

MINUTES OF CONVOCATION

Friday, 24th November, 1995
9:00 a.m.

PRESENT:

The Treasurer (Susan Elliott), Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Bellamy, Bobesich, Carey, Carpenter-Gunn, Carter, R. Cass, Copeland, Cronk, Crowe, Curtis, Eberts, Epstein, Feinstein, Finkelstein, Gottlieb, Goudge, Harvey, Krishna, Lawrence, Lax, Legge, MacKenzie, Marrocco, Millar, Murphy, Murray, O'Connor, Pepper, Puccini, Ross, Ruby, Sachs, Scott, Sealy, Stomp, Swaye, Thom, Topp, Wardlaw, Wilson, Wright and Yachetti.

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IN PUBLIC

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CALL TO THE BAR

The following candidates were presented to the Treasurer and Convocation and the degree of Barrister-at-Law was conferred upon each of them. They were then taken by Mr. MacKenzie before Mr. Justice Gerald Day to sign the Rolls and take the necessary oaths.

Kenneth Alexander Kuwayti	33rd Bar Admission Course
Jean Aileen Franklin Hancher	34th Bar Admission Course
Carole Abby Lynn Avery	36th Bar Admission Course
Barbara Anne Mercier	Special, Transfer, Alberta and Northwest Territories
Brahm Segal	Special, Transfer, Quebec
Andre Pretto	Special, Transfer, Quebec

LEGAL AID

Mr. Goudge outlined the current situation of the Legal Aid Plan and presented two motions (Option I and Option II) on the issue of whether the Law Society should continue to administer the Plan or turn the responsibility for administration over to the government.

There was a lengthy debate on the following motions:

OPTION I

Moved by: Stephen Goudge
Seconded by: Carole Curtis

It is resolved that the Law Society will agree to continue to administer the Legal Aid Plan on the following basis:

- A. The Legal Aid Plan will be operated under the terms of the MOU entered into between the Government and the Law Society of Upper Canada on September 8, 1994.

- B. Convocation will adopt a management plan for the Legal Aid Plan intended and designed to reduce expenditures by \$153 million over the next three years. It is intended that these measures together with the measures set out in (E) will enable lawyers to be paid pursuant to the Legal Aid Act and regulations in a timely way through to the end of the MOU;
- C. The Law Society will implement the measures contained in the management plan and use its best efforts as administrator to manage the Plan within the MOU limits as soon as possible and no later than April 1, 1996 after it receives the assurances set out below:
- D. The Law Society requires that the Government undertake to provide sufficient funds to the Legal Aid Plan in order that accounts rendered by lawyers in accordance with the Act and Regulations will be paid within a reasonable time provided that the Law Society complies with paragraph (G) to the satisfaction of the Government designate:
- E. To assist in the orderly implementation of the management plan the Law Society will seek advances from future allocations under the MOU to pay accounts properly rendered under the Legal Aid Act and Regulations;
- F. The Law Society requires that the Government give its undertaking that the MOU and the assurances of the Law Society referred to herein do not create any contractual obligations as between the Government and the Law Society and that the Law Society's legal obligations arise out of its role as administrator of the Legal Aid Plan in accordance with the Legal Aid Act and Regulations:
- G. The Law Society will agree to have management of the Legal Aid Plan report to the Government's designate on a quarterly basis in such form and with such detail as may be required by such designate as to the operation of the management plan and compliance therein;
- H. It is understood that the Attorney General must satisfy himself upon receipt of a report from his consultant, Stanley Beck, that the management plan has the capacity to reduce expenditures to within the MOU amounts if implemented by April 1, 1996 and that the Plan and the proposed implementation process for these reduced expenditures have the capacity to strike the appropriate balance as contemplated by the MOU;
- I. The Attorney General agrees to seek the approval by the Government of the matters covered by this resolution to the Government no later than twenty-one (21) days after receipt from the Law Society of the details of the management plan. If the Government does not accept the terms set out herein, the Law Society and the Government agree to cooperate in an orderly transfer of the Legal Aid Plan in accordance with the terms set out in Option #2;
- J. If Stanley Beck is able to provide a tentative positive recommendation to the Attorney General by December 5, 1995 then the Law Society will ask the Attorney General to seek approval from the Government by December 13, 1995 of a proposal to accelerate the flow of funds out the 1995-1996 MOU allocation to accommodate the timely payment of accounts rendered by lawyers in accordance with the Legal Aid Act and Regulations;

- K. If the Government designate does not receive the assurances under paragraph (G) or reports to the Government that it is not satisfied with such assurances, and as a result the Government determines that there be a transfer of the Plan to the Government, or an alternative Plan administrator, the Government will undertake that services performed in accordance with the Legal Aid Act and Regulations during the time that the Legal Aid Plan was administered by the Law Society will be paid in a reasonable time;
- L. The applications will be adjourned to December 15, 1995.

OPTION II

Moved by: Stephen Goudge
Seconded by: Carole Curtis

It is resolved that given that Convocation declines to adopt a management plan which will reduce expenditures within the MOU amounts and otherwise complies with the MOU by November 30, 1995, the Law Society will ask the Government to change the governance of the plan and relieve the Law Society of responsibility for administration of the plan under the Legal Aid Act on the following basis:

- A. The Law Society will facilitate an orderly transfer of the plan to the government or an alternative plan administrator by April 1, 1996;
- B. As part of the orderly transfer the Law Society will participate in negotiations for the purpose of designing a process to mediate/arbitrate all outstanding issues between the government and the law society concerning the OLAP including, and only by way of example, disposition of the property provided by the Law Society in accordance with s. 3 of the Legal Aid Act, other assets required for the administration of the olap, employment and pension issues, the disposition of the fund established under 3. 5 of the Act;
- C. The Law Society will agree to direct the staff of the OLAP to fully cooperate with the government's representative who will assist in the administration of the OLAP pending the transfer of the governance;
- D. The Law Society will continue to administer the OLAP in accordance with the Legal Aid Act and Regulations pending the change in governance and administration;
- E. The Law Society will implement the orderly transition as described above after it receives the assurances set out below;
- F. To assist in the orderly implementation of this transition plan the LSUC will seek advances from future allocation under the MOU to pay accounts properly rendered under the Legal Aid Act and Regulation within a reasonable period of time.
- G. The government will confirm that the MOU and the assurances of the LSUC referred to herein do not create contractual obligations as between the Government and the Law Society and that the Law Society's legal obligations arise out of its role as administrator of the Legal Aid Plan in accordance with the Legal Aid Act and regulation;
- H. The Government will undertake to provide sufficient funds to the legal aid plan in order that services provided by lawyers in accordance with the Act and Regulations will be paid within a reasonable time.

- I. The Attorney General agrees to seek the approval of Government of the matters covered by the resolution by December 14, 1995.
- J. If due to inadequate information as to the details of the transition plan the Attorney General is unable to present a complete plan to the Government by December 5, 1995, but he is able to provide a tentative assurance to the Government that the transition will proceed in an orderly way then the Law Society will ask the Attorney General to seek the approval of Government by December 14, 1995, a proposal to accelerate the flow of funds out of the 1995-96 MOU allocation to accommodate the timely payment of accounts rendered by lawyers in accordance with the Act and Regulations.
- L. The application will be adjourned to December 15, 1995.

Convocation took a brief recess and resumed the debate.

It was moved by Mr. Goudge, seconded by Ms. Curtis that Option I be adopted, that is, that the Law Society will agree to continue to administer the Legal Aid Plan.

Carried

ROLL-CALL VOTE

Aaron	Option II
Adams	Option I
Angeles	Option I
Armstrong	Option II
Arnup	Option I
Backhouse	Option II
Bellamy	Abstained
Banack	Option II
Bobesich	Option I
Carey	Option I
Carpenter-Gunn	Option II
Copeland	Option I
Cronk	Option I
Crowe	Option II
Curtis	Option I
Eberts	Option I
Epstein	Option II
Feinstein	Option I
Finkelstein	Option II
Gottlieb	Option II
Goudge	Option II
Harvey	Option I
Krishna	Option II
Lax	Option II
Legge	Option I
MacKenzie	Option II
Marrocco	Option II
Millar	Option I
Murphy	Option I
Murray	Option II
O'Connor	Option I
Puccini	Option II
Ross	Option I
Ruby	Option I
Sachs	Option I

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Scott	Option I
Sealy	Option I
Stomp	Option I
Swaye	Option I
Thom	Option II
Topp	Option I
Wilson	Option II
Wright	Option I

It was moved by Mr. Gottlieb but failed for want of a seconder that the Legal Aid Plan be administered by an independent agency at arm's length to the government.

It was moved by Mr. Wilson, seconded by Mr. Gottlieb that the Law Society establish the appropriate guidelines and staffing to create a Legal Aid review facility the function of which would be to assure the public of Ontario that the services of the independent tribunal are meeting the long standing and understood responsibilities of legal services being available to those who fairly require the same.

Not Put

Mr. Goudge presented the recommendations set out in the Legal Aid Report for Convocation's approval in principle.

(Bound Legal Aid Report in Convocation file)

It was moved by Mr. Ruby, seconded by Mr. Topp that the entire 153 million in savings be achieved through limiting the number of certificates.

Lost

ROLL-CALL-VOTE

Aaron	Against
Adams	For
Angeles	Against
Armstrong	Against
Arnup	Abstain
Backhouse	Against
Banack	For
Bobesich	For
Carey	For
Carpenter-Gunn	Against
Copeland	Against
Crowe	Against
Curtis	Against
Eberts	Against
Epstein	Against
Feinstein	Against
Finkelstein	Against
Gottlieb	Against
Goudge	Against
Harvey	Against
Krishna	Against
Lax	Against
Legge	For
MacKenzie	For
Marrocco	For
Millar	Against

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Murphy	Against
Murray	Against
O'Connor	Abstain
Puccini	Against
Ross	Against
Ruby	For
Sachs	For
Scott	Against
Sealy	Against
Stomp	Against
Swaye	For
Thom	Abstain
Topp	For
Wilson	Against
Wright	For

The Legal Aid Report was voted on and adopted with 1 abstention.

THE REPORT WAS ADOPTED

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:30 P.M.

CONVOCATION RESUMED AT 2:00 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Bellamy, Bobesich, Carey, Carpenter-Gunn, Carter, R. Cass, Copeland, Cronk, Crowe, Curtis, Eberts, Epstein, Feinstein, Finkelstein, Gottlieb, Goudge, Lawrence, Lax, Legge, MacKenzie, Marrocco, Millar, Murphy, Murray, O'Connor, Pepper, Puccini, Ross, Ruby, Sachs, Scott, Sealy, Stomp, Swaye, Thom, Topp, Wardlaw, Wilson and Wright.

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COMMITTEE APPOINTMENTS

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the list of Committee appointments to December 31, 1995 be adopted.

Carried

(see list in Convocation file)

Agenda - Committee Reports Taken as Read

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

Carried

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Admissions and Membership (Meeting of Nov 23/95)
Draft Minutes - October 1995
External Relations
Heritage and Bicentennial (3 Reports)
Professional Conduct
Professional Standards (Item A.-A.1. deferred to January 1996 to allow
Women in the Legal Profession Committee to
consider and report)
Reasons - Bernard Baum and John Patrick O'Donnell
Research and Planning
Specialist Certification Board
Women in the Legal Profession

COMMITTEE REPORTS

ADMISSIONS AND MEMBERSHIP COMMITTEE

Meeting of November 23, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Thursday, the 23rd of November, 1995, the following
being present: Mr. Epstein (Chair) and Messrs. Armstrong, Goudge and Mackenzie.

Also present: M. Angevine.

C.
INFORMATION

C.1. Change in Status

C.1.2. The following member has requested his status be changed from
retired Judge to active status:

Maurice Alexander Charles

Toronto

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

P. Epstein
Chair

THE REPORT WAS ADOPTED

DRAFT MINUTES - October 26, and 27, 1995

(Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

EXTERNAL RELATIONS COMMITTEE

Meeting of November 9, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE EXTERNAL RELATIONS COMMITTEE reports:

The committee met on Thursday, the 9th of November, 1995 at 3:00 in the afternoon, the following members being present:

Carole Curtis (Chair), Thomas Carey, Steven Goudge, Marshall Crowe. Staff members also in attendance, Nancy Bath and Andrew Kondraski.

C.
INFORMATION

1. GOVERNMENT RELATIONS COMMITTEE

1.A. REPORT ON THE STATUS OF TITLE INSURANCE

The Government Relations Committee reports that significant progress has been made in developing and reviewing amendments to the current Regulation on Title Insurance. In light of the advanced stage of efforts to eliminate the need for certification by lawyers for title insurance, the Government Relations Committee suggests that the Law Society's efforts to influence proposed changes are stepped up. It is also suggested that addressing proposed changes to title insurance at the government level become the first priority of the Government Relations Committee.

Issue: Amendments to Regulation on Title Insurance

Relevant Ministries:

Ontario Insurance Commission, Ministry of Financial Institutions
Ministry of Consumer and Commercial Relations
Ministry of the Attorney General

Status:

Ministry of Consumer and Commercial Relations

- * Minister Norm Sterling announced in October that the government will move to deregulate the real estate industry, freeing the real estate industry to license and monitor themselves, and wipe out the offices of real estate registrars
- * The Minister has been briefed on changes to title insurance
- * Minister has been lobbied by American Companies interested in eliminating the current Regulation, particularly First American, who argue that the Regulation doesn't allow them to compete fairly

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* Depina Georgaf is the Assistant Deputy Minister responsible for this area
Ontario Insurance Commission, Ministry of Financial Institutions

* Ultimately responsible for drafting any amendments
* Blaire Tulley, Commissioner
* Status of title insurance was discussed with Cheryl Cottle, counsel in the Commission's Legal Branch, who reports that:

- there is a potential for change
- currently evaluating impacts on consumer protection and land registry
- a lot of interest has been demonstrated by title insurance companies for change
- current Regulation perceived as interfering by a government looking to deregulate
- commonly held that there are deficiencies with the current Regulation
- to date there have been no submissions from parties opposing change; stated the Law Society was slow off the mark getting involved at this stage

Ministry of the Attorney General

* Approval would be necessary for any amendments

Involvement of CBA-O

- A sub-committee has been struck to deal with the issue of Title Insurance, lead by Maurizio Romanin, Chair of the CBAO's Real Estate Section
- Romanin states they are at a very preliminary stage, he has had an initial meeting with First American, an American title insurance company, at their request
- he has sent a letter to the Ontario Insurance Commission stating that the CBA-O is interested in any changes or amendments proposed, but he has not heard back to date

1.B. REPORT ON THE STATUS OF A PRIVATE MEMBER'S BILL ON CONTINGENCY FEES

A Private Member's Bill on Contingency Fees was introduced for First Reading in the Ontario Legislature on October 2, 1995. Bill 3 was put forward by Bob Chiarelli, Ottawa West M.P.P. and Justice Critic for the Liberal Party.

It is unlikely that this Bill will advance beyond this stage. Much work has been done on Contingency Fees by the Ministry of the Attorney General.

The Government Relations Committee does not feel this is priority legislation, and will instead determine what intentions the current government has to introduce legislation in this area.

LAW SOCIETY RESOURCES AVAILABLE FOR GOVERNMENT RELATIONS

Staff resources identified to assist the Committee in it's work are Rosemary Hnatiuk, Communications Department. Felicia Smith, Practice Advisory Service's lawyer, has indicated that she is interested in becoming involved with the work of this Committee. Ms. Smith will attend the next Committee meeting and assist on upcoming initiatives to improve relations with M.P.P.s and other government officials.

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1.C. INFORMATION ON THE LEGISLATIVE PROCESS

Members of the Committee received information on the legislative process. Attached is a one-page summary of how a bill becomes a law.

1.D. NETWORK BUILDING

To meet our goal of making the Law Society a more effective organization in dealing with issues related to government, the Government Relations Committee has identified the need to develop a network of benchers and other members of the profession and related organization committees. This network will be useful both in information gathering and where directed by Convocation, in advocating the Society's position to government.

To develop the network the Committee will circulate a memo to all benchers seeking their input of their own potential links to government officials and agencies, along with their suggestions on members of the profession that can assist the Society with this task.

2. MEDIA AND PUBLIC RELATIONS COMMITTEE

2.A. LAWYER REFERRAL MEMBERSHIP FEE.

The Media and Public Relations Committee voted unanimously to increase the Lawyer Referral Annual Membership fee from \$50. to \$100. to offset administrative costs in 1996.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

C. Curtis
Chair

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

An illustration entitled "How a Bill Becomes Law".

THE REPORT WAS ADOPTED

HERITAGE AND BICENTENNIAL COMMITTEE

Meetings of September 14, October 26 and November 9, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The HERITAGE AND BICENTENNIAL COMMITTEE begs leave to report:

Your Committee met on Thursday, the 14th of September, 1995 at 4:00 p.m., the following members being present: T. Carey (Chair), J. Harvey (Vice-Chair) and B. Pepper. Also in attendance were staff members: S. Binnie, A. Langlois and S. Traviss.

A.
POLICY

1. THE BICENTENNIAL LOGO

The Chair recommended that the Bicentennial logo, approved for use by the Committee in January, 1995, should be registered in order to prevent unauthorised use and that the new letterhead should similarly be registered. An offer has been made to carry out the necessary steps *pro bono* by an intellectual property lawyer and the Chair agreed to ask the lawyer concerned to contact the Secretary on the question of registration of Law Society symbols. It was pointed out that items with a Law Society crest are currently being manufactured and sold by a firm of legal robemakers and that registration is important, for instance, if the sale of Law Society memorabilia should become a Bicentennial project.

B.
ADMINISTRATION

1. BICENTENNIAL PROJECT PLANNING AND EVENTS COORDINATION

A review of current and proposed Bicentennial projects, as set out by Archives staff in a planning chart, took the form of a lengthy discussion of options and resources. A staff proposal for a Bicentennial staff member dedicated to events coordination was not adopted due to lack of funds for such a position.

2. FUNDRAISING FOR THE BICENTENNIAL

The Chair reviewed the Bicentennial funding situation and explained the lack of financial support as due to Convocation's decision to cut off funding in 1993. Instead of an \$800,000 to one million dollar budget, the Committee had funds of \$300,000, of which \$250,000 were already allocated. The Committee reviewed a three-pronged approach to the funding situation:

- (a) an application to the Law Foundation of Ontario, made in June, 1995 and awaiting a response;
- (b) the possibility of an approach to the Finance Committee of the Law Society;
- (c) approaches to external funding sources, including foundations and/or members of the profession.

After discussion, the Committee agreed that an approach should be made to the Finance Committee as promptly as possible. In addition, Jane Harvey and Stephen Traviss agreed to work together to investigate external funding sources.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

T. Carey
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The HERITAGE AND BICENTENNIAL COMMITTEE begs leave to report:

Your Committee met on Thursday, the 26th of October, 1995 at 8:00 a.m., the following members being present: T. Carey (Chair), J. Harvey (Vice-Chair), N. Backhouse, D. Bellamy and B. Pepper. Also in attendance were staff members: S. Binnie, A. Langlois and S. Traviss.

