MINUTES OF CONVOCATION

Friday, 28th April, 1995

ADMISSIONS AND MEMBERSHIP COMMITTEE

8:30 a.m.

PRESENT: (seised)

The Treasurer (Paul S. A. Lamek), Arnup, Blue, Bragagnolo, R. Cass, Cullity, Elliott, Graham, Hickey, Lax, Lerner, Mewett, Palmer, Peters, Richardson, Strosberg, Thom, Topp and Weaver.

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The reporter was sworn.

.....

IN PUBLIC

.....

RESUMPTION OF THE COURTNEY KAZEMBE MATTER

APPLICATION FOR ADMISSION

Mr. Michael Brown appeared for the Law Society and Mr. Edward Morgan appeared for the applicant.

Counsel, the applicant, the reporter and the public withdrew.

Convocation voted against the recommendation of the Committee.

It was moved by Mr. Strosberg, seconded by Mr. Blue that the applicant be admitted.

Carried

Mr. Strosberg would prepare the reasons.

Counsel, the applicant, the reporter and the public were recalled and informed of Convocation's decision that the applicant be admitted to the Bar of Ontario.

Counsel were advised that reasons would be prepared.

Counsel and applicant retired.

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PRESENT:

The Treasurer, Arnup, Bastedo, Blue, Bellamy, Bragagnolo, Brennan, Campbell, Carey, Carter, R. Cass, Copeland, Cullity, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Goudge, Graham, Hickey, Howie, Lamont, Lawrence, Lax, Legge, Lerner, McKinnon, Mewett, Moliner, Murphy, Murray, O'Brien, D. O'Connor, S. O'Connor, Palmer, Pepper, Peters, Richardson, Ruby, Scott, Sealy, Somerville, Strosberg, Thom, Topp, Wardlaw, Weaver and Yachetti.

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ADMISSIONS AND MEMBERSHIP COMMITTEE

APPLICATION FOR ADMISSION

Re: William Harvey JONES - Toronto

The Secretary placed the matter before Convocation.

Messrs. Blue and Cullity and Ms. O'Connor withdrew for this matter.

Mr. Michael Brown appeared for the Law Society and Mr. Brian Greenspan appeared for the applicant.

The Report of the Admissions Committee dated March 23, 1995 was filed as Exhibit 1.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE LAW SOCIETY ACT

AND IN THE MATTER OF WILLIAM HARVEY JONES,
of the City of Toronto

AND IN THE MATTER OF an Application for Admission
to the Law Society of Upper Canada

REASONS

panel:

Mr. Ian Blue, Q.C.	-	Chairman
Mr. Maurice C. Cullity, Q.C.	-	Member
Ms. Shirley O'Connor	-	Member

appearances:

Brian H. Greenspan	-	for the application
Michael Brown	-	for the Law Society

Nature of the Application

William Harvey Jones of Toronto, a law clerk at Jones, Rogers, a Toronto law firm seeks admission to the Law Society of Upper Canada on such terms relating to requalification as the Law Society may impose. Mr. Jones had been a member of the British Columbia Bar from 1983 until September 6, 1990 when at age 36 he was disbarred by the Law Society of British Columbia as the result of one foolish action on his part - preparing a bogus separation agreement and forging signatures thereon in order to enable a townhouse purchase to close - that he will regret for the rest of his life. Fortunately, no one was prejudiced by this action except Mr. Jones since the bogus agreement was discovered immediately, Mr. Jones owned up to it and the townhouse sale closed with an undertaking to provide a separation agreement.

This is Mr. Jones' second admission application since his disbarment in British Columbia and we heard it on March 7 and March 9, 1995. His first admission application was heard by a Committee consisting of Casey Hill, Donald Lamont, Q.C. and Netty Graham who reported on August 31, 1993 that the application must be refused on the grounds that Mr. Jones "has not demonstrated that he is of good character as that term is used in the Act". The Hill report was never approved by Convocation. In response to a request that Convocation

hear updated evidence prior to deciding whether to accept the recommendations in the Hill report Convocation instead invited Mr. Jones to withdraw his pending request for admission and to begin anew promptly before "a brand new Committee" which could hear all evidence on a current basis and present a current report to Convocation. The Committee is the 'brand new Committee' just referred to.

Counsel for the Law Society, Mr. Brown stated that he was taking no position on the application but would ask questions of the witnesses.

The Background

This Committee heard Mr. Jones' evidence as Mr. Greenspan put it "frame-by-frame". This evidence was similar to the evidence heard by the Hill Committee and is fully and accurately set out in the Hill Committee's report, pp. 1 to 11, as follows:

> "pre October 27, 1989 history
>
> The applicant was born on April 9, 1953 and is currently forty (40) years of age. Mr. Jones, a resident of Ontario, received a Bachelor of Arts degree from the University of Waterloo in 1978 and his law degree from the University of Western Ontario in June of 1982. The applicant was admitted as a student-at-law in the Law Society of British Columbia in may of 1982 and served articles of clerkship in the City of Vancouver before being called to the Bar of the Province of British Columbia on May 10, 1983.
>
> The applicant was married in early 1984. He and his spouse had their first child in July 1984.
>
> In 1984 Mr. Jones negotiated the purchase of another solicitor's law practice and became heavily indebted in the process. This proved a financially unsuccessful decision.
>
> He and his wife purchased a home in the mid 80's and the applicant's debt load was further increased.
>
> By 1987 the applicant became interested in returning to Ontario and in securing admission to the Law Society of Upper Canada. To this end, in 1987, he engaged in selling his law practice back to the original vendor/lawyer. This venture proved to be fraught with difficulty as the purchase soon defaulted on payments and the Royal Bank commenced an action against Mr. Jones.
>
> On February 8, 1988, Secretary Richard Tinsley, replying to the applicant, wrote as follows:
>
> > "At its meeting on the 14th of January, 1988 the Admissions Committee considered your application to transfer to the practice of law in Ontario and recommended that you be permitted to proceed under Regulation 4(1). Convocation on the 29th of January adopted the Committee's recommendation.
> >
> > The examination schedule is attached. Also attached is a copy of the policy which outlines the options available to you. If you choose to write the examination it must be written within eighteen months of the date of the approval of the application to transfer."

In February 1988, Mr. Jones secured employment with a medium-sized securities firm as an associate commercial lawyer earning about $45,000.00 per annum. That firm ultimately underwent a dissolution of sorts. In April 1989, an opportunity arose for a junior real estate lawyer at the law firm of Mawhinney & Kellough in Vancouver. Mr. Jones was accepted in the position.

The reputable firm of Mawhinney & Kellough expects a high standard of practice from its counsel. Mr. Jones worked extensively for senior partner, Mr. John Third. At the firm, the applicant thoroughly enjoyed his work, often of a sophisticated nature. The work was challenging, and on occasion, difficult. Files worked upon involved commercial real estate, commercial development and financing. A six (6)-month review with Donald Mawhinney and John Third resulted in an assessment of good technical grasp of the matters at hand and good productivity and quality effort from the applicant. The firm requested that Mr. Jones stay on, noting however that his credibility suffered from time to time when promised commitments at the firm were not kept.

By mid 1989, the applicant's marriage had undergone considerable stress in circumstances of heavy workload commitment, debt and little money in the bank, sale of the home and a move to rental accommodation, and, the raising of two young children and his wife's pregnancy with their third child.

the incident on October 27, 1989

In mid-September, 1989, another associate at the firm, who was supervising the preparation of a separation agreement, solicited Mr. Jones' assistance regarding a related real estate matter. The firm's client, the wife, was selling the matrimonial home and a division of assets was to occur under the separation agreement which would also involve the client acquiring title in her own name to a condominium property. The applicant was to meet with the client and to supervise the preparation of the closing documents. Two files were opened, one regarding the sale of the house and the other the purchase and mortgaging of the new condominium property.

Having regard to British Columbia matrimonial law, a practice existed in the province in conveyancing in matrimonial matters to either obtain a separation agreement condition or term wherein the spouse who was not to own the "new" property would waive any right, title or interest assertible under the Family Relations Act, or in the alternative, to obtain from such a spouse a specific waiver, sealed and witnessed, to this effect. In this manner, a mortgage institution ensures that its financing is protected against a superior ranking of a second spouse's interest.

