

MINUTES OF CONVOCATION

Friday, 23rd October, 1998
9:00 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Arnup, Armstrong, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cole, Copeland, Cronk, Crowe, DelZotto, Eberts, Elliott, Epstein, Feinstein, Finkelstein, Gottlieb, Harvey, Jarvis, Krishna, Lamont, Lawrence, Legge, MacKenzie, Manes, Marrocco, Millar, Murphy, Murray, O'Brien, Ortved, Ross, Ruby, Sachs, Stomp, Swaye, Topp, Wardlaw, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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CALL TO THE BAR (Convocation Hall)

The following candidates were presented to the Treasurer and called to the Bar and then presented by Ms. Backhouse and Mr. Ruby to Madam Justice Frances P. Kiteley to sign the Rolls and take the necessary oaths.

Frederick George Bartley	Bar Admission Course
Joan Aleithia Bernard-James	Bar Admission Course
Gilles Edouard Joseph Bonenfant	Bar Admission Course
Ann Brailsford-Child	Bar Admission Course
Brenda Jane Fuhrman	Bar Admission Course
Sheila Lois Isaac	Bar Admission Course
Derek Keegans	Bar Admission Course
Kevin Russell Marshall	Bar Admission Course
Marie Rachele Nathalie Nepton	Bar Admission Course
Neal Stephen Newman	Bar Admission Course
Jean-Louis Okomono	Bar Admission Course
Dianna Lynn Parsons	Bar Admission Course
Bonnie Blossom Pelletier	Bar Admission Course
Hilda Elizabeth Saunders	Bar Admission Course
Devanand Manoj Singh	Bar Admission Course
Mak Sultan	Bar Admission Course
Clifford Michael Sunday	Bar Admission Course
Sharon Lee Thomas	Bar Admission Course
Sandra Costantini	Transfer, Province of Quebec
Diane Margaret Kelly	Transfer, Province of Manitoba
Elizabeth Ann Marshall	Transfer, Province of British Columbia
Rafe James Plant	Transfer, Province of Quebec
Bonnie Elaine Roberts	Transfer, Province of British Columbia

To honour Convocation and the Law Society, First Nation Grand Chief Mitchell presented a wampum to the Treasurer. The wampum or treaty belt represents the relationship between the Aboriginal Community and non-Aboriginal cultures and was presented to Convocation to acknowledge the steps that the Law Society has taken to respect the cultural differences of the Aboriginal community.

Ms. Cronk paid tribute to The Right Honourable Brian Dickson, former Chief Justice of Canada and Honorary Bencher of the Law Society of Upper Canada who died on October 21st, 1998.

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Report of the Professional Development & Competence Committee

Re: Report entitled Beyond 2000: The Future Delivery of County Library Services to Ontario Lawyers

Ms. Eberts presented Phase I of the Report of the Working Group on the Future of County Libraries entitled Beyond 2000 for Convocation's consideration.

Professional Development & Competence Committee
October 23, 1998

Report to Convocation

Purpose of Report: Decision Making
 Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on October 8, 1998. Committee members in attendance were Larry Banack (Vice-Chair), Richmond Wilson (Vice-Chair), Mike Adams, Ron Cass, Susan Elliott, Ron Manes, and David Scott. Staff in attendance were Janine Miller, Paul Truster, and Sophia Sperdakos.
2. The Committee is reporting on the following:
 Policy Matters
 - Consideration of the Phase I Report of the Working Group on the Future of County Libraries, entitled *Beyond 2000: The Future Delivery of County Library Services to Ontario Lawyers*

Information Matters

- A report on specialist certification policy matters and new applications and recertifications as certified specialists approved in Committee on October 8, 1998.

POLICY MATTERS

REPORT OF THE WORKING GROUP ON LONG-TERM DELIVERY OF COUNTY AND DISTRICT LIBRARY SERVICES

Background

1. The Working Group on Long-Term Delivery of County and District Library Services has completed its Phase I report. The report, entitled *Beyond 2000: The Future Delivery of County Library Services to Ontario Lawyers*, was circulated in mid-August to all benchers, the Law Foundation of Ontario, the County and District Law Presidents' Association Executive and Library Committee, the Metropolitan Toronto Lawyers' Association, the Canadian Bar Association - Ontario, the Ontario Courthouse Librarians' Association, and all county libraries. Comments on the report were sought, to be received no later than October 8. Attached at Appendix A are the written comments received as of that date.

BENCHERS ARE REQUESTED TO BRING THEIR COPY OF THE REPORT TO CONVOCATION.

2. The working group has prepared a report that contains an extensive and in-depth review of the history of county library service delivery and the issues relevant to the structure and delivery of library services to the profession, currently and in the future. The working group has presented a range of policy options and design principles for Convocation's review and consideration, as well as eight models for the delivery of library services. The working group requests Convocation to provide it with policy direction for Phase II of its mandate.

Committee's Recommendation

3. To assist Convocation in its consideration of the report, the Professional Development and Competence Committee has reviewed the Recommendations, Policy Options, Design Principles, and Delivery Models, discussed throughout the report and summarized in Chapter 14 of the report. (The Executive Summary of the Report and chapter 14 are included as Appendix B.) The Committee has also considered the comments received in response to the report and set out at Appendix A.
4. With respect to the working group's recommendations, policy options, design principles, and delivery models, the Committee recommends the following:
 - (a) Recommendations i. to iv. (Pages 128 - 129)
That Convocation approve recommendations i - iv set out on pages 128-129.
 - (b) Policy Options (Pages 129- 130)
That Convocation adopt the principles that
 - (i) the County libraries should be formed into a library system;
 - (ii) in the development of a system an appropriate administrative model will be required to address local concerns and others which may be identified in the course of designing the delivery model and developing the system;
 - (iii) every library of the County Libraries should be able to provide access to each of the seven types of research as described at page 14 of the report; and
 - (iii) County libraries should try to meet the needs of all three kinds of knowledge (technical, craft, and systematic) as described at page 19 of the report;

(c) Design Principles (Pages 130 - 131)

That Convocation adopt the design principles set out in paragraphs 546 (i) and (ii), and paragraph 548 of the report.

(d) Delivery Models

That Convocation approve and direct the working group to develop in greater detail what is referred to as the "Blended System" with the understanding that in developing that model the working group consider the relevance of factors and considerations that come under the model referred to as Electronic Library - Single Library.

5. The Committee further agrees with the working group's view that a detailed discussion of funding principles is best addressed in Phase II, in the context of the development of the Blended System Model.

Request To Convocation

6. Convocation is requested to consider the report of the working group and, if appropriate, approve the Committee's recommendations as set out above.

INFORMATION MATTERS

INFORMATION REPORT ON SPECIALIST CERTIFICATION POLICY MATTERS AND NEW APPLICATIONS AND RECERTIFICATIONS APPROVED IN COMMITTEE ON OCTOBER 8, 1998

The Professional Development and Competence Committee is pleased to report the Committee's approval of

- (a) the following policy matters for specialist certification; and
- (b) the following lawyers for certification and re-certification:

Policy

1. The Certification Working Group approved the following as new policies and procedures for the Specialist Certification Program:

- (i) the working group will have a quorum for decision making of three members present at meetings;
- (ii) when reviewing applications for certification, the following conflict of interest procedure will be used:

A member of the Working Group will recuse himself or herself from any and all participation in the consideration of an applicant or from attempting to influence others with respect to an applicant if that member has a close affiliation with the applicant or any personal bias or prejudice concerning the applicant that would prevent the member from fairly evaluating all of the evidence and information concerning the qualifications of that applicant.

