Higginson, retired newspaper publisher

26th March, 1993

York County

Elizabeth Harfenist, retired chemistry professor
Ray Maruschak, solicitor/tax manager
Martin Twyeman, solicitor
Anne Weir, solicitor
Robert Spence, solicitor
Susan Woolner, solicitor
Anne Empke, solicitor
Pamela Kernaghan, social worker
Kathy Zoros, policy analyst
Aimee Gauthier, solicitor
David McComb, solicitor
David Hunt, solicitor
Virginia Evans, executive assistant

RESIGNATIONS

Lennox & Addington

Sandra Valentyne

ALL OF WHICH is respectfully submitted

"F. Kiteley"
Chair

March 11, 1993

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

- A-Item 1.(b) Freedom of Information and Protection of Privacy Policy for the Ontario Legal Aid Plan together with background information. (Schedule (A), pages (12))
- A-Item 1.(c) Responses from sources involved with refugee law. (Schedule (B), pages (22))
- A-Item 1.(c) Newsletter released by the Immigration and Refugee Board dated February 12, 1993. (Schedule (C) pages (6))
- B-Item 1.(a) Report of the Deputy Director, Finance for the Ten Months Ended January 31, 1993. (Schedule (D) pages (2))
- B-Item 1.(b) Report on the Payment of Solicitors Accounts for the months of January and February, 1993. (Schedule (E) pages (4))

It was moved by Fran Kiteley, seconded by Lloyd Brennan that the Item on the Freedom of Information and Protection of Privacy Policy be adopted.

It was moved by Harvey Strosberg that this matter be deferred.

Withdrawn

It was moved by Colin McKinnon, seconded by Ron Manes that a new item (E) be added to the Policy, Schedule A of the Report which would read:

INFORMATION NOT DISCLOSED

A third party request for information that is privileged as between a solicitor and his or her client.

The Chair accepted the motion put by Mr. McKinnon.

It was moved by Patrick Furlong, seconded by Harvey Strosberg that Item (C) of the Policy be amended to make it clear that opinion letters regarding a client's matter be disclosed in its totality to the client without editing or severance.

Lost

The motion put by Ms. Kiteley and amended by Mr. McKinnon was adopted.

THE REPORT AS AMENDED WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE asks leave to report:

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

The following members were in attendance: Paul Lamek (Chair), Philip Epstein (Vice-chair), Donald Lamont (Vice-chair), Lloyd Brennan, Laura Legge, Colin McKinnon, Dean Donald McRae (representing the law schools), Ross Murray, Louis Radomsky (non-Bencher member), and Roger Yachetti. Other Benchers attending were: Susan Elliott and Joan Lax. Staff in attendance were: Marilyn Bode, Brenda Duncan, Laurel Evans, Holly Harris, Mimi Hart, Margaret McSorley, Alexandra Rookes, and Alan Treleaven.

A.
POLICY

A.1 REQUIREMENTS FOR STANDING: PHASE ONE 1993 36TH BAR ADMISSION COURSE

A.1.1 The Requirements for Standing: Phase One 1993: 36th Bar Admission Course, once approved by Convocation, will govern Phase One of the 1993 Bar Admission Course, which commences on May 10, 1993.

A.1.2 Recommendation: It is recommended that the Requirements for Standing: Phase One 1993: 36th Bar Admission Course be approved. (pages 1 -5)

Approved

B.
ADMINISTRATION

No items to report this month.

C.
INFORMATION

C.1 CONTINUING LEGAL EDUCATION SUBCOMMITTEE: CHAIR

C.1.1 Colin McKinnon has asked to be relieved from his duties as Chair of the Continuing Legal Education Subcommittee, but has said that he will see the process of providing a report on Mandatory Continuing Legal Education through to its conclusion.

C.1.2 The Legal Education Committee asks Convocation to appoint a new Chair to its Continuing Legal Education Subcommittee.

C.2 JOINT SUBCOMMITTEE ON SEXUAL HARASSMENT

C.2.1 The Joint Subcommittee on Sexual Harassment met again on February 17, 1993. The meeting was held at the request of the Articling Subcommittee to consider a number of issues in the first draft raised by the Articling Subcommittee at its January 29, 1993 meeting. (The first draft of the Report of the Joint Subcommittee was provided to the Legal Education Committee for information purposes at its February 11, 1993 meeting.)

C.2.2 The Joint Subcommittee prepared a second draft of its Report reflecting the discussions at its February 17 meeting. The second draft was provided to the Articling Subcommittee at its February 26, 1993 meeting. The Articling Subcommittee was satisfied that its concerns had been addressed in the second draft, and recommended that the Report be presented to the Legal Education Committee for approval at its March meeting. The Report was also referred to Discipline Policy Committee and the Women in the Legal Profession Committee. It is hoped that the Report, when presented to Convocation for approval, will be endorsed by the Discipline Policy Committee, the Women in the Legal Profession Committee, and the Legal Education Committee.

C.2.3 The Legal Education Committee in general approved of the Report but was concerned about clarifying the issue of "ownership" of a complaint, and specifically about whether the Report should provide clearer guidance as to when a matter is of such potentially sufficient gravity that the Articling Director would refer it to the Discipline Committee despite the wishes of a complainant student (victim). The Legal Education Committee was also concerned that potential student complainants should have a clearer sense of their "ownership" of any matter before contacting the Articling Director.

C.2.4 The Legal Education Committee decided to table the Report to its next meeting (April 8) with a view to determining whether its concerns can be addressed by amendments to the Report.

C.2.5 (It should be noted that following the meeting of the Legal Education Committee, the Report was approved by the Women in the Legal Profession Committee. Following approval by the Women in the Legal Profession Committee, the Discipline Policy Committee approved the Report with very minor changes in its wording, and recommended that the Report be referred to Convocation for final discussion and approval.)

Note: Item deferred

C.3 LAUREL EVANS

C.3.1 Laurel Evans joined the Law Society's Toronto staff as a new Program Lawyer in the Continuing Legal Education Department, effective February 1, 1993. Ms. Evans has been in private practice for nine years, most recently in a small sole practice, in Burlington. For 3.5 years prior to that, she was an associate with Ross & McBride, in Hamilton. Ms. Evans has a strong interest in legal education, and has taught legal office programs. Ms. Evans is in the process of obtaining a diploma in Adult Education from St. Francis Xavier University. Ms. Evans also prepares case summaries for Canada Law Book's All Canada Weekly Summaries series.

C.3.2 Ms. Evans joins our current Program Lawyer, Paul Truster.

C.4 LEGAL EDUCATION COMMITTEE AND ONTARIO LAW DEANS MEETING AND DINNER

C.4.1 The annual meeting of the Legal Education Committee and Ontario Law Deans took place on Thursday, March 11 in Convocation Room.

C.4.2 At this meeting, the Legal Education Committee and the Deans discussed educational matters of common interest to the Ontario law schools and to the Law Society.

C.5 BAR ADMISSION COURSE SECTION HEADS AND LEGAL EDUCATION COMMITTEE ANNUAL MEETING AND DINNER

C.5.1 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.5.2 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.5.3 All members of the Legal Education Committee are encouraged to attend, and are asked to confirm whether they can attend with Alexandra Rookes at 416-947-3414 as soon as reasonably possible.

C.6 ARTICLING SUBCOMMITTEE

C.6.1 The Subcommittee met on February 25, 1993. In attendance were Marc Somerville (Chair), Maurice Cullity, Jay Rudolph, and Janne Burton. Staff members attending were Marilyn Bode, Deborah Brown, and Barbara Dickie.

