

MINUTES OF CONVOCATION

Friday, 24th February, 1995  
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Arnup, Bastedo, Blue, Brennan, Campbell, Carey, Carter, R. Cass, Copeland, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Goudge, Graham, Howie, Kemp-Welch, Kiteley, Lamont, Lawrence, Lax, Legge, Moliner, Murphy, Murray, S. O'Connor, Palmer, Peters, Richardson, Ruby, Scace, Scott, Sealy, Somerville, Strosberg, Thom, Wardlaw, Weaver and Yachetti.

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The reporter was sworn.

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IN PUBLIC

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AGENDA - Committee Reports to be taken as read (except those Items requiring separate debate and approval by Convocation)

It was moved by Ms. Graham, seconded by Ms. Palmer THAT the Reports listed in paragraph 3 of the Agenda (Reports to be taken as read) be adopted.

Carried

Admissions and Membership (2 Reports)  
Board of Lawyers Professional Indemnity Company  
Clinic Funding  
Discipline Policy  
Draft Minutes - January 1995  
Equity in Legal Education and Practice  
Finance and Administration  
Investment  
Legal Aid  
Legal Education  
Legislation and Rules (2 Reports)  
Libraries and Reporting  
Professional Conduct  
Professional Standards  
Reasons - Ross Hainsworth  
Research and Planning  
Specialist Certification Board  
Women in the Legal Profession

COMMITTEE REPORTS

ADMISSIONS AND MEMBERSHIP COMMITTEE

Meeting of February 8 and 23, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 8th of February, 1995 at 9:30 a.m., the following members being present: Mr. Campbell (Chair), Mr. Lamont (V. Chair), Mrs. Weaver, Ms. Moliner and Messrs. Farquharson, Howie and Murphy.

Also present: M. Angevine and P. Gyulay

B.  
ADMINISTRATION

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

B.1.1.      The following candidates have met all the requirements to proceed by way of transfer under section 4(1) of Regulation 708 made under the Law Society Act:

Barbara Noreen Locke Geier	Province of Alberta
Brenda Matte	Province of Manitoba
Barbara Anne Mercier	Province of Alberta

Approved

B.2.        DIRECT TRANSFER - QUEBEC - SECTION 4(2)

B.2.1.      The following candidates have met all the requirements to proceed by way of transfer under section 4(2) of Regulation 708 made under the Law Society Act:

Elisabeth Colson  
Andre Touchette

Approved

B.3.        PETITION FOR PERMISSION TO SIT TRANSFER EXAMINATION ON UNDERSTANDING MUST COMPLETE THREE YEAR REQUIREMENT

B.3.1.      A petition was before the Committee from a member of the Manitoba Bar who will have the requisite three years of practice, for the purpose of transfer, by the end of June 1995. The petitioner asked permission to sit the transfer examination in May 1995 when she would be short the three years by 1-1/2 months.

Your Committee recommends that she be granted permission to proceed with the examination in May 1995 on the understanding that she must complete the requisite three years in practice before being eligible for call.

B.4. PETITION OF CANDIDATE WHO ATTENDED PHASE THREE

- B.4.1. A transfer candidate, who was called to the Bar in Manitoba in 1973, was granted permission to proceed under section 4(1) of Regulation 708 in May 1994. The candidate chose to take Phase Three of the Bar Admission Course in lieu of sitting the transfer examination. The candidate passed in all areas of Phase Three with the exception of Criminal Law. He stated that had he chosen to sit the transfer examination instead of taking Phase Three, he would not have been examined on Criminal Law. The candidate requested either a waiver of the Criminal Law requirement with permission to be called or a call to the Bar on a restricted basis. His letters of January 26th and February 2nd, 1995, were before the Committee for consideration.

After considering the material before it, your Committee is of the view that, having chosen to complete Phase Three of the Bar Admission Course in lieu of sitting the transfer examination, the candidate is subject to the rules of Phase Three respecting failure of examinations, supplementals and possible repetition of Phase Three in its entirety. Your Committee recommends, therefore, that the candidate must successfully complete Phase Three before being eligible for call to the Ontario Bar.

B.5. EXAMINATION RESULTS - TRANSFER EXAMINATION

- B.5.1. The following candidates have completed successfully the January 1995 transfer examination:

Elisabeth Jane Eid	Province of Quebec
Juan Carlos Martinez	Province of Saskatchewan
Michael Warren McCandless	Province of Manitoba
Nathalie Mercure	Province of Quebec
Sylvie Eva Roussel	Province of Quebec
Pascale-Sonia Roy	Province of Manitoba
Keith Douglas Wilson	Province of Quebec

Noted

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

B.6.1. Bar Admission Course

The following candidates having successfully completed the 36th Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, February 24th, 1995:

Joseph Paul Cerrone  
Carmen Lydia Diges  
Frederick John Durdan  
Brian Joseph Goldkind  
Dubravka Mandic  
Serena Lynn Rosenberg  
Julia Elizabeth Schatz  
Karen Ann Spector  
Stella Vallelunga  
Renee Denise van Kessel

Approved

24th February, 1995

- B.6.2. The following candidates expect to have successfully completed the 36th Bar Admission Course by the week of February 20th, 1994 and ask to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, February 24th, 1995:

Joseph André Bernard Caron  
Jeremiah Apollos Eastman  
Christopher George Holland  
Gary Wayne Gabriel Patterson

Your Committee recommends that these applications be approved conditional upon the candidates successfully completing the course, filing the necessary documents and paying the required fee prior to February 24th, 1995.

- B.6.3. Transfer from another Province - Section 4(1)

The following candidates having completed successfully the transfer examination, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, February 24th, 1995:

Michael Warren McCandless	Province of Manitoba
Pascale-Sonia Roy	Province of Manitoba

Approved

- B.6.4. Transfer from Quebec - Section 4(2)

The following candidates having completed successfully the transfer examination, filed the necessary documents and paid the required fee now apply for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, February 24th, 1995:

Nathalie Mercure	Province of Quebec
Sylvie Eva Roussel	Province of Quebec
Keith Douglas Wilson	Province of Quebec

Approved

- B.6.5. Full-Time Members of Faculties of Approved Law Schools

The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under section 5 of Regulation 708 on February 24th, 1995. She had filed the necessary documents and complied with the requirements of the Society:

Yolande Viau	Faculty of Law, The University of Ottawa, Common Law Section.
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Fee: \$200.00

Approved

B.7. MEMBERSHIP UNDER RULE 50

B.7.1. (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 memberships in the Society without payment of annual fees:

Donald Victor Hambling	Collingwood
William Leroy Hayhurst	Toronto
*Gordon Hodges McConnell	Kitchener
Elmer Lorne Moore	Waterloo
*Walter John Rapson	Toronto
Richard Rosslyn Walker	Lansdowne

\* See also Membership Restored

Approved

B.8. RESIGNATION - REGULATION 12

B.8.1. The following members have applied for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. These members have requested that they be relieved of publication in the Ontario Reports.

- (a) Patricia Ellen McLachlan of Nepean, was called to the Bar on April 16, 1980. Upon her call, she practised Ontario law for a six-month period. She did not handle trust funds or other clients' property. She is not aware of any claims made against her. She is resigning her membership as she does not intend to practise law in Ontario or elsewhere. The second instalment of the 1994/95 annual fees is owing. Her annual filings are up to date.
- (b) Glennor Arlene Pitters-Fisher of Richmond Hill, was called to the Bar on March 31, 1989. She declares that she has not engaged in the practice of law since September 1990. When she terminated her practice, arrangements were made to the clients' satisfaction. She is resigning her membership due to the fact that she has not practised law for over four years, and has no plans to practise in the future. She has not handled trust funds or clients' property. She is not aware of any claims made against her. The 1994/95 annual fees are owing. Her annual filings are up to date.
- (c) Richard Frederick Double of Vancouver British Columbia, was called to the Bar on March 20, 1991. He declares that he is currently practising law in British Columbia. He previously practised in association with the firm Artindale & Partner. All legal business performed was documented in the books, records and accounts of the firm. He did not maintain a separate trust account or otherwise handle clients' property

24th February, 1995

other than as a member of the firm. He left the firm in May 1994, and any matters ongoing have been taken over by other lawyers of the firm. He is not aware of any claims made against him. The Errors and Omissions Insurance 1994 Supplementary levy is owing, as well as the second instalment of the 1994/95 annual fees. His annual filings are up to date.

- (d) Shereen Hinda Benzvy Miller of Potomoc Maryland, USA, was called to the Bar on April 11, 1986. She states in her affidavit that she has not practised law since 1988. At that time, all matters concerning clients were disposed of or completed to the clients' satisfaction. She has never been responsible for client trust funds or clients' property. She is not aware of any claims made against her. The 1994/95 annual fees are owing. Her annual filings are up to date.

Approved

C.  
INFORMATION

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C.1. CHANGES OF NAME

C.1.1.	<u>From</u>	<u>To</u>
	George <u>Ahtipis</u>	George <u>Atis</u> (Change of Name Certificate)
	Simma Cynthia <u>Rosenbaum</u>	Simma Cynthia <u>Sidlofsky</u> (Marriage Certificate)

Noted

C.2. MEMBERSHIP RESTORED

- C.2.1. The following members gave notice under section 31 of The Law Society Act that they ceased to hold judicial offices and wish to be restored to the Rolls of the Law Society.

Effective date:

* Gordon Hodges McConnell (Provincial Court)	December 31, 1994
* Walter John Rapson (Ontario Court of Justice General Division)	July 31, 1994

\* See also Membership under Rule 50

Noted

24th February, 1995

C.3. ROLLS AND RECORDS

C.3.1. (a) Deaths

The following members have died:

John Thomas Burnett  
Niagara Falls

Called June 26, 1958  
Died July 17, 1994

Jeffrey Arthur Wright  
Guelph, ON

Called April 6, 1979  
Died November 2, 1994

Gerard Joseph Cecil van Berkel  
Ottawa

Called September 16, 1960  
Died January 5, 1995

Noted

C.3.2. (b) Permission to Resign

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

Stephen Lorne McDonald  
Sudbury

Called March 29, 1977  
Permitted to Resign - Convocation  
January 26, 1995

Noted

C.3.3. (c) Disbarments

The following members have been disbarred and struck off the rolls and their names have been removed from the rolls and records of the Society:

David Jean Royer  
Cornwall

Called April 9, 1979  
Disbarred - Convocation  
January 26, 1995

Dragan Vujic  
Toronto

Called April 15, 1985  
Disbarred - Convocation  
January 26, 1995

Brian David Woodley  
Toronto

Called April 10, 1986  
Disbarred - Convocation  
January 26, 1995

Noted

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

C. Campbell  
Chair

24th February, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Thursday, the 23rd of February, 1995 at 3:00 p.m., the following members being present: Mr. Campbell (Chair), Mr. Lamont (V. Chair), Mrs. Weaver, Ms. Moliner and Messrs. Howie and Murphy.

Also present: M. Angevine and P. Gyulay

B.  
ADMINISTRATION

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

B.1.1. Bar Admission Course

The following candidate having successfully completed the 36th Bar Admission Course now has filed the necessary documents and paid the required fee and applies to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, February 24th, 1995:

David Ari Hutman

Approved

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

C. Campbell  
Chair

THE REPORTS WERE ADOPTED

CLINIC FUNDING

Meeting of February 8, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CLINIC FUNDING COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 8th of February, 1995. Present were Joan Lax, Chair, Ian Blue, Gordon Wolfe, Pamela Mountenay-Giffin, Mark Leach. Also present: Joana Kuras, Clinic Funding Manager.



A.  
POLICY

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Nil

B.  
ADMINISTRATION

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B.1.        APPLICATIONS TO THE CLINIC FUNDING COMMITTEE

B.1.1.     Supplementary Legal Disbursements

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements from the following clinics:

Brampton Community Legal Services - up to \$3,000  
Clinique juridique populaire de Prescott et Russell - up to \$5,000  
Community Legal Services (Ottawa-Carleton) - up to \$5,000  
Industrial Accident Victims Group of Ontario - up to \$5,000  
Peterborough Community Legal Centre - up to \$5,000  
Rexdale Community Legal Clinic - up to \$5,000  
Scarborough Community Legal Services - up to \$3,500  
Simcoe Legal Services Clinic - up to \$5,000  
Waterloo Region Community Legal Services - up to \$5,000

B.1.2.     Court costs

Pursuant to s. 10 of the Regulation on clinic funding, the Clinic Funding Committee has approved an application for the payment of court costs from the following clinics:

Neighbourhood Legal Services - up to \$160  
Parkdale Community Legal Services - up to \$250

C.  
INFORMATION

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The Clinic Funding Committee met with members of the Metropolitan Toronto Association of Legal Clinics on January 10, 1995 to discuss issues of concern.

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

J. Lax  
Chair

THE REPORT WAS ADOPTED

24th February, 1995

DISCIPLINE POLICY COMMITTEE

Meeting of February 8, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE POLICY COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 8th of February, 1995 at 1:30 in the afternoon, the following members being present:

D. Scott (Chair), D. Bellamy (Vice-Chair), D. O'Connor (Vice-Chair), R. Carter, C. Curtis, N. Graham, K. Howie, D. McPhadden, M. Moliner, and M. Weaver were present.

M. Brown, J. Yakimovich, S. Kerr, G. Macri and J. Brooks also attended.

A.  
POLICY

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A.1. Amendment to Regulation 708, Section 14(1) of the Law Society Act

A.1.1. Bill 134, an Act to revise the Credit Unions and Caisses Populaires Act and to amend certain other Acts relating to financial services, provides that s. 57(1) of the Law Society Act be amended to provide that a Credit Union/Caisses Populaires be an approved repository for client trust money.

A.1.2. As amended, section 57(1) will read as follows (underlining indicates the new wording):

57.-(1) Every member who holds money in trust for or on account of more than one client in one fund shall hold the money in account at a bank listed in Schedule I or II to the Bank Act (Canada), provincial savings office, credit union or a league to which the Credit Unions and Caisses Populaires Act, 1994 applies or registered trust corporation, bearing interest at a rate approved by the trustees.

A.1.3. No provision has been made for an amendment to Regulation 708 of the Law Society Act in this regard. Subsection 14 (1) of Regulation 708 currently reads:

14.-(1) Every member who receives money in trust for a client, except money hereinafter expressly exempted from the application of this section, shall forthwith pay the money into an account at a chartered bank, provincial savings office or registered trust corporation to be kept in the name of the member or in the name of the firm of which he or she is a member or by which he or she is employed and designated as a trust account.

- A.1.4. In view of the amendment to be made to the Law Society Act in regard to trust accounts, the Committee considered whether a similar amendment, as follows, to the Regulation is appropriate (underlining indicates the proposed new wording):

14.-(1) Every member who receives money in trust for a client, except money hereinafter expressly exempted from the application of this section, shall forthwith pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the Credit Unions and Caisses Populaires Act, 1994, applies, or registered trust corporation to be kept in the name of the member or in the name of the firm of which he or she is a member or by which he or she is employed and designated as a trust account.

- A.1.5. Your Committee recommends that the proposed amendment to s. 14 (1) of Regulation 708 be adopted.

B.  
ADMINISTRATION

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B.1. Joint Submissions of Counsel

- B.1.1. The Committee was asked to consider the manner in which the joint submissions of counsel are currently treated by Discipline Panels, in light of the principles adopted by Convocation on March 27, 1992 in respect of joint submissions.

- B.1.2. On March 27, 1992, Convocation adopted the recommendations of this Committee which provided, *inter alia*,

"5(a) Convocation encourages benchers sitting on discipline committees to accept a joint submission except where the committee concludes that the joint submission is outside a range of penalties that is reasonable in the circumstances.

"5(b) If the Committee, after hearing and considering submissions of counsel, does not accept the joint submission as to a particular penalty or as to the shared submission as to a range of penalties, the Committee will be at liberty to impose the penalty that it deems proper and should give reasons for not accepting the joint submission."

- B.1.3. Some members of the Committee expressed concern that these principles are not being followed at the Committee level or at Convocation and that a lack of certainty in the process might discourage counsel from entering into Agreed Statements. The Committee noted that where, following negotiations of an Agreed Statement of Facts on the basis of a joint submission as to penalty, the proposed penalty is rejected, it might be appropriate to provide the Solicitor the option of commencing the hearing anew before another Committee.

24th February, 1995

- B.1.4. Your Committee established a Sub-Committee, chaired by Robert J. Carter, Q.C., to consider the present practice regarding joint submissions at both the Committee level and at Convocation, to consider the consequences of the practice and to report to the Committee with recommendations.
- B.2. Proposed Budgets of the Audit, Complaints and Discipline Departments
- B.2.1. Your Committee considered and approved the proposed 1995/1996 budget estimates for the Audit, Complaints and Discipline Departments.

C.  
INFORMATION

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- C.1. Rule 28 Educational Pamphlet
- C.1.1. Marie Moliner, Chair of the Equity in Education Committee, addressed the Committee with respect to the content of the Education Committee's proposed educational pamphlet dealing with general discrimination issues. The Chair advised that any comments from the members of the Committee regarding the proposed pamphlet would be forwarded to Ms. Moliner.
- C.2. Authorization of Discipline Charges
- C.2.1. Once a month, the Chair and Vice-Chairs of your Committee meet with staff to consider requests for formal disciplinary action against members.
- C.2.2. The following table provides a summary of Complaints authorized in 1995.

Total number of charges authorized to date in 1995	
January	30
TOTAL	30

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

D. Scott  
Chair

THE REPORT WAS ADOPTED

24th February, 1995

DRAFT MINUTES - January 12, 26 and 27, 1995

(Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

INVESTMENT COMMITTEE

Meeting of February 8, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 8th of February, 1995 at nine-thirty in the morning, the following member being present: Mr. Wardlaw. Staff members present were David Crack and David Carey.

R. \_\_\_\_\_  
ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee the investment report summaries for the various Law Society Funds together with supporting documentation for the month ended January 31st, 1995 (Schedule A).

Approved

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

J. Wardlaw  
Chair

THE REPORT WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of February 8, 1995

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 Wednesday, the 8th of February, 1995, the following members being present: Stephen Goudge, Chair, B. Ally, L. Brennan, M. Buist (by conference call) S. Cooney, P. Copeland, C. Curtis, D. Fox, D. Fudge, M. Fuerst, R. Lalande, A. Rady, M. Stanowski and B. Sullivan.

The following senior members of staff were present: Bob Holden (Provincial Director), George Biggar (Deputy Director - Legal), Bob Rowe (Deputy Director - Finance) and Ruth Lawson (Deputy Director - Appeals).

A.  
POLICY

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A.1            STRATEGIC PLANNING SUB-COMMITTEE

A.1.1        The Strategic Planning Sub-Committee continues to meet regularly to discuss the Plan's priorities and strategic planning. Three consultation meetings have been scheduled with judges and tribunal chairs, government representatives and lawyers groups, and representatives of user groups, to seek input as the Strategic Planning Committee begins to set goals for the Plan. The Strategic Planning Sub-Committee will report on these meetings at the May Legal Aid Committee meeting.

A.2            REPORT CONCERNING CREATION OF A TARIFF REVIEW SUB COMMITTEE

A.2.1        A Tariff Review Sub-Committee has been struck to consider whether the Plan should review the tariffs. The Sub-Committee will consider the criminal, family and refugee areas and prepare a report no later than June, 1995. The Report concerning the creation of the Tariff Review Sub-Committee is attached hereto and marked as SCHEDULE A.

B.  
ADMINISTRATION

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B.1            LEGAL AID BUDGET FOR 1995/96

B.1.1        The Legal Aid Committee discussed the Legal Aid Budget for the fiscal year 1995/96 which will be presented to Convocation in March, 1995.

B.2            STATEMENT OF INCOME AND EXPENDITURE FOR  
THE NINE MONTHS ENDED DECEMBER 31, 1994

B.2.1        The Statement of Income and Expenditure for the Nine Months Ended December 31, 1994 was presented to the Legal Aid Committee by the Deputy Director, Finance and is attached hereto as SCHEDULE B.

B.3            REPORTS ON THE PAYMENT OF SOLICITORS ACCOUNTS  
FOR THE MONTH OF JANUARY, 1995

B.3.1        The Reports on the Payment of Solicitors Accounts for the month of January, 1995 is attached hereto and marked as SCHEDULE C.

24th February, 1995

B.4        REPORTS ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS  
DEPARTMENT FOR THE MONTH OF JANUARY, 1995

B.4.1      The Reports on the Status of Reviews in the Legal Accounts  
Department for the month of January, 1995 is attached hereto and  
marked as SCHEDULE D.