- (iii) the working group agreed that it will address various pending program matters over the next few months as long as they are matters not affected by the current program review of certification.

Certification Issues

2. The Certification Working Group of the Professional Development and Competence Committee is pleased to report final approval of the following lawyers for certification:

Civil Litigation: J. Thomas Curry (of Toronto)
Ian Fraser (of Ottawa)
Kenneth Hood (of Toronto)
Patrick Murphy (of Goderich)
Gary R. Will (of Toronto)

Intellectual Property Law: Donald Cameron (of Toronto)

Workers' Compensation Law: Robert Cronish (of Ottawa)

3. The Certification Working Group of the Professional Development and Competence Committee is pleased to report final approval of the following lawyers for recertification for an additional five years:

Civil Litigation: Richard Bogoroch (of Toronto)
J. Stephen Cavanagh (of Ottawa)
Larry Culver (of Hamilton)
Frances DeSantis (of Hamilton)
William Garay (of Ottawa)
Lyon Gilbert (of Ottawa)
Nestor Kostyniuk (of Toronto)
Michael Lamont (of Hamilton)
Paul Maurice Ledroit (of London)
John McNeil (of Toronto)
David Price (of Mississauga)
Pat Santini (of Ottawa)

Criminal Law: David Price (of Mississauga)
Gerald Taylor (of Waterloo)

Family Law: Bruce Haines (of Toronto)

Intellectual Property Law: Roger Hughes (of Toronto)

4. The Certification Working Group of the Professional Development and Competence Committee approved the appointment of a new member Susan Hodgson (of Ottawa) to the Family Law Specialty Committee.
5. The Certification Working Group of the Professional Development and Competence Committee approved the appointment of three new members Donald Cameron (of Toronto), Janet Fuhrer (of Ottawa), and Gregory Piasetski (of Toronto) to the Intellectual Property Law Specialty Committee.

APPENDIX A: COMMENTS RECEIVED ON THE REPORT OF THE WORKING GROUP ON LONG-TERM DELIVERY OF COUNTY AND DISTRICT LIBRARY SERVICES

APPENDIX B: EXCERPT FROM REPORT OF THE WORKING GROUP ON LONG-TERM DELIVERY OF COUNTY AND DISTRICT LIBRARY SERVICES

Ms. Elliott took questions from the Bench.

It was moved by Ms. Eberts, seconded by Ms. Carpenter-Gunn that the following steps be adopted as set out in the Report:

- Pages 3 and 4 - 4.(a) Recommendations i. to iv.
 - 4.(b) Policy Options
 - 4.(c) Design Principles
 - 4.(d) Delivery Models

Carried

The Treasurer thanked Ms. Eberts, Ms. Elliott and the working group for their work on the Report.

NOTICES OF MOTIONS RE: BILL 53

MOVED BY: R. Aaron
SECONDED BY: G. Gottlieb

1. THAT the Treasurer of the Law Society or his designate meet with the representatives of the Ontario Real Estate Lawyers Association and other members of the Council of Legal Associations (COLA) to consider, where appropriate, the preparation of friendly amendments to the Bill, and specifically to address the following issues which are not a part of the CBAO submissions:
 - whether the profession at large has been adequately consulted and informed on the provisions of Bill 53, including the proposed competency panels, the proposed right of the Law Society to enter into a lawyer's office and seize any and all computer and paper records, effectively putting her or him out of business.
 - whether this right of seizure is constitutional and whether it jeopardizes the rights of clients to the privilege and secrecy they have a right to expect.
 - whether and if so how the legislation should consider the overall issue of champerty and maintenance in the light of recent developments in class action litigation in Ontario, and whether the Law Society should have the statutory right, in the public interest, to enact rules governing lawyers' fees
2. The Attorney General be requested to delay Committee hearings on the legislation until consultations with the Canadian Bar Association and the Council of Legal Associations have concluded.

MOVED BY: R. Aaron
SECONDED BY: G. Gottlieb

WHEREAS the Law Society Amendment Act, 1998 (Bill 53)(the "Bill") received first and second reading and has been referred to the Standing Committee on the Administration of Justice;

AND WHEREAS the Canadian Bar Association (CBAO) has indicated its intention to attend to advise of its concerns at the public hearings for the Bill;

AND WHEREAS it would be preferable for any differences between CBAO and the Law Society of Upper Canada on the Bill to be resolved, where possible, in a private forum;

THEREFORE BE IT RESOLVED THAT the Treasurer of the Law Society or his designate meet with the representatives of the CBAO to consider, where appropriate, the preparation of friendly amendments to the Bill.

It was moved by Mr. Ruby, seconded by Mr. Krishna that the Notices be waived and the matter dealt with today.

Not Put

It was moved by Mr. Cole, seconded by Mr. Aaron that the Motions be tabled.

The Treasurer ruled the motion out of Order.

Messrs. Aaron and Gottlieb withdrew their Motions.

A debate followed.

It was moved by Mr. Ruby, seconded by Mr. Murphy that Convocation reaffirm its support for Bill 53.

Carried

ROLL-CALL VOTE

Aaron	Against
Adams	For
Armstrong	For
Arnup	For
Backhouse	For
Banack	For
Bobesich	For
Carey	For
Carpenter-Gunn	For
Chahbar	For
Cole	Against
Copeland	For
Cronk	For
Crowe	For
DelZotto	For
Elliott	For
Epstein	For
Feinstein	For
Finkelstein	For
Gottlieb	Against
Harvey	For
Krishna	For
Legge	For
Manes	For
Millar	For
Murphy	For
Murray	For
O'Brien	For
Ortved	For
Ross	For
Ruby	For
Sachs	For
Stomp	For

Swaye	For
Topp	For
Wilson	For
Wright	For

Vote - 34 - 3

MOTION - APPOINTMENT

It was moved by Mr. Krishna, seconded by Mr. Ruby that Frank Marrocco and Elvio DelZotto be appointed as Law Society representatives on the Law Foundation of Ontario replacing Mr. Yachetti and Mr. Wright.

Carried

The Treasurer thanked Mr. Yachetti and Mr. Wright for their years of service.

Report of the Finance and Audit Committee

Re: Enterprise System

Mr. Krishna presented the Report of the Finance and Audit Committee which was for information only.

Finance and Audit Committee
October 8, 1998

Report to Convocation

Purpose of Report: Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on October 8, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Lamont, G. Swaye, and B. Wright. Staff members in attendance were J. Saso, W. Tysall, G. Lalonde, G. Zecchini, D. Carey, K. Corrick, A. Copoc, and R. White.

1. The Committee is reporting on the following matters:
 - Spot Audit update,
 - Preauthorized payment plan date from the first business day of the month to the 15th day,
 - expenditure of up to \$1.3 million with respect to the acquisition of an enterprise system to provide an integrated member database, case tracking and workflow tools,
 - 1999 Budget update.