C.6.2 The Subcommittee gave conditional approval to a further 32 applications from prospective articling principals for the 1992/93 articling year. To date, approximately 1240 members of the profession have applied. The Subcommittee also gave conditional approval to an additional 400 applications from prospective articling principals for the 1993-94 year.

- C.6.3 The Subcommittee considered the application for principal approval which had been deferred from its January 1993 meeting. The member had a substantial number of complaints since 1989 and was authorized to participate in the Peer Review Program in June of 1992. The Subcommittee asked the member for written submissions as to why he should be approved to serve as a principal notwithstanding his history with the Law Society. The member responded to the Subcommittee's concerns. The Subcommittee approved the member as a principal subject to the submission of regular progress reports.
- C.6.4 The Subcommittee considered an application for principal approval from a member called to the Bar in 1992. The Subcommittee did not have time to fully consider the member's application. The matter was deferred to the March meeting of the Subcommittee.
- C.6.5 The Subcommittee considered several information items. The first item was two letters received from members of the profession with comments on the evaluation form and the time required to complete it. The Articling Director also advised the Subcommittee of some of the positive comments from members of the profession regarding the evaluation form and its usefulness in assessing the quality of the articling experience.
- C.6.6 The second information item was the Rights of Appearance of Articling Students issue. There has been an ongoing concern about the distinction in appearance rights for students inside and outside Metropolitan Toronto on simple contested interlocutory matters. The concern is that some judges in Metropolitan Toronto will not hear from anyone who is not gowned. Marc Somerville advised that he had spoken to the Treasurer regarding this matter. The Treasurer and Marc Somerville will arrange a meeting with the Chief Justice in the next few weeks to discuss the issue.
- C.6.7 The next meeting of the Subcommittee is scheduled on March 26, 1993.

C.7 SPECIAL SUBCOMMITTEE TO REVIEW ARTICLING RECRUITMENT PROCEDURES

- C.7.1 The Special Subcommittee to Review Articling Recruitment Procedures, chaired by Philip Epstein, is examining the effectiveness of the existing procedures governing recruitment of articling students and the availability of articling positions in the future. The Special Subcommittee is scheduled to meet on Tuesday, March 16.

C.8 EQUITY ISSUES AND EDUCATIONAL CONTENT OF THE BAR ADMISSION COURSE

- C.8.1 The Report of the Special Committee on Equity in Legal Education and Practice, approved by Convocation, includes a number of recommendations. Recommendation 9.1 reads as follows:

The Law Society should formally adopt a policy by which the Law Society and its members acknowledge the diversity of our community and make a commitment to fair treatment and opportunity for all Ontario residents. The adoption of this report will recognize the Law Society's obligation to govern the profession in a socially responsible manner by ensuring that services are provided by and for members of aboriginal and visible minority groups.

- C.8.2 The Bar Admission Course staff is preparing a report for the Legal Education Committee focusing on educational and testing concerns, so that the Legal Education Committee can determine what steps might be taken to further the objectives in the Report of the Special Committee on Equity in Legal Education and Practice.
- C.9 CONTINUING LEGAL EDUCATION REPORT ON COURSES
- C.9.1 The Report is attached. (page 6)
- C.10 BAR ADMISSION COURSE STUDENT SUPPLEMENTAL EXAMINATION ISSUE
- C.10.1 A student in the Phase Three of the 1992 Bar Admission Course has been informed by the Director of Education that the student must pass supplemental examinations in Criminal Procedure, in Public Law, and in Estate Planning and Administration. The student argues that on the unique facts of the case the Director of Education has erred, and that the student at the very most ought to be required to write and pass a supplemental examination only in Estate Planning and Administration.
- C.10.2 The Legal Education Committee considered the student's request at its meeting of March 11, and decided to table the request until a special meeting of the Committee on March 17 when further information would be available.
- C.10.3 The Committee will report to Convocation on the outcome of its March 17 deliberations by way of a written supplement to this item.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"P. Lamek"
Chair

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

- A-Item A.1.2 Requirements for Standing - Phase One 1993: 36th Bar Admission Course. (Pages 1 - 5)
- C-Item C.9.1 Report on Courses - Continuing Legal Education. (Page 6)

Item C-C.2 re: Joint Subcommittee on Sexual Harassment was deferred to the April Convocation.

THE REPORT WITH THE EXCEPTION OF ITEM C-C.2 WAS ADOPTED

Meeting of March 17, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met again on Wednesday, the 17th of March, 1993, at 11:00 a.m.

The following members were in attendance: Philip Epstein (Vice-Chair serving as Chair), Vern Krishna and Laura Legge. The Director of Education, Alan Treleaven, was also in attendance.

C.
POLICY

C.10 BAR ADMISSION COURSE STUDENT SUPPLEMENTAL EXAMINATION ISSUE

- C.10.1 The student failed four examinations during Phase Three of the 1992 Bar Admission Course. Section 4.6 of the Requirements for Standing prevents students who fail four examinations from writing supplemental examinations. There were, however, extraordinary circumstances which resulted in the student writing two supplemental examinations. The student wrote the two supplemental examinations in February of 1993, passing one examination (Real Estate) and failing the second (Estate Planning and Administration) by reason of passing only two of the three required questions.
- C.10.2 The Director of Education then informed the student that in order to be eligible to apply for admission to the Bar the student must write and pass supplemental examinations in the three courses which the student had not yet passed: Criminal Procedure, Public Law, and Estate Planning and Administration. The Director also informed the student that the student must complete successfully the supplemental Course Work in Civil Litigation (which the student had not yet submitted).
- C.10.3 The student disagreed with the Director's decision, and asked to be deemed to have satisfied the examination requirement, or alternatively for permission to write a further supplemental examination in Estate Planning and Administration only, and if successful to be deemed to have satisfied the Bar Admission Course examination requirement.
- C.10.4 Members of Convocation who wish to review a letter of the Director to the student or the student's letter to the Legal Education Committee may obtain copies on request from the Director of Education.

26th March, 1993

C.10.5 The Legal Education Committee confirmed the decision of the Director of Education that the student must write and pass supplemental examinations in Criminal Procedure, in Public Law, and in Estate Planning and Administration, and the supplemental Course Work in Civil Litigation.

ALL OF WHICH is respectfully submitted

DATED this 27 day of March, 1991

"P. Lamek"
Chair

THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of March 11, 1993

Ms. Palmer spoke to Item A-A.1. re: Proposed Amendment of Law Society Act: Cancellation of Membership of Members suspended for Non-payment of Fees or Levies.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

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

Also present: A. Brockett.

A.
POLICY

A.1. PROPOSED AMENDMENT OF LAW SOCIETY ACT: CANCELLATION OF MEMBERSHIP OF MEMBERS SUSPENDED FOR NON-PAYMENT OF FEES OR LEVIES

A.1.1. Recommendations

A.1.1.1. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendments to the *Law Society Act*:

DRAFT AMENDMENTS TO THE LAW SOCIETY ACT

1. The *Law Society Act*, being chapter L.8 of the Revised Statutes of Ontario, 1990, as amended by..., is further amended by adding thereto the following section:

36.1. If a member whose rights and privileges have been suspended pursuant to section 36 fails to pay, within twelve months of the date of suspension, all fees and levies that were payable to the Society at the time of suspension, Convocation may, at any time after February 26, 1994, by order cancel his or her membership.

2. Section 28 of the Act is amended by adding "36.1" after "36" in the second line.

A.1.1.2. That the French Language Services Committee be asked to prepare a French translation of the proposed amendments to the *Law Society Act*, to enable the Law Society to submit a French version to the Attorney General.

A.1.2. Explanation

A.1.2.1. At its meeting on February 26, 1993, Convocation adopted a recommendation from the Finance and Administration Committee proposing a new policy under which Convocation would be empowered to cancel, by order, the membership of any member suspended for non-payment of fees and levies who failed to bring his or her membership into good standing within 12 months.