B.5        AREA COMMITTEES - APPOINTMENTS AND RESIGNATIONS

APPOINTMENTS

Manitoulin and Sudbury  
Robert Beckett, solicitor

Ottawa/Carlton  
Warren L. Creates, solicitor  
Carol A. Crawford, solicitor

Peel  
High McLean, solicitor

RESIGNATIONS

Manitoulin and Sudbury  
Joseph Fragomeni

Peel  
Kenneth Harris

York Region  
Gertrude Sheridan  
Christopher Sorley

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

S. Goudge  
Chair

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

- Item A.-A.2.1 - Report concerning the Tariff Review Sub-Committee. (Schedule A)
- Item B.-B.2.1 - Statement of Income and Expenditure for the Nine Months ended December 31, 1994. (Schedule B)
- Item B.-B.3.1 - Reports on the Payment of Solicitors Accounts for month of January, 1995. (Schedule C)
- Item B.-B.4.1 - Reports on the Status of Reviews in the Legal Accounts Department for month of January, 1995. (Schedule D)

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of February 8, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE seeks leave to report:

The Committee met on Wednesday, the 8th of February, 1995, at 10:30 a.m.

The following members were in attendance: Philip Epstein (Chair), Susan Elliott (Vice-chair), Donald Lamont (Vice-chair), Colin McKinnon (Vice-chair), Lloyd Brennan, Dean Donald Carter (Queen's University), Joan Lax, Mohan Prabhu (non-Bencher member), Marc Rosenberg (non-Bencher member) and Stuart Thom. Bencher Marie Moliner also attended. The following staff were in attendance: Marilyn Bode, Deborah Brown, Brenda Duncan, Margaret McSorley, Alexandra Rookes, Sophia Sperdakos and Alan Treleaven.

A.  
POLICY

A.1 UNPLACED ARTICLING STUDENTS' SUPPORT NETWORK

A.1.1 A policy item considered by the Articling Subcommittee at its January 27, 1995 meeting was a proposal for the establishment of a support network for unplaced articling students. The Unplaced Articling Student's Support Network ("U.A.S.S.N.") would be staffed by current articling students who had difficulty in securing articling positions. The students would be available by telephone or to meet with those students entering Phase One of the Bar Admission Course who are still seeking an articling position. The main purpose would be to provide emotional support to unplaced students. This student initiative would be a complementary program to the existing Law Society Placement Services, including the mentor program for unplaced students. The U.A.S.S.N. would send notices to students registered in the Bar Admission Course. The Chair of the Articling Subcommittee would review and approve all notices prior to their being sent out to students. All students articling who might be interested in staffing the support network and all students entering Phase One who might be interested in accessing the U.A.S.S.N. would be sent the notices. A full report would be submitted by Bruce Heakes, the coordinator of the U.A.S.S.N. for 1995-96 articling students, at the end of the articling year. (Mr. Heakes is currently articling). Budget implications of the proposal for stationery, envelopes and postage are estimated at a maximum of \$300. Existing Law Society mailings to students would be utilized whenever possible to avoid or reduce postage costs. The Articling Director would cover the costs in the Articling budget. The need for and helpfulness of the network would be assessed before approving the continuation of the U.A.S.S.N. for future years.

A.1.2 Recommendation: The Legal Education Committee recommends approval of the U.A.S.S.N. proposal on a one year trial basis.



A.2 ABRIDGMENT OF ARTICLES FOR COMPASSIONATE REASONS

A.2.1 A second policy item considered by the Articling Subcommittee at its January 27, 1995 meeting was a proposal to create a new articling abridgment category. The purpose of the new abridgment category would be to enable the Articling Director, on a compassionate basis, to abridge articles in a limited way for individuals who are close to meeting the requirement of 52 weeks of articling. The maximum abridgment available to students in this category would be by one month. Those students would be required therefore to article for 11 rather than 12 months. In addition, the students could still have up to one month of vacation, subject to the approval of their articling principals.

A.2.2 Currently abridgments are possible only for lawyers from elsewhere in Canada or abroad, or for those have full time law related experience prior to law school (for example, as a legal secretary or law clerk). A copy of the current abridgment policy is found at section 14 of the Proposals for Articling Reform Report. (pages 1 - 2)

A.2.3 Examples of the types of situations that might qualify for this type of abridgment are:

- 1) students who take parental leave during the articling term,
- 2) students who are unable to article because of accident or prolonged illness,
- 3) students whose close relatives become gravely ill, and who must travel out of the province to attend to their needs,
- 4) students who work in a law office where non-management staff go on strike for a short period of time, and who are unable to attend at the office, and
- 5) students who have difficulty securing an articling position and who commence their articles a few weeks beyond the usual September 1 deadline.

A.2.4 In such situations, students who might benefit from a new abridgment category would be able to complete all but a few weeks of articles before the commencement of Phase Three in September. Currently, such students are permitted to interrupt their articling period, and if necessary split the articling period around Phase Three. This means that the students have one or more weeks of articling to complete after Phase Three. Typically, one to four weeks must be completed to fulfil the 52 week requirement. It would be helpful for the students and their articling principals to finish the articling period prior to Phase Three. The Articling Director expects that this category of abridgment would be used by no more than 10 students per year. No fee would be charged for this type of abridgment. (Other abridgment applicants are currently charged a fee of \$107.)

A.2.5 Recommendation: The Legal Education Committee recommends:

- 1) that there be permitted a maximum one month abridgment due to compassionate reasons or other reasons necessitating a leave of absence during articling for reasons beyond the student's control. In each case, the student must otherwise be unable to fulfil the 52 week articling requirement prior to the commencement of Phase Three in September.
- 2) that the Articling Director be permitted to approve applications for abridgment on this basis up to a maximum of two weeks, and that the Articling Subcommittee deal with applications for abridgments of two to four weeks.
- 3) that appeals from denials of such abridgments by the Articling Director be in writing only, and to the Articling Subcommittee. Decisions of the Articling Subcommittee on such appeals would be final.
- 4) that appeals from denials of two to four week abridgment requests by the Articling Subcommittee be in writing only, and to the Legal Education Committee. Decisions of the Legal Education Committee on such appeals would be final.

B.  
ADMINISTRATION

There are no matters to report this month.

C.  
INFORMATION

C.1 JOINT COMMITTEE ON ACCREDITATION

- C.1.1 The role and process of the Joint Committee on Accreditation ("J.C.A.") are being discussed by the Legal Education Committee.
- C.1.2 The Legal Education Committee intends to continue discussing J.C.A. related issues through a special subcommittee. Due to the busy agenda of the current Legal Education Committee, the Committee will defer its study until the Bar Admission Course Review Report and the M.C.L.E. Interim Report are completed.
- C.1.3 Following the January 12, 1995 meeting of the Legal Education Committee, Vern Krishna, in his capacity as Executive Director of the J.C.A., wrote to Alan Treleaven requesting detailed statistics relating to the performance of J.C.A. students in the Bar Admission Course. The J.C.A., as a part of its own review, would like to have detailed statistics on a case by case basis. Once all the information is organized in a systematic manner, the J.C.A. hopes to reach an informed conclusion as to how it can best balance the needs for access to the legal profession with the necessity of ensuring appropriate standards of professional competence. The J.C.A. will share its information and conclusions with the Legal Education Committee, and expects to make a detailed presentation before making any final decisions.
- C.1.4 Mr. Krishna will update the Legal Education Committee at its March 9 meeting.

C.2 MANDATORY CONTINUING LEGAL EDUCATION SUBCOMMITTEE

C.2.1 The M.C.L.E. Subcommittee held a two day meeting on January 13 and 14, 1995. On the first day members met in their individual working groups to discuss topics specific to their groups. On the second day members met in a plenary session to discuss the progress of each group, overlapping issues, and goals and direction of the Subcommittee.

C.2.2 The discussions of each working group and those of the plenary group continue to develop around identifying the indicia of competence, considering the importance of ongoing professional development, analyzing the existence of problems with the delivery of quality legal services, and considering the role that C.L.E. may have in enhancing that quality.

C.2.3 The members of the Subcommittee agree that, among the many factors that frame its discussions, there are three that provide a particular context for its work. These are as follows:

- 1) Integral to discussions about quality and competence is the recognition that the expectations of users of legal services and the society in which lawyers practise are both changing rapidly.
- 2) Quality assurance is an issue that transcends the legal profession and is being debated at many levels in society. The nature of those debates and the quality assurance steps being taken at other levels are important for the Subcommittee to consider.
- 3) In order to preserve its existence, a self-regulating profession has a particular responsibility to ensure that it is taking meaningful steps to ensure the quality of its work.

C.2.4 In the plenary session members were clear that their discussion of quality assurance goes well beyond the consideration of loss prevention techniques for "problem" lawyers. The analysis extends to considering the extent to which life long commitment to improvement and education should be fundamental to the profession's goals, and the means by which such commitment might be demonstrated.

C.2.5 In the combined meetings of the empirical evidence and content working groups, the members considered the importance of continuing with research on issues related to quality problems in the profession, the role of education in enhancing competence, and the means employed by other jurisdictions and other professions to enhance quality. To this end the members generated a detailed list of fact finding tasks, including meeting with focus groups to discuss provision of legal services, surveying the profession, and gathering statistical data.

C.2.6 At the meeting of the empirical group, Caron Wishart from L.P.I.C. provided some information on the data L.P.I.C. currently has on causes of errors and omissions. The members were also provided with preliminary statistical information from the Complaints Department on the nature of the complaints that department receives. The Practice Advisory Service has also provided data on the nature of the telephone calls it receives from practitioners seeking advice. Additional and more detailed information will be gathered from these and other departments within the Society.

- C.2.7 During its meeting, the delivery working group met with a consultant who specializes in distance learning and the use of technology for educational purposes. That meeting produced a greater awareness of the strengths and weaknesses of using different kinds of technologies for educational purposes. The group will be developing an analysis of the use to which the various technologies can best be put. In addition, members of the group will avail themselves of opportunities to see various technologies in use. The group is also investigating the better use to which the County and District library facilities can be put, and the ways in which they could be expanded to meet the needs of an M.C.L.E. audience.
- C.2.8 The delivery group also discussed ways to ensure that providers deliver programs, not just to the major centres, but to the smaller centres. It will continue to consider models for delivery and will meet with the providers working group on the issue.
- C.2.9 The providers and delivery working groups both consider it an essential part of their task to consider and provide as much information as possible on cost factors in the delivery of C.L.E. province-wide.
- C.2.10 The individual working groups will continue to develop the research on their assigned topics. The groups are increasingly aware of the overlap between their topics, and will begin having joint meetings as their research evolves. The members of the Subcommittee will hold a further two day meeting on March 3 and 4, 1995.
- C.3 ARTICLING SUBCOMMITTEE
- C.3.1 The Subcommittee met at 8:00 a.m. on January 27, 1995. In attendance were Marc Rosenberg (Chair), Ian Blue, Mohan Prabhu and Susan So. Staff members attending were Marilyn Bode and Lynn Silkauskas.
- C.3.2 The Subcommittee gave conditional approval to a further 48 applications from prospective articling principals for the 1994-95 articling term. To January, approximately 1,562 members have been approved to serve as principals for the 1994-95 articling term. One member was denied approval based on unsatisfactory participation in the Practice Review Program. Another individual of that member's firm was invited to apply to serve as an articling principal.
- C.3.3 The Subcommittee also gave conditional approval to 121 applications from prospective articling principals for the 1995-96 articling term. To January, approximately 609 members have been approved to serve as principals for the 1995-96 articling term.
- C.3.4 The Subcommittee gave special consideration to the application of one member applying for the 1994-95 articling term. The member was called to the bar in 1994 but has some previous relevant law-related experience. The application was approved on condition that the member and articling student meet with the Articling Director on a quarterly basis.
- C.3.5 The Subcommittee discussed an issue related to unpaid articling positions. The Articling Director recently met with a student who is continuing to have difficulty securing 1994-95 articles. The student had approached a mid-sized Toronto firm that currently employs two students at full salary. The members of the firm agreed to the student's request to volunteer services and commence articling, and agreed that the student could assign articles on locating a

remunerated position. One member of the firm felt this was unethical and asked the student to approach the Articling Director. The Articling Director discussed the current policy on unpaid positions (page 3) with the student, as well as the issues and recent debates on the issue at the Articling Subcommittee, the Legal Education Committee and the Annual General Meeting. The Articling Director suggested the student provide a copy of the policy to the firm and have the firm contact the Articling Director with any questions. The student asked the Articling Director to contact the firm and advise that it is not unethical to hire the student as a volunteer. The Articling Director consulted with the Chair of the Articling Subcommittee on this point. It was agreed that the Articling Director would not be proactive with the firm in creating an unpaid position for the student. The Articling Subcommittee decided that the student should be contacted again to determine whether the firm and student had reached some arrangement.

C.3.6 The Subcommittee considered articling placement issues. The Chair provided an update on the 1994-95 articling placement situation. The Placement Office is receiving very few job vacancy notices per week. A revised Notice to the Profession reminding members that highly qualified students are still seeking 1994-95 articles and that it is not too late for the students to commence articling will be placed shortly in the Ontario Reports. The updated placement statistics will be provided in writing to Convocation.

C.3.7 The Subcommittee discussed a potential waiver of tuition fees for students in unpaid articles. The Articling Director recently received a letter from a student articling on a volunteer basis with a community legal clinic for the 1994-95 articling term. The request relates to Motion 4 that was passed at the Law Society's Annual General Meeting on November 9, 1994. The wording of the Motion is as follows:

BE IT RESOLVED THAT in recognition of the contribution and sacrifices made by those students who articulated this past year for no or nominal remuneration at Community Legal Aid Clinics throughout the province, the Society waive and refund Bar Admission Course tuition fees in respect of those students.

C.3.8 The student requests that the Law Society consider waiving tuition fees for students who volunteer their time to article. The Articling Subcommittee had a preliminary discussion of the issues. It deferred a further discussion until the February meeting of the Subcommittee because many members of the Subcommittee were unable to attend the January meeting.

C.3.9 There were three information items. The first item related to corporations employing articling students. A Corporate Articling Subcommittee has been created to explore the creation of additional articling positions with corporations. The Chair of the Articling Subcommittee and the Articling Director met with Dorothy Quann, Senior Counsel of Xerox Corporation, and other senior corporate counsel on November 23, 1994 to discuss how to proceed. It was agreed that the first step would be to conduct a telephone survey of corporations that might employ articling students or employ them in greater numbers. A short survey has been developed and is underway. It is hoped that the Corporate Articling Subcommittee will meet again in late February.

- C.3.10 The second information item was an update on the Notices of Motion put forward by the Ad Hoc Committee of Unpaid and Unplaced Articling Students. The Motions were debated at the Law Society's Annual Meeting on November 9, 1994. On December 9, 1994, the Chair of the Legal Education Committee, the Chair of the Articling Subcommittee and staff met with Phase Three student representatives to discuss their views of the Motions. Widely divergent views were expressed on the possibility of the Law Society regulating maximum hours of work and minimum rates of pay. Some students clearly agree with the views of the Ad Hoc Committee of Unplaced and Unpaid Articling Students; many others do not. The Chair of the Articling Subcommittee, the Articling Director and staff lawyer Lynn Silkauskas also met with student representatives and members of the Student Division of the C.B.A.O. on January 26, 1995. Students articling at downtown Toronto law firms were invited by the executive of the Student Division to the C.B.A.O. offices that day to discuss the motions from the Annual General Meeting. The Student Division also circulated a questionnaire to the students and asked that they complete it and provide copies to their articling colleagues. The Student Division will advise the Articling Director on the results. Legal research on sections 62 and 63 of the Law Society Act has commenced to determine if the Law Society can set maximum hours of work and minimum rates of pay for articling students.
- C.3.11 The third information item related to mid-term evaluation forms. The Articling Director reported that the mid-term evaluation forms for the 1994-95 articling term are due on February 1, 1995. Many mid-term evaluations have already been received. Many are very positive about the quality of the educational experience. It is clear as well that the form provides a unique opportunity for articling principals and students to assess the quality of the articling experience and to make adjustments for the remaining months of articles where necessary.
- C.3.12 The next meeting of the Subcommittee is scheduled at 8:00 a.m. on Friday, March 31, 1995.
- C.4 ARTICLING PLACEMENT PRELIMINARY REPORT FOR THE 1995-96 TERM
- C.4.1 The 1995 Bar Admission Course application form asks students whether they have secured an articling position. The Placement Office has created a database to record this information.
- C.4.2 Out of the 1,119 Phase One 1995 application forms received by February 7, there are 931 students (83.2% of the class) who have secured an articling position and 188 students (16.8% of the class) who are still without articles. As of February 22, 1994, 1,210 Phase One 1994 applications had been received, out of which 993 students (82.06% of the class) had secured an articling position while 217 students (17.9% of the class) were without articles. The 1995 results, therefore, approximately mirror the 1994 experience.
- C.4.3 As was the case in 1994, there is an over-representation (31.7%) of equity candidates among the unplaced group. The Equity Committee, the Articling Subcommittee and the staff continue to make special efforts to reduce the disparity.
- C.5 GRADUATE PLACEMENT SURVEY RESULTS
- C.5.1 Each year the Placement Office conducts a survey to determine the employment status of Bar Admission Course graduates.

C.5.2 A survey was conducted at the signing of the rolls. Results of the survey will be reported to the Legal Education Committee and Convocation in March along with an analysis of the results.

C.6 BAR ADMISSION COURSE REVIEW SUBCOMMITTEE

C.6.1 Bar Admission Course Review Subcommittee representatives were scheduled to meet with graduates of the most recent Bar Admission Course at 4:00 p.m. on Monday, February 13.

C.6.2 The Subcommittee held dinner meetings with members of the profession in Ottawa on Thursday, February 9 and London on Tuesday, February 14, following the respective calls to the Bar in those locations.

C.6.3 The meetings throughout have been focusing on the following principal issues:

- 1) The adequacy of student knowledge of substantive law and procedure on entering the Bar Admission Course,
- 2) What knowledge, skills and attitudes students ought to possess to be licensed to practice law,
- 3) Possible changes to the examination process, including the desirability of entrance examinations,
- 4) Whether there should be limited licensing of lawyers according to practice areas,
- 5) Whether the Bar Admission Course is too intensive,
- 6) How articling could be improved as an educational experience,
- 7) Whether articling might be replaced by a supervised practice or mentoring requirement.

C.7 EQUITY IN EDUCATION COMMITTEE

C.7.1 Marie Moliner, Chair of the Equity in Education Committee, met with the Legal Education Committee on the subject of an equity pamphlet. Committee members agreed to provide their comments to Ms. Moliner directly by February 17, 1995.

C.7.2 The Chair of the Articling Subcommittee, Marc Rosenberg, will meet with Ms. Moliner to discuss equity initiatives that might be taken in articling recruitment.

C.8 DEPARTMENT OF EDUCATION 1995-96 DRAFT BUDGETS

C.8.1 The Priorities and Planning Subcommittee has asked the Legal Education Committee to provide interim budget recommendations.

C.8.2 Accordingly, draft budgets for the Department were discussed and approved for presentation to the Priorities and Planning Subcommittee.

C.8.3 There are two draft Continuing Legal Education Department budgets, the Continuing Legal Education budget and the Computer Education Facility budget. (The Computer Education Facility operates as one of the activities of the Continuing Legal Education Department.) The budgets are break even.

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- C.8.4 The draft M.C.L.E. Project budget is break even, after drawing down the balance remaining of the funding from Errors and Omissions and the General Fund.
- C.8.5 The draft Consolidated Bar Admission Course budget incorporates seven sub-budgets: Bar Admission Course - Toronto, Bar Admission Course - Ottawa, Bar Admission Course - London, Articling Reform, Financial Aid and Placement, Publications, and Bar Admission Course - Ottawa French Language.
- C.8.6 A significant portion of the required revenues comes from student tuition fees. Student tuition fees were increased significantly last year by 20.8% for the Phase One tuition (\$745.00 increased to \$900.00) and 17.9% for the Phase Three tuition (\$1,780.00 increased to \$2,100.00). The proposed budgets for the 1995-1996 budget year include proposed tuition increases of approximately 5%. Because of the budget process set by the Priorities and Planning Subcommittee, it was necessary to recommend tuition levels at the same time as the draft budgets are presented to the Priorities and Planning Subcommittee.
- C.9 BAR ADMISSION COURSE PILOT PROJECT PROPOSALS
- C.9.1 The Legal Education Committee discussed the holding of the Bar Admission Course as a pilot project in other locations.
- C.9.2 A number of factors were taken into account including:
- 1) Issues of access to the Bar Admission Course for students, including the estimated number of students who would benefit,
  - 2) Budget implications,
  - 3) The timing in light of the current review of the Bar Admission Course by the Bar Admission Course Review Subcommittee,
  - 4) The significance of any pilot project.
- C.9.3 The Committee will continue discussions at its March meeting.
- C.10 CONTINUING LEGAL EDUCATION REPORT ON COURSES
- C.10.1 The Continuing Legal Education Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached.