A.
POLICY

1. BICENTENNIAL PROJECT PLANNING

The Chair reported that a letter has been drafted inviting participation in organizing Bicentennial events addressed to Committee members, selected benchers, volunteers from the profession, and Law Society staff. This letter gives information on possible Bicentennial projects and requests commitment on a volunteer basis to a particular project or projects. The Committee agreed that the letter should also go to all current benchers as well as to some of the bencher candidates in the 1997 election. The draft letter and project list were approved on the condition that changes be made to emphasize that the projects are almost all, at this stage, proposals and will not proceed until the Committee has had a chance to review them in relation to financial resources and volunteer response.

After replies are received, volunteers will be asked to assess costs and resources for a particular project. The Heritage and Bicentennial Committee will then settle the final project list and assign resources for each proposed event or project, depending on the funding available for the Bicentennial Year.

While the projects are being finalised, the Committee needs to move on and consider the overall organization of the Bicentennial, as well as its public image including its message and its goals. The Committee will need to look at the best means of coordinating multiple projects and the best way of publicizing the Bicentennial, and these basic measures will have to be carried out within the available budget. It is suggested that the November meeting be devoted primarily to examining the issue of message and overall publicity for the Bicentennial Year and that the identification of the objectives of the Bicentennial Year be a Committee priority. In relation to the coordination of projects, staff members Ann-Marie Langlois and Susan Binnie have volunteered to draft a proposal for coordinating projects, once the probable scale and number of the projects have been established; the emphasis in this proposal would be on financial accountability and control, and on reporting procedures for each project.

2. PROPOSED 'LAW SOCIETY WEEK'

Further to the direction given at the Committee meeting on May 11, 1995, staff reported on the proclamation of a 'Law Society Week' from both the City of Toronto and the Government of Ontario. The designation would provide a definite week for celebrations during the Bicentennial Year. While events were being planned to build during 1997, from January onwards, a week would increase the public profile of the celebration. A 'Law Society Week' could be used to direct public and media attention to the anniversary and enhance its public impact. The official designation would allow or facilitate possibilities including public statements by the premier and the mayor, their attendance at certain Law Society events, flag-raising ceremonies, street decorations in the vicinity of Osgoode

Hall, etc. The Committee was advised that letters of application should be drafted for the Treasurer's signature while suitable weeks are still available. Once a week is designated, the Committee would be in a position to select specific events for Law Society Week and for the period leading up to the Week.

The Committee approved the proposal for a Law Society Week in principle. Although the Law Society was founded on July 17th in 1797, the Committee agreed that a week in June would be preferable, given the good weather usually enjoyed at that time of the year and its timing before the popular vacation periods of July and August. The Committee also suggested alternate weeks in case a week in June was not available or conflicted with other events or designated local 'weeks'. If there is no suitable week in June, September was chosen as the second choice, with the week of July 17th as the third. Staff were asked to confirm the suitability of a week in June with the Treasurer and the Secretary and to report back to the Committee.

B.

ADMINISTRATION

1. SOURCES OF BICENTENNIAL FUNDING

The Chair reported that there has been no response from the Law Foundation of Ontario regarding an application for funds for the Bicentennial. He will be in touch with the Acting Chair, Roger Yachetti, and expects a meeting will be held in the near future.

The Chair informed the Committee that a request had been made to the Finance Committee for support from the 1994/95 budgetary surplus. The Finance Committee deferred consideration of the request at its October meeting until November. It was agreed that the Finance Committee would be asked to defer the item further, to its December meeting. In the meantime, the Chair will discuss the matter with Ross Murray, Chair of the Finance Committee. As it now stands, it has been proposed that funds would be requested for administrative costs, especially temporary staffing, as there are no existing Law Society staff available to provide the necessary support, and for capital costs for revenue-generating projects such as memorabilia sales.

The Chair reported he had spoken with the Treasurer, who approved the proposal to fund-raise directly from the profession and/or foundations for the Bicentennial. She asked that the Committee formulate a plan and proceed on that basis; formal approval of Convocation is not required but an informational report should go to Convocation in November. Jane Harvey and Stephen Traviss will coordinate the fund-raising campaign, and recruit members from the profession (who are not current benchers) to assist.

C.

INFORMATION

1. BICENTENNIAL HISTORY PROJECT

Christopher Moore's book is making good progress and is close to schedule. The Advisory Committee members have reviewed two of the five chapters very positively and will receive a third for review shortly. Ramsay Derry, an editorial consultant who will be working on the final stages of editing and lay

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out of the book, is currently discussing publication possibilities with two publishers and will have a report ready for the next meeting. The publication proposals received will go to the Advisory Committee for comparison and evaluation and the Committee's recommendation will then be brought forward to this Committee.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

T. Carey
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The HERITAGE AND BICENTENNIAL COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of November, 1995 at 8:00 a.m., the following members being present: T. Carey (Chair), B. Pepper and J. Wardlaw. Also in attendance were: Ramsay Derry and May Hum, in an advisory capacity, and staff members: S. Binnie, A. Langlois and S. Traviss.

A.
POLICY

1. LAW SOCIETY 'WEEK' IN 1997

The Committee received additional information in relation to the preferable date for a prospective Law Society Week and the processes concerned in obtaining such a week from the Province and the City of Toronto. After discussion, the third week of June, 1997, was proposed for applications to the Province and the City. Susan Binnie was asked to confirm with the Treasurer and the Secretary that a week commencing on Monday, June 16th, 1997 would be acceptable; events coordinator May Hum agreed to check for potential conflicts with other events planned in the Toronto area. Subject to these details and approval by Convocation, the Committee confirms its recommendation to make an application for recognition of the week at both levels of government.

2. THE MESSAGE OF THE BICENTENNIAL

Staff had requested clarification from the Committee of the overall message that the Committee wished the Bicentennial to convey, in order to organize an effective Bicentennial Year and in particular to plan publicity for events. Discussion followed of alternative themes including how to focus events in 1997 to convey a message either in relation to the public or the profession or both. After consideration of whether lawyers' maxims (such as "the rule of law") could be made meaningful to the general public, the Chair asked staff to talk to author Christopher Moore about contributions by the profession to the Province, and to work on the development of a message, including liaison with the Communications Department and, possibly, with staff of the Ministry of the Attorney General, in order to seek their views.

B.
ADMINISTRATION

1. BICENTENNIAL PROJECT PLANNING

The Chair reported that a letter had gone out inviting participation in organizing Bicentennial events from current benchers, interested volunteers, and bencher candidates in the 1995 election. Letters were also being sent to all County and District Presidents as a follow-up to a previous mailing from the Treasurer in 1994. When clarification of the Bicentennial funding situation is obtained, some proposed Bicentennial projects may be re-classified as non-viable due to lack of interest or funding problems. The Committee continues to be interested in feed-back on potential projects and in alternative projects, but final decisions will be made shortly as the Bicentennial Year is now only thirteen months away.

2. FINANCIAL MATTERS

- (a) The Chair reported on financial developments in relation to the Law Foundation of Ontario. The proposal to apply to the Finance Committee for Bicentennial administrative and/or project funding (as in the Committee's reports of 14 September and 26 October, 1995) was discussed further. On project funding, Jane Harvey recommended postponing an approach to the Finance Committee until a specific revenue-generating project or projects had been costed. Staff and Ms. Harvey agreed to investigate the potential profitability of sales of Law Society memorabilia.
- (b) Jane Harvey and Stephen Traviss reported on a proposal to fundraise for the Bicentennial and agreed to contact additional potential fundraisers including non-member volunteers.

3. BICENTENNIAL HISTORY PROJECT

The Committee received a report from editorial consultant, Ramsay Derry, describing recent negotiations with potential publishers for the history, and asking for Committee direction on whether the book should be sold by the Law Society as well as commercially, and whether a proposal to distribute the volume to all members of the Law Society should also be pursued. After a lengthy discussion in which some members expressed interest in universal distribution, the Chair and Jane Harvey agreed to discuss the issue with the staff of the Finance Department. Ramsay Derry agreed to reframe the publishing figures on the basis of this discussion and report back to the Committee.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

T. Carey
Chair

THE REPORTS WERE ADOPTED

24th November, 1995

PROFESSIONAL CONDUCT COMMITTEE

Meeting of November 9, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL CONDUCT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of November, 1995 at three o'clock in the afternoon, the following members being present: N. Finkelstein (Chair), R. Aaron, J. Harvey, S. Lerner, G. MacKenzie, W. D. Millar, T. Stomp and G. Swaye. The following staff were present: M. Devlin, F. Smith and S. Traviss.

A.
POLICY

1. THE USE OF "1-900" NUMBERS BY LAWYERS -
THIS PROMOTES ACCESS TO LEGAL SERVICES

A few lawyers in Ontario have been advertising their accessibility through "1-900" numbers. Members of the public can call them on this number for legal advice or information. The price per call is chargeable on a per-minute basis to the caller's phone bill. Bell Canada, which provides the "1-900" service, provides a billing and collection service on behalf of the lawyers for a fee and the balance is remitted to the lawyers after Bell has deducted its various costs.

The Practice Advisor and the Committee's Secretary have discussed this service and believed that it is yet another way the public can have access to legal services. They articulated the following concerns that lawyers using the "1-900" number had to bear in mind:

- (1) There would be some loss of confidentiality because the telephone company would learn that some of its customers would have sought legal advice or legal information. This should be brought to the caller's attention at the beginning of the conversation with the lawyer.
- (2) The lawyers should be cautioned to keep careful notes of all conversations and the advice given to the caller.

The Committee concluded that the use of "1-900" numbers was in order provided lawyers bear in mind the concerns noted above.

The Committee asks Convocation to adopt its conclusion.

2. LAWYERS DIRECT PROPOSAL TO SET
UP A LAWYER REFERRAL SERVICE

Paul Champagne of Ottawa represents Lawyers Direct, a for-profit enterprise that wishes to set up a lawyer referral service province-wide.

Mr. Champagne would like to know if lawyers could participate in Lawyers Direct.

24th November, 1995

Set out below is his description as to how this service would operate:

I refer to our telephone conversation of yesterday, and am pleased to set out a description of the proposed business of Lawyers Direct and its operation as they have been described to me by the principals.

Lawyers Direct is a for-profit enterprise which is fully accessible to members of the public and to which any member of the practising legal profession may subscribe.

Lawyers Direct provides the vehicle whereby members of the public who require legal assistance may access a lawyer for consultation by telephone virtually immediately. It also provides members of the profession with an opportunity not only to make a contribution to the citizens of Ontario, but also to increase their client base.

The process may be described as follows: in order to access a lawyer, a caller in need of legal advice will telephone Lawyers Direct by way of an 800 number which will be extensively advertised. A Lawyers Direct 800 operator will respond and will take the name and address of the caller. The operator will assist the caller in identifying the area of law within which the problem falls so that the nature of the caller's inquiry may be matched with that of the lawyer's area of expertise.

The operator will then advise the caller that in order to access a Lawyers Direct lawyer, he or she must call the lawyer by way of a 900 telephone number.

The operator will inform the caller that he or she will incur a charge for the use of the 900 line, together with the rates to be charged. The 800 operator then advises the caller of the name and 900 telephone number of a Lawyers Direct lawyer who is ready to deal with the caller's specific or general problem.

The caller then decides whether or not he or she will telephone the designated lawyer.

When the telephone consultation between the caller and the lawyer has been completed, the problem will either be resolved, or, it will require further attention. If it requires further attention, the Lawyers Direct lawyer will refer the caller to a specific Lawyers Direct lawyer located in the caller's geographical area, or, take the caller as a paying client if the caller is in the same geographical area as the Lawyers Direct lawyer with whom the caller is engaged in telephone consultation.

In order to become part of Lawyers Direct, a lawyer must be available to provide legal advice pro bono for a total of two hours per week, pay a one-time fee of \$1,500.00 for the use of a 900 telephone line, and pay to Lawyers Direct \$200.00 per month, being its administration fee for providing the services to the lawyer.

Once a lawyer agrees to subscribe to the Lawyers Direct system, the 900 line is installed in his or her law office. When the lawyer is ready to receive telephone calls from the public, he or she "books in" with Lawyers Direct by providing the exact time period during normal working hours that he or she will be available to receive inquiries from the public.

24th November, 1995

The lawyer's commitment is to ensure that he or she will be accessible during the time specified for a total of two hours per week.

As Lawyers Direct is a province-wide service, it affords all lawyers in the Province of Ontario with the opportunity to participate, and the Lawyers Direct computer system ensures that each lawyer is designated for consultation in sequence, thus assuring no preferential treatment among them.

It is my understanding that the Professional Conduct Committee is meeting on November 9, 1995, and since there is considerable urgency pertaining to this matter, it is my hope that the Committee will consider and decide at that time that lawyers will be allowed to participate in this enterprise.

Finally, I am at your disposal should you require any other information prior to the meeting of the Professional Conduct Committee.

The Professional Conduct Committee has taken the position in the past that lawyers could participate in a referral service provided there was:

- (1) a proper system to see that names were rotated systematically;
and
- (2) there was no fee splitting between the participating lawyers and the referral service.

The lawyer pays a monthly fee of \$200.00 to Lawyers Direct and a one-time fee of \$1,500.00 for the use of a 900 line. The members of the public will pay a fee to Bell for the use of the 900 number.

The Committee concluded that lawyers could participate in the Lawyers Direct program. In concluding that lawyers could participate, the Committee emphasized that it was observing the normal practice of indicating that the Law Society does not endorse the project as such.

The Committee asks Convocation to adopt its conclusion.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

N. Finkelstein
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE (Item A.-A.1. deferred to January 1996)

Meeting of November 9, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PROFESSIONAL STANDARDS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of November at 2:00 p.m., the following members being present: W.A. Derry Millar (Chair), Denise Bellamy, Ronald W. Cass, Thomas E. Cole, Donald H.L. Lamont, Stuart Thom, Richmond C.E. Wilson.

Also Present: N. Amico, S. Carlyle, D. Farquharson, S. McCaffrey,
P. Rogerson

A.
POLICY

A.1. REQUALIFICATION

A.1.1 In March, 1994, Convocation approved a new policy for requalification, which requires members to requalify if they do not make substantial use of their legal skills on a regular basis in their current work for five years or more. A pre-emptive regime permits members, who would otherwise be required to requalify, to take steps in order to preserve their legal skills and avoid having to requalify at the end of the five year period. The policy came into effect on July 1, 1994.

A.1.2. Staff representatives were appointed to a committee to develop:

- i) the range of steps a member can take to preserve legal skills through the pre-emptive regime;
- ii) the range of reasonable conditions to be met by members required to requalify.

A.1.3. The staff representatives are Meg Angevine, Andrew Brockett, Sue McCaffrey and Sophia Sperdakos. Andrew Brockett serves as liaison with both the Women in the Legal Profession Committee and the Research and Planning Committee.

A.1.4. The staff committee was asked to report back to your Committee, and to the Women in the Legal Profession Committee, in November, on its progress in preparing proposals for requalification. The staff committee has met on one occasion. In preparation for that meeting, a computer print-out was prepared of the names of all members who had returned the Qualification Status form, checking off "Other" as the sole category within which they made substantial use of their legal skills. That print-out contained approximately 850 names.

A.1.5. Approximately 1400 members who returned the Qualification Status form are in the "No" category; that is, those members who have indicated they do not make substantial use of their legal skills on a regular basis. These members will have to requalify, unless they resume substantial use of their legal skills before July 1, 1999, assuming that any necessary legislative amendments to the Law Society Act will be effected prior to that time.

- A.1.6. At the present time, it is also not known how many members have not filed their Qualification Status form nor, consequently, whether there are any additional members who would fall into the "No" or the "Other" category.
- A.1.7. Because of the potentially large number of members in the two categories, and because of the logistical and administrative difficulties inherent in establishing individualized requalification requirements, your committee recommends that a uniform requalification requirement be established. It is recommended that requirements for requalification correspond with existing requirements for readmission and for transfer candidates: members required to requalify would write 8 examinations (currently the same as the Bar Admission Course Phase III examinations). The staff committee recommends, however, that individual members should be able to propose lesser requirements, based upon their specific circumstances and as is presently done in Admissions cases, in which cases a determination will be made as to whether the proposed requirements suffice to protect the public.
- A.1.8. These recommendations do not coincide precisely with the requalification policy as approved by Convocation on March 25, 1994. The policy specifically provides that the requalification requirements to be met by each member will be considered on an individual basis; the recommendations impose a uniform requirement, unless a member is able to establish that he or she should be subject to something less.

Note: Item deferred

C.
INFORMATION

C.1. PRACTICE ADVISORY SERVICE - STATUS REPORT

- C.1.1. The Service responded to 683 calls in September, 454 of which emanated from Metro Toronto. This high volume has been on-going over the past 3 years. By subject, the questions broke down as follows:
- | | |
|----------------------------------|-----|
| Accounting - general and trust | 79 |
| Client instructions | 8 |
| LPIC information | 14 |
| Law practice and file management | 116 |
| Law Society Act & regulations | 38 |
| Publications | 13 |
| Rules of Conduct | 231 |
| Various areas of law | 152 |
| General | 32 |
- C.1.2 Douglas Titus completed his six-month assignment with the Service, as Felecia Smith returned from maternity leave.
- C.1.3. The Service continues to be consulted by a large number of members who are experiencing great financial hardship and those who are having difficulty in establishing a sound employment base.

