

MINUTES OF REGULAR CONVOCATION

26th May 1989  
9:30 a.m.

PRESENT:

The Treasurer, Mr. L. K. Ferrier, Mr. Bastedo, Ms. Bellamy, Ms. Callwood, Messrs. Carey, Carter, Cass, Cullity, Doran, Farquharson, Ferguson, and Furlong, Mrs. Graham, Messrs. Ground, Hickey, and Howie, Ms. Kiteley, Messrs. Lamek, Lamont, and Lawrence, Mrs. Legge, Messrs. Levy, and Lyons, Mrs. MacLeod, Messrs. Manes, McKinnon, Murphy, Noble, O'Brien, O'Connor, and Pepper, Ms. Peters, Messrs. Rock, Ruby, Somerville, Spence, Strosberg, Topp and Wardlaw, Mrs. Weaver, and Mr. Yachetti.

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The Secretary reported that one nomination had been received for the position of Treasurer. It was moved by Mr. Rock, seconded by Lamek, that Mr. Lee K. Ferrier, Q.C., be nominated for the office of Treasurer of the Law Society of Upper Canada.

Carried

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The Treasurer presented the report of the Nominating Committee for the Law Society Medal recommending that the Law Society Medal be awarded to A. Alan Borovoy, Mary Anne Eberts, Phillip Barry Chaytor Pepper, Stanley Elmer Fennell and John Bruce Dunlop.

It was moved by Mr. Spence seconded by Mr. O'Brien that the report of the Nominating Committee be approved and that the Law Society Medal be awarded to those named in the report.

Carried

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"OPEN CONVOCATION"

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MOTION REGARDING REGULATION 533

It was moved by Mrs. MacLeod, seconded by Mr. Hickey that Regulation 573 of Revised Regulations of Ontario, 1980, made under the Law Society Act, be amended by striking out "Any person being a Canadian citizen and of good character, and who is" in first and second lines and inserting in lieu thereof "A person who is a Canadian citizen or a permanent resident of Canada, who is of good character and who is". This Regulation will come into force on the 1st day of July, 1989.

Carried

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FINANCE COMMITTEE

Mr. J. D. Ground, Chair, presented the Report of the Finance Committee of its meeting on Thursday, the 11th May, 1989.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th of May 1989 at three o'clock in the afternoon, the following members being present: Messrs. Ground (Chair), Guthrie, Howie, Furlong, Lamont, Topp, Wardlaw and Mrs. Weaver.



A.  
POLICY

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12. RULE 50 - RELIEF OF FEES FOR RETIRED MEMBERS

The Committee was asked to recommend a revised policy on retired status for members of the Law Society.

A memorandum from the Secretary was distributed to the Committee.

The Committee recommended that Rule 50 be amended to provide the age for retirement status in the Society to be 65.

B.  
ADMINISTRATION

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1. BUDGET AND ANNUAL FEES 1989/90

The Committee had before it the final draft budget for the fiscal year 1989/90. Two memoranda from the Director was before the meeting; one dated May 3rd 1989 outlining responses to queries arising out of the special committee meeting of March 31st 1989 and a second dated May 4th 1989 summarizing further changes to the budget since that date and reconciling alternative amounts for the Annual Fees.

The Committee considered two fee structures as follows:

- (a) For the three classes of members and retaining the second category at the 75% level established last year:

(i)	Full Fee	\$894
(ii)	75% Fee	\$671
(iii)	25% Fee	\$224

- (b) For the three classes of members and reducing the second category of fees to 50% of the full fee:

(i)	Full Fee	\$914
(ii)	50% Fee	\$457
(iii)	25% Fee	\$229

The Committee recommended that for this year the fees be set with the second category at 75% of full fees.

Note: See motion page 117

2. FINANCIAL REPORT

The Director presented the highlights memorandum for the three Law Society Funds together with supporting financial statements for the ten months ended April 30th 1989.

Approved

3. APPOINTMENT OF SUB-COMMITTEE RE APPLICATION OF SURPLUSES

The Chair appointed the following to be Finance Committee members on a Joint Sub-committee of Finance and Compensation Fund Committees on Application of Surpluses: Messrs. Ground, Topp and Wardlaw.

4. ONTARIO LEGAL AID PLAN - LAW SOCIETY 1988/89 CONTRIBUTION

The Deputy Director, Finance of the Ontario Legal Aid Plan has requested the balance of \$83,958 outstanding on the assessable administrative expenses in accordance with section 91(a) of the Regulations of the Legal Aid Act.

The Committee was asked to approve payment of this amount.

Approved

5. ADVOCATES' SOCIETY INSTITUTE FINANCIAL ASSISTANCE - \$34,000

In April the Legal Education Committee recommended and Convocation approved an advance in the amount of \$34,000 to the Advocates' Society Institute.

This loan will be used to reimburse the Advocates Society for one half of the \$68,000 advance which that Society advanced to the Advocates' Society Institute to deal with costs associated with the start up. It is the Education Committee's position that through this the Law Society would be demonstrating its equal obligation as a partner with the Advocates Society.

The loan would be repaid out of the Advocates Society Institute net income at the end of their fiscal year. If the cash position of the Institute is such that less than the full amount of the loan can be repaid, it is planned to repay the loan over an extended period of time.

Approved

6. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 7 members who have not complied with the requirements respecting annual filing and who have not paid the late filing fee.

In all 7 cases all or part of the late filing fee has been outstanding four months or more. The 7 members owe \$3,145.00 of which \$645.00 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 7 members be suspended on May 26th 1989 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: See motion page <sup>116</sup>.

7. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

There are 240 members who have neither paid their Errors and Omissions Insurance levy nor filed a claim of exemption for the period January to June 1989. Three notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on May 26th 1989.

Approved

Note: See motion page <sup>117</sup>.

8. CHANGES OF NAMES

The following members have requested that their names be changed on the Rolls of the Society and have submitted the required documentation:

<u>From</u>	<u>To</u>
Michael Alan Izumi Nash	Michael Alan Nash (deletion of wife's surname)
Sheila Paterson Brown	Sheila Paterson <u>Marcantonio</u> (married name)

The petitions submitted by the members are in order and the Committee was asked to recommend that the changes be entered in the Rolls.

Approved

9. MEMBERSHIP UNDER RULE 50 - RETIRED MEMBERS

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

David Clarke Ross	Toronto
George Robert Barry Hodgson	Don Mills
*James Archibald Clare, Q.C.	Midhurst

\* See also Membership Restored

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

Approved

10. MEMBERSHIP RESTORED

(a) The Honourable John Roderick Barr gave notice under section 31 of The Law Society Act that he had resigned as a Judge of the Supreme Court of Ontario and wished to be restored to the Rolls of the Law Society. Accordingly, his membership was restored effective March 20th 1989.

(b) \*The Honourable James Archibald Clare gave notice under section 31 of The Law Society Act that he had retired as a Judge of the District Court of Ontario and wished to be restored to the Rolls of the Law Society. Accordingly, his membership was restored effective April 29th 1989.