Well before closing, Mr. Jones saw a letter of mortgage commitment from the Cooperative Trust Company's solicitor relating that institution's requirements for closing the mortgage transaction. The letter sat in the applicant's desk tray for a day or two before he forwarded it to his conveyancing clerk. Mr. Jones did not read the letter in its entirety. He had failed to diarize anywhere the need to follow up getting the separation agreement or a waiver signed although by late September, 1989 the applicant had been informed by his fellow solicitor at the firm that she would not have the separation agreement completed in time for the closing. Despite meeting with the client two days before the closing date Mr. Jones inexplicably did not advert to the existing impediment regarding the mortgage.

The night before the closing, on reviewing the file, the applicant realized that no executed separation agreement or waiver of interest was in place. Rather than communicating with a principal in the firm for advice Mr. Jones entered upon a scheme, without lawful excuse or mistake, to forge signatures and to utter a false document, to wit a separation agreement, to address the requirements of the mortgage company. The applicant practiced signing the signatures of the client, her husband and a notary public in an effort to achieve the best simulation of the signatures. Different pens were employed to affix the relevant signatures on four separate counterparts to the draft separation agreement. Mr. Jones intended that counsel acting for Co-operative Trust would act on the document as genuine. On the day of closing, as a result of inquiries initiated by the conveyancing legal assistant, Mr. Jones was confronted by his superiors with their suspicions. The forgeries were admitted and the applicant's employment at the firm terminated. The applicant was afforded an opportunity to self report the misconduct to the Law Society before the firm reported its findings. The applicant so reported and voluntarily agreed not to practice pending the completion of professional disciplinary proceedings.

The British Columbia disbarment

Attached as Appendix 'A' is the Report of the Discipline Committee in British Columbia dated August 27, 1990, and an Agreed Statement of Facts, an Additional Statement of Facts and a Statement of Committee Findings of Fact.

The applicant was found guilty of professional misconduct on the basis of his above-described conduct. The unanimous decision of the Committee rejected the applicant's submission for permission to resign. An order to disbar was imposed.

The Committee found inter alia that Mr. Jones:

(1) in an effort to ingratiate himself with members of the firm took on more work than he could properly handle,
(2) acted as he did under considerable stress; he feared he would be fired and feared his wife would leave him,
(3) knew that what he was doing was wrong,
(4) did not act for any direct financial gain, and
(5) was remorseful, embarrassed and ashamed at his conduct.

In addition, the Committee found that:

(1) although no harm was done to the client or the lending institution "the risk of prejudice to both, was great',
(2) no strong mitigating circumstances were present sufficient to mitigate the solicitor's dishonest or deceitful conduct.

It is apparent that Mr. Jones, desirous of succeeding, had engaged in a fundamental breach of his professional duties. At the relevant time, his work commitments were over-extended. The applicant was depressed as he operated in circumstances of low confidence and self esteem.

After the misconduct, and before disbarment, the applicant undertook psychiatric counselling in Vancouver from Dr. Vallance. That doctor's report to counsel notes with regard to Mr. Jones that:

(1) he was unhappy but not suffering from clinical depression,
(2) his personality features emotional dependence with a dependence on whatever feedback he can derive from others as he strives overly to please and avoid rejection, and
(3) he suffered from a lack of confidence with long-standing insecurities which impaired judgment when pressures proved unmanageable.

The applicant's return to Ontario

Mr. Jones returned to reside in Ontario in early 1990.

The applicant's older brother, Richard, practices law in Toronto with the firm of Jones, Poultney, Rogers. Richard Jones arranged for the applicant to join his firm in March 1990 to work as a paralegal although at this time the firm had not complied with Rule 20. According to Mr. Jones, full disclosure of the incident in B.C. was made to his brother who believed he would be suspended. The applicant testified that he saw "a greater jeopardy facing me."

On or about October 30th, 1990 the applicant was charged with a drinking/driving offence.

On February 25, 1991, in correspondence with the Society, Robert J. Pirie, Q.C. on behalf of the firm, stated inter alia:

> "At the beginning of March, 1990 we retained the service of W. Harvey Jones at the suggestion of his brother, Richard B. Jones, a partner in this firm with the knowledge that he had committed a misdemeanour at his law firm in Vancouver and had withdrawn from practice in British Columbia. It was suggested to us that Mr. Jones, having returned to Ontario, the province of his birth and legal education, would apply to the Use Society of Upper Canada to be licensed to practise law in this jurisdiction. In the meantime we agreed that he would be employed by our firm in the position of a paralegal.
>
> At that time we did not consider the impact of Rule 20, thinking only, that Mr. Jones would be a highly trained paralegal who would have to be supervised and handled as such pending his qualification in this jurisdiction. Our knowledge of the circumstances leading him to withdraw from practice in British Columbia caused us to believe that he would be subject to discipline by the Law Society of British Columbia but we expected that he would receive a reprimand and, possible a brief suspension."

On February 26, 1991 the applicant was convicted in the criminal courts of a drinking/driving offence and fined with his driving rights suspended. At this hearing, the Society was unaware of this conviction. The incident emerged as a result of a question from the Committee regarding a 1974 drinking/driving conviction at St. Catharines, Ontario for which Mr. Jones was fined $125.00. It is accordingly unclear to this Committee as to whether the Society was aware of the criminal charge in determining the applicants qualification to work as a paralegal. The applicant testified that the charge and conviction were disclosed to the partners at Jones, Poultney, Rogers.

On March 28, 1991 Convocation authorized the Jones, Poultney, Rogers law firm to employ the applicant as a supervised paralegal. According to the applicant's testimony, he had fully disclosed the particulars of the misconduct in Vancouver to his brother. He was confident that his brother had explained the matter to partners in the firm. Mr. Jones testified that by March, 1991 he was aware of his defensive patterns of behavior and his inclination to "say yes" before thinking through the reality of accomplishing the tasks at hand. Mr. Jones testified that in his employ as a paralegal he has worked most closely with Mr. Pirie in commercial real estate and financing transactions and with his brother on insolvency files. The applicant has enrolled in continuing legal education courses in 1990, 1991 and 1992. All evidence suggests that the applicants work has been more than satisfactory. The partners at Jones, Poultney, Rogers fully support the application for admission. The applicant maintained before the Committee that the practice of law is stressful and although he remains in debt and there exist strains in his marriage, he has come to sufficiently understand his personality and emotional makeup to equip him to be admitted to the practice of law.

A Toronto psychiatrist, Dr. K. Tuters, commenced therapy with the applicant in April 1990. The doctor's opinion was that the professional misconduct in British Columbia was stress related and out-of-character but not the product of an ingrained character flaw. Character letters from three (3) Vancouver lawyers supported the view that the applicant's actions were out-of-character. The applicant's psychotherapy treatment with Dr. Tuters continued oil a regular basis for eighteen (18) months with positive results. Dr. Tuters, while recognizing that it is difficult to give a psychological prognosis in absolute terms", has reported that:

> "Mr. Jones has recognized and understood the nature of his maladaptive pattern of emotional functioning, which has further allowed him to clearly break the cycle of stress and distress which had led to his professional misconduct in 1989. As stated above, he engaged effectively in the work of psychotherapy to be able to achieve this.
>
> The cycle of stress and distress, having been clearly recognized and broken, leads me to conclude that Mr. Jones' prognosis is excellent and that a re-occurrence of misconduct is extremely unlikely.
>
> Given the foregoing I am of the opinion that Mr. Jones is emotionally fit to assume the responsibility of a lawyer, and that he does not present a threat to the public in any way."

Mr. Pirie testified before the Committee that Richard Jones had fully briefed him regarding the circumstances of the applicant's misconduct. The witness had also discussed the matter with the applicant on a couple of occasions. Mr. Pirie testified that he believed that Mr. Jones had forged a client's signature for the purpose of completing documents which he and his partners did not consider "a heinous offence". Under further questioning, the witness acknowledged that the conduct constituted a "very serious offence". At the conclusion of Mr. Pirie's evidence the following exchange occurred:

> THE CHAIRMAN: "...are you aware of any difficulties that he's encountered of a regulatory, criminal or other nature?"
>
> THE WITNESS: "Absolutely not. I have no knowledge."