A.1.2.2. The Finance and Administration Committee recognized that implementation of the policy would require amendment of the *Law Society Act*.

A.1.2.3. The proposal is that the new section follow section 36 of the *Law Society Act*. Its structure is therefore modelled on the structure of sections 34, 35 and 36, each of which begins "If a member..."

A.1.2.4. The policy adopted by Convocation on February 26, 1993, states that the period of 12 months (which is to elapse before a cancellation can be ordered) is to be reckoned from

a) the date of suspension, or

b) the date on which the policy was adopted by Convocation, whichever comes later. This is accomplished in the proposed amendment by providing that the power of cancellation is effective only after February 26, 1994.

A.1.2.5. In order to implement the policy, it will be necessary not only to include a new substantive section in the *Law Society Act* but also to amend the first clause of section 28 of the act in order to make the right to practise law expressly subject to the new provision.

A.1.2.6. Your Committee will consider whether a similar provision will be required in respect of law corporations.

A.2. REGULATION 708, R.R.O. 1990: FRENCH VERSION

A.2.1. Recommendation

That the French text of Regulation 708, attached to this report as Attachment A, be approved by Convocation.

A.2.2. Explanation

A.2.2.1. On February 11, 1993, your Committee decided to delegate to the French Language Services Committee (on a case by case basis) its authority to consider, and make recommendations to Convocation concerning, regulations in the French language. In pursuit of this policy, your Committee recommended that the French Language Services Committee be asked to consider the proposed text of the French version of Regulation 708 and, if satisfied that the translation was accurate, to recommend its approval by Convocation.

A.2.2.2. The recommendation was adopted by Convocation on February 26, 1993.

A.2.2.3. Subsequent to the meeting of the Legislation and Rules Committee on March 11, 1993, it was learned that the French Language Services Committee had duly considered the proposed French text of Regulation 708 and had satisfied itself that the translation was accurate. It is understood, however, that the French Language Services Committee considered that it was not its proper role to recommend the approval of the French text by Convocation: in its view, that was the responsibility of the Legislation and Rules Committee, itself acting on the recommendation of the French Language Services Committee.

A.2.2.4. Accordingly, your Committee includes in this report a recommendation that Convocation approve the French text of Regulation 708.

A.2.2.5. Your Committee understands that if the French language version of the regulation is approved by Convocation, it will have been "made" by Convocation under the power granted by section 63 of the *Law Society Act* and, when approved by the Lieutenant Governor in Council, the French version will have the same force and effect as the English version.

A.2.2.6. Your Committee has been informed that a French translation of Regulation 709, a regulation made by the Board of Trustees of the Law Foundation, is to be presented to the Board for approval.

A.3. RULES MADE UNDER SECTION 62(1) OF THE LAW SOCIETY ACT: AMENDMENT OF RULE 50: APPLICATION FEE FOR ADMISSION AS A STUDENT MEMBER

A.3.1. Recommendations

A.3.1.1. That, provided the Finance and Administration Committee approves an increase in the student membership application fee to \$125, the first paragraph of the part of Rule 50 entitled "STUDENT MEMBERS" be amended to read:

Upon filing an application for admission as a student member of the Society - - Non-Refundable Application Fee . . . \$125

A.3.1.2. That an identical change be made in the French version of the rules.

A.3.2. Explanation

A.3.2.1. The rule currently provides for a fee of \$101. In all other respects, the rule is worded as above.

A.3.2.2. At its meeting on February 26, 1993, Convocation adopted a recommendation of the Legal Education Committee that the application fee for filing an application for admission as a student member of the Society be increased from \$101 to \$125. The recommendation was referred to the Finance and Administration Committee and the Legislation and Rules Committee.

A.4. RULES MADE UNDER SECTION 62(1) OF THE LAW SOCIETY ACT: AMENDMENT OF RULE 56: PRESCRIPTION OF FORMS

A.4.1. Recommendations

A.4.1.1. That the references in Rule 56 to Regulation 573 be up-dated and that references to Forms 4, 5, 2 LC, 3 LC, 4 LC and 5 LC be incorporated in the rules by amending Rule 56 to read as follows (amendments underlined):

FORMS

56. (1) The notice of intention to apply for permission to resign referred to in subsection 12(2) of Regulation 708 of the Revised Regulations of Ontario, 1990, shall be in Form 1.

(2) The certificate required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be in Form 2.

(3) The report of a public accountant that is required to be filed with the Society by a member under subsection 16(2) of the said Regulation 708 shall be in Form 3.

(4) The investment authority required to be maintained by a member under paragraph 15.2(1)(a) of the said Regulation 708 shall be in Form 4.

(5) The report on investment required to be maintained by a member under paragraph 15.2(1)(b) of the said Regulation 708 shall be in Form 5.

(6) The forms in connection with the incorporation of law practices shall be as listed below:

(a) The certificate required to be filed with the Society by a law corporation under subsection 16(2) of Regulation 708 of the Revised Regulations of Ontario, 1990, shall be in Form 2 LC.

(b) The report of a public accountant that is required to be filed with the Society by a law corporation under subsection 16(2) of the said Regulation 708 shall be in Form 3 LC.

(c) The investment authority required to be maintained by a law corporation under paragraph 15.2(1)(a) of the said Regulation 708 shall be in Form 4 LC.

- (d) The report on investment required to be maintained by a law corporation under paragraph 15.2(1)(b) of the said Regulation 708 shall be in Form 5 LC.
- (e) The Application for a Certificate of Authorization shall be in Form 6 LC.
- (f) The Certificate of Authorization shall be in Form 7 LC.
- (g) The Notice to a Law Corporation respecting Annual Certificate of Compliance shall be in Form 8 LC.
- (h) The Certificate of Compliance shall be in Form 9 LC.
- (i) The Notice of Application for Permission to Surrender a Certificate of Authorization shall be in Form 10 LC.

A.4.1.2. That the French Language Services Committee be asked to prepare a French translation of the amended Rule.

A.4.2. Explanation

A.4.2.1. Forms prescribed in the rules are listed in Rule 56. Forms 4 and 5 were approved by Convocation on June 26, 1992. Forms 2LC to 5LC were approved by Convocation on September 24, 1992. This amendment adds those forms to Rule 56.

A.4.2.2. The references to Regulation 573 in R.R.O 1980 are up-dated to refer to Regulation 708 of R.R.O. 1990.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. FEES PAYABLE UPON REINSTATEMENT AND READMISSION: WHETHER THE NEW POLICY SHOULD BE PRESCRIBED BY REGULATION OR RULE

C.1.1. On February 26, 1993, Convocation adopted a recommendation of the Finance and Administration Committee for a new policy under which:

- members whose rights and privileges were suspended before February 26, 1993, for non-payment of fees or levies, will be required to pay, as a condition of reinstatement, all unpaid fees and levies that had accrued up to February 26, 1993 together with a reinstatement fee;

- members whose rights and privileges were suspended on or after February 26, 1993, for non-payment of fees or levies, will be required to pay, as a condition of reinstatement, all fees and levies outstanding for the year of suspension, together with a reinstatement fee;
- (subject to the necessary amendment of the *Law Society Act* - see item A.1 of this report) persons whose membership is cancelled following a 12-month suspension for non-payment of fees or levies, where the suspension commenced before February 26, 1993, will be required to pay, as a condition of readmission, all unpaid fees and levies that had accrued up to February 26, 1993, together with a readmission fee;
- (subject to the necessary amendment of the *Law Society Act* - see item A.1 of this report) persons whose membership is cancelled following a 12-month suspension for non-payment of fees or levies, where the suspension commences on or after February 26, 1993, will be required to pay, as a condition of readmission, all fees and levies outstanding for the year of suspension, together with a readmission fee.