\*See also Membership under Rule 50

Approved

C.  
INFORMATION

1. ROLLS AND RECORDS

(a) Deaths

The following members have died:

Stuart Hamilton Irvine	Called June 24th 1954
Toronto	Died May 28th 1988

Arthur Mahony Lebel Dorchester (Life Member)	Called May 19th 1921 Died November 16th 1988
Raymond Frederick Barnard England	Called April 10th 1984 Died December 30th 1988
Steven Otto St. Thomas	Called June 19th 1952 Died January 16th 1989
Frank Reginald Gee Chatham	Called June 20th 1940 Died February 12th 1989
William James Law Montreal	Called September 20th 1957 Died February 24th 1989
Robert Henry Smithrim Trenton	Called September 18th 1941 Died March 17th 1989
Alfred H. Stevenson Burlington (Life Member)	Called October 18th 1928 Died March 22nd 1989
John Ladislaus Jaskula Hamilton	Called June 27th 1957 Died April 7th 1989

Noted

(b) Permission to Resign

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

Herbert Gordon Mylks Odessa	Called March 21st 1969 Permitted to Resign - Convocation April 27th 1989
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Noted

(c) Membership in Abeyance

Upon his appointment to the office shown below the membership of the following member has been placed in abeyance under section 31 of The Law Society Act:

Casimir Nauert Herold Toronto	Called March 21st 1969 Appointed Judge, Regional Municipality of York February 21st 1989
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Noted

2. LEGAL MEETINGS AND ENTERTAINMENT

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

May 2nd, 1989	Law Clerks Dinner Barristers' Lounge/Convocation Hall
May 17th, 1989	CBAO - Research and Policy Section Small Dining Room
May 31st, 1989	Ministry of Consumer and Commercial Relations Barristers' Lounge

26 May 1989

June 1st, 1989	Worker's Compensation Appeals Tribunal Barristers' Lounge/Convocation Hall
June 7th, 1989	CBAO - Administrative Law Section Small Dining Room
June 16th, 1989	Supreme Court of Ontario Judges Dinner Convocation Hall
July 14th, 1989	Canadian Institute for the Administration of Justice Barristers' Lounge/Convocation Hall
October 17th, 1989	York Law Association Barristers' Lounge/Convocation Hall
November 16th, 1989	Lawyers' Club Barristers' Lounge/Convocation Hall
November 21st, 1989	York Law Association Barristers' Lounge/Convocation Hall

Noted

ALL OF WHICH is respectfully submitted

DATED this 26th day of May 1989

"J. D. Ground"  
Chair

It was moved by Mr. Carey, seconded by Mr. McKinnon, that any reference to age in Rule 50 be deleted.

Lost

Attached to original Report in Convocation File, copy of:

- A-1 - Memorandum dated 9th May 1989 from Richard F. Tinsley to Finance Committee (marked A.1)
- B-1 - Memorandum dated May 4th 1989 to Chairman and Members of Finance Committee from David Crack Re: Final Budget and recommendation for Annual Fees for the fiscal year ended June 30th 1990 and Memorandum dated May 3rd 1989 to Chairman and Members of Finance Committee from David Crack Re: Budget for the year ended June 30th 1990 - Questions raised at Meeting of March 31st 1989 (marked B.1)

THE REPORT WITH THE EXCEPTIONS OF ITEMS B(1)(6) AND (7) WAS ADOPTED

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

It was moved by Mr. Ground, 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 the 26th of May, 1989 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

LIST A

MEMBERS IN DEFAULT IN ANNUAL FILING AND  
WHO HAVE NOT PAID THE LATE FILING PENALTY

<u>Name</u>	<u>Location</u>	<u>Late Filing Penalty Position as at May 26, 1989</u>	
		<u>Outstanding Over 4 Months</u>	<u>Total Owing</u>
Berry, Colin Michael	Toronto	\$105.00	\$600.00

LIST B

MEMBERS WHO HAVE FILED BUT HAVE  
FAILED TO PAY THE LATE FILING PENALTY

<u>Name</u>	<u>Location</u>	<u>Late Filing Penalty Position as at May 26, 1989</u>	
		<u>Outstanding Over 4 Months</u>	<u>Total Owing</u>
Cote, Louis Eugene	Toronto	\$105.00	\$130.00
Cottrell, Guy Murison	Windsor	\$105.00	\$600.00

Carried

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MOTION TO SUSPEND: FAILURE TO PAY ERRORS AND OMISSIONS LEVY

It was moved by Mr. Ground, seconded by Mr. Wardlaw, That the rights and privileges of each member who has neither paid the Errors and Omissions Insurance levy which was due on 1st of January, 1989 nor filed an approved application for exemption from coverage and whose name appears in the Convocation file, be suspended from the 26th of May, 1989 for one year and from year to year thereafter or until an application for exemption has been approved or the necessary levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

MOTION RE ANNUAL FEES

It was moved by Mr. Ground, seconded by Mr. Wardlaw, That the Annual Fees for the financial year July 1st, 1989 to June 30th, 1990 for each of the three new classes of members be as follows:

Category 1	\$894.00
Less 25% reduction for:	
Category 2	\$671.00
Less 75% reduction for:	
Category 3	\$224.00

Carried

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SPECIAL COMMITTEE ON FRENCH LANGUAGE SERVICES

Mr. C. D. McKinnon, Chair, presented the Report of the Special Committee on French Language Services dated 26th May 1989.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON FRENCH LANGUAGE SERVICES begs leave to report:

Your Committee was requested in the month of February to prepare a response to the Attorney General's Consultation Paper on the use of French Language in the Courts. A copy of the Attorney General's letter to the Treasurer and the Consultation Paper is attached as Schedule "A".

Your Committee is composed of: Colin D. McKinnon (Chair), Denise Bellamy (Vice-Chair), Pierre Genest, Thomas Bastedo, Hugh Guthrie, Patricia Peters, Harvey Strosberg, and Robert Topp. Staff persons include Donald Crosbie, Richard Tinsley, Margaret Angevine, Alan Treleaven, Ajit John, and Holly Harris. John Richard represents L'AJEFO. Sarah Thomson is the Committee Secretary.

Your Committee met on two occasions to consider the issues raised in the Consultation Paper, and has chosen to consult broadly within the profession in the hope that a thorough and considered reply may be given to the Attorney General by the Law Society of Upper Canada on the issues addressed in the Paper. Staff persons did not participate in the discussion respecting this issue, nor vote.

The two specific issues raised by the Attorney General are stated by him as follows:

"1. Should the Courts of Justice Act, 1984 be amended to provide for the filing of pleadings and other pre-trial documents in civil proceedings in the Supreme and District Courts in the French language, without the consent of the other parties and without any obligation to provide a translation of the documents into English?"

"2. Should the Courts of Justice Act, 1984 be amended to provide for the hearing of motions and other pre-trial hearings before a bilingual judge or officer, without the consent of the other parties and without an order from the Court?"

Your Committee has noted that the governing Council of the Canadian Bar Association - Ontario Branch unanimously answered both questions in the affirmative.

While the Attorney General was seeking a reply from the Law Society of Upper Canada by March 15, 1989, that time limit was extended to the end of May.

Sections 135 and 136 of the Courts of Justice Act, 1984 are attached as Schedule "B".

Your Committee has noted that Sections 135(2) and 136 of the Act significantly limit the rights set out in Section 135(1) of the Act.

Section 135(1) states that: "The official languages of the Courts of Ontario are English and French". As outlined in the Consultation Paper, Sub-Section 136(4)(e) severely restricts the right outlined in Section 135 by providing that pleadings and other documents filed in proceedings in the Supreme Court Trial Division and the District Court of Ontario may be in the French language only "with the consent of all the parties". The effect of this provision is to require the use of the English language in pleadings in cases where a French trial will occur. Documents filed in the French language "shall" be accompanied by a certified translation into English (S. 135(2)(b)). Your Committee views this situation as unfair and believes that it should dispense with the requirement of consent.

The Committee had greater difficulty with the Attorney General's suggestion that there be no obligation upon the Government to provide a translation of documents into English where a French speaking litigant pleads in the French language. Many individuals consulted firmly believed that the Government should be under an obligation to provide a translation in circumstances where a French speaking litigant sues a unilingual English litigant. On this point, however, it was noted that where an English litigant sues a unilingual French litigant in Ontario, there is no requirement to provide a translation of the English document into French.

Attractive as the proposition to require government funded translations of French documents first appears, it nonetheless directly contradicts the principle enunciated in Section 135 of the Courts of Justice Act and would only be reasonable if ancillary rights were afforded to French speaking litigants. This would prove a burdensome, unnecessary and costly rule.

