

MINUTES OF CONVOCATION

Friday, 27th March, 1998
8:30 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Angeles, Armstrong, Backhouse, Banack, Carey, Carpenter-Gunn, Carter, R. Cass, Cole, Copeland, Cronk, Crowe, Curtis, DelZotto, Eberts, Feinstein, Finkelstein, Gottlieb, Harvey, Krishna, Lamont, Lawrence, Legge, MacKenzie, Manes, Marrocco, R. Martin, Millar, Murphy, Murray, Ortved, Puccini, Ruby, Sachs, Sealy, Stomp (teleconference), Swaye, Topp, Wilson and Wright.

.....

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....
IN PUBLIC
.....

MOTION - REPORTS TAKEN AS READ

Mr. Millar asked that a correction to the main motion respecting the Legal Aid Report set out in the Draft Minutes of February 27th, 1998 as follows:

"It was moved by Mr. Armstrong, seconded by Mr. Finkelstein and Ms. Ross that the Law Society cease administering the Legal Aid Plan on or about the conclusion of the MOU on condition that the government establish an independent corporation to provide legal aid services to the people of Ontario in accordance with the Finkelstein model as amended and that the Treasurer, Chair or Vice-Chairs of the Legal Aid Committee and the Chair of the Clinic Funding Committee or their designates be authorized to enter into discussions with the Attorney General to accomplish this end."

Correction underlined

It was moved by Mr. MacKenzie, seconded by Mr. Wilson that the Draft Minutes of February 12th and 27th, 1998 as amended and the Reports of the Executive Director of Education and Addendum and the Clinic Funding Committee be adopted.

Carried

DRAFT MINUTES OF CONVOCATION FOR February 12th and 27th, 1998

(see Draft Minutes in Convocation file)

THE DRAFT MINUTES AS AMENDED WERE ADOPTED

REPORT OF THE EXECUTIVE DIRECTOR OF EDUCATION AND ADDENDUM

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Executive Director of Education asks leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, March 27th, 1998:

Ward Glen Brownell	39th BAC
Shari Anne Cohen	39th BAC
David Emile Dendooven	38th BAC
Jessica Marie Grant	39th BAC
Pauline Marie Harper	38th BAC
Neville Jugnauth	39th BAC
Floyd Alfred Kane	39th BAC
Sandra Bonnie Majic	37th BAC
Lisa Margret Welch Madden	39th BAC
Helen Leslie McCallum	39th BAC
Christopher Mark Robson	39th BAC
Timothy Nicholas Ross	39th BAC
Vincenzo Romano Stendardo	39th BAC
Rocco Tuzi	39th BAC
Nicole Adrienne Wharton	39th BAC

B.1.3. Transfer from another Province - Section 4

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, March 27th, 1998:

Jeffrey Edwards	Province of Quebec
Marie-Josée Riverin	Province of Quebec

B.2. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

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

Lawrence Charissios Ducas	<u>Called:</u>	April 7th, 1982
	<u>Resigned:</u>	November 29th, 1996

Rachael Elizabeth Strong	<u>Called:</u>	February 5th, 1996
	<u>Resigned:</u>	April 4th, 1997

B.3. MEMBERSHIP UNDER RULE 50

B.3.1. (a) Retired Members

B.3.2. The following members are at least sixty-five years of age and fully retired from the practise of law, and request permission, under Rule 50 made under the Law Society Act, to continue their memberships in the Society without payment of annual fees.

Howard Leighton Beck	Toronto
William Owen Francis	Toronto
George Wilfrid Glass	Toronto
Robert Ernest Pringle	St. Catharines
Martha Babych Trofimenko	Wilmington, DE

B.3.3. (b) Incapacitated Members

The following members are incapacitated and unable to practise law and have requested permission to continue their memberships in the Society without payment of annual fees:

Catherine Helen MacLean	Ottawa
Drummond Stanley Peet	Midland
Marie Beatrice Lynne Rhéaume	Ottawa

B.4. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.4.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

1. Gilbert Stuart Bennett of Guelph, was called to the Bar on April 10, 1964 and practised Ontario law from 1983 to 1984. The 1998 annual fee is outstanding.
2. Scott Ian Bushnell of Windsor, was called to the Bar on March 16, 1973 and practised Ontario law from 1973 to 1988. The 1998 annual fee is outstanding.
3. Stephen Eric Cooper of Toronto, was called to the Bar on April 6, 1983 and practised Ontario law from 1983 to 1997. The 1998 annual fee is outstanding.
4. Larissa Louise Easson of Vancouver, BC, was called to the Bar on February 5, 1995 and practised Ontario law from 1996 to March 1997. The 1998 annual fee is outstanding.
5. Richard Allan Feldman of Toronto, was called to the Bar on March 30, 1990 and practised Ontario law from 1990 to 1993 and from 1995 to 1997. The 1998 annual fee is outstanding.
6. Marie Fleurette Isabelle Gagne of Toronto, was called to the Bar on February 7, 1996 and has never practised Ontario law. The 1998 annual fee is outstanding.
7. Garfield Robert Green Jr of New York, NY, was called to the Bar on March 17, 1967 and practised Ontario law from 1967 to 1990. The 1998 annual fee is outstanding.
8. David Edward Hill of Toronto, was called to the Bar on June 26, 1958 and practised Ontario law from 1958 to 1996. The 1998 annual fee is outstanding.
9. Soraya Kim of Livonia, MI, was called to the Bar on February 9, 1993 and practised Ontario law from 1993 to 1995. The 1998 annual fee is outstanding.
10. Anthony Stuart Lowenstein of Palo Alto, CA, was called to the Bar on November 28, 1997 and has never practised Ontario law. The 1997 and 1998 annual fees are outstanding.
11. Bonnie-Kae McPhee of Eden Prairie, MN, was called to the Bar on April 27, 1990 and practised Ontario law from 1993 to 1995. The 1998 annual fee is outstanding.

12. Aaron Leslie Moscoe of North York, was called to the Bar on March 24, 1995 and has never practised Ontario law. The 1997 and 1998 annual fees are outstanding.
13. Aviva Dehlia Rabinovici of Thornhill, was called to the Bar on February 8, 1994 and has never practised Ontario law. The 1998 annual fee is outstanding.
14. Alias Amelia Sanders of Calgary, AB, was called to the Bar on October 24, 1996 and has never practised Ontario law. The 1998 annual fee is outstanding.
15. Dale Charles Schille of Winnipeg, MB, was called to the Bar on March 30, 1990 and practised Ontario law from 1990 to 1995. The 1998 annual fee is outstanding.
16. Sander Michael Shalinsky of Toronto, was called to the Bar on February 16, 1995 and practised Ontario law from February 1995 to December 1995. He was suspended May 1, 1997 for non-payment of the 1997 annual fee. The 1997 annual fee is outstanding.
17. Robert Neil Weisberg of Thornhill, was called to the Bar on February 9, 1993 and practised Ontario law from 1993 to January 1998. The 1998 annual fee is outstanding.
18. Harold Hamilton Wright of Collingwood, was called to the Bar on April 7, 1982 and practised Ontario law from 1982 to 1997. The 1998 annual fee is outstanding.

C.
INFORMATION

C.1. ROLLS AND RECORDS

C.1.1. (a) Changes of Name

C.1.2.	<u>From</u>	<u>To</u>
	Barbara Maria <u>Fedoryk</u>	Barbara Maria <u>Switzer</u> (Marriage Certificate)
	Lisa Maurene <u>Kelly</u>	Lisa Maurene <u>Miles</u> (Marriage Certificate)
	<u>Sang-Hee Kim</u>	<u>Helen</u> Sang-Hee Kim (Change of Name Certificate)
	Shari Diane <u>Mitchell</u>	Shari Diane <u>Lapena</u> (Marriage Certificate)
	Sharon Lynne <u>White</u>	Sharon Lynne <u>White-Ducharme</u> (Marriage Certificate)

C.1.3. (b) Deaths

C.1.4. The following members have died:

Doran Robert Henderson Kingston	Called: April 13, 1983 Died: November 23, 1997
Russell Kennedy McAvoy Owen Sound	Called: June 19, 1941 Died: December 22, 1996
George Perley-Robertson Ottawa	Called: June 29, 1949 Died: June 20, 1997
Russell Allen Yeomans Rancho Palos Verdes, CA	Called: March 22, 1991 Died: August 17, 1997
James Innes Stewart Toronto	Called: June 15, 1939 Died: September 29, 1997
Harold Winfield Drummond Windsor	Called: April 12, 1984 Died: October 12, 1997
Gordon Murray Edwards Erin	Called: March 26, 1971 Died: November 17, 1997
Ronald Martland Ottawa	Called: October 29, 1982 Died: November 19, 1997
Beverly Vallack Elliot Toronto	Called: June 18, 1925 Died: December 10, 1997
John Webb Graham Toronto	Called: June 18, 1936 Died: January 9, 1998
Mark Rudolph MacGuigan Ottawa	Called: September 19, 1958 Died: January 12, 1998
James Edgar Watson Windsor	Called: November 18, 1937 Died: January 16, 1998

Ronald Warren Lincoln
Peterborough
Called: March 22, 1974
Died: January 16, 1998

Harry Walker Robertson
Peterborough
Called: September 15, 1955
Died: January 23, 1998

Alan Hershel Ain
Smith Falls
Called: April 9, 1976
Died: January 23, 1998

James Somerville Brown
Toronto
Called: June 19, 1947
Died: January 26, 1998

Roy Allen Youngson
Sault St. Marie
Called: May 17, 1951
Died: January 27, 1998

C.1.5. (b) Permission to Resign

C.1.6. On January 22, 1998, 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:

Donald Isamu Kimura
Toronto
Called: March 26, 1971

Brian Terrence Pennell
Brantford
Called: March 21, 1975

Richard Michael Ittleman
Thornhill
Called: April 11, 1980

C.1.7. (c) Disbarments

C.1.8. On January 22, 1998, the following members were disbarred and their names removed from the rolls and records of the Society:

Robert Alan Eagleson
Toronto
Called: June 25, 1959

David Roy Snider
Holland Landing
Called: April 8, 1987

C.1.9. (d) Membership in Abeyance

C.1.10. 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:

Thomas Albert Cromwell
Halifax, NS

Called: April 6, 1979
Appointed to Nova Scotia
Court of Appeal
August 29, 1997

ALL OF WHICH is respectfully submitted

DATED this the 27th day of March, 1998

ADDENDUM

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidate has completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now applies to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, March 27th, 1998:

Marguerite Russell

36th BAC

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

B.1.4. The following candidate has completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now applies to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, March 27th, 1998:

Debra Rose MacIntyre

Province of Alberta

B.2. READMISSION FOLLOWING RESIGNATION AT OWN REQUEST

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

Donald Merrill Cooper

Called:

March 21st, 1975

Resigned:

September, 27th, 1996

Petronella Minca Vanderley

Called:

February 7th, 1992

Resigned:

February 28th, 1997

B.3. MEMBERSHIP UNDER RULE 50

B.3.1. (a) Retired Members

B.3.2. The following members are at least sixty-five years of age and fully retired from the practise of law, and request permission, under Rule 50 made under the Law Society Act, to continue their memberships in the Society without payment of annual fees.

Donald Alexander S. Cromarty	London
Thomas Clifford Douglas	Toronto
Ronald James Murphy	Toronto
John Stafford Otton	Barrie

B.3.3. (b) Incapacitated Members

B.3.4. The following members are incapacitated and unable to practise law, and request permission to continue their memberships in the Society without payment of annual fees:

Evelyne Benaich	Toronto
Joy Feldman	Calgary, AB
Michael Aldwin Rodrigues	Dartmouth, NS

B.3.5. (c) Termination of Rule 50

B.3.6. The following member wishes to terminate his retirement under Rule 50 and has provided the Society with the necessary documentation:

Gopal Rai	Ottawa
-----------	--------

B.7. RESIGNATION - SECTION 12 OF REGULATION 708 MADE UNDER THE LAW SOCIETY ACT

B.7.1. The following members apply for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. In all cases the annual filings are up to date. In cases where the member was engaged in the practice of Ontario law for any amount of time, the member has declared that all trust funds and clients' property for which they were responsible have been accounted for and paid over to the appropriate persons. They have further declared that all clients' matters have been completed and disposed of, or arrangements made to the clients' satisfaction to have their papers returned to them, or have been turned over to another lawyer. The Complaints, Audit and Staff Trustees departments all report that there are no outstanding matters with these members that should prevent them from resigning. These members have requested that they be relieved of publication in the Ontario Reports:

1. Andrew Douglas Green of Toronto, was called to the Bar on February 8, 1994 and practised Ontario law from 1994 to 1997.

2. Predrag Narancic of Palo Alto, CA, was called to the Bar on May 24, 1996 and practised Ontario law from 1996 to 1997. The 1998 annual fee is outstanding.

3. Le Vern Lorraine Robertson of Toronto, was called to the Bar on March 30, 1990 and practised Ontario law from 1990 to 1992. The 1998 annual fee is outstanding.

- 4. Rajna Trbovic of Toronto, was called to the Bar on March 22, 1991 and has never practised Ontario law. The 1998 annual fee is outstanding.
- 5. Michael David Wilhelmson of Vancouver, BC, was called to the Bar on February 8, 1994 and practised Ontario law from 1994 to 1997. The 1998 annual fee is outstanding.

C.

INFORMATION

C.1. ROLLS AND RECORDS

C.1.1. (a) Changes of Name

C.1.2.	<u>From</u>	<u>To</u>
	Louis <u>Lashkovski</u>	Louis <u>Laskovski</u> (Birth Certificate)

THE REPORT AND ADDENDUM WERE ADOPTED

REPORT OF THE CLINIC FUNDING COMMITTEE

Clinic Funding Committee
March 24, 1998

Report to Convocation

Nature of Report: Decision-Making

THE CLINIC FUNDING COMMITTEE met by conference call on March 23, 1998. In attendance were:

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

This report contains:

- Funding decisions that require Convocation's approval.

1. FUNDING DECISIONS

1.1 Supplementary legal disbursements

Pursuant to s.7(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements as follows:

Clinique juridique Grand Nord	\$ 3,000
Durham Community Legal Clinic	7,500
Flemingdon Community Legal Services	2,000
Niagara North Community Legal Assistance	4,500
Parkdale Community Legal Services	10,000
South Ottawa Community Legal Services	5,000
Waterloo Region Community Legal Services	12,000
West End Legal Services	<u>5,000</u>
	<u>\$49,000</u>

1.2 Training Funds

The Committee reviewed and approved applications for training funds, as follows:

The Legal Housing Issues Committee - to fund training concerning the *Tenant Protection Act*, in an amount up to \$10,000.

The Social Assistance Steering Committee - to fund training on changes to social assistance law, in an amount up to \$15,000.

ALL OF WHICH is respectfully submitted

W.A. Derry Millar
Chair
Clinic Funding Committee

March 24, 1998

THE REPORT WAS ADOPTED

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Executive Director of Education and Addendum were presented to the Treasurer and were called to the Bar and the degree of Barrister-at-Law was conferred upon each of them. They were then taken by Mr. Lamont before Mr. Justice Lucien A. Beaulieu to sign the Rolls and take the necessary oaths.

Shari Anne Cohen	39th Bar Admission Course
David Emile Dendooven	38th Bar Admission Course
Jessica Marie Grant	39th Bar Admission Course
Pauline Marie Harper	38th Bar Admission Course
Neville Jugnauth	39th Bar Admission Course
Floyd Alfred Kane	39th Bar Admission Course
Sandra Bonnie Majic	37th Bar Admission Course
Helen Leslie McCallum	38th Bar Admission Course
Christopher Mark Robson	39th Bar Admission Course
Timothy Nicholas Ross	39th Bar Admission Course
Marguerite Russell	36th Bar Admission Course
Vincenzo Romano Stendardo	39th Bar Admission Course

Marie-Josée Riverin
Jeffrey Edwards
Debra Rose MacIntyre

Special, Transfer, Province of Quebec
Special, Transfer, Province of Quebec
Special, Transfer, Province of Alberta

Report of the Professional Regulation Committee

Ms. Cronk reviewed the issues in the Report for Convocation's consideration.