Spot Audit Update

2. The Committee requested a status report with respect to the findings of the Spot Audit Program to September 30, 1998. A report from the Society's Director of Audit & Investigation, James Yakimovich, is enclosed on pages 7 - 12.

Preauthorized Payment Plan

3. The Finance and Audit Committee was requested by Convocation to re-examine its position on altering the withdrawal date currently used for the Pre-Authorized Payment from the first business day of the month to the 15th. The Finance and Audit Committee requested the Finance Department to report further on the issue. This report is enclosed on pages 12 - 18.
4. After reviewing the issues raised at September's Convocation and once again debating the merits of allowing an alternate pre-authorized withdrawal date, the Committee has determined that the current withdrawal date, the first business day of each month, be continued.

Enterprise System

5. Gord Lalonde, the Society's Chief Information Officer, attended the meeting to present the status of the enterprise system to the Committee. The presentation included various information regarding the enterprise system (pages 19 - 25). In accordance with the Law Society's policy, a Request for Proposal ("RFP") was prepared and forwarded to various vendors.
6. The Finance and Audit Committee received and reviewed the information supplied and determined that this portion of Project 200 was within the amount budgeted in the Project 200 Business Plan. Approval was given to go forward with the proposals, provided that the system costs do not exceed the \$1.3 million budgeted.

1999 Budget Update

7. The Committee continued to review the 1999 Budget as being prepared by staff. The final budget will be presented for Convocation's approval in November.

23rd October, 1998

Finance Department
Memorandum

TO: Members of the Finance & Audit Committee

FROM: Wendy Tysall

DATE: 10 December 1998

RE: Withdrawal Date for Pre-Authorized Payment Plan

The Finance Department was requested to report further on the issue of altering the withdrawal date currently used for the Pre-Authorized Payment Plan from the first business day of the month to the 15th day. This was the topic of a report submitted in September and at that time the Committee recommended no changes to the withdrawal date for Pre-authorized Payments. Subsequently, Convocation has asked that the matter be re-examined.

Staff have met concerning this matter. Cost estimates for surveying those members on the plan have been determined to be in the \$10,000 range. This includes development and design of the survey, printing costs, mailing and inserting costs and staff costs to process and tabulate the results. There are approximately 2,000 members on the plan and we suggest that a return rate of less than 30% would not be sufficient for decision making purposes. We anticipate that the process would take up to three months to complete and then a report would need to be tabled with the results. It is unlikely that this matter could be considered prior to the end of January 1999. At this point it would be impossible for the change to be implemented for the 1999 fee year and to alter the plan during the year is not feasible.

In addition to this, we are advised that because the Finance Department has so many programming change requests with the Information Services Department for priority matters such as the annual fee billing programme (required to accommodate membership fee category changes) and the membership card programme, the earliest possible date that programming could begin on this would be March 1999. Again this makes the change prohibitive for the 1999 annual fee billing.

We are attaching our previous report on this matter which details the reasons why this change was not recommended. In summary form they are as follows:

- The Law Society would have to notify the 1,924 members on the plan of the change in the withdrawal date.
- There would be significant programming needed to our in-house Pre-Authorized Payment program to reflect the change in withdrawal date.
- With the majority of the members on the plan (91%) being practising lawyers, those paying LPIC premiums either on a monthly basis or in quarterly installments would be faced with both the withdrawal for fees and levy on the same day further affecting their cashflow.
- Many members have established their budgets around these preset withdrawal dates. A change would definitely impact their cashflow for the month, especially, those members that were previously on the Special Payment Plan and have been accustomed to this date for several years.
- With LPIC and the Law Society using the same banking institution (Bank of Montreal) and with both entities being known to the bank under the Law Society name, a move to the 15th of the month leaves open the possibility of the bank mixing up LPIC's and the Law Society's transmissions. This could lead to incorrect payment amounts being processed with respect to members' fees and levies.

- There could potentially be numerous disputed withdrawals based on the above information eliminating any administrative efficiencies attained through the elimination of the Special Payment Plan and the implementation of the Pre-Authorized Payment Plan.
- The Law Society of Upper Canada currently withdraws on the first business day of the month with the Lawyers' Professional Indemnity Company (LPIC) withdrawing on the 15th of each month. As of today, there are 1,924 members enrolled in the Law Society's Pre-Authorized Payment Plan. The breakdown of members on the plan by fee class is: 91% at full fee (practising law), 7% at half fee (non-practising) and 2% at quarter fee (unemployed or retired) with monthly withdrawals of \$176.75, \$91.83 and \$49.33, respectively. Each member enrolled in the plan completed an "Authorization For Member Annual Fee Pre-Authorized Payment Plan" form (attached), required by our banking institution, authorizing the Law Society to withdraw a stipulated amount per month on a specified date each month. The form stipulates that the Law Society shall provide written notice every time there is a change in the withdrawal amount or date(s). The form also states that the member may dispute a withdrawal (by signed declaration) if it is not drawn in accordance with the signed authorization. A process to have new forms completed and to deal with any appeals would need to be established
- In implementing the Pre-Authorized Payment Plan, the Finance department made every effort to consider the needs of our members. Our previous "Special Payment Plan" required members to submit seven postdated cheques dated the first of each month from May to December. Approximately 300 of our members on the previous Special Payment Plan opted for the Pre-Authorized Payment Plan, thus, preferring the first business day of the month, as they have become accustomed to this withdrawal date, having been on the plan for several years. Consideration was also given to the fact that LPIC's Pre-Authorized Payment Plan withdraws on the 15th of each month and their quarterly payment option requires postdated cheques dated the 15th of each quarter. In selecting the first business day of the month, the thought was that members also on LPIC's Pre-Authorized Payment Plan or quarterly installment option would not be faced with two withdrawals at the same time of the month.

Recommendation

Our investigation of the matter reveals that it will not be possible to change the withdrawal date from the 1st of the month to the 15th of the month for the 1999 annual fee year. There are numerous compelling reasons why this should not be done which have been outlined above and in a previous report. Combined with this is the information that resources are not available to accomplish the necessary programming changes and the costs estimates for carrying out a survey.

As a result, I would recommend to the Committee that the withdrawal date for the Pre-Authorized Payment Plan remain unchanged.

Finance Department Memorandum

TO: Members of the Finance & Audit Committee

FROM: Wendy Tysall

DATE: August 20, 1998

RE: Withdrawal Date for Pre-Authorized Payment Plan

The Finance Department has received a request for the alteration of the withdrawal date currently used for the Pre-Authorized Payment Plan from the first business day of the month to the 15th day. The stated reason for the request is that members whose practices generate revenue as a result of end of month closings, encounter cashflow difficulties with the withdrawal on the first business day of the month.