C.1.2. Prior to February 26, 1993, members applying for reinstatement following suspension for non-payment of fees and levies were required to pay all unpaid fees and levies that had accrued to the time of reinstatement.

C.1.3. Your Committee considered the following question:

Whether the new policy has to be prescribed in the rules made under section 62(1) of the *Law Society Act*, or in the regulations made under section 63 of the *Law Society Act*, or whether it is sufficient for Convocation simply to adopt a policy as it did by adopting the report of the Finance and Administration Committee on February 26.

C.1.4. There is no doubt that Convocation has the power to impose conditions upon persons who apply for reinstatement or readmission. Section 48 of the *Law Society Act* states:

48. Upon the readmission of a person as a member or student member or upon the termination of the suspension of the rights and privileges of a member or student member or upon the reprimand of a member or student member, Convocation or a committee thereof may impose upon the person such terms and conditions as it considers proper.

C.1.5. The new policy may be characterized as a description of how the Society will cover its administrative costs and collect outstanding fees and levies that are payable independently of the policy.

C.1.6. Your Committee has therefore concluded that so long as the amounts of the reinstatement and readmission fees are prescribed in the rules, there is no need to prescribe the policy itself in the regulation or rules.

C.2. PROCEDURE FOLLOWED IN THE MAKING, AMENDING AND REVOCATION OF RULES UNDER SECTION 62(1) OF THE LAW SOCIETY ACT

C.2.1. Rule 1 of the rules made under s. 62(1) of the *Law Society Act* reads:

PROCEDURES AS TO RULES

1. (1) Where it is proposed to make, amend or revoke any rule and the proposal is not made in the report of any committee which has been adopted by Convocation, the proposal shall not be acted upon unless notice of motion to that effect was given at the Convocation immediately preceding the Convocation at which the motion is made.

(2) Where in the report of a committee it is proposed that a rule be made, amended or revoked, no notice of motion to that effect need be given, but a motion specifying the proposal may be made immediately after the adoption by Convocation of that part of the committee's report.

C.2.2. In recent years, the convention has been that where a policy-making committee makes recommendations to Convocation that will require changes in the rules, and where Convocation adopts the recommendations, the Legislation and Rules Committee takes the matter under consideration and makes a recommendation to a subsequent meeting of Convocation setting out a proposed text for the rule-change. If Convocation adopts the recommendation of the Legislation and Rules Committee, the rule-change is deemed to have been "made".

C.2.3. Since the reports of the Legislation and Rules Committee set out each set of rule changes in a separate recommendation (as in items A.3 and A.4 of this report) your Committee is satisfied that the current convention complies with the requirements of subrule 1(2).

C.2.4. Your Committee is of the view, however, that significant changes to the rules should not be effected by means of Convocation's adopting a report that is "taken as read" without comment. In future, therefore, the Chair of the Committee will make a practice of drawing the attention of Convocation to any significant rule changes recommended by the Committee, even though the report may be taken as read.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"M. Cullity"
Chair

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

A-Item A.2.1. French text of Regulation 708.

(Marked A - A-27)

THE REPORT WAS ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of March 11, 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 11th of March, 1992, at 9:00 a.m., the following members being present:

R Topp (Vice-Chair in the Chair), R. Bragagnolo, M. Cullity, A. Feinstein, B. Pepper, M. Weaver, R. Lalande, and K. Golish. D. J. Murphy joined the meeting part-way through the Agenda. G. Howell also attended.

A.
POLICY

1. Ontario Reports - Reporting of Supreme Court of Canada Cases

The Committee discussed this policy item, and reached a conclusion. However, the Committee Chair D. J. Murphy, was absent from the meeting during the discussion, has further information on this item, and has asked that the matter be re-considered. Accordingly, this agenda item is deferred to the April Committee meeting.

B.
ADMINISTRATION

1. OR Database - Q.L. Systems price increase

QL Systems has asked for Law Society approval of its proposed \$10 per hour price increase on its \$140 per hour charge for access to its electronic retrieval system. However, the Law Society's contract with QL stipulates a price increase not in excess of the current Consumer Price Index. The \$10 increase would be a 7.1% increase.

The Committee recommends approval of a \$5 per hour increase in the charge for access to the Ontario Reports Database, to a total of \$145 per hour.

2. 1993/94 Budget

The Committee approved the budget documents as presented by the Chief Librarian, to be forwarded to the Finance Committee for consolidation into the Law Society's draft budget. The Committee recognized that the budgeted amount for the Law Foundation grant to county libraries is to be reduced by \$155,000, and that this shortfall could be covered by an increase of \$6 on the present \$79 county library levy charged to full fee-paying members. The matter of whether such an increase should be recommended to Convocation was deferred to April's meeting, pending the results of a meeting of CDLPA's Libraries Committee scheduled for April 7th.

26th March, 1993

3. Great Library - Evening and Weekend service

The Committee discussed the necessity of the Great Library remaining open on evenings (Monday to Friday, 5 p.m. to 10 p.m.) and weekends (Saturday 9 to 5, and Sunday 12-5). This matter was deferred to April's meeting, pending further information and feedback from patrons.

ALL OF WHICH is respectfully submitted

Dated this 26th day of March, 1993

"D. Murphy"
Chair

THE REPORT WAS ADOPTED

FEBRUARY CONVOCATION MINUTES

Draft Minutes - February 25th and 26th, 1993

adopted

(Draft Minutes in Convocation file)

PROFESSIONAL CONDUCT COMMITTEE

Meeting of March 11, 1993

Mr. Somerville spoke to Item A-1 re: Practice of Lawyers Preparing Wills for a Client at the Behest of a Trust Company and Item A-2 re: Rule 23 - Private Mortgages.

Mrs. Legge took no part in the debate.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of March, 1993 at three o'clock in the afternoon, the following members being present: Campbell (in the Chair), Cullity (Vice-Chair), Elliott, Finkelstein, McKinnon, Rowe, Scott and Sealy.

A.
POLICY

1. PRACTICE OF LAWYERS PREPARING WILLS FOR A CLIENT AT THE BEHEST OF A TRUST COMPANY - THE LAWYER RECEIVES THE INSTRUCTIONS FROM THE TRUST COMPANY BUT DOES NOT COMMUNICATE DIRECTLY WITH THE CLIENT TO DETERMINE IF THESE ARE THE CORRECT INSTRUCTIONS AND IF THERE IS TESTAMENTARY CAPACITY

The Law Society's attention has recently been drawn to a practice by some lawyers of taking instructions from a trust company to prepare a will for a client who is naming the trust company as the sole executor or one of the executors of his or her estate. In some of these cases the lawyer had no direct communication with the testator to confirm those instructions and to determine that the testator has testamentary capacity.

The profession should be reminded through the vehicle of the Adviser of the lawyer's obligation to communicate directly with the client to confirm the instructions and to determine whether there is in fact testamentary capacity.

Should consideration be given to communicating directly with the Trust Company Association about this undesirable practice?

Mr. Cullity took no part in the debate and left the room while the matter was discussed.

The Committee concluded that the profession should be informed of the obligation of a lawyer to communicate directly with the testator to confirm the instructions received and to satisfy himself or herself that there is testamentary capacity. The Trust Company Association should also be made aware of the Law Society's concerns.

The Committee asks Convocation to adopt its conclusions.