(pages 4 - 6)

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

P. Epstein  
Chair

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



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- Item A.-A.2.2 - Copy of the current abridgment policy. (pages 1 - 3)
- Item C.-C.10.1 - Copy of the Continuing Legal Education Report. (pages 4 - 6)

THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meetings of January 12 and February 8, 1995

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 12th of January, 1995, at 11:30 a.m., the following members being present: M. Cullity (Chair), S. Thom.

M. Hickey and P. Peters attended to make a quorum

Also present: A. Brockett, E. Spears.

A.  
POLICY

No items to report.

B.  
ADMINISTRATION

B.1. REGULATION 708 MADE UNDER THE LAW SOCIETY ACT: SECTION 9: AMENDMENT TO PROVIDE FOR A SINGLE BENCHER DISCIPLINE HEARING PANEL

B.1.1. Recommendation

B.1.1.1. That in the resolution to amend section 9 of Regulation 708 made under the *Law Society Act*, adopted by Convocation on October 27, 1994, the proposed text for a new subsection 9(3.1) be rescinded.

B.1.1.2. That section 9 of Regulation 708 made under the *Law Society Act* be amended by adding thereto the following new subsection (3.1):

(3.1) A quorum of the Committee is one member of the Committee who is not a bencher by virtue of his or her office,

(a) where the particulars of the complaint to be heard by the Committee are confined to allegations that a member has,

- (i) practised as a barrister or solicitor while his or her rights and privileges were suspended,
- (ii) breached an undertaking to the Society,
- (iii) failed to honour financial obligations to the Society,
- (iv) failed to file a certificate or report required by section 16,
- (v) failed to maintain an investment authority or a report on investment as required by section 15.2,
- (vi) failed to respond to inquiries from the Society,
- (vii) failed to co-operate with auditors or investigators acting for the Society,
- (viii) failed to pay costs as ordered by Convocation or a committee of Convocation;
- (ix) committed more than one of the types of conduct referred to in subclauses (i) to (viii); or

(b) where, before the hearing begins, the member and counsel for the Society consent to a hearing before a single bench.

B.1.1.3. That Convocation request the Attorney General to arrange for similar amendments to be made to the French text of Regulation 708.

B.1.2. Explanation

B.1.2.1. On October 27, 1994, Convocation adopted a recommendation from the Legislation and Rules Committee that section 9 of Regulation 708 be amended to permit the quorum of the Discipline Committee convened to hear a complaint against a member to be one bench in certain instances. The amendments approved by Convocation included the addition to section 9 of a new subsection (3.1). Convocation approved the following wording for new subsection (3.1):

A quorum of the Committee is one member of the Committee who is not a bench by virtue of his or her office,

- (a) where the only particulars of the complaint to be heard by the Committee involve allegations of one or more of the following instances of misconduct by the member,
  - (i) practice as a barrister or solicitor while the member's rights and privileges were suspended,
  - (ii) breach of an undertaking to the Society,
  - (iii) failure to honour financial obligations to the Society,
  - (iv) failure to file a certificate or report required by section 16,
  - (v) failure to maintain an investment authority or a report on investment as required by section 15.2,
  - (vi) failure to respond to inquiries from the Society,
  - (vii) failure to co-operate with auditors or investigators acting for the Society,

(viii) failure to pay costs that Convocation or a committee of Convocation has ordered be paid; or

(b) where, before the hearing commences, the member and counsel for the Society consent to a hearing before a single bench.

B.1.2.2. In December 1994, the Secretary received from the Attorney General for signature a Regulation amending section 9 of Regulation 708 in which the wording of new subsection 9(3.1) differed from the wording approved by Convocation. The changes were discussed with counsel for the Attorney General, and the following wording for new subsection 9(3.1) was agreed upon and approved by your Committee (wording which differs from that approved by Convocation is underlined):

A quorum of the Committee is one member of the Committee who is not a bench by virtue of his or her office,

(a) where the particulars of the complaint to be heard by the Committee are confined to allegations that a member has,

(i) practised as a barrister or solicitor while his or her rights and privileges were suspended,

(ii) breached an undertaking to the Society,

(iii) failed to honour financial obligations to the Society,

(iv) failed to file a certificate or report required by section 16,

(v) failed to maintain an investment authority or a report on investment as required by section 15.2,

(vi) failed to respond to inquiries from the Society,

(vii) failed to co-operate with auditors or investigators acting for the Society,

(viii) failed to pay costs as ordered by Convocation or a committee of Convocation;

(ix) committed more than one of the types of conduct referred to in subclauses (i) to (viii); or

(b) where, before the hearing begins, the member and counsel for the Society consent to a hearing before a single bench.

B.2. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: FORMS 4 AND 5: AMENDMENTS

B.2.1. Recommendations

B.2.1.1. That current Form 4 made pursuant to paragraph 27 of subsection 62(1) of the *Law Society Act* be revoked and replaced by the new Form 4 found at Attachment A.

B.2.1.2. That current Form 5 made pursuant to paragraph 27 of subsection 62(1) of the *Law Society Act* be revoked and replaced by the two versions of Form 5 found at Attachments B and C, the version found at Attachment B to be in force until new section 15.2 of Regulation 708 approved by Convocation on November 25, 1994 comes into force, and the version found at Attachment C to be in force when the new section 15.2 of Regulation 708 comes into force.

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- B.2.1.3. That the French Language Services Committee be asked to arrange for a French translation of the amended Forms 4 and 5.

B.2.2. Explanation

- B.2.2.1. Pursuant to section 15.2 of Regulation 708 made under the *Law Society Act*, a member who arranges mortgages for clients is required to maintain in his/her client files Forms 4 and 5. Form 4 is completed by a client, making a loan to be secured by a mortgage, and consists of the client's instructions to the member. Form 5 is completed by the member and consists of the member's report to the client on the mortgage investment.
- B.2.2.2. On November 26, 1993, Convocation adopted a recommendation from the Lawyers Fund for Client Compensation Committee that Forms 4 and 5 be amended. Included in the Committee's report to Convocation on November 26, 1993 were draft Forms 4 and 5. These Forms were referred to the Legislation and Rules Committee for final drafting.
- B.2.2.3. At its meeting on May 12, 1994, the Legislation and Rules Committee considered proposed new Forms 4 and 5. The Committee decided to send the Forms to outside counsel for comment.
- B.2.2.4. Mr. Walter Traub was retained to give his opinion on the proposed new Forms 4 and 5. In August 1994, comments on the proposed new Form 5 were received from Mr. Traub. They were passed to the Lawyers Fund for Client Compensation Committee for its consideration.
- B.2.2.5. On October 27, 1994, Convocation adopted a recommendation from the Lawyers Fund for Client Compensation Committee that further amendments (implementing all Mr. Traub's comments) be made to Forms 4 and 5. Included in the Committee's report to Convocation on October 27, 1994 were draft Forms 4 and 5. These were referred to the Legislation and Rules Committee for final drafting.
- B.2.2.6. On October 28, 1994, Convocation adopted a recommendation from the Insurance Committee that,
1. it be made clear that mortgage brokerage activity is not an insured activity under the Law Society's insurance program; and
  2. "... if a solicitor chooses to act in a situation in which she or he has no professional liability insurance, ... the solicitor should be obliged to disclose this fact in writing to the prospective client before accepting a retainer".
- B.2.2.7. Staff of the Lawyers Fund for Client Compensation Committee and the Legislation and Rules Committee prepared amendments to Forms 4 and 5 to deal with a solicitor's obligation to disclose to the client the fact that, in respect of the transaction to which Forms 4 and 5 relate, the solicitor has no professional liability insurance. These proposed amendments were circulated to members of the Lawyers Fund for Client Compensation Committee in November. No objections were received respecting the proposed amendments. The Legislation and Rules Committee was asked to consider approving these additional amendments.

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- B.2.2.8. On November 10, 1994, the Legislation and Rules Committee considered proposed versions of Forms 4 and 5. The Committee instructed the staff to refer the amendments relating to insurance to the Insurance Department for comment.
- B.2.2.9. The amendments to Forms 4 and 5 relating to insurance were referred to LPIC, no comments have been received.
- B.2.2.10. The proposed amendment to section 15.2 of Regulation 708 made under the *Law Society Act*, approved by Convocation on November 25, 1994, will affect the content of Form 5. The Legislation and Rules Committee therefore recommends two versions of Form 5, one to be in force until new section 15.2 comes into force, the second to be in force when new section 15.2 comes into force.
- B.2.3. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: FORM 4; SCHEDULE A TO FORM 3: AMENDMENTS
- B.2.4. Recommendations
- B.2.4.1. That Form 4, made pursuant to paragraph 27 of subsection 62(1) of the *Law Society Act*, be amended by adding thereto the Schedule A to Form 4 found at Attachment D.
- B.2.4.2. That section 12 of Schedule A to Form 3, made pursuant to paragraph 27 of subsection 62(1) of the *Law Society Act*, be revoked and replaced by the following two versions of section 12 of Schedule A to Form 3, the first version to be in force until new section 15.2 of Regulation 708 approved by Convocation on November 25, 1994 comes into force, and the second version to be in force when the new section 15.2 of Regulation 708 comes into force:

Version One (To be used until new section 15.2 comes into force)

- "12. In section 12, "applicable files" means files in which the solicitor or firm, as the case may be, has arranged for the lending, or acted for the lender, of money on the security of real estate during the reporting period, excluding files of lenders particularized in subsection 15.2(3) or files containing a Schedule A to Form 4 executed by the investor/lender, the borrower(s) and the lawyer or law firm, as the case may be.

I/we,

- (a) have randomly selected, pursuant to subsection 16(2.1) of the Regulation, the following number of applicable files:
- (i) one file, if the total number of applicable files equals five or less;
  - (ii) three files, if the total number of applicable files is greater than five but not greater than fifteen;
  - (iii) five files, if the total number of applicable files is greater than fifteen but not greater than twenty-five;

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- (iv) seven files, if the total number of applicable files is greater than twenty-five;
- (b) have inspected documentation in each file selected pursuant to clause (a) above, and the trust records pertaining to each such file;
- (c) without expressing any opinion on the accuracy or completeness of any file, report in respect of each file selected pursuant to clause (a) above that:
  - (i) Form 4 and Form 5 were present and each point on Form 4 and Form 5 was answered (attach an appendix noting exceptions and include copies of Forms on which any point has not been answered);
  - (ii) I/we have compared,
    - (A) the information contained in Form 4;
    - (B) any changes to the information contained in Form 4 agreed to in writing by the lender; and
    - (C) the documents included in the file;with,
    - (D) the information contained in Form 5; and
    - (E) any changes to the information contained in Form 5 agreed to in writing by the lender;and the details were/were not in agreement (attach an appendix noting disagreements and support with copies of applicable documents);
  - (iii) I/we have independently confirmed with the lender the information set out in Form 4 and Form 5, and any changes to the information contained in them, and we have/have not received confirmation of those details (attach an appendix noting the results of the confirmations and provide copies of confirmations that support inconsistencies);
  - (iv) I/we have compared the initial receipt and disbursement of principal amounts indicated in the trust records pertaining to the file, with the documentation in the file, and the details were/were not in agreement (attach an appendix noting disagreements and support with copies of applicable documents); and
- (d) attach a schedule identifying the files inspected."

Version Two (To be used after section 15.2 comes into force)

"12. In section 12, "applicable files" means files in which the solicitor or firm, as the case may be, has arranged for the lending, or acted for the lender, of money on the security of real estate, or acted for the lender in accordance with subsection 15.2(3), during the reporting period, excluding files of lenders particularized in subsection 15.2(6) or files containing a Schedule A to Form 4 executed by the investor/lender, the borrower(s) and the lawyer or law firm, as the case may be.

I/we,

(a) have randomly selected, pursuant to subsection 16(2.1) of the Regulation, the following number of applicable files:

- (i) one file, if the total number of applicable files equals five or less;
- (ii) three files, if the total number of applicable files is greater than five but not greater than fifteen;
- (iii) five files, if the total number of applicable files is greater than fifteen but not greater than twenty-five;
- (iv) seven files, if the total number of applicable files is greater than twenty-five;

(b) have inspected documentation in each file selected pursuant to clause (a) above, and the trust records pertaining to each such file;

(c) without expressing any opinion on the accuracy or completeness of any file, report in respect of each file selected pursuant to clause (a) above that:

(i) Form 4 and Form 5 were present and each point on Form 4 and Form 5 was answered (attach an appendix noting exceptions and include copies of Forms on which any point has not been answered);

(ii) I/we have compared,

(A) the information contained in Form 4;

(B) any changes to the information contained in Form 4 agreed to in writing by the lender; and

(C) the documents included in the file;

with,

(D) the information contained in Form 5; and

(E) any changes to the information contained in Form 5 agreed to in writing by the lender;

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and the details were/were not in agreement (attach an appendix noting disagreements and support with copies of applicable documents);

(iii) I/we have independently confirmed with the lender the information set out in Form 4 and Form 5, and any changes to the information contained in them, and we have/have not received confirmation of those details (attach an appendix noting the results of the confirmations and provide copies of confirmations that support inconsistencies);

(iv) I/we have compared the initial receipt and disbursement of principal amounts indicated in the trust records pertaining to the file, with the documentation in the file, and the details were/were not in agreement (attach an appendix noting disagreements and support with copies of applicable documents); and

(d) attach a schedule identifying the files inspected."

B.2.4.3. That the French Language Services Committee be asked to arrange for a French translation of Schedule A to Form 4 and of the amended Schedule A to Form 3.

B.2.5. Explanation

B.2.5.1. On February 25, 1994, Convocation adopted the recommendation of the Lawyers Fund for Client Compensation Committee that Form 4 and Schedule A to Form 3 be amended.

B.2.5.2. The amendment to Form 4 consists of adding thereto a Schedule A. The Schedule, when fully executed, will exempt certain mortgage transactions from the sample of private mortgage transactions to be reviewed annually by the public accountant pursuant to section 16 of Regulation 708.

B.2.5.3. The amendment to Schedule A to Form 3 will amend section 12 thereof, which currently reads:

12. I/we have randomly selected, pursuant to section 16(2.1) of the Regulation, ten files (or all files, if fewer than ten) in which the solicitor or firm, as the case may be, has arranged or acted for the lender of money on the security of real estate during the reporting period, excluding those clients particularized in clause 15.2(3) and have inspected documentation in each file and the trust records pertaining to each file and, although I/we express no opinion on its accuracy or completeness, I/we advise for each file that:

a) It appears that each point on Form 4 and Form 5 was/was not answered and the Forms were/were not present in each file (attach an appendix noting exceptions and support with copies of applicable Forms);

b) I/we have compared the information contained in Form 4, any changes to the information contained in Form 4 agreed to in writing by the lender, and the documents included in the file, with the information contained in Form 5, and any changes to the information contained in Form 5 agreed to in writing by the lender, and these details were/were not in agreement (attach an appendix noting differences and support with copies of applicable documents);



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- c) I/we have independently confirmed with the lender the details set out in Form 4 and Form 5, and any changes to the information contained in them, and we have/have not received confirmation of those details (attach an appendix noting the results of the confirmations and provide copies of confirmations that support inconsistencies);
- d) I/we have compared the initial receipt and disbursement of principal amounts indicated in the trust records pertaining to the file, to the documentation in the file, and the details were/were not in agreement (attach an appendix noting exceptions and support with copies of applicable documents); and,
- e) I/we attach a schedule identifying the files inspected.

B.2.5.4. Section 12,

- 1. indicates the number of mortgage transaction files that have been randomly selected for review by the public accountant;
- 2. indicates the specific items in the files, selected for review, that have been reviewed; and
- 3. specifies that certain mortgage transactions, particularized in subsection 15.2(3) of Regulation 708, are to be excluded from the review conducted by the accountant.

B.2.5.5. The amendment to Schedule A to Form 3 will,

- 1. alter the number of mortgage transaction files to be randomly selected for review by the public accountant; and
- 2. include, among the mortgage transactions to be excluded from the review to be conducted by the accountant, those transactions where Schedule A to Form 4 was fully executed.

B.2.5.6. Included in the Lawyers Fund for Client Compensation Committee report to Convocation on February 25, 1994 were a draft Schedule A to Form 4 and draft wording for section 12 of Schedule A to Form 3. These were referred to the Legislation and Rules Committee for final drafting.

B.2.5.7. At its meeting on May 12, 1994, the Legislation and Rules Committee considered the proposed Schedule A to Form 4 and the proposed section 12 of Schedule A to Form 3. The Committee decided to send the new Schedule and the new section 12 to outside counsel for comment.

B.2.5.8. Mr. Walter Traub was retained to give his opinion on the new Schedule A to Form 4 and the new section 12 of Schedule A to Form 3. In August 1994, comments on the proposed new section 12 were received from Mr. Traub. They were passed to the Lawyers Fund for Client Compensation Committee for its consideration.

B.2.5.9. No amendments to the proposed Schedule A to Form 4 and the proposed section 12 of Schedule A to Form 3, considered by the Legislation and Rules Committee on May 12, 1994, were made by the Lawyers Fund for Client Compensation Committee.

- B.2.5.10. The proposed amendment to section 15.2 of Regulation 708 made under the *Law Society Act*, approved by Convocation on November 25, 1994, will affect the content of section 12 of Schedule A to Form 3. The Legislation and Rules Committee therefore considered two versions of section 12, one to be in force until new section 15.2 comes into force, the second to be in force when new section 15.2 comes into force.

C.  
INFORMATION

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C.1. REGIONAL ELECTION OF BENCHERS: APPLICATION FOR THE INTERPRETATION OF THE LAW SOCIETY ACT

- C.1.1. On September 23, 1994, Convocation adopted the recommendation of the Committee that, pursuant to rule 14.05(3) of the Rules of Civil Procedure, an application be made to the Ontario Court (General Division) for the interpretation of the *Law Society Act* to determine if Convocation has the authority to implement by way of rules the scheme of regional election of benchers adopted by Convocation in 1993.
- C.1.2. The application was argued on Wednesday, November 16, 1994 before Mr. Justice Borins. Counsel was appointed by the court, at the request of the Law Society, to represent all members of the Law Society who have an interest in opposing, or may be adversely affected by, an order providing that Convocation may make rules providing for the regional election of benchers. The position of the Law Society was supported by the Attorney General, the named respondent.
- C.1.3. On Friday, January 6, 1995, Mr. Justice Borins released his decision. He ruled that Convocation does not have the power to make rules providing for the regional election of benchers.

C.2. LAW SOCIETY ACT: AMENDMENTS CONCERNING THE LAW FOUNDATION OF ONTARIO: BILL 175

- C.2.1. On December 9, 1994, Bill 175 (*Statute Law Amendment Act (Government Management and Services)*, 1994) received Royal Assent. Bill 175 is an omnibus bill which contains amendments to some 160 Ontario statutes, including the *Law Society Act*.
- C.2.2. The amendments to the *Law Society Act* are contained in section 49 (found at Attachment E) and concern the Law Foundation of Ontario. Briefly, the amendments will permit the Law Foundation of Ontario to pool funds held in solicitors' mixed trust accounts. The explanatory notes to Bill 175 summarize the amendments as follows:

Amendments to the *Law Society Act* are designed to increase the amount of money available to the Law Foundation of Ontario for its purposes (primarily legal aid, but including legal education and the establishment and maintenance of law libraries) from the income derived from interest on lawyers' mixed trust accounts.

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This is accomplished through the creation of joint accounts between the depositing solicitor and the Foundation of mixed trust account money deposited by a solicitor in the course of his or her practice. The financial institution in which the trust money is deposited will pay interest accruing on the deposits directly to the Foundation, which may consolidate all such money with other funds in which the Foundation has an interest and invest it in the manner set out in the Bill.

C.2.3. Pursuant to subsection 64(3) of Bill 175, the amendments to the *Law Society Act* come into force on a day to be named by proclamation of the Lieutenant Governor. As at the time of preparing this report, the amendments to the *Law Society Act* had not yet been proclaimed in force.

C.3. LAW SOCIETY ACT: SUBSECTION 57(1): INSTITUTIONS IN WHICH MEMBERS MAY HOLD MIXED TRUST ACCOUNTS: AMENDMENTS: BILL 134

C.3.1. Bill 134 (*Financial Services Statute Law Reform Amendment Act, 1994*) received Royal Assent on June 23, 1994. Subsection 389 of Bill 134 amends subsection 57(1) of the *Law Society Act* to provide that a member may hold a mixed trust account at a "credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies", in addition to "a bank listed in Schedule I or II to the *Bank Act* (Canada), provincial savings office or registered trust corporation".

C.3.2. Pursuant to subsection 396(1) of Bill 134, the provisions of the Bill come into force on a day to be named by proclamation of the Lieutenant Governor. As at the time of preparing this report, the amendment to the *Law Society Act* had not yet been proclaimed in force.