Professional Regulation Committee
March 12, 1998

Report to Convocation

Purpose of Report: Decision-Making and Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 1

AMENDMENTS TO RULE 13 OF THE RULES OF PROFESSIONAL CONDUCT 2

 A. NATURE AND SCOPE OF THE ISSUE 2

 B. BACKGROUND 3

 C. POLICY DISCUSSION AND ANALYSIS 4

 The Committee's Review 4

 The Committee's View and Proposals 7

 Options and Alternatives for Decision by Convocation 8

FOCUSED AUDIT PROFILE ISSUES 9

 A. NATURE OF THE ISSUE 9

 B. DISCUSSION AND CONCLUSIONS 10

 Profile Item # 3) 10

 Profile Item #4) 11

 Options for Decision by Convocation 12

APPLICATION OF A RETIRED JUDGE UNDER
RULE 15 OF THE RULES OF PROFESSIONAL CONDUCT 13

 Requirements of Rule 15 15

 The Committee's Views 16

 Options for Decision by Convocation 16

DISTRIBUTION OF ORDERS OF CONVOCATION 17

 Current Practice 17

 The Committee's Views 18

 Options for Decision by Convocation 19

STANDARDS FOR THE AUTHORIZATION OF
SEXUAL IMPROPRIETY COMPLAINTS AND RELATED ISSUES 20

A. NATURE OF THE ISSUES 20

B. BACKGROUND 20

 Current Standards for Proceeding with Sexual Impropriety Complaints 21

 The Applicable Standard 22

 Time Lines on Process 24

 Training 24

 Appropriateness of the Discipline Stream 25

TIME LINE FOR PREPARATION OF
REASONS OF DISCIPLINE HEARING PANELS 28

REVIEW OF RULES ON REFERRALS/REFERRAL FEES,
STEERING AND SOLICITATION 29

APPENDIX 1 - EXCERPT FROM WRITTEN SUBMISSIONS OF OBAP TO THE PROFESSIONAL REGULATION
COMMITTEE, NOVEMBER 1997 30

APPENDIX 2 - THE LAW SOCIETY OF UPPER CANADA PROFESSIONAL CONDUCT
MEMORANDUM 39

APPENDIX 3 - MEMORANDUM OF ROBERT AARON RESPECTING FOCUSED AUDIT PROFILE 48

APPENDIX 4 - QUESTION 13, PRIVATE PRACTITIONER’S REPORT
AND SECTION 15.2, REGULATION 708 56

APPENDIX 5 - EXCERPT FROM MEMORANDUM TO PROFESSIONAL REGULATION COMMITTEE BY JAMES
YAKIMOVICH RESPECTING FOCUSED AUDIT PROFILE ITEM #4) 61

APPENDIX 6 - COMMUNICATIONS RELEASE RESPECTING INFORMATION FROM DISCIPLINE
CONVOCAION 63

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on March 12, 1998. In attendance were:

Gavin MacKenzie (Acting Chair)

Harriet Sachs (Vice-Chair)

Marshall Crowe
Laura Legge
Hope Sealy

Staff: Jonathan Fedder, Scott Kerr, David McKillop, Michael Seto, Glenn Stuart, Richard Tinsley,
Stephen Traviss, Jim Varro,

2. This report contains:
- ◆ the Committee's proposals for amendments to Rule 13 as a result of consideration of the request of the Ontario Bar Assistance Program¹;
 - ◆ the Committee's proposals respecting issues arising from Convocation's debate of the focused audit profile;
 - ◆ the Committee's proposal with respect to the application of a retired judge pursuant to Rule 15;
 - ◆ the Committee's proposal for revision of the procedure for distribution of orders of Convocation;
 - ◆ information reports on:
 - the Committee's guidance to staff on the conduct of investigations into sexual impropriety and discrimination;
 - a guideline for a time line for delivery of reports of hearing panels;
 - a new working group of the Committee reviewing certain Rules of Professional Conduct.

AMENDMENTS TO RULE 13 OF THE RULES OF PROFESSIONAL CONDUCT

A. NATURE AND SCOPE OF THE ISSUE

3. In 1996, the Ontario Bar Assistance Program (OBAP) raised with the Society its desire to see Rule 13 of the Rules of Professional Conduct amended.
4. The amendment would reflect that lawyers assisting in programs like OBAP be required to observe strict confidentiality with respect to what they learn in the course of their counselling.
5. Currently, Rule 13 requires lawyers to report instances of professional misconduct by other lawyers to the Society. OBAP has indicated that this impacts on the ability of lawyers at OBAP to deal with issues that lawyers discuss with them.
6. While the issue was initially discussed at the Professional Development and Competence Committee², it was referred to the Professional Regulation Committee in June 1997, given its regulatory focus.
7. The Committee reviewed research material prepared by staff on the issue and received written materials from and an oral presentation by OBAP representatives at its November 1997 meeting.
8. Thereafter, an *ad hoc* working group of the Committee³ was formed to assess the information and review the alternatives available to the Law Society, including whether it was now an appropriate time to amend Commentary 1 of Rule 13 to clarify the lawyer's reporting obligation.

¹Originally reported by the Committee to February 27, 1998 Convocation, but deferred by Convocation to March 27, 1998.

²Patricia Rogerson, former Director of the Practice Advisory Department was a director on OBAP's board and Sue McCaffrey of the Professional Standards Department is a member at large on OBAP's board. Their departmental work falls within the jurisdiction of the Professional Development and Competence Committee, and after receiving information from OBAP, they brought the matter to that committee as a competence-related issue.

³Gavin MacKenzie and Niels Ortvad assisted by Stephen Traviss.

9. Based on that review, a proposal is being made to:
- amend Rule 13, Commentary 1, and
 - add a new Commentary which focuses on the issue of confidentiality as it relates to OBAP's service and how that interfaces with the Law Society's conduct reporting requirement.

B. BACKGROUND

10. In its submissions to the Committee, OBAP put the issue in the following context:

It is crucial to the success of lawyer assistance programs that confidentiality of participants be maintained at all times. Equally important as a rule of law and as a matter of perception and confidence in lawyer assistance programs, the absolute confidentiality of participants, including lawyers, judges and law students is essential. This has been reflected by the confidentiality rules that have been enshrined in the legislation of virtually every American state as well as several Canadian provinces.

...

After two years of careful, study, review, dialogue, amendment and redrafting by several Benchers, lawyers, judges, law students as well as friends and supporters in other jurisdictions, we have prepared [a] draft for a proposed rule amendment for consideration by the Benchers of the Law Society of Upper Canada.

11. An excerpt from the materials submitted to the November 1997 Committee meeting by OBAP, which provides some historical background to the work of OBAP and the request for the confidentiality provision, appears at Appendix 1.
12. Other Canadian jurisdictions were canvassed by staff with respect to the nature of any confidentiality provisions attaching to those involved in lawyer assistance programs. The results appear in a memorandum prepared for the Committee by Stephen Traviss, Senior Counsel - Professional Conduct at Appendix 2.
13. The current Rule 13, Commentary 1 reporting requirement for lawyers is as follows:

Unless the lawyer who tends to depart from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is, therefore, proper (unless it be privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these Rules. Where, however, there is a reasonable likelihood that someone will suffer serious damage as a consequence of an apparent breach, for example where shortage of trust funds is involved, the lawyer has an obligation to report the matter unless it is privileged or otherwise unlawful to do so. In all cases the report must be made bona fide without malice or ulterior motive.

14. OBAP's proposed amendment to Rule 13 was in the form of a new Commentary as follows:

Persons serving in any capacity in a Lawyer Assistance Program (including, but not limited to the Ontario Bar Assistance Program/Ontario Bar Alcoholism Program, Legal Profession Assistance Conference, LINK) shall not report or disclose any knowledge or evidence or documents concerning a Lawyer/Judge/Law Student and shall keep strictly confidential all information received in the course of such activities. Nothing herein shall prevent the release of information with the written permission of the Lawyer/Judge/Law Student being assisted.

15. OBAP also proposed that the Law Society should not compel lawyers providing such assistance to testify at discipline or competency hearings. The effect of this would be that, in addition to the volunteer lawyer not reporting any serious misconduct on the part of a lawyer being helped, the volunteer could not testify about discussions with that lawyer, unless the lawyer being helped consented.

C. POLICY DISCUSSION AND ANALYSIS

The Committee's Review

16. The Committee noted with interest the approaches taken by three of the Western provinces (Alberta, Saskatchewan and Manitoba), as reflected in Mr. Traviss's memorandum.

Amendment to Commentary 1

17. With respect to existing Commentary 1, the Committee acknowledged the need to expand and specify, to a degree, the circumstances where a lawyer must report the apparent misconduct of another lawyer.
18. The following amendment, drawn by the working group, was considered by the Committee (new text appears in *bold italicized* print):

Unless the lawyer who tends to depart from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is, therefore, proper (unless it be privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these Rules. *There are some very serious situations where a lawyer is under a duty to report. Such situations include but are not limited to the following: misappropriation or misapplication of trust monies; the abandonment of a law practice; participation in serious criminal activity related to the lawyer's practice; and the mental instability of a lawyer of such a serious nature that this lawyer's clients are likely to be severely prejudiced. If a lawyer is in any doubt as to whether a report should be made, the lawyer should consider seeking the advice of the Law Society be it directly or indirectly (e.g., through another lawyer). Nothing in this paragraph is meant to interfere with the traditional solicitor-client relationship.* In all cases the report must be made bona fide without malice or ulterior motive.

The New Commentary

19. With respect to OBAP's proposed new Commentary, the Committee acknowledged the enormous value of the work undertaken by OBAP and its volunteers. It also recognized that the requirement for disclosure of information of apparent misconduct to the Law Society can have a chilling effect on the willingness of lawyers to seek assistance from OBAP.
20. However, from the public interest perspective and that of the profession as a whole, the Committee carefully considered the impact of a complete exemption for volunteer lawyers from the reporting requirement. It was noted in particular that:
- there is no "carve out" in OBAP's proposal for situations involving imminent harm or criminal activity as a result of the lawyer's conduct;
 - there are public expectations that wrongdoing on the part of a lawyer will be dealt with by the regulator;
 - the Law Society, mandated to regulate in the public interest and maintain the integrity of the profession, must be appropriately informed of and is obliged to address issues of misconduct on the part of its members.

21. Against this background, the Committee considered two alternative proposals for a new Commentary.
22. Alternative #1, in the following language, essentially adopts OBAP's requested amendment:

Commentary 1A.

Often instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society of Upper Canada supports the Ontario Bar Assistance Program (OBAP), LINK and other support groups in their commitment to the provision of counselling on a confidential basis. Therefore, lawyers acting in the capacity of counsellors for OBAP and other support groups are not bound by the mandatory reporting requirement set out in paragraph one above, and will not be compelled to testify about conversations with a lawyer who has sought such assistance without the consent of the lawyer.

23. In Alternative #2, OBAP's proposal is amended so that there would be no requirement of a report except in cases of serious misconduct or criminal activity. This Alternative, as reflected in the following language, is essentially the "halfway house" between OBAP's proposal and the existing scheme:

Commentary 1A.

Often instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society of Upper Canada supports the Ontario Bar Assistance Program (OBAP), LINK and other support groups in its commitment to the provision of counselling on a confidential basis. Therefore, lawyers acting in the capacity of counsellors for OBAP and other support groups will not be called by the Law Society or by any investigation committee to testify at any discipline or competency hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer/counsellor has an ethical obligation to report to the Law Society upon learning that the lawyer being assisted has engaged in or is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice. The Law Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

The Committee's View and Proposals

24. With respect to existing Commentary 1, the Committee agreed with the proposed amendment to the current language of that Commentary and believes it provides greater guidance to the profession on what is expected in terms of the obligation to report apparent misconduct.
25. With respect to proposed new Commentary 1A, the consensus of the Committee was that while it could not justify a "blanket" exemption, it felt that the language in Alternative #2 above was a workable and responsible compromise between the interests the Law Society is required to protect and the need to enhance and facilitate the effectiveness of OBAP's program.
26. The Committee also proposes that:
 - notice to the profession of the determination of this issue by Convocation be included in an article in the *Ontario Lawyers Gazette*, and
 - efforts be undertaken by the Law Society, as appropriate, to enhance the profession's awareness of the work of OBAP and other assistance programs, through publications or other media.
27. While the Committee has proposed the amendments to Rule 13 above, it is presenting all options, including both Alternatives, for consideration and decision by Convocation.

Options and Alternatives for Decision by Convocation

28. Convocation must decide whether to:
- a. accept the Committee's proposal to amend Rule 13 by
 - adopting the language of the amendments to the existing Commentary 1 as proposed in paragraph 18 above, and
 - adopting of the language of Alternative #2 as new Commentary 1A in paragraph 23 above;
 - b. adopt the amendments as above to existing Commentary 1 and Alternative #1 as new Commentary 1A in paragraph 22 above;
 - c. adopt the amendments as above to existing Commentary 1 *without* adopting either of the Alternatives as new Commentary 1A;
 - d. amend the amendments, as Convocation sees fit, and adopt them;
 - e. maintain the current Rule and not adopt any of the proposed changes;
 - f. refer the matter back to Committee, with direction, for further consideration.

FOCUSED AUDIT PROFILE ISSUES

A. NATURE OF THE ISSUE

29. On January 23, 1998 Convocation approved a focused audit profile, based on the Committee's proposal, as amended by Convocation. In addition to making the two amendments, certain aspects of the profile were referred back to the Committee for further consideration.
30. The two amendments related to Profile Items #3) and #4), reproduced below in paragraphs 34 and 40 respectively, and were:
- a. to delete the last phrase of profile item #3), beginning with the word "or" after "clients" in the third line, subject to review by the Committee ("the Aaron amendment), and
 - b. to clarify the application of profile item #4), by adding to the end of the title thereto the words "and do not maintain proper books and records" ("the Gottlieb amendment").
31. Robert Aaron, who raised the concerns about the application of profile item # 3), articulated those concerns in his oral representations to the Committee and in a memorandum provided to the Committee, included with this report at Appendix 3.
32. With respect to profile item #4), the Chair of the Committee recommended that the Committee review the amendment thereto, as a result of a misinterpretation at January 23 Convocation of staff's intentions with respect to this particular profile item and the impact of the amendment.
33. The Committee reviewed these two matters and is proposing further amendments to the profile as reflected in this report.