- C.1.4. Questions arising out of rule 28 (Sexual Harassment) and rule 29 (Discrimination) pose particular problems for staff of the Service, because they require a very specialized degree of knowledge for which training is required. The Committee recommended that the Director of the Service investigate the training programs available to assist staff in acquiring the knowledge necessary to respond appropriately to these question, and to enquire about whether funds could be made available for this purpose, in the current fiscal year.
- C.2. PROFESSIONAL STANDARDS DEPARTMENTAL REPORT
- C.2.1. The total number of open files in the Practice Review Programme in October is 160. Staff of the department were scheduled for 29 attendances at the offices of Programme participants during the month. Benchers Ron Cass, Don Lamont and Samuel Lerner sat on a Review Panel in October, to review the practices of three lawyers participating in the Programme; their assistance is greatly appreciated.
- C.2.2. A fourth lawyer has been added to the department, Donna Farquharson, and a second, part-time systems adviser, Colleen Lenaghan. Ms. Farquharson, who was called to the Bar in 1984, practised in Oshawa, in the fields of family law, real estate, and wills and estates. She came very highly recommended, by judges of both the General and the Provincial Division of the Ontario Court of Justice, as well as by fellow practitioners and her former partner. Colleen Lenaghan has over 15 years' experience in law offices and business, as bookkeeper, accounting technician and office administrator. She also taught accounting procedures to adults for the Peel Board of Education.
- C.2.3. Nancy Amico, the Programme Co-ordinator, returned from maternity leave on November 6, and Rebecca Brown, who was Acting Co-ordinator in Nancy's absence, returned to her position as secretary within the department; we are very grateful for Rebecca's capable assistance during Nancy's absence.
- C.2.4. The Specialist Certification Board has amended its procedures in considering candidates for certification. Where a candidate has what appears to be an excessive pattern of complaints for a specialist, but not to the extent to warrant participation in the Practice Review Programme, the Professional Standards Department will review the complaints, interview the candidate, and provide a report to the Board and to the candidate, to assist the Board in its determination of whether to certify the candidate as a specialist.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

D. Millar
Chair

THE REPORT WITH THE EXCEPTION OF ITEM A.-A.1. WAS ADOPTED

24th November, 1995

REASONS OF CONVOCATION

Bernard Baum

THE LAW SOCIETY OF UPPER CANADA

In the matter of the Law Society Act
and in the matter of Bernard Baum of
the City of Toronto, a barrister and
solicitor

Christine Budweth
for the Society

Michael Ingram
for the Solicitor

September 28, 1995

Reasons of Convocation

Upon reviewing the report and recommendation of the discipline hearing panel in this matter, and upon hearing submissions from counsel for the Society and for the Solicitor, Convocation adopted both the report and the panel's recommendation as to penalty. Convocation accordingly imposed the following penalty:

- (1) The Solicitor shall be suspended from practice for a period of 18 months. This period will be in addition to the period during which the Solicitor has voluntarily undertaken not to practise;
- (2) The Solicitor may return to practice at the conclusion of this 18 month period only after a report has been provided to the Law Society by a psychiatrist or psychologist acceptable to the Law Society evidencing the Solicitor's fitness to return to practice;
- (3) The fiscal 1994 filing must be provided to the Law Society prior to the Solicitor's resuming practice;
- (4) Upon returning to practice, the Solicitor shall have no authority with respect to trust accounts for a period of three years;
- (5) Upon resumption of practice, the Solicitor will enrol in and cooperate with the Law Society's Practice Review Program; and
- (6) The Solicitor shall pay the Law Society's costs of this matter in the total amount of \$6,000; \$2,500 of this shall be due and payable immediately. The balance of \$3,500 shall be due prior to the Solicitor being permitted to resume practice.

In accepting the discipline hearing panel's recommendation as to penalty, however, Convocation wishes to disassociate itself from the panel's suggestion (at page 12 of its report) that there is any "threshold level" at which misappropriations by members should result in disbarment.

Convocation was informed by counsel that neither counsel submitted to the discipline hearing panel that there is any threshold level at which misappropriation should result in disbarment, and neither counsel sought to support that proposition before Convocation.

24th November, 1995

The amount of money misappropriated should of course be considered as one factor to be weighed in the imposition of penalty; but there is no threshold level at which disbarment automatically becomes the appropriate penalty. One can readily imagine cases involving the misappropriation of relatively small amounts in which disbarment would be the most appropriate penalty. One can similarly imagine cases involving the misappropriation of larger amounts in which, because of compelling extenuating circumstances, a penalty other than disbarment is the most appropriate penalty.

The Solicitor undertook not to practise as of December 1, 1993. Convocation's order, by which he was suspended from practise for at least 18 months, was made on September 28, 1995. Even if the other terms of Convocation's order are complied with, the Solicitor will not be entitled to resume practise until March 28, 1997 - almost three years and four months after he undertook not to practise in consideration for the Law Society's consenting to the adjournment of his discipline hearing. (That adjournment was sought by reason of the Solicitor's mental incapacity).

In addition to the other factors weighed by the discipline hearing panel. Convocation also considered the following:

1. The fact that the solicitor had made restitution in full;
2. That the recommendation was supported in Convocation by both counsel for the Society and counsel for the solicitor;
3. That the recommendation of the discipline panel was unanimous and as such was entitled to serious consideration.

The report of the discipline hearing panel is attached hereto for ease of reference.

Gavin MacKenzie

Frank Marrocco, Q.C.

John Patrick O'Donnell

The Law Society of Upper Canada

In the matter of the Law Society Act
and in the matter of John Patrick
O'Donnell of the City of Mississauga
a barrister and solicitor

Janet Brooks
for the Society

J.V.P. O'Donnell
on his own behalf

September 28, 1995

Reasons of Convocation

Upon reviewing the report and recommendation of the discipline hearing panel in this matter, and upon hearing submissions from counsel for the Society and from the Solicitor, Convocation adopted both the report and the panel's recommendation as to penalty. Convocation accordingly imposed as a penalty a seven-week suspension, and ordered that the Solicitor pay costs in the amount of \$1,000.

One aspect of the discipline hearing panel's reasons for its recommendation as to penalty requires comment. In paragraph 4 at page 10, of its report, the discipline hearing panel referred to "the Dymont principles." This reference is to a case that was considered by Convocation on the same day as was the present case.

In Dymont Convocation rejected the discipline hearing panel's recommendation as to penalty - a one-month suspension and an order that the Solicitor pay costs in the amount of \$900 - and substituted an order that the Solicitor be suspended for a period of 15 days and pay costs in the amount of \$900. Convocation's principal reason for reducing the period of suspension was that it appeared from the agreed statement of facts that the Solicitor did not have actual notice of his suspension for approximately fifteen days after Convocation ordered he be suspended.

In Convocation's view, it is not desirable that in circumstances in which a penalty of suspension is imposed, a portion of the penalty be allocated to particular purposes of the discipline process. It is further not desirable that principles of sentencing developed in criminal cases be imported and applied by discipline panels in making recommendations on the question of penalty: McKee v. College of Psychologists of British Columbia (1994), 116 D.L.R. (4th) 555 (B.C.C.A.).

Two significant objectives of the discipline process are the protection of the public and the protection of the reputation of the profession. To allocate specified portions of a suspension to general and specific deterrence may suggest that those significant objectives are being subordinated, if not disregarded.

As a general rule, as decided in McGregor, solicitors who practise while under suspension should not be put in a better position as a result of being disciplined than they would be in if they had complied with their obligations not to practise. For this reasons, it is appropriate that solicitors who practise while under suspension be suspended for at least as long as the period during which they practised while under suspension. The specific penalty in each case, however, should reflect a multitude of considerations, some of which are referred to above, and many of which are not susceptible to a mathematical formula.

In the present case, given the serious consideration that Convocation should give to unanimous recommendations of discipline hearing panels, Convocation has concluded that it should not interfere with the panel's recommendation, which was not opposed in Convocation by counsel for the Society or by the Solicitor.

The report of the discipline hearing panel is attached hereto for ease of reference.

Gavin MacKenzie

Frank Marrocco, Q.C.

THE REASONS WERE ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of November 9, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCACTION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met with members of the Governance Restructuring Committee on Thursday, the 9th of November, 1995, at 8:00 a.m, the following members of the two committees being present: A. Feinstein (Chair), The Treasurer, N. Finkelstein, the Hon. A. Lawrence, R. Murray, H. Sealy, T. Stomp, R. Wilson.

Consultant: R. Armstrong

Staff: J. Saso, R. Tinsley, G. Zecchini, A. Brockett, E. Spears

A.
POLICY

A.1. DISSOLUTION OF THE RESEARCH AND PLANNING COMMITTEE

A.1.1. In September 1995, the Treasurer asked every standing committee to decide whether it would need to meet at all during the year commencing January 1, 1996.

A.1.2. The terms of reference of the Research and Planning Committee are:

The Research and Planning Committee is responsible to Convocation for all matters related to emerging policy issues affecting the Society and the profession which do not fall within the jurisdiction of other standing committees and without limiting the generality of the foregoing, the Research and Planning Committee shall undertake and direct research into such policy issues and shall develop proposals relevant to these issues for the consideration of Convocation and the other standing committees of Convocation.

A.1.3. Your Committee is of the view that if the policy-governance model recommended by John Carver is adopted by Convocation, there will no longer be a role for the Research and Planning Committee. The matters that fall within the Committee's terms of reference are matters of policy that should be considered by Convocation as a whole.

A.1.4. Recommendation

The Research and Planning Committee recommends that if the Carver policy-governance model is adopted by Convocation, the Research and Planning Committee should be dissolved.

A.2. IMPLEMENTATION OF THE 1993 REPORT OF THE DISPUTE RESOLUTION SUBCOMMITTEE

A.2.1. In February 1993, Convocation adopted the report of the Dispute Resolution Subcommittee.

A.2.2. The first recommendation in the report was that the Law Society should itself set an example of employing alternatives to litigation, particularly in its disciplinary and insurance activities.

A.2.3. The remaining recommendations fell into four categories:

- Education.
- Insurance.
- Professional conduct.
- Public information.

A.2.4. Since mid-1993 a committee of benchers chaired by the Hon. A. Lawrence (the Dispute Resolution Implementation Subcommittee) has been responsible for overseeing implementation of the report. Some recommendations have been implemented; others have not.

A.2.5. Under the policy-governance model it seems inappropriate for benchers to be charged with responsibility for ensuring implementation of a report.

A.2.6. Recommendation

Your Committee recommends that Convocation,

- (a) establish a short-term task force to,
 - (i) outline the extent to which the recommendations in the Dispute Resolution Report have been implemented, and
 - (ii) identify the recommendations that still need to be implemented; and
- (b) instruct the Chief Executive Officer to implement the recommendations and report back to Convocation.

A.3. POSSIBLE STUDY OF THE IMPACT OF COMMERCIALISM ON PROFESSIONALISM

A.3.1. One outcome of the benchers' 1992 Strategic Planning Conference was a recommendation that the Law Society should study the impact of commercialism on professionalism among lawyers. The matter was passed to the Research and Planning Committee.

A.3.2. A Planning Subcommittee of the Research and Planning Committee narrowed the scope of the proposed project and identified a number of topics that deserved study. The topics are grouped under the following headings:

- Competitiveness of small firms.
- Lawyer "burn-out"
- Cost of legal services.
- Access to justice.

- A.3.3. Your Committee has written to the Canadian Bar Association - Ontario, the County and District Law Presidents' Association and the County of York Law Association, asking for their comments on the proposed study and, in particular,
- whether they consider that it would be an appropriate use of time and other resources to begin such a project in 1996; and
 - if the study were to be launched, whether they would be interested in appointing a representative to take part.
- A.3.4. At least one of the three bodies approached has indicated that it will be unable to reply before your Committee holds its next (and probably final) meeting on December 7, 1995.
- A.3.5. Recommendation
- Your Committee recommends that Convocation establish an *ad hoc* committee,
- to review the proposal for a study of professionalism in light of the responses that will be received from the other organizations; and
 - to report to Convocation as to whether or not the study should be commenced in 1996.

B.
ADMINISTRATION

- B.1. INDEX AND DIGEST OF POLICY MATTERS CONSIDERED BY CONVOCATION
- B.1.1. Your Committee decided that the recently produced Index and Digest of Policy Matters considered by Convocation during the quadrennial term May 1, 1991 -April 30, 1995 should be distributed to,
- (a) all benchers; and
 - (b) each County Law Library.
- B.1.2. The cost of this distribution (printing and postage), which will be met from the Committee's budget, will be approximately \$400.

C.
INFORMATION

- C.1. OBJECTIVES AND GOALS CONFERENCE, JANUARY 5-6, 1996
- C.1.1. Your Committees considered a draft outline for the Objectives and Goals Conference to be held at Osgoode Hall, January 5-6, 1996. The draft had been prepared by Ruth Armstrong, the Conference Consultant. It identified eight "directions" in respect of each of which the Conference is to develop (1) Ends, and (2) Means. The eight "directions" (drawn from the Role Statement) are:

- Governance.
- The public interest.
- Standards of learning for lawyers.
- Professional conduct.
- Independence of the profession.
- Access to legal services.
- Professional competence.
- Integrity and honour of the legal profession.

C.1.2. A revised outline for the Conference will be available for distribution to benchers at Convocation on November 24.

C.1.3. It has been agreed that the twelve lawyer-members of committees (appointed under the policy which governs the appointment of lawyer-members to committees of Convocation) should be invited to participate in the Conference.

C.2. BUDGET FOR 1996

C.2.1. In light of the uncertainty as to the future of the committee structure, committee secretaries have been instructed to prepare draft budgets for existing committees for the financial year commencing January 1, 1996, on the assumption that the functions of the committees will need to be continued even if the committees themselves are discontinued.

C.2.2. Your Committee approved a draft budget for the functions of the Research and Planning Committee for the financial year commencing January 1, 1996.

C.3. DISTRIBUTION OF CONVOCATION TRANSCRIPT TO COUNTY LAW LIBRARIES

C.3.1. Your Committee has been responsible for overseeing implementation of the policy under which a monthly transcript of the proceedings of Convocation (on computer diskette) is distributed to all County Law Libraries.

C.3.2. Responsibility for overseeing this policy has been passed to the Member Relations Committee.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

A. Feinstein
Chair

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of November 9, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIALIST CERTIFICATION BOARD begs leave to report:

Your Board met on Thursday the 9th of November 1995 at nine o'clock in the morning, the following members being present: D. Murphy (Vice-Chair), J. Callwood, G. Sadvari, and G. Swaye. C. Giffin and D. Moreira of the Law Society, were also present.

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

The Environmental Law Specialty Committee met on Tuesday, the 17th day of October, 1995 at twelve o'clock in the afternoon.

The Criminal Law Specialty Committee met (conference call) on Friday, the 3rd day of November, 1995 at one o'clock in the afternoon.

A.
POLICY

A.1. PROFESSIONAL STANDARDS POLICY

- A.1.1. Your Board approved changes to the program's current procedures in handling the applications of those lawyers who may not be candidates for the Practice Review Program, but who show excessive patterns of complaints in their Law Society complaints/claims records.
- A.1.2. The section on Application Procedures in the General Information form will stress the Board's emphasis on high standards. Applicants will be made aware of the Board's policy that (i) consideration of any applications having "open" complaints and/or claims on their internal record at the time of Board review, will be deferred until those matters are fully resolved; and (ii) any internal records with an excessive number of complaints and/or claims may be subject to further investigation by the Board.
- A.1.3. Applicants will be informed that they may request a copy of their internal record from the Program office prior to or at the start of the application process. A cover letter will be sent out with each record requested informing the lawyer that either (a) there are no concerns with their internal record, or (b) the Professional Standards Department does have some concerns about the record and will be contacting the lawyer.
- A.1.4. The Professional Standards Department will investigate not only the Practice Review candidates but also any records that the Board or the Program Administrator feels are problematic. For these lawyers, Professional Standards will more closely investigate the existing complaints and claims, and if necessary, send a standard letter informing them that the Board may have some concerns about possible

practice management issues. A report will be generated by Professional Standards with respect to the applicant, and/or the applicant may correspond directly with the Board in anticipation of the Board's final review of the applicant's file.

A.2. NEW SPECIALTY AREAS

A.2.1. On March 26, 1993 a Specialty Areas Subcommittee was established to determine basic criteria for the implementation of new specialty areas and to consider requests from lawyers or specialty groups within the bar for certification in new areas. A discussion paper was to be prepared by the Program Administrator as a starting point for the subcommittee, but has yet to be completed. Furthermore, some original members of the subcommittee are no longer involved with the Certification Program.

A.2.2. Your Board agreed to implement the following approach to the development of any new specialty areas, rather than regroup the Specialty Area Subcommittee:

A.2.3. Let the onus be on the specialty group within the Bar to demonstrate to the Board the need for certification in their specialty area.

The Board will establish basic criteria for the implementation of new specialty areas, which the specialty group can use in their effort to prove their need for certification.

A standard letter will be sent to any interested groups stating that the Board would be happy to work collaboratively with them by providing the basic criteria and assisting in any way necessary. The letter will stress, however, that there is no guarantee that their efforts will result in approval and implementation of the new specialty area by the Board.

B.
ADMINISTRATION

B.1. ENVIRONMENTAL LAW SPECIALTY AREA

B.1.1. Your Board approved the finalized Standards and Application Form for this new specialty area. A notice will be published in the Ontario Reports announcing the acceptance of applications by the Program office.

B.2. CHANGES TO WORKER'S COMPENSATION LAW STANDARDS

B.2.1. At the suggestion of the Workers' Compensation Law Specialty Committee, your Board has approved changes to the current Standards for Certification for application as a Worker's Compensation Law Specialist. These changes have been made in response to concerns expressed by members of the profession.

- (i) With respect to paragraph 3.(b).ii., the required number of hearings as counsel has been reduced from forty (40) hearings to thirty (30).

- (ii) With respect to the requirement in paragraph 6 of providing the names of three (3) references, two (2) of whom shall be lawyers, this has been changed to three (3) references, one (1) of whom shall be a lawyer.

- B.2.2. Your Board approved the Worker's Compensation Law Resource materials to be used to aid lawyers in meeting the requirements for certification.
- B.2.3. Your Board approved a draft letter to be sent to all lawyers who have expressed interest in the Workers' Compensation Law Specialty, announcing the above changes as well as addressing other concerns that may have contributed to the lack of applications in this area.

C.
INFORMATION

C.1. CERTIFICATION OF SPECIALISTS

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

Alan Risen (of Toronto)

C.2. RECERTIFICATION OF SPECIALISTS

- C.2.1. Your Board is pleased to report the recertification for an additional five years of the following lawyer as a Civil Litigation Specialist:

Daniel Monteith (of Newmarket)

ALL OF WHICH is respectfully submitted

DATED this 8th day of December, 1995

R.Manes
Chair

THE REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of November 9, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 9th of November, 1995, at 11:30 a.m., the following members being present: H. Sachs (Chair), J. Lax (Vice-Chair), M. Adams, P. Copeland, B. Luke.

Staff: A. Brockett, A. Singer, E. Spears.

A.
POLICY

A.1. THE CONTINUATION OF THE WOMEN IN THE LEGAL PROFESSION COMMITTEE

- A.1.1. In preparation for the report on the status of its work, which the Treasurer in September asked each Committee to prepare by December 1995, your Committee considered whether there was a need for the Women in the Legal Profession Committee to continue in 1996.
- A.1.2. It was the consensus of the Committee that the Law Society needs to have in place a structure to focus on gender issues in the legal profession. At present, this structure is the Women in the Legal Profession Committee.
- A.1.3. Your Committee recommends that, until such time as a structure, other than the Women in the Legal Profession Committee, is put into place to focus on gender issues in the legal profession, the Women in the Legal Profession Committee should continue.
- A.1.4. Your Committee also considered whether, in 1996, it would need to meet monthly or whether less frequent meetings would suffice. The Committee decided that, given its current agenda, it will continue to meet monthly.

B.
ADMINISTRATION

B.1. BUDGET FOR 1996

- B.1.1. Your Committee approved a budget for the financial year 1996 amounting to \$32,000. (This is the same amount which the Committee requested, and Convocation approved, for the financial year 1995-1996.)

