

Friday, 27th May, 1994

MINUTES OF CONVOCATION

Friday, 27th May, 1994
9:30 a.m.

PRESENT:

The Treasurer (Paul S. A. Lamek), Bastedo, Bragagnolo, Brennan, Campbell, R. Cass, Cooper, Copeland, Curtis, Elliott, Epstein, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Jarvis, Kiteley, Krishna, Lamont, Lawrence, Lax, Legge, Lerner, Levy, McKinnon, Mohideen, Moliner, Murphy, Murray, Palmer, Peters, Richardson, Ruby, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer paid tribute to The Honourable William G. C. Howland, Q.C. former Chief Justice of Ontario and Treasurer of The Law Society of Upper Canada (1968 - 1970) who passed away on Friday, May 13th, 1994.

The Treasurer announced that a \$15,000 prize for the student attaining the highest grade in company or corporation law had been donated by Mrs. Rita Cudney in memory of her husband Rubert J. Cudney, K.C..

NOMINATION OF TREASURER

The Secretary advised that there was one nomination for the position of Treasurer as follows:

Paul S. A. Lamek	Nominated by David Scott
	Seconded by Susan Elliott

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MOTION - COMMITTEE APPOINTMENT

It was moved by Mr. Goudge, seconded by Mr. Somerville THAT Paul Rouleau be appointed to the Civil Rules Committee.

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MOTION - AGENDA - COMMITTEE REPORTS TAKEN AS READ

It was moved by Mr. Epstein, seconded by Mr. Lerner THAT the Reports listed in paragraph 3 of the Agenda (Reports to be taken as Read) excluding the French Language Services Report, be adopted.

Carried

Admissions (2 Reports)
April Draft Minutes
Clinic Funding
Communications
Discipline
Equity in Legal Education and Practice
Finance and Administration
Insurance (1 of 2 Reports - not E & O)
Investment
Lawyers Fund for Client Compensation
Legal Aid
Legal Education
Legislation and Rules
Libraries and Reporting
Professional Conduct
Professional Standards
Relief and Assistance
Research and Planning
Specialist Certification Board
Spicer Reasons
Unauthorized Practice
Women in the Legal Profession

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COMMITTEE REPORTS

ADMISSIONS COMMITTEE

Meeting of May 27, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on the morning of Friday, the 27th of May 1994, the following members being present: Mr. Lamont (Vice-Chair, Ms. Moliner and Mr. Levy.

B.

ADMINISTRATION

B.1. EXAMINATION RESULTS - TRANSFER EXAMINATION

B.1.1. The following candidates have completed successfully the May 1994 transfer examination:

Jean-Pierre Blais	Province of Quebec
Gerald Joshua Boyaner	(Requalification candidate)
John Edward Stuart Briggs	Province of Nova Scotia
Darrell James Burt	Province of Manitoba
Thane Alexander Campbell	Province of Prince Edward Island
Brian Alexander Dingwall	Province of Alberta

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Donald Alan Jackson	Province of Alberta
Indra Lynne Chandanee Maharaj	Province of Manitoba
Debra Joy Poon	Province of Alberta
Victor Steven Savino	Province of Manitoba
Michelle Tarney Taj	Province of Nova Scotia
Lawrence David Wilde	Province of Alberta

NOTED

B.2. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.2.1. Transfer from another Province - Section 4(1)

B.2.2. 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, May 27th, 1994:

John Edward Stuart Briggs	Province of Nova Scotia
Darrell James Burt	Province of Manitoba
Thane Alexander Campbell	Province of Prince Edward Island
Brian Alexander Dingwall	Province of Alberta
Victor Steven Savino	Province of Manitoba

APPROVED

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

R. Carter
Chair

THE REPORT WAS ADOPTED

DRAFT MINUTES - April 21 and 22, 1994

(see Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

CLINIC FUNDING COMMITTEE

Meetings of April 6 and May 18, 1994

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 April 6 and May 18, 1994. Present were: Joan Lax, Chair, Paul Copeland, Jim Frumau, Pamela Giffin, Mark Leach. Also present: Joana Kuras, Clinic Funding Manager.

A.
POLICY

B.
ADMINISTRATION

1. Summer Students 1994

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

2. Applications to the Clinic Funding Committee

a. 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 clinic:

East Toronto Community Legal Services - up to \$1,000

3. Application for Incorporation

a. African Canadian Legal Clinic

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

4. Special Legal Education/Outreach

The Clinic Funding Committee reviewed and approved five additional applications for special legal education/outreach funds. Funds are made available from the Access to Legal Information Fund by the federal Department of Justice. These funds can only be used for special legal education and outreach:

Aboriginal Legal Services of Toronto - up to \$8,000

Workshops on police violence, rent-geared-to-income housing and tenants' rights, social assistance, and status applications.

Hastings & Prince Edward Legal Services - up to \$800

Purchase of TTY equipment for the clinic's "Legal Information for the Deaf" outreach project.

Renfrew County Legal Clinic - up to \$5,000

Production of educational print material on legal issues relating to proposed federal reforms of the unemployment insurance system for distribution to grassroots community organizations and advocates.

Community Legal Education Ontario - up to \$33,000

Translation and printing of four titles from the existing workers' compensation pamphlet series, plus reprints of "Elder Abuse: The Hidden Crime" and "Every Resident".

Community Legal Services of Niagara South - up to \$2,127.50

Development of a local coalition on poverty issues and provision of information about law reform in the social assistance area.

C.
INFORMATION

The Ministry of the Attorney General has asked the Clinic Funding Committee and its staff to develop a strategy to deal with social assistance, landlord/tenant, workers' compensation and other cases within the clinic poverty law mandate if the Legal Aid Committee decides to stop issuing poverty law certificates. For some time, clinics have been unable to provide complete service in these areas due to a combination of increasing demand during the recession and an inability to provide additional staff or resources to clinics due to a lack of funding. Consequently, many clinics have been referring clients to local area offices for the issuance of certificates to deal with the demand for service. The clinic system does not have the capacity, even with additional funds, to deliver services to all persons in need.

The Clinic Funding Committee is working with the Legal Aid Committee to minimize the effect of a cut to legal aid certificates. In contemplation of the possible disappearance of legal aid certificates in poverty law, the Clinic Funding Committee prepared a proposal to fund a strategic, system-wide approach to poverty law issues, which is included as part of the Legal Aid Committee's Report to Convocation. The Clinic Funding Committee and its staff are continuing to work with the Legal Aid Committee and its staff on this matter. The Clinic Funding Committee will report more fully to Convocation in June.

ALL OF WHICH is respectfully submitted

J. Lax
Chair

May 19, 1994

THE REPORT WAS ADOPTED

COMMUNICATIONS COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMMUNICATIONS COMMITTEE begs leave to report:

Friday, 27th May, 1994

Your Committee met on Thursday, the 12th of May, 1994, the following members being present: Denise Bellamy (Chair), Carole Curtis, Christopher DuVernet, Susan Elliott, Fran Kiteley, Allan Lawrence, Ross Murray, Hope Sealy, and Stuart Thom. Staff representation: Diane Partenio, Richard Tinsley, and Gemma Zecchini.

C.
INFORMATION

1. Call Statistics

The Lawyer Referral Service received 15,832 calls this month for a total of 59,155 since the beginning of this year. This represents an average of 721 calls/day. Dial-A-Law received 17,504 calls, for a total of 81,815 calls for the year to date, representing an average of 727 calls/day.

ALL OF WHICH is respectfully submitted

DATED this 12th day of May, 1994

D. Bellamy
Chair

THE REPORT WAS ADOPTED

DISCIPLINE COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994 at 1:30 in the afternoon, the following members being present:

H.T. Strosberg (Chair), D. Scott (Vice-Chair), M. Cullity, S. Goudge, M. Moliner, M. Martin, D. McPhadden, S. Thom.

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

A.
POLICY

A.1. ACCEPTANCE OF UNDERTAKINGS FROM SOLICITORS

- A.1.1 In the course of investigations by the Complaints and Professional Standards Departments, staff lawyers may obtain undertakings from members. The undertaking is typically in the form of an acknowledgement from the member of his or her professional obligation and an undertaking to fulfil that obligation in the future. The member may also undertake to participate in the Practice Review Programme of the Professional Standards Department. The member may be advised by the staff lawyer that having given the undertaking, the member's file with that department will be "closed".
- A.1.2. The Committee considered the practice of staff lawyers accepting undertakings and the effect of the acceptance of an undertaking on future disciplinary action relating to the complaints under investigation and any subsequent complaints. S. McCaffrey of the Professional Standards Department and S. Kerr of the Complaints Department addressed the Committee on this issue. Both Ms. McCaffrey and Mr. Kerr advised that participation in the Practice Review Programme should not be viewed by members as providing immunity from discipline proceedings. The view was expressed that participation in the Programme should be seen, at most, as a mitigating factor in possible future disciplinary proceedings.
- A.1.3. Your Committee recommends to Convocation that it accept the principle that the acceptance of an undertaking by either the Complaints Department or Professional Standards Department is not a bar to a Complaint being subsequently authorized by the Chair of Discipline for conduct with respect to the undertaking.

B.
ADMINISTRATION

B.1. RE-ORGANIZATION OF COMPLAINTS, AUDIT & INVESTIGATION AND DISCIPLINE DEPARTMENTS

- B.1.1. James Yakimovich and Scott Kerr advised the Committee of the current developments by staff in considering potential structural or organizational changes in the Complaints, Audit and Discipline departments.
- B.1.2. The Committee considered, as well, the necessity of assessing potential procedural changes, in particular:
- a. addressing the increasing number of discipline hearings for administrative offences by establishing alternative methods of proceeding, and
 - b. reviewing proposed changes to the Law Society Act and Regulations with respect to the Complaints Review process.
- B.1.3. The Committee established a Sub-Committee, chaired by Ms. Moliner. The Sub-Committee will monitor the progress of staff in respect of structural, organizational and procedural changes, as well as provide advice and make recommendations in these areas.

Friday, 27th May, 1994

B.2. PRE-HEARING RESOLUTION OF COMPLAINTS

B.2.1. The Committee considered various means of reducing the number of formal hearings in Discipline matters, or limiting the issues in those hearings. The Committee considered the merit in requiring pre-hearing conferences.

B.2.2. The Committee established a Sub-Committee, chaired by Mr. Goudge. The Sub-Committee will report to the Committee on methods of resolving complaints, or issues in complaints, other than through the formal discipline process.

B.3. OUTSIDE COUNSEL

B.3.1. Michael F. Brown addressed the Committee on the current use of outside counsel at a nominal fee to reduce the backlog of discipline cases. The Committee approved the continued use of outside counsel at a nominal fee and encouraged efforts to seek alternative solutions for the resolution of outstanding discipline matters.

ALL OF WHICH is respectfully submitted

DATED this 27th of May, 1994

H. Strosberg
Chair

THE REPORT WAS ADOPTED

INSURANCE COMMITTEE (1 of 2 Reports - not E & O Report)

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th day of May, 1994 at 10:30 in the forenoon, the following members being present: Messrs. Campbell (Chair), Hickey, Howie, Finkelstein, Murray, Cass, Wardlaw, Bastedo, Lerner, Epstein, McKinnon and Ms Elliott.

In light of the agenda, the Finance and Administration Committee was invited to attend and was represented by Messrs. Somerville, Feinstein, Krishna, Hill and Mesdames Bellamy and Weaver.

Also in attendance were Messrs. Crosbie, Tinsley, Crack, Anderson, Whiklo, Carey, and O'Toole.

ITEM

1. 1994 ERRORS & OMISSIONS LEVY

The President's report on the E&O levy requirements for the second half of 1994 was tabled before a joint meeting of the Insurance and Finance Committees. Both Committees recommend adopting the President's levy recommendations, the details of which will follow shortly in a special levy information package currently being prepared for submission to Convocation.

2. PRESIDENT'S MONTHLY REPORT

The President's monthly report is attached as Appendix "A".

3. LEVY EXEMPTION: MEMBER RESIDING IN THE U.S.

A member residing in the State of Michigan, where there is no mandatory insurance program and who occasionally performs professional services in Ontario, has requested an exemption from the E&O levy. The coverage, purchased privately by the member through the commercial insurance market, extends to the performance of professional services in Ontario and also provides for substantially equivalent insurance coverage including a per occurrence policy limit of \$1,000,000. Under the existing rules for levy exemption, members resident in other Canadian jurisdictions who perform professional services in Ontario and who demonstrate proof of substantially equivalent coverage through their home jurisdictions mandatory insurance programs are eligible for a levy exemption. Your Committee is of the view that, an exemption from the levy is appropriate, provided such members demonstrate proof of substantially equivalent insurance coverage for the performance of professional services in Ontario including an undertaking from the insurer to provide notice of cancellation or change in coverage.

4. LOSS PREVENTION POLICY SUBCOMMITTEE

The Chair, Mr. Wardlaw, reported that the Subcommittee is of the view that LPIC Loss Prevention initiatives, which incorporate the Errors Bulletin and Loss Prevention Video Programs, should continue to be developed, particularly in co-operation with other Law Society programs including CLE, Professional Standards and the Practice Advisory Service.

The 1994 insurance program budget, as approved by Convocation, includes a provision for one additional LPIC staff member, dedicated to the implementation and development of LPIC's Loss Prevention Program. Your Committee recommends that LPIC proceed to hire an additional staff member in this regard.

Friday, 27th May, 1994

5. OUTSTANDING ITEMS

a) Transaction Fee Based Levy

An Insurance Subcommittee has been considering a recommendation that the profession charge a transaction fee on a range of legal services. The revenue generated by the transaction fee would be applied to the cost of the mandatory insurance program. The Subcommittee Chair, Mr. Feinstein, reported that in light of the legal opinion obtained by the Subcommittee it appears none of the issues or concerns previously raised by the Subcommittee would impede implementation of a transaction fee. The Subcommittee will meet shortly to consider and refine the emerging transaction fee model and will report further as developments occur.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

H. Strosberg
Chair

Attached to the original Report in Convocation file copies of:

Item 2 - Report of the President of LPIC to the Insurance Committee for the month of April 1994. (Appendix "A", pages 1 - 18)

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994 at nine-thirty in the morning, the following members being present: Messrs. Wardlaw (Chair). 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 summary for the various Law Society Funds together with supporting documentation for the month ended April 30, 1994 (Schedule A).

Approved

Friday, 27th May, 1994

2. Investment Activity for April, 1994 - Lawyers' Fund for Client Compensation

<u>Purchase</u>	<u>Broker</u>	<u>Current Market</u>	<u>Cost</u>	<u>Yield</u>
\$1,000,000 7.5% FEDERAL BUSINESS DEVELOPMENT BANK Bonds due March 10, 1998	Scotia McLeod	99.850	\$ 998,500	7.540%
\$1,500,000 6.5% GOVERNMENT OF CANADA BONDS due September 1, 1998	Scotia McLeod	96.550	\$1,448,250	7.440%

These investments were made on the advice of Martin, Lucas and Seagram Ltd., our independent investment counsel, and with the Director of Finance's approval. The Committee was asked to ratify the purchase of these investments.

Ratified

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

J. Wardlaw
Chair

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

Item B.-1. - Investment Report summary for various Law Society Funds together with supporting documentation for month ended April 30, 1994. (Schedule A)

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 12th of May, 1994, at 10:30 a.m. the following members being present: S. Lerner (Vice-Chair in the Chair) S. Thom, and R. Wise; J. Brooks, S. Hickling, H. Werry and J. Yakimovich also attended.

A.
POLICY

No Items

B.
ADMINISTRATION

1. APPLICATIONS FOR THE POSITION OF REFEREE

Advertisements for applicants to the position of Referee were placed in the Ontario Reports and the Lawyer's Weekly. Approximately two hundred applications were received and forwarded to the Chair of the Committee. The resumé's were reviewed and thirty-five have been selected for review by the Committee.

IT IS RECOMMENDED that nine applicants be chosen for the position of Referee to the Lawyers Fund for Client Compensation. Six of these should be from the Toronto area and three from outside areas - preferably Ottawa, Windsor or London and a northern community. The Committee recommends that generally hearings should be held where the claimant resides or the solicitor involved carried on his or her practice.

All applicants should have approximately ten years of practise and preferably some litigation experience. If necessary interviews would be set up with a Committee member.

2. EXTENSION OF APPOINTMENT OF PRESENT REFEREE

It has come to our attention that the appointment of the Honourable B. Barry Shapiro, Q.C., as Referee for the Lawyers Fund for Client Compensation has lapsed. Mr. Shapiro has proven to be an adept and conscientious Referee for the Committee. He has presided over the past hearings concerning Mr. Michael Spensieri. A new claim has been received concerning this solicitor which will require another hearing and, as it would be preferable to have the same Referee, we would like to have Mr. Shapiro's appointment extended. Mr. Shapiro has also been scheduled to be a Referee at a new set of hearings in May which involve several claims.

IT IS RECOMMENDED that the appointment of the Honourable B. Barry Shapiro, Q.C. be extended to hear further Lawyers Fund for Client Compensation matters.

C.
INFORMATION

1. REFEREE REPORT AND STAFF MEMORANDA

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

2. Copies of graphs showing the relationship between claims made and claims outstanding with limits applied and without limits applied are attached.
(Pgs. C1 - C2)

Friday, 27th May, 1994

3. Accounts approved by staff in April amounted to \$3,646.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

C. Ruby
Chair

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

- Item C.-1. - Referee Report and Staff Memoranda. (Schedule "A")
Item C.-2. - Graphs re: Claims. (marked C1 - C2)

THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of May 12, 1994

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 May, 1994, at 11:30 a.m., the following members being present: M. Cullity (Chair), the Hon. A. Lawrence, S. Lerner, S. Thom.

Also present: A. Brockett, S. Hickling, E. Spears, J. Yakimovich.

A.
POLICY

No items to report.

B.
ADMINISTRATION

B.1. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: FRENCH TRANSLATIONS OF AMENDMENTS MADE DECEMBER 1, 1993 TO APRIL 30, 1994

- B.1.1. The most recent French version of the Rules made under subsection 62(1) of the *Law Society Act* incorporates all amendments in the English version up to November 30, 1993.

- B.1.2. At its meeting on April 14, 1994, the French Language Services Committee approved, as accurate, a French translation of all amendments made to the English version of the Rules between December 1, 1993 and April 30, 1994, and a minor revision to the French text to make the translation more accurate.
- B.1.3. The French translations, and the minor revision, will be found at Attachment A.
- B.1.4. The French Language Services Committee having approved
- (i) the French translations of amendments made to the Rules between December 1, 1993 and April 30, 1994, and
 - (ii) the minor revision to the French text of the Rules,
- your Committee submits the translations and the minor revision to Convocation for its approval.

C.
INFORMATION

- C.1. REGULATION 708 MADE UNDER THE LAW SOCIETY ACT: SECTION 15.2: MEMBER'S OBLIGATION TO COMPLETE FORMS 4 AND 5: AMENDMENT
- C.1.1. On November 26, 1993, Convocation adopted the recommendation of the Lawyers Fund for Client Compensation Committee that section 15.2 of Regulation 708 made under the *Law Society Act* be amended. Section 15.2 stipulates a member's obligation to complete Forms 4 and 5 when arranging mortgages for clients.
- C.1.2. Draft wording for section 15.2 was considered by the Lawyers Fund for Client Compensation Committee at its meetings on November 11, 1993 and April 14, 1994. The draft wording was referred to the Legislation and Rules Committee for final drafting.
- C.1.3. The Legislation and Rules Committee has considered the draft wording for section 15.2 and has decided to refer it, for comment, together with the wording for present sections 15.1 and 16 of Regulation 708, to outside counsel experienced in mortgage transactions.
- C.2. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: FORMS 4 AND 5: AMENDMENTS
- C.2.1. On November 26, 1993, Convocation adopted the recommendation of the Lawyers Fund for Client Compensation Committee that Forms 4 and 5 be amended. Pursuant to section 15.2 of Regulation 708 made under the *Law Society Act*, Forms 4 and 5 are required to be completed when a member arranges mortgages for clients. 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.
- C.2.2. Draft Forms 4 and 5 were considered by the Lawyers Fund for Client Compensation Committee at its meeting on November 11, 1993, and were referred to the Legislation and Rules Committee for final drafting.