Under further examination, the witness admitted knowing that the applicant since being employed by the firm, had been defended by a former partner of the witness on a criminal drinking/driving offence. Indeed, on the applicant's evidence it was Mr. Pirie who had directed him to a lawyer of his acquaintance to defend the charge.

After considering the appropriate legal principles, which we consider below, the Hill Committee concluded as follows:

decision

The Committee is mindful that no applicant should be held to a standard of perfection. Good character need not be demonstrated beyond a reasonable doubt nor is an applicant obliged to provide a warranty that s/he will not in the future breach the public trust. However, an assessment of present good character, requires the public and the profession be satisfied that the applicant is unlikely to again engage in unprofessional conduct.

It is not in dispute that the applicant exhibited a degree of cooperation with the Law Society of Law Columbia. While apparently inescapably caught the applicant did voluntarily cease to practise. The applicant is remorseful for his prior misconduct. He has suffered emotionally and financially. He is ashamed of the stigma of the finding of unprofessional conduct and the consequent disbarment. He has given a good account of himself as a paralegal, including some CLE involvement, and has acquired the support of the firm with which he is employed.

In addition, the Committee has considered that body of evidence supporting the view that the incident in British Columbia was out-of-character and that further professional misconduct will not occur should the applicant be admitted. There is no evidence to suggest that Mr. Jones is inherently dishonest. However, with regret, it is the unanimous decision of the Committee that the applicant has failed to established on the requisite standard that he is, at this time, of sufficient good character to merit admission.

The conduct in British Columbia in 1989 constituted a serious, ethical misjudgment of a type highly relevant to the practice of law and to the good character of the applicant. At that time the applicant was not morally or ethically equipped to practise law. Rehabilitation has been underway in the two and one half (2 1/2)-year period between disbarment and the admissions hearing. In our view this short period of stigmatization has not adequately developed the applicant's character to the point where it can safely be said that he will not forget his oath in the future and his professional responsibilities. Mr. Laskin fairly concedes that the period of time since sanction in British Columbia is very short.

The psychiatric counselling has undoubtedly contributed to the reform of the applicant's character insofar as his resolve to adhere to ethical standards when under stress. While the reports express the opinion that a reoccurrence of the undesirable behaviour is unlikely, the Committee is not sufficiently confident that that is so having regard to the seriousness of the earlier misconduct and the following factors:

(1) On at least two (2) occasions, in sworn testimony before the Committee, the applicant stated that he could not understand why he had acted as he did in Vancouver in 1989. In our view, the process of self-evaluation and analysis is as yet incomplete.

(2) The applicant remains in debt and is experiencing continuing stresses in his marriage. He agreed in testimony that the practice of law is stressful and that the stresses he experienced in 1989 were the normal stresses of life. In considering all of the evidence, and the manner in which the applicant testified, more time is required in our view before the applicant could successfully manage the stresses of membership.

(3) The 1990 drinking/driving offence, committed during a period of non-compliance with Rule 20, occurred pending the disposition of the discipline proceedings in British Columbia. Mr. Laskin agrees that the conviction is relevant but submits that little significance arises therefor. We view the matter somewhat more seriously.

CONCLUSION

For the foregoing reasons, on the balance of probabilities, the Committee concludes that as of this date the applicant has not demonstrated that he is of good character as that term is used in the Act. His application for admission to the Law Society of Upper Canada must, accordingly, be refused.

The evidence before the Hill Committee described how matters stood as of February 22, 1993. The evidence before this Committee described how matters stood as of March 9, 1995, more than two years later. Mr. Jones will have been in the wilderness of disbarment for four years and eight months when Convocation considers this report in late April 1995. We will consider the updated evidence as it relates to Mr. Jones' psychiatric counselling and to the three factors of concern enumerated in the Hill Committee decision quoted above.

The Psychiatric Evidence

The Committee had the assistance of viva voce testimony from Dr. Kaspars Tuters M.D., F.R.C.P.(c) an eminent psychiatrist who Mr. Jones commenced visiting with his wife after his return to Toronto commencing in April 1990. Dr. Kaspars had provided a report dated December 15, 1992 to the Hill Committee that is referred to in the Hill Committee reasons. He saw Mr. Jones subsequent to that and as recently as February 1995 and he provided an updated report dated March 1, 1995.

Dr. Tuters is a member of the Canadian Psychiatric Association and International Psychoanalytic Association, has been an assistant clinical professor in the Department of Psychiatry at the University of Toronto since 1982 and is a faculty member of Psychoanalytic Society. The Committee found his evidence candid, clear and helpful. Dr. Tuters' March 1, 1995 conclusions about Mr. Jones in his report were:

"One of the main dynamics that led him into difficulties in the past was a type of submissive dependence on others. As a result, for Mr. Jones, interactions with others were frequently motivated by a constant need to please them, at whatever cost to himself. This emotional submission to the needs of significant others in his life put him at a disadvantage in his ongoing relationships with his family as well as with important clients and colleagues.

This emotional submission led to a continuing pattern of overcommitment to the important individuals in his life. In order to "curry favour" with individuals important to him such as family members, colleagues and important clients, Mr. Jones developed a pattern of making commitments to

> such individuals which were unrealistic. Inevitably stress and overwork leads to significant resentment and anger against those who, ironically, Mr. Jones held in esteem. Finally, this stress, anger and resentment led to the suspension of rational judgment associated with Mr. Jones' misconduct of October 1989. This mechanism was undoubtedly the major contributing factor to his serious professional misconduct of 1989.
>
> Through eighteen months of pyschotherapy with me during 1990 and 1991 he was able to recognize these self-destructive patterns, and slowly develop more constructive and mature patterns of handling relationships. At present, I am satisfied that these healthier patterns are well integrated in him, thus indicating a good prognosis in terms of Mr. Jones' ability to successfully deal with the inevitable stresses of life including the practice of law."

Any lawyer who has had experience in working with expert witnesses approaches an expert's report with caution; especially where it seeks to explain aberrant actions of lawyers or other professionals. The members of this Committee were no different when they began to hear Dr. Tuters' evidence.

Dr. Tuters, however, when given the opening of suggesting that Mr. Jones' actions in forging the separation agreement was induced by a serious personality problem did not take it. He characterized Mr. Jones' problem as moderate and not serious but one "which could certainly put him into difficulty with stress that he wasn't able to cope with". He said that Mr. Jones' difficulty was "quite small in comparison to major disorders" but still the contributing factor to Mr. Jones' professional misconduct. The Committee concludes, therefore, that Mr. Jones' submissive dependence problem was a moderate personality problem that assists in understanding the action that led to his British Columbia disbarment.

The Committee accepts Dr. Tuters' evidence that Mr. Jones now understands and now can control this "submissive dependence" problem. Dr. Tuters testified that as of March 7, 1995 that he would give Mr. Jones "a very good prognosis. I don't think that he would step back into previous patterns [of trying to please everyone]". Dr. Tuters testified that Mr. Jones' marital stress that existed in 1988/89 in Vancouver is substantially less today.

In giving examples of how Mr. Jones had improved, Dr. Tuters said that looking a Mr. Jones' history before the incident and looking at his conduct in the several years of treatment since disbarment, the action leading to disbarment was an "isolated incident". He said that Mr. Jones has now developed coping mechanisms for dealing with the stressful situations he had experienced in British Columbia that had caused Mr. Jones to commit his act of professional misconduct and that Mr. Jones was "of no further danger to the public". He said that he had had an ongoing opportunity to see the changes in Mr. Jones and how they are maintained, and the different ways that Mr. Jones was able to delegate situations now that he wasn't previously able to do. He said that Mr. Jones was able to understand the main motivators that led him into the misconduct.

Mr. Jones' Understanding of His Action

As already noted, Dr. Tutors stated that Mr. Jones now "certainly has understanding of the main motivators that led him into the misconduct."

Mr. Jones testified at length. The Committee was impressed with his obvious sincerity and with the degree of insight he appears to have gained with respect to the causes of his misconduct. The Committee is satisfied that he has benefited greatly from the treatment he has received from Dr. Tuters.