C.4. LEGISLATION AND RULES MANUAL/PROFESSIONAL CONDUCT HANDBOOK: UPDATE

C.4.1. The first update for the *Legislation and Rules Manual/Professional Conduct Handbook* has been prepared. It includes a new, bilingual version of the Rules made under subsection 62(1) of the *Law Society Act*, current as at November 25, 1994, new versions of the *Barristers Act* and the *Solicitors Act*, replacement pages for the *Law Society Act*, the *Professional Conduct Handbook* and the *Code de déontologie*, and a bilingual version of the Role Statement. Distribution of the update to benchers, County and District Law Libraries, other law societies, law school libraries and Law Society staff will take place during the month of January 1995.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

M. Cullity  
Chair

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

- |                    |                                 |                     |
|--------------------|---------------------------------|---------------------|
| Item B.-B.2.1.1. - | Copy of current Form 4.         | (Attachment A)      |
| Item B.-B.2.1.2. - | Copy of two versions of Form 5. | (Attachments B & C) |

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- Item B.-B.2.4.1. - Copy of Schedule A to Form 4. (Attachment D)
- Item C.-C.2.2. - Amendments to Law Society Act re: Law Foundation of Ontario. (Attachment E)

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 Wednesday, the 8th of February, 1995, at 11:30 a.m., the following members being present: M. Cullity (Chair), J. Wardlaw.

R. Carter and K. Howie attended to make a quorum

Also present: A. Brockett, E. Spears.

A.  
POLICY

A.1. LAW SOCIETY ACT: SECTION 12: ABOLITION OF LIFE BENCHER STATUS

A.1.1. Recommendations

A.1.1.1. That Convocation revoke its decisions of April 24, 1992 and June 24, 1994 to request the Attorney General to amend section 12 of the *Law Society Act* to alter the eligibility requirements for status as a bencher by virtue of office pursuant to paragraph 6 of subsection (1).

A.1.1.2. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendments to the English text of the *Law Society Act*, together with equivalent amendments to the French text of the Act:

1. Paragraph 6 of subsection 12(1) to be repealed and replaced by the following new paragraph 6:

"Every person who was elected a bencher at four elections and who completed sixteen years of service as a bencher on or before May 26, 1995."

A.1.2. Explanation

A.1.2.1. At present, section 12 of the *Law Society Act* reads, in part:

12. (1) The following, if and while they are members, are benchers by virtue of their office:

\*\*\*\*

6. Every person who is elected a bencher at four elections and who serves as a bencher for sixteen years.

\* \* \* \*

A.1.2.2. On April 24, 1992 and June 24, 1994, Convocation adopted two separate recommendations that the eligibility requirements for status as a bencher by virtue of office, contained in paragraph 6 of subsection 12(1), be reduced. Draft wording implementing the recommendations was included in the package of amendments to the *Law Society Act* being prepared for submission to the Attorney General.

A.1.2.3. On November 25, 1994, Convocation voted on three motions relating to the office of life bencher. The following two motions were carried:

Motion #2

That the *Law Society Act* be amended to provide that the office of life Bencher arising from continuous service as an elected Bencher be eliminated. This would not apply to incumbent life Benchers.

Motion #3

That Motion #2 will not apply to incumbent elected Benchers who would be eligible to become life Benchers at the end of the current term in 1995.

B.  
ADMINISTRATION

B.1. REGULATION 708 MADE UNDER THE LAW SOCIETY ACT: SECTION 14: AMENDMENT TO PERMIT MEMBERS TO DEPOSIT TRUST MONEY IN AN ACCOUNT AT A CREDIT UNION OR LEAGUE

B.1.1. Recommendations

B.1.1.1. That subsection 14(1) of Regulation 708 made under the *Law Society Act* be amended by inserting after the word "office" a comma and the words "credit union or a league to which the *Credit Unions and Caisses Populaires Act*, 1994 applies".

B.1.1.2. That Convocation request the Attorney General to arrange for similar amendments to be made to the French text of Regulation 708.

B.1.2. Explanation

B.1.2.1. At present, section 14 of Regulation 708 made under the *Law Society Act* reads, in part:

14. (1) Every member who receives money in trust for a client, except money hereinafter expressly exempted from the application of this section, shall forthwith pay the money into an account at a chartered bank, provincial savings office or registered trust corporation to be kept in the name of the member or in the name of the firm of which he or she is a member or by which he or she is employed and designated as a trust account.

\* \* \* \*

B.1.2.2. Section 14 of Regulation 708 addresses a member's obligation to deposit into a trust account money received from a client in trust. The section permits a member to keep one or more trust accounts. If a member were to keep monies received in trust from more than one client in one trust account, that account would be a "mixed trust account". At present, the section restricts members to keeping the trust accounts at chartered banks, provincial savings offices or registered trust corporations.

B.1.2.3. Subsection 57(1) of the *Law Society Act* addresses a member's obligation to keep "mixed trust accounts" at particular institutions. At present, the section restricts members to keeping "mixed trust accounts" at banks listed in Schedule I or II to the *Bank Act* (Canada), provincial savings offices or registered trust corporations. Current subsection 57(1) of the *Law Society Act* reads:

57. (1) Every member who holds money in trust for or on account of more than one client in one fund shall hold the money in an account at a bank listed in Schedule I or II to the *Bank Act* (Canada), provincial savings office or registered trust corporation, bearing interest at a rate approved by the trustees.

B.1.2.4. On June 23, 1994, the *Financial Services Statute Law Reform Amendment Act, 1994* received Royal Assent. Section 389 of that act amends subsection 57(1) of the *Law Society Act* by permitting "mixed trust accounts" also to be kept at credit unions and leagues to which the *Credit Unions and Caisses Populaires Act, 1994* applies. Section 389 comes into force on a day to be named by proclamation of the Lieutenant Governor. When the section is proclaimed in force, subsection 57(1) of the *Law Society Act* will read (amendments underlined):

57. (1) Every member who holds money in trust for or on account of more than one client in one fund shall hold the money in an account at a bank listed in Schedule I or II to the *Bank Act* (Canada), provincial savings office, credit union or a league to which the *Credit Unions or Caisses Populaires Act, 1994* applies or registered trust corporation, bearing interest at a rate approved by the trustees.

B.1.2.5. It has been suggested that subsection 14(1) of Regulation 708 should be amended so as to permit members to keep any trust account, not only "mixed trust accounts", at credit unions or leagues.

B.2. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: RULE 33: AMENDMENT TO LIMIT AUTHORITY OF COMMITTEES TO SPEND MONIES APPROVED IN BUDGET

B.2.1. Recommendations

B.2.1.1. That Rule 33 of the Rules made under subsection 62(1) of the *Law Society Act* be revoked and replaced by the following new Rules 33 and 33.1:

ESTIMATES

*Estimates - consideration, adoption, submission*

33. (1) Every standing committee of Convocation shall,

- (a) not later than at its February meeting in each year, or at such other time as Convocation may determine, consider and adopt estimates in respect of the operations of the committee for the next three financial years; and
- (b) immediately thereafter, submit the estimates to the Finance and Administration Committee.

*Estimates - areas of expenditure*

(2) The estimates prepared for the purposes of subrule (1) shall be divided into the following three areas of expenditure:

- 1. Salaries and benefits.
- 2. Common expenses.
- 3. Unique program expenses.

*Estimates - form and detail*

(3) Subject to subrule (2), the estimates prepared for the purposes of subrule (1) shall be in a form and contain such detail as may be determined by the Finance and Administration Committee.

EXPENDITURES

*Expenditures within approved budget permitted*

33.1 (1) Subject to any direction of Convocation, a standing committee may make expenditures, as provided in this Rule, within a budget approved for it by Convocation.

*Expenditures - rules*

(2) In making expenditures, a standing committee shall observe the following rules:

- 1. Except as provided in subrule (3), funds budgeted for an area of expenditure set out in subrule (2) of Rule 33 shall not be transferred to any other area of expenditure.
- 2. Except as provided in subrule (4), funds allocated to a line item within an area of expenditure set out in subrule (2) of Rule 33 shall not be transferred to any other line item within the same area of expenditure.

*Transfer of funds between areas of expenditure*

(3) A standing committee may transfer funds budgeted for one area of expenditure to another area of expenditure if,

- (a) the transfer of funds will not create an expenditure commitment in a financial year subsequent to that in which the transfer of funds is to occur;
- (b) the amount of funds to be transferred is not more than \$25,000; and
- (c) the transfer of funds has been approved in writing by,

- (i) the Under Treasurer, where the amount of funds to be transferred is not more than \$10,000, or
- (ii) the Chair of the Finance and Administration Committee, where the amount of funds to be transferred is more than \$10,000.

*Transfer of funds between line items*

(4) A standing committee may transfer funds allocated to one line item in one area of expenditure to another line item within the same area of expenditure if the transfer of funds is approved in writing by,

- (a) the Under Treasurer, where the transfer of funds will not create an expenditure commitment in a financial year subsequent to that in which the transfer of funds is to occur; or
- (b) the Chair of the Finance and Administration Committee, where the transfer of funds will create an expenditure commitment in a financial year subsequent to that in which the transfer of funds is to occur.

*Unique programs - transfer of surplus funds*

(5) Subject to subrule (6), where the amount of funds budgeted for a unique program is more than is required for the unique program, the surplus funds may be transferred to another unique program.

*Idem*

(6) The surplus funds of a unique program shall not be transferred to another unique program without the approval in writing of the Chair of the Finance and Administration Committee where,

- (a) the amount of funds to be transferred is more than \$5,000; and
- (b) the expenditures on the other unique program are discretionary.

*Other transfers of funds - approval of Convocation required*

(7) A transfer of funds within the budget of a standing committee that is not provided for in this Rule requires the approval of Convocation.

*Transfer of funds - report to Finance and Administration Committee*

(8) All transfers of funds approved by the Under Treasurer under subrule (3) and all transfers of funds approved by the Chair of the Finance and Administration Committee shall be reported to the Finance and Administration Committee.

B.2.2.2. That the French Language Services Committee be asked to arrange for a French translation of new Rules 33 and 33.1.



B.2.3. Explanation

- B.2.3.1. At present, Rule 33 of the Rules made under subsection 62(1) of the *Law Society Act* reads:

ESTIMATES

33. (1) Every standing committee of Convocation shall not later than at its February meeting in each year consider and adopt an estimate in respect of its operations for the ensuing financial year and submit such estimate forthwith thereafter to the Finance and Administration Committee.

(2) Upon the approval of a budget by Convocation, either as submitted or amended, a standing committee of Convocation may, subject to any further direction of Convocation, make expenditures within such budget without further recourse to Convocation or to the Finance and Administration Committee.

- B.2.3.2. On November 25, 1994, Convocation adopted a recommendation from the Finance and Administration Committee that Rule 33 be revoked and replaced. The proposed new Rule 33 would require committees to consider estimates in terms of specific areas of expenditure, permit the Finance and Administration Committee to determine the form of, and the amount of detail contained in, the estimates it receives from committees, and limit the authority of committees to make expenditures within their approved budgets by establishing a protocol for transfers of funds between areas of expenditure and between line items within areas of expenditure.

- B.2.3.3. Draft wording for a proposed new Rule 33 was included in the report of the Finance and Administration Committee and was referred to the Legislation and Rules Committee for final drafting. Staff proposals for new Rules 33 and 33.1 were brought to the attention of staff of the Finance and Administration Committee who raised no objections to the proposals.

C.  
INFORMATION

C.1. CONTINGENT FEES

- C.1.1. On May 27, 1988, on the recommendation of the Special Committee on Contingency Fees, Convocation approved in principle the introduction into Ontario of contingent fees. On July 10, 1992, also on the recommendation of the Special Committee on Contingency Fees, Convocation approved a specific contingent fee scheme to be implemented in Ontario.

- C.1.2. In 1988 and 1992, it was recognized that the introduction into Ontario of contingent fees would involve, at least, the amendment of the *Solicitors Act* and would, therefore, depend on the Attorney General's willingness to permit contingent fees.

- C.1.3. In order to avoid delay when the Attorney General indicates a readiness to proceed with contingent fees, your Committee has instructed staff to draft the necessary amendments to the *Solicitors Act* and the necessary rules and/or regulations under the *Law Society Act* to implement the decisions of Convocation made in 1988 and 1992.

24th February, 1995

C.2. COMMITTEE BUDGET FOR FISCAL YEAR 1995/1996

- C.2.1. Your Committee approved a budget for financial year 1995/1996 amounting to \$12,800, which is \$1,700 less than the budget for financial year 1994/1995.

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

M. Cullity  
Chair

THE REPORTS WERE ADOPTED

LIBRARIES AND REPORTING COMMITTEE

Meeting of February 8, 1995

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 Wednesday, the 8th of February, 1995, at 8:00 a.m., the following members being present:

S. Elliott (Chair), R. Topp (Vice-Chair), I. Blue, M. Cullity, G. Farquharson, M. Hickey, B. Pepper, M. Hennessy, & D. DiGuisepppe. G. Howell also attended.

A.  
POLICY

1. County Library Review Subcommittee - Final Report

The final report of the County Library Review Subcommittee, (chaired by Robert Topp, and including Ian Blue and Rino Bragagnolo as members) was reviewed and then unanimously adopted by the full Committee. The Report had been extensively reviewed by the County & District Law Presidents' Association (CDLPA) and was endorsed at CDLPA's plenary session in November, subject to three recommended amendments. Two amendments were reflected in the Final Report.

The main recommendation of the report is that "funding of County & District Law Libraries be based on a principle of obtaining, within a time period of 5 to 10 years, equal contribution from all fee paying members of the Law Society," and that, in accordance with this principle, "in the financial year 1995/96, the County Library Levy be increased by \$35 (from \$81 to \$116)."

24th February, 1995

The nineteen-page policy document, entitled "Funding of County and District Law Libraries", was forwarded by mail to all Benchers on February 8th, with a cover note stating that the Report was for the information of Benchers, and is subject to the normal process of review by the Priorities & Planning Subcommittee and the Finance Committee, and will not be presented to Convocation for formal approval until this review process is completed.

B.

ADMINISTRATION

1. 1995-96 Budget Estimates

The Committee reviewed six pages of budgetary material with the Chief Librarian. This preliminary material is to be forwarded to the Finance department as the initial stage of the 1995-96 budget process.

The Committee noted that 1995 revenues for the Law Foundation of Ontario are projected to be substantially higher than those for 1994, and therefore recommends to the Finance department that the upcoming Law Society application to the Law Foundation for county libraries be in the amount of \$929,000. This would return Law Foundation funding of county libraries to the 1992-93 level, before two reductions of \$155,000 each (totalling \$310,000) brought the current funding level down to \$619,000.

C.

INFORMATION

1. Great Library - Automation - Progress Report

The Committee was advised that the project to upgrade several Great Library functions with modern technology has recently commenced. Computer cabling, a Local Area Network (LAN), and an On-line Public Access Catalogue (OPAC) will be installed by the end of the fiscal year (June 30th). A letter of support from the Chair (Susan Elliott) was instrumental in obtaining approval from the Finance and Administration Committee for capital expenditures on computer equipment. The upgrade allows the Law Society's library system to take advantage of existing and emerging technologies.

The Great Library's electronic catalogue (replacing the card catalogue) will be available to patrons and staff within the library, to Law Society lawyers elsewhere in Osgoode Hall, to lawyers and judges by local phonecall in Toronto, and to those outside Toronto on a "dial-up" basis using Bell Canada's Datapac network. The electronic catalogue will eventually be available on the Internet.

The project entails the extension of electronic access to county libraries next fiscal year, likely through the production of CD-Rom catalogues for the system (each library having a "union" catalogue of the holdings of the Great Library plus their own "local" holdings). Such electronic access would replace the current "book" catalogues that all counties now receive from the Great Library.

Finally, the project eventually will also allow the Great Library's holdings of CD-Rom products (especially those from the United States) to be accessible, not only on the network within the library, but also to lawyers, judges and the county librarians inside and outside Toronto by "dial-up" access over telephone lines.

24th February, 1995

2. County Libraries - 1994 Finances, 1995 Budgets, and Increases to County Law Association Library Fees for 1995

The Committee was provided with copies of three charts, two of which reflected 1994 operating results plus 1995 budgets for the 47 county libraries. The system ran an operating loss for 1994, and finished the year with an extremely modest balance forward. The third Chart listed the 20 counties that have increased their local library fee (some by a substantial amount) for 1995.

The system is projecting an operating deficit of some \$370 thousand in 1995, which will eradicate the balance forward from 1994 and leave a deficit balance of some \$195 thousand at the end of 1995.

3. County of York Law Association - Evaluation of Book Collection

The County of York Law Association recently had an independent evaluation done of its book collection by Ken Barnett (former sales manager of Carswell). The Committee was provided with copies of Mr. Barnett's December 29th letter, along with a list of the components of the book collection.

Mr. Barnett's evaluation of the total replacement cost of York County's book collection is \$1,281,255. The Chief Librarian arranges replacement cost insurance coverage for the 47 counties, and the Law Society's property coverage on York County's book collection was virtually identical (\$7,000 higher, on almost \$1.3 million) to Mr. Barnett's evaluation. The insurance coverage was also very close to the evaluations done previously for three other counties. The total property coverage on the 47 county libraries is almost \$20 million. The Law Society has similar coverage on the Great Library.

4 County & District Law Presidents' Association (CDLPA) - new Representative on Libraries & Reporting Committee

Michael Hennessy has been the representative of CDLPA on the Libraries & Reporting Committee for the past two years (having succeeded CDLPA's first representative on the Committee, Randy Lalande). Dino DiGiuseppe, a past president of the Thunder Bay Law Association, and a member of the Executive of CDLPA, is the new Chair of the Library Committee of CDLPA, succeeding Mr. Hennessy. CDLPA has asked that Mr. DiGiuseppe be appointed to the Libraries & Reporting Committee.

The Committee was advised by the Chair that Mr. Hennessy had agreed to continue on the Committee until the end of the present Benchers' term.

ALL OF WHICH is respectfully submitted

Dated this 24th day of February, 1995

S. Elliott  
Chair

THE REPORT WAS ADOPTED

24th February, 1995

PROFESSIONAL CONDUCT COMMITTEE

Meeting of February 8, 1995

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 Wednesday, the 8th of February, 1995 at three o'clock in the afternoon, the following members being present: C.Campbell (in the Chair), I. Blue, M. Cullity and M. Moliner. The following staff were present: M. Devlin, D. Godden and S. Traviss.

A.  
POLICY

1. WRITTEN RETAINER - LAWYER WISHES TO PUT CLAUSE  
IN RETAINER THAT CASE MAY BE SETTLED IN THE  
EVENT CLIENT CANNOT BE CONTACTED - THIS  
AUTHORITY WOULD BE BACKED UP BY A LIMITED  
POWER OF ATTORNEY - REQUEST FOR ADVICE

A law firm has asked if it would be proper to provide in a written retainer that the lawyer has the authority to settle a client's claim in the event that the client disappears and cannot be located. Its inquiry is set out in the following terms:

Our firm wishes to amend our retainer agreement so that the client provides our firm with authorization to settle his case as we deem fit in the event that the client cannot be located or will not make himself available. The agreement would further authorize our firm to take our fees and disbursements out of the settlement and leave the remainder in trust for the client. The rationale is obviously that we have expended monies on disbursements and our time which have become unrecoverable. I assume it would take the form of a limited Power of Attorney so that a lawyer in our firm could sign the necessary Releases.

The Committee's Secretary in replying to the law firm made the following points:

1. Under the Regulation made under the *Law Society Act* respecting books, records and accounts, a lawyer is entitled to withdraw monies out of the trust account to cover fees and disbursements if an account to cover same has been sent to the client.
2. The lawyer has apparent authority to settle a client's civil lawsuit. However, it goes without saying that the client's informed consent is critical.
3. I wonder whether it is proper for a lawyer to ask a client for authority to settle a case in the event the client disappears or will not make himself or herself available.
4. I would like the Professional Conduct Committee to consider the matter raised in item #3 above and the obtaining of a limited power of attorney.

In concluding that it was undesirable for a lawyer to ask for such broad authority to settle a case in the event that the client disappears or will not make himself or herself available the Committee noted the language of paragraph 5 of the Commentary under Rule 3 (Advising Clients). It reads:

The lawyer should advise and encourage the client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis, and should discourage the client from commencing useless legal proceedings.

The Committee asked its Secretary to so advise the law firm and to suggest that at the time a retainer is signed the client be given a letter requesting the client to keep in regular touch with the law firm, reminding the client that the inability to locate him or her might frustrate concluding a settlement that is advantageous to that client's interests.