Background Information

The Law Society of Upper Canada currently withdraws on the first business day of the month with the Lawyers' Professional Indemnity Company (LPIC) withdrawing on the 15th of each month. As of today, there are 1,924 members enrolled in the Law Society's Pre-Authorized Payment Plan. The breakdown of members on the plan by fee class is: 91% at full fee (practising law), 7% at half fee (non-practising) and 2% at quarter fee (unemployed or retired) with monthly withdrawals of \$176.75, \$91.83 and \$49.33, respectively. Each member enrolled in the plan completed an "Authorization For Member Annual Fee Pre-Authorized Payment Plan" form, required by our banking institution, authorizing the Law Society to withdraw a stipulated amount per month on a specified date each month. The form stipulates that the Law Society shall provide written notice every time there is a change in the withdrawal amount or date(s). The form also states that the member may dispute a withdrawal (by signed declaration) if it is not drawn in accordance with the signed authorization.

In implementing the Pre-Authorized Payment Plan, the Finance department made every effort to consider the needs of our members. Our previous "Special Payment Plan" required members to submit seven postdated cheques dated the first of each month from May to December. Approximately 300 of our members on the previous Special Payment Plan opted for the Pre-Authorized Payment Plan, thus, preferring the first business day of the month, as they have become accustomed to this withdrawal date, having been on the plan for several years. Consideration was also given to the fact that LPIC's Pre-Authorized Payment Plan withdraws on the 15th of each month and their quarterly payment option requires postdated cheques dated the 15th of each quarter. In selecting the first business day of the month, the thought was that members also on LPIC's Pre-Authorized Payment Plan or quarterly installment option would not be faced with two withdrawals at the same time of the month.

Requirements

With a change in the withdrawal date for the Pre-Authorized Payment Plan from the first business day of the month to the 15th, the following would be required:

- The Law Society would have to notify the 1,924 members on the plan of the change in the withdrawal date.
- Arrangements would have to be made with the Bank of Montreal to adjust the withdrawal date.
- There would be significant programming needed to our in-house Pre-Authorized Payment program to reflect the change in withdrawal date.

Issues

Based on the first seven months of the plan, we have only had a few complaints about the withdrawal date. With a change to the 15th of the month, the following issues may arise:

- With the majority of the members on the plan (91%) being practising lawyers, those paying LPIC premiums either on a monthly basis or in quarterly installments would be faced with both the withdrawal for fees and levy on the same day further affecting their cashflow.
- Many members have established their budgets around these preset withdrawal dates. A change would definitely impact their cashflow for the month, especially, those members that were previously on the Special Payment Plan and have been accustomed to this date for several years.
- With LPIC and the Law Society using the same banking institution (Bank of Montreal) and with both entities being known to the bank under the Law Society name, a move to the 15th of the month leaves open the possibility of the bank mixing up LPIC's and the Law Society's transmissions. This could lead to incorrect payment amounts being processed with respect to members' fees and levies.

- There could potentially be numerous disputed withdrawals based on the above information eliminating any administrative efficiencies attained through the elimination of the Special Payment Plan and the implementation of the Pre-Authorized Payment Plan.

Recommendation

With the significant number of practising members on the plan that are also responsible for premiums with LPIC on the 15th of the month, the impact of such a change could be quite negative. As a result, I would recommend to the Committee that the withdrawal date for the Pre-Authorized Payment Plan remain unchanged.

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

- (1) Copy of a Confidential Memorandum from Mr. James N. Yakimovich, Audit Department to the Professional Regulation Committee dated October 4, 1998 re: Results of the Completion of Spot Audits - September 30, 1998.
(pages 7 - 12)
- (2) Copies of various information on the Enterprises System.
(pages 19 - 25)

Report of the Professional Regulation Committee

Re: Spot/Focussed Audits

Ms. Cronk presented the Report of the Professional Regulation Committee.

Professional Regulation Committee
October 8, 1998

Report to Convocation

Purpose of Report: Information

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on October 8, 1998. In attendance were:

Eleanore Cronk	Chair
Gavin MacKenzie	Vice-Chairs
Niels Ortved	
Paul Copeland	
Elvio DelZotto	
David Scott	

Staff: Janet Brooks, Lesley Cameron, Jonathan Fedder, Sophia Sperdakos, Elliot Spears, Richard Tinsley, Stephen Traviss, Jim Varro, James Yakimovich
2. This report contains the Committee's *information reports* on:
 - completion of spot audits in September, 1998, and approval for additional audits in 1998;
 - regulatory implementation tasks respecting the *Law Society Amendment Act, 1998*;
 - the study of issues relating to steering and referral arrangements, referral fees and solicitation, including subjects in the DelZotto/Aaron motion (September 25, 1998 Convocation);
 - review of a new issue respecting the mandatory LPIC reporting requirement.

INFORMATION

REPORT ON THE SPOT AUDIT PROGRAM

A. OVERVIEW

3. At the July 8, 1998 meeting of the Finance Committee, approval was granted to conduct an additional 150 spot audits for completion by September 30, 1998.

4. Instructions were received from the Chair, Professional Regulation Committee, on July 29, 1998, that the basis of selection of firms subject to spot audits conducted to September 30, 1998 should be one-half selected on a random basis and one-half selected on the basis of the firm's failure to file a financial report (Private Practitioner's Report) with the Law Society.
5. Although 150 spot audits were approved and selected, only 139 spot audits were completed by September 30, 1998. With respect to the 11 law firms which have not yet been audited, indulgences were granted to permit the firm to bring records fully up to date prior to the commencement of the audit. Appointments were made with these eleven 11 firms to conduct the audit in October, 1998.

B. RESULTS SUMMARY

6. One hundred eighteen law firms or 85% of the 139 spot audits conducted detected some form of trust accounting records inadequacies or other conduct which requires further investigation. The breakdown with respect to the 118 law firms is as follows:
 - 5%, or seven audits, were of a nature which gave rise to a subsequent request to conduct a more in-depth investigation. All firms in this group are "failure to file" firms;
 - 80%, or 111 audits, were dealt with by providing administrative guidance;
7. The average cost for each spot audit completed is \$1,050.00. Ninety six percent of the members that responded to a post audit survey report that the auditors were courteous, considerate and helpful.

The Law Firm Selection Process

8. A computer based selection process is used to randomly select law firms for spot audit. Initially 75 law firms were selected on a random basis and 75 law firms were selected because the firm (member) failed to file the most recent financial report (Private Practitioner's Report) with the Law Society in spite of repeated administrative requests for the making of the report.
9. Six members in the original selection could not be located at the address on record and five others were replaced because of other valid reasons. Additional authorization was sought to replace these 11 firms. This secondary process resulted in a minor imbalance between randomly selected and non-filing members, as disclosed in Chart 1.

Firms - Geographic Area

10. The geographic location of selected law firms is as follows:

Chart 1

Geographic Area	Number of Total	Number of Law Firms Randomly Selected	Number of Law Firms Selected Because of Non Filer Status
North Ontario	4	3	1
South Ontario	17	8	9
East Ontario	22	12	10
West Ontario	22	12	10
GTA (Greater Toronto Area)	85	41	44

Geographic Area	Number of Total	Number of Law Firms Randomly Selected	Number of Law Firms Selected Because of Non Filer Status
Total	150	76	74

Firms - by Firm Size

11. Law firms, by size, selected for spot audit, are as follows:

Chart 2

Firm Size	Number of Firms in Ontario	
Sole Practitioner	129 Firms	86 %
Partnership - 2 to 10 Partners *	21 Firms	14 %

* Some partnerships exceeded 10 practising lawyers, with the non partner lawyers practising as associates of the law firm.