2. RULE 23 - PRIVATE MORTGAGES - PROPOSAL BY LAWYERS FUND FOR CLIENT COMPENSATION THAT IN EVERY PRIVATE MORTGAGE LENDER AND BORROWER BE SEPARATELY REPRESENTED

It has been recommended by the Lawyers Fund for Client Compensation that clients involved in private mortgages (not involving lending institutions such as banks and trust companies) should be represented by different lawyers.

The views of the profession on this and other issues have been sought.

The County & District Law Presidents' Liaison Committee understand that no decision will be taken by the Law Society on this matter until after its May 1993 Plenary Session.

There are issues before the Insurance Committee which would be affected by the proposed change.

The Committee concluded that this was a difficult and contentious issue and that there must be further consultation with the profession before any recommendation is made.

The Committee asks Convocation to adopt this position.

26th March, 1993

B.
ADMINISTRATION

1. REQUEST OF ARTISTS' LEGAL ADVICE SERVICES
(ALAS-OTTAWA) TO INCORPORATE - REQUEST FOR ADVICE

The Artists' Legal Advice Services (Alas-Ottawa) wrote the Law Society in November asking if it could incorporate. Set out below is its letter of November 4th:

Further to our conversation of November 3, 1992 I have enclosed a copy of Form 2, (not attached to the report) Corporations Information Act, with respect to Artists and Lawyers for the Advancement of Creativity, operating under the name or style of Artists' Legal Advice Services.

The Ottawa chapter of Artists' Legal Advice Services wishes to incorporate in Ontario as a non-profit charitable corporation under the name or style Artists' Legal Advice Services - Ottawa. The Ottawa chapter is of the view that this name or style is the best one for representing the activities of the organization and that it would not be confused with a law firm. The Ottawa chapter has been operating under the name Artists' Legal Advice Services - Ottawa for two years and has published promotional material under this style. Artists' Legal Advice Services - Ottawa is funded by the Ontario Legal Aid Plan, Community Legal Education Ontario, the Cultural Collective of the Law Union of Ontario, Canadian Artists' Representation Ontario and other organizations.

I look forward to your response with respect to this organization operating under the name or style of Artists' Legal Advice Services - Ottawa.

The Committee's Secretary sent the following letter after the November 10th Committee meeting:

I read out your letter to the Professional Conduct Committee at its November meeting.

The Committee wanted to know more about your organization. For example, does it give legal advice? If it does give legal advice there would be a problem were you to incorporate because at the present time a corporation cannot carry on the practice of law. This may change if lawyers are permitted to incorporate.

Perhaps you can supply some more information in order that I may once again place it before the Committee.

The following letter was then sent by the Artists' Legal Advice Services (Alas-Ottawa):

I am writing in reply to your letter of November 16, 1992 addressed to Francis K. Peddle concerning the incorporation of ALAS-Ottawa (ALAS stands for Artists' Legal Advice Service.)

26th March, 1993

The purpose of ALAS-Ottawa is to provide "summary" advice on arts-related problems. Duty counsel attempt to help the client during the designated half hour appointment and to explain various aspects of the law or the legal system and address the specific concerns of the client. Duty counsel do not make phone calls on behalf of clients, nor do they draft contracts or letters or appear in court on their behalf. Duty counsel may review a letter or contract or suggest ways of handling a specific legal problem or suggest that a lawyer be obtained to further help them with the legal problem.

ALAS-Ottawa is associated with ALAC, Artists and Lawyers for the Advancement of Creativity at 183 Bathurst Street, Toronto, M5T 2R7. Their current Chair is Ms. Marian Hebb. We are currently in the process of applying to ALAC to be a charter chapter of them.

The Committee concluded that it could not incorporate because a corporation cannot carry on the practice of law.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"M. Somerville"
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of March, at 11:30 a.m., the following members being present: C. McKinnon (Chair), R. Murray (Vice Chair), M. Weaver (Vice Chair), P. Furlong, N. Graham, L. Legge, D. Murphy, M. Trofimenko.

Also Present: J. Adamowicz, N. Amico, R. Holden, S. Kerr, S. McCaffrey, P. Rogerson.

A.
POLICY

A.1. Joint Committees of Legal Aid and Professional Standards

A.1.1 Background

a) Competence Standards and the Ontario Legal Aid Plan

Section 27 of the regulations under the *Legal Aid Act* permits the establishment of criteria for entry to and retention on the legal aid panels. To date, no such criteria have been set. As a result, when faced with lawyers who are apparently delivering sub-standard services, the Provincial Director of the Plan has been unable to direct the removal of such lawyers from the panel or as duty counsel, or prevent their admission to the panel.

The Legal Aid Plan is also facing increasing pressure from the provincial government with respect to the cost of Legal Aid services, particularly in the area of criminal law. Of the 5,459 lawyers who billed the Plan in 1991-92, 237 (4.4%) received more than \$200,000. In addition, the Plan has concerns about the quality of services being delivered in high-volume practices. These circumstances led to the establishment of a sub-committee of the legal aid committee with province-wide representation, to consider standards. The profession, however, raised concerns about the propriety of this task being undertaken by the Legal Aid Plan rather than the Law Society, as a result of which Convocation approved the creation of joint committees of the Legal Aid and Professional Standards Committees to address the feasibility of standards in the areas of criminal law, family law and immigration/refugee law.

A.1.2. b) Competence Standards and the Law Society

The Professional Standards Committee is responsible for the creation, maintenance and enforcement of standards of competence among members of the profession. This mandate includes the formulation of minimum standards of practice in those branches of the profession for which it is practical to do so.

To give effect to this mandate, both the Committee and its sub-committees considered what the "standards" should be, and the uses to which they should be put. The result has been the formulation of checklists in a number of fields, including criminal defence practice and family law (publication of which is pending).

While the form and content of the checklists has varied somewhat, the general purpose of these checklists was intended to:

1. provide members with a practice manual that could be used regularly and in a variety of circumstances;
2. alert members to problem areas, both from an ethical and a loss prevention standpoint;

3. give practice reviewers a reference document when reviewing the practice of a lawyer participating in the Practice Review Programme.

As well, amendments to the *Law Society Act* have been proposed, that will give the Law Society the power to make and enforce orders regulating professional competence. These amendments would constitute the adoption by the provincial government of the "Reform Package" of The Law Society which, *inter alia*, would bring about substantial reform in the area of Professional Standards.

A.1.3. c) Complaints/Errors & Omissions Data

Criminal Law: 4% of complaints, 1986-1992
(980 in total; cf. 22,330 against the profession as a whole)

E&O claims - no specific statistical data
(included in claims category "Other", which is 2.5% of all E&O claims)

Family Law: 17% of complaints, 1986-1992
4% of E&O claims

Refugee/
Immigration Law: complaints - no specific statistical data
(included in category "Other", which is 17% of all complaints)

E&O claims - no specific statistical data
(included in claims category "Other", 2.5% of all E&O claims)

A.1.4. d) Other Considerations

i) Criminal Law

It is anticipated that the Martin Report will recommend more formal pre-trial procedures, whereby experienced judges, knowledgeable Crown attorneys and informed, instructed defence counsel will meet to review, narrow and, where possible, resolve, the issues in a criminal matter, so that trials will be held only where a consensual disposition is not possible. Courtrooms and judges will be made available so that guilty pleas can be dealt with forthwith. Work is presently underway in developing a Draft Protocol with respect to the implementation of the Martin Report in two targeted areas; Toronto and Central East Region. The Professional Standards and Legal Aid Committees are cooperating in the development of Draft Protocol.

ii) Family Law

In the spring of 1992, the Attorney General announced that legal aid offices staffed by salaried lawyers would be established to deal with family, youth and refugee matters. The Law Society expressed concern that this initiative could lead to a two-tier system of justice, and compromise the interests of legal aid clients, particularly women. Because access to services in some areas poses a problem in family law, the Law Society agreed to co-operate in the development of a limited number of family law pilot projects. Continued involvement by the Society will depend upon an assessment of the effectiveness of the pilot projects.

iii) Immigration/Refugee Law

In the immigration law field, recent legislative change may reduce the demand on Legal Aid in this area of law by 40% to 60%. The Law Society has been invited to discuss with the Ministry of the Attorney General the feasibility of pilot project staff models in immigration/refugee law; Convocation has decided to defer such discussion until after the legislation has been in place for sufficient time to permit determination of the actual impact of the legislation on the funding requirements of the Legal Aid Plan.