Mr. Jones testified that when he embarked on the preparation of the bogus separation agreement his actions were "hysterical" and "frightening" to him. He testified that he now understood the reasons for his actions, being assisted in forming this understanding by Dr. Tuters. Specifically, he said that Dr. Tuters had identified his character trait of submissive dependence on others. This trait has led to him being unable to say "no" to professional colleagues or to his wife when they made demands upon him even when it was apparent that he had taken on too much work with too little time to complete assignments and family obligations. This inability to say "no" to additional work assignments or to his wife led him to feel that he could not negotiate on an equal basis when asked to do something. The stresses that this inability to negotiate on an equal basis created, he feels, led to the build-up of resentments that caused him to finally snap.

Mr. Jones further testified that he believes there is no real possibility of future misconduct because he knows what the contributing factors to his stresses were and he now has mechanisms to recognize and avoid them. He said that he knows now that he should discuss a professional problem with other lawyers and do something constructive to solve the problem. He stated that he knows that he has changed his former maladaptive patterns of behaviour.

Mr. Jones' conviction that he now understood the reasons for his behaviour was tested in questioning both from Mr. Brown and from the Chair. We are satisfied as a result that Mr. Jones now understands what caused him to take the actions that got him disbarred in British Columbia and we believe that Mr. Jones has the ability to cope with stresses and avoid such actions should similar circumstances arise in the future.

Continuing Stresses - Debt and Marriage

Mr. Jones testified that there has been a "considerable improvement" in his domestic situation. He acknowledges that, as a result of the stresses that led to the professional misconduct that caused his disbarment and of the aftermath of disbarment and returning to Toronto, he and his wife have had some terrible years. he said that since 1990 they both have matured a great deal, are now happily married with three young children and love each other. He said that since returning to Toronto he and his wife have learned to communicate with each other better and that in coping with the situation together they have saved their marriage. He said that he didn't know whether he could have gotten through his troubles without his wife and that he feels far better off with her than without her. The matrimonial situation, he said, has never been so happy as it is at present.

His financial situation is stable. He earns $55,000 as a law clerk. His wife operates a day care and makes about $5,000.00. Their recreation needs are met by his sister and her husband making their cottage available and by visiting his mother who now lives in Niagara-on-the-Lake. His bank debt resulting from the ill-fated purchase and re-sale of the Roadburg practice in Vancouver which was the source of much of his financial pressure there totals approximately $20,000.00 inclusive of principal and accrued interest. This is down from $54,000.00 for which the Bank originally sued him. The Bank knows where he works, knows his employment and seems not to have really pressed him for principal re-payment since the summer of 1990 pending clarification of his employment situation. The Committee takes this to mean that the Bank is awaiting to see if he will be admitted to the bar. Mr. Jones and his wife rent a home on Fairlawn Avenue in North York and have no mortgage debt.

The Committee concludes that the $20,000 debt is not an unmanageable burden on a family income of $60,000.00 and would be less of a burden if Mr. Jones were re-admitted and received remuneration higher than that of a law clerk.

For these reasons, we conclude that the stresses on Mr. Jones' life from family and debts are reduced substantially from the level they were at when Mr. Jones committed the professional misconduct that caused him to be disbarred.

The 1990 Drinking/Driving Offence

This happened on October 30, 1990 during the period of non-compliance with Rule 20 and after the Decision of the Discipline Committee in British Columbia which had happened on September 6, 1990. That afternoon Mr. Jones had attended the funeral of a family member in Mississauga and in the Canadian tradition drank "some wine" at the funeral tea. After this he drove to Oakville to dine with a law school classmate. They 'had a beer' in a pub and then joined by one of the friends' colleagues had a pre-dinner drink, a bottle of wine with dinner and then 'brandy after dinner, or something'. This, by Canadian standards, would not be an unusual evening having dinner with friends.

Driving home from downtown Oakville Mr. Jones missed the QEW by crossing at a street without QEW access and got lost. Having stopped to look at a map he attracted an OPP officer's attention. He gave a roadside breath sample and recorded a "fail". He was asked to go to Milton where he blew .13. He subsequently was convicted of driving with a blood alcohol content in excess of 80 milligrams per cubic centimetre. He was sentenced to a $400.00 fine and a 12 month licence suspension commencing March 1991.

Mr. Jones stated that he feels that he bottomed out as a result of this criminal charge. He had to tell his wife about it and as a result he and his wife have agreed that he will never again operate a car if he has been drinking and that he will not come into the house if he has been drinking. He says he drinks now only at Christmas parties or occasional firm social events and then only a glass of wine. He doesn't drink other than that any more because his wife doesn't like alcohol. He thinks that the family is better off for his not drinking.

Mr. Jones did not disclose the 1991 conviction when he spoke with Mr. Gavin MacKenzie when discussing becoming a law clerk. He stated that he believed at this time that it did not affect his professional integrity. He said that if he could do it over again he would have mentioned the conviction to Mr. MacKenzie but that he still does not think it affected his professional integrity.

Mr. Robert Pirie, Q.C., a former partner at Poultney, Jones and still with the firm, testified. He also had testified before the Hill Committee as the portions of the Hill Committee report above indicate. Before the Hill Committee, Mr. Pirie had testified that he had not been made aware of Mr. Jones' 1991 conviction when he wrote to the Law Society requesting permission to hire Mr. Jones as a law clerk although he had full knowledge of the circumstances leading to disbarment. The problem was that Mr. Jones testified before the Hill Committee that he had told Mr. Pirie and that Mr. Pirie recommended David Price, a criminal lawyer and former associate of Mr. Pirie's.

Before this Committee Mr. Pirie said that he had thought about the matter and could only conclude that his recollection that he had not known about the conviction was faulty. Mr. Pirie was pressed on this issue by the Chairman and confirmed that he must have known about the 1991 driving conviction even though he did not recall it at the time of the Hill Committee. Mr. Pirie's answers were thoughtful and forthright and this Committee accepts Mr. Pirie's evidence that he was mistaken before the Hill Committee about his knowledge of the 1991 conviction.

The Committee gives the 1991 conviction little weight in the determination it has to make. The amount of alcohol consumed was not different than the amount that would be consumed by many at a standard Canadian dinner party. There is no evidence of a drinking or substance abuse problem. While Mr. Jones would have been wiser and more socially responsible not to drive, his decision to do so does not go to his professional integrity even though its timing in relationship to the British Columbia disbarment was unfortunate. To give it anymore weight would be unfair to Mr. Jones who has dealt with it by taking the positive action of for the most part avoiding alcohol.

Additional Evidence

Letters of support were received in evidence as follows and some of these had been before the Hill Committee:

Derek A. Poultney	-	July 27, 1992
Harold A. Poultney	-	September 16, 1992
Maris R. McMillan	-	September 17, 1992
Alexander S. Angus	-	December 19, 1994 and September 1, 1992
Robert J. Pirie	-	January 3, 1995
David B. Waugh	-	January 3, 1995
Ian F. H. Rogers	-	January 4, 1995

The first, third and fourth letters were from individuals who knew Mr. Jones' work as a lawyer in Vancouver. They described him as open, candid, straightforward, responsible and honest and of good character. Mr. McMillian's and Mr. Angus' letters indicate that they were fully cognizant of the professional misconduct that led to Mr. Jones' disbarment.

Mr. Pirie, Mr. Waugh and Mr. Rogers testified viva voce in support of their views that if admitted to the Ontario bar Mr. Jones would conduct himself in accordance with high standards of honesty and integrity. These views were undiminished after cross-examination by Mr. Brown which was not directed to these points but rather to Mr. Jones' ability to handle stress. Given that Mr. Jones works as a paralegal and under supervision at Poultney Jones, the Committee found the evidence of those he worked with at Poultney Jones helpful.

Mr. Pirie testified that if Jones was admitted to the bar, that while Poultney Jones had made no decision one way or the other to hire him that working there was a good possibility. Mr. Jones said that he understands that this is a possibility assuming that the economy does not change adversely.

The Committee finds that Mr. Jones work and conduct as a law clerk has been competently honest and approved of by the members of the profession with whom he works.