C.
INFORMATION

C.1. FOLLOW-UP TO THE TRANSITIONS REPORT: THE ONTARIO TRANSITIONS RE-CONTACT SURVEY

- C.1.1. In September 1995, your Committee considered a research proposal from Dr. Fiona Kay (Assistant Professor of Sociology, University

of British Columbia) which included a follow-up study of the 1,597 members who responded to the 1990 survey which was the basis for the *Transitions Report*. The Committee expressed interest in supporting this study. However, a number of questions relating to the funding and content of the study were raised. It was agreed that the Chair and staff of the Committee would discuss these questions with Dr. Kay and report back to the Committee.

- C.1.2. At the meeting in October 1995, the Chair reported to the Committee on discussions held with Dr. Kay. At the same meeting, the Committee considered a preliminary budget for the study prepared by staff.
- C.1.3. At its meeting on November 9, 1995, the Committee had before it a budget for the *Ontario Transitions Re-contact Survey* prepared by Dr. Kay.
- C.1.4. Having considered Dr. Kay's budget for the *Ontario Transitions Re-contact Survey* and the financial resources of the Women in the Legal Profession Committee, your Committee has decided to authorize Dr. Fiona Kay to proceed with the first stage of the *Ontario Transitions Re-contact Survey*.
- C.1.5. The Committee expects to meet with Dr. Kay in December, at which time it will discuss issues that it would like the study to address.

C.2. JOINT ACTION COMMITTEE ON GENDER EQUALITY

- C.2.1. The Joint Action Committee on Gender Equality was formed in 1992, at the instance of the Law Society, with a mandate to consolidate the efforts of a number of professional legal organizations across Ontario working to promote gender equality in the profession. Along with the Law Society, the following organizations are members of the Joint Action Committee: Canadian Bar Association - Ontario, The Advocates' Society, the Ontario Crown Attorneys' Association, Women's Law Association of Ontario, Women and the Law (University of Toronto), Black Law Students' Association of Canada, The Criminal Lawyers' Association, Ministry of the Attorney General, University of Toronto - Out-in-Law, and Delos Davis Law Guild. In the past, the Law Society, through the Women in the Legal Profession Committee, has contributed funds to the Joint Action Committee. The Canadian Bar Association - Ontario has contributed to the Joint Action Committee in kind (chiefly by the provision of office space).
- C.2.2. The Joint Action Committee has made a request for further funding from the Law Society. Two meetings of the Joint Action Committee have been held to discuss funding. The Chair of your Committee attended both meetings and has reported on them.
- C.2.3. The Joint Action Committee has been asked to provide a budget of the Committee's operating expenses and information on the monetary contributions of the Committee's other member organizations. Your Committee has deferred consideration of the funding request until after the budget and other information have been received from the Joint Action Committee.

C.3. REQUALIFICATION

C.3.1. In the report to Convocation of the Professional Standards Committee dated September 29, 1995, the following item appeared:

A.2. REQUALIFICATION

A.2.1. In March, 1994, Convocation approved the report on requalification. Members will be required to requalify if they do not make use of their legal skills on a regular basis in their current work for five years or more. A pre-emptive regime will permit members, who would otherwise be required to requalify, to take steps in order to preserve their legal skills and avoid having to requalify at the end of the five year period. The policy came into effect on July 1, 1994.

A.2.2. Staff representatives were appointed as follows: Sue McCaffrey, for Professional Standards, Meg Angevine, for Admissions, and Sophia Sperdakos, for Legal Education.

A.2.3. Your Committee therefore recommends that:

1. The staff committee prepare proposals for requalification, recommending:
 - i) the range of steps a member can take to preserve legal skills through the pre-emptive regime;
 - ii) the range of reasonable conditions to be met by members required to requalify.
2. The staff committee liaise with the Women in the Legal Profession Committee on the proposals for the pre-emptive regime to ensure that the measures developed do not impact adversely on women members.
3. The staff committee further liaise with the Research and Planning Committee in the development of the proposals.
4. The staff committee report back to the Professional Standards and Women in the Legal Profession Committees in November.

C.3.2. Your Committee had before it a report on the work to date of the staff committee. The Committee deferred consideration of the recommendations contained in the report to a future meeting.

C.4. WOMEN IN THE LEGAL PROFESSION COMMITTEE: WORK IN PROGRESS

C.4.1. The Committee has on its current agenda the following items:

1. The assignment of legal aid receivables by members to satisfy payment of Law Society fees and insurance levies.
2. The impact of insurance levies on female lawyers.

3. The organization of an exchange of information between professional organizations on work undertaken to advance gender equality within various professions and businesses (e.g., architecture, engineering, accounting, nursing, teaching, medicine, banking).

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

H. Sachs
Chair

THE REPORT WAS ADOPTED

Agenda - Additional Matters Requiring Debate and Decision by Convocation

It was moved by Mr. Murray, seconded by Ms. Curtis THAT the English version of the Rules made under subsection 62(1) of the *Law Society Act* be amended as indicated below:

1 AMENDMENT TO RULE 5: CHANGE OF FINANCIAL YEAR

1.1 Proposed Amendment

- 1.1.1 That the words "the 1st day of July to the 30th day of June of the following year" be deleted and replaced by the words "January 1 to December 31", so that Rule 5 would read (proposed amendment underlined):

The financial year of the Society shall be from January 1 to December 31.

1.2 Reason for Amendment

- 1.2.1 At present, Rule 5 reads:

The financial year of the Society shall be from the 1st day of July to the 30th day of June of the following year.

- 1.2.2 On September 29, 1995, Convocation adopted a recommendation from the Finance and Administration Committee that the Law Society's financial year be changed to run from January 1 to December 31.

2 AMENDMENT TO RULE 14: DELETION OF SUBRULE (2)

2.1 Proposed Amendment

- 2.1.1 That subrule 14(2) be deleted.

2.2 Reason for Amendment

2.2.1 At present, subrule 14(2) reads:

If among the forty persons who have the highest number of votes there is any person who by virtue of such election becomes an ex officio benchner, the scrutineers shall so report and, subject to subrule 4 of rule 13, the twenty other persons within Metropolitan Toronto and the twenty other persons outside Metropolitan Toronto as mentioned in section 15 of the Law Society Act, who have the highest number of votes shall be certified forthwith by the Secretary as having been elected as benchers.

2.2.2 Subrule 14(2) does not have any application to the "benchner by virtue of office" provisions of the *Law Society Act* as now worded. Under the current wording of paragraph 6 of subsection 12(1) of the Act, the mere fact of election cannot lead to a person becoming a "benchner by virtue of office". There are two requirements which must each be met if a benchner is to become a benchner by virtue of office pursuant to the paragraph: election at four elections and sixteen years of service as a benchner. Any benchner who meets the sixteen year requirement must, by necessity, have been elected at least four times. A benchner can never be in the position of having fulfilled the sixteen years requirement but being short of the required four elections. A benchner who has been elected only three times can have served no more than twelve years: that benchner's election for the fourth time cannot therefore mean that the benchner thereby immediately fulfils all remaining requirements for becoming a benchner by virtue of office.

2.2.3 Subrule 14(2), in fact, is almost identical to subsection 20(2) of the *Law Society Act*, R.S.O. 1960, c. 207, which also provided in paragraph 4 of section 5 that every person who had been elected a benchner at four quinquennial elections was an *ex officio* benchner. In that scheme, the mere fact of re-election could qualify a person for "ex officio" status. Subrule 14(2) would have practical application in such a scheme: it can have no application in the present scheme.

3 RULES 40 AND 41: DELETION OF REFERENCES TO THE BAR ADMISSION COURSE LIBRARY

3.1 Proposed Amendments

3.1.1 That in Rule 40, after the words "Great Library", the words "the Bar Admission Course Library", and the ensuing comma, be deleted, so that Rule 40 would read (proposed deletion struck through):

The Committee is responsible to Convocation for the general supervision and management of the Great Library, ~~the Bar Admission Course Library~~, all other rooms used exclusively for library purposes, and library books in other rooms and the Committee may make such arrangements and take such steps as it considers advisable to carry out its responsibility.

3.1.2 That in subrule 41(3), after the words "Great Library", the words "and an assistant librarian of the Bar Admission Course Library who shall have charge thereof" be deleted, so that subrule 41(3) would read (proposed deletion struck through):

There shall be one or more assistant librarians of the Great Library ~~and an assistant librarian of the Bar Admission Course Library who shall have charge thereof~~ under the superintendence of the Chief Librarian.

3.2 Reason for Amendments

3.2.1 Rule 40 outlines the mandate of the Libraries and Reporting Committee. At present, it reads:

The Committee is responsible to Convocation for the general supervision and management of the Great Library, the Bar Admission Course Library, all other rooms used exclusively for library purposes, and library books in other rooms and the Committee may make such arrangements and take such steps as it considers advisable to carry out its responsibility.

3.2.2 Rule 41 outlines the responsibilities of the Chief Librarian. At present, subrule (3) of Rule 41 reads:

There shall be one or more assistant librarians of the Great Library and an assistant librarian of the Bar Admission Course Library who shall have charge thereof under the superintendence of the Chief Librarian.

3.2.3 Rule 40 and subrule 41(3) contain references to the Bar Admission Course Library, which is defunct. There is, therefore, no need for the Rules to refer to the Bar Admission Course Library.

Carried

TITLE INSURANCE COMMITTEE

It was moved by Ms. Cronk, seconded by Mr. Feinstein THAT the committee on Title Insurance be established and be composed of the following members: Thomas Cole (Chair), Robert Aaron, Michael Adams, Henry Blumberg, Elaine Franklin, John McKay, Carolyn Rosenstein, Alan Silverstein, Malcolm Heins, Frank Marrocco, Hope Sealy, Harvey Strosberg and William Taggart.

Carried

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

ADMISSIONS AND MEMBERSHIP COMMITTEE

Meeting of November 9, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS AND MEMBERSHIP COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of November, 1995, the following being present: Mr. Epstein (Chair) and Messrs. Armstrong, Goudge and Mackenzie.

Also present: M. Angevine, A. Treleaven, M. Hart and P. Gyulay

A.
POLICY

A.1. RECOMMENDED CHANGE TO TRANSFER EXAMINATION POLICY

- A.1.1. The current transfer examination policy gives candidates the option of either completing the transfer examination or becoming enrolled in Phase Three of the Bar Admission Program and completing it in its entirety.
- A.1.2. The examination covers six subject areas and comprises a written portion and an oral portion. The open-book, written portion covers a six day period. There is a separate part for each subject area which is 2½ hours in length. The candidate must pass in all six subject areas. Those who have passed are automatically excused from the oral portion. Those who fail in one or more subject areas are required to attend the one hour, closed book oral portion of the examination before a panel of three examiners. The oral covers all six subject areas again. Those that fail the oral portion are required, should they wish to continue with the transfer, to either attempt the transfer examination a second time in its entirety, subject to being excused from the oral portion or to complete Phase Three in its entirety.
- A.1.3. Your Committee recommends that the transfer examination policy be changed as follows:
- (a) the oral portion of the examination be abolished
 - (b) candidates be permitted, upon payment of the prescribed fee, to sit a supplemental in any of the six subject areas failed at the next sitting of the transfer examination;
 - (c) candidates failing one or more supplementals be required, should they wish to continue with the transfer, to complete successfully the section(s) of Phase Three relating to the subject area(s) failed. This would include payment of the prescribed fee for each session attended; mandatory attendance in seminar sessions, satisfactory completion of group assignments and examination(s).
- A.1.4. 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.
- A.1.5. It is also recommended that those candidates, who have already failed one sitting of the examination and who have not yet completed the transfer, be permitted to write supplementals in the subject areas failed. Should they fail any of those supplementals it is recommended that the proposed new policy be followed to require them to complete the section(s) of Phase Three related to the areas failed. This would include payment of the prescribed fee for each session attended; mandatory attendance in seminar sessions, satisfactory completion of group assignments and examination(s).

- A.1.6. Candidates failing a section(s) of Phase Three, who wish to continue with the transfer, will be required to make written application to the Admissions and Membership Committee setting out that a significant change in their circumstances will likely result in successful completion of the section(s) of Phase Three failed if permitted to complete the section(s) again.
- A.1.7. Your Committee further recommends that Convocation,
- (a) prescribe the following fees,
 - (i) for each section of Phase Three of the Bar Admission Course (including examinations in that section) - \$300.00 (+GST);
 - (ii) for each supplemental examination - \$100.00 (+GST) plus the cost of any up-dated study materials relevant to that examination; and
 - (b) amend Rule 50 (Fees) accordingly.
- A.1.8. If Convocation adopts the recommendation in the previous paragraph, a motion to amend Rule 50 will be made immediately after adoption of the Committee's report.

B.
ADMINISTRATION

- B.1. REINSTATEMENT FOLLOWING SUSPENSION - REQUEST FOR WAIVER OF REQUALIFICATION EXAMINATIONS
- B.1.2. Fred Harinder Singh Sandhu was called to the Bar of Ontario on the 14th April 1986 and was suspended for non payment of the annual fee on the 27th February 1987.
- B.1.3. Mr. Sandhu requests permission to be reinstated upon payment of all arrears of fees and without being required to complete the requalification examination on the strength of his having continued to actively practice law in another Canadian common law jurisdiction. His letter of November 6th, 1995, setting out the nature of his practice in Manitoba since the date of his suspension in Ontario, was before the Committee.
- Your Committee recommends that the applicant be reinstated upon payment of all arrears of fees or upon making the appropriate payment arrangements with the Director Finance. It is also recommended he be exempt from sitting the requalification examination in light of his having continued to actively practice in another Canadian common law jurisdiction.
- B.2. DIRECT TRANSFER - COMMON LAW - SECTION 4(1)
- B.2.1. The following candidate has met all the requirements to transfer under section 4(1) of Regulation 708 made under the Law Society Act:

Gregory Alfred Tereposky

Province of British Columbia

Approved

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

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

Maria Bruzzese
Gordon Levine
Peter Noble
Francesco Picciola

Approved

B.4. APPLICATIONS TO BE LICENSED AS FOREIGN LEGAL CONSULTANTS

- B.4.1. Lance J. Madden has applied to be licensed as a foreign legal consultant in the Toronto office of Hodgson, Russ.

- B.4.2. Mr. Madden's application is complete and both he and the firm have filed all necessary undertakings.

Approved

- B.4.3. Christopher John Cummings has applied to be licensed as a foreign legal consultant in the Toronto office of Shearman & Sterling.

- B.4.4. Mr. Cumming's application is complete and both he and the firm have filed all necessary undertakings.

Approved

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

- B.5.1. (a) Bar Admission Course

The following candidate having successfully completed the 33rd Bar Admission Course now has filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, November 24th, 1995:

Kenneth Alexander Kuwayti

Approved

- B.5.2. The following candidate having successfully completed the 34th Bar Admission Course now has filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, November 24th, 1995:

Jean Aileen Franklin Hancher

Approved

24th November, 1995

- B.5.3. The following candidate having successfully completed the 36th Bar Admission Course now has filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, November 24th, 1995:

Carole Abby Lynn Avery

Approved

- B.5.4. Transfer from another Province - Section 4(1)

The following candidate having completed successfully the Transfer Examination, filed the necessary documents and paid the required fee now applies for call to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, November 24th, 1995:

Barbara Anne Mercier

Province of Alberta

Approved

- B.5.5. Transfer from another Province - Section 4(2) - Quebec

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

André Pretto
Brahm Segal

Province of Quebec
Province of Quebec

Approved

- B.6. MEMBERSHIP UNDER RULE 50

- B.6.1. (a) Retired Members

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

Roger Gordon Conant
Jordan Dimoff
Joseph Nicholas Ferris
Peter Jerome Gloin
Douglas Gordon Haig
Theodore Samuel Herman
Arthur Lloyd Jackson
Sidney Kaplan
Thomas Edward O'Marra
Duncan Rae Phillips
Joseph Weldon Thomas
Cezarina Wysocki

Toronto
Toronto
Toronto
Elgin County
Simcoe County
North York
Simcoe County
Toronto
Peel Region
North York
Ottawa-Carleton
Durham Region

Approved

B.6.2. 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:

James Wild Eayrs	Toronto
Nicole Marie Renee Godbout	Toronto
Frederick Edward Horton	Simcoe County
Ralph Hershel Lewis	Toronto
Patricia Marie Perrizo Olson	Frontenac County
Randall Norman Rae	Vancouver, BC

Approved

B.7. RESIGNATION - REGULATION 12

B.7.1. The following members have applied for permission to resign their memberships in the Society and have submitted Declarations/Affidavits in support. These members have requested that they be relieved of publication in the Ontario Reports:

- (1) Robert Steven Adler of Toronto, Ontario, was called to the Bar on March 30, 1990. He declares that he has not practised law in Ontario since February 1994; and, that all client matters were completed or arrangements made prior to submitting his 1994/95 Annual Filings. The 1995/96 annual fee is owing. The annual filings are up to date.
- (2) Craig Barnard of Oakville, Ontario, was called to the Bar on April 13, 1978. He declares that he has not practised law since September 1980. The 1995/96 annual fee is owing. The annual filings are up to date.
- (3) Allan Edward Barsky of Calgary, Alberta, was called to the Bar on April 10, 1986. He claims that he has not practised law since he has been called to the Bar. The 1995/96 annual fee is owing. The annual filings are up to date.
- (4) Peter Graham Barton of St. Marys, Ontario, was called to the Bar on October 18, 1974. He claims he has not practised since 1981; and, that there are no matters outstanding with regards to client monies, trust funds, and client property. The 1995/96 annual fee is outstanding. The annual filings are up to date.
- (5) Michael Bendel of York, Ontario, was called to the Bar on March 25, 1977. He states that he has not engaged in the practice of law since July 1984. The 1995/96 annual fee is owing. The annual filings are up to date.
- (6) George S. Boychyn of Oshawa, Ontario was called to the Bar on June 29, 1949. He declares that he is retired from the practice of law on June 30, 1995. The member states that there is one claim made against him. The claim is made by Ernest Knapp and his estate, and Martha Knapp in third party proceeding. The 1995/96 annual fee is owing. The annual filings are up to date.