Your Committee noted that in Federal matters the suggestions for reform presented by the Attorney General have long been the law. Indeed, in an Ontario case, a French speaking litigant may file documents and make argument in the French language in the Supreme Court of Canada or the Federal Court of Canada. Translations of documents are at the expense of the party.

Those individuals consulted practising before Federal Regulatory Agencies and Courts have found expeditious ways of ensuring that they understand pleadings and documents filed in the other language. Your Committee also noted that in the vast majority of the designated areas originally identified in the Courts of Justice Act, most firms have bilingual capacity. (See S. 136(1)).

Your Committee is confident that parties will develop expeditious ways of ensuring that they understand what they must, without resort to translations where unnecessary. As to retaining the services of translators, this should be a cost recoverable like any other party and party costs relating to the retaining of experts, and be at risk just like any other item of costs.

Your Committee believes that Sub-Section 136(4)(g) provides ample protection to a party seeking a court provided translation and also protects against abuse. It reads as follows:

"136(4)(g) on the request of a party or counsel who speaks the English or French language, but not both, the court shall provide,

- (i) interpretation of anything given orally in the other language under clause (a), (b), (c) or (d), and
- (ii) translation of documents in the other language under clause (a), (d) or (f), unless the court considers that the ends of justice do not require the expense of translation,

into the language spoken by the party or counsel. R.S.O. 1980, c. 233, s. 130(6,7)."



Your Committee believes that any fears generated by the removal of Sub-Section 136(4)(e) is offset by the provisions of Section 136(4)(g). Your Committee is of the view, however, that Sub-Section 136(4)(g)(ii) is too restrictive and should be amended to change the words "the court shall provide translation of documents..." to such words as "the court on motion may order the translation of documents in proper cases", thus giving jurisdiction respecting the provision of translations to judges, who may then determine the requirement on the merits of each case. Sub-Section 136(4)(g)(i) should remain unchanged.

Your Committee is mindful that it is dealing with an issue relating to the rights of litigants, not lawyers, and believes that these amendments, if made, will have little effect on the vast majority of litigants and lawyers in Ontario, but would be restricted to certain areas where the majority of French speaking Ontarians reside.

As is pointed out in the Attorney General's Consultation Paper, and repeated in the CBAO submission, a copy of which is attached hereto as Schedule "C", Section 133 of the Constitution Act, 1867 has always provided that pleadings may be filed in English or French in the Courts of the Province of Quebec, without any obligation to provide a translation of the documents into French or English. Similarly there are no restrictions or limitations on the rights to file pleadings and other pre-trial documents in English or French in the courts of the Province of New Brunswick or in the courts of the Province of Manitoba, notwithstanding the fact that the Francophone populations of these two provinces is much smaller than the Francophone population of Ontario. Moreover, legislative provisions similar to the proposed amendments to the Courts of Justice Act will soon be adopted in the Province of Saskatchewan, pursuant to legislation passed in 1988.

Your Committee notes the preamble of the French Language Services Act, 1986 which reads as follows:

"Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this Act;"

The Committee also notes that additional bilingual judges and officials are being appointed and hired by the Ministry of the Attorney General. It is believed that the proposed amendments are supportive of the spirit of the preamble of the French Language Services Act, 1986.

Your Committee believes that the same logic is compelling in answering recommendation no. 2. At present, pre-trial proceedings and motions may only be brought in the French language where consent or a Court order is obtained. This restriction on the right to use French cannot be supported by your Committee and the Government should be encouraged to extend the right to allow pre-trial motions and proceedings to be argued in the language of choice, and that Sub-Section 136(4)(d) should be amended accordingly. In this regard, the approach taken in the original amendments to the Judicature Act of implementing the policy in "designated areas" would be the preferred approach, so as to ensure access to bilingual judges and officials for pre-trial motions and proceedings.

Your Committee believes that, as a result of the government proposals for reform, the Law Society of Upper Canada has a special responsibility to French speaking litigants in the Province of Ontario.

For these reasons, your Committee supports the initiatives for reform set out in the Attorney General's Consultation Paper, and subject to the comments in this report, answers both questions posed in the Consultation Paper in the affirmative.

ALL OF WHICH is respectfully submitted

DATED this 26th day of May, 1989

"Colin D. MacKinnon"  
Chair

It was moved by Mr. Cass seconded by Mrs. MacLeod that the answers to 1 and 2 be in the affirmative provided that the party so moving be a francophone.

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THE REPORT WAS ADOPTED

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Attached to original Report in Convocation File, copy of:

- Letter dated January 23, 1989 from Ian Scott, Attorney General to Mr. Lee Ferrier with Ministry of the Attorney General Consultation Paper, Use of the French Language in the Courts  
(Schedule "A")
- Sections 135 and 136 of the Courts of Justice Act 1984  
(Schedule "B")
- Ministry of the Attorney General, Consultation Paper, Use of the French Language in the Courts, Draft Recommendations from the CBAO Official Languages Committee to CBAO Council dated March 31, 1989  
(Schedule "C")

THE REPORT WAS ADOPTED

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#### LEGAL EDUCATION

Mr. A. M. Rock, Chair, presented the Report of the Legal Education Committee of its meeting on Thursday, 11th May, 1989.

#### TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

#### IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on May 11th, 1989, the following members being present: Messrs. Rock, (Chair), Lamont, (Vice-Chair), Bastedo, Epstein, Kemp-Welch, Manes, Wardlaw, Yachetti, Mrs. Legge, Mrs. King MacLeod, Dean MacPherson, Andrew Foti, Vice-Chair, Bar Admission Advisory Committee.

C.

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1. CONTINUING LEGAL EDUCATION - COMPLETED PROGRAMS

The Committee reviewed the summary of evaluations of past continuing legal education programs.

2. SUB-COMMITTEE ON BAR ADMISSION COURSE REFORM

The Acting Director of Education presented a summary of Bar Admission Course Reform activity for the months of December, 1988 through April, 1989.

(Pages 1 - 4)

3. SUB-COMMITTEE ON ARTICLING REFORM

The Chair of the Articling Reform Sub-committee, Mr. Epstein, gave a verbal report of the Sub-committee's activities. The Sub-committee is preparing a report that will be presented in the fall.

ALL OF WHICH is respectfully submitted

DATED this 11th day of May, 1989

"Allan Rock"  
Chair

Attached to original Report in Convocation File, copy of:

C-Item 3 - BAC Reform Activity December, 1988 to April 30, 1989

(Pages 1 - 4)

THE REPORT WAS ADOPTED

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DISCIPLINE POLICY

Mr. P.S.A. Lamek, Chair, presented the Report of the Discipline Policy Committee of its meeting on Thursday, 11th May, 1989.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE COMMITTEE begs leave to report:

Your Committee met Thursday, May 11th, 1989 at one thirty in the afternoon, the following members being present: Mr. Lamek (Chair), The Honourable Allan Lawrence, Messrs. Cary, Cass, Cullity, Lerner, O'Connor, Mrs. Graham. Also in attendance was Stuart Thom, Q.C.

B.

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ADMINISTRATION

1B. REPORT ON MORTGAGE PORTFOLIOS

Mr. Thomas Stephany of the Society's Audit Department has prepared a summary, attached and numbered as B-1 to B-6,

26 May 1989

respecting mortgage portfolios managed by members. The Audit Department recommends that audit procedures should include the following:

1. have title searches conducted of the mortgaged premises on a test basis;
2. have current appraisals made of the mortgaged premises on a test basis;
3. send positive confirmation letters to all investors of record as at the last day of the period being audited.

Your Committee recommends that the filing of Forms 4 and 5 be made compulsory and that necessary changes to the Regulations be referred to the Legislation and Rules Committee.