2. LAWYER OR LAW FIRM SPONSORING THE  
PUBLICATION OF A COLUMN IN LOCAL NEWSPAPER

A newspaper in Eastern Ontario (the Pembroke Observer) has asked whether an Ontario lawyer or law firm could sponsor a column on the law that is published in newspapers owned by the Thomson chain and are written by Claire Bernstein. The columns are entitled "You be the Judge" and put the facts of a real life situation to the readers. The readers can then turn to another part of the newspaper to find out what the result was in the case.

In British Columbia a lawyer or law firm can sponsor this type of column.

The Committee concluded that it could see no contravention of Rule 12 by this type of sponsorship.

B.  
ADMINISTRATION

1. BUDGET 1995/96

The Committee tentatively approved its budget for the fiscal year 1995/96. Because there were not more members at the meeting the budget will be circulated to all members with the request for their input.

C.  
INFORMATION

1. EQUITY PAMPHLET

Marie Moliner, the Chair of the Equity in Education Committee reviewed with the Committee, as she had with several other Committees, a draft pamphlet entitled "What lawyer employers need to know about recruitment and hiring." She invited input by telephone so that the pamphlet can go forward for approval at the February Convocation.

24th February, 1995

2. JOINT MEETING OF THE PROFESSIONAL CONDUCT  
COMMITTEE AND THE INSURANCE COMMITTEE TO  
DISCUSS THE WARDLAW MOTION

In June 1994 Convocation decided that a joint meeting of the Professional Conduct Committee and the Insurance Committee should be held to discuss the Wardlaw motion made by James Wardlaw respecting representation of more than one client in certain real estate transactions.

A joint meeting was held in October.

Mr. Wardlaw is revising his motion and will table it at Convocation in February with a request that it be debated at Convocation in March.

The Professional Conduct Committee will discuss the revised motion at its March meeting to which all Benchers with a solicitor's practice will be invited.

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

M. Somerville  
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of February 8, 1995

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 Wednesday, the 8th of February, at 3:00 p.m., the following members being present: C. McKinnon (Chair), Daniel J. Murphy, (Vice-Chair), R. Carter, R. Cass, Netty Graham, Mary P. Weaver. Also present was Marie Moliner.

Also Present: S. McCaffrey, A. Nicholas, P. Rogerson.

B.  
ADMINISTRATION

B.1. PROJECTED OPERATING EXPENSE BUDGET FOR 1995/96 FISCAL YEAR

B.1.1. The Professional Standards Department and Practice Advisory Service operating expense budgets for the 1995/96 fiscal year were reviewed and approved by the Committee. The budgets will be forwarded to

both the Priorities and Planning Committee and the Finance Committee for their consideration. The Committee questioned, however, the cost of equipment and furniture, and suggests that a purchasing and procurement policy should be implemented, Law Society-wide, to assist in reducing these costs.

B.2. JANUARY FILE CLOSURE - REFERRED BACK BY CONVOCATION

Convocation referred back to the Committee, for further consideration, a file that had been closed in January. The member had been referred to the Practice Review Programme by a Complaints Review Commissioner. At the time of the authorization the member, who was called to the Bar in 1965, had 2 complaints and 10 potential LPIC claims (9 of which had been closed without a claim payment made). The solicitor was invited to participate in January, 1994, and wrote protesting his referral and requesting further information, which was provided. In October, 1994, the solicitor declined to participate.

B.2.2 The Committee discussed the member's complaints and claims history, and noted that participation in the Programme is voluntary. Since the member declined to participate, the member's file remains closed. The file has been referred to the Staff Committee to decide what alternatives, if any, should be considered by the Law Society.

B.3. RECONSIDERATION OF FIRM AUTHORIZATION FOR PARTICIPATION IN PRACTICE REVIEW

B.3.1. In November, 1994 a four-member firm was authorized for participation in the Practice Review Programme. The referral to the Programme was made by the Audit Department, which was concerned about an anonymous letter received outlining office management and file storage problems. Profiles of the firm members' complaints and claims were prepared, and based on the anonymous letter and the profiles, the firm was authorized to participate in the Practice Review Programme. In the case of one of the firm members, a separate referral was also made by the Complaints Department due to the nature of the complaint received.

B.3.2. The firm's counsel wrote to the Committee requesting that the authorization be reconsidered. Counsel stated that the anonymous complaint was so void of particularity that any attempts to respond to the allegations made by the unknown client put the law firm at an unfair disadvantage.

B.3.3. The Committee reviewed the submissions made by counsel and the firm's history of complaints and claims, and has concluded that authorization for 3 of the firm members should be withdrawn, and the firm's PRP file closed. The Committee recommended, however, that the particular firm member who was also referred by the Complaints department should remain in the Programme, as it appears that due to the nature of the complaints received, the member may benefit from participation in the Programme.



B.4. FILE CLOSURES - PRACTICE REVIEW PROGRAMME

- B.4.1. One file was closed based on the member's successful completion of the Practice Review Programme. The member's practice was initially assessed by a reviewer, who made recommendations for the improvement of the practice. Staff attended on two occasions to provide further assistance. The member has reported one further potential claim since the authorization; the date of occurrence was prior to his involvement in the Practice Review Programme. It appears that the member's implementation of the recommendations made to him in the course of the Programme have benefitted the member.
- B.4.2. Three Practice Review files were closed based on the fact that the members are no longer practising law. In two of these instances the files will be monitored twice yearly in the event that the members return to practice, at which time the files may be re-opened, if appropriate to do so.
- B.4.3. In the third instance, the member was authorized to participate in the Programme based on a referral from the Complaints Department due to the nature of one of the complaints received. Upon receipt of the letter inviting him to participate in the Programme, the member advised that it was his intention to retire from the practice of law shortly. The member's file was monitored until his retirement for further complaints and/or claims. None were received. The Law Society's records confirm that the member has now retired from the practice of law.
- B.4.4. Two Practice Review files were closed because the members face serious discipline allegations. The members were participating in the Practice Review Programme and had met with a reviewer and staff on several occasions. The allegations against one member include misappropriation, swearing of a false Land Transfer Tax Affidavit and acting in conflict of interest. The member's PRP file has been in abeyance since July, 1990 due to the discipline investigation. The Committee has recommended that the file be closed and that staff monitor the Audit file. In the event that it becomes appropriate to do so, the PRP file can be re-opened. The other member has been suspended for non-payment of his annual fees since May of 1993. The member is in the discipline process, with allegations of practising law while under suspension, failing to file forms 2/3, failure to reply to the Law Society and failure to maintain books and records. His discipline file has been adjourned *sine die* pending investigation by the Staff Trustee. The Committee has recommended that the member's file be closed and that staff monitor the Discipline file and the Trustee's file. In the event that it becomes appropriate to do so, the member's PRP file can be re-opened.
- B.4.5. One Practice Review file was closed based on the member's unwillingness to cooperate with the Practice Review Programme. This matter has been referred to the Staff Committee to decide what alternatives, if any, should be considered by the Law Society.
- B.4.6. This member was referred to the Programme in September, 1991 by the Complaints Department. At the time of authorization the member had accumulated 13 complaints and 3 potential claims since 1989. A reviewer and staff attended at the member's practice, and made recommendations for the improvement of the practice. In February 1994, the member was suspended by discipline for professional misconduct for a three-month period. Staff attended in June, 1994 to assess the member's progress. Six letters sent to the member

requesting his response to the staff report failed to elicit a response. The member finally telephoned staff to advise that he would send his response and that he was considering leaving the practice of law. No response was received. The member now has 30 complaints, 9 of which were filed in 1994, and 12 claims, 7 of which were filed in 1994.

C.  
INFORMATION

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C.1.        EQUITY PAMPHLET

C.1.1.     Marie Moliner, the Chair of the Equity in Education Committee attended the Committee meeting to discuss the subject of an equity pamphlet. Committee members were provided with a draft of the pamphlet regarding Recruitment and Hiring, and have been asked to review same and provide their comments directly to Ms. Moliner by February 17, 1995.

C.2.        PRACTICE ADVISORY SERVICE - STATUS REPORT

C.2.2      Six hundred calls were received in December of 1994, a slight increase over December of 1993. December is traditionally a slower month for the Service.

C.2.3      In January, 1995, a large proportion of the calls were related to the issue of professional insurance, either asking about the insurance proposals, or requesting information on closing a practice.

C.2.4      Many calls are received each month about the "difficult client"; that is, a client suffering from some kind of mental disability, or a client who is overly demanding and threatening to the lawyer. A small number of calls are received from members complaining about another member, and hoping the Law Society will exert some pressure on the other member to comply with the Rules of Professional Conduct. Often, however, it is not a Rules situation, but rather part of the litigation process, to be dealt with by the court. Even where members say they will "abide by the ruling of Practice Advisory", they are advised that the Service will not usurp the authority of the court, nor does the Service provide rulings--only advice.

C.2.5      Calls continue from new members working out arrangements with more senior members or firms, trying to expand the concept of "associate" so as to have the most advantageous business relationship possible.

C.2.6      Start-Up Workshops were offered in conjunction with the Bar Admission Course in Toronto, London and Ottawa; a total of 171 students attended.

C.2.7      The Practice Advisory Service will have some input into the Mandatory Continuing Legal Education project.

24th February, 1995

C.3. PROFESSIONAL STANDARDS - DEPARTMENTAL REPORT

- C.3.1 Rebecca Brown has joined the department as an intermediate secretary, effective January 9, 1995, working on a contract basis during the maternity leave of the permanent secretary, Rezna Ellis.
- C.3.2 In January, 9 members were authorized to participate in the Practice Review Programme, bringing the total number of open files to 144. Benchers Carole Curtis and Fran Kiteley sat as review panellists, for four lawyers presently participating in the Programme. Their assistance is greatly appreciated.
- C.3.3 The staff committee, which was established in September, examines the profiles of potential candidates, and of lawyers who have refused to participate in the Programme, in order, in the first instance, to provide additional information relevant to the authorization process and, in the latter instance, to decide what further steps, if any, should be taken with respect to the member.
- C.3.4 The Director attended a program entitled "Making it Work: Managing and Practising in Law Firms in the Diversity of the '90s". She also addressed a class of students in the Mortgage Broker education program offered by the Ministry of Finance through Seneca College, speaking on "Ethics and the Law". Once the stated belief that "lawyers aren't ethical" was addressed and, it is hoped, overcome, an interesting discussion ensued.

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

C. McKinnon  
Chair

THE REPORT WAS ADOPTED

REASONS OF CONVOCAATION RE: ROSS HAINSWORTH

THE LAW SOCIETY OF UPPER CANADA

REASONS OF CONVOCAATION

SEPTEMBER 22, 1994

In the matter of  
The Law Society Act  
and in the matter of

ROSS HAINSWORTH  
of the City  
of Edmonton  
a barrister and solicitor

Michael Brown  
for the Society

Frank Marrocco  
for the solicitor

24th February, 1995

Reasons for Decision

"Mr. Ross Hainsworth appeared before Convocation on April 21, 1994 for a hearing in relation to the Report and Decision of a Discipline Committee composed of Messrs. Paul Copeland (Chair), James Wardlaw and Stuart Thom dated August 5, 1993 in the Hainsworth matter (the "Decision"). A copy of the Decision is attached as Exhibit "A".

The Discipline Committee heard the Hainsworth matter in Mr. Hainsworth's absence on July 6, 1993 because he did not appear. The Committee heard evidence, reviewed all of the materials which Mr. Hainsworth chose to supply to the Committee in the absence of testifying or leading a case, and recommended that Mr. Hainsworth be disbarred. The essence of the Decision is set out at page 16-17 thereof as follows:

"Our courts require that the evidence presented before them be truthful. Very serious penalties are imposed for perjury even in minor matters. Perjury is bad enough for lay people. Lawyers with their skill and knowledge know what evidence will be important. They better than anyone else will know what false evidence will assist in a case. If lawyers think that it is permissible to fabricate evidence or to have witnesses lie, our system of justice will break down.

An attorney actively engaged in the conduct of a trial is not merely another citizen. He is an intimate and trusted and essential part of the machinery of justice, an 'office of the court' in the most compelling sense.

Frankfurter J. in *Re Sawyer*, 360 U.S. 622, 668 (1959)

In our view the behaviour of Mr. Hainsworth is more serious than misappropriation of funds by a lawyer.

The public must be assured by our decision that we totally disapprove of and reject this type of behaviour. General deterrence is an important aspect of the penalty in this case. Generally speaking disbarment is required in these types of cases. In the absence of any mitigating factors concerning the actions of Mr. Hainsworth, i.e. stress, psychiatric problems, substance additions, coupled with character evidence, or a proven background of professional excellence and contribution, Mr. Hainsworth should be disbarred".

At Convocation on April 21, 1994, Mr. Hainsworth asked that the Decision not be adopted and, further, that he be awarded costs pursuant to s. 41 of the *Law Society Act*.

He argued that the Discipline Committee breached its duty to act judicially because, according to him, he did not receive notice of the time and place of the July 6, 1993 hearing pursuant to s. 33(1)(b), and because, again according to him, the panel was biased before it heard the evidence.

As to the question of bias, Mr. Hainsworth points to the Committee's use of the word "specious" in the last paragraph of the passage quoted below, which he argued indicated a bias. As well, he points to page 14 of the Decision where the Committee said "The Committee had no reason to doubt the veracity of the testimony given by the witnesses and we found Mr. Hainsworth guilty of the two counts of professional misconduct". Mr. Hainsworth submitted that this was an error and indicated a bias in the Committee before it embarked upon the hearing.

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Convocation does not accept that these indicate any actual bias in the Committee, or that they could create a reasonable apprehension of bias in the eyes of a reasonable person or member of the public. Accordingly, Convocation rejects this ground of objection.

The question of notice is more serious. Mr. Hainsworth knew the time of the hearing on July 6, 1993, and indeed the place of the hearing was the same as that for all the previous appearances in the case. The notice of the continuation of the hearing on July 6, 1993 did not specifically state the place. Mr. Hainsworth therefore argues that the notice did not comply with s. 33 of the Law Society Act.

The Discipline Committee's Reasons in this regard are instructive at p. 2-4 of the Decision:

"The endorsements on the Complaint against Mr. Hainsworth are as follows:

1. May 13, 1992: adjourned on consent to set a date;
2. May 19, 1992: adjourned on consent to set a date;
3. June 2, 1992: adjourned on consent to proceed on October 27 and 28;
4. October 27, 1992: adjourned on consent to February 16 and 17, 1993 in order that court martial re-trial can take place. Letter from solicitor filed indicating consent to adjournment and fact that he is not practicing law;
5. February 16, 1993: adjourned to April 13, 1993 to be spoken to. Law Society to advise Mr. Hainsworth by fax;
6. April 13, 1993: adjourned on consent to May 12, 1993 to set date;
7. May 12, 1993: adjourned to proceed peremptorily on July 6 and 7, 1993 for trial for reasons given orally.

Mr. MacKenzie advised us that the Law Society had initially agreed to adjourn the discipline proceedings until after the court martial proceedings had been completed but eventually the Law Society indicated a desire to proceed with the matter even though the court martial proceedings had not been completed.

On May 12, 1993 Mr. Hainsworth had requested an adjournment *sine die*. This request was refused by a Committee chaired by Mr. Ruby. Subsequent to the decision of May 12, 1993, Mr. Hainsworth raised an objection to Mr. Ruby's involvement on May 12, because Mr. Hainsworth had at one time in these proceedings consulted with Mr. Ruby's partner, Melvin Green. Mr. MacKenzie advised us that an option was given to Mr. Hainsworth regarding a possible re-application for an adjournment. Mr. Hainsworth initially had indicated to Mr. MacKenzie on the telephone that he wouldn't be asking for an adjournment today and that he intended to rely on Mr. Ruby's involvement on May 12, 1993 as a defect in the proceedings.

Mr. Hainsworth's request for a stay of these proceedings was based on the fact that the letter to him advising him of the hearing scheduled for July 6 and 7, 1993 did not specify the place of the hearing.

After retiring for a period to consider the matter, the Committee refused the request for an adjournment and for a stay of proceedings and gave the following reasons orally:

We regard ourselves as a fresh panel as requested by Mr. Hainsworth in Appendix F to his submission. We do not regard it as necessary to determine whether the decision to refuse the adjournment made by the panel chaired by Mr. Ruby on May 12, 1993 was improper because of Mr. Ruby's participation as outlined by Mr. Hainsworth in Appendix E to his request for an adjournment. In our view the public interest requires that this matter proceed. It is unclear whether court martial proceedings against Mr. Hainsworth will proceed. We do not regard the Law Society as being obliged to refrain from proceeding with disciplinary matters until criminal or quasi-criminal proceedings have been completed.

On the issue of the request for a stay by reason of non-compliance with s. 33(1)(b) of the Law Society Act concerning notification of the place of hearing, we note that the original notice served on Mr. Hainsworth's then solicitor Mr. Trudell on May 13, 1992 specified the place of the hearing as Convocation Room, in the east wing of Osgoode Hall, 130 Queen Street West, in the City of Toronto. This hearing is a continuation from that notice. Mr. Hainsworth has been aware of the place of these hearings and up until now has never raised any objection. To now argue that the letter of May 28, 1993, Appendix D, and the transcript of the Committee decision dated May 12, 1993, Appendix C, fails to disclose a place of hearing appears to us to be a specious attempt by Mr. Hainsworth to avoid having this case dealt with on its merits. We note that Mr. Hainsworth is not present at this hearing in the Discipline Room of the Society and is not present at Convocation Room upstairs. The matter will proceed in the absence of Mr. Hainsworth. It should be noted that the Committee has reviewed all of the materials supplied by Mr. Hainsworth including his letter of June 30, 1993, his submissions dated June 30, 1993 with appendices, his memorandum dated January 25, 1993 as well as the Law Society document book and Mr. MacKenzie's submissions. (emphasis added)

Sections 33(1) and 33(13) of the Law Society Act are also relevant here, and read as follows:

33.-(1) No disciplinary action under sections 34, 35, 37 or 38 shall be taken unless,

- (a) a complaint under oath has been filed in the office of the Secretary and a copy thereof has been served on the person whose conduct is being investigated;
- (b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and
- (c) a committee of Convocation has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so requests, has heard the evidence and any evidence on the person's behalf and has reached the decision that the person is guilty.

....

(13) Any document required to be served under this Act upon a person whose conduct is being investigated shall be served personally upon the person or by mailing a copy thereof in a registered letter addressed to the person at the person's last known residence or office address as shown by the records of the Society, and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof of affidavit of the service is sufficient. R.S.O. 1980, c. 233, s. 33(12, 13).

It is clear from the record and the above recital of the procedural history of the matter that Mr. Hainsworth had actual notice of the time and place of the hearing on May 13, 1992 in the Law Society Convocation Room as required by s. 33. From that time, the hearing was continued, being adjourned on consent on May 13, 1992, May 19, 1992, June 2, 1992, October 27, 1992, and on April 13, 1993 the matter was adjourned on consent to May 12, 1993 to set a date. On May 12, 1993, the matter was adjourned to proceed peremptorily on July 6 and 7, 1993. Mr. Hainsworth had notice of all this and, indeed, had actual notice that the continuation of the hearing was to proceed peremptorily on July 6 and 7, 1993. The hearing on July 6, 1993 was thus a continuation of the May 13, 1993 hearing for which a full s. 33(1)(b) notice was served.

Given the course of the proceedings herein, and the fact that throughout there was never any issue from Mr. Hainsworth about any defects in the notice or that he did not know where the hearing was being held from May 13, 1992 to July 6, 1993, and further given his demeanor before us at Convocation, it is our view that Mr. Hainsworth knew the time and place of the hearing, and the requirements of s. 33 were accordingly satisfied.

The fact that Mr. Hainsworth had actual knowledge of the time and place of the hearing is, in our view, sufficient to dispose of his argument that the July 6, 1993 continuation of the original hearing which commenced on May 13, 1992 was defective. However, it may be useful to add that, in any event, it is Convocation's view that s. 33(1)(b) does not require that a fresh notice pursuant to that subsection be served following every adjournment, provided that a full s. 33 notice is given initially specifying the time and place of the first hearing, and also provided that the person who is the subject of the proceeding is aware of the time and place of the continuations. *Re Emerson and Law Society of Upper Canada*, [1983] 5 D.L.R. (4th) 294 is instructive in this regard. At p. 314, the Court said:

"Section 33(1) is directed to the jurisdiction of convocation; the language has been clearly expressed to preclude convocation from taking any disciplinary action under s. 34 unless the requirements of service of the complaint, notice of the hearing and the hearing of evidence are first fulfilled; in the absence of compliance with those conditions, convocation has no jurisdiction to embark upon disciplinary proceedings. Moreover, it is apparent that when the proceedings under ss. 33 and 34 are viewed as a single proceeding conducted in two stages, failure to fulfil the conditions precedent puts in question the validity of the whole proceedings, including the role of the discipline committee at the first stage".