B. DISCUSSION AND CONCLUSIONS

Profile Item # 3)

34. The original text of this profile item read:

Lawyers in private practice holding mortgages in trust for clients, collecting monthly private mortgage investment payments for clients, arranging private mortgage investments for lender clients, or acting for private mortgage lenders and handling advances in respect of the private mortgage transaction

35. Mr. Aaron's suggestion was that lawyers who act in private mortgage transactions and handle the mortgage advances, but who do not act as the broker in the transaction, should not form one of the categories within the scope of private mortgage work in the profile for focused audits.
36. In its discussions, the Committee noted, through information provided by staff, that when the Law Society moved to the self-reporting regime for lawyers' financial information, and prescribed the Private Practitioner's Report (PPR) for that purpose, the only area totally eliminated from the reporting scheme was the accountant's review of the lawyer's Forms 4 and 5 respecting mortgage transactions.⁴
37. The intention in the self-reporting scheme with respect to private mortgages was that information requested of the lawyer would replace the accountant's random sampling of mortgage files. Question 13 on the PPR, attached at Appendix 4, focuses on this circumstance (the relevant section of Regulation 708 indicated in Question 13 is also attached).
38. The Committee reviewed the purpose of the Forms 4 and 5 in this respect and noted the exceptions to the requirement for the Forms. It became clear after further discussion that the intention was that the exemptions listed in the regulation related to circumstances which were not to be included in the focused audit profile.
39. Accordingly, the Committee was of the view that Mr. Aaron's amendment should be accepted, and reflected in the following revised language of Profile Item #3) (new/replaced text in *boldface italics*):

Lawyers in private practice holding mortgages in trust for clients, collecting monthly private mortgage investment payments for clients, arranging private mortgage investments for lender client, *or acting for or receiving money from mortgage lenders in transactions where subsection 15.2(4) of Regulation 708 does not apply.*

Profile Item #4)

40. The original language of this item read:

Members who act as sole Estate Trustee and have sole authority over estate assets

41. In the discussion at the January 23 Convocation, Mr. Gottlieb raised concerns about this item, which resulted in an amendment to add the words "and do not maintain proper books and records" to the profile item.
42. The Chair, in discussions with staff after Convocation about the effect of the amendment, decided that the matter should be reconsidered.
43. Attached at Appendix 5 is an excerpt from a memorandum prepared for the Committee by James Yakimovich, Director, Audit and Investigations, in response to the issues raised by the amendment.
44. After reviewing Mr. Yakimovich's information, the Committee agreed that there was a risk of not capturing important information if the profile item were defined too narrowly.
45. Accordingly the Committee decided that the profile item should be amended to delete the words added by the Gottlieb amendment on January 23, so that the profile item should now read as it appears in paragraph 40 above.

⁴Under section 15.2 of Regulation 708, Form 4 (Investment Authority for Mortgages or Charges on Real Property) to be signed by the lender and Form 5 (Report on Client Mortgage Investment) to be signed by the lawyer are required when a lawyer acts on a private mortgage transaction.

Options for Decision by Convocation

46. Convocation must decide:
- a. whether it agrees with the Committee's proposals for amendments to the two profile items;
 - b. if it does not agree, what the language of those profile items should be.

APPLICATION OF A RETIRED JUDGE UNDER
RULE 15 OF THE RULES OF PROFESSIONAL CONDUCT

47. A retired Ontario judge is seeking Convocation's permission pursuant to Rule 15 of the Rules of Professional Conduct to act as independent counsel to the discipline committee of an Ontario regulatory body.
48. The following information was provided by Mr. Glenn MacPherson to the Law Society respecting this matter:

As you may know, ADR Chambers in Ontario has a panel consisting of several retired justices of the province, from both Appellate and Trial levels, together with myself and Brian Wheatley, who were practising lawyers until our retirement from active practise in late 1995.

For the past two and a half years, our group has been engaged in the delivery of ADR services in various forms, as complete neutrals, and we have always been very careful not to engage in the delivery of any service which might be construed by anyone as the practise of law.

Recently, ADR Chambers was approached by a representative of the Ontario College of Teachers. Pursuant to recent legislation, they now have the legislative authority, inter alia, to regulate the members of the Ontario College of Teachers and, if necessary, to conduct hearings before a Discipline Committee.

They have specifically requested that ADR Chambers provide one of its retired justices, who would commit a block of his time, amounting to perhaps eight or ten weeks per year, to deliver the service of independent counsel to the Hearing Committee.

The services which would be provided by the member of ADR Chambers would appear to be twofold:

1. Prior to an actual hearing, there would likely be a form of mediation process conducted by our member. This, of course, would be very similar to the type of service we have always delivered at ADR Chambers and does not in any way constitute the delivery of a legal service.
2. If a matter proceeds to a hearing, then the member of ADR Chambers, in his role as independent counsel, would be present in the hearing room and would give assistance to the Hearing Committee with respect to such matters as the admissibility of evidence, applications to stay the process, interpretation of the relevant statute, and the like.

In my view, these latter duties would indeed constitute the delivery of a legal service.

In effect, the Hearing Committee would look to the independent counsel for his suggestion as to the applicable legal considerations to be given to any issue being debated by the parties. Counsel for the parties would then have an opportunity to respond to any advice given to the Hearing Committee by independent counsel. The Hearing Committee would then make a decision based upon the arguments of counsel for the parties and the advice of independent counsel.

While independent counsel is not to be involved in the decision making process itself, it is obvious that the Hearing Committee would be inclined to give weight to the suggestions and advice given to it by independent counsel.

I should mention that there is a right of appeal, as of right to the Divisional Court, from the decision of the Discipline Committee.

It is the view of the Ontario College of Teachers that the function of independent counsel is very similar to the functions discharged by members of the judiciary on a daily basis. They therefore believe that there is no person more qualified to discharge the role of independent counsel than a former member of the judiciary.

Since the members of ADR Chambers, to date, have not engaged in the practise of law, it seems to me that we must consider the provisions of Rule 15 of the Professional Conduct Handbook.

One of our members who has been requested to act in the role of independent counsel is Patrick T. Galligan, who retired from the Ontario Court of Appeal in late 1995. As a former member of the Ontario Court of Appeal, his appointment as independent counsel would require a compliance with Section 1 of Rule 15, i.e. obtaining the express approval of Convocation to deliver the identified legal service as independent counsel.

Having regard to the provisions of Section 2 of Rule 15, we would not appear to have the same concern if the appointed independent counsel was a former justice of the Trial Division who had been in retirement for more than two years.

Dealing, then, with Mr. Galligan in particular, I would certainly appreciate your guidance and assistance in presenting this issue to your Professional Regulation Committee, which I understand may be convened within the next few days. Since the Ontario College of Teachers would like to have their hearing process implemented within the next month or two, it becomes imperative on our part to make the necessary application for the approval of Convocation regarding Mr. Galligan, as soon as possible.

Thank you for taking the time to address this issue with me. I would certainly appreciate it if you would acknowledge receipt of this letter and advise as to the earliest date upon which the application for the approval of Convocation can be made. We are quite prepared to make any additional written or oral submission which may be required.

Requirements of Rule 15

49. Paragraph 1 of Rule 15 requires that a judge who sat in an appellate court cannot return to practise as a counsel or advocate before the courts or tribunals "without the express approval of Convocation". It states:

Without the express approval of Convocation, which approval may only be granted in exceptional circumstances and may be restricted as Convocation sees fit, no member who was formerly a judge of the Supreme Court of Canada, the Ontario Court of Appeal or the Federal Court of Canada, Appeal Division and who has retired, resigned or been removed from the Bench and has returned to practice, shall appear as counsel or advocate in any court, or in chambers, or before any administrative board or tribunal.

50. The problem that Rule 15 was intended to address was the appearance to the public that a party who had as counsel a retired judge would have an advantage over the other party whose counsel was not a retired judge.

The Committee's Views

51. The Committee concluded that the language of Rule 15 would apply to the role Mr. Galligan would assume with respect to the hearing panels of the subject regulatory body.
52. The Committee also concluded that based on the circumstances outlined by Mr. MacPherson and the duties described, Mr. Galligan should be allowed to provide legal services as indicated to the regulatory body.
53. He would not be acting in a partisan capacity but would only be providing legal advice to the tribunal.
54. The Committee therefore proposes that Convocation grant approval pursuant to Rule 15 to allow Mr. Galligan to act as counsel to the Ontario College of Teacher's Hearing Committee.

Options for Decision by Convocation

55. Convocation must decide whether to:
- c. approve or not approve the application of Mr. Galligan, or
 - d. approve the application with restrictions, as provided for in Rule 15.

DISTRIBUTION OF ORDERS OF CONVOCATION

56. At the request of the Chair, the Committee reviewed the procedure by which discipline orders of Convocation are distributed in the public realm, with a focus on the efficacy of the current system and whether changes are required.
57. The issue prompting the review arose as a result of the experience of a member of the profession, appearing as counsel for a lawyer before discipline Convocation last year, where, through inadvertence, the order in the matter before Convocation was distributed when it had not been settled between the counsel and Convocation.⁵

⁵The issue of the settling of Convocation's orders, and ways to improve the current process in that respect is the subject of a separate review by the Committee.

Current Practice

58. Currently, orders resulting from the disposition of matters at Discipline Convocation are sent by the Clerk to the Hearing Panels to the following five groups:

- i. Registrar of the Ontario Court (General Division)
Orders of disbarment and suspension are sent to the court, as it maintains the rolls, but apparently, until recently, all orders, including reprimands, were sent. The court office has now advised the Society that it need not see the orders, but wishes to be informed primarily of suspensions or other membership status changes.
- ii. Official Documents Office
This office has advised that it only wishes to obtain copies of orders through which a lawyer's membership in the Society has been terminated (i.e. permitted resignations, disbarments) or other changes in membership status (i.e. suspensions).
- iii. Editor of the Toronto Legal Directory
- iv. Editor of the Lawyer's Phone Book
- v. County and District Law Association Presidents
The distribution of the Orders to these individuals was initiated about the time Convocation's proceedings were opened to the public (sometime in 1986). There was a time lag between the reporting of discipline proceedings either through the *Communique Plus* or the Ontario Reports. There were apparently instances where a member had been suspended or otherwise disciplined and the local bar was unaware of it until the press started to call. Accordingly, it was decided that the local president would receive a copy of the order, as it arose from a public hearing.

Administratively, the orders are sent by the Clerk to the presidents in the jurisdictions in which the disciplined lawyers reside. This is a time consuming process, in that a determination must first be made as to the correct county/district for the lawyer, and then a covering letter is drafted to the president of each county affected, attaching a copy of the order.

The reality is that this is of necessity given lower priority to staff's other work flowing from Convocation, and there can be up to several weeks delay in sending the letters after the applicable Convocation has sat.

59. The Society's Communications Department prepares its own list of lawyers against whom discipline orders have issued at Convocation. That list, an example of which appears at Appendix 6, identifies the lawyer, the city or town of residence/practice and the nature of the order, and is distributed to the press shortly after Convocation.

The Committee's Views

60. The consensus of the Committee was that notification to the current recipients of the results of Discipline Convocation should continue, but with the following changes:

- a. Only those settled orders imposing the penalties of disbarment, permission to resign or suspension should be included in the information provided;
- b. The information sent, reporting those orders, should be that prepared by the Communications Department as described above, to be faxed to the recipients immediately after preparation following the relevant Convocation.⁶

61. The Committee believes that this will satisfy the information requirements of the recipients and ensure a timely receipt of the information.

⁶The exception is the Official Documents Office, which will still require a copy of the actual order for its records.

62. Further, the above procedure would not preclude any of the recipients from contacting the Law Society for further information, including copies of the specific orders, if the need or desire arose.

Options for Decision by Convocation

63. Convocation must decide whether to:
- a. accept the Committee's proposal for distribution of Convocation's orders;
 - b. continue with the current procedure.

STANDARDS FOR THE AUTHORIZATION OF
SEXUAL IMPROPRIETY COMPLAINTS AND RELATED ISSUES

A. NATURE OF THE ISSUES

64. The Committee's working group⁷ reviewing the standard which should be applied to the authorization of sexual impropriety complaints⁸ and, by expansion of its mandate, reviewing the Society's approach to the investigation of complaints alleging sexual harassment and discrimination, generally, by lawyers, under Rules 27 and 28 of the Rules of Professional Conduct, reported to the Committee on March 12.
65. The Committee considered the working group's findings and in this report for Convocation's information, is providing commentary on the issues and the Committee's endorsement of the conclusions reached by the working group, as a matter of direction and guidance to Law Society investigatory and prosecutorial staff.

B. BACKGROUND

66. The working group identified the following issues which it addressed in its deliberations:
- (a) what standard should be applied by the Discipline Authorization Committee in authorizing formal Complaints alleging sexual improprieties (and therefore by staff when putting matters forward for authorization), and, specifically, should an assessment of credibility be made at the authorization stage, or at any stage prior to a hearing?
 - (b) What time lines, if any, should be applied to the investigation and prosecution of sexual impropriety complaints?
 - (c) Is there a need for further training in this area, and, if so, what training should be implemented and for whom?
 - (d) In light of the unique nature of sexual impropriety complaints, are discipline proceedings the most appropriate vehicle for effectively addressing these complaints?
67. Each of the above is dealt with separately in this report.

⁷Members of the working group are benchers Eleanore Cronk, Harriet Sachs and Hope Sealy, and staff members Susan Carlyle and Glenn Stuart.

⁸ In this context, "sexual improprieties" are considered broadly to include discriminatory conduct, sexual harassment, and all forms of sexual assault.

Current Standards for Proceeding with Sexual Impropriety Complaints

68. All investigations into sexual impropriety or discrimination complaints are currently brought before the Discipline Authorization Committee, prior to closing the file, whether the authorization of a formal Complaint is sought or not.
69. The Complaints Department has historically applied, as the standard to be met when seeking authorization for and swearing all formal complaints, the standard expressed in the text of the formal Complaint, namely, that the Complainant (the investigator himself or herself) has "reasonable and probable grounds to believe and does believe" that the lawyer is guilty of the conduct complained of. No different standards have been adopted for complaints of sexual misconduct or discrimination.
70. Since this standard has a subjective element, the investigative practice is to make an assessment of the credibility of a complainant during the course of an investigation and factor this assessment into the decision as to whether to seek the authorization of a formal Complaint.
71. While the Complaints Department's view was that, where a case turns solely on an issue of credibility, with no extraneous evidence to tip the balance in favour of the complainant, a formal Complaint cannot be sworn, the Discipline Department's view was that the current wording of the sworn Complaint does not preclude the authorization of or the swearing of a Complaint where the case turns on an issue of credibility.
72. The prevailing practice among Discipline Counsel is to determine on the basis of all of the available evidence whether there is a reasonable prospect of obtaining a finding of professional misconduct (or conduct unbecoming), in light of the established standard which requires clear and convincing proof on the basis of cogent evidence⁹. This assessment may involve a consideration of the credibility of individual witnesses, not so as to weigh the credibility of a specific witness but only to determine whether there is an identifiable flaw in a witness' credibility that would prevent that person's evidence from being accepted.
73. Accordingly, the only assessment of credibility which is made by discipline counsel in all types of cases is a determination of whether there is a flaw in the evidence of a witness which seriously impugns the witness' credibility. An obvious example of such a flaw may be a perjury conviction with respect to the subject-matter of the Complaint. Less obvious flaws may result from a culmination of factors which, in isolation may not have a determinative effect, but whose collective impact is very strong.

The Applicable Standard

74. The Committee is therefore of the view that the following standard should be applied to the authorization of sexual impropriety or other types of complaints, except in the cases described in paragraph 73 above in which the evidence is flawed in such a way as to seriously impugn the witness's credibility¹⁰: *if the complainant is believed*, are there reasonable and probable grounds to believe that the Solicitor is guilty of professional misconduct?

⁹ This test was first articulated by the Divisional Court in *Bernstein v. College of Physicians and Surgeons (Ontario)* (1977), 15 O.R.(2d) 447, and has been re-affirmed repeatedly since then.

¹⁰For example, this standard would not preclude investigatory staff from bringing to the attention of the Discipline Authorization Committee situations where, for any number of reasons, it is clear that the likelihood of the complainant being believed is extremely small, for the decision of the Committee as a matter of its discretion on whether a formal Complaint should be authorized.