- (7) Harold Winston Brown of York, Ontario, was called to the Bar on April 18, 1985. He states that he practised as a sole-practitioner until June 30, 1985. He declares that all client matters have been completed and disposed of; or, that arrangements have been made. The annual fee is owing. The annual filings are up to date.
- (8) Robert Thomas Buternowsky of Oakburn, Manitoba, was called to the Bar on March 30, 1990. He declares that he ceased practising in Ontario on or about April 1st, 1994. He states that all trust funds for which he was responsible for were accounted for or paid over to the persons entitled thereto. The 1995/96 annual fee is owing. The 1995/96 Errors and Omissions Insurance is owing. He is in default of 1995 annual filing, as of October 31, 1995.
- (9) James Lawrence Carpick of Burnaby, British Columbia, was called to the Bar on April 14, 1988. He states that he has not practised Ontario law since April 30, 1990. He was called to the British Columbia Bar in August, 1991, and since November 1991, has practised British Columbia law. The 1995/96 annual fee is owing. The annual filings are up to date.
- (10) Brenda Mary Constantine of Ottawa, Ontario was called to the Bar on April 18, 1988. She states that since her call to the Bar, she has not engaged in the practice of law in Ontario. The annual fee is owing. The annual filings are up to date.
- (11) Colleen Glenn Covert of Regina, Saskatchewan, was called to the Bar on February 12, 1992. She is currently suspended for non-payment of the 1994/95 annual fee. She claims that other than articling, she has never practised law in Ontario.
- (12) Victoria Christina De La Ronde of Ottawa, Ontario, was called to the Bar on March 28, 1990. She is currently working for the Government of Canada, in a non-legal capacity, and states that she has never engaged in the practice of law in the Province of Ontario. The 1995/96 annual fee is outstanding. The annual filings are up to date.
- (13) Doreen Moore Dewart of Toronto, Ontario, was called to the Bar on April 18, 1985. She states that she has not practised law since December 31, 1994; and, that she has never held trust funds or clients' property. The 1995/96 annual fee is owing. The annual filings are up to date.
- (14) Giuseppina Di Biase of Toronto, Ontario, was called to the Bar on February 5, 1993. She states that she practised law from July 1, 1993 to December 31, 1994; and, that she has not engaged in the private practice of law since that time. She claims that all trust funds or clients property have been accounted for, and paid over to the persons entitled thereto. The 1995/96 annual fee is owing. She is required to file a Form 2 certificate for 1995, but is up to date in filing.

- (15) Susan Aileen Donahue of Toronto, Ontario, was called to the Bar on February 7, 1992. She states that she has never practised law since her call to the Bar. The 1995/96 annual fee is owing. The annual filings are up to date.
- (16) Jean Anna Fraser of Toronto, Ontario, was called to the Bar on April 6, 1982. She states that she has not practised law since 1989, and that she has never handled trust funds or clients' property. The annual fee is owing. The annual filings are up to date.
- (17) Doris Botsford Gaspar of Windsor, Ontario, was called to the Bar on April 11, 1979. She is currently suspended for non-payment of the 1994/95 annual fee. She claims that she has not engaged in the practice of law since March 1993. She is required to file a Form 2 certificate for 1995, and owes \$3000 in late filing penalties.
- (18) David William Gaukrodger of New York City, New York, was called to the Bar on February 5, 1993. He states that he has not practised in Ontario; that, after being called to the Bar of the State of New York in January 1994, he has been practising law in New York since that time. The 1995/96 annual fee is owing. The annual filings are up to date.
- (19) Dianne Bernice George of St. John's, Newfoundland, was called to the Bar on March 28, 1990. She states that she practised as a sole-practitioner in Ottawa until March 31, 1995; but, has not practised since that time. Two outstanding files concerning trust accounts, have been passed on to Michele Blais, of Ottawa, Ontario. There is one outstanding claim she is aware of, commenced in 1994. She is on levy relief for the 1995/96 insurance. The 1995/96 annual fee is outstanding. She is still owing her annual filings for January 31, 1995.
- (20) Terrance Arthur Joseph Goudie of Markham, Ontario, was called to the Bar on March 24, 1972. Since his partnership of Laidlaw and Goudie dissolved on October 1, 1985, he states that he ceased practising law in Ontario. The 1995/96 annual fee is owing. The annual filings are up to date.
- (21) Tova Janice Kelman of Vaughan, Ontario, was called to the Bar on April 9, 1981. Since her call to the Bar, she has been working for an accounting firm a non-legal capacity. The 1995/96 annual fee is owing. The annual filings are up to date.
- (22) Richard Robert John King of Ottawa, Ontario, was called to the Bar on March 25, 1966. From 1969 to his retirement in June 1995, he has been a member of the Department of Justice. He has held no trust funds or client property. The 1995/96 annual fee is owing. The annual filings are up to date.

- (23) Paul Avrom Konikoff of Thornhill, Ontario, was called to the Bar on April 15, 1988. He states that he has not engaged in legal practice since February 1993. He is aware of one claim against him File # T-342. The 1995/96 annual fee is owing. The annual filings are up to date; however, he is required to file a Form 2 certificate for the 1995 year.
- (24) Paul Walter Lackowicz of Whitehorse, Yukon Territory, was called to the Bar on April 13, 1978. He states that he left active practice in the Province of Ontario, and has not handled any client files or trust money since December 31, 1981. The 1995/96 annual fee is owing. The annual filings are up to date.
- (25) Christopher Dilworth MacDonald of St. John, New Brunswick, was called to the Bar on March 22, 1991. He states that he has never engaged in the practice of law in Ontario. The 1995/96 annual fee is owing. The annual filings are up to date.
- (26) Sheila Carole MacGowan of Toronto, Ontario, was called to the Bar on March 30, 1990. She states that she practised law in Ontario from June 1990 to November 1992. She states that she has never handled any clients' trust accounts or property. Any outstanding files were handed over to other lawyers at Fasken Campbell Godfrey. The 1995/96 annual fee is owing. The annual filings are up to date.
- (27) Patrick Hugh MacIsaac of Sudbury, Ontario, was called to the Bar on March 20, 1975. He states that he has never practised law in Ontario. The 1995/96 annual fee is owing. The annual filings are up to date.
- (28) Tadeusz Malak of Guelph, was called to the Bar on March 19, 1970. He declares that he has been practising law for twenty-five years. The 1995/96 annual fee is owing. The annual filings are up to date.
- (29) Nancy Ellen Makepeace of East York, Ontario, was called to the Bar on April 8, 1987. She states that she has never been in private practice, and that she has not practised law since January 1993. The 1995/96 annual fee is owing. The annual filings are up to date.
- (30) Monica Liisa Maki of Winnipeg, Manitoba, was called to the Bar on February 16, 1995. She states that she has not engaged in the practice of law in Ontario since her call to the Bar. The 1995/96 annual fee is outstanding. The annual filings are up to date.
- (31) David John McGruder of Vancouver, British Columbia, was called to the Bar on April 6, 1984. He states that as of March 31, 1995 he has not practised law in Ontario. All trust funds and client matters were handed over to Barrigar & Moss prior to his resignation in March. The 1995/96 annual fee is owing. The 1995 insurance levy is owing. The annual filings are up to date.

- (32) Kim Marie McNeill of Charlottetown, PEI, was called to the Bar on March 30, 1990. She states that she ceased practising law in Ontario in March 1992. All trust funds and clients' property was held by her former employer Simpson, Wigle. She is aware of a potential claim that was reported in May 1993. The 1995/96 annual fee is owing. The annual filings are up to date.
- (33) Albert Ronald Donnie O'Connell of Orleans, Ontario, was called to the Bar on March 29, 1989. He states that he has never engaged in the private practice of law, since his call to the Bar. The 1995/96 annual fee is owing. The annual filings are up to date.
- (34) Arnold Hal Olyan of Calgary, Alberta, was called to the Bar on March 31, 1989. He states that he practised with McCarthy Tetrault in Toronto from 1989 to 1992; and, with the same firm in Alberta from 1992 to April 1995. All books and records remained with the firm. The 1995/96 annual fee is outstanding. The annual filings are up to date.
- (35) Alan Victor Parish of Halifax, Nova Scotia, was called to the Bar on November 20, 1981. He is currently suspended for non payment of 1993/94 annual fee. He states that he has never practised law in Ontario.
- (36) Anthony Ross Pattee of Vancouver, BC, was called to the Bar on March 29, 1989. He claims that he has never practised law in the Province of Ontario. The 1995/96 annual fee is owing. The annual filings are up to date.
- (37) Martin Perelmuter of Toronto, Ontario, was called to the Bar on February 16, 1995. He states that he ceased practising law on August 4, 1995. All trust funds/clients' property have been accounted for and paid over to the persons entitled. \$737.89 is owing for the 1995/96 annual fee. \$1121.25 is owing for the 1995 insurance levy. The annual filings are up to date.
- (38) George Bryan Porter of Peachland, BC, was called to the Bar on September 18, 1981. He states that he ceased practising law in Ontario on January 1, 1983. All trust funds and clients' property were accounted for and paid over to the persons entitled prior to January 1, 1983. The 1995/96 annual fee is owing. The annual filings are up to date.
- (39) Heather Diane Rex of Hamilton, Ontario, was called to the Bar on February 1, 1994. She states that she has not practised law since August 1994. The 1995/96 annual fee is owing. The annual filings are up to date.
- (40) Bruce Stewart Russell of Halifax, Nova Scotia, was called to the Bar on September 28, 1984. He is a member of the Nova Scotia Bar, and has been with the federal Department of Justice since October 1982. The 1995/96 annual fee is owing. The annual filings are up to date.
- (41) Trevor Gerard Schindeler of North Bay, Ontario, was called to the Bar on April 11, 1986. He states that he has not practised law since January 2, 1989. The 1995/96 annual fee is owing. The annual filings are up to date.

- (42) Kimberly Gayla Shane of Vancouver, BC, was called to the Bar on February 8, 1994. She states that she ceased practising law in Ontario as of December 31, 1994. All client matters were transferred to other lawyers in her former firm. The 1995/96 annual fee is outstanding. The annual filings are up to date.
- (43) Jeremy Scott Sheppard of Vancouver, BC, was called to the Bar on March 22, 1991. He states that as of September 1, 1995 he has begun practice in British Columbia. All trust funds have been accounted for and paid over to the persons entitled thereto. The 1995/96 annual fee is owing. The 1995 insurance levy is owing.
- (44) Elizabeth Jean Siemens of Saskatoon, Saskatchewan, was called to the Bar on February 8, 1994. She states that she has never practised in Ontario other than during her articles. The 1995/96 annual fee is owing. The annual filings are up to date.
- (45) Veronica Ann Singer of Gibsons, BC, was called to the Bar on March 20, 1991. She states that she was never in private practice in Ontario, and that she has not engaged in the practice of law in Ontario since November 1993. The 1995/96 annual fee is owing. The annual filings are up to date.
- (46) Lloyd Robert Spiro of Ottawa, Ontario, was called to the Bar on April 19, 1963. He states that he has never been responsible for trust funds or clients' property as he has been an employee of the Federal Department of Justice from May 1967 to June 14, 1995. The 1995/96 annual fee is owing. The annual filings are up to date.
- (47) Theodore Michael Sutcliffe of Vancouver, BC, was called to the Bar on February 16, 1995. He has been engaged in practice for approximately 2 weeks on contract for the Attorney-General of Ontario. He has been called to the Bar in British Columbia, and plans to practise there. The 1995/96 annual fee is owing. The annual filings are up to date.
- (48) Chella Ann Turnbull of Mississauga, Ontario, was called to the Bar on March 31, 1989. She is currently suspended for non-payment of the 1994/95 annual fee. She states that she has not practised law since June 30, 1994. All files remained with her former employer Lawson, McGrenere, Rose & Clemenhausen.
- (49) Richard Norton Vale of Binghampton, New York, was called to the Bar on April 10, 1980. He states that he has not engaged in the practice of law since March 1988, and that all client matters were left with his former firm of Harvey Freedman. The 1995/96 annual fee is owing. The annual filings are up to date.
- (50) Richard Arthur Vanderkooy of Vancouver, British Columbia, was called to the Bar on April 6, 1984. He states he ceased practising law in Ontario in April 1992. All client matters for which he was responsible have been completed and disposed of. The 1995/96 annual fee is owing. The annual filings are up to date.

- (51) Patrick James Walker of Vancouver, British Columbia, was called to the Bar on March 20, 1991. He states that he has never practised law in Ontario. The 1995/96 annual fee is outstanding. The annual filings are up to date.
- (52) Loretta Helen Yaskiel of Toronto, Ontario, was called to the Bar on March 30, 1990. She states that she ceased practice as a sole-practitioner on October 31, 1995. Since filing an assignment in bankruptcy on March 23, 1995, she has not maintained a trust account. The 1995/96 annual fee is owing. She is on levy relief for the 1995 insurance levy.

Approved

C.
INFORMATION

C.1. EXAMINATION RESULTS - TRANSFER/REQUALIFICATION EXAMINATION

- C.1.1. The following candidates have completed successfully the September 1995 Transfer/Requalification Examination:

Laurie Gayle Ballantyne-Gaska Requalification
Brahm Segal Province of Quebec

Noted

C.2. CHANGE OF NAME

<u>From</u>	<u>To</u>
<u>Eric Lloyd Burton</u>	<u>Harreson R. Greene</u> (Change of Name Registration)
Carole Ann <u>Trethewey</u>	Carole Ann <u>Prest</u> (Birth Certificate)
Duriya Patel	Duriya <u>Patel-Altaf</u> (Citizenship Certificate)
Cecilia Mary <u>McMahon</u>	Cecilia Mary <u>Moffat</u> (Change of Name Certificate)
Kathleen <u>Petruch</u>	Kathleen <u>Vent</u> (Marriage Certificate)
Lisa Karen <u>Demers</u>	Lisa Karen <u>Negraiff</u> (Marriage Certificate)

Noted

24th November, 1995

C.3. STUDENTS

C.3.1. FROM

TO

Tanya Jennifer Baranowski

Tanya Jennifer Carmichael
(Change of Name Certificate)

Marie Jacqueline Moore

Jacqueline Marie Prefontaine-Moore
(Change of Name Certificate)

Clementina Santa Rita Do
Rosario Costa

Clementina Santa Rita Do
Rosario Costa-D'Aguir
(Change of Name Certificate)

Noted

C.4. ROLLS AND RECORDS

C.4.1. (a) Deaths

The following members have died:

Robert Ian Hendy
Toronto, ON

Called June 29, 1948
Died May 5, 1994

Archibald Gaylord Greenaway
Willowdale, ON

Called June 29, 1948
Died June 1, 1994

Howard Ross Douglas
Toronto, ON

Called June 18, 1936
Died June 25, 1995

Lawrence Gerrard O'Connor
Chatham, ON

Called June 19, 1941
Died September 6, 1995

Sharman Ketchen Learie
Niagara, ON

Called June 18, 1936
Died September 20, 1995

Harvey Frank McCulloch
Hamilton, ON

Called September 21, 1933
Died September 21, 1995

Gabriel Leo Paul Benoit
Chatham, ON

Called September 16, 1948
Died September 29, 1995

Robert James Venier
Kanata, ON

Called April 8, 1987
Died September 30, 1995

Frank Minich
Oshawa, ON

Called March 22, 1974
Died October 6, 1995

Philip Douglas Isbister
Toronto, ON

Called June 29, 1948
Died October 10, 1995

Murray Herman
Thornhill, ON

Called March 26, 1965
Died October 17, 1995

Noted

C.4.2. (b) Disbarments

C.4.3. The following member has been disbarred and his name has been removed from the rolls and records of the Society:

Alan Bernard Silver
Blackpoint, NS

Called March 19, 1970
Disbarred - Convocation
October 27, 1995

Noted

C.4.4. (c) Memberships in Abeyance

C.4.5. Upon their appointments to the offices shown below, the memberships of the following members have been placed in abeyance under Section 31 of The Law Society Act:

David James McNab
Fort McMurray, AB

Called April 13, 1978
Appointed to Provincial Court
of Alberta
January 3, 1995

Albert Joseph Roy
Cornwall, ON

Called March 17, 1967
Appointed to Ontario Court of
Justice (General Division)
July 13, 1995

Noted

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

P. Epstein
Chair

It was moved by Mr. Epstein, seconded by Mr. Armstrong that the Report and the following motion to amend Rule 50 respecting fees be adopted.

Carried

MOTION TO AMEND THE RULES MADE UNDER SECTION 62(1) OF THE LAW SOCIETY ACT

That the part of Rule 50 (Fees) headed "Transfer Members" which currently reads as follows:

TRANSFER MEMBERS

Upon filing an application for admission under section 4 of Regulation 708 of the Revised Regulations of Ontario,	
1990 Non-refundable Application Fee	\$125
Upon sitting the common law examination	\$ 500
Upon sitting the transfer examination	\$ 600

be amended to read as follows:

TRANSFER MEMBERS

Upon filing an application for admission under section 4 of Regulation 708 of the Revised Regulations of Ontario, 1990: Non-refundable Application Fee	\$125
Upon sitting the common law examination	\$ 500
Upon sitting the transfer examination	\$ 600
Upon sitting each supplemental examination	\$ 100
plus the cost of any up-dated study materials relevant to that examination.	
For each section of Phase Three of the Bar Admission Course (including examinations in that section)	\$ 300

Note: There is no need to specify GST as there is already a general provision in Rule 50 stating that the amount payable is "the amount specified and any tax that is required by law to be paid by the person receiving the service and collected by the Society."

THE REPORT WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of November 22, 1995

Mr. Murray presented for Convocation's approval the Report of the Finance and Administration Committee which considered the financial impact of the Epstein Gottlieb motion and its recommendations of same.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met by conference call on Thursday, the 22nd of November, 1995 at 5:00 p.m., the following Benchers participating: R.W.Murray (Chair), N.L.Backhouse, K.A.Carpenter-Gunn, M.Crowe, A.Feinstein, P.G.Furlong, P.B.C.Pepper, and B.H.Wright. Staff in attendance were J.T.Saso, R.F.Tinsley D.E.Crack, M.J.Angevine, M.Heins, and M.Strom.

At October Convocation the following motion was made by Philip Epstein and seconded by Gary Gottlieb:

"Whereas Convocation recognizes that as a result of the legal aid crisis some lawyers face serious financial hardships with the consequent inability to pay current Law Society fees for 1995 and LPIC levies.

And whereas the Law Society is currently unable to determine the future course of the legal aid dispute with the government of Ontario.

Accordingly, where a lawyer warrants that he or she suffers from serious financial hardship because his or her legal aid receivables are overdue by more than 90 days in an amount that exceeds the amounts owing to the Society for fees and levies and that the said overdue receivables are the cause of the lawyer's inability to pay these accounts owing, then such accounts shall be deferred until such time as the Law Society determines otherwise."

Convocation deferred consideration of this motion (the Epstein/Gottlieb motion) until the Finance and Administration Committee could consider the financial impact.

The Finance and Administration Committee met on November 16, 1995 to discuss the Epstein/Gottlieb motion and its financial impact. Messrs. Wardlaw and Wright were asked to draft a motion which captured the recommendations made by the Committee.