And at p. 318-9:

"Mr. Twohig submits that the conditions as to service and notice in s. 33(1) are not mandatory but are directory procedural requirements which the solicitor has waived and which ought not to be interpreted strictly so as to permit failure of mere formalities and technical requirements to defeat the validity of the proceedings in a manner contrary to the public interest in maintaining the integrity of professional conduct. He cited *McPherson v. McPherson*, [1936] 1 D.L.R. 321, [1936] A.C. 177, [1936] 1 W.W.R. 33 (P.C.); *Re Wessex Enterprises Inc. and A.-G. Ont. et al.* (1974), 6 O.R. (2d) 305, 52 D.L.R. (3d) 529; see de Smith, 4th ed., already cited, and 1 C.E.D. (Ont. 3rd), paras. 62-64.

While I accept this submission in the result, I prefer to state my reasoning thus. The language of s. 33(1) is mandatory in the sense that it does not impose a permissive or discretionary conduction on the proceedings before convocation. The conditions in cls. (a) and (b) concerning service of the complaint and notice of the hearing are, however, in the category that has been described as giving rise to a

24th February, 1995

contingent defect of jurisdiction in the event of breach rather than to a total want of jurisdiction (de Smith. pp. 253-4). Waiver or acquiescence by the party may, therefore, result in the court refusing to exercise its discretion to grant him relief. In this case I go farther, however, and say that the provisions have been complied with satisfactorily. First, the provisions of s. 33(13) concerning the manner and time of service of any document may be differently viewed. In this subsection the word "shall" is capable of being constructed as permissive in the sense that while notice and service are mandatory it is open to the parties to accept some other service such as short notice or service on solicitors as is frequently done in litigation in the courts. This view is fortified, in my opinion, by the provisions of the *Statutory Powers Procedure Act* which applies to this tribunal. I again refer to ss. 6 and 32, quoted above.

I view this provision, as Mr. Twohig urges me to do as providing for reasonable notice in lieu of the rigid 10 days in s. 33(13) of the *Law Society Act*. As appears from the agreed statement of facts, the solicitor had actual notice of the intended May 9th complaint and the date of the hearing when he executed it on May 6th. Moreover, he deposes that he believes a copy of the complaint was given to his counsel on May 10, 1983 [sic 1993]. In my opinion, having regard to the circumstances there was sufficient notice and service for the purposes of s. 33(1) and the condition precedent was met. Moreover, s. 4 of the *Statutory Powers Act*, when read with s. 32, in my opinion, gives overriding authority to the parties to consent to service and notice as was actually done; this section also extends to other aspects of the proceedings that were carried forward with the consent or acquiescence of the parties".

In this case, Mr. Hainsworth had full s. 33(1)(b) notice of the time and place of the original hearing, notice of the continuations which were adjourned on consent, and notice of the time of the July 6, 1993 hearing. It also appears that he knew the place of the continuation on July 6, 1993, although the notice did not actually specify it. In those circumstances, it is Convocation's view that Mr. Hainsworth had notice as required by s. 33 of the *Law Society Act*. For the reasons given above, Convocation rejects his argument made in writing but not orally based upon s. 7 of the *Charter of Rights*. Accordingly, his challenge to the Discipline Committee's Report is rejected.

After reviewing the Decision, Convocation accepted the Discipline Committee's finding of professional misconduct.

Following Convocation's decision to reject Mr. Hainsworth's challenge to the Decision, Mr. Hainsworth advised Convocation that he was not prepared to proceed on the issue of penalty. Convocation accordingly granted an adjournment, and urged Mr. Hainsworth to retain counsel to address the penalty issue. Mr. Hainsworth was further advised that, if he chose to lead evidence on penalty, he would be permitted to do so.

The hearing before Convocation resumed on September 22, 1994, by which time Mr. Hainsworth had retained counsel. Counsel submitted that Mr. Hainsworth should be permitted to reopen the finding of professional misconduct because it was based upon evidence heard in Mr. Hainsworth's absence, and because Mr. Hainsworth had never told his side of the story under oath. Counsel pointed out that Mr. Hainsworth had not participated before the Disciplinary Committee because he had taken the position that the Committee had no jurisdiction. Mr. Hainsworth was unrepresented at that time, and should be given some leeway. Convocation then heard Mr. Hainsworth's counsel's review of his (Hainsworth's) September 1994 affidavit.



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Convocation is of the view that Mr. Hainsworth bears the burden of showing why this new evidence in September, 1994 could not have been adduced before the Discipline Committee by due diligence. The fact is that Mr. Hainsworth deliberately chose not to attend before the Discipline Committee, but instead chose to rely upon what he regarded as a defect in the notice. Mr. Hainsworth is a lawyer, he made that tactical decision himself, he would have been prepared to benefit by it had he been correct in his submissions, and he must now bear the consequences of the manner in which he chose to conduct his defence. It is not enough to simply say that he chose to be unrepresented, made a tactical mistake, and now wishes to start over again to lead evidence - in fact, his own testimony - which could have been lead before the Committee. Mr. Hainsworth had a full opportunity to make his case on the issue of professional misconduct before the Committee and chose not to. Convocation is therefore not prepared to send this matter back to Committee for a rehearing, nor to rescind its previous acceptance of the Discipline Committee's Report and Decision on the question of professional misconduct.

This matter should accordingly proceed on the issue of penalty".

THE REASONS WERE ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of February 8, 1995

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 Wednesday, the 8th of February, 1995, at 8 a.m, the following members being present: L. Brennan (Chair), F. Carnerie, A. Feinstein, R. Murray, J. Palmer, H. Sealy.

The following bencher was also present: D. Bellamy.

Visitors: M. Aplin, A. Love.

Staff: A. Brockett, E. Spears, L. Talbot, R. Tinsley, G. Zecchini.

A.

POLICY

No matters to report.

B.

ADMINISTRATION

No matters to report.

C.  
INFORMATION

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C.1.        PROGRAM EVALUATION WORKSHOP FOR STAFF

C.1.1.       In order to encourage a uniform approach to the program review exercise that all committees have been asked to undertake, an evaluation workshop has been arranged for Friday, February 17, 1995. Committee secretaries and management staff have been asked to attend. The workshop is to be conducted by Dr. Arnold Love, a program evaluation consultant.

C.1.2.       Dr. Love met with your Committee to ascertain what it is that benchers hope to see accomplished by the program review exercise.

C.1.3.       It was agreed that staff who attend the evaluation workshop would be asked to invite staff under their supervision to contribute suggestions as to ways in which the Law Society might implement its Role Statement. In this way, input from all staff will be encouraged.

C.2.        OBJECTIVES AND GOALS CONFERENCE: OCTOBER 1995

C.2.1.       As the conclusion of the program review exercise, your Committee is planning a conference in October, 1995, at which Convocation would adopt objectives and goals for the quadrennial term 1995-1999.

C.2.2.       The sum of \$50,000 has been included in your Committee's proposed budget for 1995-1996, to cover the cost of the conference.

C.2.3.       A subcommittee, comprising Fran Carnerie and Abraham Feinstein, will develop detailed plans for the conference.

C.3.        REVIEW OF COMMITTEE PROGRAMS

C.3.1.       As a first step in its own program review, your Committee received a list of the programs and activities conducted by the Research and Planning Committee.

C.3.2.       Your Committee has requested a further report from its staff, following the evaluation workshop of February 17.

C.4.        BUDGET FOR 1995-1996

C.4.1.       Your Committee approved a budget for 1995-1996 totalling \$86,700. This represents an increase of \$47,500 over the 1994-1995 budget. However, the increase is more than accounted for by the sum of \$50,000 which has been included for the October 1995 Objectives and Goals Conference. If the cost of the conference is excluded, the Committee's budget shows a reduction of \$2,500 from 1994-1995.

C.5.        REVIEW OF POLICY GOVERNING LAWYER-MEMBERS ON COMMITTEES

C.5.1.       In January, 1995, Convocation extended the term of the current lawyer-members on Standing Committees to August 31, 1996. The twelve-month extension was made in order to permit time for the policy governing the appointment of lawyer-members to be reviewed, and if necessary, amended.

C.5.2.       A subcommittee (Fran Carnerie, Julaine Palmer, Hope Sealy, Michael Somers) was asked to bring forward recommendations concerning the current policy.

24th February, 1995

C.6. LAWYERS' LIAISON COMMITTEE

- C.6.1. On February 2, your Committee organized a meeting with representatives of the Law Society, the Canadian Bar Association - Ontario and the County and District Law Presidents' Association to discuss the need for a body which would speak with a united voice in the interests of the legal profession.
- C.6.2. A major impetus for the meeting was to clarify the role of other organizations in the profession now that the Law Society has adopted its Role Statement.
- C.6.3. The CBA-O and the CDLPA have assumed responsibility for taking this matter further. It has been suggested that they might convene a meeting with other groups in the profession.

C.7. WORKING GROUP ON RULES OF PROFESSIONAL CONDUCT FOR LAWYERS ACTING AS MEDIATORS

- C.7.1. On February 3, the Dispute Resolution Implementation Subcommittee held an all-day workshop to discuss possible rules of professional conduct for lawyers acting as mediators. The initiative arose directly from the report of the Dispute Resolution Subcommittee which was adopted by Convocation in February, 1993.
- C.7.2. Approximately 70 members of the profession attended. Participants were divided into seven discussion groups, each with a separate topic and each led by members of Law Society staff, most of whom were from the Education Department.
- C.7.3. The Dispute Resolution Implementation Subcommittee hopes to be able to formulate recommended draft rules as a result of the workshop.

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

L. Brennan  
Chair

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of February 8, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Wednesday the 8th of February 1995 at nine o'clock in the morning, the following members being present: C. McKinnon (acted as Chair), P. Furlong, J. Callwood and G. Sadvari. C. Giffin, of the Law Society, was also present.

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

The Workers' Compensation Law Specialty Committee met on Thursday, the 26th of January, 1995 at five-fifteen in the evening.

The Criminal Law Specialty Committee met (conference call) on Friday, January 27, 1995 at one o'clock in the afternoon.

A.

POLICY

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No items.

B.

ADMINISTRATION

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B.1.            PROGRAM BUDGET 1995/96

A first draft of the 1995/96 Interim Budget was reviewed by members and changes were recommended before submission to the Finance Department.

C.

INFORMATION

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C.1.            CERTIFICATION OF SPECIALISTS

C.1.1.        Your Board is pleased to report the certification of the following lawyer as a Criminal Law Specialist:

Howard Rubel (of Toronto)

C.1.2.        Your Board is pleased to report the certification of the following lawyer as a Family Law Specialist:

Michael Menear (of London)

C.2.            RECERTIFICATION OF SPECIALISTS

C.2.1.        Your Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

Roderic Ferguson (of Midland)  
Paul Jewell (of Toronto)  
Harvey Strosberg (of Windsor)

C.2.2.        Your Board is pleased to report the recertification for an additional five years of the following lawyers as Criminal Law Specialists:

John Lang (of Kitchener)  
Allan Mintz (of Toronto)

24th February, 1995

C.3. NEW CERTIFICATION OF PREVIOUSLY CERTIFIED DUAL CIVIL & CRIMINAL SPECIALISTS

C.3.1. Your Board is pleased to report the certification of the following lawyers, who were "grandfathered" as dual Civil/Criminal Specialists and which designation has since been abolished, as Criminal Law Specialists:

Arthur Cogan (of Ottawa)  
Douglas J. Crane (of Toronto)  
John Joseph Kelly (of Kitchener)  
Frederick Leitch (of Oakville)  
John P. Nelligan (of Ottawa)  
Patrick Rudden (of Cornwall)  
Robert J. Upsdell (of St. Thomas)

C.3.2. Your Board is pleased to report the certification of the following lawyers, who were "grandfathered" as dual Civil/Criminal Specialists and which designation has since been abolished, as Civil Litigation Specialists:

Arthur Cogan (of Ottawa)  
Frederick Leitch (of Oakville)

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

R. Yachetti  
Chair

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of February 8, 1995

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 Wednesday, the 8th of February, 1995 at 9:45 a.m., the following members being present: P. Copeland (Chair), N. Angeles-Richardson, J. Lax, P. Hennessy and B. Humphrey.

Also present: M. Moliner

Staff: A. Singer, E. Spears and L. Talbot

A.  
POLICY

Nothing to report.

B.  
ADMINISTRATION

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B.1            REVIEW OF PROGRAMS, ACTIVITIES AND PROPOSALS

- B.1.1          The Committee continued to review its programs, activities and proposals.
- B.1.2          A more detailed review will be undertaken following the *Workshop on Principles of Program Evaluation* being held for Law Society Staff on February 17, 1995.

C.  
INFORMATION

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C.1            RULE 28 EDUCATION PAMPHLET TO MEMBERS OF THE PROFESSION

- C.1.1          Marie Moliner addressed the Committee and distributed a draft pamphlet to be sent to members entitled "Recruitment and Hiring" relating to the education plan being implemented by the Equity in Legal Education and Practice Committee.
- C.1.2          Members of the Committee were asked to respond individually to Ms Moliner and provide any comments on the draft pamphlet before Thursday, February 23, 1995.

C.2            FOLLOW-UP RESEARCH ON THE TRANSITIONS REPORT

- C.2.1          After considering the recommendations that came from the meeting your Committee had with Fran Kiteley last month, the Committee decided to undertake follow-up research on the findings of the *Transitions* Report published in May 1991.
- C.2.2          The Committee is proposing to retain an expert consultant to study changes in the legal profession since 1991 which affect women. The study will compare the current circumstances of women in the legal profession and measure recent changes against the findings and recommendations set out in the *Transitions* Report.

C.3            ALTERNATIVE EMPLOYMENT FOR LAWYERS

- C.3.1          After reviewing a number of the recommendations set out in *Transitions*, your Committee considers one priority to be the need to foster greater awareness of alternative employment opportunities for lawyers.
- C.3.2          This is an issue which vitally affects female members of the profession because their employment opportunities are often affected by child-rearing responsibilities.
- C.3.3          The Committee plans to consider this matter further with a view to making concrete recommendations that will assist lawyers interested in seeking employment outside the traditional practice of law.

C.4 BUDGET FOR FISCAL YEAR 1995-1996

- C.4.1 Your Committee approved a draft budget for fiscal year 1995-1996 totalling \$ 32,000. This figure is the same amount budgeted for last year.

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

P. Copeland  
Chair

A draft of the Recruitment and Hiring paper dated February 6, 1995 was distributed to the Benchers.

THE REPORT WAS ADOPTED

CALL TO THE BAR

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

Joseph Andre Bernard Caron	36th Bar Admission Course
Joseph Paul Cerrone	36th Bar Admission Course
Carmen Lydia Diges	36th Bar Admission Course
Jeremiah Apollos Eastman	36th Bar Admission Course
Brian Joseph Goldkind	36th Bar Admission Course
Christopher George Holland	36th Bar Admission Course
David Ari Hutman	36th Bar Admission Course
Dubravka Mandic	36th Bar Admission Course
Gary Wayne Gabriel Patterson	36th Bar Admission Course
Serena Lynn Rosenberg	36th Bar Admission Course
Julia Elizabeth Schatz	36th Bar Admission Course
Karen Ann Spector	36th Bar Admission Course
Stella Vallelunga	36th Bar Admission Course
Renee Denise van Kessel	36th Bar Admission Course
Michael Warren McCandless	Special, Transfer, Manitoba
Nathalie Mercure	Special, Transfer, Quebec
Pascale-Sonia Roy	Special, Transfer, Manitoba
Sylvie Eva Roussel	Special, Transfer, Quebec
Keith Douglas Wilson	Special, Transfer, Quebec
Yolande Viau	Professor, Faculty of Law, University of Ottawa

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Convocation went in camera briefly. No staff was present.

24th February, 1995

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer advised that 55 nominations had been filed for the upcoming bench election.

MOTION - COMMITTEE APPOINTMENTS

It was moved by Ms. Graham, seconded by Ms. Palmer THAT Tom Carey be appointed as a member of the Heritage Committee and Special Committee on the Bicentennial.

Carried

JOINT COMMITTEE ON GOVERNANCE AND OPERATION

Mr. Bastedo reported orally on the Committee's recommendations for the recruitment of the new Chief Executive Officer. It was the Committee's view that they proceed immediately to hire this individual.

A memorandum was distributed to Convocation containing a proposal from Coopers & Lybrand to assist the Law Society in selecting the Chief Executive Officer. Also distributed was a draft recruitment advertisement and another document on recruiting specifications.

The Treasurer commented that the search was premature in that the position had not been fully defined in terms of the scope of the position and the overall structure of the Society.

A debate followed.

It was moved by Mr. Epstein, seconded by Mr. Copeland that the Society proceed with the process but defer the selection until after the new bench is elected.

Lost



ROLL-CALL VOTE

Arnup	Abstain
Bastedo	Against
Brennan	Against
Campbell	Against
Carey	Against
Carter	Against
Copeland	For
Epstein	For
Feinstein	Against
Finkelstein	Against
Goudge	Against
Kiteley	Abstain
Lamont	Against
Lax	Against
Legge	Against
Moliner	Against
Murphy	Against
Murray	Against
S. O'Connor	Against
Palmer	For
Peters	Against
Richardson	Against
Ruby	For
Scace	Against
Scott	Against
Sealy	Against
Somerville	Against
Strosberg	Against
Thom	Against
Yachetti	Against

It was moved by Mr. Bastedo, seconded by Brennan that the Law Society proceed forthwith with the selection of a new Under-Treasurer and approve the proposal of the Joint Committee.

Carried

ROLL-CALL VOTE

Arnup	Abstain
Bastedo	For
Brennan	For
Campbell	Against
Carey	Against
Carter	For
Copeland	For
Epstein	For
Feinstein	For
Finkelstein	For
Goudge	Against
Kiteley	Abstain
Lamont	Against
Lax	For
Legge	For
Moliner	For
Murphy	For
Murray	For
S. O'Connor	For
Palmer	For
Peters	For
Richardson	For
Ruby	For
Scace	For
Scott	Against
Sealy	Against
Somerville	For
Thom	For
Yachetti	Against

It was moved by Mr. Carey, seconded by Mr. Yachetti that the search process be suspended until May and that the Secretary be appointed interim Under-Treasurer.

An amendment was proposed by Mr. Campbell that an interim Under-Treasurer be appointed until a selection was made.

Mr. Yachetti withdrew as seconder and the motion failed.

It was moved by Mr. Epstein, seconded by Ms. Peters that the matter be deferred to March Convocation for further consideration by the Committee.

Withdrawn

THE REPORT WAS ADOPTED

AGENDA - Reports or Specific Items Requiring Convocation's Consideration and Approval

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of February 8, 1995

Mr. Bastedo presented Item B.-3. & 4. re: Suspensions, for Convocation's approval.

24th February, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 8th of February, 1995 at 10:30 a.m., the following members being present: R.W. Murray (Vice Chair in Chair), A. Feinstein, J.J. Wardlaw, R.W. Cass, C. Curtis, P. Furlong, K. Howie, and M. Moliner. B. Pepper, M. Weaver. Also in attendance were Nancy Chaplick of Osler, Hoskin & Harcourt and Peter Beca of MLH & A. Staff in attendance were M. Angevine, D. Carey, D. Crack, L. Johnstone, B. Rowe, R. Tinsley, and J. Yakimovich.

A.  
POLICY

1. CERTIFIED CHEQUE POLICY

The current policy of the Finance Department is that certified cheques are mandatory in two instances, namely:

- i) Where a member has been administratively suspended for non-payment of a fee or levy, the member is required to provide a certified cheque to reinstate his or her membership to good standing; and
- ii) Where a member's cheque has been returned NSF to the Society, the replacement cheque provided by the member must be certified.

The first of these has proved to be troublesome for the staff to administer. There are several reasons for this, the first being that many members mail their cheques at the last minute, hence they are not received by the Law Society until after the suspension deadline has passed. Staff are then obliged to return the cheque to the member and request a certified cheque in its place which adds to their workload. Even where the member has not already mailed the cheque prior to receiving registered notice of suspension, there is significant resistance on the part of the profession to providing a certified cheque for reinstatement. Staff are then forced to spend additional time with members who do not wish to provide a certified cheque. In order to address these problems, it is proposed that certified cheques only be required as follows:

- i) Where a member has been administratively suspended for non-payment of a fee or levy and the member has a history of payment problems with the Society, the member be required to provide a certified cheque to reinstate his or her membership to good standing; and
- ii) Where a member's cheque has been returned NSF to the Society, the replacement cheque provided by the member must be certified.

The rationale for this change is that the Society is currently requiring certified cheques from members where, in most cases, there is little or no risk of the uncertified cheques being returned NSF. It is time consuming for both members and staff to require this. It is also a source of irritation for the membership. By identifying the problem payors and requiring only those individuals to provide certified cheques on reinstatement, we will eliminate some of the aggravation surrounding the suspension process as well as reduce the workload for the staff.