75. If this standard is not applied, the situation arises where there would never be a hearing where a matter turns solely on credibility because the issue of credibility which requires a hearing provides an insufficient basis for a hearing; such a view would have (and has had) a disproportionate negative impact on hearings into allegations of sexual improprieties given their nature.
76. The Committee believes that the current wording of the sworn Complaint (“... has reasonable and probable grounds to believe and does believe ...”) does not preclude the swearing of a Complaint where the case turns on an issue of credibility. Credibility is a matter which should be left for an oral hearing before a Discipline Committee.
77. Where the issue with respect to a Complaint is one solely of credibility, and there are no dominant factors which may strongly pre-dispose an observer considering that issue to one story or the other, the Complaint ought to proceed to a hearing.
78. This view applies to Complaints of all kinds and not only those involving alleged sexual improprieties. The underlying premise of this view is that it is not the role of counsel, or other staff, to assess the credibility of witnesses.
79. Fairness, which must be exercised in favour of both the Solicitor and the complainant, requires that issues of credibility be the subject of an oral hearing. This principle was recently affirmed by the Court of Appeal:

Many courts in many different settings have emphasized that when a decision turns on credibility, a decision-maker should not make an adverse finding of credibility without affording the affected person an oral hearing.¹¹

Time Lines on Process

80. Convocation eliminated the tracking of formal Complaints on specified time lines in April 1997 with the adoption of the new Rules of the Discipline Hearing Process.
81. The general position of the Discipline Department is that all Complaints must be moved forward expeditiously. Although there is no formal policy, it is understood that the sensitive nature of this type of Complaint requires these Complaints in particular to be prosecuted expeditiously.
82. The Committee, in accepting the working group’s finding in this respect, agreed that as a matter of policy, the Law Society should make a commitment to the timely investigation and prosecution of sexual impropriety and discrimination complaints, but that fixed time lines not be imposed for the reasons enunciated by Convocation when it eliminated the formal "tracking" of Complaints.¹²
83. Further, the Committee agreed that no additional steps should be taken in the investigation of these matters which would not be taken in other investigations and which would serve to protract the Society's disposition of these matters.

¹¹ *Khan v. University of Ottawa* (1997), 34 O.R.(3d) 535 (C.A.), at p. 543

¹²Convocation decided that the “tracks” became redundant in light of newer procedures instituted in the process, such as the Hearings Management Tribunal (HMT) and internal case management procedures within the discipline Department.

Training

84. There are significant weaknesses in the level of insight into these issues by staff and benchers (which is only reflective of a broader lack of understanding in the profession and society at large). A first step to any meaningful approach to these issues must be heightened awareness of the subtleties and nuances of sexual misconduct and discrimination issues, including sexual harassment. Without this awareness, the Law Society cannot fulfil its governance mandate and leadership role with respect to these issues.
85. This concern has two specific implications:
- a. any process which is devised will only be effective if staff are trained adequately in the area, and
 - b. the Law Society has an important role in the profession to set an example of the appropriate level of awareness to these issues, which will have the effect of giving direction to the profession and making the process more effective.
86. A key consideration in identifying the actual training to be implemented in the Law Society's circumstances will be the weight given to the different skills which are required in dealing with this type of complaints, including awareness training, investigative training and mediation/ADR training specific to this context.
87. The Committee agreed that funds within the existing departmental budgets should be allocated to implement appropriate training in relation to sexual impropriety and discrimination issues for both regulatory staff and benchers. A training plan can then be developed to identify the specific training to be implemented.

Appropriateness of the Discipline Stream

88. The Committee considered whether matters of this nature are best resolved in a discipline forum or whether there is a need for more avenues for diversion or alternative dispute resolution at an early stage.
89. The working group identified three factors which support alternative approaches to discipline:
- (1) allegations of this nature are more personal to both parties than any other matters considered by the Law Society;
 - (2) because the allegations are personal in nature, both the complainant and the lawyer have a greater vested interest in a meaningful and mutually acceptable resolution of the matter; and,
 - (3) the problems identified by a complainant often have broader, and even systemic, ramifications beyond the particular complaint.
90. For these reasons, a more constructive approach to complaints of this nature which includes remedial and educational avenues in lieu of the traditional discipline process, in some cases at least, may provide "better" resolutions to the problems (that is, more acceptable to the parties and more likely to prevent future difficulties) than the often blunt remedies available through the discipline process. These considerations need to be weighed against a concern that these matters not be seen as being given "special treatment" on the one hand or reduced importance because they are not invoking disciplinary sanctions on the other.
91. The Law Society of British Columbia (LSBC) has implemented an alternative track for matters of this nature (and also discrimination issues more broadly) through the office of the ombudsperson to the Law Society of British Columbia ("LSBC"). It provides an alternative to a "regulatory" complaint for persons with complaints relating to matters of discrimination or sexual improprieties.
92. The role of the ombudsperson to the LSBC is two-fold: first, to provide education to the profession so as to encourage the modification of people's behaviour before misconduct occurs; and, second, to provide an avenue for people who have been the subject of discriminatory conduct to address the matter without invoking the formal regulatory processes of the LSBC.

93. According to the LSBC's ombudsperson, the office has been an overwhelming success. Whereas only seven or eight formal complaints have been made in each of the last couple of years in relation to sexual impropriety matters (both from lawyers in firms and members of the public), about 130 calls have been received over the last two years. These calls have covered the gamut of sexual improprieties as well as other discrimination issues. Good settlements have been obtained in the vast majority of these cases; very few complainants have chosen to pursue the discipline option.
94. The LSBC experience shows that there are a large number of people who have been the subject of discriminatory conduct/sexual improprieties for whom the discipline process is not a viable option, and it is the ombudsperson's view that having this alternative to formal discipline is not only justified, but necessary if the Law Society is to provide services which are responsive to the needs of the public and the profession.
95. The Committee agreed that the Law Society needs to consider how to implement alternative mechanisms for responding to complaints of sexual improprieties and discrimination in appropriate cases, such as the creation of an ombudsperson's office, so as to better respond to these complaints.
96. In this respect, the Committee is directing that this matter be considered in the broader context of defining the role of alternative dispute resolution in the regulatory process, the design and implementation of which is the subject of intensive work within Project 200 and the concurrent and connected activities of the Committee's working group on mediation in the regulatory process.

TIME LINE FOR PREPARATION OF REASONS OF DISCIPLINE HEARING PANELS

97. At the request of the Chair, the Committee reviewed of the timeliness of preparation and release of reasons of discipline hearing panels, and whether there was a need for a policy establishing a time line for delivery of the reasons.
98. Currently, there is no formal guidance to panels on when reasons should be prepared and delivered. Neither the *Law Society Act* nor Regulation 708 speak to a time line for delivery of reasons after hearing. The legislative reform package, while indicating that Convocation may make rules of practice and procedure¹³, does not specify a time frame for delivery of reasons. The Rules of the Discipline Hearing Process also do not address the issue.
99. While most hearing panels are diligent in providing their reasons within a reasonably short period after hearings are completed, some reasons are delayed for an unacceptably lengthy period of time.
100. The Committee determined that a period of 90 days for delivery of reasons after completion of a hearing would provide sufficient time for panels to prepare appropriate reasons, taking into consideration that the nature of some cases requires a heavier time commitment than others for the purpose of writing reasons.
101. Accordingly, the Committee, while not proposing that the time line of 90 days be adopted as an inflexible policy, is requesting that Convocation accept as a general guideline that 90 days be observed by hearing panels as the period within which reasons are to be delivered after hearing.

REVIEW OF RULES ON REFERRALS/REFERRAL FEES, STEERING AND SOLICITATION

102. The Committee has agreed to form a working group to review issues relating to restrictions on referral of legal work to lawyers, referral fees and the broader issues of steering and solicitation.

¹³Section 46.2 reads "Convocation may make rules of practice and procedure applicable to proceedings under this Part and under subsection 27(4)", the latter being admissions hearings.

27th March, 1998

103. The review was prompted by concerns expressed by a member of the Law Society about the relevance and necessity for certain proscriptions in the Rules of Professional Conduct in the above areas, given the reality of legal practice in today's business world and marketplace.
104. The Committee has struck a working group to be chaired by Marshall Crowe to study the issues, mindful of the initiative currently under way through the Multi-Disciplinary Partnerships Working Group of Convocation's Futures Task Force, which will be examining this and other regulatory issues in the future.

APPENDIX 1

EXCERPT FROM WRITTEN SUBMISSIONS OF OBAP TO THE PROFESSIONAL REGULATION
COMMITTEE, NOVEMBER 1997

(see excerpt in Convocation file)

APPENDIX 2

THE LAW SOCIETY OF UPPER CANADA

Professional Conduct

MEMORANDUM

TO: Jim Varro

DATE: November 4, 1997

FROM: Stephen E. Traviss

RE: OBAP Proposal that lawyers participating in the program
be under a strict duty not
to report serious wrongdoing by
a lawyer they are helping without the express consent of
the lawyer being helped

INTRODUCTION

A lawyer's duty to report is addressed in paragraph 1 of the Commentary under Rule 13. It reads:

1. Unless the lawyer who tends to depart from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is, therefore, proper (unless it be privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these Rules. Where, however, there is a reasonable likelihood that someone will suffer serious damage as a consequence of an apparent breach, for example where a shortage of trust funds is involved, the lawyer has an obligation to report the matter unless it is privileged or otherwise unlawful to do so. In all cases the report must be made bona fide without malice or ulterior motive.

There is little guidance with respect to the mandatory reporting of serious misconduct save the example of a lawyer who is dipping into his trust account.

CANVASS OF OTHER LAW SOCIETIES

I sent a fax to the various law societies across Canada asking three questions:

- (1) Do you have in your jurisdiction a program similar to the OBAP program?
- (2) If you do have such a program, has your Law Society issued any guidelines to participating lawyers with respect to the revelation of any wrongdoing they learn of?
- (3) What sort of lawyer wrongdoing must be reported to the Law Society in your jurisdiction and what reporting is discretionary?

Set out below are the responses.

Alberta

- (1) It has a similar program - ASSIST.
- (2) A recent amendment to the Code of Conduct is set out below.
- (3) Answered in (2) above.

4.2 Improper conduct often arises from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek help as early as possible. The Law Society supports the ASSIST Program and similar agencies in their commitment to the provision of counselling on a confidential basis. Therefore, a lawyer who is making a bona fide effort to have another lawyer seek help for such problems is not required to report to the Law Society non-criminal conduct of that lawyer that would otherwise have to be reported under Rule #4. However, the lawyer must advise the Law Society if there are reasonable grounds to believe that the other lawyer will engage in conduct that is criminal or is likely to harm any person.

See Law Society Rules 31.1 and 31.2 which, respectively, exempt:

- (a) the Office of the Practice Advisor from reporting conduct unless it relates to the misappropriation or the likely misappropriation of funds, or to the likelihood of physical harm to any person;
- (b) the Office of the Equity Ombudsperson from reporting any conduct unless it relates to the misappropriation or the likely misappropriation of funds.

British Columbia

- (1) It has a program similar to the OBAP program.

Since 1990, the Law Society has funded as part of its Members' Assistance Program, the Lawyers' Assistance Program (LAP). The LAP is a peer based program in which volunteer lawyers assist other lawyer throughout the province to deal with personal problems including both drug and alcohol addictions (the original focus of the program) and other kinds of personal problems (i.e. depression, suicide, other addictions). The LAP is governed by a Board and it has a full-time staff person, Mr. Derek LaCroix. About half of the volunteer lawyers are recovering alcoholics.

- (2) Since its inception both the staff, the Board and the volunteers at the LAP have taken the position that the names of the lawyers that they deal with are to be kept confidential. This has been respected by the Law Society and recently confirmed in the first written contract with the LAP. There has been the unwritten expectation that participating lawyers would honour the reporting requirements in the Professional Conduct Handbook, the *Act* and Rules.

From time to time there has been some discussion between the LAP Staff, Board Members and the various Chairs of Law Society Committees with respect to LAP's desire to codify a strict duty of confidentiality and an immunity for participating lawyers within the *Legal Profession Act*. This has not taken place yet.

- (3) All lawyers in British Columbia are subject to the reporting requirements set out in Chapter 13 of the Professional Conduct Handbook which reads as follows:

Reporting Another Lawyer to the Law Society

1. Subject to Rule 2, a lawyer shall report to the Law Society:
 - (a) another lawyer's breach of undertaking which has not been consented to or waived by the recipient of the undertaking;
 - (b) another lawyer's shortage of trust funds, and
 - (c) any other conduct by another lawyer which raises a substantial question as to the other lawyer's honesty or trustworthiness as a lawyer in other respects.
2. A lawyer shall not, in making a report under Rule 1, disclose any confidential information respecting the lawyer's client acquired in the course of the professional relationship or any privileged communications between them, unless the client expressly or implicitly consents.

Reporting any other breach of the Rules, *Act*, or Handbook would be discretionary.

Manitoba

- (1) Manitoba does have a program similar to OBAP. In this province it is called the Lawyers Assistance Program.
- (2) The Law Society of Manitoba has not issued any guidelines to participating lawyers with respect to reporting wrongdoing of which they may become aware in the course of providing assistance. The source of this information understands, however, that whereas the assisting lawyers were bound by confidentiality, it was understood that if they became aware of any serious wrongdoing, their ethical obligation to report such conduct to the Law Society would override. However, the source notes that in this most recent ad the advertisement states, "The Program runs an absolutely confidential process." The source is therefore unclear as to whether the earlier understanding would be observed.

The fact is, however, that this Program is not used very frequently, if at all, by the members, and the confidentiality issue may be at the heart of it.

- (3) There is a general requirement in the Code of Professional Conduct to report the misconduct of other lawyers. In its application, however, it is understood that it is a discretionary matter and one in which a lawyer is called upon to make a professional judgment. It is Manitoba's view that any serious misconduct would impose a strong obligation on a member to report.

New Brunswick

New Brunswick (NB) does not have a similar program. The NB Branch of the CBA however is in the process of setting up a lawyer assistance program in NB. The Law Society has not become involved in setting this up because of the inherent conflict between the discipline obligation and the confidentiality required to make such a program viable. The CBA Branch has not approached the Law Society at this time to ask for some kind of immunity from prosecution for not reporting a wrongdoing to the Law Society. The Society indicated that it would not be surprised if the CBA would do so in the near future.

Newfoundland

The Law Society of Newfoundland participates in a Professional Assistance Programme operated jointly by physicians, dentists and lawyers. A significant part of the programme counselling involves alcohol-related problems, but all dealings with the programme are at arms length from the Law Society and confidential. The Society has no programme in place similar to the OBAP and, hence, the ethical concerns you raise are not raised here in the normal course of events.

Northwest Territories

- (1) Our jurisdiction provides a Lawyers' Assistance Program (LAP) which is a confidential counselling service designed to assist lawyers and members of their family in dealing with a wide range of personal problems affecting health, well being and professional life including:
 - Anxiety
 - Depression
 - Marital or Family Problems
 - Alcohol or Drug Abuse
 - Financial Difficulties
 - Practice Problems
 - Work & Career Concerns
 - Stress
 - Any other issues that may cause distress

The Law Society and CBA have contracted with Kelly, Luttmer & Associates Ltd. to provide the service 24 hours per day, 365 days per year, toll free. They are trained psychologists and other professionals experienced in providing confidential counselling services.

The LAP is completely confidential. The Law Society and the CBA receive only statistical information regarding the number of callers. The names of callers and particulars of their problems are not released. The LAP provides short-term counselling as well as assistance in finding the best resources available in the lawyer's community or elsewhere. Fees for initial sessions are paid by the Law Society and CBA - NWT Branch.

- (2) There are no guidelines, nor does the source of information for the Law Society believe that it would consider issuing any guidelines with respect to the revelation of any wrongdoing learned during the course of this program. Guidelines to this effect would conflict with the mandate of the program. Through this program, the Law Society tries to encourage its members to identify their problems and seek appropriate help. It is understood that as part of the counselling and recovery process, that they are encouraged to self-report any wrongdoing.

- (3) According to Chapter XV of the CBA Code of Professional Conduct (1987 Edition) that was adopted by the members of the Law Society of the NWT, "*It is, therefore, proper (unless it be privileged or otherwise unlawful) for a lawyer to report to a governing body any occurrences involving a breach of this Code.*"¹⁴

In acknowledging the difficulties likely to be experienced the program were operated through the assistance of volunteers (due to the size of the bar and the necessity to ensure utmost confidentiality), the Society opted to contract these services outside the profession.