ALL OF WHICH is respectfully submitted

DATED this 26th of May, 1989

"P.S.A. Lamek"  
Chair

Attached to original Report in Convocation File, copy of:

B-Item 1B - Inter-Office Memorandum dated April 5th 1989 from Thomas Stephany to Ajit John Re: Mortgages in Trust  
(marked B-1 - B-6)

THE REPORT WAS CARRIED SUBJECT TO THE PROVISIO THAT THE CHAIR OF DISCIPLINE IS TO CONSULT WITH MR. WARDLAW REGARDING THE FORMULATION OF WORDING FOR CONFIRMATION LETTERS TO SOLICITORS' CLIENTS REGARDING MORTGAGE INVESTMENTS.

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#### ORDERS

Mr. Lamek presented ten Orders of Convocation to be recorded in the Minutes of Convocation.

Re: JAMES WILLIAM CHRISTIE, SARNIA

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

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

#### O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 11th day of January, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

26 May 1989

CONVOCATION HEREBY ORDERS that the said James William Christie be granted permission to resign his membership in The Law Society of Upper Canada.

DATED this 22nd day of February, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

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Re: BENJAMIN WALTER DOLISZNY

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Benjamin Walter Doliszny, of the City of St. Catherines, 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, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the said Benjamin Walter Doliszny be reprimanded in Convocation. Convocation also accepts the Solicitor's Undertaking to rectify his procedures. Upper Canada.

DATED this 22nd day of February, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

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26 May 1989

Re: RONALD EDWARD FOLKES

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Ronald Edward Folkes, of the City of Brampton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 20th day of October, 1988, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the rights and privileges of the said Ronald Edward Folkes be suspended for a period of three months from the date of this Order, and that he pay the costs incurred by the Society in the course of its investigation in the amount of \$1,000.

DATED this 22nd day of February, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

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Re: NANCY GRACE KOSTER

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Nancy Grace Koster, of the City of Newmarket, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of The Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 6th day of February, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the said Nancy Grace Koster be reprimanded in Convocation and that she undertake not to take on new matters of litigation and family law.

DATED this 22nd day of February, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

.....

26 May 1989

Re: PETER KRAWEC

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Peter Krawec,  
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 18th day of January, 1989, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

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

DATED this 22nd day of February, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

.....

Re: SCOTT THOMAS MILLOY

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Scott Thomas Milloy,  
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 29th day of December, 1988, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor, wherein the Solicitor was found guilty of professional misconduct and having heard Counsel aforesaid;

CONVOCATION HEREBY ORDERS that the rights and privileges of the said Scott Thomas Milloy be suspended for a period of three months from the date of this Order.

DATED this 22nd day of February, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

.....

26 May 1989

Re: ALBIN ROBERT ROGALA

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Albin Robert Rogala,  
of the City of Stoney Creek, 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, 1989, in the presence of Counsel for the Society, the Solicitor and his Counsel having indicated that they would not to appear;

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

DATED this 22nd day of February, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

.....

Re: MICHAEL ELLIOTT CHODOS

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Michael Elliott Chodos, 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 3rd day of April, 1989, in the presence of Counsel for the Society and the Solicitor wherein the Solicitor was found guilty of professional misconduct and having heard Counsel and the Solicitor aforesaid;

CONVOCATION HEREBY ORDERS that the said Michael Elliott Chodos be Reprimanded in Convocation.

DATED this 27th day of April, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

.....



Re: ANDREW NICHOLAS KUTNEY

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Andrew Nicholas Kutney, 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 6th day of April, 1989, in the presence of Counsel for the Society and the Solicitor wherein the Solicitor was found guilty of professional misconduct and having heard Counsel and the Solicitor aforesaid;

CONVOCATION HEREBY ORDERS that the said Andrew Nicholas Kutney be Reprimanded in Convocation upon his giving to the said Society an Undertaking to the following effect:

(a) that he will not practice, other than as an employed solicitor or as a partner in a law firm, and that if he is a partner in a law firm, the books and records of the law firm will be the responsibility of the other solicitor or solicitors of the law firm;

(b) that he pay the costs incurred by the said Society in the investigation of this matter in the amount of \$1,500.00 within six months of the date of this Order.

DATED this 27nd day of April, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

.....

Re: HERBERT GORDON MYLKS

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Herbert Gordon Mylks, of the County of Lennox and Addington, 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 27th day of March, 1989, in the presence of Counsel for the Society and the Solicitor wherein the Solicitor was found guilty of professional misconduct and having heard Counsel and the Solicitor aforesaid;

CONVOCATION HEREBY ORDERS that the said Herbert Gordon Mylks be permitted to resign his membership in The Law Society of Upper Canada.

DATED this 27nd day of April, 1989.

"Lee K. Ferrier"  
Treasurer

(SEAL - The Law Society of Upper Canada)

"Richard F. Tinsley"  
Secretary

Filed

.....

LEGISLATION AND RULES

Mr. C. B. Noble, Chair, presented the Report of the Legislation and Rules Committee of its meeting on Thursday, 11th May, 1989.

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 two occasions: Thursday, the 11th day of May, 1989, when Messrs. Cullity (Acting Chair), Lerner and Cass were present, and on Friday, the 26th day of May, 1989, when the following members were present: Messrs. Noble (Chair), Cass, Cullity and Strauss. Mr. Donald Crosbie, the Under Treasurer, was in attendance on both occasions.

A.  
POLICY

1. Proposed Amendments to the Law Society Act and Regulation

Members of the Committee have been reviewing a detailed report on amendments to the Act and Regulation 573 proposed by the Law Society since 1977. In the midst of this process, the Law Society has been asked by the Attorney General for those proposed amendments that we considered to be non-controversial for incorporation into a bill amending the Law Society Act to be brought forward and passed by June of this year. In addition, the amendments to s.12 of the Act, which were approved by Convocation in February 1989 (as a result of the Report of the Special Committee on Voting Procedures and Non-Bencher Appointments), will be included in the bill.

The Committee Chair, Bruce Noble, suggested a number of amendments and these have been discussed by staff with Douglas Ewart of the Ministry of the Attorney General.

The following amendments have been identified as being non-controversial:

1. Section 24

To repeal section 24 and substitute a new section to provide for a quorum in Convocation of ten benchers for all purposes in place of the present requirement of fifteen for discipline and ten for other business.

2. Section 30

To repeal subsection 30(2) and substitute a new subsection to provide that after hearing the recommendation of the Admissions Committee, Convocation may re-admit a member who has resigned upon such terms and conditions as it considers proper.

3. Section 31

(i) To amend section 31 to provide that the memberships of those members of the Ontario Bar appointed to judicial office outside the province would be in abeyance.

(ii) To amend section 31 to give Convocation the discretion to refuse to restore the membership of a judge who is removed from office or resigns in circumstances which might have resulted in removal.

It is recommended that the section also provide that no restoration of membership be refused until the judge has been given an opportunity to appear before the Admissions Committee.

4. Section 50

(i) To amend s.50(2) to increase the maximum fine for unauthorized practice from \$1,000 to \$10,000.

(ii) To amend s.50 by adding a new subsection to provide for a limitation period of 24 months, during which charges of unauthorized practice could be laid.

Note: The amendment to s.50(3) suggested by the Unauthorized Practice Committee and approved, as amended, by Convocation this morning was considered by the Committee and approved, in the following form, to be submitted to the Attorney General:

(3) The Society may, at any time, apply to a judge for an order enjoining a person from acting as a barrister or solicitor, practising as a barrister or solicitor, or holding himself out as or representing himself to be a barrister or solicitor and the judge may make the order and it may be enforced in the same manner as any other order or judgment.

5. Section 62

To amend subsection 62(1) by adding a new paragraph - 13a - setting out Convocation's authority to make rules providing for and prescribing the rate of interest on amounts due to the Society.