C. SPOT AUDIT FINDINGS

12. Findings with respect to the completed 139 audits, about 1.9% of all Ontario law firms, can be summarized as follows:

Chart 3

	Total	% of 150 Firms	% of 139 Firms	Random Selection	Non Filer
Trust accounting records inadequacies of a serious nature, or other conduct which requires further investigation, and for which authority was sought from the Chair or a Vice-Chair of the Discipline Committee for authority to conduct an in-depth investigation. (Chart 4 & 5)	7	N/A	5%	0	7
Inadequacies of a nature that did not warrant a current investigation because of corrective action taken. eg messy record keeping. A new audit will be sought in 6 months. (Chart 6&7)	16	N/A	11.5%	2	14

	Total	% of 150 Firms	% of 139 Firms	Random Selection	Non Filer
Inadequacies which require follow-up by The Society to ensure the member continues to comply with the Regulation. Letter to members requesting proof of continued compliance sought eg. submit copies of monthly trust comparisons.(Chart 6&7)	27	N/A	19.5%	13	14
Inadequacies of a minor nature that require no further action. (Chart 8 & 9)	68	N/A	49%	45	23
No inadequacies	21	N/A	15%	14	7
The audit had not yet been conducted at the time of this report.	11	7.3%	N/A	2	9
Total	150	100%	100%	76	74

Inadequacies of a Serious Nature

13. The seven law firms, 5 % of the audits conducted, where inadequacies of a serious nature were found, were located geographically as follows:

Chart 4

Geographic Area	Number of Law Firms	Size of Law Firm	
		Sole	Partner
North Ontario	0	0	0
South Ontario	2	2	0
East Ontario	0	0	0
West Ontario	2	2	0
GTA (Greater Toronto Area)	3	3	0
Total	7	7	0

14. The nature of the serious inadequacies or conduct with respect to the seven firms is outlined at Chart 5 as follows:

Chart 5

Nature of Serious Inadequacy or Conduct	Number of Law Firms-by Geographic Area - All Sole Practitioner & Non Filers
Misappropriation (one instance of greater than \$100,000 and one instance of \$1,500)	GTA (1) West (1)
Failure to maintain trust accounting records for a continuous period in excess of six months and which were not brought current to the date of the audit.	GTA (2) South (1)
Significant instances of member pre-taking fees without issuing billing, or immediate pre-taking of fees upon receipt of retainers.	South (1)
Failure to keep spot audit appointment, make arrangements for alternate audit date, and failure to produce trust accounting records.	West (1)

Inadequacies of a Nature Requiring Future Action - New Category

15. Forty three audits completed, or 31% of the 139 audits completed fall into this category. The audit of these firms was concluded by satisfactory remedial action. The firms in this category exhibited a lack of attention to proper record keeping (messy records), although the integrity of trust money was NOT compromised at any time, or, records were not maintained on a current basis and were brought up-to-date because of the audit. Typically, the audit visitation was deferred by a short period of time in order to allow the firm to take efforts, at its expense, to make the firm's financial records current and complete. Chart 6 and Chart 7 outline the findings with regard to these findings.

Chart 6

Nature of Inadequacy	Number of Firms	Number of Law Firms and Geographic Distribution					Size of Law Firm		Random	Non Filer
		North	South	East	West	GTA	Sole	Partner		
Inactive client trust balances	32	1	4	2	6	19	25	7	10	22
Unreconciled items in the monthly trust reconciliations	24	0	4	3	4	13	21	3	7	17
Maintaining earned fees in the trust account, contrary to Regulation 708.	19	0	3	1	2	13	17	2	3	16

Nature of Inadequacy	Number of Firms	Number of Law Firms and Geographic Distribution					Size of Law Firm		Random	Non Filer
		North	South	East	West	GTA	Sole	Partner		
Pre-taking fees	16	0	3	3	2	8	14	2	4	12
Uncorrected overdrawn trust ledger accounts existed	19	0	4	1	3	11	17	2	3	16

Chart 7

Frequency of Multiple Inadequacies	Total Firms For each Range	Number of Law Firms		Random	Non Filer
		Sole	Partner		
1 to 3 Inadequacies	9	6	3	5	4
4 to 5 Inadequacies	6	5	1	2	4
6 or More Inadequacies	28	25	3	8	20

Inadequacies of a Minor Nature

16. With respect to the 139 audits completed, 68 law firms, were found to have trust accounting records inadequacies of a minor nature. The member has received on-site written guidance with respect to corrective action. The most frequent five minor inadequacies found with respect to the 68 law firms are as follows:

Chart 8

Nature of Minor Inadequacy	Number of Firms	Number of Law Firms and Geographic Distribution					Size of Law Firm		Random	Non Filer
		North	South	East	West	GTA	Sole	Partner		
Inactive client trust balances	40	2	4	7	7	20	30	10	14	16
Unreconciled items of a minor nature in the monthly trust reconciliations	20	2	1	2	3	12	18	2	10	10
Maintaining earned fees in the trust account, contrary to Regulation 708.	21	0	3	4	3	11	16	5	14	7

Nature of Minor Inadequacy	Number of Firms	Number of Law Firms and Geographic Distribution					Size of Law Firm		Random	Non Filer
		North	South	East	West	GTA	Sole	Partner		
Minor instances of pre-taking fees	15	0	2	3	2	8	11	4	10	5
Lack of adequate details on duplicate deposit slip.	10	0	4	1	4	1	8	2	7	3

Chart 9

Frequency of Multiple Minor Inadequacies	Total Firms For Each Range	Number of Law Firms		Random	Non Filer
		Sole	Partner		
1 to 3 Inadequacies	41	37	4	28	13
4 to 5 Inadequacies	13	7	6	10	3
6 or More Inadequacies	14	13	1	7	7

D. SPOT AUDIT COST ANALYSIS

17. The cost to conduct the 139 audits was \$146,000, based on actual costs and estimates received to date. Some final billings have not yet been received. The amounts are distributed as follows:

Chart 10

Geographic Area	Cost of Spot Audits
North	\$ 5,000.00
South	\$ 17,000.00
East	\$ 18,000.00
West	\$ 21,000.00
GTA	\$ 85,000.00
Total	\$ 146,000.00

E. POST AUDIT MEMBER SURVEY RESULTS

18. In order to continually measure the effectiveness of the spot auditors and the spot audit program, each audited law firm was asked to voluntarily complete a survey after the completion of the audit. Fifty three member surveys were returned by the date of this report and reflect the following:

Chart 11

Nature of Survey Question	Favourable Responses		Unfavourable or Non Responses	
	Number	Percentage	Number	Percentage
Was the spot auditor courteous, considerate and helpful	51	96%	2	4%
Do you agree with the policy of making an advance appointment for purposes of conducting a spot audit?	53	100%	0	0%
Do you agree with the policy of receiving an advance listing of the books and records which must be produced on the day of the spot audit?	50	94%	3	6%
Do you agree that being provided with a post audit report which outlines minor records keeping inadequacies, and provides suggested remedies, is helpful?	47	89%	6	11%
Did you find the spot audit process constructive? (By enhancing knowledge of record keeping)	34	64%	19 ** (19 - negative responses)	37%
Do you agree that the spot audit process is an appropriate accompaniment to the lawyer self reporting financial form model?	41	77%	12 (10 - negative responses) (2 - did not respond)	23%