The Finance and Administration Committee met again on Thursday November 22 to consider the Wardlaw/Wright draft motion. Following discussion the Committee recommends that Convocation adopt the following motion:

- "1. WHEREAS it has been determined that the deferral of the Law Society annual fees to May 31, 1996 (for any lawyer who meets the criteria set out in the Epstein/Gottlieb motion) would not cause unacceptably high costs to the membership and unacceptably great administrative difficulties for the Society;
2. AND WHEREAS the Lawyers' Professional Indemnity Company is governed by insurance laws and regulations that place it outside the same considerations that led Convocation to defer payment of the annual fees such that there would be unacceptably high costs to the membership and unacceptably great administrative difficulties for the Society and LPIC if a similar deferral were adopted for levies beyond the existing levy deferral regime referred to below;
3. AND WHEREAS the Law Society is obligated by contract to pay a premium to LPIC and to LPIC's re-insurers for every member of the Law Society in private practice and in good standing as of December 31, 1995, whether or not those members have paid their insurance levies;
4. AND WHEREAS there are currently about 1,000 members who have not paid their levies, and a further 630 members who have already been granted a deferral under the existing regime;
5. AND WHEREAS, if levy deferrals are granted based on Legal Aid receivables, and if, for example, 500 of those lawyers never pay the levies, the Law Society will lose in excess of \$2,900,000 at a cost per member of about \$182, with greater or lesser consequences flowing from a greater or lesser number of lawyers failing to pay the levies;
6. AND WHEREAS there already exists a mechanism by which members may apply to LPIC for a deferral of payment of the levy such that it is unnecessary to provide for a separate deferral application based on hardship arising from Legal Aid receivables;
7. AND WHEREAS it is acknowledged that LPIC and LSUC shall attempt to process any and all levy and annual fee deferral applications in a timely fashion and with all reasonable leniency having regard to the fact the inability to pay may well be of relatively short duration;

THEREFORE BE IT RESOLVED THAT:

1. *The rights and privileges of any member who has failed to pay the first instalment of the 1995/96 annual fee that was due on July 1, 1995, and who has not been granted a deferral shall be suspended by Convocation on November 24, 1995 to take effect on December 31, 1995, if the annual fee remains unpaid by December 31, 1995; provided that any member who warrants on or before December 31, 1995, that he or she is suffering from serious financial hardship because his or her legal aid receivables are overdue by more than 90 days in an amount that exceed the amount owing for annual fees, and who warrants that the said overdue receivables are the cause of the inability to pay the amount owing for the annual fees, may defer payment of the annual fee until on or before May 31, 1996, or until the said warranties no longer apply to him or her, whichever occurs first.*
2. *The rights and privileges of any member who has failed to pay his or her errors and omissions insurance levy that was due on July 1, 1995, and who has not been granted a deferral or an exemption for the period from July 1 to December 31, 1995, shall be suspended by Convocation on November 24, 1995, to take effect December 31, 1995, if the said levy remains unpaid by December 31, 1995.*

BACKGROUND INFORMATION

A. LAW SOCIETY'S CURRENT POLICY FOR DEFERRAL OF FEES AND LEVIES

The Law Society has adopted and implemented a policy which permits members who are experiencing financial hardship for any reason to pay their fees and levies over a period in excess of the four months permitted under the Act. Members who are granted a deferred payment program are required to meet a payment schedule which is designed to ensure that they are current with their fees and levies by the end of the fiscal year or reasonably soon thereafter. These members remain in good standing as long as they continue to make payments in accordance with the approved schedule. Members who default are subject to suspension at the next Convocation following default.

At present there are 630 members who have been granted a deferred payment program with respect to the 1995 E&O levy and are currently making payments in accordance with an approved schedule.

B. STAFF INFORMATION

Staff prepared the following information for the committee to help clarify the issues surrounding current suspension and implications of approving the Epstein/Gottlieb motion.

1. The attached material [pages 6 - 8] indicates that the impact on the Society's General Fund of the Epstein/Gottlieb motion is about \$15,000 and hence is minor in nature. However, the situation with respect to the E&O Fund is somewhat more complicated in that any deferral program, including the deferred payment program already in place, may have a significant impact on the E&O Fund and therefore on the Law Society's overall financial situation.

2. The reasons for this are as follows:

- (i) The E&O Fund pays an insurance premium to LPIC based upon the number of members in good standing as at December 31, 1995 who are subject to the levy. (The premium is calculated at the rate of \$5,600 per such member.)
- (ii) To the extent that the Law Society offers a deferred payment program or some other deferral arrangement to its members, it will incur liability for an insurance premium without having collected the corresponding levy amount from the member. There is a risk therefore that some portion of that levy amount will not be collected from the member, with the premium cost then being borne initially by the Society's E&O Fund, and ultimately by those members who are subject to the levy.
- (iii) The Law Society has adopted and implemented a policy which permits members who are experiencing financial hardship for any reason to pay their fees and levies over a period in excess of the four months permitted under the Act. (see item A above)
- (iv) By virtue of the policy already in place regarding deferred payment programs, the risk referred to in (ii) above already exists. While we cannot state precisely the magnitude of the risk ie. how many members will default on their payment plans and at what point that default will occur, we can predict a range of magnitude based on our experience to date.
- (v) At present there are approximately 630 members who have been granted a deferred payment program with respect to the 1995 E&O levy and are currently making payments in accordance with an approved schedule.
- (vi) There are about 1,000 (November 22, 1995) members who are facing suspension because they have neither paid the 1995 levy nor made application for a deferred payment program. If every one of these members were granted a deferred payment program, the number of members participating would total 1,600.
- (vii) The experience to date with members who default suggests that a default rate in the range of 15% to 50% is conservatively realistic in the circumstances. The potential loss of revenue to the E&O Fund as a result of the current deferred payment program, based upon a default rate in the range of 15% to 50%, is estimated to be between \$1.34 million (15% X 1,600 X \$5,600) and \$4.48 million (50% X 1,600 X \$5,600).

24th November, 1995

- (viii) Premised upon valid self declaration, the Epstein/Gottlieb motion will not expand the group of members eligible for a deferral arrangement. It contemplates an indefinite deferral of payment, as opposed to a deferred payment program with regular payments, for those members who fulfil the specific conditions set out in the motion. Since every member who fulfils the conditions set out in the Epstein/Gottlieb motion would also be eligible to participate in the deferred payment program, as that program is currently administered, there will be no increase in the number of members eligible.
- (ix) The effect of this motion is, therefore, to remove the requirement that members, as part of the deferral package, agree to a payment schedule which will ensure they are current by the end of the policy year or reasonably soon thereafter. By removing the requirement of a payment scheme, the timing of the levy revenue from members who participate in the deferral will be affected. This may generate revenue loss because of lost interest. The maximum the foregone interest might be for the period January 1, 1996 to May 31, 1996 is about \$150,000.
- (x) It is not expected, however, that the default rate for members under the Epstein/Gottlieb proposal would differ significantly from the projected range of default rates under the current deferred payment program (i.e. 15% to 50%). The reason for this is that those members who would qualify under the Epstein/Gottlieb proposal will, by definition have legal aid receivables available to fund their payment schedules. Accordingly, the potential loss of levy revenue to the E&O Fund will be the same, i.e. between \$1.34 million and \$4.48 million, whichever deferral scheme is in place.
- (xi) Therefore the cost difference between the current deferred payment program and the deferral proposed by the Epstein/Gottlieb motion will be the foregone interest which will be, at most, \$150,000.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

R. Murray
Chair

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

Copy of Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated November 15, 1995 re:
Implication of Extending the Suspension Date Beyond December 1, 1995 -
Effect on General Fund. (pages 6 - 8)

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT:

1. WHEREAS it has been determined that the deferral of the Law Society annual fees to May 31, 1996 (for any lawyer who meets the criteria set out in the Epstein/Gottlieb motion) would not cause unacceptably high costs to the membership and unacceptably great administrative difficulties for the Society;
2. AND WHEREAS the Lawyers' Professional Indemnity Company is governed by insurance laws and regulations that place it outside the same considerations that led Convocation to defer payment of the annual fees such that there would be unacceptably high costs to the membership and unacceptably great administrative difficulties for the Society and LPIC if a similar deferral were adopted for levies beyond the existing levy deferral regime referred to below;
3. AND WHEREAS the Law Society is obligated by contract to pay a premium to LPIC and to LPIC's re-insurers for every member of the Law Society in private practice and in good standing as of December 31, 1995, whether or not those members have paid their insurance levies;
4. AND WHEREAS there are currently about 1,000 members who have not paid their levies, and a further 630 members who have already been granted a deferral under the existing regime;
5. AND WHEREAS, if levy deferrals are granted based on Legal Aid receivables, and if, for example, 500 of those lawyers never pay the levies, the Law Society will lose in excess of \$2,900,000 at a cost per member of about \$182, with greater or lesser consequences flowing from a greater or lesser number of lawyers failing to pay the levies;
6. AND WHEREAS there already exists a mechanism by which members may apply to LPIC for a deferral of payment of the levy such that it is unnecessary to provide for a separate application based on hardship arising from Legal Aid receivables;
7. AND WHEREAS it is acknowledged that LPIC and LSUC shall attempt to process any and all levy and annual fee deferral applications in a timely fashion and with all reasonable leniency having regard to the fact the inability to pay may well be of relatively short duration;

THEREFORE BE IT RESOLVED THAT:

1. The rights and privileges of any member who has failed to pay the first instalment of the 1995/96 annual fee that was due on July 1, 1995, and who has not been granted a deferral shall be suspended by Convocation on November 24, 1995 to take effect on December 31, 1995, if the annual fee remains unpaid by December 31, 1995; provided that any member who warrants on or before December 31, 1995, that he or she is suffering from serious financial hardship because his or her legal aid receivables are overdue by more than 90 days in an amount that exceed the amount owing for annual fees, and who warrants that the said overdue receivables are the cause of the inability to pay the amount owing for the annual fees, may defer payment of the annual fee until on or before May 31, 1996, or until the said warranties no longer apply to him or her, whichever occurs first.

Carried

ROLL-CALL VOTE

Adams	For
Armstrong	Abstain
Arnup	For
Backhouse	For
Bellamy	For
Banack	For
Bobesich	For
Carpenter-Gunn	For
Cronk	For
Eberts	For
Epstein	For
Feinstein	For
Finkelstein	For
Gottlieb	For
Lax	For
Legge	For
MacKenzie	For
Marrocco	Against
Millar	For
Murphy	For
Murray	For
O'Connor	For
Puccini	For
Ross	For
Ruby	For
Sachs	For
Scott	For
Sealy	For
Stomp	For
Swaye	For
Thom	For
Wilson	For
Wright	For

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT:

2. The rights and privileges of any member who has failed to pay his or her errors and omissions insurance levy that was due on July 1, 1995, and who has not been granted a deferral or an exemption for the period from July 1 to December 31, 1995, shall be suspended by Convocation on November 24, 1995, to take effect December 31, 1995, if the said levy remains unpaid by December 31, 1995.

Carried

ROLL-CALL VOTE

Adams	For
Armstrong	For
Arnup	For
Backhouse	For
Bellamy	For
Banack	For
Bobesich	For
Carpenter-Gunn	For
Cronk	For
Eberts	For
Epstein	For
Feinstein	For
Finkelstein	For
Gottlieb	Against
Lax	For
Legge	For
MacKenzie	For
Marrocco	For
Millar	For
Murphy	For
Murray	For
O'Connor	For
Puccini	For
Ross	For
Ruby	For
Sachs	For
Scott	For
Sealy	For
Stomp	For
Swaye	For
Thom	For
Topp	For
Wilson	For
Wright	For

The Epstein/Gottlieb motion was not put.

THE REPORT WAS ADOPTED

Meeting of November 9, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of November, 1995 at 10:30 a.m., the following Benchers being present: R.W. Murray (Chair), M. Crowe, A. Feinstein, N. Finkelstein, J.D. Harvey, D.H.L. Lamont, P.B.C. Pepper, G.A. Swaye, and J.J. Wardlaw. Staff in attendance were J.T.Saso, R.F.Tinsley, D.E. Crack, D.N. Carey, L. Johnstone, M. Heins, and G.Zecchini. Also in attendance was B. Graham of Coopers & Lybrand.

R.
ADMINISTRATION

1. FINANCIAL REPORT

The highlights memorandum for the General Fund and the Lawyers Fund for Client Compensation for the three months ended September 30, 1995 was before the meeting. [pages 3 - 16]

It was resolved that, in future, financial statements be presented quarterly and include *Previous Year to Date Actual* in addition to *Year to Date Actual* compared to *Year to Date Budget*. Variances in excess of 10% of the budget are to be highlighted and commented on by management.

Approved

2. BUDGET PROCESS FOR THE FINANCIAL YEAR ENDED DECEMBER 31, 1996

In September 1995, Convocation approved the change in the Society's financial year end from June 30th to December 31st.

It was recommended that, in preparing the budget for the six month period July to December 1996, the target be to decrease the General Fund portion of the annual fee by 5% and that the budget be prepared by staff under the direction of the Chief Executive Officer for presentation to the Finance and Administration Committee.

Approved

3. SUSPENSION OF MEMBERS - LATE FILING FEE

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

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

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on November 24, 1995 effective December 1, 1995 if the late filing fee remains unpaid on that date.

4. SUSPENSION OF MEMBERS - ANNUAL FEE

There are members who have not paid the first instalment of 1995/96 annual fee which was due July 1, 1995. Two notices have been sent.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on November 24, 1995 effective December 1, 1995 if the fees remain unpaid on that date.

Note: Motion, see page 220

5. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS INSURANCE LEVY

There are members who have neither paid all of the Errors and Omissions Insurance levy nor filed a claim for exemption for the period July 1 to December 31, 1995 and/or the supplementary levy for 1994. Two notices have been sent.

24th November, 1995

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on November 24, 1995 effective December 1, 1995 if the members have not complied with the requirements of the Errors and Omissions Insurance Plan on that date.

Approved

Note: Motion, see page 220

C.
INFORMATION

1. REPORT ON INVESTMENTS

Investment schedules for the General Fund and the Lawyers Fund for Client Compensation were before the Committee. [pages 17 - 19]

- Schedule 1 Investment summary showing:
1. Total portfolio value for each fund.
 2. Value and Percentage of Investments by year of maturity
 3. Investment activity by type

Schedule 2 Quarterly short term Securities Transactions

Schedule 3 Lawyers Fund for Client Compensation matching maturities with Reserves for Unpaid claims.

Noted

2. LEGAL MEETINGS AND ENTERTAINMENT

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

November 15, 1995	Medico-Legal Convocation Hall and Barristers' Lounge
November 16, 1995	Lawyers' Club Convocation Hall and Barristers' Lounge
November 17,18,19 1995	A.G.E.F.O. Celebration Small Dining Room, Museum Room, Barristers' Lounge and Convocation Hall
November 23, 1995	SOAR Reception and Dinner Convocation Hall and Barristers' Lounge
November 28, 1995	Canadian Tax Foundation

Noted

ALL OF WHICH is respectfully

DATED this 24th day of November, 1995

R. Murray
Chair

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

- Item B.-1. - Copy of Memorandum from Mr. David Crack to the Chair and Members of the Finance and Administration Committee dated November 6, 1995 re: Financial Highlights for September 30, 1995. (pages 3 - 16)
- Item C.-1. - Investment schedules for the General Fund and the Lawyers Fund for Client Compensation. (pages 17 - 19)

It was moved by Mr. Murray, seconded by Mr. Feinstein that the Report with the exception of Items B.-4. and 5. be adopted.

Carried

It was moved by Mr. Murray, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from December 1, 1995 and until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

THE REPORT WITH THE EXCEPTION OF ITEMS B.-4. & 5. WAS ADOPTED

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IN PUBLIC

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Agenda - Additional Matters Requiring Debate and Decision by Convocation

ANNUAL MEETING MOTIONS

The Annual Meeting Motions were tabled.

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

DISCIPLINE POLICY COMMITTEE

Meeting of November 9, 1995

Mr. Scott spoke to Item A.-A.1. re: Failure to file Forms 2/3.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE DISCIPLINE POLICY COMMITTEE begs leave to report:

Your Committee met on November 9, 1995 at 2:00 in the afternoon, the following members being present:

F. Marrocco (Acting Chair), L. Banack, L. Legge, S. Lerner, D. McPhadden, C. Ruby, T. Stomp, G. Swaye.

M. Brown, S. Kerr, G. Macri, M. O'Connor, and J. Yakimovich also attended.

A.
POLICY

- A.1. Failure to file Forms 2/3
- A.1.1. Section 16(2) of Regulation 708 requires every member who has engaged in *private practice* to file Forms 2/3 within six months of their fiscal year end. The Form 2 requires the member to indicate whether they are engaged in private practice and whether they are involved in the operation of a trust account. Only members who confirm the latter are required to complete Form 3 which, among other things, requires a Chartered Accountant to certify that a member's trust accounts are in order. The main purpose behind this requirement is to enable the Law Society to effectively monitor the trust accounting practices of the profession, to provide for continuity in reporting on trust accounts and to ensure that proper standards are maintained.
- A.1.2. Historically, members who have failed to comply with the requirements set out in Section 16 have been subject to disciplinary action, usually by way of formal discipline complaint. Prior to authorization being sought however, the member receives two notices. The first is issued when the member has failed to file the required Forms within six months of their fiscal year end. The second notice is sent if, after a further 30 days have elapsed, the Society has not yet received the Forms. The second notice stipulates a date (usually 15 days hence) after which a "late filing fee" of \$10 per day will begin to run. The fee will continue to accrue until a member's Forms are received by the Law Society. The maximum fee that can accrue is \$1,500.
- A.1.3. On the other hand, disciplinary action is sought for failing to file forms after approximately 60 days have passed since the first notice was sent to the member.
- A.1.4. The late filing fee continues to accrue regardless of whether or not disciplinary action against a member is authorized.
- A.1.5. In addition, s. 36 of the Law Society Act stipulates that lawyers shall be suspended if any fee owing to the Society remains outstanding for a period of more than four months. Assuming that the member is not already suspended, a third notice is sent out informing the member that their name will be placed before the next scheduled Convocation with a recommendation that they be suspended unless all *outstanding fees* are paid.

- A.1.6. In 1994, the Chair and Vice-Chairs of your Committee authorized the issuance of 197 formal discipline complaints based on a member's failure to file. A further 174 have been authorized so far in 1995. This represents nearly 40% of all the discipline complaints authorized during this period.
- A.1.7. In many of these cases, the prior filing(s) made by the member indicated that they were not in private practice and that they did not operate a trust account. This required them to file the Form 2. The Society's records would classify these members in one of a number of categories including the following:
- Suspended (i.e. for non-payment of annual fees, etc.)
 - Retired or Not Working
 - Not in Ontario
 - Employed - Other
- A.1.8. In practice, when a member fails to submit the required filing, the process of seeking authorization for disciplinary action is commenced, regardless of whether the last filing received by the Law Society included a Form 3 as well as a Form 2 or was only a Form 2.
- A.1.9. Your Committee considered whether the current practice of taking disciplinary action against members who fail to file their forms in such a wide variety of circumstances should be continued.
- A.1.10. Given that the main purpose of the mandatory filings program is to provide the Law Society with a means by which to monitor lawyers' trust account activity (as set out in the Form 3), the question is whether disciplinary action is warranted when all the available information indicates that the member does not operate a trust account.
- A.1.11. A possible alternative would be to continue invoking the disciplinary process only in circumstances where a member has failed to file and the last filing received by the Law Society included a Form 3 disclosing that the member operated a trust account. This would appear to strike a balance between the legitimate and continuing need to effectively monitor lawyer trust account activity on the one hand and the desire to reserve the discipline process for matters which clearly relate to the Society's public protection mandate on the other.
- A.1.12. It is estimated by staff involved in the processing of these matters that the adoption of the alternative would significantly reduce the number of "failed to file" discipline cases.
- A.1.13. One difficulty with this approach however is that the members not referred to the discipline process would still be subject to late filing fees and possible suspension if they failed to file within four months of the commencement of the late filing fee.
- A.1.14. This raises the question of whether the combination of financial penalties and suspension is appropriate given the determination that members in this "class" should not have been viewed as a sufficient risk to warrant their referral to the discipline process.