Applicable Principles

Technically, this is an application for admission under section 27 of the Law Society Act, R.S.O. 1990, c. L.8. Both counsel submitted and the Committee agrees that since Mr. Jones was disbarred in a Canadian jurisdiction that he should have the same onus as one seeking re-admission under section 46 of the Act. Sections 27 and 46 state:

> "27. (1) Every application for admission to the Society shall be on the prescribed form and be accompanied by the prescribed fees.
>
> (2) An applicant for admission to the Society shall be of good character.

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

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

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

(6) Where an application for admission to the Society has been refused, another application based on new evidence may be made at any time.

46. Where a person's membership or student membership is cancelled, the person may apply to be readmitted, and Convocation, after due inquiry by a committee thereof, may readmit the person as a member or student member, as the case may be."

In Convocation's Goldman decision about re-admission of May 5, 1987, Convocation said:

> "Convocation is mindful of the fact that unless the Applicant makes out a case of very special circumstances, and has shown that he has entirely purged his guilt and has in all other respects fulfilled the requirements for reinstatement the Law Society should be slow to permit restoration to the rolls. Convocation accepts that substantial and satisfactory evidence is needed to show that there is no probability of the Applicant offending in the future. The Society must consider whether a sufficient period has elapsed before the Applicant applies for restoration. The Applicant must establish that his conduct and character are unimpeached and are unimpeachable and this can only be established by the evidence of trustworthy persons especially members of the profession and persons with whom the Applicant has been associated since his disbarment.
>
> Convocation accepts as an overriding principle that restoration should be permitted only where the Applicant has shown by a long course of conduct that he is a person to be trusted and is in every way fit to be a member of the Society and that the Society must be entirely satisfied on these grounds before restoring an Applicant to the rolls."

These words must be read recognizing that Goldman had been convicted of the criminal offence of conspiracy to possess counterfeit money having been put in this position by his need to pay off "loansharks" to whom he owed money because of his gambling addiction. He was disbarred in April, 1981 and re-admitted on May 5, 1987, only six years later.

In Convocation's "Gray" decision of January 25, 1995, Convocation set out several principals applicable to re-admission which is the basis on which this case is to be decided. Gray, as a result of a substantial misappropriation of funds, had been permitted to resign instead of being disbarred due to his particular psychiatric problems. He resigned on October 22, 1992. He brought an application for readmission which was heard on March 3, 1994. The admission committee recommended that the solicitor be re-admitted. Convocation disagreed. It said at p.8 and ff. that:

> "The criteria for determining whether the public interest would be served by a solicitor's readmission is whether the solicitor has been rehabilitated and possesses the good character required for admission or readmission to the Society.

The facts which gave rise to the Solicitor's misconduct as found, while a weighty consideration in deciding the appropriate penalty for the misconduct, bear less prominence in determining admission or readmission. The essence of the matter for readmission is, given that rehabilitation is established, whether the Solicitor is of a character which enables his readmission.

Convocation accepts the definition of good character put forward in Re Spicer:

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

Convocation further accepts the test for determining the good character required for admission as stated in Re Spicer:

> "[The Solicitor] 'bears the onus of establishing on the balance of probabilities that he or she is of good character and should be admitted to the Society.' Thus, on the balance of probabilities, [the Solicitor] bears the burden of persuasion to establish by clear and convincing evidence that he is of good character."

Therefore, a solicitor seeking readmission must discharge a heavy onus. It is an onus which, practically speaking, exceeds the onus on a candidate for admission since a solicitor who seeks readmission has previously misconducted himself or herself as a member of the profession. It is not sufficient that there be some evidence of good character, or that the medical evidence indicates a substantial resolution of the underlying problems at a particular point in time. Rather the Admissions Committee must be presented with evidence with which it can satisfy itself that in all events the public interest will be protected. In Re Goldman, Convocation established the evidentiary standard required in readmission matters:

> "Convocation accepts that substantial and satisfactory evidence is needed to show that there is no probability of the Applicant offending in the future. The Society must consider whether a sufficient period has elapsed before the Applicant applies for restoration. The Applicant must establish that his conduct and character are unimpeached and are unimpeachable and this could only be established by the evidence of trustworthy persons especially members of the profession and persons with whom the Applicant has associated with since his disbarment."

In the case of Re Moynihan, the Supreme Court of Washington considered the quality and standard of evidence required for readmission and held that:

> "A petitioner for reinstatement to the Bar must show by clear and convincing evidence that he is rehabilitated, fit to practice, competent and has complied with all applicable discipline orders and rules."

The above references to "substantial and satisfactory evidence" and "clear and convincing evidence" mean that the evidentiary burden on the Solicitor seeking readmission is onerous. This high burden is based on the depth of the responsibility, trust and confidence reposed in members of the profession by the public, clients and colleagues. The public has a right to expect that a solicitor who has misconducted himself or herself to the detriment, whether real or potential, of the public, will not be

> readmitted unless and until he or she can show through clear and compelling evidence that there is no real possibility of future misconduct. .....
>
> Convocation accepts that as a general rule, an application for readmission should not be entertained for a period of at least three years subsequent to disbarment or resignation. We are of the view that Convocation is justified in expecting that at least a three year period is required for the Solicitor to gather and present clear and compelling evidence to satisfy the onerous standards required for readmission. This is especially so when dealing with psychiatric conditions such as that present in this case, where the additional period of time can only add further assurance to the claim of rehabilitation."

Decision

We are unanimously of the view that Mr. Jones should be admitted to the Law Society of Upper Canada subject to terms and conditions respecting requalification that are acceptable to the Law Society. In giving our reasons we will address the principles in the above quotes from the Goldman and Gray decisions.

The Goldman Principles

Entirely Purged His Guilt

Mr. Jones' client suffered no prejudice by his preparation of the bogus separation agreement. The mistake which the false document was intended to correct was easily corrected by straightforward means that cost the client nothing. Mr. Jones was not charged with any offence. The false document was identified by 9:00 a.m. on the day that it was prepared. Mr. Jones admitted the wrongful action to Mr. Mawhinney immediately that he was confronted with it. He self-reported his wrongful action to the Law Society of British Columbia.

Mr. Jones chose the wise course of leaving British Columbia where he had disgraced himself. He continued to act wisely in seeking assistance from his older and more successful sister and brother in Toronto in order to restore order to his and his family's life. He took counselling from Dr. Tuters in order to understand the reasons for his action. He stayed close to the law working as a law clerk at Poultney Jones, his brother's firm so that he could work under supervision which may not have been altogether pleasant for him and his self esteem. He has worked at his family relationships and has reduced his financial obligations in order to lower his stress levels. He has attended CLE programs. He has gone through some of the best years of his life on modest means. He has gone through the considerable humility of making his life an open book before two Admissions Committees. He understands why he did what he did, what made him do it and he has vowed that it will not happen again. He strikes the Committee as sincere, credible, honest and seems to have preserved his composure and dignity through his troubles. All his actions are purgative of his guilt and he has waited nearly five years. The Committee, therefore, finds that Mr. Jones has purged his guilt.

No Probability of Offending in the Future

Dr. Tuters has put his professional reputation on the line by saying about Mr. Jones committing professional misconduct in the future "as much as professionally is possible I would suggest that he is of no further danger to the public." Mr. Jones testified that he would not commit professional misconduct again in the future because he understood the causes of the professional misconduct that got him disbarred and now has adaptive mechanisms to prevent similar pressures from bringing him to the snapping point again. He said that if he made another professional mistake he would seek assistance from other lawyers. The Committee

is satisfied that his professional misconduct, his disbarment and the damage to his life that they have caused is something that Mr. Jones rues and will do everything in his power to avoid again. More importantly, the Committee believes that Mr. Jones is fundamentally a person of integrity. He has gained sufficient in maturity as a result of his experience and the treatment he has received to enable him to withstand the stresses and pressures of personal and professional life.

The Committee is satisfied on the basis of this evidence which it finds both substantial and satisfactory that there is little or no probability of Mr. Jones offending again in the future.