Approved

B.  
ADMINISTRATION

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1. FINANCIAL REPORT

Attached is the highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the six months ended December 31, 1994. [Appendix A]

Approved

2. REPORT OF SUBCOMMITTEES

(a) *Administration Subcommittee*

- i) Law Society Employee Pension Plan - Review of Investment Administration Management

At the last Finance Committee meeting, the Director was asked to canvass the employees of the Law Society to confirm that the employees endorse the recommendation of the Employee Pension Committee.

By memorandum dated January 27, 1995, (copy at Appendix B), employees were invited to information meetings on Monday, January 30, 1995. Of the ballots circulated to the approximately 200 staff in attendance, 116 have been returned, all in favour of the Pension Committee's recommendation.

The Committee was asked to approve the Employee Pension Committee recommendation that the investment manager be changed from Standard Life Assurance Company to Canada Life Insurance Company.

Nancy Chaplick of Osler Hoskin & Harcourt, our counsel on pension matters, addressed the meeting on issues relating to the Society's and the Benchers' fiduciary duties as plan sponsor, and Peter Beca of MLH & A addressed investment management issues.

It was approved that the investment manager be changed from Standard Life Assurance Company to Canada Life Insurance Company subject to a further report to the Committee that satisfactory arrangements are made with Standard Life for the transfer of members' assets.

- ii) A memorandum from the Director of Finance recommending the acquisition of a second AS/400 for six months at a cost of approximately \$36,000 is attached.

Approved

(b) *Report of the Priorities and Planning Subcommittee* [No Report]

(c) *Report of the Facilities Subcommittee* [No Report]

3. SUSPENSION OF MEMBERS - LATE FILING FEE

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

In all cases all or part of the late filing fee has been outstanding for four months or more.

24th February, 1995

The Committee was asked to recommend that the rights and privileges of these members be suspended on February 24, 1995 if the late filing fee remains unpaid on that date.

Approved

Note: Motion, see page 399

4. SUSPENSION OF MEMBERS - N.S.F. CHEQUE

There are members who paid their Annual Fees or their Errors and Omissions Insurance levies with cheques which were subsequently dishonoured by the bank.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on February 24, 1995 if the fees or levies remain unpaid on that date.

Approved

Note: Item deleted

C.  
INFORMATION

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1. LEGAL MEETINGS AND ENTERTAINMENT

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

February 2, 1995	York Law Association Convocation Hall
February 16, 1995	Lawyers' Club Dinner Convocation Hall
February 22, 1995	Medico-Legal Dinner Convocation Hall
February 24, 1995	Laskin Moot Dinner Convocation Hall
March 4, 1995	Gale Cup Dinner Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

T. Bastedo  
Chair

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

Item B.-1. - Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated February 8, 1995 re: Financial Statement Highlights - December 31, 1994.

(Schedule A - C)

24th February, 1995

Item B.-2.(a)i) - Memorandum from Mr. David Crack, to Ross Murray, Chair - Administration Subcommittee dated February 7, 1995 re: Computer Resources.

Item B.-4. re: Suspensions - N.S.F. Cheque was deleted.

It was moved by Mr. Bastedo, seconded by Mr. Feinstein that Item B.-3. be adopted.

Carried

THE BALANCE OF THE REPORT AS AMENDED WAS ADOPTED

MOTION TO SUSPEND - FAILURE TO PAY LATE FILING FEE

It was moved by Mr. Bastedo, seconded by Mr. 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 name appears on the attached list be suspended from February 24, 1995 and 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)

Convocation rose for a brief recess at 11:00 a.m. and resumed at 11:20 a.m.

AGENDA - Additional Matters Requiring Debate and Decision by Convocation

SPECIAL COMMITTEE ON CONFLICTS OF INTEREST

Mr. Scace presented the Report of the Special Committee on Conflicts of Interest for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON CONFLICTS OF INTEREST begs leave to report:

The Special Committee on Conflicts of Interest was struck on March 25, 1994 to consider the issue of conflicts of interest with respect to benchers and bencher firms; its members being Arthur Scace (Chair), Lloyd Brennan, Kevin Carroll, Maurice Cullity, Carole Curtis, Susan Elliott, Marie Moliner, Ross Murray and Hope Sealy.

Your Committee has met on April 21st, August 10th, September 7th, November 9th and November 25th, 1994 and January 26th and February 10th, 1995.

I Background

This Committee was created as a result of the debate in Convocation concerning the report of the Special Committee on Lawyers' Fees. That Special Committee was charged with recommending guidelines for the selection and compensation of counsel to represent the Law Society in a variety of matters. When its report came before Convocation, a lively debate ensued in which the need for a comprehensive policy for benchers and their firms on conflicts of interest vis a vis the Law Society was identified. Convocation voted to establish this special committee for that purpose.

24th February, 1995

Your Committee has explored various approaches to the problem of conflicts of interest which arise by virtue of the benchers' role.

In so doing your Committee has examined in some detail the different functions that benchers perform and the nature and context of the problems that arise in each of those roles.

At the outset your Committee recognized that there is an enormous variety and number of conflicts arising out of the bencher role. It is acknowledged that it is not practical to attempt to deal with every such conflict. Accordingly your Committee has limited its consideration to those conflicts which are significant.

## II Discussion

As a general principle, it is acknowledged that benchers are elected precisely because of the combination of interests, talents and experience which they as individuals can bring to the work of Convocation. Furthermore, your Committee feels that benchers have an obligation to carry those attributes into Convocation.

In addition, your Committee recognizes that there are certain conflicts of interest which are inherent in any self-governing body. Every elected bencher is by definition also a member of the Law Society and therefore has a self-interest in the matters coming before Convocation. That self-interest is, however, essential to the effective governance of the profession. The question your Committee has focused on is, "At what point does an individual bencher's self-interest become so significant that a conflict of interest arises which interferes with that bencher's ability to make a decision in the best interest of the Law Society and the public?".

There is a clear distinction between voting on issues which affect the profession as a whole and necessarily affect benchers as members and voting on issues where the bencher is in a position to benefit, either financially or otherwise, in a fairly specific and direct way from a particular decision of Convocation.

Further, there may well be instances where a bencher not only ought not to vote on an issue but ought not to speak or even attend in Convocation while certain issues are considered.

The Committee has attempted to formulate a general statement of principle by which individual benchers may govern themselves. As well, it has tried, where possible, to enumerate specific rules and guidelines for particular situations. The Committee recognizes that the problem is complex and does not lend itself to a simple straightforward solution. In any solution proposed, there will be areas of disagreement. That this is necessarily so was evident from the discussion in the Committee. There are some situations which will be resolved ultimately by the exercise of the personal judgment of the bencher involved.

## III Sample Issues

In order to provide Convocation with a sense of the scope of the issues that the Committee identified, a sampling of some of the questions posed during the course of the Committee's deliberations is included here:

1. May a bencher whose firm acts for LPIC in insurance defense matters participate in debate or decisions concerning such matters as
  - (a) an increase or decrease in the schedule of rates for counsel to LPIC;
  - (b) changes to the amount and structure of the member's deductible; or

- (c) changes to the coverage provided by LPIC.
2. May a benchner whose practice includes a substantial proportion of legally aided clients participate in debate or decisions involving such matters as:
- (a) Legal Aid service cuts in the area of law in which the benchner primarily practises;
  - (b) changes to the Legal Aid Tariff which would affect the benchner's practice;
  - (c) funding of disbursements by Legal Aid where the benchner's practice would be affected; or
  - (d) the introduction of a staff delivery model for services in the benchner's area of practice.
3. To what extent may a benchner who is employed by the provincial government participate in debate or decisions involving:
- (a) any matters concerning the Legal Aid Plan;
  - (b) negotiations with the government; or
  - (c) proposals for amendments to the Law Society Act which would materially affect the relationship between the Law Society and the government.

These examples serve to illustrate the kinds of issues that were considered by the Committee which went beyond the conflicts usually identified in relation to benchers, such as, direct retainer by the Society or involvement in the discipline process.

Your Committee struggled to answer these and other questions and could not in every case provide a complete response that was acceptable to all Committee members. In some instances, however, the Committee, after a thorough analysis of the issue, reached a consensus on the response. It is important to state, however, that even in those cases where the Committee reached agreement that in the particular circumstances a benchner ought not to be prohibited from participating, it at the same time recognized that individual benchers might well, in the exercise of their personal judgment, decide they ought not to participate. In other words, the fact that there is no absolute prohibition does not necessarily settle the matter. Benchers must be aware of and alert to situations which require them to exercise independent judgment.

For example, as to the matters outlined in question #2, the Committee initially felt that there are special considerations surrounding Legal Aid which bear on the issue of who may vote. Perhaps the most significant of these is that Convocation's authority with respect to the Legal Aid Plan differs somewhat from its authority over many of the other programs administered by the Law Society. This difference arises by virtue of the fact that funding for the Ontario Legal Aid Plan is provided primarily by the government of Ontario. Thus the conflicts may not be as direct and immediate as they might seem to be at first. Taking this into account, your Committee concluded that there should be no absolute prohibition against any benchner voting on all the issues outlined in question #2. Each benchner must assess their own personal situation and decide whether or not



to participate. After exploring the Legal Aid issues further, however, the Committee concluded that while there are some special considerations surrounding Legal Aid, on balance, there should not be a different standard applied to conflicts arising in a Legal Aid context than would be applied in any other context.

#### IV Types of Conflicts

The Committee identified a number of different situations in which conflicts or potential conflicts needed to be addressed. To the extent possible, this report will describe each of them and suggest an approach for dealing with them.

##### A. Proceedings involving an individual member's rights and privileges - benchers acting in a quasi-judicial capacity

This category includes:

Discipline, incapacity, admission, readmission and competency proceedings and any other proceeding involving an individual member's rights and privileges.

The Committee is of the view that even the slightest perception of a conflict of interest in these proceedings must be scrupulously avoided at every stage in the proceeding.

Accordingly, your Committee suggests the following specific rules:

##### 1. Bencher prohibited from appearing as counsel

A bencher may not appear as counsel before a Committee of benchers or Convocation in a discipline, incapacity, admission, readmission, or competency hearing or any other matter involving an individual member's rights and privileges.

##### 2. Member of bencher firm appearing as counsel

A member of a bencher firm may appear as counsel before a Committee of benchers or Convocation in a discipline, incapacity, admission, readmission, or competency hearing or any other matter involving an individual member's rights and privileges, provided the bencher in question does not in any way participate in the matter.

##### 3. Member of bencher firm providing evidence

Where a member of a bencher firm provides evidence (including a testimonial) in any hearing or other matter before a Committee of benchers or Convocation involving an individual member's rights and privileges, the bencher in question will be excluded from all deliberations.

Note: Motion, see page 407

4. Bencher participating who knows member

It is a matter of individual judgment whether a bencher who knows a member either personally or professionally should participate as a bencher in any stage (e.g. investigation, authorization, pre-hearing, hearing) of the process in respect of a discipline, incapacity, admission, readmission or competency hearing or any other matter involving that member's rights and privileges, subject to the usual considerations governing bias or reasonable apprehension of bias in proceedings before an administrative tribunal.

In this context your Committee considered one example of a fairly common situation ie: where the bencher is on a discipline panel and a member is before the panel who is known to the bencher. In this particular instance the following steps are suggested, assuming that the bencher concludes that he or she can continue to participate:

The bencher should:

- (1) state on the record that the bencher knows the member and provide particulars of the circumstances;
- (2) indicate on the record that the bencher does not feel that he or she is unable to continue to participate by virtue of the knowledge or relationship;
- (3) invite the member to take a few moments to consider whether he or she wishes to raise any objection to the bencher's continued involvement.

The advantage of this approach is that the panel is then able to deal with the issue at the outset and where the member raises no objection, he or she will, in most cases, be precluded from raising it at some later date, as, for example, a ground for appeal.

5. Bencher as witness

It is a matter of individual judgment whether a bencher who knows a member either personally or professionally should participate as a witness or in some other capacity in support of the member in respect of a discipline, incapacity, admission, readmission or competency hearing or any other matter involving that member's rights and privileges.

Your Committee in formulating these rules suggests that benchers should be alert to the consequences both for them as individuals and for Convocation and the Society's admissions and discipline process, should they or members of their firm provide character evidence on behalf of an individual member in a proceeding before Convocation or a hearing panel. Your Committee urges benchers to weigh carefully any request for their participation on behalf of an individual member, bearing in mind the need to ensure that a sufficiently large and diverse pool of benchers is maintained for hearings in Committee and Convocation.

B. Direct Retainer by the Law Society or the Lawyers' Professional Indemnity Company of a benchers or a benchers firm

In considering the elements which should be included in this policy, your Committee, after some discussion, concluded that it was not in the best interests of the Law Society or LPIC to exclude benchers and benchers firms from the pool of counsel eligible for selection. The Committee felt that some of these individuals and firms possess substantial expertise in the area of solicitor's negligence, which expertise the LSUC and LPIC have made a significant investment in developing. To exclude them would, in effect, be throwing away that investment as well as denying LPIC access to experienced counsel. Accordingly, your Committee does not recommend that Convocation adopt a policy under which the Society or LPIC would be prohibited from directly retaining benchers or members of benchers firms.

Instead, the following guidelines are proposed for the retaining of counsel generally by the Society or LPIC. The Committee made the observation that in the vast majority of instances, counsel will be selected and retained by senior Law Society or LPIC staff and not by Convocation. The guidelines have been prepared with this in mind.

1. The Law Society or LPIC should establish criteria for the selection of counsel having regard to the following goals:
  - (a) To ensure that the Society or LPIC is represented by counsel who will provide competent and cost effective legal services and, in particular, to ensure that the services are provided by individuals whose skills, training and experience are most appropriate to the task.
  - (b) To ensure that the Society's or LPIC's work is distributed as equitably as possible having regard to considerations of specific expertise, geographic location, gender and resources.

Note: Motion, see page 407

2. In each instance where the Society or LPIC retains counsel, there should be a written notation confirming that the selection criteria have been applied and setting out in brief terms the justification for the particular choice.
3. There should also be an independent review of the selection process on a periodic basis.
4. There should be a monthly report to Convocation of all counsel retained in the preceding month.

Note: Motion, see page 407

5. There should be an annual report to the membership of all counsel retained during the preceding year, specifying the nature of the matters handled and the amounts billed by firm.

Note: Motion, see page 407

It is also suggested that LPIC avoid, wherever possible, retaining a benchers to represent LPIC and a member in an insurance matter where that matter is also the subject of a Law Society complaints investigation.

C. Benchers and Bencher Firms Acting Against the Law Society or LPIC

The conclusion of the Committee is that benchers ought not to accept a retainer to represent a party adverse in interest to the Law Society or LPIC in any proceeding involving either the Law Society or LPIC.

No definitive conclusion was reached vis a vis bencher firms in this regard. It is suggested, however, that it would be unduly restrictive of an individual's right to choice of counsel to impose a similar restriction on all members of bencher firms. This is yet another situation where the Committee concluded that individual benchers would be called upon to exercise their independent judgment after careful consideration of all the circumstances.

Note: Motion, see page 407

D. Policy Issues Considered by Committees or Convocation

For the balance of matters considered in Committee or Convocation, it is suggested that it is up to the individual bencher to decide whether or not to participate in the decision.

On a very simplistic basis, it is recognized that each bencher brings to their work at the Society a unique combination of personal and professional experience which will affect their approach to and ultimately their decisions upon the matters before Convocation. It is both understood and expected that this is the case. To require individual benchers to declare a conflict of interest by virtue of the fact that some aspect of their personal or professional experience impinges upon or in some way relates to the issue before Convocation, would significantly impair not only the individual bencher's freedom to participate but also Convocation's ability to deal with business.

The Committee wrestled with how to offer useful guidance to benchers in reaching a decision.

Two situations were raised by way of example to illustrate instances where, in the Committee's view, benchers ought to refrain from participating.

1. Solicitor-Client Relationship

A bencher ought not to participate in a matter where:

1. the bencher or the bencher's firm acts for a client whose interests will be significantly affected by Convocation's decision, or
2. the bencher or the bencher's firm is, by virtue of a solicitor-client relationship, in possession of confidential information pertaining to the issue under consideration which may tend to influence the bencher's decision on the matter.

2. Employment Relationship

Where a bencher is an employee, the bencher ought not to participate in a matter where:

1. the bencher's employer has a significant interest, which is distinct from the interest of the profession at large, in a matter before Convocation, or

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2. the benchers, by virtue of his or her employment, is in possession of confidential information pertaining to the issue under consideration which may tend to influence the benchers' decision on the matter.

V Rulings by Convocation

Lastly, your Committee considered whether there should be some procedures introduced to assist benchers in recognizing and dealing appropriately with conflicts of interest. There was unanimous support for this proposal. Accordingly, your Committee recommends as follows:

1. Benchers are invited to consult informally with the Treasurer to seek guidance in situations involving the appearance of, or a potential or actual conflict of interest relating to their responsibilities as benchers.
2. Benchers may also seek a ruling by Convocation on any situation involving the appearance of, or a potential or actual conflict of interest relating to their own or any other person's responsibilities as benchers.
3. Where a ruling is sought, Convocation may rule that the benchers who are the subject of the ruling:
  - (a) be required to withdraw from Convocation while the matter in question is under consideration;
  - (b) may remain in Convocation and be available to inform Convocation but may not otherwise participate in the debate or decision on the matter in question;
  - (c) may remain in Convocation and participate in the debate but may not vote on the matter in question; or
  - (d) may participate fully in the debate and decision on the matter in question.
4. Convocation shall maintain a record of such rulings as are made and where appropriate, such advice as is given, so that it is available for reference as required.

All of which is respectfully submitted

DATED this 24th day of February, 1995

Arthur Scace  
Chair

It was moved by Mr. Scace, seconded by Ms. Sealy that the Report be adopted.

A debate followed.

Mr. Epstein did not participate and did not vote.

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Convocation voted on the following amendments.

It was moved by Ms. Kiteley, seconded by Mr. Scace THAT the issue of equity be included in the list - (page 7, 1(b))

Carried

It was moved by Mr. Somerville, seconded by Mr. Yachetti THAT Item C. be deleted - (page 7)

Carried

It was moved by Mr. Strosberg, seconded by Mr. Scott THAT #4. be deleted - (page 7, under Item B.)

Carried

It was moved by Ms. Kiteley, seconded by Mr. Murphy THAT the reference to a testimonial be excluded where a member of a benchers firm provides evidence - (page 5, #3.)

Carried

THAT #4. be deleted - (page 5)

Lost

It was moved by Mr. Strosberg, seconded by Mr. Scott THAT #5. (page 7) be amended to read as follows:

"There should be a semi annual report to Convocation of all law firms retained during the preceding six months, specifying the amounts billed for fees and disbursements by firm."

Carried

It was moved by Mr. Finkelstein, seconded by Mr. Howie that an amendment be made in the first paragraph under Item C. on page 7 to add the words "after the date of the adoption of this report" following the word "retainer" so that the sentence would then read:

"The conclusion of the Committee is that benchers ought not to accept a retainer after the date of the adoption of this report to represent a party adverse in interest to the Law Society or LPIC in any proceeding involving either the Law Society or LPIC."

Not Put

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:50 P.M.

The Treasurer and Benchers had as their guest for luncheon Ms. Laura Kathleen Fric, who was awarded the Treasurer's Medal at the Call to the Bar in London in February 1995.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Blue, Brennan, Campbell, Carey, Carter, R. Cass, Copeland, Epstein, Feinstein, Finkelstein, Goudge, Graham, Howie, Kiteley, Lamont, Lawrence, Lax, Moliner, Murphy, Murray, Palmer, Peters, Ruby, Sealy, Strosberg, Thom, Wardlaw, Weaver and Yachetti.

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IN PUBLIC

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AGENDA - Reports or Specific Items Requiring Convocation's Consideration and Approval

BOARD OF LAWYERS' PROFESSIONAL INDEMNITY COMPANY

Meeting of February 8, 1995

Mr. Strosberg presented Item A.-A.2. re: LPIC Board of Directors, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BOARD OF LAWYERS' PROFESSIONAL INDEMNITY COMPANY begs leave to report:

The Board of Directors has met on February 8, February 10 and February 13, 1995.

The current members of the Board are H. Strosberg (Chair), T. Bastedo, S. Elliott, A. Feinstein, N. Finkelstein, M. Heins, R. Murray, J. Palmer and J. Wardlaw.

A.  
POLICY

A.1. Benchers Law Firms and LPIC Legal Work

A.1.1. LPIC's Board of Directors has considered the motion of Messrs. Copeland and Ruby to the effect that the Law Society of Upper Canada assign no new legal work respecting Errors and Omissions to any firm of which a Benchers is a member.