A.1.5. The Target Audience for Standards

The standards that are developed will presumably be used to measure the level of competence displayed by a lawyer in providing services. It is therefore necessary to define the term "competence". The following are possible definitions, which are not mutually exclusive:

- i) Deliberate Incompetence - lawyers who knowingly structure a practice in such a way that a consistently unacceptable standard of service is provided (e.g. high volume/low fee practices in such areas as criminal law).
- ii) The Under-Resourced Practice - lawyers who lack the office systems and staff support needed to provide an adequate level of service.
- iii) The Incompetent Practice - lawyers who lack the advocacy skills and substantive legal knowledge required to provide competent services.

A definition of competence or incompetence which captures all three examples would embrace not only lawyers who lack the qualities of a capable practitioner but also lawyers whose deficiencies may be attributable to financial problems and lawyers who have made a conscious business decision to provide substandard services. These issues are particularly relevant to a review of rule 2, which the Committee has been requested to undertake.

A.1.6. Definition of Standards

There are at least four methods of approaching the definition:

1. A canon of ethical principles: relatively broad guidelines, similar to the present Rules of Professional Conduct.

2. A "practice manual": this approach has been followed to date, in developing checklists.
3. A code of competence: giving the Law Society and its agents the means by which to enforce minimum ethical, procedural and substantive standards.
4. Competency regulations: specific to lawyers seeking admission to and retention on legal aid panels.

A.1.7. a) Option #1 - Canon of Ethical Principles

As with the present Rules of Professional Conduct, this option would set relatively broad guidelines for the profession, violation of which could form the basis of disciplinary action. In essence the canon would be a set of moral indicators, with little or no impact on civil liability. The costs of implementing this proposal would be marginal, consisting primarily of drafting the principles, disseminating them to the profession, and auditing members' conduct in response to complaints of violation, as is presently done.

A.1.8. b) Option #2 - Practice Manual

This option, geared towards particular areas of practice, involves setting out a series of steps to be taken and issues to be considered in each area of law. Again it provides guidelines rather than enforceable standards, and as in option #1 would result in little civil liability and negligible financial outlay.

A.1.9. c) Option #3 - Code of Competence

A code of competence would provide enforceable standards of conduct, rather than mere guidelines. Of the four possible options, it is the most comprehensive and far-reaching. By drafting such a Code, the Law Society would be indicating to the profession in very specific terms the nature and quality of representation the profession is expected to deliver to the public, thus establishing a benchmark against which an individual member's services could be measured, in civil negligence suits or discipline proceedings. This approach would require the establishment of enforcement mechanisms, including educational programs to remedy substandard conduct, monitoring and reporting of such conduct, peer reviews, and prosecution for violations of the code. The financial impact on the Society would be significant, both with respect to the development of the code, the education of the profession and the development and maintenance of enforcement mechanisms. It is likely that this option would require an initial financial commitment in excess of \$500,000 and an on-going commitment of at least that amount annually, for monitoring and enforcement of compliance with the code. It would have an impact on a number of branches of the Law Society, including Complaints, Discipline, Standards and Legal Education.

A.1.10 d) Option #4 - Competency Regulations

Regulations could be drafted that would give the Legal Aid Committee criteria by which to evaluate the competence of and, if necessary, reject the application of, members seeking admission to the legal aid panels. A procedure similar to that used to vet potential articling principals, Bar Admission Course instructors, applicants for specialist designation, and the like, could be followed:

- a member submits a formal application for admission to a legal aid panel or to act as duty counsel;
- the member's name is vetted through various departments of the Law Society, including Discipline, Complaints, Errors & Omissions, Audit and Standards;
- the member's application would be rejected in the following circumstances:
 - i) if the member has received in excess of a pre-determined number of complaints;
 - ii) if the member has made in excess of a pre-determined number of E&O claims;
 - iii) if the member is in discipline;
 - iv) if the member is participating in the Practice Review Programme;
 - v) in such other circumstances as may be appropriate.
- either all members would be requested to make formal application, in order that the vetting process can be applied across the board, or some form of "grandfathering" could occur
- the process would be repeated on a regular basis e.g. yearly

This option would not impose civil liability on members. Some expense would arise because of the necessity of drafting regulations and forms, and as a result of meetings of the sub-committee, but the vetting mechanisms are already in place.

A.1.11. Requirements - Competence Standards

In examining the question of competence, the following issues should be addressed:

1. The definition of incompetence: the existing Rule 2 is the starting point for discussion and is being reviewed by the Committee as a working group. Is it adequate for the purpose?
2. What is the intended purpose of the proposed standards:
 - i) guidance only?
 - ii) profession-wide enforcement mechanism?
 - iii) governing admission to Legal Aid panels?

Should the standards be narrowly defined, or broadly, to achieve this purpose?

3. What is the financial impact of setting "standards", including the feasibility of monitoring and enforcing compliance with same?
4. How should the interests of the Law Society and the Legal Aid Plan be addressed, with respect to the following issues:
 - i) monitoring and compliance procedures;
 - ii) continued membership on legal aid panels;
 - iii) role of the Area Director and the Area Committee in any compliance procedure?

A.1.12. Comment

The initiatives undertaken by the Professional Standards Committee to date have been aimed at assisting members in improving the quality and level of service being delivered to the public. The checklist approach was used in part to avoid the possibility that the profession, the courts and the public would view the Committee's endeavours in this regard as establishing a mandatory standard of service. For that reason, there are disclaimers in the existing checklists which provide that the checklists are general in nature and should not be viewed as a comprehensive instruction manual.

A.1.13. Recommendations

The Committee therefore recommends the following:

1. That the Legal Aid Committee consider drafting competency regulations, as set out in option #4 above, establishing the basis on which a member's admission to or retention on a Legal Aid Panel would be denied, focusing particularly upon that member's complaints, claims, audit, discipline and standards history;
2. That the Legal Aid Committee consider instituting a procedure whereby the names of applicants for duty counsel or legal aid panels would be vetted through the various departments of the Law Society, including Discipline, Complaints, Errors & Omissions, Audit and Professional Standards, so as to gather information as to whether a member violates the competency regulations as proposed in option #4 above;
3. That the Professional Standards Committee, in its capacity as a working group reviewing Rule 2 of the Rules of Professional Conduct, define competence in terms of a general standard of acceptable practice, taking into consideration the legislative amendments proposed with respect to professional standards as a result of the Reform Implementation Committee's report. The Committee decided that it was neither necessary nor financially viable to develop codes of standards for specific areas of law; in particular, the Committee was of the view that if it were advisable that specific areas of law be targeted, the first priority would be Real Estate which generates the greatest impact on Errors and Omissions claims.

4. That the Professional Standards Committee undertake this initiative as part of its mandate in reviewing Rule 2 of the Rules of Professional Conduct.

Note: Item deferred

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

- A.2.1 In response to an invitation from Marc Somerville, Chair of the Special Committee to Review the Rules of Professional Conduct, the Committee at its February meeting decided to strike the Committee as a whole as a Working Group to review the adequacy of Rule 2 (Competence and Quality of Service). The review of Rule 2 encompasses the issues raised in item #1 of this Report with respect to competence standards. The Committee has agreed to meet within the next 30 days to begin the review process, in order to submit a preliminary report by April 30, 1993, as requested.