Although difficult to measure, the view is that the program has been very successful.

Nova Scotia

- (1) The Nova Scotia Barristers' Society has a Lawyers Assistance Program ("LAP").
- (2) A Confidentiality Policy with respect to the Program, endorsed by Council, is set out below.

NOVA SCOTIA BARRISTERS' SOCIETY

Lawyers Assistance Program Confidentiality Policy

The Nova Scotia Barristers' Society and the Nova Scotia Branch of the Canadian Bar Association are concerned with the health and welfare of individual lawyers and their families. The well-being of the profession as a whole is integrally linked with the emotional health of the individual practitioner and the practitioner's family.

The following statement has been approved by both organizations:

The Nova Scotia Barristers' Society and the Nova Scotia Branch of the Canadian Bar Association recognize that alcoholism and other addictions are illnesses that can be successfully treated. Treatment is in the best interest of the member, courts, Bar, and the public.

The Nova Scotia Barristers' Society and the Nova Scotia Branch of the Canadian Bar Association recognize that in addition to alcoholism and addiction, there are problems capable of successful treatment, e.g. marital, stress, emotional distress, and financial.

The primary objective of the Lawyers Assistance Program is to provide meaningful assistance, on a wholly confidential basis, to those members and their immediate families seeking such assistance; to help them deal more effectively with those personal problems which impair the ability of the members to serve their clients and their profession.

Accordingly, the Nova Scotia Barristers' Society and the Nova Scotia Branch of the Canadian Bar Association wholeheartedly support and endorse the objectives of the Lawyers Assistance Program, and the principle of total confidentiality upon which they are based.

- (3) The Barristers' Society believes that the above must be read in conjunction with the provisions of its *Legal Ethics Handbook* requiring the reporting of serious professional misconduct and that there is no absolute privilege associated with communications received by lawyer volunteers or others associated with the LAP. In the five years that the Program has existed, no reports have come forward.

¹⁴This is similar to paragraph 1 of Commentary to our Rule 13

Prince Edward Island

- (1) PEI does not have a similar program, although there is an informal program of interested members who offer assistance in these circumstances and who are connected with the national lawyers assistance program. Efforts are being made through the CBA to start a more formal program.
- (2) No guidelines exist. However, members who offer such assistance enter into a form of retainer agreement with the members they assist which they feel obliges them to keep confidential any wrongdoing they encounter. This retainer agreement has never been tested, to the Law Society's knowledge.
- (3) The relevant sections of PEI's Code is identical to paragraph 1 of the Law Society of Upper Canada's Commentary to Rule 13.

Saskatchewan

- (1) Lawyers Concerned For Lawyers has been in operation for approximately eleven years. The focus for its inception was to deal with alcohol problems. However, it was recognized that lawyers suffer from many stresses and therefore the program is wider than problems with alcohol.
- (2), (3) Chapter XV, Commentary 6, of *The Code of Professional Conduct* added September 17, 1993 states:

6. Often instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society of Saskatchewan supports Lawyers Concerned for Lawyers in its commitment to the provision of counselling on a confidential basis. Therefore, subject to the qualification below, it is not required that lawyers acting in the capacity of counsellors for Lawyers Concerned for Lawyers disclose information received in that capacity to the Discipline Committee of the Law Society, its agents, investigators or employees. Such lawyer/counsellor will not be called by the Law Society or by any investigation committee to testify at any discipline or competency hearing without the consent of the lawyer from whom the information was received.

Notwithstanding the above, a lawyer/counsellor has an ethical obligation to report to the Law Society representations from a lawyer that indicate he/she may engage in future conduct which is unethical or criminal. Such conduct includes, without limitation, perjury, theft and fraud. The Law Society cannot countenance the continuation of such conduct regardless of a lawyer's attempts at rehabilitation.

No reply has been received from either the Law Society of the Yukon or from the Barreau du Quebec.

MEDICAL PROFESSION IN ONTARIO

Doctors in Ontario are now under a duty to report sexual abuse of a patient by another doctor who was or is that patient's treating physician.

Section 85.5 of the *Regulated Health Professions Act* requires doctor employers or those doctors working in partnerships who dismiss an employed doctor or disband the partnership to make a report to the Registrar of the College where the reasons include "professional misconduct, incompetence or incapacity." This broad category would include addiction to alcohol and drugs.

Section 33 of the *Public Hospitals Act* (set out below) requires an administrator to make a report to the College concerning a physician in the following circumstances:

33. Where,
- (a) the application of a physician for appointment or reappointment to a medical staff of a hospital is rejected by reason of his or her incompetence, negligence or misconduct;
 - (b) the privileges of a member of a medical staff of a hospital are restricted or cancelled by reason of his or her incompetence, negligence or misconduct; or
 - (c) a physician voluntarily or involuntarily resigns from a medical staff of a hospital during the course of an investigation into his or her competence, negligence or conduct,

the administrator of such hospital shall prepare and forward a detailed report to The College of Physicians and Surgeons of Ontario. R.S.O. 1980, c. 410, s. 30.

The Ontario Medical Association's
Physical Health Program

The Ontario Medical Association ("OMA") receives calls and referrals from a number of sources including the College of Physicians and Surgeons. It operates a Help Program on a confidential basis.

Where a doctor is receiving treatment he/she will sign a contract with the OMA that provides for a report to be made to the College in the event there is a relapse and the doctor is being unco-operative. This program was developed after many years of careful consultation and preparation by the College and the OMA.

SET/em

APPENDIX 3

MEMORANDUM OF ROBERT AARON RESPECTING FOCUSED AUDIT PROFILE

(see memorandum in Convocation file)

APPENDIX 4

QUESTION 13, PRIVATE PRACTITIONER'S REPORT AND SECTION 15.2, REGULATION 708 (Subsection 15.2(4) in Boldface)

(see copy of Private Practitioner's Report in Convocation file)

15.2 (1) In this section,

"charge" has the same meaning as in the *Land Registration Reform Act*,
("charge")

"lender" means a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or corporation. ("prêteur")

(2) Every member who acts for or receives money from a lender shall, in addition to complying with sections 14, 15 and 15.1, maintain a file for each charge, containing,

(a) a completed form as prescribed by the rules, signed by each lender before the first advance of money to or on behalf of the borrower;

(b) a copy of a completed report, in the form prescribed by the rules, or a reporting letter that contains a response to every question in the prescribed form;

(c) if the charge is not held in the name of all the lenders, an original declaration of trust;

(d) a copy of the registered charge; and

(e) any supporting documents supplied by the lender.

(3) Forthwith after the first advance of money to or on behalf of the borrower, the member shall deliver to each lender,

(a) an original of the report or reporting letter referred to in clause (2)(b); and

(b) if clause (2)(c) applies, a copy of the declaration of trust.

(4) Clauses (2)(a) and (b) do not apply with respect to a lender if,

(a) the lender,

(i) is a bank listed in Schedule I or II to the *Bank Act (Canada)*, a licensed insurer, a registered loan or trust corporation, a subsidiary of any of them, a pension fund, or any other entity that lends money in the ordinary course of its business,

(ii) has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge, and

(iii) has given the member a copy of the written commitment before the advance of money to or on behalf of the borrower;

(b) the lender and borrower are not at arm's length;

(c) the borrower is an employee of the lender or of a corporate entity related to the lender;

(d) the lender has executed Form 1 of Regulation 798 of the Revised Regulations of Ontario, 1990, made under the *Mortgage Brokers Act*, and has given the member written instructions, relating to the particular transaction, to accept the executed form as proof of the loan agreement;

(e) the total amount advanced by the lender does not exceed \$6,000; or

(f) the lender is selling real property to the borrower and the charge represents part of the purchase price.

(5) Each time the member or any other member of the same firm does an act described in subsection (6), the member shall add to the file maintained for the charge the form referred to in clause (2)(a), completed anew and signed by each lender before the act is done, and a copy of the report or reporting letter referred to in clause (2)(b), also completed anew.

(6) Subsection (5) applies in respect of the following acts:

1. Making a change in the priority of the charge that results in a reduction of the amount of security available to it.
2. Making a change to another charge of higher priority that results in a reduction of the amount of security available to the lender's charge.
3. Releasing collateral or other security held for the loan.
4. Releasing a person who is liable under a covenant with respect to an obligation in connection with the loan.

(7) Forthwith after completing a report or reporting letter anew under subsection (5), the member shall deliver an original of it to each lender.

(8) Each time the member or any other member of the same firm substitutes for the charge another security or a financial instrument that is an acknowledgment of indebtedness, the member shall add to the file maintained for the charge the lender's written consent to the substitution, obtained before the substitution is made.

(9) The member need not comply with subsection (5) or (8) with respect to a lender if clause (4)(a), (b), (c), (e) or (f) applied to the lender in the original loan transaction.

APPENDIX 5

EXCERPT FROM MEMORANDUM TO PROFESSIONAL REGULATION COMMITTEE BY JAMES YAKIMOVICH RESPECTING FOCUSED AUDIT PROFILE ITEM #4)

...

An analysis of the results from the Public Accountant's Report for the last filing period, which was the first year this form was used by the profession, reports as follows:

“ Other that in relation to accounts reported in questions 1(a) and 1 (b) of the report, had you acted as a sole estate trustee and/or exercised sole signing authority (ie, not requiring the signature of any other person) pursuant to a Power of Attorney, during the reporting period for any persons who are (or were) your clients and not related to you?”

With respect to this question, 381 members gave a positive response and reported that the grand total of all monies controlled as sole estate trustee, and in client accounts over which they exercised sole signing authority pursuant to power(s) of attorney, as at the end of the reporting period was \$172.5 million.

This group of 381 members was analysed further and it was found that 75 of those members reported holding \$ 15.1 million and reported that they did not maintain any books, accounts, and records pertaining to the estate or power of attorney, as the case may be. The dollar value of the estate money held was reported to be in the range of \$2.611 million to \$1,046.19.

The group of 381 members was analysed again with respect to those that reported they maintained books and records for the estate or power of attorney, as the case may be, and it was found that 132 of those members reported holding \$ 54.7 million and reported that they reconciled their accounting records with the banking records, not on a monthly basis, but “at least at the fiscal year end”. The dollar value of the estate money held was reported to be in the range of \$6.4 million to \$ 56.42.

To assist the committee, a number of past cases were reviewed where the member had misused estate money where he also acted as sole estate trustee. The anecdotal information is as follows:

Member A. - Member acted for one estate. Misappropriated the entire estate of \$120,000.

Member B. - Member acted for two estates. He misappropriated about \$ 8,000 from an estate valued at about \$80,000.

Member C. - Member acted for only one estate. He misappropriated about \$200,000 from an estate valued at \$300,000.

Member D. - Member had approximately eight estates. Three of the estates were valued at about \$400,000, of which he misused about \$200,000.

Member E. - Member acted for one estate valued at about \$800,000 of which he misappropriated about \$320,000.

Member F. - Member acted for two estates. He misappropriated the entire value of one estate in the amount of about \$107,000.

Member G - Member acted for eight estates. He misapplied about \$300,000 of estate money in a kiting scheme.

Member H. - Member acted for a few estates. He misappropriated about \$28,000 from one estate.

With respect to these instances, some books and records were maintained. In the current reporting model, were the member to report that proper books and records were maintained for these estates, a focused audit of these estates would not be conducted were profile item #4 to include only those members that do not maintain proper books and records.

Mindful of the commentary made at Convocation with respect to dollar thresholds, it is the respectful position of staff that where authorization is sought to conduct a focused audit with respect to an estate or power of attorney matter, the Chair/Vice-Chairs of the Authorization Committee will be provided with the member reported dollar value of mortgage transactions so that each case may be considered on its own merits.

27th March, 1998

APPENDIX 6

COMMUNICATIONS RELEASE RESPECTING
INFORMATION FROM DISCIPLINE CONVOCATION

From: Steve Heipel
To: FI.Education, FI.Finance, IS.IS, FI.Ottawa, FI.Lib...
Date: 2/5/98 4:19pm
Subject: Media release -- January discipline

The following release was distributed to Ontario media today.

For Immediate Release
February 5, 1998

Law Society Disciplines Lawyers

Toronto -- Fifteen lawyers were disciplined in January by the Law Society of Upper Canada -- the governing body of the Ontario legal profession.

Note: the notation following a lawyer's name indicates age and year of call to the Ontario bar.

The following lawyers were found guilty of professional misconduct:

Adamson, Brian Francis, (46, 1979) of Haliburton County was given a six month suspension to commence January 22, 1998 and to continue indefinitely thereafter until he replies to the Law Society and produces his book and records.

Casey, David Gerard, (56, 1967) of Ottawa was given a one month suspension to commence at the conclusion of his current administrative suspension and to continue indefinitely thereafter until he produces a medical report satisfying the Society that he is fit to practise law, and until several other conditions are met.

Colman, David Joseph, (34, 1993) of Toronto was suspended for one month to commence at the conclusion of any administrative suspension, and to continue month to month thereafter until he completes outstanding filings and produces the required books and records for the Society.

Ellis, Clinton Vernol, (51, 1982) of North York was given a six month suspension commencing March 1, 1998. Upon his return to practice Mr. Ellis is to work under the supervision of another lawyer for a period of two years. He was also ordered to pay costs of \$2,500.

Green Weldon Frederick, (68, 1958), of Toronto was given a nine month suspension commencing at the end of his current administrative suspension.

Ittleman, Richard Michael, (44, 1980) of Richmond Hill was granted permission to resign.

Kimura, Donald Isamu, (54, 1971) of Toronto was granted permission to resign.

McCauley, John Lionel, (50, 1976) of Ottawa was given a six month suspension commencing January 22, 1998, such suspension to continue indefinitely thereafter until he replies to the Law Society. Upon his return to practice, Mr. McCauley must participate in the Practice Review Program.

Mikitchook, Yaroslav, (51, 1975) of Toronto was suspended for three months to commence March 14, 1998.

Moberg, Michael James, (34, 1992) of Niagara Falls, was given a three month suspension commencing at the end of his current administrative and disciplinary suspensions and indefinitely thereafter until he completes outstanding filings and replies to the Society. Mr. Moberg was also ordered to pay costs of \$1,000.

Pennell, Brian Terrence, (51, 1975) of Brantford was granted permission to resign.

Ross, Michael Theodore, (52, 1981) of Mississauga was reprimanded in Convocation.

Sherman, Brian Allen, (46, 1977) of Richmond Hill was given a four month suspension commencing at the end of his current administrative suspension, and to continue indefinitely thereafter until he completes outstanding filings.

Snider, David Roy, (43, 1987) of Whitby was disbarred.

The following lawyer was found guilty of conduct unbecoming a barrister and solicitor:

Eagleson, Robert Alan, (64, 1959) of Toronto was disbarred.

For more information, please contact:

Steve Heipel
416.947.3317

.....

Re: Focused Audit Profile Issues

Mr. MacKenzie presented the amendments to the focused audit profile for Convocation's approval.

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that the language of Profile Item #3 be amended by adding the words "or acting for or receiving money from mortgage lenders in transactions where subsection 15.2(4) of Regulation 708 does not apply" so that Profile Item #3 would then read:

"Lawyers in private practice holding mortgages in trust for clients, collecting monthly private mortgage investment payments for clients, arranging private mortgage investments for lender client, or acting for or receiving money from mortgage lenders in transactions where subsection 15.2(4) of Regulation 708 does not apply."

Carried

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that the language of Profile Item #4 be amended by adding the words "and do not maintain proper books and records on a monthly basis" so that Profile Item #4 would then read:

"Members who act as sole Estate Trustee and have sole authority over estate assets and do not maintain proper books and records on a monthly basis"

Carried

Re: Rule 15 of the Rules of Professional Conduct

Mr. MacKenzie presented an application under Rule 15 for an Ontario Judge to act in the role of independent legal counsel to the discipline committee of an Ontario regulatory body.

A discussion followed.