- A.1.15. In summary, the Society does not have a single, comprehensive enforcement mechanism to ensure broad compliance with filing requirements. Instead, the current practice involves a combination of administrative measures (i.e. fees and suspensions) and the discipline process.
- A.1.16. Your Committee takes the position that, in certain instances, it is appropriate to withhold the application of some or all of these measures and it makes the following recommendations:
- a) If the member has failed to file for their most recent fiscal year, the last filing received from the member included a Form 3, and the Society has received no information that the member is not practising and operating a trust account, then the administrative and disciplinary measures described above will continue to be employed.
 - b) If the last filing received from the member was a Form 2 disclosing that the member did not operate a trust account and was not engaged in private practice and the Society has no information that the member's status has changed since:
 - i) no disciplinary action against the member will be initiated at that time. The member will however be informed that if they wish to engage in private practice at some point in the future, they will be required to bring their filings up to date and that they may be subject to disciplinary action if they fail to do so.
 - ii) In addition, any late filing fees will remain due and owing and the member will be informed that if they wish to engage in practice in the future, any accumulated fees must be paid.
 - iii) Finally, members in this class will only be subject to suspension for failing to pay the late filing fee if they fail to pay all outstanding fees at the time they wish to engage in private practice.
 - c) In the event of anomalous or other situations arising which are not caught by this recommendation, staff will obtain the instructions of the Chair and/or Vice-Chairs of the Discipline Policy Committee on how best to proceed.
- A.2. Discipline Authorizations - Reasons For Not Authorizing Formal Complaint
- A.2.1. The Chair and Vice-Chairs of the Committee meet monthly to consider material submitted by investigative staff. In most cases, staff recommend the method by which they believe the Society should proceed. In some cases where staff have recommended that a Formal Discipline Complaint be authorized, the Chair and Vice-Chairs disagree and will either authorize a less serious course of action (i.e. an Invitation to Attend) or will direct that no further action be taken by the Law Society.
- A.2.2. In 1990, Convocation approved the following recommendations of the Special Committee on Discipline Procedures (the Yachetti Committee):

- a) The decision to authorize a Formal Complaint should remain a purely administrative one.
 - b) There should be no review of that decision available.
 - c) Reasons should be given by the Discipline Complaints Authorization Committee in all instances where it refuses to authorize a Formal Complaint, or refuses the Formal Complaint but authorizes a lesser Formal Complaint. Care should be taken in the reasons not to prejudice a fair hearing of any Formal Complaint.
- A.2.3. In explaining these recommendations, the Yachetti Committee expressed the view that providing reasons would deflect criticism that the Society was proceeding behind closed doors and would ensure that complainants were kept fully informed.
- A.2.4. The Yachetti Committee further recommended that no active steps should be taken to publish these reasons.
- A.2.5. With rare exception, the Chair and Vice-Chairs do not provide reasons when they do not agree with a staff recommendation requesting the authorization of a Formal Complaint. The rationale behind this is a concern that the authorization stage of the discipline process continue to be viewed as an administrative as opposed to an adjudicative one.
- A.2.6. The practice has developed however of recording detailed minutes of every meeting where the Chair and Vice-Chairs consider authorization requests. The reasoning used in arriving at decisions is therefore retained as part of the minutes.
- A.2.7. Your Committee takes the position that it is neither necessary nor desirable to provide written reasons whenever a recommendation that a Formal Complaint be issued is refused. It is recommended that:
- a) detailed minutes of the discussions in such cases be retained;
 - b) that this information be available to Benchers upon request and that;
 - c) at the direction of the Chair and Vice-Chairs, details of the basis for a decision be communicated to the member or other parties as required.

B.
ADMINISTRATION

- B.1. Bencher Attendance on Discipline Hearing Panels
- B.1.1. Statistics recently received from the Discipline Hearings Co-ordinator indicate an inequitable distribution of responsibility assumed by Benchers for service on discipline hearing panels for the period from June 1 to September 30, 1995.

- B.1.2. The days spent by individual Benchers on hearing panels during this period ranged from eight and one-half (8 1/2) to zero (0). To have achieved a balance among the Benchers in the relevant period, a median of three (3) days should have been served by each Bencher. If that median of three (3) days should have been served by each Bencher, the statistics show that twenty-four (24) Benchers fell below the median.
- B.1.3. Your Committee recommends that, with the assistance of the Discipline Hearings Coordinator, the Chair continue to monitor Bencher participation in Discipline Committee work and that, at his discretion, he alert individual Benchers of the continuing need for all Benchers to share this important responsibility.
- B.2. Special (Discipline) Convocation - Dividing Convocation To deal With Backlog Of Cases
 - B.2.1. Your Committee discussed the backlog of discipline cases that are currently scheduled to proceed before Convocation and given the heavy volume of cases that are at various, earlier stages of the process. Concern was expressed that measures were required to increase the Society's capacity to deal with this volume.
 - B.2.2. Your Committee has asked staff to consider the feasibility of dividing Convocation into two groups that would, at different times, hear discipline matters. In doing so, staff were asked to determine the resources required to properly support this initiative and to incorporate this information into the budget proposals to be tabled at the next month's meeting.

C.
INFORMATION

- C.1. Rule 13 Commentary 6 - Duty To Honour Practice-Related Financial Obligations - Application Of This Rule To Judgments Owed By Members To Clients Arising From Negligence Claims
 - C.1.1. This matter was considered at the October meeting and it was recommended that the issues arising from this item be discussed with Harvey Strosberg and officials from LPIC.
 - C.1.2. The Chair has written to Mr. Strosberg and will report to the Committee once further information has been obtained.
- C.2. Rule-Making Powers of Convocation (under *Statutory Powers and Procedures Act*) - Amendment of Discipline Procedures
 - C.2.1. Eleanore Cronk was appointed to chair a Sub-Committee to study the extent to which the new rule-making provisions in the *Statutory Powers Procedure Act* can be applied to amend the Society's discipline procedures without recourse to the legislature.
 - C.2.2. Ms. Cronk is in the process of meeting with various parties in order to determine the composition of the Sub-Committee and develop a course of action.
- C.3. Discipline Process - Education Session

24th November, 1995

- C.3.1. The Chair and Michael Brown are in the process of organizing a session intended to provide information regarding the role of Benchers sitting on Discipline panels.
- C.4. Budget Estimates - July-December 1996
- C.4.1. The Society recently decided to change its fiscal year from July - June to January - December. The operating budgets of the Society's various departments are currently based on a fiscal year ending June 30, 1996. It is therefore necessary for budget estimates to be formulated for the period between July 1 and December 31, 1996.
- C.4.2. Estimates from the Audit, Complaints and Discipline Departments for this period will be submitted at the December meeting.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

D. Scott
Chair

It was moved by Mr. Scott, seconded by Mr. Marrocco that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

REAL ESTATE ISSUES COMMITTEE

Meeting of November 9, 1995

Mr. Aaron presented the Report of the Real Estate Issues Committee and spoke to Item A.-A.1. re: Mortgage Loans without Legal Advice to Borrowers.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The REAL ESTATE ISSUES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 9th of November, 1995, at 4:00 p.m., the following members being present:

Benchers: R. Aaron (Chair), R. Cass, T. Cole, A. Feinstein, G. Gottlieb, D. Lamont, D. Murphy, R. Wilson;

Non-Benchers: L. Barsky, L. Bremner, A. Dierenfeld, S. Esbin, E. Franklin, E. Gutstein, J. Leal, R. Leclair, A. Loeb, J. McKay, C. Rosenstein, A. Silverstein, J. Stiff, G. Wilkki.

Also present: C. Giffen, D. Godden.

A.
POLICY

A.1. Mortgage Loans Without Legal Advice to Borrowers

- A.1.1 This item was considered by your Committee at its meeting on October 12, 1995 and duly reported to Convocation on October 27th. As Convocation did not have time to deal with the matter in October, it has been carried forward to this Report.
- A.1.2 Your Committee has previously reported its concerns that some institutional lenders offer mortgage loans to individuals under terms which suggest that a borrower or guarantor does not need legal advice and which may, in fact, discourage borrowers and guarantors from obtaining legal advice.
- A.1.3 A financial institution may itself be taking some risk by relying upon mortgage security given by a borrower/guarantor who does not have independent legal advice, but that is probably not a matter of public concern.
- A.1.4 The fact that the financial institution may be at risk does not preclude the possibility of serious prejudice to individual borrowers/guarantors who have been persuaded to proceed with such transactions without legal advice. Resisting demands or other action taken by a lender under a disputed mortgage may involve litigation, with resulting expenses to the borrower/guarantor which are likely to be far greater than the cost of obtaining legal advice before signing documents purporting to create debt or guarantee and security obligations.
- A.1.5 Your Committee believes that it is as much in the interest of the public as in the interest of lawyers that persons entering into mortgage or guarantee commitments should be urged to seek legal advice. The Committee has concluded that a direct approach should be made to financial institutions to discourage or try to prevent the particular business practice complained of.
- A.1.6 It has been noted that The Law Foundation of Ontario, constituted under the Law Society Act, deals directly with most banks and trust companies (and indirectly, through representative organizations, with many credit unions) in Ontario which are permitted by S.57.(1) of that statute to act as repositories of lawyers' trust funds.
- A.1.7 Your Committee proposes that the co-operation of The Law Foundation be invited to assist in bringing to the attention of those financial institutions the Law Society's concerns that some such institutions are known to be offering mortgage loans on terms which discourage borrowers/guarantors from seeking legal advice.
- A.1.8 If The Law Foundation can be shown to have any authority to impose terms or conditions respecting matters other than the administration of lawyers' trust funds in its agreements with financial institutions under S.57 of the Law Society Act, your Committee would further propose that the Foundation be invited to consider a requirement that financial institutions refrain from discouraging borrowers/guarantors from obtaining legal advice, as a condition of the renewal of any agreement between The Law Foundation and a financial institution wishing to continue to act as a repository for lawyers' trust funds. However, the Committee acknowledges that it would be necessary to obtain a legal opinion

as to the interpretation of applicable statutory and regulatory provisions before any such request could be made of The Law Foundation.

A.1.9 Your Committee therefore RECOMMENDS:

- (a) that Convocation approve in principle the proposal that the co-operation of The Law Foundation of Ontario be invited to assist in negotiations with financial institutions to attempt to bring an end to the practice of discouraging borrowers or guarantors from obtaining legal advice with respect to mortgage transactions; and
- (b) that if such approval in principle is given, Convocation instructs that legal opinion be obtained by the Law Society as to the extent to which The Law Foundation may have discretion to impose collateral conditions in its agreements with financial institutions, as contemplated in subparagraph A.1.8. of this Report.

B.
ADMINISTRATION

NOTHING TO REPORT

C.
INFORMATION

C.1. Real Estate Specialist Accreditation

- C.1.1 There are currently eight areas of law in which lawyers can obtain "specialist" accreditation by the Law Society. It is understood that the Specialist Certification Board proposes to expand the Specialist Certification Program to include other areas of law and that the Board has established a Subcommittee to recommend criteria for the creation of new specialty areas.
- C.1.2 Your Committee was informed that the Law Society has received several requests for the establishment of a "specialist" designation in one or more areas involving real estate law, real estate lending law, and mortgages law.
- C.1.3 Daniel J. Murphy Q.C. (Vice-Chair of the Specialist Certification Board) and Carol Giffen (Administrator of the Specialist Certification Program) were present at the meeting and provided information as to the objectives and procedure for specialist accreditation by the Law Society.
- C.1.4 Your Committee has established a Subcommittee composed of Richmond C. E. Wilson, Q.C. (Chair), Daniel J. Murphy, Q.C., Raymond Leclair and Carolyn Rosenstein to:
 - (a) consider and make recommendations to the Real Estate Issues Committee on the question whether the Specialist Certification Board should be asked to provide for the certification of specialists in any one or more areas of real estate practice; and

- (b) if so, to make recommendations as to the requirements for such certification which might be proposed by the Real Estate Issues Committee to the Specialist Certification Board.

C.2. Real Estate Tariffs

- C.2.1 On January 27, 1995 Convocation received and approved the Report of the Review Group on Real Estate Practice which concluded that there were "serious problems in the practice of real estate law that require urgent attention and which are within the Role of the Law Society". The Review Group reported to Convocation, in part, in the following terms:

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

The Report went on to suggest that consideration should be given to the role of tariffs or fee guidelines in controlling the quality of service.

- C.2.2 Following the suggestion of the Review Group on Real Estate Practice, the Real Estate Issues Committee has established a Subcommittee composed of Daniel J. Murphy Q.C. (Chair), Alan Dierenfeld and Sheldon Esbin to:

- (a) examine the role of tariffs or fee guidelines in controlling the quality of service in real estate practice; and
- (b) if it should be determined that there is justification for tariffs or fee guidelines, to consider how they might be authorized and controlled.

C.3 Electronic Registration of Title Documents

- C3.1 In 1984 the Land Registration Reform Act introduced a new Province of Ontario Land Registration System (Polaris) which contemplated the complete automation of land title registers, title searches and document registration. For several years the Ontario Ministry of Consumer and Commercial Relations ("MCCR") and Teranet Land Information Services Inc. ("Teranet") have been working together to automate the system.

- C.3.2 In August, 1995 Teranet and MCCR formed an "Electronic Registration Consultation Group" composed of representatives from the Law Society, Canadian Bar Association-Ontario, the Ontario Real Estate Lawyers Association and the Association of Ontario Land Surveyors to review, comment and advise upon the implementation of the electronic document registration system devised by Teranet. Mr. John K.H. Stiff, one of the non-bencher members of the Real Estate Issues Committee, is also a member of the Electronic Registration Consultation Group.
- C.3.3 Mr. Stiff presented a report to the Committee upon the present status of MCCR and Teranet proposals for the electronic registration of title documents. The documents would actually consist of electronic data (as opposed to an image of a paper document) that would be input into the system from remote locations (as opposed to attending at a land registry office). Several concerns were identified regarding the proposals, including the potential for mistakes and even fraud and the corresponding need to control the input of data, the responsibility for errors, and the possible need to supplement the electronic record with a paper/audit trail. Concerns were also expressed regarding the costs for a lawyer whose office has access to the system, and whether there is any real choice for a lawyer who would prefer not to incur those costs.
- C.3.4 Your Committee will consider the issues further and will submit a report to Convocation in due course.

ALL OF WHICH is respectfully submitted

DATED this 24 day of November, 1995

R. Aaron
Chair

It was moved by Mr. Aaron, seconded by Mr. Wilson that Convocation approve in principle the proposal that the co-operation of The Law Foundation of Ontario be invited to assist in negotiations with financial institutions to attempt to bring an end to the practice of discouraging borrowers or guarantors from obtaining legal advice with respect to mortgage transactions.

Carried

It was moved by Mr. Aaron, seconded by Mr. Wilson that, if such approval in principle is given, Convocation instructs that legal opinion be obtained by the Law Society as to the extent to which The Law Foundation may have discretion to impose collateral conditions in its agreements with financial institutions as contemplated in sub-paragraph A.1.8. of the Real Estate Issues Report.

Carried

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE

Meeting of November 9, 1995

Ms. Lax presented the Report of the Legal Education Committee and spoke to Item A.-A.2 re: Bequest of the Honourable William Howland Estate.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

The Committee met on Thursday, the 9th of November, 1995, at 10:30 a.m.

The following members attended: Philip Epstein (Chair), Gavin MacKenzie (Vice-chair), Derry Millar (Vice-chair), Robert Armstrong, Larry Banack, Tom Carey, Allan Lawrence, Joan Lax and Laura Legge. The following staff attended: Marilyn Bode, Deborah Brown, Katherine Corrick, Brenda Duncan, Mimi Hart, Alexandra Rookes, Sophia Spirdakos and Alan Treleaven.

A.

POLICY

A.1 PROCEDURES GOVERNING THE RECRUITMENT OF SUMMER STUDENTS FOR THE SUMMER OF 1996

A.1.1 A draft document entitled "Procedures Governing the Recruitment of Summer Students for the Summer of 1996" is attached. (page 1)

A.1.2 The Summer Student Recruitment Procedures govern the recruitment of summer students within Metropolitan Toronto only.

A.1.3 Based on general satisfaction on the part of firms and students with the summer student recruitment process, adoption of the same procedures in place in prior years is recommended, subject only to changes in dates.

A.1.4 It is recommended that the document entitled "Procedures Governing the Recruitment of Summer Students for the Summer of 1996" be approved.

A.2 BEQUEST OF THE HONOURABLE WILLIAM HOWLAND ESTATE

A.2.1 The Law Society Foundation (an entity distinct from the "Law Foundation") asked the former Treasurer to recommend how to apply a bequest of the estate of the late Honourable William Howland. The matter was referred to the Legal Education Committee. The bequest to the Law Society Foundation is worded in the will as follows: "...to be used for the purpose of furthering legal education." The Law Society Foundation has stipulated its preference to preserve the capital and apply the interest to appropriate legal education purposes.

A.2.2 Joan Lax (serving as a special subcommittee of the Legal Education Committee) and Alan Treleaven have considered a number of ideas, including related procedures.

A.2.3 It is recommended that the following procedures be adopted in dealing with the bequest:

- 1) That the Legal Education Committee appoint a Howland Bequest Subcommittee, comprising two Benchers and the Director of Education, to make recommendations each year directly to the Law Society Foundation,
- 2) That the proposed subcommittee's recommendations be premised on preservation of the capital, and use of a whole or part of the income accumulated in a particular year,
- 3) That the proposed subcommittee have the discretion to recommend allocation each year of the whole or part of the income among one or more educational proposals, with the possibility of a recommended allocation extending beyond one year for a specified number of years.

A.2.4 It is further recommended that Joan Lax and Alan Treleaven be authorized to consider in detail the following two proposals for 1995, and to recommend one or both of these proposals to the Law Society Foundation:

- 1) Development of a program for training teachers in advocacy. The proposal would include production of a videotape package that would be used to facilitate advocacy teacher training throughout the province, and for a wide variety of advocacy teachers, including the law schools, the Bar Admission Course, the Law Society's Continuing Legal Education Department and the Ontario Centre for Advocacy Training.
- 2) Development of further Law Society Continuing Legal Education Department advocacy programs incorporating videotape demonstrations. The specific proposal is to develop a video-based program in alternate dispute resolution. This proposal also has the advantage of enhancing access to continuing legal education throughout the province.

B.
ADMINISTRATION

There are no regular business and administration items this month.