Sufficient Period

In the Gray decision, Convocation said that an applicant for readmission should wait at least three years. Mr. Jones will have now waited four years and eight months. The Committee finds that Mr. Jones' application is not premature. This finding is based on the isolated nature of the professional misconduct for which he was disbarred, the fact that no one suffered or was likely to suffer from it and a comparison of the offence and the circumstances in which it was committed with the facts of Goldman, Gray and Manek.

Evidence of Trustworthy Persons

Above, we set out the evidence of members of the profession, especially persons with whom the Applicant has been associated since disbarment, that his conduct since 1990 has been unimpeachable. The Committee, therefore, finds that Mr. Jones' conduct and character since disbarment in British Columbia on September 6, 1990 are unimpeached and unimpeachable.

Trustworthy and Fit to be a Member of the Law Society

The Committee refers to the above conclusions and finds that Mr. Jones is trustworthy and has shown by his conduct since 1990 that he can be trusted and is of good character.

The Gray Principles

The Committee notes that if the professional misconduct that led to his disbarment in British Columbia had happened in Ontario, the penalty, while disbarment might be at the extreme end of the range, would most likely have been a suspension and not disbarment. It may be that the British Columbia bar being smaller than Ontario's sees fewer of the really bad disbarment cases that we see here and, therefore British Columbia, does not have as finely a graduated scale of offences and penalties as we have, or, it may be that benchers in British Columbia are tougher on professional misconduct than benchers in Ontario. But in any case the Committee believes it is quite possible that Mr. Jones would not have been disbarred in Ontario for his professional misconduct considering the lack of prejudice to his client, the isolated nature of the event, the self-reporting, the obvious remorse and the fact that there was no criminal offence charged.

While here in Ontario we wish to give deference to the decisions of other Canadian Law Societies, we note that the Gray decision makes it clear that the nature of the professional misconduct leading to disbarment bears less prominence in determining readmission than it does in determining the original penalty. The Committee also notes that Convocation has rejected the principle that simply because a solicitor has been disbarred for some terrible act of professional misconduct (without stating that what Mr. Jones did was a "terrible" act) the solicitor can never be readmitted. We are not so rhadomanthine as this. Readmission always depends on the circumstances as they exist at the time of readmission in light of the Goldman and Gray principles.

Discharging the Onus

The Committee believes that Mr. Jones is basically a good, honest, hardworking lawyer who had some bad luck at the British Columbia bar and who panicked while under pressure and made a single horribly foolish mistake that he instantly regretted. Since then he has done everything he could do to restore his professional standing, save his marriage, reduce his debts, understand what led him to commit professional misconduct, understand why he did the foolish act of forging a separation agreement in order to be able to close a townhouse deal for a client and to ensure that he will do nothing similar ever again. In attempting to climb his way back to membership in the bar he has experienced shame, dishonour, exclusion, and has had to reach for the helping hands of his high achieving brother and sister. He has shown remorse, appreciation of his wrong doing, a reformed nature and honesty and integrity in climbing back. We conclude again that Mr. Jones has purged or expiated his guilty. Only a person of good character as that term is defined in Re Spicer could have done so. The Committee is satisfied therefore that Mr. Jones has discharged the heavy onus on him to establish good character and to meet the Goldman and Gray tests.

For these reasons, we recommend that Mr. Jones be admitted to the Law Society subject to conditions about requalification acceptable to the Law Society.

All of which is respectfully submitted

Ian Blue, Q.C.
March 23, 1995

It was moved by Mr. Lerner, seconded by Mr. Carey that the Report be adopted.

Both counsel made submissions in support of the recommendation of the Committee.

The Report was adopted recommending that the applicant be admitted to the Law Society subject to conditions regarding requalification acceptable to the Law Society.

Convocation advised that the first paragraph on page 24 under the heading "The Gray Principles" be deleted.

Counsel and applicant retired.

.....

CALL TO THE BAR

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

Richard Charlton Bogart	36th Bar Admission Course
Moran Chiu	36th Bar Admission Course
Jin Young Choi	36th Bar Admission Course
Nicholas John Cutaia	36th Bar Admission Course
Hanaa Ahmed El-Alfy	36th Bar Admission Course
Margot Jean Ferguson	36th Bar Admission Course
Jane Anne Helen Fitzmaurice	36th Bar Admission Course
Mary Lenore Hodgson	36th Bar Admission Course

Yi Wen Hsu	36th Bar Admission Course
Abdurahman Hosh Jibril	36th Bar Admission Course
Salim Jamaluddin Khot	36th Bar Admission Course
Marc Joseph Claude Laroche	36th Bar Admission Course
Barbara Ellen La Vieille	36th Bar Admission Course
Jay Gerald Joseph Meunier	36th Bar Admission Course
Rogaciano Marcos Palacio	36th Bar Admission Course
Christine Nakimera Sepuya	36th Bar Admission Course
David Andrew Stone	36th Bar Admission Course
Simon Anthony Oram Threlkeld	36th Bar Admission Course
Gerrit Wolbertus Verbeek	36th Bar Admission Course
Deborah May Wall	36th Bar Admission Course
Janette Gaye Watt	36th Bar Admission Course
Tong Wu	36th Bar Admission Course
Harold Joel Arkin	Special, Transfer, Manitoba

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TREASURER'S REMARKS

The Treasurer read a letter addressed to the Attorney General dated April 13, 1995 expressing the Society's and the profession's concern over the decision by the Ontario Realty Corporation to begin charging rent to county law associations for premises occupied by county law libraries in provincial courthouses.

AGENDA - Reports to be taken as read

It was moved by Ms. Weaver, seconded by Ms. Graham THAT the Reports listed in paragraph 4 of the Agenda except the Report of the Lawyers Fund for Client Compensation Committee, be adopted.

Carried

Admissions and Membership
Draft Minutes - March 1995
Equity in Legal Education and Practice
Investment
Legal Aid
Legislation and Rules
Professional Conduct
Professional Standards
Specialist Certification Board
Women in the Legal Profession

COMMITTEE REPORTS

ADMISSIONS AND MEMBERSHIP COMMITTEE

Meeting of April 13, 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 13th of April, 1995 at 9:30 a.m., the following members being present: Mr. Campbell (Chair), Mrs. Weaver, and Messrs. Farquharson, Howie and Murphy.

Also present: R. Tinsley, M. Angevine, P. Gyulay and M. O'Connor.

A.
POLICY

A.1. REQUALIFICATION - CHANGE IN POLICY TO INCREASE SUBJECT AREAS COVERED BY EXAMINATION

A.1.1. On September 26th, 1986, Convocation adopted the recommendation of the Joint Sub-Committee of the Admissions Committee and Legal Education Committee on Reinstatement after Suspension that the following policy be brought into effect:

A.1.2. That those whose rights and privileges have been suspended for failure to pay a fee or levy and remain suspended for 5 consecutive years or more be required to completed successfully the examinations of the teaching term of the Bar Admission Course and if unsuccessful that they be permitted to attend the Bar Admission Course and successfully complete the teaching term including the examinations before being permitted to resume practising.

A.1.3. The above policy came into effect in April 1987.

A.1.4. On the 30th January, 1987, Convocation adopted the recommendation of the Admissions Committee that applicants for readmission to the Society shall comply with Section 27(2) of The Law Society Act and be required to comply with the same requirements as those who return after suspension except with respect to the payment of fees.

A.1.5. The Report of the Special Committee on Requalification adopted by Convocation 25th March, 1994 stated with respect to suspended members as follows:

"Members are presumed competent upon their call to the Bar. Members who stop paying their Law Society fees have apparently cut their ties to the Society, and requalification is justified on that basis, if the member remains suspended for five years or more. There is no need for a change to the existing policy."

A.1.6. The current practice is to require Requalification candidates either to sit the examination used in testing transfer candidates proceeding under sec. 4 or to attend Phase Three of the Bar Admission Course and complete it in its entirety.

A.1.7. The difference between these two options is in the subject areas of the examinations. Students in the Bar Admission Course must complete examinations in Criminal Procedure and Public Law in addition to the six subject areas covered in the Transfer examination.

Your Committee concluded that Requalification candidates should be required to pass examinations in all eight subject areas or satisfactorily complete Phase Three of the Bar Admission Course.