The following amendments were accepted by Mr. MacKenzie:

- that Mr. Galligan does not act as a mediator in the same matter; and
- so long as he is a member in good standing of the Law Society.

Convocation took a recess at 10:00 a.m. and resumed at 10:20 a.m.

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that Mr. Galligan be given approval to act as independent legal counsel in a tribunal setting provided he does not act as a mediator in the same matter and so long as he is a member in good standing of the Law Society.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	For
Backhouse	For
Banack	For
Carey	For
Carpenter-Gunn	For
Carter	For
Cole	Against
Cronk	For
Crowe	For
Curtis	Against
DelZotto	For
Eberts	Against
Feinstein	For
Finkelstein	For
Gottlieb	Against
Harvey	For
Legge	For
MacKenzie	For
Manes	For
Marrocco	For
R. Martin	Against
Millar	For
Murphy	For
Murray	For
Ortved	Abstain
Puccini	Against
Ruby	Against
Sachs	Against
Sealy	For
Stomp	For
Swaye	For

Topp
Wilson
Wright

For
Abstain
For

Vote - 26 - 8, 2 abstentions

Re: Amendments to Rule 13 of the Rules of Professional Conduct

Mr. Ortved presented the item dealing with amendments to Rule 13 in light of those lawyers assisting in programs like the Ontario Bar Alcoholism Program (OBAP).

It was moved by Mr. Ortved, seconded by Ms. Cronk that the amended Commentary 1 to Rule 13 set out in paragraph 18 on page 5 and subsidiary Commentary 1A as set out in paragraph 23 on page 6 be approved.

A debate followed.

It was moved by Ms. Curtis, seconded by Mr. Banack that the matter be referred back to the Committee for further information on the work of OBAP.

Withdrawn

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that the following amended Commentary 1 to Rule 13 be adopted.

Carried

Amended Commentary 1 to Rule 13 (page 5 of the Report)

"Unless the lawyer who tends to depart from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct which would lead to serious breaches in the future. It is, therefore, proper (unless it be privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these Rules. There are some very serious situations where a lawyer is under a duty to report. Such situations include but are not limited to the following: misappropriation or misapplication of trust monies; the abandonment of a law practice; participation in serious criminal activity related to the lawyer's practice; and the mental instability of a lawyer of such a serious nature that this lawyer's clients are likely to be severely prejudiced. If a lawyer is in any doubt as to whether a report should be made, the lawyer should consider seeking the advice of the Law Society be it directly or indirectly (e.g., through another lawyer). Nothing in this paragraph is meant to interfere with the traditional solicitor-client relationship. In all cases the report must be made bona fide without malice or ulterior motive.

Amendment underlined

It was moved by Mr. Gottlieb, seconded by Mr. Carey that OBAP's proposed new Commentary 1A as set out in paragraph 22 on page 6 be adopted.

Lost

ROLL-CALL VOTE

Aaron
Adams
Armstrong
Backhouse
Banack

For
Against
For
Against
For

Carey	For
Carpenter-Gunn	Against
Carter	Against
Cole	For
Copeland	Against
Cronk	Against
Crowe	Against
Curtis	For
DelZotto	Abstain
Eberts	For
Feinstein	Against
Finkelstein	Against
Gottlieb	For
Harvey	For
Krishna	For
Legge	Against
MacKenzie	Against
Manes	For
Marrocco	Against
R. Martin	Against
Millar	Against
Murphy	For
Murray	For
Ortved	Against
Puccini	For
Ruby	For
Sachs	For
Sealy	Against
Stomp	Against
Swaye	Against
Topp	Against
Wilson	Against
Wright	Against

Vote - 21 - 16, 1 Abstention

It was moved by Ms. Puccini but failed for want of a seconder that the words "except in case of threat of bodily harm" be added to the OBAP proposed Commentary IA in paragraph 22.

It was moved by Mr. Ortved, seconded by Ms. Cronk that the new Commentary IA at paragraph 23 as amended be adopted.

Carried

Amended Commentary IA

"Often instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society of Upper Canada supports the Ontario Bar Assistance Program (OBAP), LINK and other support groups in its commitment to the provision of counselling on a confidential basis. Therefore, lawyers acting in the capacity of counsellors for OBAP and other support groups will not be called by the Law Society or by any investigation committee to testify at any discipline or competency hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer/counsellor has an ethical obligation to report to the Law Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice. The Law Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

It was moved by Mr. Carter, seconded by Mr. Marrocco that in Commentary IA set out in paragraph 23 the words "has engaged in or" be deleted.

Carried

It was moved by Mr. Banack, seconded by Mr. Manes that the words "serious misconduct or" be deleted.

Lost

It was moved by Mr. Wright, seconded by Mr. DelZotto that Commentary IA set out in paragraph 23 be referred back to the Committee for further determination of what is meant by "serious misconduct".

Lost

Re: Distribution of Orders of Convocation

Mr. MacKenzie presented the proposed changes for the distribution of Orders of Convocation for Convocation's approval.

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that the procedure set out at paragraph 60 on pages 18 and 19 be adopted as follows:

"That notification to the current recipients of the results of Discipline Convocation continue but with the following changes:

- a. Only those settled orders imposing the penalties of disbarment, permission to resign or suspension be included in the information provided;
- b. The information sent, reporting those orders, be that prepared by the Communications Department to be faxed to the recipients immediately after preparation following the relevant Convocation."

Carried

INFORMATION ONLY

The Professional Regulation Committee contained the following items for information only:

- (1) the Committee's guidance to staff on the conduct of investigations into sexual impropriety and discrimination;
- (2) a guideline for a time line for delivery of reports of hearing panels;
- (3) a new working group of the Committee reviewing certain Rules of Professional Conduct.

THE REPORT AS AMENDED WAS ADOPTED

The Chair advised that a round table meeting was scheduled for April 7th, 1998 to discuss ways of improving the Complaints and Discipline processes with counsel who defend members of the profession at the discipline hearings and Convocation and counsel who handle prosecution cases.

Report of the Finance and Audit Committee

Mr. Krishna presented for Convocation's approval the proposed expenditures required to upgrade the Society's telephone and voice mail systems.

Finance and Audit Committee
March 12, 1998

Report to Convocation

Purpose of Report: Decision Making

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS.....3

UPGRADE TO THE SOCIETY'S TELEPHONE AND VOICE MAIL SYSTEM.....4

COMBINED ERRORS AND OMISSIONS INSURANCE FUND DRAFT
FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 1997.....10

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on March 12th, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Murphy, T. Stomp, R. Wilson and B. Wright. Staff members in attendance were J. Saso, D. Carey, R. White and L. Johnstone. M. Heins and M. Strom of Lawyers' Professional Indemnity Company were also in attendance.

- I. The Committee has two matters that require Convocation's approval:
 - Upgrading the Society's Telephone and Voice Mail Systems,
 - Combined Errors and Omissions financial statements for the year ended December 31, 1997.

2. Enclosed on pages 4 - 6 is a report with respect to upgrading the Society's telephone and voice mail systems. A total of \$108,000 was approved in the 1997 Capital Budget but the spending was delayed while awaiting more specifics with respect to the proposed call centre. The current proposal, including applicable sales tax, totals \$122,600. In keeping with the CEO's Executive Limitations, the Committee was requested to recommend to Convocation the approval of expenditures totalling \$122,600 to upgrade the Society's telephone and voice mail systems. The difference of \$14,600 has been offset by under spending in other 1997 Capital expenditures.
3. The Finance and Audit Committee recommends the approval of \$122,600 in capital expenditures to upgrade the Society's telephone and voice mail systems as recommended in the report.
4. Michelle Strom presented to the Committee the draft Combined Errors and Omissions Insurance Fund financial statements for the year ended December 31, 1997. These statements are attached on pages 10 - 19 of the report.
5. The Committee recommends to Convocation the approval of the draft financial statements for the Combined Errors and Omissions Fund for the year ended December 31, 1997.

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

- (1) Copy of a Memorandum to Ms. Wendy Tysall from Ms. Linda Johnstone dated March 4, 1998 re: Recommendations for Upgrading the telephone and Voice Mail System. (pages 4 - 6)

Finance and Audit Committee
March 12, 1998

Report to Convocation

Purpose of Report: Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS.....9

LAWYERS PROFESSIONAL INDEMNITY COMPANY AUDITED
FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 1997.....20

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on March 12, 1998. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, D. Murphy, T. Stomp, H. Strosberg, R. Wilson and B. Wright. Staff members in attendance were J. Saso, R. Tinsley, D. Carey and R. White. Also in attendance were M. Heins and M. Strom from the Lawyers' Professional Indemnity Company.

1. The Committee is reporting on the following matters:

- Lawyers Professional Indemnity Company audited financial statements for the year ended December 31, 1997,
- funding of spot and focussed audit program.

2. Michelle Strom presented the Audited Financial Statements for the Lawyers' Professional Indemnity Company to the Committee. The statements are attached on pages 20 - 29.
3. A report was before the Committee with respect to funding for the spot and focussed audit program. The Committee had several questions and requested that a further report be submitted to the Committee at April's meeting addressing the outstanding issues. Approval to expend funds on this program has not been given.

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

- (1) Copy of the draft Combined Errors and Omissions Insurance Fund financial statements for the year ended December 31, 1997. (pages 10 - 19)
- (2) Copy of the Audited Financial Statements for the Lawyers' Professional Indemnity Company to the Committee. (pages 20 - 29)

.....

It was moved by Mr. Krishna, seconded by Mr. DelZotto that \$122,600 in capital expenditures be approved to upgrade the Society's telephone and voice mail systems.

Carried

The item dealing with the draft financial statements for the Combined Errors and Omissions Fund for the year ended December 31, 1997 was deferred to the April Convocation.

THE REPORT AS AMENDED WAS ADOPTED

MOTION - SUSPENSIONS

It was moved by Mr. Krishna, seconded by Mr. DelZotto THAT the rights and privileges of each member who has not paid the Membership Fee, and whose name appears on the attached list, be suspended from March 30, 1998 and until their fee is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

It was moved by Mr. Krishna, seconded by Mr. DelZotto THAT the rights and privileges of each member who has not paid the Errors and Omissions Insurance Levy, and whose name appears on the attached list, be suspended from March 30, 1998 and until their levy is paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

Report of the Admissions and Equity Committee

Re: Formation of a Working Group to Review Procedures Governing Recruitment of Articling Students

Mr. Carter presented the item in the Report dealing with the formation of a working group to review the recruitment process of summer and articling students in light of changes in the legal marketplace.

Report to Convocation

Purpose of Report: Decision-Making
 Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 2

FORMATION OF A WORKING GROUP TO REVIEW PROCEDURES GOVERNING RECRUITMENT OF SUMMER
AND ARTICLING STUDENTS 2

TRANSFER CANDIDATES - PROPOSED CHANGE TO CURRENT POLICY 3

AMENDMENT TO SECTION OF PROPOSALS FOR ARTICLING REFORM 5

LICENSING EXAMINATION RULES 7

 Background 7

 Licensing Examinations Issues 8

 Examination Review Experience 10

 An Alternative Approach 11

 The Committee’s View 11

 Options for Convocation to Consider 12

MANDATORY ATTENDANCE IN PHASE THREE 12

 Background to the Issue 12

 Description of Mandatory Attendance Requirement 13

 Mandate for Attendance Requirement 13

 Reasons Underlying Mandatory Attendance 14

 Issues Arising Out of the Requirement 15

 Issue for Consideration 15

CONSEQUENCE OF FAILING BAR ADMISSION COURSE 16

 The Issue 16

 Options for Convocation 18

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions & Equity Committee (“the Committee”) met on March 12, 1998. Committee members in attendance were Philip Epstein (Chair), Nancy Backhouse (Vice-Chair), William Carter (Vice-Chair), Nora Angeles, Gordon Bobesich, Tom Carey, Allan Lawrence, and Dean Marilyn Pilkington. Staff in attendance were Deborah Glatter, Mimi Hart, Wendy Johnson-Martin, Ian Lebane, Terry McCarthy, Margaret McSorley, Kimberley Saikkonen, Sophia Sperdakos, Alan Treleaven, and Roman Woloszczuk.

2. The Committee is reporting on the following matters:

(Information)

- Formation of a Working Group to Review Procedures Governing Recruitment of Summer and Articling Students

(Policy)

- Transfer Candidates - Proposed Change to Current Policy
- Amendment to *Proposals for Articling Reform*
- Licensing Examination Rules
- Mandatory Attendance in Phase Three of the BAC
- Consequence of Failing Phase Three of the BAC

Information Item

FORMATION OF A WORKING GROUP TO REVIEW PROCEDURES GOVERNING RECRUITMENT OF SUMMER AND ARTICLING STUDENTS

1. Recruitment procedures were originally developed to put order into the process by which summer students and articling students are recruited and to reduce the pressure that was placed on students to accept offers before they had finished the interviewing process. The recruitment procedures are reviewed annually by staff.
2. In view of the changing face of the market, a more comprehensive review is recommended in 1999. The Committee was requested to consider appointing a working group to consider the issues and report to the Committee. The working group's mandate would be to review the procedures governing recruitment of summer students and articling students and make recommendations to the Committee as to any changes that it should consider in the recruitment process in light of changes in the legal marketplace.
3. It was further proposed that the chair of the working group be Jay Rudolph, a practitioner and former chair of the Articling Subcommittee, and that there be broad representation in the group including representation from law firms (both within and outside the match program), other recruiters of students (e.g. government), Career Development Officers from the law schools, and law students. Mimi Hart will be the staff liaison to the working group.
4. The Committee approved the creation of the working group, which will provide a draft time line and membership information to the Committee next month.

Policy

TRANSFER CANDIDATES - PROPOSED CHANGE TO CURRENT POLICY

1. The current transfer examination policy for eligible lawyers from other Canadian provinces who seek to be licensed in Ontario provides them the option to do either a self-study approach to transfer examinations or to complete Phase Three of the Bar Admission Course in its entirety.
2. The fee for the self-study option is currently \$642 for materials and the examination sitting fee, plus an application fee in the amount of \$133.75. The fee for attending Phase Three was \$2,625 in 1997. A candidate who elects the self-study option, but fails an examination and the supplemental examination in a subject must complete the section of Phase Three related to the area(s) failed. The fee for each section is \$300 (plus GST).

3. Transfer candidates electing the self-study approach prepare for examinations covering six subject areas. Those subjects are: Civil Litigation, Family Law, Estate Planning, Real Estate, Business Law, and Professional Responsibility. The Law Society makes available, for purchase by the transfer candidates, the Bar Admission Course materials related to those six subjects areas. The examinations are offered three times a year, generally in the months of January, April, and August. The examinations are (usually) 2½ hours in length, open book, and based upon the Bar Admission Course materials.
4. Transfer candidates who choose to transfer by way of enrollment in Phase Three of the Bar Admission Course commit themselves to completing it in its entirety. Transfer candidates join Bar Admission Course students to work in small groups under the guidance of the instructors. Attendance at lectures and seminars is mandatory.
5. Currently, those transfer candidates who enrol in Phase Three must take the six subjects listed above as well as Criminal Procedure, Public Law, and Accounting (self-study course). They must sit examinations in all nine subjects.
6. The basis for this requirement is set out in Convocation's policy on transfer examination from November 1995, which states in the relevant section as follows:

A candidate will continue, at any stage in the process, to be able to elect to complete Phase Three in its entirety in lieu of the transfer examination.