**15 of these respondents had no inadequacies or only a few minor inadequacies.

APPROVAL FOR ADDITIONAL AUDITS IN 1998¹

19. As noted above, September 30, 1998 saw the completion for the second cycle of 150 spot audits. The first cycle of 150 spot audits was completed on June 30, 1998 and reported to Convocation on September 25, 1998.
20. The above findings with respect to the completion of the second cycle demonstrates that the spot audit program continues to identify a significant number of firms that benefit from remedial advice with respect to records keeping practices. Further, the second cycle identified a number of firms which necessitated escalation to a disciplinary focussed investigation because of the gravity of the identified potential misconduct.
21. In this context, the Committee reviewed the request of the Director, Audit and Investigations to conduct an additional 100 audits before December 31, 1998. Based on average costs associated with completed audits, it is expected that 100 spot audits would cost approximately \$100,000 in professional accounting fees. Adequate funds are available in the budget for this additional expenditure. The spot audits would commence in mid-October and have a planned completion target of mid-December, 1998.
22. The Committee determined that the additional spot audits should continue to be equally selected on the basis of random selection and failure to file the annual financial report (Private Practitioner's Report).

¹In September 1998, the Professional Regulation Committee affirmed its responsibility for monitoring the spot/focussed audit program and assumed the function of approving the conduct of audits within the program.

23. The Committee believes that the merits in support of performing additional spot audits for the balance of 1998 are derived from the results of the spot audits completed to date in 1998, and accordingly approved the conduct of a further 100 spot audits to the end of 1998.

REGULATORY IMPLEMENTATION TASKS ARISING FROM THE
LAW SOCIETY AMENDMENT ACT, 1998 (BILL 53)

24. In preparation for the anticipated proclamation of the *Law Society Amendment Act, 1998* in early 1999, Law Society staff have identified and are currently working on tasks necessary to complete the operational implementation of the legislative reforms. This involves, for example, drafting a new regulation (under an amended *Law Society Act*), by-laws and rules of practice and procedure for hearing panels.
25. The Committee received from Secretariat and regulatory staff an overview of the implementation tasks required under the amendments, and the current status of staff's work on these initiatives.
26. Convocation established the Legislative Reform Implementation Task Force, which will oversee all aspects of implementation. However, as many of the reforms are regulatory-focussed, the Committee has established a process which will allow a review, at first instance, of drafts of the regulation, by-laws and rules prepared or being prepared by staff. One such meeting, apart from the October 8 meeting, has already been held, and reviews will continue at the regularly scheduled November 11 Committee meeting.
27. The Committee will co-ordinate this review with the larger responsibilities of the Implementation Task Force, the members of which will include a representative of the Committee. To this end, the Committee has planned a special joint meeting with the Task Force in December 1998, prior to referral of the drafts to Convocation for approval and adoption.

REVIEW OF ISSUES RELATING TO
STEERING AND REFERRALS, REFERRAL FEES AND SOLICITATION

28. The Committee reviewed the issues relating to steering, referral arrangements, referral fees and division of fees (included in portion of Rules of Professional Conduct 9 and 12), focussing on the specific matters raised in a motion of Elvio DelZotto before Convocation on September 25, 1998 (attached at Appendix 1). Consideration of the motion, with Mr. DelZotto's agreement, was deferred pending the Committee's discussion of these issues on October 8, in connection with a review already underway through a working group of Committee.²
29. Mr. DelZotto discussed with the Committee the genesis of and reasons for the motion, primarily from the perspective of the real estate practitioner. After consideration of the options available for dealing in a prompt but meaningful way with the questions raised, the Committee, with Mr. DelZotto's agreement, decided to expand the existing working group, both in terms of the mandate and benchers/staff complement, and conduct a focussed study on the problems with the current prohibitions in the specified rules, as they affect *all* areas of practice. To this end, the working group is to include a sufficiently broad cross-section of benchers and non-benchers lawyers from practice areas beyond real estate, and additional Law Society staff.
30. The Committee was mindful of the comprehensive review now underway through the Task Force on Review of the Rules of Professional Conduct. The Committee, however, decided that the questions raised were of sufficient importance, with a measure of urgency, that they be given separate treatment, although liaison with the Task Force will occur.

²Marshall Crowe, with the assistance of staff member Stephen Traviss

MANDATORY LPIC REPORTING RULE
AND SOLICITOR/CLIENT PRIVILEGE

31. In June 1998, Convocation adopted amendments to the text of the language of Rules 3 and 5 of the Rules of Professional Conduct to make mandatory the lawyer's report of a claim to the Lawyers' Professional Indemnity Company (LPIC).
32. An issue has arisen relating to circumstances where a client instructs a lawyer *not* to report the claim to LPIC. The question is whether the lawyer would be breaching the client's instructions, or violate solicitor/client privilege or confidentiality if he or she reports, despite the client's direction.
33. The Committee determined that the nature of the issue required review in the context of the work of the Task Force on Review of the Rules of Professional Conduct, and accordingly referred the matter to the Task Force for study.

APPENDIX I

DELZOTTO/AARON MOTION
(SEPTEMBER 25, 1998 CONVOCATION)

It was moved by Ms. Cronk, seconded by Mr. Topp that it be reaffirmed that the Professional Regulation Committee have oversight responsibility for the monitoring of the spot/focussed audit program within the budget set by Convocation.

Carried

Motion Re: Suspensions

It was moved by Mr. Krishna, seconded by Mr. Ruby THAT the rights and privileges of each member whose name appears on the attached list, and who has not paid the Errors and Omissions Insurance Levy as of Friday, October 23, 1998 (5:00 p.m.), be suspended effective Monday, October 26, 1998 (9:00 a.m.) and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

Mr. Banack abstained from voting.

MOTION - REPORTS TAKEN AS READ

It was moved by Mr. Krishna, seconded by Mr. Ruby that the Draft Minutes of Convocation for September 24th and 25th, 1998 and the Reports of the Executive Director of Education and Addendum, Legal Aid Committee and Clinic Funding Committee be adopted.