B.
ADMINISTRATION

B.1. REINSTATEMENT FOLLOWING SUSPENSION - PETITION FOR WAIVER OF EXAMINATIONS

B.1.1. Deborah Johnson Petch was called to the Bar on April 7th, 1982. She was suspended on February 26th, 1988 for non-payment of the annual fee. Ms. Petch now seeks to be reinstated without being required to sit the requalification examination.

B.1.2. In her letter of application dated April 6th, 1995, Ms. Petch provides an outline of the work she has done as an independent insurance adjuster with the Lawyers' Professional Indemnity Company for claims against lawyers for professional negligence. She states that it is her hope to continue in the position of an examiner with LPIC.

B.1.3. Ms. Petch asks to be reinstated to the non-practising category of membership. She also requests a waiver of the requalification examinations on an undertaking not to engage in the practice of law without the Law Society's consent and understands that, at such time as she may want to be restored to full-practising status, she may be required to complete requalification examinations.

B.1.4. Ms. Petch's letter of application dated April 6th, 1995 was before the Committee for consideration.

It is recommended that the applicant be reinstated to a non-practising membership category on her signing the usual undertaking that she will not engage in the practice of Ontario law without first obtaining the Society's permission and, in the Society's discretion, completing the Society's requirements for requalification at that time.

B.2. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.2.1. Mark Duane Hunsaker has applied to become licensed as a foreign legal consultant in the Toronto office of Shearman & Sterling.

B.2.2. Mr. Hunsaker was called to the Bar of the State of New York on October 25th, 1994 and has practised with the firm of Shearman & Sterling since that time. In his letter of application dated March 21st, 1995, Mr. Hunsaker undertakes to restrict his practice as a foreign legal consultant to that practised under the supervision of Pamela M. Gibson, a foreign legal consultant licensed by the Law Society of Upper Canada in November 1988.

B.2.3. Mr. Hunsaker's application is complete and both he and the firm have filed all necessary undertakings.

Approved

B.3. REINSTATEMENT FOLLOWING SUSPENSION - PETITION FOR WAIVER OF EXAMINATIONS

B.3.1. A suspended member, called to the Bar on April 13th, 1987, was suspended on February 23rd, 1989 for non-payment of the annual fee. She now seeks to be reinstated without being required to sit the requalification examination.

B.3.2. In her letter of application dated April 7th, 1995, the applicant for reinstatement provides a curriculum vitae outlining her work experience over the last few years primarily in the area of Indian Affairs. She is currently being considered for a position with the Federal Department of Justice in Ottawa, with the Department of Indian Affairs to write legal opinions.

B.3.3. She asks to be reinstated to a full-practising category. The applicant also requests a waiver of the requalification examinations in light of exceeding the five year period by only one year and on the strength of the extensive law related work she has been responsible for since the time of her suspension.

B.3.4. Her letter of application dated April 7th, 1995 together with a letter dated April 12th, 1995 from the Honourable Bertha Wilson, outlining the nature of the applicant's work over the last few years, were before the Committee for consideration.

Your Committee recommends that the applicant be required to complete a requalification examination covering eight subject areas.

B.4. PETITION TO BE REQUIRED TO REWRITE ONLY THOSE AREAS FAILED IN COMMON LAW EXAMINATION

B.4.1. A Quebec transfer candidate sat the January 1995 Common Law Examination and failed. 50 is the passing mark and must be obtained on both papers.

B.4.2. The examination is written in two separate parts. The candidate obtained a mark of 37 on Part I and 55 on Part II.

B.4.4. In her letter of April 10th, 1995 the applicant requests permission to rewrite only a portion of Part I of the examination.

B.4.5. Her letter of April 10th, 1995 was before the Committee for consideration.

Your Committee recommends that the candidate be required to satisfactorily complete the entire examination a second time in keeping with the current policy.

B.5. PETITION TO PROCEED WITH TRANSFER IN ADVANCE OF NEW REGULATION COMING INTO EFFECT

B.5.1. An individual seeks permission to proceed under the proposed transfer regulation in advance of the regulation coming into effect.

B.5.5. The applicant's letters of both March 8th and April 12th, 1995 were before the Committee for consideration.

Your Committee concluded that the applicant's petition must be denied.

B.6. DIRECT TRANSFER - COMMON LAW - SECTION 4(1)

B.6.1. The following candidates have met all the requirements to transfer under section 4(1) of Regulation 708 made under the Law Society Act:

Margaret Anne Cowtan	Province of Alberta
Michael Aaron Crystal	Province of Newfoundland

Approved

B.7. DIRECT TRANSFER - QUEBEC - SECTION 4(2)

B.7.1. The following candidate has met all the requirements to transfer under section 4(2) of Regulation 708 made under the Law Society Act:

Ingmar Rainer Borgers

Approved

B.8. EXAMINATION RESULTS - COMMON LAW EXAMINATION

B.8.1. One candidate failed the January 1995 sitting of the Common Law examination:

Noted

B.9. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.9.1. Bar Admission Course

The following candidates having successfully completed the 36th Bar Admission Course now have filed the necessary documents and paid the required fee and apply to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, April 28th, 1995:

Richard Charlton Bogart
Jin Young Choi
Hanaa Ahmed El-Alfy
Jane Anne Helen Fitzmaurice
Mary Lenore Hodgson
Salim Jamaluddin Khot
Marc Joseph Claude Laroche
Barbara Ellen La Vieille
Jay Gerald Joseph Meunier
Rogaciano Marcos Palacio
Christine Nakimera Sepuya
David Andrew Stone
Simon Anthony Oram Threlkeld
Gerrit Wolbertus Verbeek
Deborah May Wall
Janette Gaye Watt
Tong Wu

Approved

B.9.2. The following candidates expect to have successfully completed the 36th Bar Admission Course by the week of April 24th, 1995 and ask to be called to the Bar and to be granted a Certificate of Fitness at Regular Convocation on Friday, April 28th, 1995:

Moran Chiu
Nicholas John Cutaia
Margot Jean Ferguson
Yi Wen Hsu
Abdurahman Hosh Jibril

Approved

B.9.3. Transfer from another Province - Section 4(1)

The following candidate having completed successfully Phase Three of the Bar Admission Course, 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, April 28th, 1995:

Harold Joel Arkin Province of Manitoba

Approved

B.10. MEMBERSHIP UNDER RULE 50

B.10.1. (a) Retired Members

B.10.2. 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:

William Russell Artindale	Kitchener
Joseph George Casse	Toronto
Terence Rudolph Doidge	Don Mills
Rose Greenstein	Toronto
Joseph McLaren	Hamilton
Donald Frederick Meyrick	Toronto
Terence Albert Wardrop	Campbellford

Approved

B.10.3. (b) Incapacitated Members

B.10.4. The following member is incapacitated and unable to practise law and has requested permission to continue his membership in the Society without payment of annual fees:

Joseph Fantl Toronto

Approved

B.11. RESIGNATION - REGULATION 12

B.11.1. 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.

(a) Elizabeth Hamilton Goodwin of Kowloon Hong Kong, was called to the Bar on April 10, 1980. She declares in her affidavit that she has never practised law in Ontario. Her annual filings are up to date.

(b) Linda Kathleen Greer of Toronto, was called to the Bar on April 9, 1981. She declares that she is no longer practising law. The second instalment of the 1994/95 annual fee is owing. Her annual filings are up to date.

(c) Michael David Lanos of Orleans, was called to the Bar on February 12, 1992. He declares that he is no longer practising law, and has not practised since November 1993. The 1994/95 annual fee is owing. His annual filings are up to date.

(d) Ronald Schmalcel of Winnipeg Manitoba, was called to the Bar on March 30, 1990. He declares that he has never practised law in Ontario. The 1994/95 annual fee is owing. His annual filings are up to date.

Approved

C. INFORMATION

C.1. APPLICATIONS FOR ADMISSION CONSIDERED BY THE COMMITTEE WITH RESPECT TO 'GOOD CHARACTER'

C.1.1. In the period spanning June 1994 through March 1995 the Committee reviewed 10 applications for admission with respect to the "good character" requirement for call to the Bar. The Committee concluded that in respect of 6 of the applicants, a hearing should be held to determine the issue of "good character" pursuant to section 27.