Friday, 27th May, 1994

- C.2.3. The Legislation and Rules Committee has considered draft Forms 4 and 5 and has decided to refer them, for comment, to outside counsel experienced in mortgage transactions.
- C.3. RULES MADE UNDER SUBSECTION 62(1) OF THE LAW SOCIETY ACT: FORM 4; SCHEDULE A TO FORM 3: AMENDMENTS
- C.3.1. On February 25, 1994, Convocation adopted the recommendation of the Lawyers Fund for Client Compensation Committee that Form 4 be further amended and that Schedule A to Form 3 be amended.
- C.3.1. 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 which are to be reviewed annually by the public accountant pursuant to section 16 of Regulation 708.
- C.3.2. The amendment to Schedule A to Form 3 involves section 12 thereof. Section 12 indicates the number of mortgage transaction files that have been randomly selected for review by the public accountant (as provided for in section 16 of Regulation 708), and 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. The amendment to Schedule A to Form 3 will alter the number of mortgage transaction files to be randomly selected for review by the public accountant, and will exclude from the review those transactions where Schedule A to Form 4 has been fully executed.
- C.3.3. A draft Schedule A to Form 4 and draft wording for section 12 of Schedule A to Form 3 were considered by the Lawyers Fund for Client Compensation Committee at its meeting on February 10, 1994. They were referred to the Legislation and Rules Committee for final drafting.
- C.3.4. The Legislation and Rules Committee has considered draft Schedule A to Form 4 and the draft wording for section 12 of Schedule A to Form 3 and has decided to refer them, for comment, to outside counsel experienced in mortgage transactions.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

M. Cullity
Chair

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

- Item B.-B.1.3. - Translation of Amendments to the Rules approved in English by Convocation on February 10, 1994. (Attachment A)

THE REPORT WAS ADOPTED

Friday, 27th May, 1994

LIBRARIES AND REPORTING COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994 at 8:30 a.m., the following members being present:

D. Murphy (Chair), T. Bastedo, M. Cullity, G. Farquharson, M. Hickey, M. Weaver, and M. Hennessy. G. Howell also attended.

A.
POLICY

1. County Libraries - Priorities & Planning Committee's Recommendations - Review of County Library Funding and Expenditures

Last month, the Committee briefly reviewed the recommendations of the Priorities & Planning Committee relating to the County Library Levy. In short, the Priorities & Planning Committee recommended that any funding shortfall from cost increases should be met by the county library "reserve", and not by the Committee's recommended \$3 increase on the County Library Levy (presently at \$81).

The Priorities & Planning Committee also recommended that "a full report should be submitted to Convocation not later than the early Spring of 1995 so that Convocation can debate and determine the funding of the county libraries over the next few years", and concluded that it disagreed with adding an annual increase to the county library levy "without a thorough determination of the expenditures of the various county libraries and the funding mechanisms for them". (emphasis added).

The Committee reviewed five charts, three of which provide a breakdown of 1994 budgeted expenses for books, staffing and other operating expenditures. The Committee agreed with the Chief Librarian's recommendation that the following process and timetable for the Committee's review of the county library system, be adopted:

Libraries & Reporting Committee's review of the County Library system

Activity

Timeframe

- A. 1. Establishment of a Sub-Committee of Libraries & Reporting, which would work with the Chief Librarian in order to bring a report back to the Committee for review and then recommendation to Convocation

May

2. The Sub-Committee will have five members, to be appointed by the Chair:
 - a) a Committee member from Metro Toronto
 - b) a Committee member from a Regional Centre
 - c) a Committee member from a non-Regional Centre
 - d) a representative from CDLPA
 - e) a representative from York County Law Association
- B. Consultation with the Counties on the "Hennessy" Reform Proposal (county library funding through the Law Society of Upper Canada's county library levy rather than local association fees) June
- C. "Issues" paper to be distributed by the Sub-Committee, for consideration by the meetings outlined in the next two stages. August
- D. Meeting of the CDLPA Library Committee (along with York County representatives) September
- E. Plenary session of CDLPA (along with York County representatives) November
- F. Draft Report of Sub-Committee to full Committee January
- G. Final Report of Libraries & Reporting Committee to Convocation February
- H. Approval by Convocation March (at latest)

For the information of Convocation, the three charts providing the breakdown of 1994 budgeted expenses for books, staffing and other operating expenses are attached. Benchers should also refer to item C.1. of the Report to Convocation herein for the item on Annual Percentage Increases in Subscription Costs payable to Law Publishers (and the survey charts attached thereto).

B.
ADMINISTRATION

1. Great Library - "Custom" Copy/Fax Services - Publishers' Lawsuit

The Chair of the Committee has spoken with representatives of the three law publishers (Canada Law Book, Carswell and CCH) in order to continue negotiations relating to the publishers' lawsuit over the Great Library's service of providing copies of law reports and other publications to Law Society Members. The Chair distributed copies of a draft licence agreement from the publishers, and asked for input from Committee members on the terms thereof. The Chair will report back to the next Committee meeting on this matter.

Friday, 27th May, 1994

2. Committee meeting in Kingston with

a) Frontenac Law Association

b) QL Systems (our OR database distributor)

The Committee originally had planned to meet in Kingston on the Wednesday before Committee Day in January. The plan was to meet with the officers of the Frontenac Law Association on their library premises (a "typical" median-sized county library), meet with the members of the association at a general meeting (reception), and visit the premises of QL Systems and discuss "database matters" with Prof. Lawford (QL President). The Frontenac officers, the Kingston Benchers (Hickey and Elliott), and QL officers were all enthusiastic about the meeting. The Committee's first meeting outside Toronto would have symbolic (as well as practical) value.

The Chief Librarian recommended that, in light of the impending review of the county library system, a meeting at the Kingston library and with Frontenac Law Association members would be more important now than ever. Additionally, there are recent developments in on-line databases that Prof. Lawford could demonstrate best on his premises in Kingston.

The Committee agreed that, subject to a poll of all Committee members on their availability to attend, the next meeting of the Committee would be in Kingston, on Wednesday, June 8th, the day before Thursday's Committee Day back in Toronto.

C.
INFORMATION

1. Book Costs - Annual Percentage Increases in Subscription Costs

Last month, the Chief Librarian distributed copies of a cost comparison chart to the members of the Committee, for information. There was no "covering" agenda item.

Another cost comparison chart has come to the Chief Librarian's attention. The implications for the county libraries are obvious; therefore, copies of both are being distributed.

The Chief Librarian's analysis of cost increases for just the basic subscriptions for Ontario's county library system has showed the following percentage increases for the past several years:

1990	<u>18%</u>
1991	<u>16%</u>
1992	<u>11%</u>
1993	<u>8%</u>

It was on the basis of this seemingly declining percentage factor that the Chief Librarian's 1994 budget memorandum to the counties asked them to use a 5% inflation factor as a guideline for book costs for 1994. This request was also based partially on the simple fact that funding would not be increased for 1994.

Friday, 27th May, 1994

The disturbing fact is that the two attached surveys (cost comparison charts) indicate that, on a broader national scale, the percentage increases are very high - depending upon which survey is chosen, the cost increase is 13% or 17%.

If these percentage increases continue in 1994, and worse, again in 1995, then those counties with more than the "basic" subscriptions (especially the median-sized and larger counties) are going to face a budget "crunch".

The charts (one from the CALL Newsletter, the other from UNB) are attached.

ALL OF WHICH is respectfully submitted

Dated this 27th day of May, 1994

D. Murphy
Chair

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

Item C.-1. - Surveys re: Cost Comparison Charts. (pages 1 - 5)

THE REPORT WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994 at three o'clock in the afternoon, the following members being present: Somerville (Chair), Campbell (Vice-Chair), Cullity, Feinstein, Finkelstein, Goudge, Hickey and Moliner. The following staff members were present: M. Devlin, D. Godden, T. Hoskins and S. Traviss.

A.
POLICY

1. REMOVAL OF LAWYER'S NAME FROM FIRM NAME
AFTER APPOINTMENT TO THE BENCH, AS
REQUIRED BY RULE 12 - SHOULD THIS
REQUIREMENT BE REPEALED?

The Committee has had occasion to consider paragraph 7(d) of Rule 12 of the Rules of Professional Conduct which provides:

Friday, 27th May, 1994

When a lawyer retires from a firm to take up an appointment as a judge or master, or to fill any office incompatible with the practice of law, the lawyer's name shall be deleted from the firm name.

The reason behind this provision is that the public could associate the judge's name with the firm and conclude that there was a marked advantage to be gained by employing this law firm in litigious matters because his brother and her sister judges would know of that judge's former association with that firm. Although no benefit would be accorded a litigant in these circumstances, there is still that perception which would harm the administration of justice.

The ABA Model Code at Rule 7.5, subsection (c) reads:

The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practising with the firm.

The majority of the Committee was of the opinion that the justification for paragraph 7(d) should be rethought. It may be that the requirement in paragraph 7(d) is unnecessary and therefore should be repealed.

Mr. Cullity will be preparing a position paper for consideration of this matter at the June 9th meeting. The Committee asks the members of Convocation to make known their views on the subject to Mr. Cullity in advance of June 9th.

It was thought advisable to let Convocation know that a change to paragraph 7(d) of Rule 12 was being contemplated.

2. REQUEST FOR INTERPRETATION OF A
COMMISSION IN RULE 9 BY A LAWYER
WHO IS FUNCTIONING AS A
DIRECTOR OF FRANCHISE DEVELOPMENT

A lawyer is employed as Director of Franchise Development for a printing company. He does not do any legal work for his employer. The lawyer has directed the following inquiry to the Professional Conduct Committee.

As explained, I am employed by X Printing Co. as the Director of Franchise Development. I wish to generate some interest in our business by direct-mailing lawyers and providing them with an information package. As an incentive, I would like to offer them a commission in the event one of their clients goes on to buy.

It is my understanding that a commission is permitted providing a lawyer obtains a written consent from their client stating that the client has no objection to a commission being paid. (Paragraph 8, Rule 9)

Complicating the issue a little further, is the fact that I require a certificate of independent legal advice from any person who wishes to invest in a franchise. I would like to know if the lawyer receiving the commission from our firm would be obligated to refer the client to different counsel to ensure the advice regarding the franchise is truly independent.

Friday, 27th May, 1994

Paragraph 8 of the Commentary under Rule 9 reads as follows:

The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, reward, costs, commission, interest, rebate, agency or forwarding allowance or other compensation whatsoever related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such other person or agency.

If the lawyer is recommending to the client that an investment be made in the franchise, that lawyer has a financial interest and therefore could not give a certificate of independent legal advice.

The Committee concluded that the referring lawyer could receive a finder's fee provided he has the written consent of the client.

3. ADVERTISING IN NEWSPAPER WITH TELEPHONE
NUMBER OF LAW FIRM - MEMBER OF PUBLIC COULD
CALL IN FOR INFORMATION - REQUESTS FOR FURTHER
INFORMATION WOULD BE DIRECTED TO LAW FIRM

A lawyer in Ottawa has been asked if he would care to participate in a newspaper scheme described below:

As indicated to you by telephone, I have been approached regarding a proposal involving a local newspaper.

A real estate company proposes to place in the newspaper a "Touchtone" Information Service. The public could phone a number provided which would then give a number of taped information messages on various topics involving real estate. I think it would be similar to the service provided by the Law Society. They plan to have a section dealing with legal aspects of purchasing a home and have asked that I participate. There would be some indication that our firm was providing the information. Further the caller would be advised that by touching "0" they could be connected with our offices for further information.

Would it make any difference if this Information Service was not provided through the real estate company, but rather directly and independently by our firm?

Whether the local Bar Association should become involved in such a project is not the question I ask. Rather is there some rule which prevents me from doing so is the issue. Certainly, other firms could choose to follow my lead in this area of law or other if they so wished.

I understand that you will place this matter before the Professional Conduct Committee. I look forward to hearing from you.

This proposal appears to be somewhat similar to that involving the "Talking Yellow Pages" considered by the Professional Conduct Committee at the October 1993 Convocation.

Convocation accepted the Committee's recommendation.

Friday, 27th May, 1994

Set out below is the Committee's Report to Convocation:

Tele-Direct which publishes the Yellow Pages has been approaching lawyers in Mississauga, Brampton and Oakville to see if they would like to sponsor a legal subject, information about which can be obtained by dialing certain numbers from a touch tone telephone.

Set out below is the letter from Teresa Deakin at Tele-Direct:

Cindy Kennedy has asked me to make your professional association aware of a new advertising opportunity that Tele-Direct will be testing in the February 1994 issues of the Mississauga, Brampton and Oakville Yellow Pages directories.

We will be approaching lawyers in these areas offering them the opportunity to be the exclusive sponsor of helpful consumer information related to an area of legal practice concerns. This information will be made available to the public on our Talking Yellow Pages service - a free service that presently provides news, weather, sports reports, horoscopes, etc., accessible via touch-tone telephones.

An example of this new concept that exists in the Calgary directory is attached. When a caller enters one of the 4-digit codes for a legal topic, they will first hear "it is brought to them by Mr. Smith". Then at the end of that topic they will have the option to "press 1 to be directly connected to Mr. Smith's office". Nothing will appear in print about the sponsoring professional.

Please call me if you would like any further details or have any questions.

Attached is a copy of a list of legal subjects (Appendix A).

Ms. Deakin was present to explain how the system would operate. Basically, only one law firm or lawyer would be approached. During the discussion the issue of "steering" was discussed. In this regard reference was made to paragraph 5(f) under Rule 12 which reads as follows:

The lawyer shall not:

- (f) arrange for or encourage anyone (e.g., a real estate agent) to make a practice of recommending to any person that the lawyer's services be retained;

The Committee was particularly concerned that the opportunity to advertise would be restricted to one lawyer in each area of practice. This makes the proposal unacceptable. Were all lawyers in the community given the opportunity to participate (provided, of course, they paid the relevant fees), there would not be a problem.

The Committee was of the opinion that this scheme was almost identical to the Tele-Direct proposal and could not operate unless all lawyers in the community in question were given an opportunity to participate provided, of course, they paid the requested fees.

The Committee asks Convocation to adopt this position.

Friday, 27th May, 1994

C.
INFORMATION

1. DRAFT RULE 28 ON DISCRIMINATION

The Committee will bring forward a revised Rule 28 for adoption by Convocation in its June report.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

M. Somerville
Chair

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

Item A.-3. - List of legal subjects in the Calgary telephone directory.
(Appendix A)

THE REPORT WAS ADOPTED

SPECIAL COMMITTEE ON RELIEF AND ASSISTANCE

Meeting of April 21, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON RELIEF AND ASSISTANCE begs leave to report:

Your Committee met on Thursday the 21st of April 1994 at five o'clock in the Afternoon, the following members being present: M.P. Weaver (Chair). Also present was D.E. Crack.

B.
ADMINISTRATION

1. REQUEST FOR FUNDS - J.SHIRLEY DENISON FUND

A request for financial assistance from a member in a letter dated February 8, 1994 was before the committee.

A grant of \$1,000 was recommended.

Approved

Friday, 27th May, 1994

C.
INFORMATION

1. APPLICATION TO DEFER THE PAYMENT OF THE 1993/94 ANNUAL FEE AND/OR THE JANUARY - JUNE 1994 ERRORS AND OMISSIONS INSURANCE LEVY

There were 71 applications approved to defer the payment of the 1993/94 annual fee and 127 applications approved to defer the payment the January - June 1994 Errors and Omissions Insurance levy.

Noted

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

M. Weaver
Chair

THE REPORT WAS ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994 at 8:00 a.m., the following members being present: L. Brennan (Chair), F. Carnerie, A. Feinstein, C. Hill, A. Lawrence, R. Murray and H. Sealy.

Also present: A. Brockett, E. Spears, J. Yakimovich and S. Hodgett.

A.
POLICY

No matters to report.

B.
ADMINISTRATION

No matters to report.

C.
INFORMATION

C.1. PROFESSIONALISM AND THE CHALLENGE OF COMMERCIALISM

C.1.1. At its February 1994 meeting, the Committee appointed a subcommittee to plan for a study of professionalism and the challenge of commercialism. The subcommittee is Abraham Feinstein (Chair), Fran Carnerie and Michael Somers.

C.1.2. The topic arose out of a recommendation found in the Committee's Report from the Strategic Planning Conference (adopted by Convocation on May 28, 1993). The Committee recommended that a Special Committee be appointed. At its January meeting, the Committee decided to consider the topic, because it did not appear that a Special Committee would be appointed owing to constraints on benches and staff time.

C.1.3. The Committee received an interim report from the subcommittee and discussed the topic. The Committee suggested that the subcommittee focus on a number of issues within the broad topic. It was suggested that the subcommittee consider contacting other legal organizations and institutions which might have an interest in particular aspects of the subject.

C.2. SUBCOMMITTEE ON POLICY IMPLEMENTATION

C.2.1. A subcommittee has been considering ways to aid the development and implementation of policy at the Law Society. The subcommittee consists of Susan Elliott (Chair), Fran Carnerie, Carole Curtis, Abraham Feinstein and Ross Murray. The Committee received a discussion paper from the subcommittee.

C.3. STAFF WORKING GROUP ON TECHNOLOGY AT THE LAW SOCIETY

C.3.1. The staff reported to the Committee on current thinking concerning the possible use of computer technology by the Law Society. A staff working group is currently considering this topic. The Research and Planning Committee is investigating how new technology may benefit the Law Society and the provision of legal services by the profession.

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

C.4.1. In April 1994, the Subcommittee on the Role of the Law Society surveyed the profession concerning the proposed Statement on the Role of the Law Society. A document reporting the results of the survey, *LSUC Role Statement: Survey of the Ontario Legal Profession, April 1994*, has been sent to all benches by the Chair of the Subcommittee, Fatima Mohideen.

Friday, 27th May, 1994

- C.4.2. The Subcommittee will consider the survey results, as well as written comments received from legal organizations and individual members of the profession. A final report will be submitted to the Research and Planning Committee on June 9, 1994. Your Committee will present its report concerning the Role Statement to Convocation on June 24, 1994.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May 1994

L. Brennan
Chair

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday, the 12th of May, 1994 at nine o'clock in the morning, the following members being present: D.W. Scott (Vice-Chair), A.M. Cooper, C.D. McKinnon and G.P. Sadvari. S. Thomson, of the Law Society, was also present.

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

The Immigration Law Specialty Committee met (in person/conference call) on Thursday, the 14th of April, 1994 at four o'clock in the afternoon.

The Criminal Law Specialty Committee met (conference call) on Friday, the 22nd of April, 1994 at one o'clock in the afternoon.

The Workers' Compensation Law Specialty Committee met on Thursday, the 28th of April, 1994 at five o'clock in the afternoon.

The Civil Litigation Specialty Committee met (conference call) on Tuesday, the 10th of May, 1994 at eight-thirty in the morning.

A.
POLICY

A.1. RIGHT OF AN APPLICANT TO INFORMATION CONCERNING THE INTERVIEW REQUIREMENT

- A.1.1. An applicant is required to attend for an interview to support the application for certification and has requested the following information:

- A.1.1.1. "the panel members that decided my case in respect to determining that I required an interview,
- A.1.1.2. the individual decisions of those panel members, and
- A.1.1.3. their noted concerns or reasons why they felt an interview would be appropriate"
- A.1.1.4. "the written criteria or guidelines indicating when interviews might be warranted and when they can be waived"
- A.1.1.5. "a list of those practitioners who have been certified as specialists both with and without interviews."

OR

- A.1.1.6. "if this is not provided, I would like to know what by-laws or governing regulations prohibit the disclosure of same"
- A.1.1.7. "if I am to subject my reputation...to be judged by my peers, I want to know what concerns they might individually have about my ability to specialize in this area of law"
- A.1.2. Specialty Standards include the following section pertaining to the interview: "Applicants may be required to attend for an interview."
- A.1.3. In addition, applicants sign a Declaration which includes the following: "I am prepared to attend for an interview in connection with my application for Specialist status if requested to do so ..."
- A.1.4. The Board considers that the Specialty Committees have a quasi-judicial function. A Committee exercises its discretion, based on all materials before it, when deciding whether an applicant should be interviewed. There are no written criteria or guidelines indicating when interviews might be warranted and when they can be waived. Whether an interview is to take place will depend on the Committee's view with respect to the assessment of the particular applicant.
- A.1.5. It would be inappropriate for the Board to assess the exercise of that discretion, and applicants should not be provided with details about discussions which are held in confidence in Committee meetings.
- A.1.6. With reference to A.1.1.5. above, the Board considers that common sense should satisfy the applicant that confidential information about other applicants will not be divulged to anyone other than the members of the Board, the assessing Specialty Committee and the interview panelists.
- A.1.7. It should be noted that the newer Specialty Standards are including some general information on possible areas of questioning in the event an interview is required.