This Committee recommends that Convocation approve these amendments to the Law Society Act for submission to the Attorney General.

ALL OF WHICH is respectfully submitted

DATED this 26th day of May, 1989

Chair

THE REPORT WAS ADOPTED

.....

PROFESSIONAL CONDUCT

Mr. M. Hickey presented the Report of the Professional Conduct Committee of its Report on Thursday, 11th May, 1989.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 11th day of May, 1989 at three o'clock in the afternoon, the following members being present: Messrs. Carter (Vice-Chair in the Chair), Carey, Hickey, Lyons, O'Connor, Topp and Mrs. Graham.

A.  
POLICY

1. REQUEST OF THE CITY SOLICITOR TO SPEAK  
TO THE PROFESSIONAL CONDUCT COMMITTEE  
ABOUT THE LOBBYISTS REGISTRATION BY-LAW

The City Solicitor, Mr. Dennis Perlin, was unable to be present at the Committee's April meeting to discuss the by-law. The Committee agreed to hear him in May.

The Law Society's counsel in this matter, Mr. George Rust-D'Eye of Weir & Foulds was present during the meeting.

At Convocation in April the Committee's decision that the Law Society intervene in the constitutional challenge to the by-law was approved. Attached is a notice to the profession that has been given out to inquiring lawyers and the media.

(numbered 1 & 2)

Mr. Perlin addressed the meeting and urged the Committee to recommend to Convocation that it reconsider its earlier position and not intervene in the constitutional challenge to the by-law. Attached to this report (numbered 3 - 8) is the text of Mr. Perlin's remarks. Mr. Perlin was accompanied by Miss Pat Foran, the Deputy City Solicitor.

The Committee discussed this matter after Mr. Perlin and Miss Foran had left and reaffirmed its earlier position.

The Committee asks Convocation to reaffirm the position taken by both the Committee and Convocation in April.

Mr. Lyons, who was present during the discussion of this item, did not vote when the issue was put.

2. REFERRAL FROM A SUB-COMMITTEE  
OF THE LEGAL AID COMMITTEE

Concern has been expressed by a Legal Aid Sub-committee because of a statement in a Court of Appeal judgment that it is acceptable for a defence counsel to be absent from a trial on certain occasions where there are a number of co-accused if such absences occur during a portion of the trial that did not affect the particular lawyer's client specifically.

The relevant passage in the Regina v. Rowbotham case reads as follows:

In our view, however, it was not necessary that her counsel be present in court every day during this very long trial to provide her with adequate legal representation. There were many points that were common to all the accused, some of whom were represented by senior and eminent defence counsel. The evidence directly admissible against Laura Kononow, as previously noted, fell within a small compass. Defence counsel, as a result of disclosure, could, with little difficulty, have ascertained the evidence directly admissible against her, as well as the nature of the overall evidence that the Crown proposed to adduce. As experienced defence counsel know, even an accused who is well able to afford counsel will, in lengthy trials involving multiple defendants, where much of the evidence does not affect him or her, frequently arrange that his or her counsel be present in court only during those parts of the trial that are critical to him or her. It is common and commendable practice for Crown counsel in cases of this kind to cooperate with defence counsel by informing him or her when evidence affecting the client will be called. We think that the trial judge, in appropriate circumstances, should supervise and enforce this salutary practice.

The critical parts of the trial requiring the presence of counsel for Laura Kononow clearly included the arraignment, the selection of the jury, the calling of the evidence directly admissible against her, the calling of the defence witnesses, the judge's charge to the jury and the jury deliberation (in order to enable counsel to make submissions with respect to questions by the jury).

Mr. Carter, on behalf of the Sub-committee, has written to the Chair of the Professional Conduct Committee suggesting that a position be taken.

In addition, the Committee was advised that a practice has arisen in long cases where some counsel absent themselves from the trial for periods of time and have counsel for a co-accused or other counsel cover for them. Our concern is that this may result in material evidence given in the absence of counsel for an accused, thus depriving the accused of a proper challenge to the evidence or an inconvenience of having the witness return for further cross-examination. In extreme cases counsel for a co-accused covering for another counsel may find himself in a situation of conflict between the two clients.

I don't want to usurp the function of the Committee, but I think that it is professional misconduct for counsel for an accused to be voluntarily absent from a trial, except when all the following criteria have been met:

1. He has the consent of the trial judge.
2. He has the consent of the client.
3. He has arranged for knowledgeable counsel, with no potential conflict with regard to the evidence to be called, to replace him.
4. He has the assurance from other counsel including the Crown that no material evidence against his client is expected to be called.
5. He has considered the above and exercised his discretion that it is accordingly not prejudicial to his client to absent himself for periods of time.

Without presuming to decide for the Committee, I think the above ruling is the proper position to take and would solve both problems for Legal Aid.

The Committee discussed the issue and concluded that the criteria put forward by Mr. Carter should govern lawyers in these circumstances.

The Committee recommends to Convocation that the profession be advised through the Proceedings of Convocation published in the Ontario Reports that counsel for a co-accused not voluntarily absent himself or herself from a trial unless the criteria set out above are complied with.

See note page 134.

3. DUTY OF THE LAWYER TO ADVISE THE CLIENT  
ABOUT LOST INTEREST IF MONEY PUT INTO  
REGULAR MIXED TRUST BANK ACCOUNT

The Chair of the Law Foundation of Ontario has asked the question about what duty a lawyer is under to explain to a client whether trust monies he receives will be deposited and the consequences of same. In order for the client to obtain interest on these monies the lawyer must place them in a separate trust bank account. Many lawyers have a practice of advising clients that they are obligated to place trust monies in their regular mixed trust bank account unless they are directed to do otherwise and that the client will not receive the interest if the money is in the regular mixed trust bank account. A copy of Mr. H. Donald Guthrie's letter is attached (numbered 9 & 10).

To date the Law Society has not passed a rule or made a statement about the lawyer's obligation in these circumstances.

The Committee recommends to Convocation that lawyers be reminded that, in special circumstances, where they are to receive in trust substantial monies from a client which are to be held for a long period of time, they inform the client he will not be entitled to any interest on this money unless the money is deposited at the client's direction in a special interest bearing trust account.

See note page 134.

C.  
INFORMATION

1. A LAWYER HAVING AS A PARTNER A NON-LAWYER  
(AND A LAWYER OFFERING INCENTIVES FOR  
PROFIT SHARING TO NON-LAWYER EMPLOYEES)

This Sub-committee has held two meetings, the second of which took place on February 8th. The Sub-committee, at the second meeting, heard the views of Professor Michael Trebilcock from the Faculty of Law, University of Toronto and Jack Quinn of Blake, Cassels and Graydon, both of whom were involved with the Professional Organizations Committee and are well known in the field of the law and economics.

A draft interim report will be circulated prior to the June meeting.

Members: Messrs. Somerville (Chair), Genest, Lyons and O'Connor.

2. SUB-COMMITTEE ON RULE 23  
(LAWYERS IN MORTGAGE TRANSACTIONS)

The Sub-committee made an interim report in October. It was decided then that no changes to our Rules of Professional Conduct should be made until the Sub-committee has had an opportunity to examine the draft Mortgage Brokers Act. The Law Society has been told by the Ministry of Financial Institutions that we would be given a copy of a draft when it is available.

26 May 1989

The Deputy Registrar under the Mortgage Brokers Act has indicated that the Ministry has put the draft legislation on the back burner for at least six months. The Law Society has been assured that a copy of the draft legislation will be sent to it when the issue has been revived.

3. SUB-COMMITTEE ON RULE 26  
(MEDICAL-LEGAL REPORTS)

The Committee decided that Rule 26 (Medical-legal Reports) ought to be reviewed and has directed that a Sub-committee composed of Messrs. Strosberg (Chair), Carey and Cooper look into the adequacy of the Rule.