Note: Item deferred

B.
ADMINISTRATION

B.1. CLOSURE OF FILE AND REINSTATEMENT ON THE LAWYER REFERRAL SERVICE

- B.1.1. The solicitor practises in association with another lawyer, both of whom were authorized for participation in the Practice Review Programme in March 1992. At the time of authorization there were a total of 13 claims and 18 complaints against the solicitors.
- B.1.2. As is the Committee's policy in such circumstances, the Lawyer Referral Service was informed of the authorization and the solicitors' names were removed from the Service pending successful completion of the Practice Review Programme.
- B.1.3. The solicitors have requested that the Committee approve the closing of their file in a fashion that will restore their names to the Lawyer Referral Service roster. Committee policy provides that, if a member withdraws from the Programme without successfully completing same, that member's name will continue to remain off the roster for another year, while the member's complaints and claims continue to be monitored. If the member receives no additional complaints or claims, the member's name will be restored to the roster. If further complaints or claims are received, the member will be brought back to the attention of the Committee, to determine whether the name should continue to be removed from the roster.
- B.1.4. The solicitors have further asked, presumably in the alternative, that their names be restored to the Lawyer Referral Service roster even if the file is not closed on the basis of successful completion of the Programme. The solicitors argue that their participation in the Lawyer Referral Service is a right or a privilege and that this right or privilege was suspended "without a hearing, without the opportunity to make submissions, and contrary to the rules of natural justice".

B.1.5. The Committee recommended that the solicitors be advised that participation in the Lawyer Referral Service is not a right or a privilege, suspension of which requires the application of the rules of natural justice. In the event that the solicitors wish to address the issue further, the Committee recommends that the solicitors be requested to prepare a written submission to the Committee on this issue.

B.1.6. The Committee deferred consideration of the lawyers' request that their file be closed until the Committee is in receipt of the lawyers' written response, if any.

B.2. PRACTICE REVIEW PROGRAMME - FILE CLOSURES

B.2.1. Two Practice Review files were closed by the Committee on the basis of the members' successful completion of the Practice Review Programme. The first solicitor was authorized for participation in the Programme in September 1989 because of his lengthy complaints records. The solicitor implemented the recommendations made in the course of the Program. There have been no complaints made against the solicitor since May 1992 and no claims since February 1992. The second solicitor was authorized for participation in December 1989 as a result of an undertaking given in discipline proceedings. He has not had any complaints since May 1991 and has had one claim since March 1990, liability for which is rated as doubtful. It appears that both members have improved the quality of their practices and have benefitted from the Practice Review Programme.

C.
INFORMATION

C.1. FAMILY LAW CHECKLIST

C.1.1. A final draft of the Family Law Checklist was distributed to the Committee members at the February meeting for their review with a view to its approval at the March Committee meeting. This item was deferred to the April Committee meeting.

C.2. CIVIL LITIGATION CHECKLIST

C.2.1 Discussion of this item was deferred to the April Committee meeting at which time Mr. Manes will address the Committee.

C.3. WILLS AND ESTATES CHECKLIST

C.3.1. Discussion of this item was deferred to the April Committee meeting at which time Mrs. Weaver will address the Committee.

C.4. REPRESENTATIVE FROM THE ERRORS AND OMISSIONS DEPARTMENT

C.4.1. Jerzy Adamowicz, Claims Examiner, is now representing the Errors and Omissions Department at meetings of the Professional Standards Committee.

C.5. PROFESSIONAL STANDARDS DEPARTMENTAL REPORT

- C.5.1. There are 109 lawyers currently participating in the Practice Review Programme. A letter containing the review panel schedule was sent to all Benchers in February, requesting their participation in same. The response received to date has been encouraging and review panels are now being scheduled on a regular basis.
- C.5.2. Investigations are underway in preparation for seeking authorization for discipline action against members with particularly egregious complaints or errors & omissions histories, who have been invited to participate in the Practice Review Programme but have either declined to do so or been unwilling to co-operate with the Programme.
- C.5.3. The Errors & Omissions Department is in the process of preparing a videotape on loss prevention for distribution to members of the profession. Staff participated in same, discussing common problems that occur in law practices, as encountered through the Practice Review Programme.
- C.5.4. The Requalification Sub-Committee met on three occasions in February, as a result of which a draft policy has been agreed upon and is in the process of being written. The draft will be distributed to interested organizations and those members of the profession who contacted the Law Society regarding this issue, and a proposal formulated that takes into consideration the responses received. It is anticipated that a preliminary report will be made to Convocation in April, 1993, and the final report completed for consideration by Convocation in May, 1993.
- C.5.5. The Clinic Funding Office of the Ontario Legal Aid Plan recently held a two-day management training programme for Directors of Community Legal Clinics. Staff were invited to address participants on the topic "What You Should Know about Competency Standards"; the various initiatives of the Professional Standards Committee were discussed, as was the applicability of the Practice Review Programme to the Clinic environment.

C.6. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.6.1. The Service has been involved in various inter-departmental matters, notably work with the Audit and Investigation Department on the new mortgage reporting forms. This work is on-going as the department tries to respond to concerns of the Compensation Fund committee and the membership.
- C.6.2. Seneca College of Applied Arts and Technology is planning the implementation of a two-year course for post-graduates as law office managers and has asked the department for assistance.

26th March, 1993

C.6.3. The Service is responding to calls from lawyers regarding real estate fee undercutting and whether this affects quality of service.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"C. McKinnon"
Chair

Item A-A.1. re: Joint Committees of Legal Aid and Professional Standards and Item A-A.2. re: Special Committee to Review the Rules of Professional Conduct were deferred to the April Convocation.

THE REPORT WITH THE EXCEPTION OF ITEMS A-A.1. & A.2. WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of March 11, 1993

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of March, 1993, at 8:00 a.m, the following members being present: L. Brennan (in the chair), S. Elliott, A. Feinstein, J. Herbert, the Hon. A. Lawrence, F. Mohideen.

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

A.
POLICY

No matters to report.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. NON-BENCHER REPRESENTATION ON LAW SOCIETY COMMITTEES

C.1.1. Your Committee received an Interim Report from its Subcommittee on Non-Bencher Representation on Law Society Committees.

26th March, 1993

- C.1.2. The Interim Report raised a number of issues flowing from the proposition (recommended by the Subcommittee) that non-bencher members should continue to serve on Standing Committees of Convocation. The issues were discussed at length by your Committee.
- C.1.3. In its April 1993 report, your Committee expects to forward to Convocation a final report from the Subcommittee. Among other matters, the final report will make recommendations concerning:
- a statement of purpose relating to non-bencher membership of Law Society committees;
 - an application package for non-benchers interested in serving on committees;
 - a procedure for selecting non-bencher members to serve on committees;
 - criteria to be followed in selecting non-benchers to serve on committees;
 - the term of appointment;
 - an information package for non-bencher members of committees;
 - the financial impact of the proposals.

C.2. REPORT OF THE DISPUTE RESOLUTION SUBCOMMITTEE: IMPLEMENTATION

- C.2.1. At its meeting on February 26, 1993, Convocation adopted the report of the Dispute Resolution Subcommittee.
- C.2.2. Your Committee discussed ways of implementing the recommendations of the report. It was decided that there was a need to appoint a group (perhaps a subcommittee, perhaps a bencher and a staff member) to take responsibility for implementation.
- C.2.3. In a future report to Convocation, your Committee will deal further with the nature and composition of the implementation group.