7. This results in unequal treatment among transfer candidates, with a more onerous examination burden placed on those who choose to take Phase Three of the Bar Admission Course. There does not appear to be a sufficient policy reason for continuing this unequal treatment.
8. In addition there appears to be little reason to compel candidates to attend all six courses if, in the candidates' opinion, they need the course support in fewer than the six. It is important, however, that candidates be required to complete all the requirements in whatever section(s) they do elect to attend. All candidates, whether electing the self-study approach or the course attendance approach or some combination of the two, would be required to successfully complete six examinations.
9. The Committee recommends the amendment of the relevant portion of the 1995 transfer examination policy to read as follows:

A candidate will, at any stage in the process, be entitled to elect to complete any or all of those sections of Phase Three that correspond with the subject areas that candidates writing transfer examinations are required to complete, namely, Civil Litigation, Family Law, Estate Planning, Real Estate, Business Law, and Professional Responsibility. In the case of such election the candidate must successfully complete all the requirements of the section(s) in which the candidates enrolls.

This is in addition to successful completion of the examinations.

10. Currently the cost per section of Phase Three is \$300 plus GST.

AMENDMENT TO SECTION OF PROPOSALS FOR ARTICLING REFORM

1. Section 14.1.2 of the *Proposals for Articling Reform* permit a waiver of the articling requirement to be granted by the Articling Director where the candidate has been admitted to the bar of another Canadian province and has practised in that province "for at least one year, but less than three years".

2. The section currently reads:

14.1.2 Waiver of articles based on experience in another province

Candidates who have been admitted to the Bar of another province and have practised in that province for at least one year, but less than three years, may be permitted a waiver of articles by the Articling Director.

3. The restriction to less than three years was in all likelihood based on the assumption that all candidates with three or more years of experience would be adequately accommodated by the transfer regulation. That was probably so until that regulation was amended to incorporate the following section as one of the conditions for call to the bar in Ontario of lawyers from other Canadian provinces:

For a period or periods totalling at least 17 months within the three-year period immediately before he or she passes the transfer examination, the applicant was engaged in one of the following activities, or any combination of them:

- i. the active practice of law as a member of a law society or equivalent body that 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*
- iii. service under articles of clerkship in Ontario.*

4. It would appear that subsection 14.1.2 should have been amended when the transfer requirement was amended to remove the "but less than three years" restriction so that those affected by the new three year requirement in the transfer policy would not be excluded under both policies.

5. It is also the case that candidates entitled to a waiver of the articling requirement generally also seek exemption from Phase One of the Bar Admission Course. Phase One is designed to prepare students for articling through education in practice skills such as Advocacy, Interviewing, Legal Research, Legal Writing and Drafting, Negotiation, and Professional Responsibility and Practice Management. Phase One is one month in length. It is offered immediately after law school in May and June and is attended by students prior to the commencement of the articling term. There is a strong argument that those receiving a waiver of the articling requirement should also be exempt from Phase One. On an individual basis, candidates seeking exemption are assessed on the extent to which their training and practice experience demonstrate ability in these skill areas.

6. The Committee was requested to consider whether it would be appropriate to recommend that Convocation approve an amendment to the *Proposals for Articling Reform*. The Committee has considered the proposed amendment and recommends that Convocation approve it so that the new section will read:

14.1.2 Waiver of articles based on experience in another province

Candidates who have been admitted to the Bar of another province and have practised in that province for at least one year may be permitted a waiver of articles and an exemption from Phase One by the Articling Director.

LICENSING EXAMINATION RULES

Background To the Issue

1. Convocation approved significant changes, beginning in 1996, to the rules and marking procedures for the bar admission licensing examinations. These changes were made with a view to ensuring that licensing procedures for candidates intending to practice in Ontario meet standards that serve the public interest and fairly measure candidate lawyering competence.
2. The BAC objective is to ensure that newly-called lawyers have the skills, knowledge, and professional responsibility required to provide appropriate service to clients. Licensing examinations assess candidate readiness to begin the practice of law in Ontario. These examinations are also administered to transfer applicants (individuals already called to the bar in another Canadian jurisdiction) who have applied to practice in Ontario.
3. To improve the quality of the licensing examinations and to develop an accurate and fair grading system, and with advice on educational measurement and testing, the Law Society has been developing a bank of confidential examination questions tested as effective instruments for measuring candidates' lawyering knowledge and skills.
4. The use of a bank of examination questions facilitates the development of licensing examinations that are of equal quality and difficulty from year to year and from examination to examination. This confidential bank of examination questions, which undergoes annual review and development, preserves and protects the integrity of the licensing examinations.
5. In furtherance of the goals of the licensing examinations students are not permitted to review failed examinations or take photocopies of their examination papers. However, just prior to the January supplemental examination sittings for Phase Three 1997 and as a result of an interim recommendation of the Task Force on Examination Performance, students were permitted to look at their failed examinations in a supervised setting without bringing in paper or writing utensils.
6. As in previous years a licensing examination rules booklet is being prepared to advise students of examination procedures for Phase Three. A number of competing issues arise in considering what the 1998 examination structure should be. In view of the concerns raised by the Task Force on Examination Performance, which led to the examination review, and the concerns raised by others about the difficulties created by an examination review, the Committee was asked to consider the matter and provide options for Convocation.

Licensing Examinations Issues

7. The licensing examinations are not part of the instructional process. Licensing examinations are not administered to assist candidates to improve their legal knowledge or skills by receiving feedback on their examination performance. Rather, these examinations are administered to determine the competence of candidates to practise law in Ontario. Licensing examinations are summative assessment instruments, and are distinguishable from formative assessments.
8. The process Convocation approved is one that distinguishes the teaching component of the BAC from the testing component. The theory behind the confidentiality of the examination questions is that, through development of an examination bank, there is the ability to develop examinations of equal quality and difficulty from year to year, to better ensure the validity of questions asked, and to test to a comparable standard from examination to examination. The intended goal is to enhance the reliability of the licensing examination process. Bar admission licensing examinations are the result of a rigorous and carefully monitored development process. Each licensing examination is designed and produced by a team whose members include lawyers with expertise in the area of law being examined.

9. Section Heads of each course, who are practitioners involved with the design of the course and the creation and marking of the examinations, have indicated strong support for the confidentiality of the examinations because of the positive impact this has on consistency and quality of examinations. There is concern that the examination review and the examination bank are mutually exclusive options. The examination review sacrifices examination bank security.
10. During the course of their meetings, however, the members of the Task Force on Examination Performance heard about negative impact on student performance that may be created by the system. The Task Force rejected the premise that the desire to improve the licencing process can only be accomplished in one way. The Task Force was seriously concerned with the implications of refusing students the ability to examine their failed papers. The students are unable to learn from the weaknesses their failed examination demonstrates, which might assist their performance on subsequent examinations and on the supplemental examination they write in the failed subject. This has particular significance in an examination system in which students write eight examinations over 12 weeks, but could potentially rectify problems by reviewing previous examinations.
11. In the view of the Task Force, even if one accepts that a licensing examination is different from one whose purpose is also to teach, the approach must still be a supportive one that sets a standard and then takes steps to assist students to meet the standard. This is particularly important in the case of those students who, because of cultural and linguistic factors, may face unfair barriers to their call to the bar in the examination process.
12. The desirability of allowing students to know why they went wrong is heightened by what the Task Force and others believe is the difference between law school and Law Society examinations. Although no systematic analysis has been done of the similarities and differences between the typical law school examination and BAC examinations, the untested view of BAC staff, students, lawyers, and law schools themselves is that they are very different. BAC examinations are essentially short answer or multiple choice examinations that involve a high degree of statutory analysis in an effort to reflect a practice reality and require exact answers that are either right or wrong. Law school examinations appear to be more broadly analytical and open-ended both in their approach and the answers they require students to give.
13. If there is indeed a substantial difference in examination structure, this may have a negative impact on student performance based not on student inability to understand content, but on lack of familiarity with the particular examination tool.

Examination Review Experience

14. The impact on student performance of the examination review session that took place before the January 1998 supplemental examinations cannot be systematically measured. The following points reflect some of what has emerged from the process.
 - A few of the students who spoke to faculty or benchers have indicated that the process was helpful because they were able to see where they were going wrong.
 - To the extent that students dealt with staff and faculty following the review session, the majority complained that they did not receive the marks they deserved. In the short time allotted to study, many students sought relief from re-writing examinations by telephoning, meeting with and writing to faculty, the Assistant Registrars, the Executive Director of Education, benchers, and the Treasurer.
 - Rather than provide the most useful method for improving performance, the examination review may have diverted students' from their goal of passing the supplemental examinations.
 - Even if examination reviews are held after each examination, because of the tight scheduling of examinations students will have written three or four examinations before they receive their first marks. As such the review is not effective as a preventative support to students.

An Alternative Approach

15. The possibility that the examination bank can be preserved and that students can be assisted in a manner that would address the concerns raised by the Task Force on examination performance has been suggested. The goal would be to implement a system to assist students in preparing for examinations and to provide additional assistance for students who anticipate specific difficulty, based on past examination experience, or who begin experiencing difficulty in the licensing examination process.
16. One component of the new system would be to provide to each student a comprehensive self-study examination preparation book, which would focus on the development of examination writing skills specific to BAC examinations. The book would be developed in conjunction with experienced BAC Section Heads, Senior Instructors, and those involved in the setting and grading of examinations. The book would include the sample questions that focus on common problems that experience has revealed frequently arise for students in the licensing examination process. Sample answers would include both good and bad answers, with advice on why the bad answers are weak.
17. To provide additional assistance for students who anticipate specific difficulty, based on past examination experience, or who begin experiencing difficulty in the licensing examination process, there would also be optional examination preparation sessions. In the examination preparation sessions, students would work with the self-study book, but would receive the advice of experienced examination markers in a workshop style setting. For students who continue to encounter difficulty, additional and more focused sessions would be provided.

The Committee's View

18. Members of the Committee are in agreement that steps should be taken to familiarize students with the testing tool to be used, the pitfalls that may arise in examination writing, and the problem areas in each subject area. Committee members are not in agreement on the issue of whether there should be failed examination review sessions. A majority of the Committee members is of the view that students should not be provided the opportunity to see their failed examinations provided that there is a meaningful preventative program to address the pitfalls many students fall into in writing the examinations. A minority of the Committee is of the view that there should be both the preventive approach and the right to review failed examinations.

Options for Convocation to Consider

19. Convocation is requested to consider the following options and select the approach to be followed in the licensing process for Phase Three 1998:
 - Option a) That students not be permitted to review their failed examination papers so that the examination bank is preserved provided that the initiatives described in paragraphs 15, 16, and 17 above are in place.
 - Option b) That students be permitted to review their failed examination papers in a supervised review session, as was used in January 1998.

MANDATORY ATTENDANCE IN PHASE THREE

Background to the Issue

1. The issue of mandatory attendance in Phase Three of the Bar Admission Course has been the subject of discussion periodically since it was introduced as part of the Spence model in 1991. On February 13, 1997, the Admissions and Equity Committee indicated that it was interested in more information on the mandatory attendance requirement of Phase Three of the Bar Admission Course. The Committee has previously discussed the issue, but no recommendations have been made.

2. Although the Department of Education is concerned with some of the implications of deleting the mandatory attendance requirement in the current Phase Three program, it is of the view that on balance the requirement should be deleted for Phase Three only.
3. In 1997 Convocation approved the Requirements for Standing and agreed that they need not be returned annually for approval unless a substantive change was being sought. The Committee has considered the mandatory attendance issue and is requesting that Convocation choose one of two options discussed below.

Description of Mandatory Attendance Requirement

4. There are approximately 57 teaching days (and eight examination days) in Phase Three of the Bar Admission Course, each teaching day being 3.5 hours in length. Attendance on the teaching days is mandatory, subject to students being entitled as of right to be absent for up to five days overall, but for no more than two days in any of the eight courses. Further absences are permitted on an exceptional basis, with the written permission of the Registrar, based on a significant medical or compassionate reason that is not employment-related.
5. More substantial absences can be approved if the Registrar is satisfied that a student is disadvantaged by family status or disability.
6. In practice, with very few exceptions, all students satisfy the mandatory attendance requirement without requesting approval for further absences.

Mandate for Attendance Requirement

7. Since 1991, the first year of Phase Three, the Requirements for Standing, approved by Convocation each year, have included the mandatory attendance requirement. The introduction of the requirement is premised on the Spence Subcommittee Report, approved by Convocation in June 1988, which calls for a substantial skills focus to the Bar Admission Course including mandatory attendance. The rationale is that teaching skills requires that:
 - a) The student have some knowledge about the essential elements of the skill;
 - b) The student have an opportunity to watch the skill being performed;
 - c) The student have the chance to practise the skill in a small group session;
 - d) The student have an opportunity to receive feedback on the student's performance;
 - e) The student have the opportunity to practise the skill again.

Reasons Underlying Mandatory Attendance

8. The individual courses were initially designed with the mandatory attendance component as one of the underlying features. More than 75 per cent of Phase Three is conducted in seminar groups of 20 students.
9. Mandatory attendance is intended to ensure, to the extent that it is possible with multiple seminar groups, that there is reasonable uniformity in the professional training of all students. Although most students might ultimately be able to pass the licensing examinations on a self-study basis, the purpose of Phase Three of the Bar Admission Course extends beyond preparing students to write examinations.
10. Instructors' evaluations of Phase Three strongly support the view that the seminars and the learning by doing exercises are the most effective way to teach and learn.
11. In more recent years mandatory attendance does not appear to have been an active issue with most students. This is in contrast to the earlier years of Phase Three, when students complained more about the mandatory attendance requirement.

12. In the past when there was no mandatory attendance requirement students engaged in what came to be known as "seminar shopping", using word of mouth opinion on a particular instructor to attend a seminar other than the one to which the student was assigned. This resulted in instructor frustration and administrative difficulty in running the course.
13. Continuation of the mandatory attendance requirement would simple continue the status quo of the last 7 years.

Issues Arising Out of the Requirement

14. Although learning by doing is an effective method of learning, mandating attendance is not a motivating feature in adult education. Moreover, the length of Phase Three, combined with examination pressure, works against the effectiveness of mandatory attendance.
15. Although there are provisions in the Requirements for Standing to accommodate student difficulties with attendance and there is financial aid for students, mandatory attendance can create significant problems for students who have financial difficulties and need to work or have family responsibilities.
16. Although Phase One continues to be a highly interactive program in which student attendance is critical to the learning and assessment, Phase Three courses have become significantly less skills based in recent years, lessening the imperative for mandatory attendance.
17. Because the course is only offered in three centres many students are required to travel several hours a day or find temporary accommodation in Ottawa, London, or Toronto for the duration of the course.
18. Although the Bar Admission Review process is ongoing, one of the underlying views of the current discussion paper is that the new course should not have a mandatory attendance requirement. This is not to preclude mandatory attendance for particular aspects of the course that require it for assessment or specific skills-based learning, but rather that as a blanket requirement those studying a new course do not recommend it.

Issue for Consideration

19. In the view of the Department of Education the practical difficulties of the general mandatory attendance requirement as set out above outweigh the advantages for Phase Three.
20. At the same time it is true that this conclusion has not been reached without recognition that
 - a) there will be students who choose not to attend classes who will do poorly in examinations;
 - b) there will need to be creative approaches to avoiding the return to "seminar shopping", and instructors may be unwilling to volunteer their time if it is not clear they will have students to teach; and
 - c) there may be pressures placed on students by law firms to work during the bar admissions course, which students will be unable to resist.
21. The Department of Education and the Committee are of the view that the general mandatory attendance requirement for Phase Three 1998 should be deleted. This would not preclude mandatory attendance being required for certain specified days in the course where skills assessments or the specific nature of the day's instruction require it.
22. If the mandatory attendance requirement is to be deleted the Requirements for Standing will need to be revised for approval by Convocation in April so that students may be advised of the change immediately.

Options for Convocation's Consideration

23. Convocation is requested to consider whether to:

- Option a) delete the requirement for mandatory attendance from Phase Three 1998; or
- Option b) continue to require mandatory attendance in Phase Three 1998.