B.
ADMINISTRATION

B.1. SIX-MONTH CERTIFICATE EXTENSIONS

- B.1.1. The certificates of 49 Specialists expired on May 9, 1994. The vast majority of those Specialists have applied for recertification and their certificates are now being processed.
- B.1.2. The Board extended the certificates for six months to November 9, 1994 (or the renewal date) to allow proper time for the proper processing of these applications.

C.
INFORMATION

C.1. THE SPECIALIST CERTIFICATION PROGRAM

- C.1.1. By letter dated May 4, 1994, the Program Administrator informed the Board of her intention to resign, with a date of departure no later than the beginning of September 1994.
- C.1.2. This raises some serious issues which will be addressed by the Board and presented in a future Report to Convocation.

C.2. CERTIFICATION OF SPECIALISTS

- C.2.1. The Board is pleased to report the certification of the following lawyer as an Immigration Law Specialist:

David A. Bruner (of Toronto)

- C.2.2. The Board is pleased to report the certification of the following lawyers as Criminal Law Specialists:

Damien R. Frost (of Toronto)
Michael Lomer (of Toronto)

C.3. RECERTIFICATION OF SPECIALISTS

- C.3.1. The Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

Jonathan T. Fidler (of Toronto)
Donald H. Lapowich (of Toronto)
Gavin MacKenzie (of Toronto)
Michael McGowan (of Toronto)
Dennis R. O'Connor (of Toronto)

Stan Raphael (of Toronto)
Mark Scharf (of Barrie)
W. Graydon Sheppard (of Hamilton)
John I. Tavel (of Ottawa)
Herman A. Turkstra (of Hamilton)
William Vorvis (of Guelph)

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

R. Yachetti
Chair

THE REPORT WAS ADOPTED

REASONS - MICHAEL JOHN SPICER

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF AN APPLICATION
BY MICHAEL JOHN SPICER FOR ADMISSION
TO THE LAW SOCIETY OF UPPER CANADA

REASONS OF CONVOCATION

I. INTRODUCTION

1. Michael John Spicer ("Mr. Spicer") was born on May 27, 1953. He holds a B.A. from the University of Waterloo, a Master of Divinity from King's College, University of Western Ontario, a Bachelor of Education from the Ontario Teachers' College, Hamilton (1979), and a Diploma from the University of Regina. In 1989, he received an LLB from the University of Saskatchewan.

2. On August 11, 1989, Mr. Spicer applied to and was accepted by the Society for admission as a student member. By August, 1990, Mr. Spicer fulfilled his articling requirements. In January, 1991, he successfully completed the Bar Admission course, thus fulfilling all the educational prerequisites for a member's admission to the Law Society of Upper Canada (the "Society").

3. Following completion of the Bar Admission course, Mr. Spicer applied for admission to the Society as a member effective March, 1991.

4. A quorum of the Admissions Committee (the "Committee") was appointed to hear Mr. Spicer's application and to determine whether he was of "good character".

5. After hearing evidence and argument, the Committee concluded, by report dated October 3, 1991, that Mr. Spicer was not of good character and that his application should be refused.

6. On November 25, 1993, the Committee tendered its report to Convocation. Following lengthy argument, the Treasurer, speaking for Convocation, announced that Convocation had approved and adopted the Committee's conclusions that Mr. Spicer was not of good character and that his application for admission was refused. The Treasurer also advised that these reasons for the decision would follow.

II. "MEMBER" VS. "STUDENT MEMBER" UNDER THE LAW SOCIETY ACT

7. The provisions of the Law Society Act R.S.O. 1990, c.L. 8 (the "Act") governing Mr. Spicer's application for admission to membership in the Society are as follows:

1. "member" means a member of the Society and includes a life member and a temporary member but does not include an honorary member or a student member.

27. (1) Every application for admission to the Society shall be on the prescribed form and be accompanied by the prescribed fees.

(2) An applicant for admission to the Society shall be of good character.

(3) No applicant for admission to the Society who has met all admission requirements shall be refused admission.

(4) No application for admission to the Society shall be refused until the applicant has been given an opportunity to appear in person before a Committee of benchers.

(5) Where an applicant for admission to the Society is refused admission, he is entitled to a statement of the reasons for the refusal.

(6) Where an applicant for admission to the Society has been refused, another application based on new evidence may be made at any time. R.S.O. c. 233, s. 27.

30. Convocation may accept the resignation of a member or student member who has applied in writing to resign whereupon the applicant's membership is cancelled. 1990, c. 8, s. 4 part.

Regulation 708 under the Act is also applicable and provides, in part, as follows:

1. (2) No person shall be called to the bar as a barrister only or admitted as a solicitor only, but all applicants for admission to membership in the Society, other than student membership, shall qualify both for call to the bar as a barrister and admission as a solicitor and be called to the bar as a barrister and admitted as a solicitor on the same day. R.R.O. 1980, Reg. 573, s.1.

8. When Mr. Spicer made his application for membership to the Society, he was a "student member" of the Society. As a student member of the Society his status was different from that of a "member" of the Society. That there is a difference is clear from the Act's s.1 definition of "member" excepting a student member from the definition. Likewise, s.1 of regulation 708 specifically differentiates between "student membership" and "membership" in the Society.

9. In *Rajnauth v. Law Society of Upper Canada* 13 O.R. (3d) 380 at 383-4, the Divisional Court said:

...Both counsel made their respective submissions on the basis that s. 27 was applicable notwithstanding, apparently, that the applicant is seeking to be "called to the bar:", as opposed to applying for "admission to the Society".

10. Convocation respectfully believes that the Divisional Court is in error if it intended to suggest, in drawing a distinction between an application to be "called to the bar" and an application for "admission to the Society," that a student member is a "member" of the Society and need not comply with the "good character" requirement of s.27.

11. In Convocation's opinion, the Act and the regulations passed under it contemplate that a student member may apply for admission to the Society only after he or she successfully completes the necessary educational requirements. To be admitted as a member, the student member must be of "good character." If this condition precedent is satisfied, then and only then is the student member entitled to become a "member" of the Society and be called to the bar as a barrister and admitted as a solicitor.

III. THE MEANING OF "GOOD CHARACTER"

12. Before Convocation, Mr. Spicer argued that the onus was upon the Society to establish that he was not of good character.

13. Convocation adopts the principle articulated in Re. P. that an applicant for admission to the Society as a member "bears the onus of establishing on the balance of probabilities that he or she is of good character and should be admitted to the Society." Thus, on the balance of probabilities, Mr. Spicer bears the burden of persuasion to establish by clear and convincing evidence that he is of good character: *Rajnauth and Law Society of Upper Canada*, supra, at page 383; *Re: Rizzotto and Law Society of Upper Canada*, Sept. 14, 1992 (Reasons for Convocation) at pages 7, 19.

14. Mr. Spicer argued that the term "good character" must be given its ordinary meaning and that the Committee erred by adopting in essence the definition of good character articulated in Re. P.. Convocation disagrees.

15. Convocation accepts that character is that combination of qualities or features distinguishing one person from another. Good character connotes moral or ethical strength, distinguishable as an amalgam of virtuous attributes or traits which undoubtedly include, among others, integrity, candour, empathy, and honesty.

16. This approach was approved in Reasons of Convocation in *Re Rizzotto and Law Society of Upper Canada*, supra, at page 7. More recently, in *Re Rajnauth and Law Society of Upper Canada*, supra, at page 384, the Court remarked:

The requirement in s.27(2) of the Law Society Act, that applicants for admission shall be of good character, finds expression also in rule 1 of the Law Society of Upper Canada's rules of professional conduct: "The lawyer must discharge with integrity all duties owed to clients, the court, the public and other members of the profession." Commentary 1 to rule 1 reads as follows:

1. Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If the client is in any doubt as to the lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If personal integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.

The purposes of the good character requirement include the protection of the public, the maintenance of high ethical standards, and the maintenance of public confidence in the legal profession.

17. The Divisional Court's observations on the meaning of good character in Rajnauth accord well with the views expressed by Mary F. Southin, Q.C. (now Madam Justice Southin of the British Columbia Court of Appeal) who, in the article titled What is Good Character? (1987), 35 The Advocate 129, observed at p. 1129:

The requirement...as to character is mandatory although the Act does not define "good character".

...

I think in the context "good character" means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law...at the time of application.

Character within the Act comprises in my opinion at least these qualities:

1. An appreciation of the difference between right and wrong;
2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;
3. A belief that the law at least so far as it forbids things which are malum in se must be upheld and the courage to see that it is upheld.

18. This statement has been applied, with apparent approval, in Hutton v. Law Society of Newfoundland, [1992] N.J. No. 276 (Nfld. S.C.t.D.).

19. Because every person's character is formed over time and in response to a myriad of influences, it seems clear that no isolated act or series of acts necessarily defines or fixes one's essential nature for all time. The Act itself, by affording at subsection 27(6) an unsuccessful applicant the right to reapply for admission to the Society "on new evidence," contemplates the possibility that a person's character may change.

20. Thus, past conduct is no automatic bar to admission, now or in the future. Quite simply and directly, the issue is: has Mr. Spicer established on the balance of probabilities that he is now of good character?

21. The answer to this question pivots around a host of related and rather more specific questions including, principally, these:

- (a) did Mr. Spicer engage in sexual intercourse with H.T., his 12-year-old pupil, on December 21, 1982 and January 7, 1983" and
- (b) has Mr. Spicer been candid and honest in his evidence?

22. Mr. Spicer has no inherent right to practice law (In Re Kienan, 50 N.E. (2d) 786 (Mass. S.C.) at 786-787 per Qua, J.) and the Benchers are duty-bound to investigate serious allegations of lack of good character (Calvert et al. v. Law Society of Upper Canada (1981), 32 O.R. (2d) 176 (H.C.) at 180 per Steele, J.)

23. Good character is inevitably judged or perceived as a bundle of virtues. Convocation is mindful that Mr. Spicer's character must be assessed as fairly and as dispassionately as possible. He is not to be held to a standard of perfection.

24. Why has Convocation called upon Mr. Spicer to prove that he is now of good character? The reason is that his past conduct as a teacher suggests he was not of good character.

25. In September, 1982, Mr. Spicer was employed by the Moose Jaw (Saskatchewan) Catholic School Board as a teacher and Vice Principal. At the time, he was about 29 years old.

26. One of his grade 7 pupils was a 12 year old, H.T..

27. On or about January 7, 1983, Mr. Spicer was charged that he sexually assaulted H.T. contrary to s. 246.1(1) of the Criminal Code of Canada. In essence, the Crown alleged that Mr. Spicer had engaged in a single act of sexual intercourse with his student, at his home, while she was present ostensibly to babysit. Mr. Spicer's defence was that the allegation was untrue, that the act of intercourse did not occur.

28. Following a trial before Mr. Justice Halvorson and a jury, Mr. Spicer was convicted. Following an appeal, the Saskatchewan Court of Appeal overturned the conviction and ordered a new trial: see R. v. Spicer 36 Sask. R. 235.

29. At the new trial, Mr. Spicer was acquitted.

IV. THE EFFECT OF MR. SPICER'S ACQUITTAL

30. Convocation must decide whether Mr. Spicer is correct when he argues that his acquittal is a finding for all purposes that he did not engage in sexual intercourse with H.T. on January 7, 1983.

31. In Her Majesty the Queen v. Verney, released October 26, 1993, Mr. Justice Finlayson, speaking for the Ontario Court of Appeal, wrote at pages 11 and 12:

In retrospect, I agree that this trial was unfair. Fundamental to this ground of appeal is the concept that an acquittal is more than a finding of not guilty and is in law a declaration of innocence for all purposes. This must be so, because the verdict of not guilty restores to the accused the presumption of innocence. In Grdic v. The Queen (1985) 19 C.C.C.9 (3d) 239 (S.C.C.) at p. 293 Lamer J. quoted with approval from Friedland in Double Jeopardy, supra, at p. 129;

As a matter of fundamental policy in the administration of the criminal law it must be accepted by the Crown in a subsequent criminal proceeding that an acquittal is the equivalent to a finding of innocence.

32. In Convocation's opinion, Mr. Justice Finlayson's statement "that an acquittal is more than a finding of not guilty and is in law a declaration of innocence for all purposes" must be construed to mean "for all purposes" relating to the criminal law process. So, in any subsequent criminal proceeding, Mr. Spicer must be presumed not to have engaged in sexual intercourse with H.T. on January 7, 1983.

33. However, in respect of any subsequent civil action, such as an action for damages for battery, or an action for damages for breach of fiduciary duty, or a divorce action between Mr. Spicer and his wife, or an action between Mr. Spicer and his wife for custody of their children, or for an administrative hearing to determine admission to the Society, the question of whether Mr. Spicer engaged in sexual intercourse with H.T. on January 7, 1983 must be answered afresh.

34. The reasons for this requirement are simple and clear: the onus of proof in a civil action differs from the onus of proof in a criminal trial. So also are the rules of admissibility of proof different. Thus, at the criminal trial the Crown failed to prove that Mr. Spicer engaged in sexual intercourse with H.T. on January 7, 1983 because it did not or could not establish this fact on proof beyond a reasonable doubt. In a subsequent civil action or administrative proceeding, however, a party adverse to Mr. Spicer might successfully prove, on the balance of probabilities, that sexual intercourse between Mr. Spicer and H.T. took place on January 7, 1983. As Mr. Justice Campbell has observed in Gillen and College of Physicians & Surgeons of Ontario (1990) 68 O.R. (2d) 278 (Div. Ct.):

It is true that the criminal trial and the discipline proceedings share an identical issue of fact; that is, did the doctor sexually assault the patient or did he not?

The standard of proof in the criminal trial, however, was proof beyond a reasonable doubt. It was on that basis, on all the evidence from the Crown and the defence including conflicting evidence from the complainant and the doctor, that the doctor was acquitted...

The stringent criminal standard of proof beyond a reasonable doubt which secured the applicant's acquittal in the criminal trial in the face of all the evidence against him does not apply at a discipline hearing where the applicable standard set out in cases such as Re Bernstein and College of Physicians & Surgeons of Ontario (1977), 15 O.R. (2d) 447, 76 D.L.R. (3d) 38 (Div. Ct.), and Re Coates and Registrar of Motor Vehicle Dealers and Salesmen (1988), 65 O.R. (2d) 256, 52 D.L.R. (4th) 272, 24 Admin. L.R. 70 (Div. Ct.) at pp 535-7 is significantly lower than that in a criminal case and could therefore yield a different result. The evidence will not necessarily be the same at both hearings. It is clear from the Health Disciplines Act, R.S.O. 1980, c. 196, that the strictures of criminal evidence do not apply at the discipline hearings where the civil rules will apply.

Because the standard of proof is different, and the rules of evidence different there is here no issue estoppel or res judicata and no issue arises of abuse of process.

There is no authority or logic for the proposition that a criminal acquittal is in disciplinary proceedings prima facie evidence or proof that the gravamen of the criminal charge was unfounded or untrue. There is no novel point in this case. The significant differences between criminal and disciplinary proceedings have been dealt with on many occasions in cases such as Re Imrie and Institute of Chartered Accountants of Ontario, [1972] 3 O.R. 275, 28 D.L.R. (3d) 53 (H.C.J.)..."

35. Convocation concludes that the Committee was required to decide on the evidence before it whether, on the balance of probabilities, Mr. Spicer engaged in sexual intercourse with H.T. on January 7, 1983. Mr. Spicer's acquittal does not require the Committee to conclude that sexual intercourse did not take place on January 7, 1983.

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V. THE RELEVANCE OF H.T.'S EVIDENCE BEFORE THE COMMITTEE

36. In 1983, H.T. testified that she had engaged in sexual intercourse with Mr. Spicer on January 7, 1983 and only on this occasion. The question of whether Mr. Spicer had engaged in sexual intercourse with her on December 21, 1982 at the Harwood Hotel was not the subject of a criminal charge. And evidence of Mr. Spicer's activity at the Harwood Hotel and of the registration card dated December 21, 1982 at the Harwood Hotel were excluded from the new trial (R. v. Spicer, supra, p. 237).

37. Although the evidence relating to Mr. Spicer's activities with H.T. on December 21, 1982 in no way affected the criminal trial proceedings, such evidence is, of course, highly relevant to the issue of his good character.

38. H.T. testified before the Committee that she had engaged in intercourse with Mr. Spicer on December 21, 1982 at the Harwood Hotel and on January 7, 1983 at Mr. Spicer's home. Obviously, her evidence before the Committee was fundamentally inconsistent with the evidence she gave on previous occasions. At the first trial, she testified that she had had intercourse with Mr. Spicer only on January 7, 1983. Before the Committee she acknowledged that she and Mr. Spicer had had intercourse on four or five occasions. Her explanation for her inconsistent testimony was as follows:

...because I was 13 and I was scared and I wanted to protect Mr. Spicer I didn't want to go through anything that I went through. My mother was also sick, so was my father. I couldn't talk to them really about what was going on. I didn't want to bother them any more than what I already had bothered them and I was basically scared.

Q. Why are you coming forward now and saying it occurred on other occasions?

A. Because I am older, I know what happened was wrong and I want to clear my conscience of hiding a secret for all these years. My mother isn't here today.

Q. What happened to your mother?

A. She died of cancer.

Q. Did you know that when you were testifying at that first trial, that you weren't telling the truth about previous occasions of sex with Mr. Spicer?

A. Yes, I did understand I was not telling the truth.

...

I am just finally starting to get on with my life now. You know, basically forget and realize that I wasn't the person in the wrong, that I wasn't the person at fault.

...

I would just like to say that I know I had lied in the past trials and that today I am coming forth to tell the truth because I don't believe that I was wrong and it was all my fault.

VI. THE RELEVANCE OF ADDITIONAL EVIDENCE

39. H.T.'s evidence that she engaged in sexual intercourse with Mr. Spicer on December 21, 1982 at the Harwood Hotel has been corroborated in material respects.

40. Tendered in evidence before the Committee was a registration card dated December 21, 1982 from the Harwood Inn. The card contained the following information:

Name: M. Ivers

Address: 420 High St.

City: Regina, Prov. Sask.

Car Type: Datsun - Licence No. MGR 899

41. Mr. Spicer denied that he had completed this card, although he admitted owning a 1981 Datsun. This motor vehicle, as verified by a certificate issued by the Alberta government (exhibit 15), had carried Alberta licence MGR 899. Also tendered in evidence (exhibit 19) was a certificate issued from the Saskatchewan government establishing that Mr. Spicer licensed the 1981 Datsun in Saskatchewan on December 13, 1982 as plate number MBN 228.

42. The Committee also heard and accepted the evidence of Diane Anderson, a full-time documents examiner. According to Ms. Anderson, it was "highly probable that Mr. Spicer executed the writing on the card."

43. Further, there was evidence before the Committee that a person named "Ivers" had been Mr. Spicer's student.

VII. THE COMMITTEE'S FINDINGS

44. The Committee carefully weighed the inconsistencies in H.T.'s evidence. The Committee properly instructed itself as to the need for "clear and convincing" evidence before concluding that sexual intercourse had occurred.

45. The Committee accepted H.T.'s evidence and rejected Mr. Spicer's evidence on the issue of sexual intercourse. It was open to the Committee to accept H.T.'s evidence that she and Mr. Spicer had engaged in sexual intercourse on December 21, 1982 and January 7, 1983 and to reject as untrue Mr. Spicer's denials.

46. Express self-instruction as to the dangers inherent in accepting the evidence of a witness who has provided different sworn statements is not always necessary. Nonetheless, in this case, Mr. Spicer and counsel for the Society agreed upon the need for corroborative evidence. The issue was sharply focused for the Committee: in reviewing and assessing inconsistent statements made under oath, the Committee was obliged to proceed with the utmost caution before proceeding to any conclusions. The Committee thus took careful account of the witnesses' explanations for the divergent accounts given under oath, the inconsistencies in H.T.'s evidence, the inconsistencies in Mr. Spicer's evidence, and the totality of the evidence, including those facts corroborative of H.T.'s version of events. Significantly, the Committee held the incalculable advantage of seeing, hearing and observing the demeanour of the witnesses as they testified. Mr. Spicer's testimony, according to the Committee, was selective, convenient, rambling and evasive." By contrast, H.T.'s evidence and demeanour were marked by "forthrightness" and without trace of any vengeful or improper motive.