A very brief meeting of the Sub-committee was held on February 17th. The Chair will be sending out some material together with an outline of the relevant issues.

4. SPECIAL COMMITTEE ON CONTINGENCY FEES

The Special Committee, which reported to Convocation last May on the basic question of whether or not contingency fees would be of value to litigants in Ontario, is preparing its second report. This report will put forward for consideration of Convocation and the Attorney General a nuts and bolts scheme as to how contingency fees could be implemented in Ontario. At this stage it does not appear that a report will be ready for consideration by Convocation until June.

A very productive meeting was held on February 27th with members of The Advocates' Society's Committee on Contingency Fees.

Members: Messrs. Outerbridge (Chair), Carter, Furlong and Howie.

5. SPECIAL COMMITTEE TO CONSIDER TITLE INSURANCE

Convocation on March 18th accepted the Professional Conduct Committee's recommendation that a Special Committee be appointed to consider the whole question of title insurance. This recommendation was prompted by a proposal from First American Title Insurance Company.

It is expected that the Treasurer will appoint a Chair sometime this month.

ALL OF WHICH is respectfully submitted

DATED this 26th day of May, 1989

"M. G. Hickey"  
Chair

Attached to original Report in Convocation File, copy of:

A-Item 1 - Memorandum notice to the profession dated April 13th, 1989

(numbered 1 & 2)

A-Item 1 - Text of Mr. Dennis Perlin, the City Solicitor, remarks addressed to the Law Society of Upper Canada, Attention: Professional Conduct Committee, Re: Submission from City Solicitor on Lobbyist Registration By-law

(numbered 3 - 8)

A-Item 3 - Letter dated March 31, 1989 from Mr. H. Donald Guthrie, Chairman, The Law Foundation of Ontario

(numbered 9 & 10)

WITH THE EXCEPTION OF ITEMS 2 AND 3 UNDER POLICY WHICH ARE TO BE BROUGHT BACK TO CONVOCATION IN JUNE, THE REPORT WAS ADOPTED.

.....

26 May 1989

CLINIC FUNDING

Mrs. H. K. MacLeod presented the Report of the Director, Legal Aid, dated May 12, 1989, with respect to Clinic Funding.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of LEGAL AID begs leave to report:

CLINIC FUNDING

The Clinic Funding Committee submitted a report to the Director recommending funding for various projects.

The Director recommends to Convocation that the report of the Clinic Funding Committee dated May 12, 1989 be adopted.

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

ALL OF WHICH is respectfully submitted

Robert L. Holden,  
Director,  
Legal Aid

May 12, 1989

ATTACHMENT:

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

The Clinic Funding Committee met on May 11, 1989. Present were: Philip Epstein, Q.C., Chairman, Helen King MacLeod, Thea Herman.

A. DECISIONS

1. Applications to the Clinic Funding Committee

a. Court costs

(i) Peterborough Community Legal Centre

Pursuant to s.10 of the Regulations on clinic funding, the Clinic Funding Committee has reviewed and approved an application for the payment of court costs, in an amount up to \$50, from the Peterborough Community Legal Centre.

2. Summer student funding 1989

After a review of its budget situation for 1989/90, and its overall priorities for this fiscal year, the Clinic Funding Committee has made a decision to reduce by one-third the funding normally provided for summer students in four student clinics. The Committee is satisfied that the level of funding which will be provided will allow the clinics to provide substantial services, and that the consequent savings should be applied to meet other high priority needs within the clinic system.



The Committee therefore recommends Convocation's approval of funding for summer students in 1989, as follows:

Correctional Law Project (2 students)	\$9,600
Kensington-Bellwoods Community Legal Services (7 students)	\$33,600
Legal Assistance of Windsor (10 students)	\$48,000
Parkdale Community Legal Services (12 students)	\$57,600
	<u>\$148,000</u>

3. Incorporations

The Committee has reviewed the application for incorporation of the Peterborough Community Legal Centre, as to name and objects, and recommends Convocation's approval of this application.

B. INFORMATION

1. Clinic Funding Manager's Resignation

Ross Irwin, the Clinic Funding Manager since 1982, has resigned, effective June 30, 1989.

ALL OF WHICH is respectfully submitted

"Helen King Macleod for"  
Philip Epstein, Q.C.  
Chairman  
Clinic Funding Committee

May 12, 1989

THE REPORT WAS ADOPTED

.....

CERTIFICATION BOARD

Mr. Howie, Chair, presented the Report of the Certification Board of its Meeting on Wednesday, 10th May, 1989.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Wednesday, May the 10th, 1989 at three-thirty in the afternoon, the following members being present:

Mr. Howie (Chair), Mr. Rock (Vice-Chair), Messrs. Bastedo, Bragagnolo, Furlong, Gold, Hickey, Lyons, Murphy, Price, Webb, Yachetti and Ms. Pilkington. Ms. Thomson from the Law Society was also present.

Item 1: Certified Specialists

The Board is pleased to report to Convocation of the recent certification as Specialists of the 60 members listed in Schedule "A".

Item 2:     Structure Committee Proposal

The Board unanimously recommends to Convocation the restructuring of the Certification Board in accordance with Schedule "B".

Item 3:     Status Report

The Certification Board has established a regular monthly meeting date, being the Wednesday prior to Meeting Day.

The Board has met on the following occasions since its last Report to Convocation in October 1988: November 7, 1988; December 7, 1988; January 25, 1989; February 28, 1989; and April 12, 1989.

The "grandparenting" of Specialists was completed at the December meeting. The application process is now well under way, and the first applicants in Civil and/or Criminal Litigation have been certified.

Certain policies have been developed or amended since the Board's last Report to Convocation. Examples of these policies are below.

An Advertising Sub-committee has been struck to look into a number of issues, including the advertising of the Certification Program and identification of what a "Specialist" means to the public and the profession. The Board's position on advertising the Specialist designation is set out in Schedule "C".

The interview has become an optional part of the application process because a number of the applicants at the present time obviously meet both the quantitative and qualitative requirements for certification.

In anticipation of appeals, the Board considered some of the legal implications surrounding non-disclosure of reasons for non-certification. The Board concluded that it is not subject to the Statutory Powers Procedure Act but it is subject to the requirement of fairness. Therefore, the Board should provide to applicants, as requested, the substance of its reasons for non-approval of an application. The following assurance to references reflects this general policy and yet encourages frankness in the letters of reference:

"Your reply will be kept in confidence, but a composite summary of assessments received (without identifying their source) may be provided to the applicant."

Standard procedures and letters are being developed for each stage of the certification process. A comprehensive package of these standard items tracing the certification process and outlining Board policies will be reported to Convocation when completed.

ALL OF WHICH is respectfully submitted

DATED this 26th day of May, 1989

"K. E. Howie"  
Chair

Attached to original Report in Convocation File, copy of:

-Item 1 - Certificate Program, Assessment of Applications, Decisions  
          of the Certification Board, May 10, 1989, Specialists in  
          Civil Litigation

(Schedule "A")

- Item 2 - Report of the Structure Committee to the Certification Board, May 10, 1989 (Schedule "B")
- Item 3 - Memo to All Certified Specialists Re: Law Society's Certification Program - Advertising as a Specialist (Schedule "C")

THE REPORT WAS ADOPTED

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LIBRARIES AND REPORTING

Mr. D. J. Murphy, Chair, presented the Report of the Libraries and Reporting Committee of its meeting on Thursday, 11th May, 1989.

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, May 11th, 1989 at 9:30 a.m. the following members being present: Messrs. Murphy (Chair), Bragagnolo (Vice-Chair), and Topp; P. Bell and G. Howell also attended.