Carried

Draft Minutes of Convocation - September 24th and 25th, 1998

THE DRAFT MINUTES WERE ADOPTED

(see Draft Minutes in Convocation file)

Report of the Director of Education and Addendum

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Executive Director of Education asks leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, October 23rd, 1998:

Frederick George Bartley
Joan Aleithia Bernard-James
Gilles Edouard Joseph Bonefant
Ann Brailsford-Child
Brenda Jane Fuhrman
Sheila Lois Isaac
Derek Keegans
Kevin Russell Marshall
Marie Rachèle Nathalie Nepton
Neal Stephen Newman
Jean-Louis Okomono
Dianna Lynn Parsons
Bonnie Blossom Pelletier
Hilda Elizabeth Saunders
Devanand Manoj Singh
Mak Sultan
Clifford Michael Sunday
Sharon Lee Thomas

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, October 23rd, 1998:

Sandra Costantini	Province of Québec
Diane Margaret Kelly	Province of Manitoba
Elizabeth Ann Marshall	Province of New Brunswick
Ronald Norman Pelletier	Province of British Columbia
Rafe James Plant	Province of Québec
Bonnie Elaine Roberts	Province of British Columbia

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

B.1.6. The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under sec. 5 of Regulation 708 on October 23rd, 1998. He has filed the necessary documents and complied with the requirements of the Society:

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

B.2.1. The following former members apply for readmission and have met all the requirements in that regard:

Penny Loraine Levesque	<u>Called:</u>	February, 12th, 1992
	<u>Resigned:</u>	January 28th, 1994
Harold Hamilton Wright	<u>Called:</u>	April 7th, 1982
	<u>Resigned:</u>	March 27th, 1998

B.3 REINSTATEMENT FOLLOWING SUSPENSION

B.3.1. The following suspended member applies to be reinstated upon payment of all arrears of fees:

B.3.2. Thomas Henry Webster	<u>Called:</u>	April 6th, 1979
	<u>Suspended:</u>	February 25th, 1983

B.4. MEMBERSHIP RESTORED

B.4.1. The following members have given notice that they ceased to hold judicial office and ask to be restored to the Rolls of the Law Society pursuant to Section 31(2) of the Law Society Act:

Effective date

*Howard Garfield	October 17, 1998 Supreme Court of Ontario
Sydney Lewis Robins	May 24, 1998 Court of Appeal for Ontario

*See also Membership under Rule 50

B.5. MEMBERSHIP UNDER RULE 50

B.5.1. Retired Members

B.5.2. The following members are at least sixty-five years of age and fully retired from the practice of law, and request permission, under Rule 50 made under the Law Society Act, to continue their membership in the Society without payment of annual fees:

*Howard Garfield	Toronto, ON
Larry Hargrave Gilbertson	Toronto, ON
Bruce Jarvis Legge	Toronto, ON
Donald Frank Pounsett	Toronto, ON
Albert Abraham Strauss	Toronto, ON

* See also Membership Restored

B.6. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.6.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

1. Alan Douglas Arsenault of Calgary, Alberta, was called to the Bar on February 24, 1998 and has never engaged in the practice of Ontario law.
2. Nathalie Johanne Chalifour of Guelph, Ontario, was called to the Bar on February 7, 1996 and has never engaged in the practice of law.
3. Coady Francis Cormier of Calgary, Alberta, was called to the Bar on February 12, 1992 and has never engaged in private practice with respect to Ontario law.
4. Hugh McClaren Evans of Toronto, Ontario, was called to the Bar on April 7, 1982 and has not practised Ontario law since December 1994. The member's rights and privileges were suspended May 12, 1995 for non-payment of the annual fee.
5. Leslie Lee Adams Fryers of Calgary, Alberta, was called to the Bar on March 29, 1977 and has never engaged in the practice of Ontario law.
6. Matthew Davidson Garfield of Toronto, Ontario, was called to the Bar on February 7, 1992 and practised law in Ontario from May 15, 1994 to March 31, 1998.
7. David Robert Henders of Toronto, Ontario, was called to the Bar on February 7, 1992 and practised law in Ontario from April 1, 1993 to May 25, 1998.
8. Ronald Albert Irwin of Sault Ste. Marie, Ontario, was called to the Bar on April 12, 1962 and has not practised Ontario law since 1993.

9. Vernon Victor Kakoschke of Oakville, Ontario, was called to the Bar on April 7, 1982 and practised law in Ontario from April 7, 1982 to June 30, 1998.
10. Sharon Helen Pratchler of Regina Saskatchewan, was called to the Bar on February 12, 1992 and has never practised Ontario law. The member's rights and privileges were suspended November 1, 1993 for non-payment of the annual fee.

C.
INFORMATION

C.1. CHANGE OF NAME

C.1.1.	<u>From</u>	<u>To</u>
	Susan Clara <u>Sbrolla</u>	Susan Clara <u>Kelly</u> (Name Change Certificate)
	Manuela Rosa Angela <u>Cocuzza</u>	Manuela Rosa Angela <u>Belmontes</u> (Marriage Certificate)

C.2. ROLLS AND RECORDS

C.2.1. (a) Deaths

The following Members have died:

Sidney Alexander Gillies Ottawa	Called: June 17, 1948 Died: March 6, 1987
Patrick Kilroy Kerwin Toronto	Called: June 19, 1941 Died: March 3, 1997
Francis James Murphy London	Called: March 26, 1965 Died: June 16, 1998
Peter White Toronto	Called: June 17, 1937 Died: August 6, 1998
Wessel Gall Burlington	Called: June 24, 1954 Died: August 15, 1998
Clarence Thomas Hay Fredricton	Called: February 7, 1992 Died: August 26, 1998
Nelson William Ross Boyes Toronto	Called: June 29, 1950 Died: August 28, 1998
Carl Peter Joseph Vipavec Toronto	Called: June 24, 1954 Died: August 30, 1998

Barry Winston Earle
Toronto

Called : March 17, 1967
Died: October 1, 1998

C.2.2. (b) Permission to Resign

C.2.3. The following member was permitted to resign his membership in the Society and his name has been removed from the rolls and records of the Society:

William Samuel Painter
Brantford

Called: March 22, 1974
Permitted to Resign: September 24, 1998

C.2.4. (c) Disbarments

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

Henry Desmond Morgan
London

Called: April 19, 1963
Disbarred: September 24, 1998

C.3. LIFE MEMBERS

C.3.1. Pursuant to Rule 49 made under the Law Society Act, the following members have become Life Members of the Society, having been called to the Bar on or before October 21, 1948:

James Baldwin Beckett
John McCreary Coyne

Ottawa, ON
Ottawa, ON

ALL OF WHICH is respectfully submitted

DATED this the 23rd day of October, 1998

REPORT OF THE EXECUTIVE DIRECTOR OF EDUCATION

23RD OCTOBER, 1998

ADDENDUM

B.
ADMINISTRATION

B.1. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

B.1.1. The following former member applies for readmission and has met all the requirements in that regard:

Sander Michael Shalinsky

Called:

February 16th, 1995

Resigned:

March 27th, 1998

THE REPORT AND ADDENDUM WERE ADOPTED

Report of the Legal Aid Committee

THE ONTARIO LEGAL AID PLAN
RÉGIME D'AIDE JURIDIQUE DE L'ONTARIO

Legal Aid Committee
October 7, 1998

Report to Convocation

Nature of Report: Information

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The Legal Aid Committee met on October 7, 1998. In attendance were:

Committee members: Bob Armstrong (Chair), Tamara Stomp, Allan Lawrence, Rich Wilson, Derry Millar, Tom Carey, Abe Feinstein and Gerry Swaye.

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

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

The following items are for your information:

1. Financial Reports - August 1998

The financial reports for August 1998 are attached.

2. Area Committee Appointments

The Committee approved one new appointment to Area Committees as recommended by the Provincial Director: Michael Bennett in Algoma.