47. It was open to the Committee to accept H.T.'s evidence that she and Mr. Spicer had engaged in sexual intercourse on December 21, 1982 and January 7, 1983 and to reject as untrue Mr. Spicer's denials. The facts marshalled by way of confirmation of H.T.'s evidence as to the events of December 21, 1982 in turn provide support for the finding of sexual intercourse on January 7, 1983.

48. In essence, the Committee concluded that Mr. Spicer breached his fiduciary duty by engaging in sexual intercourse with his 12-year-old pupil, a child with whom he was in a position of trust. The Committee also concluded that Mr. Spicer was neither honest nor candid when testifying under oath.

VIII. CONCLUSION

49. In affording deference to discipline committee findings, Convocation must be vigilant to ensure that a Committee made no error of law in considering the evidence and the applicable legal principles. Yet, Convocation does not retry in the case. In Convocation's opinion, the Committee made no error in principle in concluding that Mr. Spicer engaged in sexual intercourse with his 12-year-old pupil on December 21, 1982 and again on January 7, 1983. The Committee findings are neither unreasonable nor unsupported by the evidence. No reversible error is manifest in the substance of the Committee's reasons. There is no reason to doubt the correctness of the Committee's findings of fact on these issues. There was ample evidence upon which the Committee might reach these conclusions.

50. In Convocation's opinion, the Committee was correct in concluding that Mr. Spicer engaged in sexual intercourse with Ms. H.T. on December 21, 1992 and on January 7, 1983. As was said in Re P, the best test in assessing credibility is the consistence or inconsistency of the witnesses' testimony with the preponderance of probabilities disclosed by the objective evidence taken as a whole. The registration card in Mr. Spicer's hand, in the name of his student Ivers, and the appearance of his Alberta licence number MGR 899 thereon after he had licenced the Datsun in Saskatchewan under another plate number are corroborative of and consistent with the conclusion that Mr. Spicer attended at the Harwood Hotel on December 21, 1982 and wished to hide the fact of his attendance.

51. In Convocation's opinion, the Committee's findings that Mr. Spicer engaged in sexual intercourse with H.T. on December 21, 1982 and again January 7, 1983 and that he testified untruthfully before the Committee in denying the intercourse, lead inexorably to the conclusion that Mr. Spicer was not of good character at the time he testified before the Committee.

52. In Convocation's opinion, the findings that Mr. Spicer engaged in sexual intercourse with his 12-year-old pupil on December 21, 1982 and again on January 7, 1983 and did not testify candidly and honestly are dispositive of the issue of whether Mr. Spicer is of "good character," however the term may be defined.

53. Mr. Spicer raised numerous procedural and technical complaints before Convocation. None has merit and none gives rise to any concern of unfairness or bias.

54. For these reasons, Convocation concludes that the Committee was correct in concluding Mr. Spicer was not of good character.

Friday, 27th May, 1994

55. It follows that Mr. Spicer is refused admission to the Society as a member.

REASONS PREPARED FOR CONVOCATION BY:

Date: May 1, 1994

Harvey T. Strosberg, Q.C.S. Casey Hill

THE REASONS WERE ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 12th of May, 1994, at 3:00 p.m., the following members being present: S. Elliott (Chair), S. Goudge, B. Humphrey, N. Richardson.

Also present: M. Angevine, A. Singer, E. Spears

A. _____
POLICY

No items to report.

B. _____
ADMINISTRATION

No items to report.

C. _____
INFORMATION

1. PART-TIME CROWNS AND ERRORS AND OMISSIONS INSURANCE

- 1.1. The Law Society's professional liability insurance plan provides to members employed by the government an exemption from payment of the levy for indemnity for professional liability. Members who work exclusively as contract lawyers for the government are not exempt from payment of the levy.

- 1.2. It has come to the attention of the Committee that members who work exclusively as contract lawyers for the government on a part-time basis are finding payment of the levy prohibitive.
- 1.3. The Committee understands that the Insurance Committee considered, and rejected, a reduced levy for part-time lawyers in October 1991 and October 1992. (When the Insurance Committee considered a reduced levy for part-time lawyers in October 1992, the Law Society of British Columbia had instituted a reduced fee for part-time lawyers.) The Committee further understands that in January 1993, the Insurance Committee considered, and rejected, an exemption from payment of the levy for lawyers working exclusively under contract for the government.
- 1.4. It is the Committee's view that, consistent with the *Transitions Report* (adopted by Convocation in April 1991), any work arrangement which gives lawyers the flexibility necessary to attend to family responsibilities, such as working under contract for the government on a part-time basis, should be encouraged, not hindered, by Law Society policies and practices.
- 1.5. The Committee therefore asks the Insurance Committee to reconsider,
 1. exempting members, who work exclusively as contract lawyers for the government on a part-time basis, from payment of the levy for indemnity for professional liability; and
 2. reducing the amount of the levy for members who work exclusively as contract lawyers for the government on a part-time basis.

2. LAW SOCIETY SUPPLEMENTARY MATERNITY LEAVE BENEFITS

- 2.1. On April 22, 1994, Convocation adopted the following recommendation from the Women in the Legal Profession Committee:

The Women in the Legal Profession Committee recommends that Convocation adopt as a matter of principle a supplementary maternity leave policy which in conjunction with the unemployment insurance program would provide women on maternity leave with 93% of salary for a seventeen week period and is subject to a one year period of employment before the employee will qualify for leave. [Emphasis added]

- 2.2. Subsequently, concern arose in respect of that part of the recommendation providing for a one year period of employment as a qualifying period for supplementary maternity leave benefits. In particular, questions were raised as to whether the one year period of employment included any probationary period.
- 2.3. Questions were also raised as to whether supplementary maternity leave benefits would extend to persons working under contract for the Law Society.
- 2.4. The Committee wishes to clarify that its recommendation was to the effect that,
 1. Only persons permanently employed by the Law Society, and not persons working under contract for the Law Society, would be entitled to supplementary maternity leave benefits; and
 2. The one year period of employment to qualify for maternity leave benefits would exclude any probationary period.

3. DRAFT RULE 28 ON NON-DISCRIMINATION

- 3.1. Stephen Goudge, Chair of the Equity in Legal Education and Practice Committee, and a member of this Committee, reported on the proposed Rule of Professional Conduct on non-discrimination (draft Rule 28). Mr. Goudge touched on two matters: the proposed timetable for introducing draft Rule 28, and the plan for educating the profession in areas related to the subject matter of draft Rule 28, for example, human rights law and employment equity law.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

S. Elliott
Chair

THE REPORT WAS ADOPTED

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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.

Bryan Richard Dale	35th Bar Admission Course
Sandra Alexandra Antonella Erika Gabrielle Girard	35th Bar Admission Course
Shamim Hansraj	35th Bar Admission Course
Margaret Elizabeth Hill	35th Bar Admission Course
Jeunesse Leelawatie Hosein	35th Bar Admission Course
Vincent Victor Houvardas	35th Bar Admission Course
Rubina Husain	35th Bar Admission Course
Jacek Adalbert Janczur	35th Bar Admission Course
Dale Francisca Jean-Pierre	35th Bar Admission Course
Maryanne Elizabeth Kramer	35th Bar Admission Course
Sally Kwan	35th Bar Admission Course
Patti-Jo McGarroch	35th Bar Admission Course
Martin Stacey Powless	35th Bar Admission Course
Robin Ann Rostad	35th Bar Admission Course
Dairn Owen Shane	35th Bar Admission Course
Devi Dayal Sharma	35th Bar Admission Course
Mary Beth Sprigings	35th Bar Admission Course
KVS Sriskandakumar	35th Bar Admission Course
Gloria Tongol-Malonzo	35th Bar Admission Course
Claudio Vitullo	35th Bar Admission Course
Darrell Spencer Waisberg	35th Bar Admission Course
Kirk Warren Walstedt	35th Bar Admission Course
John Edward Stuart Briggs	Special, Transfer, Nova Scotia
Darrell James Burt	Special, Transfer, Manitoba
Thane Alexander Campbell	Special, Transfer, Prince Edward Island
Brian Alexander Dingwall	Special, Transfer, Alberta
Victor Steven Savino	Special, Transfer, Manitoba
Maureen Shebib	Special, Transfer, Manitoba

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AGENDA - REPORTS OF SPECIFIC ITEMS REQUIRING CONVOCATION'S CONSIDERATION AND APPROVAL

INSURANCE COMMITTEE

Meeting of May 12, 1994 (E & O Report)

Introductory remarks were made by the Treasurer setting out the background and procedure to be followed in dealing with the Insurance Report.

Mr. Campbell presented the Insurance Committee Report on the E & O Levy which was followed by a debate.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994 at 10:30 in the forenoon, the following members being present: Messrs. Campbell (Chair), Howie, Somerville, Hickey, Feinstein, Finkelstein, Murray, Cass, Krishna, Wardlaw, Bastedo, Hill, Lerner, Epstein, McKinnon and Mesdames Elliott, Bellamy and Weaver.

Also in attendance were Messrs. Crosbie, Tinsley, Crack, Anderson, Whiklo, Carey, and O'Toole.

ITEM

1. 1994 ERRORS & OMISSIONS LEVY

Your Committee has to report that the levy for the last half of 1994 must be increased substantially.

In the process of preparing their report on the 1993 program year, the actuary which has provided actuarial services to the program since 1990, reassessed a number of factors affecting the valuation of outstanding claims and reserves. These changes indicated that there would be a substantial increase in the fund deficit over and above the \$24 million deficit that had been established following its report for the 1992 program year.

In view of this unexpected development, LPIC retained the services of a second actuary to carry out an independent study of the program. The following results are taken from the second actuary's report, which is based on more conservative estimates than the first report. The deficit, as derived from the information provided by the second report is \$122 million as of December 31, 1993.

The initial levy for 1994 was \$4,350 which included a sum to amortize over five years a deficit estimated to be \$45 million. The levy required for 1994 based on the new actuarial information is \$7,210. The changes since the setting of the levy in November 1993 are as follows:

LEVY REQUIRED TO MEET 1994 CLAIMS		
	NOVEMBER 1993	MAY 1994
ESTIMATE VALUE OF CLAIMS	\$63.0 M	\$ 83.0 M
DISCOUNT FACTOR TO CURRENT VALUE	0.774	0.843
CURRENT VALUE OF CLAIMS	\$48.8 M	\$ 70.0 M
LPIC PREMIUM/REINSURANCE (LLOYDS)	\$ 8.3 M	\$ 8.6 M
ADMINISTRATIVE COSTS	\$ 4.3 M	\$ 4.3 M
INTEREST LOST IN DEFICIT	\$ 3.1 M	\$ 9.15 M
MISCELLANEOUS (GST, DEDUCTIBLE REFUNDS)	\$ 2.5 M	\$ 2.5 M
	\$67.0 M	\$94.550 M
PER MEMBER LEVY	\$3,900	\$5,730

LEVY REQUIRED TO AMORTIZE THE DEFICIT		
	NOVEMBER 1993	MAY 1994
ESTIMATE DEFICIT	\$45.0	122.0
FIVE YEAR DEFICIT RETIREMENT	9.0/YR	\$24.4/YR
LEVY	\$450.00	\$1,480.00

LEVY FOR 1994		
	NOVEMBER 1993	MAY 1994
1994 PROGRAM	\$3,900	5,730
DEFICIT REDUCTION	<u>450</u>	<u>1,480</u>
TOTAL LEVY	\$4,350	\$7,210
JANUARY 1, 1994 LEVY	\$2,175	\$2,175
JULY 1, 1994 LEVY	\$2,175	\$5,035

EXPLANATION OF THE INCREASES

1. Estimate for 1994 Claims

The estimate has increased from \$63.0 million to \$83.0 million. The \$63M was based on an actuarial projection of 1992 claims at \$62.6M and experience in the first nine months of 1993 that suggested some downward trend in claims would occur in 1994. That has not occurred.

The actuarial reports of the losses for the 1992 fund year based on December 31, 1993 data was \$74.54M by one actuary and \$82.5M by the other. The two actuaries estimate the 1993 losses at \$70.17M and \$82.56M respectively.

In the absence of any evidence at this time of any reduction in the value of claims occurring in 1994, the Committee recommends that the estimate of claims for 1994 be based on the 1992 and 1993 figures or \$83M.

2. Discount Factor

A factor is used to discount claims to allow for the fact that they will be paid over a period of years. In November 1993 the factor was 0.774 which means that a claim would be discounted to 74.4% of its original value. When this factor was recalculated in 1994, the analysis of the pay-out pattern of claims, which is much shorter than before, coupled with changes in interest rates, resulted in the factor being increased to 0.843. This in effect increased the amount to be funded through the levy by 10% (84.3 - 74.4).

3. LPIC & Reinsurance Premium

The November 1993 figure of \$8.3M was based on an estimate of the cost of the reinsurance which was not finally negotiated until later. The final cost will be \$8.6 million.

4. Administrative Costs

These costs have not changed.

5. Interest Lost On Deficit

Because there is a deficit, it is necessary to bring into the calculation of revenues and costs, an amount to make up for the interest that would otherwise have been earned had there not been a deficit. As the deficit increased, the amount required to be made up was increased. The \$9.15M figure is 7.5% of the \$122.0M deficit.

6. Miscellaneous Program Costs

This includes the cost of GST, rebates of deductibles when no indemnity is paid, brokers fees, etc. There is no change in this amount.

EXPLANATION OF INCREASE IN DEFICIT

The deficit, based on actuarial information for the 1992 program year, indicated a deficit of \$24.0M as of December 31, 1992.

A further actuarial review as of June 30, 1993 indicated a deficit in the range of \$45M. The current estimates by the two actuaries are that the deficit as of December 31, 1993 is \$107.0M and \$122.0M respectively.

Friday, 27th May, 1994

Starting with the December 31, 1992 deficit of \$24M, the following are the main factors increasing the deficit.

1. The actuarial work done between 1990 and 1993 was based on a fundamental misunderstanding of the contribution of members' deductible to the payment of claims. The actuary thought that there was a deductible paid on every claim made. This approach overlooked the fact that about 78% of all claims are resolved without payment of any indemnity and hence no payment of a deductible. The actuary's approach therefore greatly overstated the contribution made by deductibles. The cumulative effect of this misunderstanding is estimated to be \$52.1M.

2. The recalculation of the effect of the change in the pay-out pattern and interest rates resulted in an increase in the discount rate which in turn increased the present value of the reserves required by \$22.1M. This in effect increased the deficit by \$22.1M.

3. In making estimates of the ultimate cost of claims, our actuary gave a range around a mid-point. To minimize the impact on the levy, the practice has been to adopt the lowest value in the range. In the present uncertain market conditions and in view of the loss experience, the Committee has adopted the mid-point estimate. This adjustment increases the deficit by \$21.0.

RECOMMENDATION

Your Committee recommends:

1. The levy for the six-month period from July 1, 1994 to December 31, 1994 for members who have had no claims paid on their behalf in the last five years be:

a)	For the 1994 year claims	\$3,780
b)	For the deficit reduction	<u>1,255</u>
	TOTAL	<u>\$5,035</u>

2. The levy for persons from the Bar Admission Course called to the Bar in 1994 not include the \$1,255 levy for deficit reduction.

3. The levy for persons from the Bar Admission Course called to the Bar in 1993 include only 50% of the \$1,255 levy for deficit reduction.

4. The current rating differential for claims experience be maintained.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

C. Campbell
Chair

Friday, 27th May, 1994

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

Item 1 - Copies of drafts and statistics re: E & O levy.

(pages 1 - 3)

Convocation took a brief recess at 11:00 a.m. and resumed at 11:15 a.m.

Before continuing with the E & O debate the Treasurer welcomed Mr. Yachetti back to Convocation and advised that Ms. Shirley O'Connor was unable to attend Convocation because her father had passed away the day before.

The debate on the Insurance Report continued.

THE REPORT WAS RECEIVED

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CONVOCATION ADJOURNED FOR LUNCHEON AT 12:35 P.M.

The Treasurer and Benchers had as their guests for luncheon, the following members of the Law Society - Mr. V. Msi, President of the Delos Davis Law Guild, Mr. Donald McIntosh, Q.C., Mr. Bernd Christmas and Ms. Tina-Marie Fasano.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Bastedo, Brennan, Campbell, Carter, R. Cass, Copeland, Curtis, Elliott, Feinstein, Finkelstein, Goudge, Graham, Hickey, Kiteley, Krishna, Lamont, Lawrence, Lax, Legge, McKinnon, Mohideen, Moliner, Murphy, Murray, Palmer, Peters, Richardson, Ruby, Scott, Somerville, Strosberg, Thom, Topp, Wardlaw and Weaver.

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IN PUBLIC

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AGENDA - REPORTS OF SPECIFIC ITEMS REQUIRING CONVOCATION'S CONSIDERATION AND APPROVAL

FRENCH LANGUAGE SERVICES COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FRENCH LANGUAGE SERVICES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994, the following members being present: Vern Krishna, Q.C. (Chair), Fatima Mohideen, Gwen Cortis (Legal Aid), Tony Keith (CBAO), and Guy Pratte (AJEFO). Staff representation: Marie Fortier, Dominique Picouet-Bhatt and Gemma Zecchini.

B.

ADMINISTRATION

1. Bilingual citation of Ontario Reports

The Committee has asked that Glen Howell attend at the next meeting to explain the decision of the Library and Reporting Committee to reject a proposal to cite the Ontario Reports in French.

Note: Amendment, see page 309

C.

INFORMATION

1. Human Resources Status Report

The Committee commenced an audit of the French Language Services Policy in order to determine its on-going relevance and cost-effectiveness. It also reviewed the Human Resources Status Report on designated bilingual positions as of May 1, 1994. In reviewing the French language capability in the Discipline Department, the Committee requested that the Committee Secretary report on the volume of French complaints and the number of discipline hearings requested and conducted in French over the past 12 months.

2. Availability of French Language Materials

The Committee focused on the French version of the Rules of Professional Conduct. Pending the revision of the Rules in English, which is expected to take some considerable time, the Committee recommended finalizing the present French version, and submitting it to Convocation for official approval in the Fall so that both English and French versions are equally authoritative.

The meeting was adjourned at 1:00 p.m.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

V. Krishna
Chair

AUX MEMBRES DU CONSEIL DU BARREAU DU HAUT-CANADA

RÉUNIS EN ASSEMBLÉE

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

Le Comité s'est réuni le jeudi 12 mai 1994. Étaient présents M^{re} Vern Krishna, c.r. (président), M^{re} Fatima Mohideen, M^{me} Gwen Cortis (aide juridique), M^{re} Tony Keith (ABCO), M^{re} Guy Pratte (AJEFO) et, en qualité de membres du personnel, M^{re} Marie Fortier, M^{me} Dominique Picouet-Bhatt et M^{me} Gemma Zecchini.

B.
ADMINISTRATION

Citation du Recueil de jurisprudence de l'Ontario

Le Comité a demandé que M^e Glen Howell vienne expliquer à la prochaine réunion la décision du Comité des bibliothèques et de la publication des décisions judiciaires qui a rejeté le projet de citation en français du Recueil de jurisprudence de l'Ontario (O.R.).

C.
INFORMATION

1. Rapport des Ressources humaines

Le Comité a commencé à revoir la politique des services en français afin de déterminer son utilité actuelle et sa rentabilité. Il a aussi examiné le rapport d'activité du Service des ressources humaines sur les postes désignés bilingues au 1^{er} mai 1994. Dans le cadre de l'étude des capacités du Service de discipline en français, le Comité a demandé que le secrétaire rende compte du volume de plaintes en français et du nombre d'audiences qui ont été demandées et tenues en français au cours des 12 derniers mois.

2. Disponibilité des documents en français

Le Comité s'est concentré sur le Code de déontologie en français. En attendant la révision de la version anglaise, qui devrait s'étendre sur une période assez longue, le Comité a recommandé de polir la version française et de la présenter à l'automne au Conseil pour qu'il l'approuve officiellement et que les deux versions aient la même force.