B.  
ADMINISTRATION

1. ONTARIO REPORTS - PUBLISHING CONTRACT -  
WEEKLY PARTS - DATA BASE - CD-ROM

The Secretary reported that the Sub-committee on the Ontario Reports Data Base met on Thursday, April 27th, 1989 to consider an offer concerning the publishing contract of the Weekly Parts, the possible extension of the Data Base contract, and the matter of obtaining a master disc in order to consider whether the Society should distribute the Ontario Reports in CD-ROM format.

Your Committee recommends that the contracts for the hard copy - Weekly Parts, the Ontario Reports Data Base, and the Ontario Reports on CD-ROM be tendered. It is further recommended that the lowest tenderer on each of the three items would not necessarily be accepted, and that one company might be the successful tenderer on more than one of the above items.

2. AMERICAN ASSOCIATION OF LAW LIBRARIES  
ANNUAL CONFERENCE - JUNE 18 - 21, 1989

The Secretary reported that the annual conference of the American Association of Law Libraries is being held in Reno, Nevada from June 18 - 21, 1989 inclusive. Approval was sought for the Chief Librarian and two professional librarians to attend. This is the same number as has attended for many years and is within budget. One of the librarians to attend (the newest member of the Library's professional staff) was successful in obtaining an association grant, provided through the Carswell Company, to help defray travel costs in attending the conference.

Your Committee approved of this expenditure.

C.  
INFORMATION

1. BOOK LIST

The Great Library will be adding 46 new titles to its book collection for May 1989.

2. FINANCIAL STATEMENT

The Financial Statement for the ten months ended April 30th, 1989 was approved.

3. FAXING OF REASONS FOR JUDGMENT

The Secretary reported that the Sub-committee on the Ontario Reports Data Base considered an offer of a royalty agreement for the right to fax copies of cases in the Ontario Reports to the profession and the public for \$2. per page. The staff were instructed to investigate this matter further.

4. BOSTON TRIP

The Chief Librarian, Mr. Howell, reported on the trip to Boston by the members of the Sub-committee on Long Range Planning for the Great Library. The meetings and discussions with the Board of Trustees will be very helpful in the planning for the long range use of the Great Library. He indicated that the Sub-committee hopes to have a draft Report ready in June that would be considered by the Committee in September.

ALL OF WHICH is respectfully submitted

DATED this 26th day of May, 1989

"D. J Murphy"  
Chair

THE REPORT WAS ADOPTED

.....

COMPENSATION FUND

Mr. J. J. Wardlaw, Vice-Chair, presented the Report of the Compensation Fund Committee of its meeting on Thursday, 11th May, 1989.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMPENSATION FUND COMMITTEE begs leave to report:

Your Committee met on Thursday, May 11th, 1989 at 11:30 a.m. the following members being present: Messrs. Yachetti (Chair), Wardlaw (Vice-Chair), Ms. Callwood, Mrs. Graham, Mrs. Legge, Lerner, Mrs. MacLeod, O'Connor and Thom; P. Bell and Mrs. H.A. Werry also attended.

B.

ADMINISTRATION

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1. COMPENSATION FUND - FILE STORAGE - SUMMER STUDENT

The Secretary reported that it is necessary to file some of the closed files off-site. In order to index the files that are to be stored off-site, authority is requested to hire a summer student. The estimated amount to hire a summer student would be \$1,000 - \$5,000. This would be within budget since there is an amount of \$15,000. in the budget for "Office Expenses". Your Committee approved of that expenditure.

C.

INFORMATION

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1. REFEREES' REPORTS

The following Referees' Reports were approved by the Review Committee and are listed here as a matter of information with the grants recommended shown on Schedule "A" attached.

- |    |   |   |
|----|---|---|
| 1. | B.W. Grossberg, Q.C.                      | H.D. Bernhard (deceased Oct. 14/85)<br>- claim of Karl Jakowski               |
| 2. | David Goldberg, Q.C.<br><u>re-hearing</u> | G.D. Fallis (permitted to resign<br>Apr. 26/85)<br>-claim of Mrs. D. Pintwala |

2. MEMORANDA OF AN ASSISTANT SECRETARY

The following Memoranda of Heather A. Werry were before your Committee for approval and the recommended amounts that have been approved by the Review Committee are as set out in Schedule "A" attached.

- |    |   |  |
|----|---|--|
| 1. | T.J. Mayhew (disbarred Sept. 17/87)       | -claim of Sandra & Patrick Nolan                                     |
| 2. | William J. Marinac (disbarred Jan. 29/87) |  |
|    | a.)                                       | -claim of Norma J. Duncan, Executrix<br>of the Estate of Tena Beamer |
|    | b.)                                       | -claim of Gilbert Mazetti  |
| 3. | Nicholaus W. Wolf (Disbarred June 21/84)  | -claim of Blaizie Craigie  |

The staff were instructed to prepare a memo indicating what guidelines are used when Assistant Secretaries recommend grants and to have it on the Agenda for the June meeting.

- |    |  |
|----|--|
| 3. | The total amount of accounts approved by Assistant Secretaries for the months of March and April, 1989 was \$4,176.62. |
| 4. | The Financial Summaries and Activity Reports for the <u>two</u> months, March and April, 1989 are attached.            |

(Pages 4 - 7)

5. FORMATION OF JOINT COMMITTEE  
OF FINANCE AND COMPENSATION FUND

The Chair reported that he had spoken to Mr. Ground, Chair of the Finance Committee, and agreed to the formation of a Joint Committee of Finance and Compensation Fund to review the status of the Compensation Fund.

The Joint Committee to be composed of Messrs. Ground and Topp from the Finance Committee, Noble and Yachetti from the Compensation Fund Committee and Wardlaw from both Compensation Fund and Finance Committees.

ALL OF WHICH is respectfully submitted

DATED this 26th day of May, 1989

"J. J. Wardlaw, Acting"  
Chair

Attached to original Report in Convocation File, copy of:

C-Items 1 & 2 - Schedule of Grants Approved by the Compensation Fund  
Committee on May 11th, 1989  
(Schedule "A" - Page 3)

C-Item 2(4) - The Law Society of Upper Canada, Financial Summary for  
the Period July 1st, 1988 - March 31st, 1989,  
Compensation Fund Activity Report, March 31st, 1989,  
Financial Summary for the Period July 1st, 1988 -  
April 30th, 1989, Compensation Fund Activity Report,  
April 30th, 1989  
(Pages 4 - 7)

THE REPORT WAS ADOPTED

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PUBLIC INFORMATION

Mr. S. Thom presented the Report of the Public Information Committee of its meeting on Thursday, 11th May, 1989.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PUBLIC INFORMATION COMMITTEE begs leave to report:

Your Committee met on Thursday, May 11, 1989, the following members were present: Mr. Outerbridge (Chair), Ms. Callwood, Messrs. Kemp Welch, Lyons, Manes, McKinnon, Shaffer, Thom and Yachetti. Also in attendance were Messrs. Crosby, Traviss and Jenkins.

A.  
POLICY

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1. PUBLIC COMMUNICATIONS BY BENCHERS

In 1985, Convocation adopted a set of confidentiality guidelines to assist Benchers and Society staff as to when and to what extent they could properly comment to members of the profession, the media and the general public on matters that were pending or had been dealt with by Convocation.

Now that the proceedings of Convocation are to be open to the profession and the public, subject to certain matters being dealt with in camera, this Committee reviewed and discussed the existing guidelines. It was decided that a Sub-committee of this Committee should review the underlying principles and formulate guidelines that complement the Society's policy of openness. A Sub-committee, chaired by Mr. Manes, is being struck to consider this matter.

B.  
ADMINISTRATION

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1. REFERENCE FROM THE PROFESSIONAL CONDUCT COMMITTEE

The Professional Conduct Committee asked this Committee to consider two proposed advertising schemes. One matter involved a proposal by a private company to introduce in Ontario a combination television advertising scheme and private lawyer referral service; the other combined a private Dial-A-Law type service with an advertising scheme. This Committee tabled discussion of these matters until the June meeting.