CONSEQUENCE OF FAILING BAR ADMISSION COURSE

The Issue

1. The Requirements for Standing governing Phase Three 1997 provided that if a student, having exhausted all supplemental examination rights, was still unsuccessful in one course the student was entitled to repeat only that one course. Students who failed more than one course were required to repeat Phase Three in its entirety, including the courses previously passed.
2. The Department of Education has proposed that students who have failed Phase Three of the Bar Admission Course after exhausting all their supplemental examination rights, but who wish to continue in the bar admission process, be required to satisfactorily repeat each of the one or more Phase Three courses that they failed, at the next scheduled date, but not Phase Three in its entirety.
3. In order to satisfactorily repeat a failed course students would be required to successfully complete (within three years of the failure), any prescribed course work and pass the related examination, including, where applicable, supplemental examinations.
4. Students would generally be required to repeat the courses in the next scheduled offering of Phase Three. The three year period referred to above is proposed in order to provide some leeway to a student who, for compassionate reasons, is unable to complete the course at the next scheduled offering. The rule that students may only repeat a particular course once (absent special circumstances) will be retained.
5. If this change is approved, the Bar Admission Course Registrar would also take the necessary steps to ensure that the benefit of this change is applied retroactively to students in past years.
6. In 1997 Convocation approved the Requirements for Standing and agreed that they need not be returned annually for approval unless a substantive change was being sought. The Committee has considered the issue and is recommending to Convocation that the appropriate changes be made to the Requirements for Standing for Phase Three 1998.

Options for Convocation

7. Convocation is requested to consider whether to:

- Option a) amend the Phase Three Requirements for Standing to delete the requirement that students not successfully completing Phase Three be required to repeat Phase Three in its entirety(where a student has already passed one or more courses within the previous three years). In its place students would be required to repeat only those courses they have not passed (having exhausted all supplemental examination rights) and successfully complete all assignments and examinations in those courses. Generally , students would be required to repeat those courses in the next scheduled offering of Phase Three.
- Option b) affirm the requirement currently in the Phase Three Requirements for Standing that students who have failed more than one course in Phase Three be required to repeat Phase Three in its entirety.

.....

It was moved by Ms. Curtis, seconded by Mr. Wilson that the working group report on their recommendations as to any changes by June 1998.

Carried

Re: Transfer Candidates

Mr. Carter presented the proposed change to the current policy for eligible lawyers from other Canadian provinces who seek to be licensed in Ontario.

It was moved by Mr. Carter, seconded by Ms. Backhouse that the following amendment of the relevant portion of the 1995 transfer examination policy be approved:

A candidate will, at any stage in the process, be entitled to elect to complete any or all of those sections of Phase Three that correspond with the subject areas that candidates writing transfer examinations are required to complete, namely, Civil Litigation, Family Law, Estate Planning, Real Estate, Business Law, and Professional Responsibility. In the case of such election the candidate must successfully complete all the requirements of the section(s) in which the candidates enrolls.

Carried

Re: Amendment to Proposals for Articling Reform

Mr. Carter presented the proposed amendment to section 14.1.2 of the Proposals for Articling Reform for approval by Convocation.

It was moved by Mr. Carter, seconded by Mr. Carey that the words "but less than three years" be deleted from section 14.1.2 so that it would then read:

"14.1.2 Waiver of articles based on experience in another province

Candidates who have been admitted to the Bar of another province and have practised in that province for at least one year, may be permitted a waiver of articles and an exemption from Phase One by the Articling Director."

Carried

Re: Licensing Examination Rules

Mr. Carter outlined the options for Convocation's consideration to be followed in the licensing process for Phase Three 1998.

It was moved by Mr. Carter, seconded by Mr. Wilson that Option a) be approved, that students not be permitted to review their failed examination papers so that the examination bank is preserved provided that the initiatives set out in paragraphs 15, 16 and 17 on page 11 are in place.

Lost

It was moved by Ms. Backhouse, seconded by Mr. Ruby that Option b) be approved, that students be permitted to review their failed examination papers in a supervised review session.

Carried

It was moved by Mr. Crowe, seconded by Ms. Eberts and accepted by the mover and seconder that the deletion of the words "in a supervised review session" from Option b) be referred back to the Committee for further consideration and report back to Convocation in June 1998.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:15 P.M.

CONVOCATION RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Angeles, Armstrong, Backhouse, Carey, Carter, R. Cass, Cole, Cronk, Crowe, DelZotto, Eberts, Feinstein, Gottlieb, Harvey, Krishna, Lawrence, MacKenzie, Manes, Millar, Murphy, Murray, Puccini, Sachs, Sealy, Stomp (conference call), Swaye, Topp, Wilson and Wright.

.....

.....

IN PUBLIC

.....

Continuation of the Report of the Admissions and Equity Committee

Re: Mandatory Attendance in Phase Three

Mr. Carter presented the options dealing with the mandatory attendance requirement in Phase Three for Convocation's consideration.

It was moved by Mr. Carter, seconded by Mr. Carey that Option a) that the requirement for mandatory attendance in Phase Three 1998 be deleted.

Carried

Re: Consequence of Failing Bar Admission Course

It was moved by Mr. Carter, seconded by Mr. Carey that Option a) be approved:

"amend the Phase Three Requirements for Standing to delete the requirement that students not successfully completing Phase Three be required to repeat Phase Three in its entirety (where a student has already passed one or more courses within the previous three years). In its place students would be required to repeat only those courses they have not passed (having exhausted all supplemental examination rights) and successfully complete all assignments and examinations in those courses. Generally students would be required to repeat those courses in the next scheduled offering of Phase Three.

Carried

THE REPORT AS AMENDED WAS ADOPTED

Report of the Professional Development and Competence Committee

Mr. Wilson presented for Convocation's approval the items dealing with Certificates of Attendance for Registrants in Continuing Legal Education Programs and the Follow Up Letter to the Civil Rules Committee on Mandatory Mediation.

Report to Convocation

Purpose of Report: Decision-Making

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on March 12, 1998. In attendance were Rich Wilson (Vice-Chair), Larry Banack (Vice-Chair), Kim Carpenter-Gunn, Ron Cass, Carole Curtis, Ron Manes, and David Scott. Staff members present were Carol Austin, Katherine Corrick, Janine Miller, Diane Moreira, Sophia Sperdakos, Mary Shena, Alan Treleaven and Paul Truster.
2. The Committee is reporting on two matters:
 - A proposal to issue certificates of attendance for registrants in continuing legal education programs.
 - A follow up letter to the Civil Rules Committee from the Law Society on mandatory mediation.

I CERTIFICATES OF ATTENDANCE FOR REGISTRANTS IN CONTINUING LEGAL EDUCATION PROGRAMS

3. In January 1998, Convocation approved the issuance of certificates of attendance for members completing comprehensive ADR training through attendance at Law Society Continuing Legal Education courses. The Department of Continuing Legal Education proposes to offer a three-day workshop on Corporate-Commercial Transactions and wishes to issue certificates of attendance to the registrants.
4. The purpose of the proposed certificates is to make attendance at the program more attractive by formally recognizing it, and thereby raise registration levels. The certificates would certify attendance only; they would not certify competence or anything else.
5. This issue may arise in future in relation to other kinds of Continuing Legal Education programs. The Committee proposes that Convocation authorize the Committee to approve future requests from staff for issuing certificates of attendance for certain Continuing Legal Education programs.
6. The Committee asks Convocation to authorize the Committee to approve the issuance of certificates of attendance for certain Continuing Legal Education programs.

II FOLLOW UP LETTER TO THE CIVIL RULES COMMITTEE FROM THE LAW SOCIETY ON MANDATORY MEDIATION.

7. In November 1997, the Law Society sent a submission to the Civil Rules Committee regarding the Attorney General's proposals for mandatory mediation in Ontario. A copy of the submission is attached at Tab A.
8. The Committee's Working Group on Mandatory Mediation has continued to meet and monitor developments on the proposals. It has met with staff from the Ministry of the Attorney General and has been kept apprised of developments.

9. Although the Attorney General's proposals have changed from immediate implementation of a full scale system of mandatory mediation across the province to initial implementation of projects in Toronto and Ottawa, the Committee's working group is concerned that some of the questions set out in the November submission have not yet been addressed.
10. The Committee wishes to send a follow up letter to the Civil Rules Committee before its next meeting on March 31, 1998, providing further comments from the Law Society on the Attorney General's proposals and pointing out those questions from the November submission that have not yet been addressed.
11. Convocation is asked to approve a letter for signature of the Chair of the Professional Development and Competence Committee to be forwarded to the Civil Rules Committee. The letter to be approved will be circulated at Convocation.

.....

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

- (1) Copy of a submission to the Civil Rules Committee dated November 10, 1997 re: Draft Rule on Mandatory Mediation. (Tab A)

Re: Certificates of Attendance

It was moved by Mr. Wilson, seconded by Mr. Cole that the Committee be authorized to approve the issuance of certificates of attendance for certain Continuing Legal Education programs.

Carried

It was moved by Mr. Millar, seconded by Mr. Feinstein and accepted by the mover and seconder that the motion be amended by leaving it to the CLE staff handling programs to determine which certificates of attendance are available.

Carried

Re: Follow Up Letter to Civil Rules Committee

It was moved by Mr. Wilson, seconded by Mr. Gottlieb that the draft letter addressed to the Civil Rules Committee which was circulated to the Benchers be approved for signature and be forwarded to the Civil Rules Committee.

Carried

THE REPORT AS AMENDED WAS ADOPTED

Bencher Retreat on Competence

Ms. Eberts reported on the upcoming Bencher Retreat on the subject of Competence to be held on May 12th.

INFORMATION ONLY

Report of the Legal Aid Committee

Mr. Armstrong reported on the current developments as a result of the motion passed in February concerning the Legal Aid Plan.

27th March, 1998

Legal Aid Committee
March 18, 1998

Report to Convocation

Nature of Report: Information

The Legal Aid Committee met on March 18th, 1998. In attendance were:

Committee members: Bob Armstrong (Chair), Heather Ross (Vice Chair), Tamara Stomp, Carole Curtis, Allan Lawrence, Gerry Swaye, Rich Wilson, Tom Carey, Jane Harvey, Abe Feinstein and Marshall Crowe.

Senior management of OLAP: Robert Holden, Provincial Director, and Deputy Directors Ruth Lawson and David Porter, Clinic Funding Manager, Joana Kuras.

Law Society, Government Relations: Sheena Weir. Other OLAP Staff: Elaine Gamble, Communications Coordinator and Felice Mateljan, Executive Assistant.

The following items are for your information:

1. Financial Reports - January 1998

The financial reports for January 1998 are attached as Appendix A.

2. Area Committee Appointments

The Committee approved three new appointments to area committees as recommended by the Provincial Director: Baldev Mutta and George Schnall in Peel Region and Mary Ann Currie in Thunder Bay.

.....

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

- (1) Copy of the Ontario Legal Aid Plan's Financial Reports January 1998.

ORDERS

The following Orders were filed at Convocation.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Bernard Jacob Kamin, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

27th March, 1998

ORDER FOR INTERIM SUSPENSION

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 20th day of February, 1998, in the presence of Counsel for the Society and Duty Counsel, the Solicitor not being in attendance, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Bernard Jacob Kamin be suspended as of the date of this Order, such suspension to continue indefinitely until Complaints D188/96 and D229/97 are finally resolved by Convocation.

DATED this 27th day of February, 1998

"H. Strosberg"
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 Gerard Casey, of the City of Ottawa, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 16th day of August, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

27th March, 1998

CONVOCATION HEREBY ORDERS that David Gerard Casey be suspended for a period of one month, commencing at the conclusion of his current administrative suspension, and continuing indefinitely thereafter until he provides a medical report, satisfactory to the Secretary, that he is fit to practise law.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Brian Francis Adamson, of the County of Haliburton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 11th day of December, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Brian Francis Adamson be suspended for a period of six months, commencing as of the date of this Order, and continuing indefinitely thereafter, until he replies to the Law Society and until his books and records are produced.

DATED this 22nd day of January, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

27th March, 1998

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF John Lionel McCauley; 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 23rd day of October, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that John Lionel McCauley be suspended for a period of six months definite, commencing as of the date of this Order, and continuing indefinitely thereafter until he fully responds to the Society with respect to the matters identified in particulars 2(a), (b) and (d) of Complaint D262/96. Convocation further orders that the Solicitor enroll in and co-operate with the Practice Review Program upon his reinstatement, and that he pay Law Society costs in the amount of \$1,500.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Brian Terence Pennell, of the City of Brantford, 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 December, 1997 in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Glen Hainey and Lynn Mahoney, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

27th March, 1998

CONVOCATION HEREBY ORDERS that Brian Terence Pennell be granted permission to resign his member in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor, and from holding himself out as a barrister and solicitor.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Theodore Ross, 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 11th day of December, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Michael Theodore Ross be reprimanded in Convocation and that he pay Law Society Costs in the amount of \$500 to be paid by June 30, 1998.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Clinton Vernol Ellis, 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 22nd day of October, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Brian H. Greenspan, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Clinton Vernol Ellis be suspended for a period of six months commencing March 1, 1998. Convocation further orders that the Solicitor pay Law Society costs in the amount of \$2,500 payable at \$250 per month commencing October 1, 1998, and that upon reinstatement he practise for two years under the supervision of a lawyer approved by the Secretary.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Brian Allen Sherman, of the City of Richmond Hill, 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 December, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

27th March, 1998

CONVOCATION HEREBY ORDERS that Brian Allen Sherman be suspended for a period of four months, commencing at the conclusion of the present administrative suspension, and continuing indefinitely thereafter until the filings referred to in Complaint D203/96 have been made.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Yaroslav Mikichook, 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 October, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Morris Singer, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Yaroslav Mikichook be suspended for a period of three months commencing March 14, 1998.

DATED this 22nd day of January, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

27th March, 1998

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act:

AND IN THE MATTER OF Robert Alan Eagleson, 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 21st day of January, 1998 in the presence of Counsel for the Society, the Solicitor not being in attendance but represented by Brian H. Greenspan, wherein the Solicitor was found guilty of conduct unbecoming a barrister and solicitor and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Robert Alan Eagleson be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 22nd day of January, 1998

"P. Epstein"
Acting 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 Weldon Frederick Green, 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 21st day of October, 1997, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Gregory P. Johnstone, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

27th March, 1998

CONVOCATION HEREBY ORDERS that Weldon Frederick Green be suspended for a period of nine months commencing at the conclusion of his present administrative suspension.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Donald Isamu Kimura, 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 27th day of July, 1997 in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Donald Isamu Kimura be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor, and from holding himself out as a barrister and solicitor.

DATED this 22nd day of January, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

27th March, 1998

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Roy Snider, of the Town of Whitby, 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 2nd day of September, 1997 in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that David Roy Snider be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Richard Michael Ittleman, of the Town of Richmond Hill, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 28th day of October, 1997 in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Robert D. Warren, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Richard Michael Ittleman be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor, and from holding himself out as a barrister and solicitor.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Moberg, of the City of Niagara Falls, 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 23rd day of October, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Michael James Moberg be suspended for a period of three months commencing at the conclusion of any administrative suspension and consecutive to the suspension of one month previously ordered by Convocation. The suspension is to continue indefinitely until the Solicitor replies to the Law Society and makes the requisite filings which are the subject matter of the Complaints. Convocation further orders that the Solicitor pay Law Society costs in the amount of \$1,000.

DATED this 22nd day of January, 1998

"H. Strosberg"
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 Joseph Colman, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 25th day of November, 1997, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that David Joseph Colman be suspended for a period of one month, commencing at the conclusion of his present administrative suspension, and continuing indefinitely thereafter until he has made his filing and produced the books and records of his practice to the satisfaction of the Law Society. Convocation further orders that the Solicitor pay Law Society costs in the amount of \$800.

DATED this 22nd day of January, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

CONVOCATION ROSE AT 3:15 P.M.

Confirmed in Convocation this ²⁴ day of April, 1998

Hawey T. Strosbey
Treasurer