La séance a été levée à 13 h.

Fait le 27 mai 1994.

LE PRÉSIDENT,

Mr. Krishna asked that Item B.-1. be amended by substituting the words "Chair of the Libraries and Reporting Committee" for Mr. Howell.

THE REPORT AS AMENDED WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of May 12, 1994 and Memorandum of May 25, 1994

Ms. Kiteley presented for Convocation's approval: Item A.-A.3 re: Finances for the Current Fiscal Year, Item A.-A.4 re: Report on Refugee Issues and Item A.-A.5 re: Women's Family Law Centre.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994 the following members being present: Frances P. Kiteley, Chair, B. Ally, J. Campbell, P. Copeland, S. Cooney, C. Curtis, D. Fudge, M. Fuerst, P. Peters, A. Rady, M. Stanowski, B. Sullivan.

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

A.
POLICY

A.1 LEGAL AID COMMITTEE - BOARD DEVELOPMENT PROCESS

A.1.1 As reported earlier to Convocation, the Legal Aid Committee held a Strategic Planning Day in December 1993 as part of its ongoing development process. Steve Raiken, the consultant from Ernst and Young prepared his final report which was given to the Committee. Formal acceptance of the Report was deferred until the June meeting to give Committee members sufficient time to study the report.

A.2 APPENDIX A TO THE REPORT OF THE APPOINTMENTS SUB-COMMITTEE

A.2.1 Convocation received the Report of the Appointments Sub-Committee in January of this year. Appendix A of that report "Draft Role and Responsibilities of Legal Aid Committee Members" was deferred by the Legal Aid Committee at its January meeting for further discussion. The specific description of the role and responsibility of members coincides with one of the recommendations made by the consultant arising from the Strategic Planning Day. When the final report of the consultant is presented in June, Appendix A will also be considered.

A.3 FINANCES FOR THE CURRENT FISCAL YEAR

A.3.1 In January 1994, Convocation approved the budget for the fiscal year commencing April 1, 1994. The Attorney General has now confirmed the allocation for the 1994/95 fiscal year. Due to cash flow, the Legal Aid Plan was unable to pay all accounts rendered in the previous fiscal year. The combination of these problems has led to a serious shortfall in the current fiscal year.

A.3.2 The Legal Aid Committee received the Report of the Steering Committee (SCHEDULE #1). It contains many issues for consideration in an attempt to balance the budget. The Legal Aid Committee did not reach conclusions as to implementation (except rejection of 4.1.23 in the Steering Committee Report).

A.3.3 The Legal Aid Committee will meet on June 8 and 9 for 3 hours each day in order to arrive at recommendations for Convocation in June 1994. To address the urgent financial problems, decisions must be made in June if there is to be any impact in the current fiscal year.

- A.3.4 It is important that Benchers review the Steering Committee Report (SCHEDULE #1) to become familiar with the range of options being considered by the Legal Aid Committee.
- A.3.5 A Sub-Committee of the Legal Aid Committee, chaired by Paul Copeland, considered the elimination of service in certain categories in criminal matters (See 4.1.20 of the Steering Committee Report). That report is attached as (Schedule #H) to the Steering Committee Report. That report was considered by the Legal Aid Committee but deferred until the June meeting.
- A.4 REPORT ON REFUGEE ISSUES
- A.4.1 Ruth Lawson, the Deputy Director, Appeals, reported on two issues affecting refugee claimants. Her report is attached as (SCHEDULE #2).
- A.4.2 The Report with respect to the Refugee Pilot Projects is included for information.
- A.4.3 The Report at (SCHEDULE #2) also identifies an important issue with respect to the Cost Recovery Fee for landing applications by Convention Refugees. The Legal Aid Committee directed the Chair to correspond with the Minister of Citizenship and immigration. A copy of the letter is attached as (SCHEDULE #3). Convocation will be asked to decide at the June meeting whether the Legal Aid Plan should pay the cost recovery fee (possibly \$3 mil. annually).
- A.5 WOMEN'S FAMILY LAW CENTRE
- A.5.1 At the April meeting, the Legal Aid Committee gave further consideration to the Report of the Design Committee and the position taken by Convocation on November 16, 1993. The following resolution was passed by 8 votes to 4 votes:
- "The Legal Aid Committee recommends that the Women's Family Law Centre be established by the Plan and that it should focus its efforts on the provision of services to women who are victims of spousal abuse.
- The Committee further recommends that Legal Aid continue to grant certificates and that adequate social services of the type provided in the Women's Family Law Centre be made available in the community to men and women.
- The Plan will continue to follow equal opportunity hiring policies in hiring for the Women's Family Law Centre. It is not intended that the Centre be staffed only by women."
- A.5.2 The following history reflecting the background of this matter may be helpful to Convocation.
- A.5.2.1 In mid 1992 Convocation concluded after a lengthy debate that the Law Society and the Legal Aid Committee should undertake a pilot project in the delivery of Legal Aid in Family Law based on a staff model of delivery.

- A.5.2.2 A Steering Committee was struck to pursue that objective. The Steering Committee includes representatives of the Legal Aid Committee, the Clinic Funding Committee and the Ministry of the Attorney General.
- A.5.2.3 The Steering Committee created a Design Committee. The members of the Design Committee included members of the profession, representatives of the Ministry of the Attorney General, representatives of the Legal Aid Committee, Intermediaries, and one consumer. The Design Committee met on 25 occasions and produced a report which is attached as (SCHEDULE #4).
- A.5.2.4 The recommendations of the Design Committee were as follows:
- a Limited Service Model should be undertaken to provide standard paper intensive services such as uncontested divorces and adoptions.
 - the Women's Family Law Centre should be undertaken to provide comprehensive legal and related services for women in family law cases. Related services would include advice and referrals in related criminal, immigration administrative and other areas of law as well as advocacy, crisis counselling, interpreters, community legal education, law reform and other features.
 - the staff office providing only services consistent with the status quo on a certificate should not be undertaken. A certificate allows only for delivery of legal services in a distinct family law case. (This has been referred to as the third model or judicare equivalent model).
- A.5.2.5 The Legal Aid Committee adopted the report of the Design Committee at its meeting in November, 1993.
- A.5.3 On November 26, 1993 Convocation:
- adopted the limited service model
 - rejected the Women's Family Law Centre
 - adopted the third model/judicare equivalent model
- A.5.4 In the course of deliberations, several concerns were raised at Convocation. The issue to which many benchers spoke was the aspect that the Women's Family Law Centre would serve only women. Several benchers indicated a receptiveness to the approach if the rationale for giving priority to women was that their legal needs were related to the abuse they had experienced in their domestic relationship.
- A.5.5 The members of the Design Committee were subsequently canvassed on that issue. As a result of those additional consultations, the Legal Aid Committee reconsidered the report of the Design Committee and considered additional background information as follows:
- A.5.5.1 Facts About Women: Occurrences of Abuse and Poverty: Women Who are Victims of Spousal Abuse (SCHEDULE #5).
- A.5.5.2 The report of the Violence Against Women Survey released in November, 1993 by Statistics Canada (SCHEDULE #6).
- A.5.5.3 Statistics from the Centre for Violence Against Women and Children (SCHEDULE #7).

- A.5.5.4 Column by Michelle Landsberg dated December 18, 1993: The Male Myth of "Battered Husbands" (SCHEDULE #8).
- A.5.5.5 A summary prepared by The Easton Alliance reflecting Statistics on Husband Abuse (SCHEDULE #9).
- A.5.5.6 A newspaper Report from the Globe and Mail on steps taken by Hospitals with respect to abuse of women becoming apparent in the hospital setting (SCHEDULE #10).
- A.5.5.7 A letter from Alva Orlando dated March 24, 1994 on behalf of the inter Clinic Work Group on Violence Against Women and Children (SCHEDULE #11).
- A.5.5.8 Contributions by Margaret Buist (a recent appointment to the Legal Aid Committee and a member of the Design Committee) and by George Biggar (Co-Chair of the Design Committee) that the members of the Design Committee assumed that the population served by the Women's Family Law Centre would be primarily abused women and that the resolution before the Legal Aid Committee on April 14 would accurately reflect the consensus of the members of the Design Committee.
- A.5.6 The recommendation of the Legal Aid Committee was scheduled to be addressed at April Convocation. Many Benchers asked for deferral to allow further opportunity to consider the issues. Accordingly the matter was deferred to May Convocation.
- A.5.7 All Benchers were invited to attend a meeting on either May 12 or May 13 to canvas the issues. The following Benchers attended: L. Brennan, S. Goudge, P. Lamek, C. McKinnon, F. Mohideen, N. Richardson, D. Scott, H. Sealy, M. Weaver. In addition, C. Campbell and H. Sealy made further written or oral contributions.
- A.5.8 As a result of these consultations the text of the recommendations above may be modified modestly. Unfortunately, the time available before production of the Report to Convocation was so limited that the refinements have not yet been completed. Benchers should expect further advice on this point by facsimile transmission before Convocation.

Note: Motion, see page 315

B.
ADMINISTRATION

B.1 APPOINTMENT OF AREA DIRECTOR - GUELPH

Mr. Joe Berry, Area Director Guelph, passed away in February, 1992. Mr. Terry Jackman has been Acting Area Director since that time and it is now recommended that Mr. Jackman be appointed Area Director. His curriculum vitae is attached as (SCHEDULE #12).

B.2 REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR THE MONTH OF APRIL, 1994

The Report on the Payment of Solicitors Accounts for April, 1994 is attached hereto as (SCHEDULE #13).

Friday, 27th May, 1994

B.3 REPORT ON THE STATUS OF REVIEWS FOR THE MONTH OF APRIL, 1994

The Report on the Status of Reviews in the Legal Accounts Department for the month of April, 1994 is attached hereto as (SCHEDULE #14).

B.4 AREA COMMITTEES; APPOINTMENTS AND RESIGNATIONS

APPOINTMENTS

Hastings and Prince Edward
Edward J. Kafka, solicitor

Nipissing
Shawn Edward Eagles, solicitor
James Douglas Sawa, solicitor

Waterloo
Clarke L. Melville, solicitor
Orlin C. Wood, solicitor

RESIGNATIONS

Essex

Armando F. DeLuca, Q.C.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

F. Kiteley
Chair

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

- Item A.-A.3.2 - Report of the Steering Committee dated May 12, 1994.
(Schedule #1, pages 1 - 41)
- Item A.-A.4.1 - Memorandum from Ms. Ruth Lawson, Deputy Director, Appeals to the Legal Aid Committee dated May 5, 1994 re: Refugee Issues:
1. Cost Recovery Fee for Landing Applications by Convention Refugees; 2. Refugee Law Office (Pilot Project)
(Schedule #2, pages 1 - 6)
- Item A.-A.4.3 - Copy of letter to The Honourable Sergio Marchi, Minister of Citizenship and Immigration from Ms. Fran Kiteley, dated May 17, 1994.
(Schedule #3, pages 1 - 2)
- Item A.-A.5.2.3 - Report of the Design Committee dated June 1, 1993.
(Schedule #4, pages 1 - 49)
- Item A.-A.5.5.1 - Report re: Facts about Women: Occurrences of Abuse and Poverty.
(Schedule #5, pages 1 - 2)
- Item A.-A.5.5.2 - Report re: The Violence Against Women Survey.
(Schedule #6, pages 1 - 10)

Friday, 27th May, 1994

- Item A.-A.5.5.3 - Statistics from the Centre for Violence Against Women and Children. (Schedule #7)
- Item A.-A.5.5.4 - Column by Michelle Landsberg dated December 18, 1993 re: The Male Myth of "Battered Husbands". (Schedule #8, pages 1 - 2)
- Item A.-A.5.5.5 - Summary by The Easton Alliance re: Statistics on Husband Abuse. (Schedule #9)
- Item A.-A.5.5.6 - Newspaper Report from Globe and Mail re: steps taken by Hospitals with respect to abuse of women. (Schedule #10)
- Item A.-A.5.5.7 - Letter from Ms. Alva Orlando to Ms. Frances Kiteley dated March 24, 1994 re: Family Law Clinics. (Schedule #11, pages 1 - 2)
- Item B.-B.1 - Curriculum Vitae of Terrence B. Jackman. (Schedule #12, pages 1 - 2)
- Item B.-B.2. - Report on the Payment of Solicitors Accounts for April 1994. (Schedule #13, pages 1 - 2)
- Item B.-B.3 - Report on the Status of Reviews in the Legal Accounts Department for month of April 1994. (Schedule #14)

It was moved by Ms. Kiteley, seconded by Mr. Brennan that the following Recommendation as set out in the May 25th Memorandum be adopted:

That the Women's Family Law Centre be established by the Plan and that its efforts should be directed to the provision of services to women who are victims of spousal abuse.

The Committee further recommends that Legal Aid continue to grant certificates and that adequate social services of the type provided in the Women's Family Law Centre be made available in the community to men and women.

The Plan will continue to follow equal opportunity hiring policies in hiring for the Women's Family Law Centre. It is not intended that the Centre be staffed only by women.

Carried

ROLL-CALL VOTE

Bastedo	For
Brennan	For
Campbell	For
Carter	Against
Copeland	For
Curtis	For
Elliott	For
Feinstein	For
Finkelstein	For
Goudge	For
Graham	For
Hickey	Against
Kiteley	For
Lamont	Against
Lax	For
McKinnon	For
Mohideen	For
Moliner	For
Murphy	For
Murray	Against
Palmer	For
Peters	Against
Richardson	For
Scott	Against
Somerville	For
Strosberg	Against
Thom	For
Topp	Against
Wardlaw	Against
Weaver	Against

It was moved by Ms. Curtis, seconded by Ms. Peters that the Law Society not participate in the Family Law Pilot Projects.

The Treasurer ruled Ms. Curtis' motion out of order as no notice had been given.

Mr. Copeland challenged the ruling of the Curtis motion. The challenge lost and the Treasurer's ruling was upheld.

It was moved by Mr. Topp, seconded by Mr. Strosberg that the Item on the Women's Family Law Centre be deferred.

Lost

It was moved by Ms. Peters, seconded by Mr. Topp that the amount of \$1.5 million for the Women's Family Law Centre be budgeted by the Attorney General.

Ms. Peters' motion was ruled out of order.

THE BALANCE OF THE REPORT WAS ADOPTED

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AGENDA - ADDITIONAL MATTERS REQUIRING DEBATE AND DECISION BY CONVOCATION

SPECIAL COMMITTEE ON PRIORITIES AND PLANNING

Meeting of May 19, 1994

Mr. Bastedo presented the Report of the Special Committee on Priorities and Planning for information only.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON PRIORITIES AND PLANNING begs leave to report:

Your Committee met on Thursday, the 19th of May 1994, the following persons being present: Thomas Bastedo (Chair), Abe Feinstein (by correspondence), Hope Sealy, David Crack and Richard Tinsley.

B.

ADMINISTRATION

RECOMMENDATIONS AS TO THE FUTURE OF THE PRIORITIES AND PLANNING PROCESS

Having completed two years of the Priorities and Planning process, the past year as the Special Committee on Priorities and Planning, the following are a number of recommendations with respect to how your special committee believes that the Society should view the Priorities and Planning process in the future and how it relates to the Finance and Administration Committee. The Committee's recommendations are followed by comments of Mr. Feinstein.

1. ISSUE

While the Priorities and Planning Committee has functioned over the past two years, it is the Finance and Administration Committee which is charged under Rules 33 and 34 with the responsibility for considering estimates submitted to it by the other committees.

RECOMMENDATION

It is recommended that the Priorities and Planning Committee should be a subcommittee of the Finance and Administration Committee and that the members of that committee should not be chairs of other committees.

2. ISSUE

Rule 34 currently sets out that the management of land and buildings is the responsibility of the Finance and Administration Committee.

RECOMMENDATION

It is recommended that the functions of the Building Committee be subsumed into a subcommittee of the Finance and Administration Committee. In addition to matters relating to the management of land and buildings, this subcommittee would also be responsible for other facilities provided by the Law Society including in-house Printing, rental and use of space, security, and other such services.

3. ISSUE

With the increase in complexity of the administration of the Law Society as well as the proliferation of new legislation there is a need for a better reporting system to the Finance and Administration Committee and Convocation.

RECOMMENDATION

It is recommended:

That issues with respect to the following matters be reported to the Finance and Administration Committee on a monthly basis (or from time to time as needed) through a new subcommittee called the "Administration Subcommittee":

- (a) Information Systems (computerization etc.)
- (b) Human Resources
- (c) Salary and Benefits
- (d) Staff Health and Safety
- (e) Pay Equity
- (f) Employment Equity
- (g) Matters relating to Secretariat

Amendments to Rule 34 may have to be considered by the Finance and Administration Committee to accommodate this change.

4. ISSUE

Matters which are more appropriately the responsibility of the Admissions and Membership Committee have historically been reported to Convocation by the Finance and Administration Committee.

RECOMMENDATION

That all matters dealing with membership should be transferred from the Finance and Administration Committee to the agenda of the Admissions and Membership Committee. The only matters respecting membership which would remain on the Finance and Administration Committee would be a report from the Admissions and Membership Committee recommending those members whose rights and privileges would be suspended for non-payment of fees and levies.

5. ISSUE

As presently drafted, Rule 33 made under the *Law Society Act* gives a standing committee approval to spend its budget once it has been approved by Convocation without further reference to the Finance and Administration Committee or Convocation. There is a need to clarify how in-year surpluses and deficits in various program items should be controlled. A discussion with a proposal for amendment of Rule 33 is attached at Appendix A.

RECOMMENDATION

It is recommend that the Finance and Administration Committee consider the proposals made by the Under Treasurer in respect of revisions to Rule 33 of the *Law Society Act* as set out in Appendix A and make appropriate recommendations to Convocation.

6. ISSUE

Further consideration should be given to more formalization of the budget structure and process. It is our view that for most projects and program activities of the Law Society, a three year time plan is appropriate to allow for the orderly planning and financing of such projects and programs.

RECOMMENDATION

It is recommended:

- i. That each Committee be required annually to project its activities over a three year period and report on what has occurred in the two previous fiscal years. In this way, programs can be debated and the direction of the Law Society controlled through Convocation.
- ii. That suitable budget formats, or working papers, be devised early in the new financial year to allow each committee to participate in this exercise on a consistent basis. Further expenditure reports would be provided to the committee from time to time during the fiscal year to update the progress of programs against budget.
- iii. That the Finance and Administration Committee project revenues and expenses for a three year period and on the basis of such projections an estimate that will be required for fees for such period.

7. ISSUE

While Section 61 of the *Law Society Act* grants Convocation the authority to set the Errors and Omissions insurance levy, there is no direct reference in Rule 34 (Responsibility to the Finance and Administration Committee) or Rule 46(a) (Responsibility to the Insurance Committee) as to the responsibility for reporting to Convocation a recommendation as the amount of annual Errors and Omissions insurance levy.

RECOMMENDATION

It is recommended that this matter should be discussed by both the Finance and Administration Committee and the Insurance Committee and a recommendation made to Convocation.

Comments of Abe Feinstein on Priorities Process

Mr. Feinstein is of the view that the Priorities and Planning Committee should remain a committee of Convocation rather than a subcommittee of the Finance and Administration Committee with the purpose of planning the priorities of the Law Society in the following manner:

1. The Planning and Priorities Committee should prepare an annual and long term work plan for the Law Society.
2. The work plan should relate to the Law Society's role statement.
3. The work plan would be developed through consultation between the Priorities Committee and other Law Society committees with an attempt to reach a consensus.

Friday, 27th May, 1994

4. The work plan endorsed by the Priorities and Planning Committee, including a financial impact statement, together with the recommendations of any committee that are contrary to the Priorities and Planning Committee's position, would be debated by Convocation, which would make the final determination of the annual and long term work plan.
5. By this method, Convocation will be setting the direction and the goals of the Society to be followed by the Committees.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May 1994

T. Bastedo
Chair

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

- Item B.-5. - Proposal by the Under Treasurer for the Amendment of Rule 33 to increase Controls on Program Budgets.
(Appendix A, pages 1 - 3)

THE REPORT WAS RECEIVED

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AGENDA - REPORTS OF SPECIFIC ITEMS REQUIRING CONVOCATION'S CONSIDERATION AND APPROVAL

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of May 12, 1994

Mr. Feinstein presented Items B.-3. & 4. re: Suspensions for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994 at 10:30 a.m., the following members being present: K.E. Howie (Chair), M. Somerville (Vice Chair), J.J. Wardlaw (Vice Chair), T.G. Bastedo, D. Bellamy, R.W. Cass, A. Feinstein, N. Finkelstein, and V. Krishna. Also in attendance were D.A. Crosbie, D.E. Crack and D.N. Carey.