C.3. STRATEGIC PLANNING CONFERENCE: CONCLUSIONS AND RECOMMENDATIONS

- C.3.1. The Group Facilitators from the September 1992 Strategic Planning Conference are preparing a report of the conclusions and recommendations. The report will be discussed by your Committee at its April meeting with a view to its presentation to Convocation on April 23, 1993.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March, 1993

"T. Bastedo"
Chair

THE REPORT WAS ADOPTED

26th March, 1993

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of March 11, 1993

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 11th of March, 1993 at 10:30 a.m., the following members were present: N. Finkelstein (Acting Chair), N. Graham and M. Weaver. Also in attendance were: A. John and J. West.

B.
ADMINISTRATION

1. COMPLAINTS/INVESTIGATIONS

Two further investigations were authorized. There were no further prosecutions.

2. PARALEGAL PROGRAM AT SENECA

At the February 1992 meeting, the Unauthorized Practice Committee discussed the proposed curriculum for paralegal training at Seneca College. After subsequent discussions with the Treasurer, Under-Treasurer and Secretary, a letter was prepared for delivery to the College supporting the principle that the public must be protected from the provision of inadequate legal services by persons unauthorized to practise law. As well, the letter has expressed support for the establishment of a Tri-Partite Committee referred to in the Report of the Special Committee on Paralegals approved by Convocation in June 1992. It was intended that the Tri-Partite Committee, composed of representatives of the Law Society, the Attorney General's Department and independent paralegals, would examine those legal tasks appropriate as permissible areas of practice for unsupervised paralegals, and would establish restrictions or conditions with respect to such tasks. The letter concludes that until the Tri-Partite Committee establishes the scope of paralegal practice, no meaningful comment can be expressed about the proposed curriculum except with respect to those activities already permitted by statute.

3. PROPOSAL FOR DEALING WITH HYBRID OFFENCES

The Law Society has been notified that paralegals routinely represent persons accused of impaired driving. Such "hybrid" offences are deemed to be indictable unless and until the Crown elects to proceed summarily.

Staff in the Unauthorized Practice Department have discussed with one group of paralegals the need to balance the right of the accused to choose their own representative with the need to receive adequate legal representation. The Department has also discussed the issue with a Senior Crown Attorney in Toronto and is considering the adoption of a policy along with the following lines:

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In all cases of hybrid offences, the paralegal should immediately advise the accused:

- (i) that he/she cannot accept an unconditional retainer;
- (ii) that he/she will not act for the accused until the Crown elects to proceed summarily;
- (iii) that he/she will accept a retainer limited to determining how the Crown will make its election;
- (iv) that he/she will endeavour promptly to determine, how the Crown makes its election before any further step is taken; and
- (v) if the Crown elects to proceed by way of indictment and the client is not proposing to appear in person, the paralegals will advise the client that he or she must seek the services of a qualified barrister and solicitor of their choice.

Your Committee will discuss the matter further at its meeting in April 1993.

4. CURRENT PROSECUTIONS

For your information, attached hereto is a list of current prosecutions.

ALL OF WHICH is respectfully submitted

DATED the 26th day of March, 1993

"D. O'Connor"
Chair

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

B-Item 4 List of current prosecutions.

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of March 11, 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 11th of March 1993 at 11:30 a.m., the following members being present: S. Elliott (Chair), S. Goudge, J. Lax, F. Mohideen and J. Monaghan.

Also present: C. Ateah, J. Herbert, M. Bode, G. Zecchini and S. Hodgett.

A.
POLICY

A.1. REPORT OF THE JOINT SUB-COMMITTEE ON SEXUAL HARASSMENT

A.1.1. Your Committee had before the Report of the Joint Sub-Committee on Sexual Harassment. This Sub-Committee is made up of representatives of the Discipline Policy Committee, the Legal Education Committee and the Women in the Legal Profession Committee. The Report is found as an Attachment to the Report of the Discipline Policy Committee.

A.1.2. Ms. J. Lax presented the Report to the Committee. After discussion, the Committee concluded that the Report is an appropriate response to this difficult issue.

A.1.3. Your Committee recommends that the Report be adopted.

Note: Item deferred

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. REINSTATEMENT FEE

C.1.1. Your Committee discussed the issue of reinstatement fees for members who have become suspended for administrative reasons. The Chair sought the advice of the Committee, so that she could make the views of the Committee known to the Finance and Administration Committee. The background to this issue follows.

C.1.2. In its Report to Convocation on February 26, 1993, the Discipline Policy Committee recommended to Convocation that a reinstatement fee be instituted as follows:

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

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

Accompanying this recommendation was a recommendation that the Director of Finance have the discretion to waive the fee in cases of hardship.

- C.1.3. In addition to the recommendations in C.1.2, the Discipline Policy Committee made the following statement in its Report:

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

- C.1.4. At Convocation on February 26, the recommendations of the Discipline Policy Committee were referred to the Finance and Administration Committee for consideration.

- C.1.5. The present practice is that no fee is charged for reinstatement following suspension. The Finance and Administration Committee in its January Report to Convocation had already approved in principle the imposition of a reinstatement fee for suspended members. The only thing to be determined was the amount of the fee. The Director of Finance in consultation with senior staff has made the following recommendation to the Finance and Administration Committee:

- (a) A reinstatement fee of \$150 should be instituted.
- (b) The Director of Finance should have the discretion to waive the reinstatement fee in cases of hardship. The correspondence notifying the member of the suspension should include a reference to this discretion.

- C.1.6. The issue of the Law Society's fee structure and parental leaves was considered by the Women in the Legal Profession Committee in March 1992. A recommendation was made to the Finance and Administration Committee that members be permitted exemption from the membership fee for up to six months while on parental leave. This recommendation was subsequently rejected by the Finance and Administration Committee, which recommended a 25% fee for members who take parental leave. The 25% fee was accepted at Convocation and implemented.

- C.1.7. The Women in the Legal Profession Committee discussed the institution of a reinstatement fee and its possible impacts on members who have allowed themselves to become suspended during parental leaves. Concern was expressed that many members may not yet be aware of the availability of the 25% fee for periods of parental leave and so would be affected by a reinstatement fee.

- C.1.8. The Committee requested that the Chair take the following position at the meeting of the Finance and Administration Committee:

The Women in the Legal Profession Committee supports the institution of a reinstatement fee of \$150 on the condition that the availability of the 25% fee rate during parental leave be well publicized, in particular a statement about the parental leave policy should be included in mailings to the profession concerning the fee changes proposed.

26th March, 1993

C.2. DRAFT SEXUAL HARASSMENT QUESTIONNAIRE

C.2.1. In January 1992, Convocation adopted *A Recommended Personnel Policy Regarding Employment-Related Sexual Harassment*. The policy was distributed to all law firms in Ontario. The Law Society has continued to receive requests for the policy from members of the profession. In its November report to Convocation, the Committee outlined plans for a review of the policy by circulating a questionnaire to law firms in Ontario to measure the policy's success.

C.2.2. The Committee considered and commented upon a draft questionnaire prepared by the staff. This questionnaire will be revised and approved by the Committee at its next meeting.

ALL OF WHICH is respectfully submitted

DATED this 26th day of March 1993

"S. Elliott"
Chair

Item A-A.1. re: Report of the Joint Sub-Committee on Sexual Harassment was deferred to the April Convocation.

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

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MOTION

It was moved by Ross Murray, seconded by Netty Graham THAT Denise Bellamy, Allan Lawrence and Don Lamont be added as members to the County and District Liaison Committee.

Carried

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CONVOCATION ROSE AT 12:30 NOON

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Confirmed in Convocation this day of , 1993.

Treasurer