C.  
INFORMATION

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1. LETTER OF APPRECIATION

Attached is a letter of appreciation to the Society from a High School Law Teacher illustrating the use to which she and her students put the Dial-A-Law brochures and program.

(Appendix C-1)

2. MEMO RE: INWATS COSTS ON DIAL-A-LAW

Attached is a copy of a memorandum from the Director to David Crack regarding INWATS charges for the balance of 1988-89 and revised projections for 1989-90 together with comments on the cost savings hoped for through the installation of "satellite" Dial-A-Law programs outside Metro, starting with Ottawa.

(Appendix C-2)

3. STATISTICS

Attached are the updated figures for the Lawyer Referral and Dial-A-Law programs to April 30, 1989. (Appendix C-3). The LRS figures remain virtually static due to the program having reached its capacity. Two new operators will be added (Convocation's passing the PIC budget assumed) to help relieve the capacity crunch.

Dial-A-Law shows continuing strength compared to last year. However, the monthly figures for April show a 5,000 call drop no doubt due to the discontinuing of all forms of advertising beginning in early to mid-March. However, the figures are still respectable.

ALL OF WHICH is respectively submitted

DATED this 26th day of May, 1989

Chair

Attached to original Report in Convocation File, copy of:

- C-Item 1 - Letter dated April 17, 1989 from Mrs. Elaine Snider to  
The Law Society of Upper Canada  
(Appendix C-1 - Page 5)
- C-Item 2 - Letter dated May 4, 1989 from John Beaufoy, Director,  
Information Department Re: Inwats/Dial-A-Law/Budget  
1989-90  
(Appendix C-2 - Page 3)
- C-Item 3 - Public Information Committee, Statistics for Lawyer Referral  
and Dial-A-Law programs to April 30, 1989.  
(Appendix C-3) - Page 4)

THE REPORT WAS ADOPTED

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#### PROFESSIONAL STANDARDS

Mr. A. M. Rock, presented the Report of the Professional Standards Committee of its meeting on Thursday, 11th May, 1989.

#### 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 the 11th day of May, 1989 at eleven thirty in the morning the following members being present: Mr. Lyons (Chair), Ms. Bellamy, Mr. Ferguson, Mr. Furlong, Mr. Guthrie and Mrs. Weaver.

Also in attendance at the meeting was Mr. Ruby.

Also present were Ms. Angevine, Ms. Poworoznyk, Ms. Rose and Messrs. Kerr, Marshall and Stephany.

#### A. POLICY

#### 1. SUB-COMMITTEE ON THE COMPETENCY OF CRIMINAL LAWYERS - JURISDICTION OVER CROWN ATTORNEYS

The Committee considered a legal opinion provided by John F. Howard, Q.C. of the law firm of Blake, Cassels & Graydon dealing with the jurisdiction of the Law Society to formulate and administer standards of competency applicable to Crown Attorneys.



26 May 1989

The Committee concluded that further elaboration on some issues raised in the opinion was required and action on this matter was deferred until the June Committee meeting to give Mr. Howard the opportunity to address these concerns.

Attached as A1 - A26 is a copy of the opinion.

2. REQUALIFICATION REQUIREMENTS FOR MEMBERS

The Committee discussed the Law Society's present policies regarding the examination of members who have not been practising actively for an extended period of time.

The Committee recommended that Convocation form a Special Committee comprising of members of the Admissions, Legal Education, Finance and Professional Standards Committee to review existing policies and to formulate alternatives. In view of the urgent need for reform in this area, the Committee further recommended that the Special Committee report back to Convocation by September, 1989.

C.  
INFORMATION

1. SUB-COMMITTEE ON THE COMPETENCY OF CRIMINAL LAWYERS

The initial publication run of the Defence Counsel checklist has been completed and methods of circulation are being considered.

2. SUB-COMMITTEE ON FAMILY LAW

The sub-committee held its second meeting on May 1, 1989 and its next meeting is scheduled for May 29, 1989.

ALL OF WHICH is respectfully submitted

DATED this 26th day of May, 1989

"Rod Ferguson for:  
Chair

Attached to original Report in Convocation File, copy of:

A-Item 1 - Legal opinion provided by John F. Howard, Q.C. of the law firm of Blake, Cassels & Graydon dated May 8, 1989

(marked A1 - A26)

THE REPORT WAS ADOPTED

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MUNIMENTS AND MEMORABILIA

The Report of the Muniments and Memorabilia Committee meeting and the Archivist on Wednesday, 17th May, 1989 was presented.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The MUNIMENTS AND MEMORABILIA COMMITTEE begs leave to report:

Your Committee met on Wednesday, the 17th day of May, 1989 at 12:30 p.m., the following members being present: Mr. Ferrier (Chair), Mr. Doran, Mrs. Tait., Messrs. Tinsley, Traviss and Schaeffer were present from the staff.

A.

POLICY

1. REPORT OF THE ARCHIVIST

The Committee received the report of the Archivist which contains details of all projects undertaken during 1988/89 and all projects planned for the coming year. It was noted that the Archives has received substantial supplementary financial support from The Law Foundation of Ontario for projected projects. A copy of the report is attached.

(Pages 1 - 5)

B.

DONATION

1. An offer was received from the Honourable David Humphrey for the donation of the cheque for the largest fine ever imposed in Canada (\$25 million dollars). The offer was made on condition that it be exhibited in some appropriate location at Osgoode Hall. The donation and conditions were accepted.

WILLIAM DUMMER POWELL BICENTENNIAL

2. The committee discussed plans for the unveiling of a plaque by the Ontario Heritage Foundation to honour the bicentennial of the arrival in Ontario of William Dummer Powell, the province's first professional judge, in Windsor in the summer of 1989. The plaque was suggested by the Law Society Archives and the committee agreed to provide a financial contribution to the unveiling ceremony. The committee also agreed to designate an exhibition planned for the fall of 1989 as an event marking the bicentennial.

C.

1. STAINED GLASS WINDOW BOOKLET

The committee received a proposal that a colourful booklet be prepared to describe the stained glass windows in Convocation Hall. The committee agreed to investigate the costs of producing a booklet or flyer for general distribution and a more comprehensive bound publication that might be used as a presentation piece.

2. SPECIAL COMMITTEE ON THE BICENTENNIAL

The committee was informed of the appointment of the Special Committee on the Bicentennial under the chairmanship of Mr. Ian Outerbridge. The committee will superintend a number of heritage projects including the production of an official history of the Law Society.

3. JOHN GRAVES SIMCOE MEMORABILIA

The long-term loan of a small collection of documents, paintings, and artifacts relating to the life of John Graves Simcoe from the John Graves Simcoe Foundation was noted.

4. DONATIONS

A collection of speeches and material relating to prominent Ontario barristers was received from Mr. John Arnup; Mrs. Reginae Tait presented the Society with a copy of the Galway Express for July 27, 1912.

5. STAINED GLASS WINDOWS

It was noted that the last stained glass window is to be installed in Convocation Hall in August, 1989. Window Number 10 is to be displayed at the London Art Gallery to mark the 50th anniversary of that institution, June 10th to July 30th, 1989.

"M. G. Hickey"  
Chair

Attached to original Report in Convocation File, copy of:

A-Item 1 - Archives - Report to the Muniments and Memorabilia Committee  
May 10, 1989, 89/90 Projects

(numbered 1 - 5)

THE REPORT WAS NOTED

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Mr. Carey raised the general concern about the timing of open Convocation and the scheduling of in camera items.

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Convocation adjourned at 4:30 p.m.

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Confirmed in Convocation this            day of            , 1990

Treasurer