B.
ADMINISTRATION

1. FINANCIAL REPORT

The Director of Finance presented a highlights memorandum for the General Fund and the Lawyers' Fund for Client Compensation for the 9 months ended March 31, 1994. (pages 4 - 8)

Approved

2. EMPLOYEE BENEFITS PROGRAM - RENEWAL JUNE 1, 1994

A proposal has been received for the renewal of the Law Society's Employee Benefits Coverage currently placed with SunLife. The policy covers employees at both the Law Society and the Ontario Legal Aid Plan and expires June 1, 1994.

A major issue this year has been the significant increase in claims against the long-term disability program. SunLife had initially been seeking an increase of 121% in that premium.

Our benefits consultants, MLH+A Inc., after consultation with the Director of Finance, the Deputy Director-Finance of OLAP, and Human Resources staff, have negotiated an overall increase in the premium of 2.4%. This has been accomplished by amending certain other coverages, applying a small surplus which existed in the extended health coverage section, and by reducing premiums due to favourable experience in both the extended health and dental coverage of the policy.

This increase represents an increased cost to the Law Society of approximately \$12,000 for the year of which \$9,000 is charged to the General Fund.

Approved

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.

The Committee was asked to recommend that the rights and privileges of these members be suspended on May 27, 1994 if the late filing fee remains unpaid on that date.

Approved

Note: Motion, see page 323

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 May 27, 1994 if the fees or levies remain unpaid on that date.

Approved

Note: Motion, see page 324

Friday, 27th May, 1994

5. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

Gaston Carbonneau	Aylmer, PQ
Ian Telfer MacDonald	Toronto
Stuart Peebles Parker	Kimberly
John Lawrence Sullivan	Welland

(b) Incapacitated - Membership under Suspension

Taivi Lobu of Toronto, was suspended on December 1, 1992 for non-payment of the 1992/93 annual fee. At the time of her suspension, the member was incapacitated and unable to practise law. She has now applied under Rule 50 on a retroactive basis requesting that her membership be reinstated without payment of the 1992/93 and 1993/94 annual fees.

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

Approved

6. RESIGNATION - REGULATION 12

The following members have applied for permission to resign their membership 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) Michael Henry Holden of Perth, Australia was called to the Bar on March 26, 1971 and has never practised law in Ontario since his call. His rights and privileges were suspended on April 27, 1973 for non-payment of the 1972/73 annual fee. Annual fees for the years 1972/73 -1992/93 inclusive are outstanding.
- (b) Alexander Kenneth MacLaren of Ottawa, was called to the Bar on May 17, 1957 and practised law until December 31, 1967 with the firm MacLaren Laidlaw and Corlett. All files, books and records were left with the firm. He states that there are no outstanding claims against him. His annual filings are up to date.
- (c) David Henry Hirsch of Erskineville, Australia was called to the Bar on April 11, 1986 and practised with the firm Smith Lyons Torrance Stevenson and Mayer until March 1989. He was not responsible for any trust funds or clients' property. All client matters were transferred to other solicitors in that firm. He is not aware of any claims made against him. The 1993/94 annual fee is outstanding. His annual filings are up to date.

Their Declarations/Affidavits are in order and the Committee was asked to approve them.

Approved

C.
INFORMATION

1. LEGAL MEETINGS AND ENTERTAINMENT

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

May 12, 1994	County & District Law Presidents' Association Convocation Hall
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May 26, 1994	Lawyers' Club Convocation Hall
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Noted

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

K. Howie
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 May 10, 1994 re: March 1994 Financial Highlights.

(pages 4 - 8)

THE BALANCE OF THE REPORT WAS ADOPTED

MOTION TO SUSPEND - FAILURE TO PAY LATE FILING FEE

It was moved by Mr. Feinstein, seconded by Mr. Wardlaw THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from May 27, 1994 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)

MOTION TO SUSPEND - N.S.F. CHEQUES

It was moved by Mr. Feinstein, seconded by Mr. Wardlaw THAT the rights and privileges of each member who paid their Annual Fees or their Errors and Omissions Insurance levy with cheques which were subsequently dishonoured by the bank and whose name appears on the attached list be suspended from May 27, 1994 and until the necessary fee or levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

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PROFESSIONAL STANDARDS COMMITTEE

Meeting of May 12, 1994

Mr. McKinnon presented Item A.-A.1. re: Applicants for Specialist Certification and the Practice Review Programme, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, at 3:00 p.m., the following members being present: C. McKinnon (Chair), M. Weaver (Vice Chair), R. Carter, R. Cass, D. Murphy, H. Warder-Abicht.

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

A.
POLICY

A.1. APPLICANTS FOR SPECIALIST CERTIFICATION AND THE PRACTICE REVIEW PROGRAMME

A.1.1. Members who apply to the Law Society for certification as specialists are advised, on the application form, that their names will be reviewed by the Professional Standards Department and that they may be referred to the Practice Review Programme, in which case their certification application will be put in abeyance pending successful completion of the Programme. A "profile" of the member is prepared, setting out the member's history with the Law Society, including any past discipline, administrative suspensions, complaints, audits, and insurance claims. If it appears from the profile that the member might be a possible candidate for the

Practice Review Programme, or if the member is or was participating in the Programme, the Certification Board is so advised. If the member appears to be a potential candidate, staff consult with relevant departments of the Law Society to obtain more information about the member. Authorization for participation, if appropriate, is then sought from the Chair of the Professional Standards Committee, based upon the profile and any supporting information or documentation.

Note: Motion, see page 330

- A.1.2. Participation in the Programme is voluntary, as the Law Society has no mechanism at present to require members to participate. In order to encourage participation, however, Convocation adopted a policy in May, 1986, which it reaffirmed in October, 1992, whereby the names of members who refuse to co-operate with the Programme would be referred to Senior Counsel, Discipline, for consideration of possible disciplinary action. In the initial letter sent to members after authorization, members are advised that the review process is consensual, but that Senior Counsel, Discipline will be advised if the member does not agree to participate, or later withdraws from the Programme.
- A.1.3. In most instances, members are referred to the Programme by departments such as Complaints, Discipline, Audit and LPIC, which departments have sufficient familiarity with the member's practice to be able to evaluate whether participation in the Programme would be appropriate and of assistance to the member. In the certification process, however, that evaluation occurs after the member's name has been referred to the Professional Standards Department.
- A.1.4. The Committee was of the opinion that it cannot disregard information suggesting that a member may be an appropriate candidate for the Practice Review Programme, even if that information came to the attention of the Professional Standards Department as a result of the certification process. The Committee was also of the opinion, however, that in these circumstances it was not appropriate, after authorization to participate was granted, to indicate in the initial correspondence from the Professional Standards Department that a referral would be made to Senior Counsel, Discipline if the member refused to participate in the Programme. Nor did the Committee think it appropriate to refer such members automatically to Senior Counsel, Discipline.
- A.1.5. Your Committee therefore recommends that the following procedure be implemented, when an applicant for certification as a specialist appears to be an appropriate candidate for the Practice Review Programme:
1. Staff will present the member's profile, and any additional documentation or information, to the Chair of the Professional Standards Committee, seeking authorization for that member to participate in the Programme.
 2. If authorization is granted, a letter will be forwarded to the member advising of this fact, and omitting any reference to discipline. A copy of this letter will be provided to the Certification Board.

3. The Certification Board will be advised of the member's response to the invitation to participate, and the Board can then decide whether to proceed with the application for certification.
4. If the member refuses to participate, the member's file in the Practice Review Programme will be closed without any referral to Senior Counsel, Discipline, except in the circumstances set out in paragraph 5.
5. If it appears, however, on a *prima facie* basis, that there are concerns about the member sufficient to warrant possible disciplinary action, the Professional Standards Committee will be so advised, and the Committee as a whole will decide whether a referral should be made to Senior Counsel, Discipline.

B.

ADMINISTRATION

B.1. REQUEST FOR RECONSIDERATION OF AUTHORIZATION TO PARTICIPATE IN PRACTICE REVIEW PROGRAMME

B.1.1. A member was authorized for participation in the Practice Review Programme in March, 1994, as a result of seeking re-certification as a specialist. The member had received 7 complaints since 1987, and 14 potential E&O claims; the Law Society paid on his behalf \$191,582.61 in claims, legal fees and adjuster fees. A representative of the Errors & Omissions Department (now LPIC) confirmed their view that the claims indicated at least a lack of adequate office systems, and possibly deficient knowledge of limitation periods. The member wrote to the Committee, setting out his background, providing additional information, and requesting reconsideration of his authorization to participate.

B.1.2. The Committee reviewed the member's written submissions, but concluded that the member was an appropriate candidate for the Programme, and confirmed his authorization.

B.2. REINSTATEMENT ON THE LAWYER REFERRAL SERVICE ROSTER

B.2.1. i) Background

B.2.2. The Lawyer Referral Service was established as a pilot project in 1970, the primary function of which appears to be to facilitate access by the public to competent legal counsel. When a lawyer is authorized for participation in the Practice Review Programme, therefore, pursuant to Committee policy the Lawyer Referral Service is so notified, and the Communications Department removes the lawyer's name from the Service's roster. As recommended by this Committee, and reaffirmed by it in June, 1990, the removal is based upon the following rationale:

- a) the purpose in notifying the Lawyer Referral Service is to protect the public and, to a lesser extent, the Law Society, from the danger of creating a solicitor/client relationship involving a lawyer whom the Society, based on a significant body of data, believes may have a competency problem;

- b) the Referral Service should be made aware of the names of all lawyers authorized, regardless of whether they agree to participate in the Programme, so that the Service can make an informed decision on the suitability of the lawyer to continue as a participant in the Service.
- B.2.3. Upon the successful completion of the Practice Review Programme, the Standards Department notifies the Lawyer Referral Service, and the lawyer's name is ordinarily restored to the Service's roster.
- B.2.4. To date, only a very small percentage of the matters authorized has resulted in the prompt termination of a review on the basis of inaccurate Law Society data.
- B.2.5. ii) Reinstatement of Participating Lawyers
- B.2.6. Where it considers it appropriate to do so, the Committee can recommend to the Lawyer Referral Service that a lawyer's name be restored to the Referral Service roster even though that lawyer is participating in the Practice Review Programme. Discretion remains with the Service as to whether to accept the Committee's recommendation in this regard. The Committee, in May, 1990, recognized that many participants in the Programme rely heavily on the Referral Service to augment their limited client base, and some competency problems can be directly related to the tenuous financial viability of a practice. Removal of the lawyer's name from the roster could exacerbate some of the problems leading to competency concerns. In addition, the purpose of the Programme is not to eliminate a lawyer's practice or make it financially impossible for a lawyer to continue in practice.
- B.2.7. The Committee re-affirmed, however, that protection of the public must be the dominant consideration when reviewing requests from members participating in the Programme to be reinstated on the Lawyer Referral Service roster.
- B.2.8. iv) Responses to Requests
- B.2.9. The Committee considered requests from three members, two of whom are presently participating in the Programme, and one of whom has been authorized for participation, but has not yet agreed to do so.
- B.2.10. One solicitor was referred to the Law Society by two members, one of whom is the president of the local law association and the other of whom is on the Area Committee for Legal Aid. Clients of the solicitor had distributed posters around the community complaining of the solicitor's incompetence, and a judge of the Provincial Division had commented, on the record, about the solicitor's unfamiliarity with law and procedure. The Ontario Legal Aid Plan had concerns about the solicitor's excessive billing practices. The solicitor was called to the bar in 1989, and had received only 2 complaints and no insurance claims; his practice is in desperate financial straits. Although sympathetic to the solicitor's circumstances, the Committee concluded that reinstatement would be inappropriate, given the concerns outlined and the Law Society's duty to the public.

B.2.11. A second member was identified as a possible candidate for the Programme by the Errors & Omissions Department. Called to the bar in 1983, the solicitor has received 6 complaints and reported 19 possible insurance claims; \$29,400 has been expended in investigation and defence costs, although no actual claim has been paid out on the solicitor's behalf. The solicitor was certified as a specialist in civil litigation in May, 1993. A review of the solicitor's practice was conducted in March, 1994. The solicitor has a caseload of 400 active files, and the reviewer recommended that this volume be reduced by one third; the solicitor did not agree with that recommendation. The Committee considered written submissions from the solicitor and his counsel, but concluded that there was no basis on which to exempt the solicitor from application of the policy.

B.2.12. A third member was authorized to participate as a result of a referral from the Errors & Omissions Department. He was called to the bar in 1977. The Law Society has received 27 complaints against the solicitor and 9 potential insurance claims; approximately \$35,000. has been paid in claims and in defence costs. The solicitor has not yet decided whether to participate in the Programme, and objected to being removed from the Lawyer Referral Service roster without notice and without the opportunity to make submissions, alleging that this approach is contrary to the rules of natural justice. The Committee concluded that participation in the Lawyer Referral Service is not a right, the suspension of which requires the application of the rules of natural justice. Should the solicitor wish to address this issue further, the solicitor will be requested to prepare a written submission to the Committee. The Committee confirmed that, having been authorized to participate in the Programme, the member's name should remain off the Lawyer Referral Service roster.

B.3. PRACTICE REVIEW PROGRAMME - FILE CLOSURES

B.3.1. One Practice Review file was closed on the basis of the member's successful completion of the Programme. The member, who was called to the bar in 1985, was authorized for participation in the Programme in October of 1992 based on a referral from the Complaints department. A review of the practice was conducted and staff attended on two further occasions. The member has agreed to effect many changes to his practice in compliance with the recommendations of the Reviewer and staff. After receiving 7 complaints in 1992, the member received only 2 complaints in 1993, and one in 1994, relating to events in 1992. The solicitor appears to have improved the quality of his practice and benefitted from participation in the Programme.

B.3.2. A second Practice Review file was closed on the basis that the solicitor can no longer benefit from participation in the Programme. The member was authorized for participation in December of 1990, based on a referral from the Complaints Department. At that time the member had 21 complaints and 3 claims. A review was conducted and staff attended on four occasions. Several recommendations were made to the member with respect to the improvement of the practice. The member maintains that despite any attempts made to practise more defensively, he will continue unavoidably to receive an average of three complaints per year. The member now has received 32 complaints and 11 claims. The Committee further recommended that the member's name not be restored to the Lawyer Referral Service.

- B.3.3. A third Practice Review file was closed because of the member's unwillingness to cooperate with the Programme. The member was authorized for participation in June, 1990. Staff attended a total of six times and a review panel was also convened. A copy of the staff report on the latest attendance was sent to the member for comment; however, no response was received. Five letters in total sent to the member requesting comments failed to elicit a response. Accordingly, the member's file will be referred to Senior Counsel, Discipline.
- B.3.4 One Practice Review file was closed on the basis that the solicitor was found guilty of professional misconduct and was permitted to resign effective March 24, 1994. The solicitor had been authorized for participation in the Practice Review Programme in September, 1990.

C.
INFORMATION

C.1. UPDATE OF THE CRIMINAL DEFENCE CHECKLIST

- C.1.1. A checklist for use in a criminal law practice was published under the auspices of this Committee in May of 1989. The criminal defence sub-committee commenced preparation of the checklist in the fall of 1987.
- C.1.2. Given the time that has expired since the criminal defence checklist was originally drafted, and the procedural changes since that time, the Committee has determined that another sub-committee should be constituted to review and revise, as may be appropriate, the existing checklist.
- C.1.3. Members of the Committee are currently in the process of canvassing potential sub-committee members.

C.2. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.2.1. The Practice Advisory Service reports that the number of calls received in March, 1994 has increased to 866, leaving no time for anything except responding to same.

C.3. PROFESSIONAL STANDARDS DEPARTMENTAL REPORT

- C.3.1. There are 139 open files in the Programme. In April, Ron Manes sat as a review panellist for three participating members. Additional recommendations were contributed by Samuel Lerner, who was unable to attend the panel meeting, but made suggestions based upon the written materials presented to panel members and participants.
- C.3.2. The Staff Working Group continues to meet on a weekly basis, reviewing the reforms proposed for the *Law Society Act*. Under consideration at the present time are the capacity and competency provisions.

- C.3.3. Staff have recently had discussions with representatives of the New York State Bar and the Law Society of Alberta, about the initiatives being undertaken in those jurisdictions to address competency concerns. The Law Society of Alberta offers an education program similar to that under development by the Professional Standards Department and it is expected that the Department will draw upon Alberta's materials and experience. The New York State Bar was particularly interested in the Ontario articling and bar admission requirements and was forwarded materials regarding same.
- C.3.4. The conference on Technology for Lawyers '94, jointly sponsored by the Law Society and the Canadian Society for the Advancement of Legal Technology, was attended by staff in April. Attendance at such conferences is essential as a source of significant information on the present and future uses of technology in a law practice.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

C. McKinnon
Chair

It was moved by Mr. McKinnon, seconded by Mr. Somerville that Item A.-A.1. be adopted.

Carried

THE BALANCE OF THE REPORT WAS ADOPTED

.....

Convocation took a brief recess at 4:05 p.m. and resumed at 4:14 p.m.

AGENDA - REPORTS OF SPECIFIC ITEMS REQUIRING CONVOCAATION'S CONSIDERATION AND APPROVAL

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of May 12, 1994

Ms. Peters presented Item B.-2. re: Prosecutions under section 50 of the Law Society Act, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th of May, 1994 at 9:30 a.m., the following members being present: P. Peters (Chair), N. Finkelstein (Vice Chair), M. Hickey, C. Hill, S. Lerner and M. Weaver (Vice Chair). Staff in attendance were: A. John (Secretary) and J. West.

B
ADMINISTRATION

1. COMPLAINTS AND INVESTIGATIONS

Your Committee authorized three new matters for prosecution.

2. PROSECUTIONS UNDER SECTION 50 OF THE LAW SOCIETY ACT

During 1993, the Unauthorized Practice Department received 182 complaints concerning alleged unauthorized practice. The Department investigated 47 of these but prosecuted only 6 because of financial limitations. In an effort to deal realistically with the rapid expansion of paralegal activities in Ontario, the Unauthorized Practice Committee requested a substantial budget increase for 1994/95. However, the Priorities and Planning Committee recommended that the budget remain at the same as last year's level. Accordingly, the Committee will limit prosecutions to a small number of cases. Unfortunately, many (meritorious) cases will not move forward to prosecution even when there is ample evidence to support a conviction under s. 50 of the Law Society Act.

In May 1994, the Unauthorized Practice Committee received an offer from a complainant to pay the cost of a specific s. 50 prosecution. The Law Society would retain control of the litigation, including selection of counsel.

Your Committee requests that Convocation consider and decide whether complainants should be permitted to pay or contribute to the cost of prosecuting a case which the Unauthorized Practice Committee has approved for prosecution. Would the answer be different if the offer of funding came from lawyers who practise in the same area of law which is the subject of the proposed prosecution? Similarly, would there be a difference if counsel offered their services pro bono?

Note: Item deferred

ALL OF WHICH is respectfully submitted

DATED the 27th day of May, 1994

P. Peters
Chair

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

List of prosecutions and court dates. (page 2)

Ms. Peters agreed to refer this matter back to the Committee for further consideration and report to Convocation in June.

ITEM B.-2. OF THE REPORT WAS DEFERRED

ADMISSIONS COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 12th May, 1994 at 9:30 a.m., the following members being present: Mr. Carter (Chair), Ms. Mohideen, Ms. Moliner and Mr. Farquharson.

Also present: M. Angevine and C. Shaw

A.
POLICY

A.1. REQUIREMENTS FOR TRANSFER FROM ANOTHER CANADIAN
JURISDICTION

A.1.1. In its June 1993 report your Committee made recommendations with respect to revisions of the requirements to transfer from another Canadian common law jurisdiction under section 4(1) of Regulation 708. Convocation requested that the recommendations be further revised and that a comprehensive package be prepared to encompass section 4(2) of the Regulation with respect to applicants for transfer from Quebec.