A.1.2. It is the view of LPIC's Board of Directors that the assignment of legal counsel to defend an Insured under LPIC's policy of Insurance is a matter to be decided by the Insured member and LPIC. Any attempt by Convocation to interfere in this process could be subject to challenge by the Insured member and reinsurers as well as potentially exposing LPIC to litigation.

A.1.3. LPIC has put into place a tender procedure whereby firms or lawyers will be chosen to do LPIC's work. A committee to be chaired by the Honourable Samuel Grange on his retirement from the Bench, and composed of Malcolm Heins, President of LPIC, and Caron Wishart, Vice-President of Claims, will select qualified lawyers and firms to do the legal defence work for LPIC and its Insureds. The Insured will be free to choose legal representation from the panel of lawyers and firms selected following the tender process. This new procedure will eliminate the appearance of any bias in selection of counsel to do LPIC's defence work.

- A.1.4. The members of LPIC's Board of Directors are charged with the responsibility to act in the interests of LPIC having regard to, among other things, the Company's legal obligations to its policy holders, the Insurance Act of the Province of Ontario and the Corporations Act. A directive such as proposed by this motion would not be binding on the members of LPIC's Board. Convocation, of course, has the power to remove a Director at any time for any reason.
- A.2. LPIC Board of Directors
- A.2.1. LPIC's Board of Directors has considered its composition and the need for its independence from Convocation.
- A.2.2. LPIC's present Board is composed of eight Benchers and one non-Bencher, including the President. There are five vacancies, with Ms. Felicia Salomon having confirmed her willingness to serve pending the placement of Directors and Officers Insurance.
- A.2.3. LPIC's Board of Directors believes that it would be in the best interest of LPIC and the profession to formally invite representative organizations to nominate qualified candidates to sit on LPIC's Board. The CBAO has already nominated a candidate and others, such as the Advocates Society and the County & District Law Presidents' Association, have indicated a wish to nominate a candidate.
- A.2.4. LPIC's Board of Directors recommends that Convocation confirm a policy permitting the CBAO, the Advocates Society, the County & District Law Presidents' Association, and any other association that Convocation deems appropriate, to nominate qualified candidates for appointment to LPIC's Board of Directors. From the pool so nominated, Convocation would then select persons to sit on the Board of Directors.
- A.2.5. LPIC's Board of Directors recommends that Convocation select candidates to sit on the Board of Directors who are knowledgeable with regard to financial and insurance matters.
- A.2.6. LPIC's Board of Directors further recommends that Convocation adopt a policy that a majority of LPIC's Board of Directors need not be Benchers.

B.

ADMINISTRATION

- B.1.1. The reinsurance program for the 1995 policy period has been completed with 57% of the risk being ceded to the commercial insurance marketplace.
- B.1.2. The placement of the reinsurance program from ground up (above the member's deductible) to the policy limit on a quota share basis will reduce the risk of exposure from that which was previously experienced as well as validate the pricing and management practices of LPIC for 1995. The placement of the reinsurance on this basis effectively transfers 57% of the program's risk to the commercial insurance market.



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- B.1.3. The reinsurers who have agreed to participate in 1995 are licensed to do business in Canada and experienced with a lawyers' professional indemnity business.
- B.1.4. An information package for all members re the 1995 insurance program is currently at the printers and will be mailed next week. Advance copies are available for Benchers.

ALL OF WHICH is respectfully submitted

DATED this 21st day of February, 1995

H. Strosberg  
Chair

It was moved by Mr. Strosberg, seconded by Mr. Finkelstein that Item A.-  
A.2. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

CONTINUATION OF THE REPORT OF THE SPECIAL COMMITTEE ON CONFLICTS OF INTEREST

It was moved by Ms. Kiteley, seconded by Mr. Brennan that the Report of the Special Committee on Conflicts of Interest as amended be adopted in principle and be brought back in a revised version to the March Convocation dealing also with the issue of life bencher firms and life benchers.

Carried

ROLL-CALL VOTE

Blue	For
Brennan	For
Campbell	For
Carey	Against
Carter	For
Copeland	For
Epstein	Abstain
Feinstein	For
Finkelstein	For
Goudge	For
Howie	For
Kiteley	For
Lamont	For
Lax	For
Moliner	For
Murphy	For
Murray	For
Palmer	For
Peters	For
Ruby	Against
Sealy	For
Strosberg	For
Thom	For
Wardlaw	For
Weaver	For
Yachetti	Against

THE REPORT WAS APPROVED IN PRINCIPLE

Ms. Kiteley gave a brief oral update on the work of the Insurance Task Force Communications Committee. A memorandum dated February 22, 1995 was distributed to Convocation.

COPELAND/RUBY MOTION

THAT until Convocation makes a final decision on the issue of the selection of counsel to do Errors and Omissions' legal work, which will follow receipt of the report of the Ad Hoc Committee on Conflicts of Interest, chaired by Arthur Scace, THAT the Law Society of Upper Canada recommends to the Lawyers' Professional Indemnity Co. that it assign no new legal work respecting Errors and Omissions to any firm of which a Benchers is a member, upon the following grounds:

- (1) The award of such work to one of our own creates the appearance of an advantage gained by reason of office.

Not Put

AGENDA - Reports or Specific Items Requiring Convocation's Consideration and Approval

EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of February 8, 1995

Ms. Moliner presented Item C.-C.2 re: Rule 28 - Recruitment and Hiring for Convocation's approval.

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 Wednesday, the 8th of February, 1995, the following persons being present: Marie Moliner (Chair), Stephen Goudge, Colin McKinnon, Dennis O'Connor, Nora Richardson, Susan Charendoff, Audrea Golding, Patricia Hennessy, Marie Lavelle, Ramneek Pooni, Jocelyn Churchill and Alexis Singer (secretary to committee). Invited guests: Judith Keene, Fran Kiteley, Michael Brown, Scott Kerr, Patricia Rogerson and Stephen Traviss.

C.  
INFORMATION

C.1            The Law Society of Upper Canada Bicentennial - Equity Project

C.1.1        The committee agreed to participate in a subcommittee consisting of members from the Equity in Legal Education and Practice Committee and the Bicentennial Committee. This subcommittee will be asked to examine possible ideas for an equity project, as well as what the time-lines for such a project should be and how it should be funded. The Chair, Nora Richardson, Audrea Golding have agreed to serve on the subcommittee on behalf of the Equity in Legal Education and Practice Committee.

C.1.2        With respect to funding of any equity project, there is a foundation list of people who might be prepared to donate money if the project has an educational focus. Further, the Equity Committee may seek funding from Convocation.

C.2            Rule 28 - Review of Copy Edited Bulletin: Recruitment and Hiring

C.2.1        The committee received and reviewed a report on what lawyer employers need to know about recruitment and hiring as drafted by Judith Keene and copy edited by the Communications Department. The committee approved the bulletin for presentation to Convocation subject to amendments which would clarify undue hardship and reasonable accommodation by making the wording consistent with the wording found in the commentary to Rule 28 as well as clarification of the prohibited ground of discrimination relating to record of offences (to mean unpardoned criminal code offences).

C.2.2        The Chair circulated the bulletin to the following committees on Committee Day for approval:

Discipline	Communications
Legal Education	Professional Standards
Professional Conduct	Research and Planning
Women in the Legal Profession	

C.2.3        The committee will seek the approval of Convocation on the Rule 28 Bulletin (Recruitment and Hiring). It is important that the Hiring and Recruitment Bulletin be approved and circulated as soon as possible to assist members in hiring summer and articling students. The bulletin will be distributed at Convocation on February 24, 1995.

- C.2.4 The committee agreed that a separate bulletin dealing with undue hardship and reasonable accommodation should be created. Material from the Sheila Martin report will be made available to assist in the preparation of this bulletin. Examples of accommodation will also be used to describe the concept.
- C.3 Teleconference Call with The Law Society of England and Wales
- C.3.1 The committee received a report of a teleconference call held February 6, 1995 between the Chair, Jonathan Goldsmith (Deputy Head of Communications, Law Society of England and Wales), Marie Lavelle (articling student) and Alexis Singer (secretary to Equity Committee).
- C.3.2 As of July 18, 1995, The Law Society of England and Wales will have a rule of practice on non-discrimination in addition to the equal opportunity policies already in place. Some of the voluntary compliance techniques that The Law Society of England and Wales have employed and will continue to employ include:
- C.3.2.1 Requiring articling principals to have equal opportunity policies in place in order to be eligible for students (in spite of the fact that there is a significant supply and demand problem in England and Wales with respect to articling positions).
- C.3.2.2 Presentation of equal opportunity awards. The committee agreed that particularly the presentation of equal opportunity awards should be examined further for possible adoption by The Law Society of Upper Canada.
- C.4 Committee Composition
- C.4.1 The committee received a memorandum from Andrew Brockett dated January 10, 1995 and from Donald Crosbie dated January 11, 1995 with respect to the method of choosing non-bencher members. The committee agreed that non-bencher members for the Equity Committee should be appointed by Convocation in the same manner as other non-bencher members of committees. It was suggested that members apply, identifying areas of interest (for example, equity). The Equity Committee agreed that these non-bencher positions would have to be publicized to ensure applications from groups who should be represented on the committee. The committee would also have to liaise with those responsible for making non-bencher appointments in the Law Society.
- C.4.2 The committee agreed that principles and selection criteria should be developed to assist those responsible for appointment of non-bencher members in their decisions. The committee will develop these for approval by Convocation.
- C.5 Update on Employment Equity Plan for the Law Society
- C.5.1 The committee received staff's oral report of approved funding for focus groups to take place over the next few months to assist the Law Society in determining barriers to employment equity and developing and implementing an Employment Equity Plan. The focus groups will also serve as training vehicles and as vehicles to receive the self-identification questionnaires required under the *Employment Equity Act*.

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C.6 Articling Placement Statistics

- C.6.1 The committee received statistics updated as of February 7, 1995 as well as a Department of Education - Financial Aid and Placement Office 1995/96 Articling Placement Report.

C.7 Update on Strategic Planning Conference Recommendation

- C.7.1 The committee received a memorandum of the reasons for limiting application of the *Employment Equity Act* in the private sector to businesses with 50 or more employees to assist in its deliberations around the question of making law firms with fewer than 50 employees develop an Employment Equity Plan as part of Rule 28 obligations. The practical reasons include the fact that more than 75% of Ontario employees work in businesses with 50 or more employees and other legislation (*Ontario Human Rights Code*, *Employment Standards Act* and *Pay Equity* legislation) will achieve some measure of equity with smaller employers. Also, from a policy point of view, it may be too expensive for small businesses to implement an Employment Equity Plan and continue to do business.

C.8 Outstanding Items from Previous Agenda

- C.8.1 The committee deferred discussion of lawyer referrals made on the basis of race or ethnicity as well as the CBA Study of Racism in the Legal Profession to its next meeting. In addition, the draft Report of the Consultation of Visible Minority Women held on March 17, 1994 at the CBAO was received by the committee members and will be placed on a future agenda.

ALL OF WHICH is respectfully submitted

DATED this 24th day of February, 1995

M. Moliner  
Chair

It was moved by Ms. Moliner, seconded by Mr. Goudge that Item C.-C.2. be adopted.

Carried

It was moved by Mr. Goudge, seconded by Mr. Blue that further elements in the recruitment and hiring package need not be brought back for Convocation's approval but be circulated for information to all Benchers.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

AGENDA - Additional Matters Requiring Debate and Decision by Convocation

STROSBERG/PETERS MOTION

THAT the issue of the proposal that elected Benchers be paid at the minimum legal aid rate to a maximum of \$30,000 be placed on the ballot.

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An amendment by Ms. Kiteley was accepted that the proposal indicate to the membership that this would be optional and also what the maximum cost to the membership would be if 100% of the elected Benchers took up the option.

Lost

ROLL-CALL VOTE

Blue	Against
Brennan	Against
Campbell	Against
Carey	Against
Carter	Against
Copeland	For
Epstein	Against
Feinstein	Against
Finkelstein	Against
Goudge	Against
Graham	Abstain
Kiteley	For
Lamont	Against
Lax	For
Moliner	Against
Murray	Against
Palmer	For
Peters	For
Sealy	Against
Strosberg	For
Thom	Against
Wardlaw	Against
Weaver	Against

It was moved by Mr. Campbell, seconded by Mr. Goudge that the Treasurer appoint a Special Committee to consider this issue further as soon as is practicable following the election of benchers in May 1995.

An amendment by Mr. Epstein was accepted to agree in principle to poll the profession in due course on the issue.

Carried

ROLL-CALL VOTE

Blue	Against
Brennan	For
Campbell	For
Carey	For
Carter	Against
Copeland	For
Epstein	For
Feinstein	For
Finkelstein	For
Goudge	For
Graham	Abstain
Kiteley	For
Lamont	Against
Lax	For
Moliner	For
Murray	For
Palmer	For
Peters	For
Sealy	For
Strosberg	For
Thom	Against
Wardlaw	Against
Weaver	For

REPORT OF THE REVIEW GROUP ON REAL ESTATE PRACTICE

Report dated January 27, 1995

Mr. Lamont presented the Report of the Review Group on Real Estate Practice for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The REVIEW GROUP ON REAL ESTATE PRACTICE begs leave to report:

1. BACKGROUND

- 1.1 With the concurrence of the Treasurer, six Benchers discussed the practice of real estate law in Ontario to determine whether in light of the Law Society's Role Statement there are aspects of such practice that require attention, assistance and guidance that can be provided by the Law Society. The Benchers referred to in this report as the Review Group, are:

Laura Legge - pro tem chair of the group

Susan Elliott	Abe Feinstein
Donald Lamont	Jim Wardlaw
Mary Weaver	

The Under Treasurer acted as secretary to the Review Group.

- 1.2 All six Benchers took part in a telephone conference call on December 19, 1994 and with the exception of James Wardlaw and Mary Weaver, attended a meeting on January 11, 1995.

2. FINDINGS OF THE REVIEW GROUP

2.1 At the January 11, 1995 meeting, the Review Group agreed that there were serious problems in the practice of real estate law that require urgent attention and which are within the Role of the Law Society. The following specific areas of concern were identified.

2.1.1. Much of the real estate bar believes the troubles they face today can be traced back to the actions taken by the Federal Government under the *Combines Investigation Act* in the mid 80's that led to the prohibition of real estate tariffs and fee guidelines. Since then, in many areas, a highly competitive real estate bar has driven down the fees chargeable on real estate transactions to levels that do not permit members to carry out the full range of services that are required to complete the transaction properly. The inadequacy of the services being provided appear to be reflected in the number and costs of professional liability claims attributable to the real estate bar.

Such results suggest that some members of the real estate bar are not serving their clients with high standards of competence nor does the service provided reflect well on the legal profession. The Review Group believes that the role of tariffs or fee guidelines in controlling the quality of service should be examined. Should it be determined that there is justification for tariffs or fee guidelines, consideration should be given to how they might be authorized and controlled.

2.1.2 The Review Group noted the significant increases in the responsibilities placed upon real estate lawyers to ensure compliance by the public with government policies dealing with such matters as municipal planning, environmental controls, building standards and tax collection. The extent of these responsibilities and the high standards of performance placed on the real estate bar by the courts has turned a certificate of title into a guarantee that there are no problems at all in respect of the transaction. In many instances, the responsible public officials cannot provide the required evidence of compliance or non-compliance with their requirements in a timely manner. As a result, there are many transactions that cannot be completed properly and the real estate bar is unable to properly serve the public interest.

2.1.3 The Review Group identified the lack of proper education as a contributing factor to the problems faced by the real estate bar. Notwithstanding that a good understanding of real estate law is fundamental to a wide range of legal services, real estate law is not a required core subject at law schools. It is possible to be called to the bar with very limited knowledge of real estate law garnered during the Bar Admission Course. Such ignorance of real estate law is inconsistent with the high standards of learning the Law Society has undertaken to provide to the public. The significance of this lack of training becomes apparent when members, who studied in anticipation of practising in other areas of law, find it necessary to fall back on the highly competitive field of real estate law to earn a living.



- 2.1.4 The Benchers noted that related to the lack of education was the lack of professionalism in dealing with other lawyers. Where in the past a lawyer would assist a colleague in dealing with a title defect or some negligent occurrence, increasingly the practice now is to immediately demand that the member at fault report the matter to the insurer. In many cases, matters that could have been resolved by a little cooperation and patience become the subject of much more costly insurance claims.
- 2.1.5 The Benchers noted the in-roads being made by title insurance companies. It was generally concluded that in many cases the fees paid for title insurance were in excess of what would be charged by a competent real estate lawyer and in many cases the protection provided by a members' liability insurance would be equal to or greater than that provided by title insurance. If all real estate transactions in Ontario were carried out under title insurance, the cost to the public would be higher than the costs required to support a fully funded liability insurance program. This observation led the Benchers to conclude that the Law Society should be examining the role of title insurance in Ontario and determining what options are open to it or to the Lawyers' Professional Indemnity Company to deal with this issue. As the safe-guarding of the public through an effective and affordable liability insurance program is an integral part of maintaining the integrity of the legal profession, the study of this issue falls within the mandate of the Law Society.
- 2.1.6 The Review Group noted the increasing role of paralegals in the real estate field. The introduction of computer data base technology with remote searching and registration, will likely increase the scope for paralegal activity. The absence of adequate controls over the activities or competence of unsupervised paralegals makes it extremely difficult to ensure that the public is being served by qualified lawyers and their supervised staff. There is, therefore, an urgent need to address the role of paralegals in the practice of real estate law.
- 2.1.7 The Review Group believes that much harm occurs because the public does not understand or appreciate the value of the services provided by a competent lawyer. There is, therefore, a need to publicize the hazards of fee cutters and paralegal services and to inform the public of the value in paying a reasonable fee for competent services. Such a publicity program might have better results if it was carried out in conjunction with other organizations such as the Ontario Real Estate Lawyers' Association, the County and District Presidents' Law Association and the Real Estate Section of the CBAO.

### 3. CONCLUSIONS

- 3.1 Having concluded that the Law Society could make a significant contribution to a number of aspects of the practice of real estate that fall within the role statement of the Law Society, the Review Group concluded that a Special Committee on the Practice of Real Estate Law should be appointed to direct such activity.
- 3.2 The Review Group concluded that the complexity of the issues involved in the proposed work of the Special Committee requires the services of a support person with an excellent background in real estate law. The Benchers believe that such a person can be found who would provide the necessary services at a salary in the range of \$275 a day (equivalent to an annual salary of \$60,000). The services of such a person for three days a week for the balance of

the 1994/95 financial year would cost about \$15,000. Other costs of the Special Committee should not exceed \$10,000 in financial year 1994/95. There is considerable uncertainty about these numbers as until the work gets underway and the degree and kind of support from other organizations is determined, it is difficult to judge how much work will need to be done by the support person.

- 3.3 The Review Group has concluded that the work of the Special Committee should be commenced as soon as possible and wishes to avoid the delay that would be caused if consideration of its recommendations was put over until the February Convocation. It recognized the need, however, to have the costs of the proposal vetted by the Finance and Administration Committee. This could be done if Convocation were to authorize the Finance and Administration Committee to consider and if satisfactory approve the proposed expenditures of the Special Committee without further referral to Convocation.

4. RECOMMENDATIONS

- 4.1 The Review Group recommends that subject to the review and approval of the proposed expenditures set out in these recommendations by the Finance and Administration Committee:

- a) a Special Committee on the Practice of Real Estate Law consisting of the Review Group be appointed to review and report on the contribution that the Law Society can make to the solution of the problems outlined in part 2 of this report;
- b) the Special Committee be authorized to employ the services of a support person experienced in real estate law at a cost in the balance of the 1994/95 financial year of approximately \$15,000;
- c) the Special Committee be authorized to spend up to \$10,000 in the balance of the 1994/95 financial year for purposes other than the salary or fee of the support person;
- d) the Special Committee prepare a budget for the 1995/96 financial year for consideration as part of the 1995/96 budgeting process; and
- e) the cooperation and assistance of organizations such as the Ontario Real Estate Lawyers' Association, the County and District Presidents' Law Association and the Real Estate Section of the CBAO, in the review and resolution of issues be requested and if considered appropriate that representatives from such organizations be added as members of the Special Committee.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 1995

L. Legge

It was moved by Mr. Lamont, seconded by Ms. Weaver that the Report be adopted.

THE REPORT WAS ADOPTED

Carried

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24th February, 1995

Mr. Wardlaw put forward a Notice of Motion to be brought before March Convocation re: Conflict - acting for both sides.

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IN CAMERA

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IN CAMERA Content Has Been Removed

24th February, 1995

IN CAMERA Content Has Been Removed

CONVOCATION ROSE AT 3:30 P.M.

Confirmed in Convocation this            day of            1995

Treasurer