C.
INFORMATION

C.1 MANDATORY CONTINUING LEGAL EDUCATION SUBCOMMITTEE

C.1.1 The consultation meetings were completed on October 30. Meetings were held in 31 locations with attendance as follows:

LOCATION	ATTENDANCE
Kenora	27
Peterborough-Victoria-Haliburton	37
Northumberland	18
Haldimand-Norfolk	11
Toronto-York Region-Durham	6
Toronto (second Toronto meeting)	13
Grey-Bruce	13

Waterloo-Cambridge	25
Perth	11
Renfrew	5
Carleton	11
Nipissing	7
Algoma	14
Frontenac, Hastings-	
Lennox and Addington-	
Prince Edward County	7
Prescott and Russell	15
Cochrane-Temiskaming	8
Simcoe	6
Lambton	3
Elgin	16
Middlesex	9
Essex-Kent	14
Parry Sound	7
Hamilton	9
Peel	6
Dufferin	16
Sudbury	7
Thunder Bay	18
Welland-Lincoln	18
Leeds & Grenville	14
Stormont, Dundas, & Glengarry	31
Muskoka	13
Lanark	24
TOTAL	439

- C.1.2 In addition to obtaining views through the consultation meetings, the Subcommittee has received written comments from a number of individual practitioners, associations, and organizations.
- C.1.3 Sophia Sperdakos, the Project Director, will prepare a report for discussion at the Subcommittee meeting scheduled to take place on Friday, December 1.
- C.2 ARTICLING PLACEMENT REPORT
- C.2.1 The up-to-date articling placement statistics for the 1995-96 term will be distributed at Convocation. These statistics are more positive than the 1994-95 statistics.
- C.2.2 One year ago, the number of students registered with the Placement Office as continuing their search for articles was 60 (4.71% of the class). By December 1994, approximately 1,200 students had been placed. Eleven students (.8% of the class of 1,215) were in Ontario and registered with the Placement Office as continuing their search for an articling placement.
- C.2.3 A recent notice to the profession in the September Benchers Bulletin is expected to generate additional positions to be filled in the coming weeks.
- C.2.4 Students commencing articles after September 1 are permitted to suspend their articles to attend Phase Three on schedule in 1996 and to complete any remaining portion of their articles following Phase Three, should this be necessary. Unplaced students have been reminded of this accommodation in a letter from the Placement Director.

C.3 ARTICLING SUBCOMMITTEE

- C.3.1 The Subcommittee met on October 31. In attendance were Jay Rudolph (Chair), Tom Carey, Frank Marrocco, Dean Neil Gold, Victoria Colby, Priti Sachdeva, Gordon Andreiuk and Erin Kuzz. Staff members attending were Marilyn Bode, Mimi Hart, Lynn Silkauskas, and Alan Treleaven.
- C.3.2 The Subcommittee approved one application retroactively for an articling principal for the 1994-95 articling term. Approximately 1,649 members were approved to serve as principals for the 1994-95 articling term. One member was denied approval based on unsatisfactory participation in the Practice Review Program. Another individual of that member's firm was invited to apply to serve as an articling principal.
- C.3.3 The Subcommittee gave conditional approval to a further 210 applications from prospective articling principals for the 1995-96 articling term. To November, applications to serve as principals for the 1995-96 articling term of approximately 1,080 members have been considered. Of those, approximately 1,078 applications have been approved. One application was denied, and one was deferred to the next meeting of the Subcommittee.
- C.3.4 The Subcommittee approved 358 applications from prospective articling principals for the 1996-97 articling term.
- C.3.5 The Subcommittee considered two policy items. The first was the Report of the Bar Admission Course Review Subcommittee. The Subcommittee briefly discussed the Report and deferred a fuller discussion until its next meeting.
- C.3.6 The second policy item was a draft sample education plan for Corporate Articling Placements. The draft plan had been circulated to and endorsed by the corporate counsel serving on the Corporate Articling Advisory Committee. That Committee was formed in the fall of 1994 to assist the Placement Office in creating additional corporate articling positions and generally to be available to staff for advice in the employment of students in the corporate articling setting. The plan was approved by the Subcommittee.
- C.3.7 The Subcommittee considered four information items. The first information item was a consideration of articling placement issues. The Director of Placement provided updated statistics on the 1995-96 articling placement scene and recent initiatives undertaken by her office. See item C.2.
- C.3.8 The second information item was rights of appearance before courts and tribunals for articling students. At the moment, the rights of appearance are simply a policy statement of Convocation (approved in November of 1994). As all other law societies in Canada have included their rights of appearance for articling students in their legislation, rules or regulations, the Subcommittee recommended this be done in the spring of 1995. The Articling Director advised the Subcommittee that the rights of appearance are being drafted into Rules by staff for review by the Legislation and Rules Committee.

- C.3.9 The third information item was the election of Phase One student representatives to sit on the Articling Subcommittee. The Articling Director advised that the student representatives in Phase One, 1995 elected two new members to the Subcommittee, Gordon Andreiuk and Erin Kuzz.
- C.3.10 The fourth information item was a report by the Articling Director on the status of the second stage of Program Review. The second stage involves an assessment of the extent to which the articling program advances the role of the Law Society as set out in the Role Statement. The Articling Director advised the Subcommittee that this item has been deferred by the Treasurer pending consideration by the Benchers of more general governance issues, including the structuring of Committees and the roles of Benchers and staff in the ongoing business of the Law Society.
- C.3.11 The next meeting of the Subcommittee has been tentatively scheduled for Tuesday, December 5 at 4:30 p.m.
- C.4 BAR ADMISSION COURSE REVIEW SUBCOMMITTEE
- C.4.1 The Bar Admission Course Review Subcommittee met most recently on the evening of Thursday, October 12, 1995. Members in attendance were Philip Epstein (Chair), Dean Neil Gold, Donald Lamont, Laura Legge, Derry Millar, Dean Marilyn Pilkington and Mohan Prabhu. Staff in attendance were Erika Abner, Marilyn Bode, Margaret McSorley and Alan Treleaven.
- C.4.2 The Subcommittee is continuing its deliberations, with the intention of producing a further Report for consideration by the Legal Education Committee and Convocation in February and March of 1996.
- C.4.3 The Subcommittee made the following interim decisions:
- 1) To extend implementation of any new Bar Admission Course program to 1998, in the interest of giving adequate notice to law schools and students,
 - 2) To organize further consultation meetings with Bar Admission Course Section Heads and Senior Instructors in London, Ottawa and Toronto,
 - 3) To consult with an examination and testing expert before making recommendations relating to the nature of the proposed licensing examinations,
 - 4) To develop an examination schedule that would avoid interfering with articling,
 - 5) To create optional primer courses to assist students in preparing for the licensing examinations, and also to be available for interested lawyers through the Continuing Legal Education Department,
 - 6) To develop a variety of transactions from which students could choose, subject to the students choosing one solicitor-type transaction and one barrister-type transaction,
 - 7) To permit students to choose transactions at either a basic or advance level,
 - 8) To consider how modern technology could increase access to learning.

24th November, 1995

- C.4.4 It will be necessary to develop a more detailed proposal for a new Bar Admission Course before it is reasonably possible to assess the budgetary impact of a change in Bar Admission Course.

C.5 NEW BAR ADMISSION COURSE SENIOR INSTRUCTORS

- C.5.1 The Director of Education is pleased to announce the appointment of two new Senior Instructors in the Business Law course in Toronto. Jennifer Babe, of Miller, Thomson is the Senior Instructor in Insolvency and Robin MacKnight, of Gowlings, is the Senior Instructor in Taxation. Jennifer Babe and Robin MacKnight will work with their counterparts in London and Ottawa, and with the Business Law Section Head, Gary Shiff of Blake, Cassels and Graydon.

C.6 CONTINUING LEGAL EDUCATION REPORT ON COURSES

- C.6.1 The Continuing Legal Education Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 2 - 4)

ALL OF WHICH is respectfully submitted

DATED November 24, 1995

P. Epstein
Chair

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

- Item A.-A.1.1 - Draft Document entitled Procedures Governing the Recruitment of Summer Students for the Summer of 1996. (page 1)
- Item C.-C.6.1 - Copy of the Continuing Legal Education Report. (pages 2 - 4)
Status as at November 23, 1995 re: Articling Student Placement 1995-1996 Articling Term.

It was moved by Ms. Lax, seconded by Mr. Aaron that the Report be adopted with an amendment to the recommendations dealing with the bequest by adding an Item A.2.5., - that it is further recommended for 1995/96 the funding for the Fifth Edition of Falconbridge on Mortgages be considered by the Howland Committee.

Carried

THE REPORT AS AMENDED WAS ADOPTED

Agenda - Additional Matters Requiring Debate and Decision by Convocation

It was moved by Mr. Wright, seconded by Ms. Bellamy THAT:

24th November, 1995

- 1 That the French translations of amendments made between September 1, 1994 and June 30, 1995 to the English version of the Rules made under subsection 62(1) of the *Law Society Act* be approved.
- 2 That minor revisions to the French version of the Rules made under subsection 62(1) of the *Law Society Act*, to make the translation from the English version of the Rules more accurate, be approved.

Carried

The text of the French translations and the minor revisions are enclosed in Convocation file.

LEGAL AID MOTIONS

The Topp/Ruby Motion and the Topp/Carey Motions were not put.

EPSTEIN/EBERTS MOTION

The Epstein/Eberts Motion re: Family Support Plan Enforcement was deferred.

FEINSTEIN/LAX MOTION

The mover and seconder withdrew their motion re: Former Treasurers voting rights, on the understanding that the matter would be referred to the Governance Committee.

BOBESICH/SWAYE MOTIONS

The Bobesich/Swaye Motions re: File Form 2/3's every second year, \$25 to file complaint with Law Society were deferred.

BOBESICH/AARON MOTION

The Bobesich/Aaron motion re: Complaints no longer to refer any matters to LPIC was deferred.

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IN CAMERA

.....

IN CAMERA Content Has Been Removed

24th November, 1995

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IN PUBLIC

.....

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 Jairus Hamilton Maus,
of the City of Cambridge, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 29th day of May, 1995, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Jairus Hamilton Maus be granted permission to resign.

DATED this 28th day of September, 1995

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF William Gordon Winsor,
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 8th day of June, 1995, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of

24th November, 1995

professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that William Gordon Winsor be granted permission to resign, such resignation to be submitted one month following service of the Order of Convocation, failing which the Solicitor shall be disbarred.

DATED this 28th day of September, 1995

"S. Elliott"
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 Stephen Robert Dymont, of the Town of Markham, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of June, 1995, in the presence of Counsel for the Society and the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Stephen Robert Dymont be suspended for a period of fifteen (15) days, such suspension to commence on the 27th day of October, 1995.

DATED this 28th day of September, 1995

"P. Epstein"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th November, 1995

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Douglas Gerard Paolini, 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 Reports and Decisions of the Discipline Committee dated the 14th day of March, 1995 and the 31st day of May, 1995, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Douglas Gerard Paolini be suspended for a period of sixty (60) days definite and indefinitely thereafter until his required filings have been made and that he pay costs in the amount of \$1,500.00.

DATED this 28th day of September, 1995

"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 Gordon Alexander MacKay, Jr., of the City of Guelph, 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 February, 1995, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Gordon Alexander MacKay, Jr. be suspended for a period of two years and that his right to return to practise is conditional upon his making arrangements satisfactory to the Secretary or confirmation of his employment with Gowling, Strathy, Henderson, upon the following terms and conditions, which are to continue for a period of five years:

24th November, 1995

1. the Solicitor is to have no cheque signing authority within the firm;
2. a second signature of a partner of the firm will be required on any cheque requisition which he might initiate;
3. that a file monitoring system be set up, with the Solicitor's input and assistance, whereby another lawyer within the firm will be assigned as the file monitor on each file in his control. The file monitor will be at liberty to review that particular file at any time, for which review full cooperation is expected;
4. the Solicitor to attend a number of continuing legal education seminars selected in consultation with the Business Law Department Head in Kitchener;
5. that the Solicitor to maintain his involvement in Alcoholics Anonymous; and
6. pay costs in the amount of \$5,000.00.

DATED this 28th day of September, 1995

"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 Roger Lewis Clark, of
the City of Peterborough, 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 1st day of June, 1995, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th November, 1995

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

DATED this 28th day of September, 1995

"S. Elliott"
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 Percy Glen Graves, of
the Town of Gravenhurst, 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 30th day of May, 1995 in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Percy Glen Graves be suspended for a period of three years along with the following conditions;

1. Following the termination of the suspension, the Solicitor is to continue on the terms of his Undertaking dated February 16, 1993 that he practice only in the area of civil litigation.
2. For a period of five years following the termination of the Solicitor's suspension, he will not handle trust monies or accept retainers from clients. Trust money includes money advanced on account of fees for services not yet rendered or money advanced on account of disbursements not yet made. Endorsing a cheque representing trust money constitutes receiving and disbursing trust money.
3. Prior to resumption of practice, the Solicitor will attend and successfully complete the Bar Admission course with the exception of any period of articles which may then be required.
4. For a period of one and one half years following his resumption of practice, the Solicitor will practice under the supervision of a solicitor satisfactory to Senior Counsel - Discipline or his or her designate. This is not necessarily to be an employment relationship.

24th November, 1995

5. The Solicitor agrees that he will repay the amounts set out on the attached Addendum prepared by counsel for the Society and for the Solicitor. In all cases, payment will be with interest, such payments to commence immediately upon the Solicitor's employment in any matter and not limited to the recommencement of his practice upon the termination of his suspension. The Solicitor's suspension is to immediately resume upon his failure to comply with any term of his repayment schedule and he will provide the Society with evidence of each and every payment contemporaneous with the making thereof.
6. The Addendum will provide that payment will go first to those who have suffered losses as a result of the Solicitor's misconduct but whose losses have not been met either through LPIC or the Lawyers Fund for Client Compensation ("Lawyers Fund").
7. In regard to conditions 6 and 7, the Solicitor agrees to provide the Law Society with T4 slips and copies of his tax returns and such other evidence as requested to satisfy the Society of his income.
8. The Solicitor undertakes not to declare bankruptcy to discharge the obligations set out in the Addendum. If he is petitioned into bankruptcy, the Solicitor undertakes that these obligations will survive the bankruptcy, if this is legally permissible.
9. The Solicitor is to continue to participate as required in the Simcoe Outreach Services Program. The Solicitor is to give an Undertaking that will allow the Director of the Program to report to the Law Society if in the opinion of the Director, the Solicitor has resumed the consumption of alcohol.
10. The Solicitor is to pay costs in the amount of \$5,000.00.

DATED this 28th day of September, 1995

"S. Elliott"
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 Stephen Anthony Landau, 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 8th day of May, 1995, in the presence of Counsel for the Society, the Solicitor nor Counsel for the

24th November, 1995

Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Stephen Anthony Landau be disbarred as a Barrister and that his name be struck off the Rolls of Solicitors and that his membership in the said Society be cancelled.

DATED this 28th day of September, 1995

"S. Elliott"
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 Bernard Baum, 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 23rd day of May, 1995, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that:

- (1) the Solicitor be suspended from practice for a period of 18 months. This period is in addition to the period that the Solicitor has voluntarily undertaken not to practice;
- (2) the Solicitor may return to practice at the conclusion of this 18 month period only after a report has been provided to the Law Society by a psychiatrist or psychologist acceptable to the Law Society evidencing the Solicitor's fitness to return to practice;
- (3) the fiscal 1994 filing must be provided to the Law Society prior to the Solicitor's resuming practice;
- (4) upon returning to practice, the Solicitor shall have no authority with respect to trust accounts for a period of 3 years after returning to practice;
- (5) upon resumption of practice, the Solicitor will enrol in and co-operate with the Law Society's Practice Review Program;

24th November, 1995

- (6) the Solicitor shall pay the Law Society's costs in the total amount of \$6,000.00; \$2,500.00 of this shall be due and payable immediately and the balance of \$3,500 shall be due prior to the Solicitor being permitted to resume practice.

DATED this 28th day of September, 1995

"S. Elliott"
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 George Flak, 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 Reports and Decisions of the Discipline Committee dated the 21st day of May, 1993 and the 20th day of May 1993, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that George Flak be granted permission to resign.

DATED this 28th day of September, 1995

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th November, 1995

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF John Mowat Jaffey, 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 8th day of June, 1995, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

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

DATED this 28th day of September, 1995

"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 John Rothel, of the City of Timmins, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 24th day of February, 1995, in the presence of Counsel for the Society and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th November, 1995

CONVOCATION HEREBY ORDERS that John Rothel be suspended for a period of one month, such suspension to continue thereafter until the Secretary is satisfied that the Solicitor is fit to return to practice and that he pay costs in the amount of \$3,750.00.

DATED this 28th day of September, 1995

"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 Grant Edward Rayner,
of the City of Hamilton, a Barrister and
Solicitor (hereinafter referred to as "the
Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of June, 1995, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Grant Edward Rayner be granted permission to resign; if he fails to submit his resignation he is suspended for a period of three months definite and indefinitely thereafter until he provides a credible psychiatric opinion that he is able to be governed by the Society, and that the Solicitor be required to participate in and cooperate with the Practice Review Program of the Professional Standards Department and implement the recommendations made by that Department.

DATED this 28th day of September, 1995

"S. Elliott"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th November, 1995

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

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

CONVOCATION HEREBY ORDERS that Pasquale Iannetta be suspended for a period of three months, such suspension to commence on the 1st day of December, 1995 and that he pay Law Society costs in the amount of \$3,000.00.

DATED this 28th day of September, 1995

"S. Elliott"
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 Larry George Frolick,
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 16th day of June, 1995, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th November, 1995

CONVOCATION HEREBY ORDERS that Larry George Frolick be suspended for a period of three months and that he pay Law Society costs in the amount of \$1,500.00.

DATED this 28th day of September, 1995

"S. Elliott"
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 John Victor Patrick O'Donnell, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of June, 1995, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that John Victor Patrick O'Donnell be suspended for seven (7) weeks, such suspension to commence on the 7th day of December, 1995 and pay costs in the amount of \$1,000.00.

DATED this 28th day of September, 1995

"P. Epstein"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th November, 1995

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Audrius Antonas Stonkus, of the City of Hamilton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 12th day of June, 1995, in the presence of Counsel for the Society, the Solicitor and Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Audrius Antonas Stonkus be granted permission to resign.

DATED this 28th day of September, 1995

"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 Rocco Anthony Morra, 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 17th day of May, 1995, in the presence of Counsel for the Society, the Solicitor nor Counsel for the Solicitor being in attendance, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

24th November, 1995

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

DATED this 28th day of September, 1995

"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 Anthony Morris Butler, of the City of Ottawa, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 28th day of April, 1995, in the presence of Counsel for the Society, the Solicitor being in attendance and assisted by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Anthony Morris Butler be suspended for a period of one month, such suspension to commence on the 6th day of October, 1995, and indefinitely thereafter until his filings have been made and that he pay costs in the amount of \$500.00.

DATED this 28th day of September, 1995

"P. Epstein"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

24th November, 1995

CONVOCATION ROSE AT 4:20 P.M.

Confirmed in Convocation this 26 day of January, 1996.


Treasurer