A.1.2. Your Committee had before it for consideration the decision of the Quebec Superior Court in Richards v. Bareau du Quebec. The issue in this case was whether the requirement of three years practice in another Canadian jurisdiction in order to be eligible to transfer to Quebec is unconstitutional.

A.1.3. Regulation 708 made under the Law Society Act provides as follows:

A.1.4. Section 4(1)(a) - an applicant may be called to the bar and admitted as a solicitor who has been engaged in the active practice of law in one or more common law provinces or territories of Canada for a period or periods totalling at least three years within the five year period immediately preceding the application;

A.1.5. Section 4(2)(a) - an applicant may be called to the bar and admitted as a solicitor who has been engaged in the active practice of law in the Province of Quebec for a period or periods totalling three years within the five year period immediately preceding the application.

A.1.6. The Society retained Counsel to provide an opinion as to the validity of the requirement of three years of active practice to be eligible to transfer to Ontario from another Canadian jurisdiction in light of the Richards decision.

A.1.7. The opinion provided that, in essence, the Society may require transfer applicants to comply with standards for admission which are equivalent to those required of students proceeding through the Bar Admission Course.

A.1.8. Your Committee also considered the following: 1) transfer requirements of the other provinces; 2) the nature of their pre-call training; and 3) the draft Protocol prepared by the Federation of Law Societies Committee on Interjurisdictional Practice.

A.1.9. In reviewing the criteria transfer applicants should be required to meet, your Committee considered the requirements of pre-call training in Ontario including the academic requirements for entry to the Bar Admission Course and the seventeen months duration of the course.

A.1.10. Your Committee now recommends that the transfer requirements be revised as follows:

4(1) Upon the recommendation of the Committee, an applicant who is qualified to practise law in any province or territory of Canada outside Ontario may be called to the bar and admitted as a solicitor provided the applicant,

- (a) (i) is a graduate of a law course, approved by Convocation, in a university in Canada, or
 - (ii) has a certificate of qualification issued by the Joint Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;
 - (b) for a period or periods totalling at least seventeen months within the three year period immediately preceding the application, has been engaged in,
 - (i) the active practice of law as a member of a law society or equivalent body which is a member society of the Federation of Law Societies of Canada,
 - (ii) the pre-call education program of a member society of the Federation of Law Societies of Canada, or
 - (iii) a combination of the activities referred to in subclauses (i) and (ii);
 - (c) files a certificate of good standing issued by a member society of the Federation of Law Societies of Canada; and
 - (d) passes the transfer examination as prescribed from time to time by Convocation.
- (2) For purposes of this section, an applicant shall be deemed to have been engaged in the pre-call education program of a member society of the Federation of Law Societies of Canada when,
- (a) enrolled and participating in a teaching or education program prescribed by that society and distinct from a university law course; or
 - (b) serving under articles of clerkship to a member of that society in accordance with the rules or regulations of that society.

- (3) On each occasion when a candidate for call and admission under subsection (1) sits the transfer examination referred to in clause (1)(d) the candidate must present evidence that the candidate,
- (a) has been engaged in the activities set out in subclauses (i), (ii) or (iii) of clause 1(b) for a period or periods totalling at least seventeen months within the three year period immediately preceding the examination; and
 - (b) is a member in good standing of a member society of the Federation of Law Societies of Canada.

A.1.11. Your Committee considered a provision which would permit an applicant whose engagement in the activities referred to in clause (1) (b) does not amount to the total of seventeen months required by that clause to satisfy the requirement of that clause by serving under articles of clerkship in Ontario for the length of time required to bring the total to seventeen months.

A.1.12 After discussion your Committee concluded that such a provision ought not to be included. Your Committee was concerned that transfer applicants seeking short term articling positions in Ontario would increase the difficulties already faced by students-at-law in the Bar Admission Course in finding articling placements.

Note: Item deferred

B.
ADMINISTRATION

B.1. AWARDING OF COSTS - ADMISSIONS HEARING

B.1.2. An admissions hearing was held in January 1991 to consider the issue of good character in respect of an application for admission. The panel who heard the matter recommended that the applicant be admitted.

B.1.3. The applicant, now a member, takes the position that the investigation was not dealt with in a timely or diligent manner causing him to incur legal costs of approximately \$7,000.00. Accordingly, he requests costs on a party-and-party basis in the amount of \$3,500.00.

B.1.4. A Memorandum dated February 24th, 1994 from the applicant's counsel setting out the position of his client with respect to his recovery of legal costs incurred during the course of the admission process was before the Committee for consideration. A brief history of this matter, dated June 25th, 1993 from Law Society Counsel, was also before the Committee.

Your Committee reviewed the material before it and concluded that the applicant should not be awarded costs in this matter.

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

B.2.1. The following candidate has met all the requirements to transfer under section 4(1) of Regulation 708 made under the Law Society Act:

Harold Joel Arkin

Approved

B.3. DIRECT TRANSFER - QUEBEC - SECTION 4(2)

B.3.1. The following candidates have met all the requirements to transfer under section 4(2) of Regulation 708 made under the Law Society Act:

Marcel La Flamme
Keith Douglas Wilson

Approved

B.4. SPECIAL PETITION - PART-TIME PRACTICE & THE ACTIVE PRACTICE OF LAW

B.4.1. A member of the Quebec Bar seeks to apply for transfer under section 4(2) of Regulation 708.

B.4.2. The applicant has inquired whether part-time practice for a significant portion of the three year practice requirement will be sufficient to satisfy the rules for transfer.

Your Committee reviewed the application and concluded that part-time practice as set out in the applicant's letter would not meet the requirements of the Regulation.

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

B.5.1. Bar Admission Course

The following candidates having successfully completed the 35th Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on May 27th, 1994:

Bryan Richard Dale
Sandra Alexandra Antonella Erika Gabrielle Girard
Shamim Hansraj
Margaret Elizabeth Hill
Jeunesse Leelawatie Hosein
Vincent Victor Houvardes
Rubina Husain
Jacek Adalbert Janczur
Dale Francisca Jean-Pierre
Maryanne Elizabeth Kramer
Sally Kwan
Patti-Jo McGarroch
Grant Douglas Nelles
Martin Stacey Powless
Robin Ann Rostad
Dairn Owen Shane

Friday, 27th May, 1994

Devi Dayal Sharma
KVS Sriskandakumar
Gloria Tongol-Malonzo
Claudio Vitullo
Darrell Spencer Waisberg
Kirk Warren Walstedt
Priva Janice Warren

Approved

B.5.2. Transfer from another Province - Section 4(1)

The following candidate having completed successfully the transfer examination, filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, May 27th, 1994:

Maureen Shebib

Province of Manitoba

Approved

C.
INFORMATION

C.1. CHANGES OF NAME

C.1.1. (a) Members

From

To

Eva Rosemarie Broadbent

Eva Rosemarie Lovicsek
(Birth Certificate)

Pamela Weld Chapple

Pamela Weld Hardie
(Birth Certificate)

Doris Regina Fielding McKenna

Doris Regina Fielding
(Birth Certificate)

Jacqueline Lee Shaw

Jacqueline Lee King
(Marriage Certificate)

C.1.2. (b) Student Member

C.1.3. From

To

Karine Boltyansky

Karine Granofsky
(Marriage Certificate)

Noted

Friday, 27th May, 1994

C.2. MEMBERSHIP RESTORED

C.2.1. The following member gave notice under Section 31 of The Law Society Act that he has ceased to hold judicial office and wishes to be restored to the Rolls and records of the Society:

Effective Date:

Keith Allan Flanigan May 1, 1994
Ontario Court of Justice (General Division)

Noted

C.3. ROLLS AND RECORDS

C.3.1. (a) Deaths

The following members have died:

Donald James Grant London	Called September 17, 1936 Died January 8, 1993
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Adam Campbell Zimmerman Hamilton	Called September 17, 1936 Died March 1, 1993
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Frederick Robert Hume Toronto	Called June 18, 1936 Died January 27, 1994
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Floyd George Janes Kingston	Called April 5, 1979 Died March 31, 1994
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Leo John Gent Dorchester	Called June 18, 1942 Died April 17, 1994
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Noted

C.3.2. (b) Permission to Resign

The following members were permitted to resign their memberships in the Society and their names have been removed from the rolls and records of the Society:

Byron Dean Boughner Windsor	Called April 15, 1987 Permitted to Resign-Convocation April 21, 1994
--------------------------------	--

Noted

C.3.3. (d) Membership in Abeyance

C.3.4. Upon their appointments to the offices shown below, the membership of the following members has been placed in abeyance under Section 31 of The Law Society Act:

Margaret Ann Cartwright Scott Brantford	Called March 29, 1977 Appointed to Ontario Court of Justice (General Division) January 17, 1994
--	--

Friday, 27th May, 1994

Romain William Michael Pitt Toronto	Called March 26, 1965 Appointed to Ontario Court of Justice (General Division) April 22, 1994
Sidney Norman Lederman Toronto	Called March 22, 1968 Appointed to Ontario Court of Justice (General Division) April 22, 1994
Thomas Ronald Lofchik Hamilton	Called March 24, 1972 Appointed to Ontario Court of Justice (General Division) April 22, 1994
Bonnie Jeyne Wein Toronto	Called March 29, 1977 Appointed to Ontario Court of Justice (General Division) April 22, 1994

Noted

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

R. Carter
Chair

Item A.-A.1. re: Requirements for Transfer from another Canadian
Jurisdiction was deferred.

ITEM A.-A.1. OF THE REPORT WAS DEFERRED
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EQUITY IN LEGAL EDUCATION AND PRACTICE COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 12th of May 1994, the following persons
being present: Stephen Goudge (Chair), Denise Bellamy, Colin McKinnon, Nora
Richardson, David Scott, Susan Charendoff, Sharon Ffolkes-Abrahams, Wes Marsden,
Joanne St.Lewis, Donald Crosbie, Mimi Hart and Alexis Singer.

C.
INFORMATION

C.1 Proposed Rule 28 on Non-Discrimination

C.1.1 The committee approved the revised version of proposed Rule 28 on Non-Discrimination (Appendix "A"). A supplemental report outlining the committee's reasoning for recommending the approval of proposed Rule 28 in its redrafted form will be distributed at Convocation. These are provided to Convocation for information only at this time to ensure Benchers have ample time to review the material before June Convocation.

C.1.2 The proposed Rule 28 will be considered by the Professional Conduct Committee at its June meeting and submitted to June Convocation for approval.

C.2 Draft Work Plan for Equity Committee 1994/95

C.2.1 Attached as Appendix "B" is a draft work plan for the Equity Committee for 1994/95. This work plan was prepared by the Moliner/St.Lewis Subcommittee and it identifies the areas in which significant educational and informational work is necessary in respect of human rights and equity legislation and employment equity legislation. The plan also provides for a follow-up on the comments received on the original draft of proposed Rule 28 and an ongoing educational program.

C.2.2 To carry out this work plan it is proposed that the membership of the Equity Committee be enlarged and that three subcommittees be formed as indicated in the work plan.

Note: Item deferred

C.3 Law Society Employment Equity Plan

C.3.1 The committee discussed the development of an Employment Equity Plan for Law Society employees. A staff committee has been set up to carry out this work and it has been asked to report to the Equity Committee at the June meeting.

C.4 Review of Lawyer Referral Plan Policy on Assignment of Lawyers

C.4.1 The committee considered a memorandum of the law prepared by Sharon Ffolkes-Abrahams, Counsel with the Ontario Human Rights Commission and a member of the Equity Committee, concerning the circumstances under which discrimination may be allowed to benefit a disadvantaged group. In considering this memorandum it was noted that it would be necessary to identify a disadvantaged group and to identify the

Friday, 27th May, 1994

program that would be to the benefit of the disadvantaged group. The committee considered whether it was advisable to deal with this issue as a separate issue or whether it was more appropriate to include it in the general review of educational material required with respect to human rights legislation. No decisions were made and the matter will be considered further at subsequent meetings.

ALL OF WHICH is respectfully submitted

DATED this 27TH day of May 1994

S. Goudge
Chair

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

- Item C.-C.1.1 - Revised version of proposed Rule 28 on Non-Discrimination.
(Appendix "A")
- Item C.-C.2.1 - Draft work plan for the Equity Committee for 1994/95.
(Schedule "B")

Item C.-C.2. re: Draft Work Plan was deferred.

ITEM C.-C.2. OF THE REPORT WAS DEFERRED
.....

LEGAL EDUCATION COMMITTEE

Meeting of May 12, 1994

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

REPORT TO CONVOCATION

THE LEGAL EDUCATION COMMITTEE requests leave to report:

The Committee met on Thursday, the 12th of May, 1994, at 10:30 a.m.

The following members were in attendance: Philip Epstein (Chair), Colin McKinnon (Vice-chair), Lloyd Brennan, Dean Donald Carter (Queen's University), Maurice Cullity, Mohan Prabhu (non-Bencher member), and Marc Rosenberg (non-Bencher member). The following staff were in attendance: Marilyn Bode, Deborah Brown, Katherine Corrick, Marie Fortier, Mimi Hart, Alexandra Rookes, Lynn Silkasukas, and Alan Treleaven.

A.
POLICY

A.1 SUPPLEMENTARY PROPOSAL RE: FINANCIAL ASSISTANCE TO BAR ADMISSION
COURSE STUDENTS

- A.1.1. At the April 22, 1994 meeting of Convocation, the Legal Education Committee presented a proposal to provide additional assistance to students in Bar Admission Course, to alleviate the financial hardship for the most needy students that is associated with the considerable increase in tuition fees for 1994. The proposal recognized the severe financial difficulties being experienced by some Bar Admission Course students as a result of mounting student loan debt, the recession, and the changing composition of the law school class, which includes single parents and students supporting families as well as single students without family support. The proposal recommended that \$100,000 be allocated to the Bar Admission Course to enhance its existing bursary (grant) funds of \$30,000.
- A.1.2. The proposal was reduced from the original request of \$300,000, recognizing the constraints under which the Priorities and Planning Committee was operating. Student need beyond the \$100,000 level was to be dealt with under the existing Law Society Student Loan Program. The \$100,000 was to be allocated to the most financially needy students, many of whom, due to existing debt or other compelling circumstances, might not be able to repay a loan or might suffer so much hardship that their call to the bar could be blocked.
- A.1.3 At its December 11, 1993 meeting, Convocation had approved increases in Bar Admission tuition from \$745 for Phase One 1994 to \$900 for Phase One 1995 (a 20.8 percent increase) and from \$1780 for Phase Three 1993 to \$2100 for Phase Three 1994 (a 17.9 percent increase). The recommendation of the Legal Education Committee at its December 3, 1993 meeting for the tuition increases had been linked to a request for the new bursary funds for financially needy Bar Admission Course students. Convocation on December 11, however, deferred consideration of the bursary request while approving the tuition increases on their own.
- A.1.4. On April 22, Convocation decided against the bursary request, after debating a motion that did not clarify the source of the bursary funds. It has been suggested to the Chair of the Legal Education Committee by some Benchers that had the source of funding for the bursary proposal been part of the motion and a vote taken on the two possible funding options (an increase in the fee or a draw against the surplus), the proposal might have succeeded on one of the options.
- A.1.5. The Legal Education Committee strongly supports the bursary proposal. The Committee's recommendation to increase student tuition fees in the Bar Admission Course was linked to an enhanced bursary program to address the hardship and access issues that a substantial tuition increase will certainly create. As it stands today, there is an increase in tuition of approximately 20% and no additional funds for student bursaries.

- A.1.6. The Committee requests that the issue be readdressed, by specifically identifying the funding options, and offers an additional funding option (#3 below) in the event that one of the two preferred options (#1 or #2) is not approved. The Committee recommends reconsideration based on its serious concern over the splitting of the tuition and bursary items, and the severe implications for needy students of offering financial assistance composed only of additional debt.
- A.1.7. Recommendation: It is recommended that Convocation allocate funds to the Bar Admission Course to be used to provide financial assistance to needy students in the Bar Admission Course. Convocation is asked to approve one of the following options:
1. A fund to create a non-repayable tuition credit for the most needy students. The fund would be created out of the Law Society surplus, in an amount not to exceed \$100,000.
 2. A bursary fund for the most needy students, in an amount not to exceed \$100,000. The fund would be created either :
 - a) out of the Law Society surplus, or
 - b) by increasing the annual fee by approximately \$5 per member to produce \$100,000.
 3. A request on the annual fee notice for a voluntary charitable donation to the Law Society Foundation to support the Bar Admission Course Bursary Fund.

Note: Item deferred

A.2 PHASE THREE REQUIREMENTS FOR STANDING: 1994

- A.2.1 A draft of the Requirements for Standing to govern Phase Three of the 1994 Bar Admission Course is attached. (pages 1 - 8)
- A.2.2 The Requirements for Standing are the academic rules that govern Phase Three of the Bar Admission Course. The substance of the draft Requirements for Standing is in most respects the same as for 1993, with the exception of the following provisions:
- 1) Introduction of a new fee (\$53.50, including G.S.T.) for supplemental course work in each course and for each supplemental examination.
 - 2) Expressing the passing grade for examinations as 60 percent, except in Accounting where the passing grade is 50 percent, while eliminating the "three-part rule" and the conditional fail system.
 - 3) Introducing a limitation of three on the number of second supplemental examinations that may be written after failure of supplemental examinations on the first attempt.
- A.2.3 In instances where, after the grading of any examination, the Director is concerned that the failure rate is excessive, the Director will continue, as in the past, to consult with the Legal Education Committee before releasing the grades, to determine

whether there ought to be an adjustment in the grades. The Director and staff will work, however, with the Heads of Section to ensure as much as possible that examinations are drafted and graded so that the number of failures in any examination will not be a cause for concern to the Committee.

A.2.4 The Director and staff will introduce a tutoring system to endeavour to assist in a timely manner students who have special academic needs.

A.2.5 Recommendation: It is recommended that the Requirements for Standing: Phase Three 1994: 36th Bar Admission Course be approved.

A.3 INTERIM GUIDELINES FOR 1994 ARTICLING INTERVIEWS

A.3.1 The Law Society receives reports from students that some lawyers conducting articling interviews ask questions that appear to contravene the Ontario Human Rights Code and Rule 13, Commentary 5 of the Rules of Professional Conduct. In May and June of 1993, a Subcommittee of the Equity Committee produced guidelines for the profession to ensure the interview process would be free of discrimination.

A.3.2 Interim guidelines were approved by the Legal Education Committee and Convocation for the articling recruitment process in the Summer of 1993.

A.3.3 The process of refining the Interim Guidelines is continuing, but will not be complete for articling recruitment in the Summer of 1994. Moreover, the Interim Guidelines relate to the work of the Equity Committee on proposed Rule 28 of the Rules of Professional Conduct. Therefore, it is proposed that the 1993 Interim Guidelines, subject to some minor amendments, be continued for use in 1994, with appropriate changes to the dates. The draft document entitled "Interim Guidelines for 1994 Articling Interviews" is attached. (pages 9 - 13)

A.3.4 Recommendation: It is recommended that the draft Interim Guidelines for 1994 Articling Interviews for articling recruitment taking place in summer 1994 be approved.

B.
ADMINISTRATION

No regular business and administration to report.

C.
INFORMATION

C.1 BAR ADMISSION COURSE CIVIL LITIGATION COURSE CO-SECTION HEADS

C.1.1 Allan Rock has stepped down as Head of Section for Civil Litigation in the Bar Admission Course. The Chair of the Legal Education Committee has invited Mr. Rock's Assistant Section Heads, David Stinson of Fasken, Campbell, Godfrey, and Michael Watson, of Smith, Lyons, Torrance, Stevenson and Mayer, to serve as co-Section Heads. Messrs. Stinson and Watson have accepted, and have extended their gratitude to the Legal Education Committee.

C.2 ANNUAL MEETING AND DINNER OF THE LEGAL EDUCATION COMMITTEE AND THE BAR ADMISSION COURSE SECTION HEADS

C.2.1 The annual meeting and dinner of the Legal Education Committee and Bar Admission Course Section Heads, including Senior Instructors from London and Ottawa, is scheduled to begin at 4:00 p.m. on Wednesday, June 22 in Convocation Room. A reception will follow at 6:00 p.m. with dinner in the Benchers' Dining Room at 6:30 p.m. This is a significant occasion not only for acknowledging the tremendous contribution made by the profession to the Bar Admission Course, but also for consulting on the future direction of the Bar Admission Course.