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

Copy of the Ontario Legal Aid Plan Financial Reports - August 1998.

THE REPORT WAS ADOPTED

Report of the Clinic Funding Committee

CLINIC FUNDING COMMITTEE
October 21, 1998

Report to Convocation

Nature of Report: Decision-Making

THE CLINIC FUNDING COMMITTEE met on September 24 and October 14, 1998. In attendance were:

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

This report contains:

- Funding decisions that require Convocation's approval.

A. ADMINISTRATION

Pursuant to Regulation 70/90 made under the *Legal Aid Act*, the Clinic Funding Committee recommends Convocation's approval of funding as follows:

A.1 SUPPLEMENTARY LEGAL DISBURSEMENTS

a. Supplementary legal disbursements

Pursuant to s.7(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved an application for supplementary legal disbursements from the HIV & AIDS Legal Clinic - up to \$3,000.

A.2 APPLICATIONS FOR FUNDING

The following allocations will be used to provide duty counsel services at Ontario Housing Rental Tribunal hearings:

Brampton Community Legal Services	up to \$21,000
Community Legal Services (Ottawa-Carleton)	up to \$19,000
Dundurn Community Legal Services	up to \$12,000
Durham Community Legal Clinic	up to \$11,000
Halton Community Legal Services	up to \$ 1,300
Neighbourhood Legal Services (London & Middlesex)	up to \$ 9,000

Northumberland Community Legal Centre	up to \$ 1,100
Peterborough Community Legal Centre	up to \$ 800
Rexdale Community Legal Clinic	up to \$20,000
Scarborough Community Legal Services	up to \$21,000
Simcoe Legal Services Clinic	up to \$ 600
South Etobicoke Community Legal Services	up to \$20,000
Waterloo Region Community Legal Services	up to \$ 2,850

ALL OF WHICH is respectfully submitted

W. Derry Millar, Chair,
Clinic Funding Committee

October 21, 1998

THE REPORT WAS ADOPTED

MOTION - AMENDMENT OF RULES

It was moved by Mr. Krishna, seconded by Mr. Ruby THAT Rule 27 of the Rules made under subsection 62(1) of the Law Society Act be amended as follows:

In the list of standing committees, revoke the following:

8. Government Relations Committee;

and replace it with:

8. Government and Public Affairs Committee

THAT Rule 40 of the Rules made under subsection 62(1) of the Law Society Act be amended to read as follows:

The mandate of the Government and Public Affairs Committee is:

1. To develop and maintain an effective working relationship with the Government of Ontario, the Attorney General of Ontario, the Ontario Public Service and all elected officials of the Ontario Legislature for the purpose of ensuring the Law Society's policies and positions on matters affecting the interests of the public and the profession are understood before decisions affecting those matters are made.
2. To ensure that the Society's legislative agenda is effectively presented to the Government of Ontario for its consideration and approval.
3. To develop and maintain an effective working relationship with the Government of Canada and the Attorney General of Canada with respect to federal initiatives affecting matters within the Society's jurisdiction.
4. To develop, for Convocation's consideration, a governing policy defining the Law Society's public affairs mandate.

5. To develop a long range and comprehensive public affairs strategy consistent with the approved public affairs policy statement.

Carried

Report of the Admissions & Equity Committee

Admissions & Equity Committee
October 23, 1998

Report to Convocation

Purpose of Report: Information

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A. INFORMATION

LIFE MEMBERSHIPS.....

B.A.C. APPEAL ASSESSMENT FOLLOW-UP.....

A. INFORMATION

LIFE MEMBERSHIPS

1. Rule 49 - made under subsection 62 (1) of the *Law Society Act* - entitles every member of the Society who has practiced in Ontario for a continuous period of fifty years to become a life member. If there has been a period of interruption for non-payment of a fee, the Admissions and Equity Committee guidelines will determine if such a period may be counted towards the continuous period of fifty years.
2. At present, the Admissions and Equity Committee does not have guidelines for life membership qualification. The Committee set up a working group consisting of benchers Tom Carey and Mr. Ian Lebane to develop such guidelines. As well, the working group is asked to determine if the recent list of members put forward by the Membership Department can be recommended for life membership.

B.A.C. APPEAL ASSESSMENT FOLLOW-UP

3. On September 25, Convocation directed the Admissions and Equity Committee to implement a series of initiatives to ameliorate examination failures. To this effect, the Committee made the following decisions:

4. The Committee entrusted a working group consisting of benchers Bill Carter and Nancy Backhouse to draft a framework and set of criteria for granting discretionary relief from failure at the Bar Admission Course.
5. The Committee has directed the Education staff to draft a framework and set of criteria for establishing alternative forms of testing, including oral examinations. As well, staff is directed to examine methods for more effectively providing support for mature students.
6. The Committee has asked the Acting Articling Director to draft a report in consultation with bencher Nancy Backhouse, addressing the issue of how to assist students in obtaining quality articles.
7. The feasibility of enhancing the bursary funds for Phase I and Phase III in order to help students who struggle with financial adversity has been deferred pending the determination and discussion of the bar admissions course budget.

THE REPORT WAS RECEIVED

Legal Aid

Mr. Armstrong summarized the earlier in camera discussions regarding Bill 68.

It was moved by Mr. Armstrong, seconded by Mr. Wilson that the Treasurer, Mr. Armstrong and the Government Relations Committee be instructed to deal with the government to seek an amendment to those sections previously discussed to express the principal that the Society should be the sole supervisor of quality assurance, that there be a complete release of the Law Society from any indemnity arising out of the operation of the Plan and that the judicare system be continued in the current form.

Carried

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

The Treasurer and Benchers had as their guests for luncheon Ms. Celia Corcoran, Ms. Diane Kelly, Mr. Vic Savino, Mr. William J. Anderson, Mr. Roderick Barr (former Bencher), Grand Chiefs Doug Maracle, Mike Mitchell and Chief Tobasonakwat Kinew.

CONVOCATION RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Armstrong, Arnup, Backhouse, Bobesich, Carey, R. Cass, Chahbar, Cole, Copeland, Crowe, DelZotto, Epstein, Feinstein, Finkelstein, Gottlieb, Harvey, Manes, Millar, Murray, Ross, Sachs, Stomp, Swaye, Wardlaw, Wilson and Wright.

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IN PUBLIC

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MOTION RE: SMOKING IN BENCHERS' RECEPTION

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that the Benchers' Reception area of Osgoode Hall be declared and posted as a "no smoking" area.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	Against
Arnup	For
Backhouse	Against
Bobesich	For
Carey	Against
Chahbar	Against
Cole	For
Copeland	For
Crowe	Against
DelZotto	For
Epstein	Abstain
Feinstein	For
Finkelstein	For
Gottlieb	For
Harvey	Against
Manes	Abstain
Millar	Against
Murray	Against
Ross	Abstain
Sachs	Against
Stomp	Against

23rd October, 1998

Swaye
Wilson
Wright

Against
For
For

Vote 12 - 11

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IN CAMERA

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IN CAMERA Content Has Been Removed

CONVOCATION ROSE AT 3:45 P.M.

Confirmed in Convocation this 22 day of November, 1998

Harvey T. Strober
Treasurer