C.3 PROFESSIONAL STANDARDS COMMITTEE REQUEST FOR MENTORS

C.3.1 The Professional Standards Committee, at its March 10, 1994 meeting, considered the following recommendation arising from the Benchers Strategic Planning Conference:

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

C.3.2 On April 22, 1994, Convocation adopted a recommendation of the Professional Standards Committee from the Professional Standards Committee's meeting of April 14, 1994, reading as follows: "The Legal Education Committee consider requiring instructors in the Bar Admission Course to agree to act as mentors to newly-called members, as a part of the instructors' commitment to the teaching process".

C.3.3 Susan McCaffrey, Professional Standards Director, reports as follows: "The Professional Standards Committee recognized that many instructors informally make this "commitment", but also recognized that some instructors appear less than eager to assist newly-called lawyers when contacted by them, and therefore felt that a more formal commitment might, first, highlight this issue for instructors and, second, help ensure that mentors are available for more junior members of the bar".

C.3.4 The Legal Education Committee is concerned that, while it would be desirable to ask instructors who are invited to teach in the Bar Admission Course to volunteer in writing to act as mentors to newly-called lawyers, it would be imposing an inordinate burden on the instructors to require them to volunteer yet more of their time to the Law Society, and might have the adverse affect of interfering significantly with the recruitment of instructors.

C.3.5 The Legal Education Committee decided that Bar Admission Course instructors should be invited to volunteer to act as mentors to newly-called members, but that a commitment to act as a mentor to newly-called members should not be a pre-requisite to serving as an instructor in the Bar Admission Course.

C.4 REPORT ON REQUALIFICATION

C.4.1 On March 25, 1994, Convocation approved the Report on Requalification, with some amendments.

- C.4.2 The Report requires all members, regardless of their fee-paying status, to complete a "qualification status" form annually indicating whether they make substantial use of their legal skills on a regular basis in their current work. The Report includes a provision for a pre-emptive regime that will prescribe steps that each member who is not in the ongoing "qualified" category can take to ensure that the member's legal skills will be preserved so as to avoid being required to requalify.
- C.4.3 The Report includes the following provisions as items 7 and 8:
- 7) The Admissions Committee, the Legal Education Committee and the Professional Standards Committee will be asked jointly to develop the range of steps a member can take to preserve his or her legal skills through the pre-emptive regime.
 - 8) The Admissions Committee, the Legal Education Committee, and the Professional Standards Committee will be asked jointly to develop a range of reasonable conditions to be met by members who have not participated in the pre-emptive regime, and are therefore required to re-qualify.
- C.4.4 Such steps or conditions, according to the Report, might include continuing legal education and volunteer work.
- C.4.5 At its April 14, 1994 meeting, the Professional Standards Committee appointed Mary Weaver and Susan McCaffrey, Professional Standards Director, as its representatives on the Subcommittee, and invited the Legal Education Committee and Admissions Committee to each name two persons to a joint-Subcommittee.
- C.4.6 Due to shortage of time, the Legal Education Committee deferred this matter to the June 9, 1994 meeting.
- C.5 CONTINUING LEGAL EDUCATION REPORT ON COURSES
- C.5.1 The Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 14 - 16)
- C.6 BAR ADMISSION COURSE SUBCOMMITTEE
- C.6.1 The Bar Admission Course Subcommittee held its third meeting on Saturday, April 23, 1994. The following members were in attendance: Philip Epstein (Chair), Mark Austen, Lloyd Brennan, Neil Gold, Stephen Goudge, Donald Lamont, Joan Lax, Laura Legge, Dean Donald McRae and Mohan Prabhu. Staff in attendance were Erika Abner of the Bar Admission Course Faculty and Alan Treleaven.
- C.6.2 The Subcommittee recognized that it is important for newly called lawyers to be qualified in the following areas: performance skills, analytical ability, professional responsibility knowledge and attitudes, substantive law knowledge, and practice and procedure knowledge. The Subcommittee referred in particular to the American Bar Association Report entitled "Legal Education and Professional Development-An Educational Continuum", a study and critique of the current process of legal education in the United States. A part of the Report entitled "Statement of Fundamental Lawyering Skills and Professional Values" describes in significant detail those skills and professional values that lawyers ought to possess. The Subcommittee considers the detailed enumeration of those skills and values to be appropriate guides to its work.

C.6.3 The Subcommittee then moved on to consider the role of the Bar Admission Course in teaching and testing knowledge of substantive law and knowledge of practice and procedure. There were particular concerns expressed about the ever-increasing breadth of the law and increasing specialization in the practice of law.

C.6.4 The Subcommittee intends to carry on at its next meeting with an assessment of the need to teach and test knowledge of substantive law and knowledge of practice and procedure in the Bar Admission Course, all in the framework of the Law Society's financial constraints.

C.6.5 The next meeting of the Subcommittee is at 9:00 a.m., on Saturday, May 28, 1994.

C.7 ARTICLING SUBCOMMITTEE

C.7.1 The Subcommittee met at 8:00 a.m. on April 22nd. In attendance were Philip Epstein (Chair of the Legal Education Committee), Stephen Goudge (Chair of the Subcommittee), Maurice Cullity, Dora Nipp, Mohan Prabhu, and Carmel Sakran. Staff members attending were Marilyn Bode, Deborah Brown, Mimi Hart, Lynn Silkauskas, and Alan Treleaven.

C.7.2 The Subcommittee gave conditional approval to a further 12 applications from members to serve as articling principals for the 1993-94 articling year. To April, approximately 1357 members have applied to serve as principals for the 1993-94 articling year. Of those, 1348 applications have been approved. One application was denied as the member was found to be dishonest by a referee of the Lawyers' Fund for Client Compensation. The remaining applications have been deferred because an audit investigation, a discipline investigation and a Lawyers' Fund For Client Compensation hearing are pending.

C.7.3 The Subcommittee also gave conditional approval to a further 18 applications from prospective articling principals for the 1994-95 articling term. To March, approximately 729 members have applied to serve as principals for the 1994-95 articling term. Of those, 727 applications have been approved. One application was denied because the member was, at the time of review of the application, suspended for non-payment of the member's errors and omission insurance levy. That member's application has since been approved as the member has paid the levy. Another application was deferred as an audit investigation on the member is pending.

C.7.4 The Subcommittee gave special consideration to the applications of five members for the 1993-94 or 1994-95 articling terms. A final decision on one of the applications was deferred by the Subcommittee as a Lawyers' Fund for Client Compensation hearing is pending. The four other members were approved. In one member's case, the approval was subject to the member's participation in the Practice Review Program.

- C.7.5 A student asked for the special consideration of the Articling Subcommittee. The student completed Phase One in 1992 and Phase Three in 1993. The student articulated for one month in September of 1992 for a member with a long, significantly negative history with the Law Society. The Articling Subcommittee at its September 1992 meeting declined to approve the member as an articling principal for the 1992-93 articling term. The student was immediately advised of the denial. The Subcommittee also declined to count the one month of articles the student served for the member based on the member's long, significantly negative history with the Law Society. The student was advised on or about September 24, 1992 that the student could no longer article for the member. This was confirmed by letter dated October 6, 1992 from the Articling Director.
- C.7.6 The student requested relief in two letters to the Articling Director in March and April, 1994, including counting the time spent in the member's office and for a period of three or four months the student articulated in 1988, granting an abridgment on a compassionate basis and on the basis of a pending call to the bar of an American state, and calling the student to the bar with restrictions on practice rights.
- C.7.7 The Articling Subcommittee decided that, as with all Bar Admission Course students, excepting abridgment candidates, the student would be required to complete 52 weeks of articles. The Subcommittee granted the following relief to the student: subject to the receipt of satisfactory confirming documentation, the Subcommittee would count a three or four month period of articles the student served in 1988. Therefore, the student would have eight or nine months of articles still to complete. The Subcommittee confirmed its earlier decision and denied the student's request to have the four weeks of articles spent in the member's office count toward completion of the 52 week articling requirement. The Subcommittee noted that the student recognized as early as September, 1992 that the member did not appear to be an appropriate articling principal.
- C.7.8 The student had also made submissions requesting credit for a six or ten week term at the member's office on the basis that some notice is generally given to the student before a withdrawal of the articling commitment. That request was denied. The student also requested that credit be given for six months of articles at the member's office on the rationale that had the student waited to file the Articles of Clerkship, the time might have been counted. The Subcommittee denied this request. The Subcommittee noted that the student had an offer of employment for articles that the student refused. The Subcommittee believes the student is employable.
- C.7.9 The Subcommittee denied the student's request for an abridgment based on the student's pending call in an American state or on a compassionate basis. Abridgments are granted for post-call practice experience in foreign jurisdictions, for calls to the bar in another Canadian province, and for law-related experience in Canada. The Subcommittee also denied the student's request for an immediate call to the bar with restrictions on practice rights.
- C.7.10 Since the meeting of the Subcommittee, the student has notified the Director of Education that the student intends to request a review of the decision of the Subcommittee by the Legal Education Committee, but not in May.

- C.7.11 The Subcommittee considered a number of policy items. The first item related to the placement of articling students for the 1993-94 term. Ms. Hart advised the Subcommittee that 6 students (approximately 0.5% of the incoming Phase Three class) were still seeking articles as of the April 22nd meeting.
- C.7.12 The second policy item was the articling student placement situation for the 1994-95 articling term. Ms. Hart had advised the Subcommittee at its March 11th meeting that 217 students, or 17.9 percent of students enrolling in Phase One for the summer of 1994, reported not having yet located an articling position for the 1994-95 articling term. This compares to 155 students in January of 1993 still seeking articles for the 1993-94 articling term. Ms. Hart advised the Subcommittee that the profession was responding positively to the "Will You Help" notice in the Ontario Reports.
- C.7.13 The third policy item was a consideration of the issue of student representation on the Articling Subcommittee. This matter had been raised by the Unplaced and Unpaid Articling Students Ad Hoc Committee. The Subcommittee agreed that two student representatives should be recommended for the Articling Subcommittee for the 1994-95 articling term. The two representatives would be elected by the students during Phase One of the Bar Admission Course. Currently, there is one articling student, Carmel Sakran, on the Subcommittee. He was appointed to the Subcommittee. The Chair of the Subcommittee will contact the Acting Chair of the Unplaced and Unpaid Articling Students Ad Hoc Committee about this matter.
- C.7.14 The fourth policy item was a consideration of a notice to students without articling jobs drafted by the Ad Hoc Committee of Unplaced and Unpaid Articling Students. The Subcommittee discussed the notice. It decided that it would not distribute the notice to students as it would detract from the efforts of the Law Society and its tone would create unnecessary panic among students.
- C.7.15 The fifth policy item was a consideration of whether students might be asked to voluntarily identify themselves as belonging to a visible minority group or as having a particular sexual orientation. This matter had also been raised by the Ad Hoc Committee of Unplaced and Unpaid Articling Students. The voluntary self-identification would be on the Bar Admission Course application or other documentation submitted to the Law Society. Currently, members of the visible minority, Aboriginal and disabled communities may self-identify on the Bar Admission Course application and two other questionnaires distributed during the Course. After a discussion of this item, it was agreed that Mimi Hart would draft questions for the Subcommittee's review at its May 27, 1994 meeting.
- C.7.16 The sixth policy item was a consideration of the issue of proposed educational materials for Articling Principals. Specifically, the extent, form and content of such materials, in written or videotaped format, were to be discussed. The Subcommittee had insufficient time for this item. The item was deferred to the May 27, 1994 meeting of the Subcommittee.
- C.7.17 The only information item was an update on a member's request for review of the denial of his principal application for the 1993-94 articling term to the Legal Education Committee at its April 11th meeting. The Legal Education Committee denied the member's application.

Friday, 27th May, 1994

C.7.18 The next meeting of the Subcommittee will be at 8:00 a.m. on May 27, 1994.

C.8 REQUEST OF STUDENT TO COMPLETE PHASE THREE BEFORE PHASE ONE

C.8.1 The student, by letter of April 27, 1994, requests "a reconsideration of my request of March, 1994 at the next meeting of the Legal Education Committee", on the following basis: "It appears that the Legal Education Committee believed during its deliberations of April 14, 1994 that other options were open to me which are clearly not".

C.8.2 At its meeting of April 14, 1994, the Legal Education Committee decided that the student's request to complete Phase Three in 1994 before completing Phase One should be denied. The student, by letter of March 25, 1994 requested permission to complete the Bar Admission Course in the following order:

- 1) Phase Three, September to December of 1994,
- 2) articling, January to December of 1995,
- 3) Phase One, either during a four week leave from articling in 1995 or split between late-July of 1994 and the first half of a Phase One session in 1995, but in any event not to be completed until after Phase Three.

C.8.3 By letter of March 25, the student detailed in full the relevant legislative provisions and outlined the student's own circumstances. Although the student's circumstances are sympathetic, the student does not have any background in the practice of law to support the student being excused from completing Phase One before Phase Three. The letter did refer, however, to related experience at law school.

C.8.4 One of the reasons for the student's request is that the student's overseas graduate school will not allow the student to sit the final examinations either early or in Ontario on the appointed dates (July 4, 5, 12 and 13, 1994). Those dates conflict with Phase One. The student indicates that deferral of the graduate examinations until a subsequent date is not permitted, and requests that the Law Society alter its prescribed requirement that Phase One be completed before Phase Three.

C.8.5 Following the decision of the Legal Education Committee, the Director advised the student by letter of April 18, 1994 of the decision, and informed the student that a place would be available in Phase One 1994 from June 8 to June 30 (session two of Phase One) and on the waiting list for May 9 to June 3 (session one of Phase One) if the student could work out an accommodation with the graduate school, or with the court where the student intends to article. The Director also advised the student that the Law Society would be willing to administer the graduate school examinations at any of its premises if such arrangements could be made by the student with the graduate school.

Friday, 27th May, 1994

- C.8.6 The Legal Education Committee, on reconsidering the student's request, decided to grant the request.

ALL OF WHICH is respectfully submitted

DATED this 27th day of May, 1994

P. Peters
Chair

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

- Item A.-A.2.1 - Requirements for Standing Phase Three 1994: 36th Bar Admission Course. (pages 1 - 8)
- Item A.-A.3.3 - Interim Guidelines for 1994 Articling Interviews. (pages 9 - 13)
- Item C.-C.5.1 - Report on courses by Brenda Duncan, Director of Continuing Legal Education. (pages 14 - 16)

Item A.-A.1 re: Supplementary Proposal re: Financial Assistance to Bar Admission Course Students was deferred.

ITEM A.-A.1 OF THE REPORT WAS DEFERRED

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ORDERS

The following Orders were filed with Convocation.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Paul Hubert Watson, of the Regional Municipality of Carleton-Ottawa, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 21st day of January, 1994, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

Friday, 27th May, 1994

CONVOCATION HEREBY ORDERS that Paul Hubert Watson be granted permission to resign.

DATED this 24th day of March, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Roger Edgar Bellefeuille, of the Town of Alexandria, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of March, 1994, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Roger Edgar Bellefeuille be suspended for a period of 30 days definite and indefinitely thereafter until filings are done and pay costs in the amount of \$500.00.

DATED this 21st day of April, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

Friday, 27th May, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Norman Edward Joseph Roy, of the City of Oakville, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of January, 1994, in the presence of Counsel for the Society, neither the Solicitor nor counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct, and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Norman Edward Joseph Roy be suspended for a period of one month and pay costs in the amount of \$1,200.00. Commencing on the termination of the date of the suspension, the Solicitor is to file monthly trust comparisons for a period of eighteen months.

DATED this 24th day of March, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 20th day of December, 1993, in the presence of Counsel for the Society, neither the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

Friday, 27th May, 1994

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

DATED this 24th day of March, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Grant Edward Rayner, of the City of Hamilton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 14th day of February, 1994, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Grant Edward Rayner be suspended for a period of one month definite and indefinitely thereafter until his books and records are brought up to date and that he pay costs in the amount of \$1,000.00.

DATED this 24th day of March, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

Friday, 27th May, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Norman George Matusiak, of the City of Etobicoke, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of March, 1994, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Norman Gerald Matusiak be reprimanded in Convocation and pay costs in the amount of \$750.00.

DATED this 21st day of April, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 18th day of March, 1994, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

Friday, 27th May, 1994

CONVOCATION HEREBY ORDERS that David Warga be suspended for a period of three months, such suspension to commence on the 11th day of June, 1994.

DATED this 21st day of April, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 31st day of January, 1994, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that William Edward Horman be suspended from the practice of law for a period of six months, and that such suspension continue until his filings for the years ending January 31, 1991 and January 31, 1992 have been properly completed. Convocation further orders that the Solicitor be prohibited from operating a trust account for three years and if after the three year period the Solicitor has a trust account, he be subject to co-signing controls for a further two year period.

DATED this 24th day of March, 1994

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

Friday, 27th May, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Byron Dean Boughner, of the City of Windsor, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 9th day of March, 1994, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of conduct unbecoming and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Byron Dean Boughner be granted permission to resign.

DATED this 21st day of April, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 24th day of January, 1994, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct, and having heard Counsel aforesaid;

Friday, 27th May, 1994

CONVOCATION HEREBY ORDERS that Michael James Taylor be suspended for a period of two months.

DATED this 21st day of April, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 13th day of December, 1993, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Ted Roland Laan be suspended for a period of two months, such suspension to commence the 1st day of June, 1994.

DATED this 24th day of March, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

Friday, 27th May, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of January, 1994, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Mario Zammit be granted permission to resign.

DATED this 24th day of March, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Anthony Morris Butler, of the City of Ottawa, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 21st day of February, 1994, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

Friday, 27th May, 1994

CONVOCATION HEREBY ORDERS that Anthony Morris Butler be reprimanded in Convocation and that he pay costs in the amount of \$500.00.

DATED this 21st day of April, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 7th day of February, 1994, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that Paul Magnus Feldman be reprimanded in Convocation and pay costs in the amount of \$1,000.00.

DATED this 24th day of March, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

Friday, 27th May, 1994

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF George Clegg, of
the City of Orillia, a Barrister and
Solicitor (hereinafter referred to as
"the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 9th day of February, 1994, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that George Clegg be suspended for a period of one month, such suspension to commence the 4th day of June, 1994 and pay costs in the amount of \$4,000.00.

DATED this 21st day of April, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of December, 1993, in the presence of Counsel for the Society, and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

Friday, 27th May, 1994

CONVOCATION HEREBY ORDERS that Gabriele Monika Hauser be suspended for a period of one month, such suspension to commence the 1st day of May, 1994.

DATED this 21st day of April, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Timothy John Lutes, of the City of Orillia;

O R D E R

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

CONVOCATION HEREBY ORDERS that the said Timothy John Lutes be readmitted to the practice of law in Ontario, on the following conditions:

- a) that he bring into good standing all of his outstanding filings and accounts owing to the Law Society;
- b) that he take a course from the Law Society with respect to opening a small practice of law;
- c) that his first two years of practice be under the supervision and in association with a criminal lawyer with at least ten years experience;
- d) that the applicant restrict his practice to criminal law and quasi-criminal law for the first two years of his practice after readmission;

Friday, 27th May, 1994

- e) that the applicant continue his present therapy until the Law Society is provided with satisfactory evidence that such therapy is no longer required and that in any event at the end of the solicitor's first two years of practice he provide the Law Society with an up-to-date report from his therapist that he is fit to continue practising law.

DATED this 24th day of March, 1994.

P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Raymond Arthur Niejadlik, of the City of Toronto;

O R D E R

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

CONVOCATION HEREBY ORDERS that the said Raymond Arthur Niejadlik be readmitted to the practice of law in Ontario, on the following conditions:

- a) that he complete successfully either the Bar Admission exams or the Transfer exams, or engage in the usual one-year period of articling. That the applicant determine which of these three alternatives best suits his needs;
- b) that he practise initially for a period of two years under supervision. That a plan of supervision be filed with the Society and be subject to the approval of the Society acting through the Secretary.

DATED this 24th day of March, 1994.

"P. Lamek"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

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Friday, 27th May, 1994

CONVOCATION ROSE AT 4:25 P.M.

Confirmed in Convocation this day of , 1994.

Treasurer