Noted

C.2. CHANGES OF NAME

C.2.1.

From	To
Marie Cecile Germaine Louise Beaudet	Marie Cecile Germaine Louise Beaudet Davidson (Marriage Certificate)
Tracey Jayne Campbell	Tracey Jayne Nieckarz (Marriage Certificate)

Paramdeep Singh	Karan Paramdeep Singh Garewal (Change of Name Certificate)

Noted

C.3. ROLLS AND RECORDS

C.3.1. (a) Deaths

The following members have died:

Thomas Owen Jones Ridgeway, ON	Called June 18, 1942 Died January 23, 1994
Allan Keith Lishman Hamilton, ON	Called June 24, 1954 Died January 27, 1995
Anne Elizabeth Armstrong Toronto, ON	Called March 20, 1975 Died January 30, 1995
Joel Anthony Leon Kerbel Toronto, ON	Called May 27, 1983 Died February 27, 1995
Charles Thomas Sheridan Evans Bradford, ON	Called June 17, 1926 Died March 6, 1995
Anthony Edward Charlton Toronto, ON	Called April 10, 1964 Died March 19, 1995

Noted

C.3.2. (b) Disbarments

The following members have been disbarred and struck off the rolls and their names have been removed from the rolls and records of the Society:

Ross Hainsworth Toronto, ON	Called April 10, 1980 Disbarred - Convocation March 23, 1995
Dave Allen Klaiman Willowdale, ON	Called April 10, 1986 Disbarred - Convocation March 23, 1995

Noted

C.3.3. (c) Memberships in Abeyance

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:

Robert James Sharpe Toronto	Called March 22, 1974 Appointed to Ontario Court of Justice (General Division) February 28, 1995

Frances Patricia Kiteley Toronto, ON	Called April 9, 1976 Appointed to Ontario Court of Justice (General Division) February 28, 1995

Noted

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

C. Campbell
Chair

THE REPORT WAS ADOPTED

DRAFT MINUTES - March 23 and 24, 1995

(Draft Minutes in Convocation file)

THE DRAFT MINUTES WERE ADOPTED

EQUITY IN LEGAL EDUCATION AND PRACTICE

Meeting of April 13, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 13th day of April, 1995, the following persons being present: Dennis O'Connor (Acting Chair), Colin McKinnon, Nora Richardson, André Chamberlain, Judith Keene, Maria Lavell, Brigid Luke, Marilyn Pilkington, Jocelyn Churchill, Mimi Hart and Alexis Singer.

C.
INFORMATION

C.1 Rule 28 - Bulletin Status

C.1.1 The committee received the follow-up draft bulletins "Overview of Law Relevant to Rule 28", "Recruitment and Hiring" and "Employment Within Law Firms". The Recruitment and Hiring Bulletin is in its final production stages. Judith Keene will redraft the other two bulletins for the copy editor and for circulation to the following committees for consultation on committee day, May 11, 1995: Communications, Discipline Policy, Legal Education, Professional Standards, Professional Conduct, Research and Planning and Women in the Legal Profession. The bulletins will then be circulated to Convocation for information as per the approval process agreed to on February 24, 1995.

C.1.2 The committee agreed that each bulletin will not be a "stand-alone" bulletin but reference will be made to where information can be located in other bulletins in the series.

C.1.3 The committee agreed that all three bulletins currently in production should go to the profession at one time. The Guidelines for Conducting Articling Interviews which will be circulated by the Legal Education Committee have much of the material contained in the Recruitment and Hiring Bulletin and will be available to assist the profession in recruiting and hiring articling students for the 1996/97 articling year.

C.1.4 The committee will consider the question of the appropriate distribution list for the education material related to Rule 28. Specifically the committee will examine the question of whether some note to the profession should appear in the Ontario Reports advising of the existence of the educational bulletins.

C.1.5 The committee must consider any budget issues related to changes in format of the bulletins.

C.2 1995/96 Budget

C.2.1 The committee approved the budget as submitted.

C.3 Motions Arising from the Annual General Meeting - November 9, 1994

C.3.1 The Equity Committee has an interest in the motions which passed at the Annual General Meeting on November 9, 1994. The Equity Committee notes especially the disproportionate affect of unpaid articles on equity students. It will return to Convocation with further reports especially with respect to this issue.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1995

M. Moliner
Chair

THE REPORT WAS ADOPTED

INVESTMENT COMMITTEE

Meeting of April 13, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The INVESTMENT COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of April, 1995 at nine-thirty in the morning, the following member being present: Mr. Wardlaw (Chair). Staff members present were David Crack and David Carey.

B.

ADMINISTRATION

1. Investment Report

The Deputy Director of Finance presented to the Committee the investment report summaries for the various Law Society Funds together with supporting documentation for the month ended March 31st, 1995 (Schedule A).

Approved

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

J. Wardlaw
Chair

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

Item B.-1. - Copy of the Investment Report Summaries for the various Law Society Funds for the month ended March 31, 1995. (Schedule A)

THE REPORT WAS ADOPTED

LEGAL AID COMMITTEE

Meeting of April 13, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL AID COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of April, 1995, the following members being present: Stephen Goudge, Chair, L. Brennan, H. Burroughs, P. Copeland, C. Curtis, D. Fudge, M. Fuerst, L. Hart, R. Lalande, P. Peters, A. Rady, M. Stanowski and B. Sullivan.

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

A.

POLICY

A.1 REPORT OF THE NATIONAL COUNCIL OF WELFARE

A.1.1 The Legal Aid Committee agreed that a letter would be forwarded to the National Council of Welfare requesting a meeting with the author(s) of the Report and some members of the National Council to discuss the Committee's concern about some of the conclusions and statements in the report.

A.2 STRATEGIC PLANNING COMMITTEE

A.2.1 The Chair reported that the Strategic Planning Committee had had an excellent meeting with the service providers and government officials which is the second in a series of meetings being held to discuss the Plan's strategic planning for the next five years. The third and final meeting, with user groups, will be held near the end of the month and a final report will be presented to the Committee in May.

A.3 TARIFF REVIEW SUB-COMMITTEE

A.3.1 Paul Copeland reported that the sub-committee had met for the first time on April 12, and that three further meetings are scheduled through the spring.

B.
ADMINISTRATION

B.1 DIVORCE LAW OFFICE

B.1.1 The Committee was advised that the Divorce Law Office opened on March 31, 1995 and is situated at 439 University Avenue, Suite 540, Toronto. This is the second pilot project office (the first being the Refugee Law Office) and will perform the standard, paper-intensive service relating to uncontested divorces in a cost efficient manner. This is a three year pilot project.

B.2 STATEMENT OF INCOME AND EXPENDITURE FOR THE ELEVEN MONTHS ENDED FEBRUARY 28, 1995

B.2.1 The Legal Committee received the Statement of Income and Expenditure for the Eleven Months ended February 28, 1995 which is attached hereto and marked as SCHEDULE A.

B.3 ACCOUNT COST PROJECTIONS AND HISTORICAL SUMMARY

B.3.1 The Legal Aid Committee received a historical summary of average account costs with 1996 forecast and total account costs assuming:

(a) Oct. 1994 to March 1995 average account costs (total average account cost of $978) and

(b) month of March average account cost (total average account cost of $991)

B.3.2 This information is attached as SCHEDULE B.

B.4 REPORT ON THE PAYMENT OF SOLICITORS ACCOUNTS FOR THE MONTH OF MARCH, 1995

B.4.1 The Legal Aid Committee received the Report on the Payment of Solicitors Accounts for March, 1995 which is attached hereto and marked as SCHEDULE C.

B.5 REPORT ON THE STATUS OF REVIEWS IN THE LEGAL ACCOUNTS DEPT. FOR THE MONTH OF MARCH, 1995

B.5.1 The Legal Aid Committee received the Report on the Status of Reviews in the Legal Accounts Department for March, 1995 which is attached hereto and marked as SCHEDULE D.

B.6 AREA COMMITTEES - APPOINTMENT

Grey County
Steven R. Lowe, Chartered Accountant

C.
INFORMATION

C.1 CIVIL JUSTICE REVIEW

C.1.1 The Legal Aid Committee received excerpts from the Civil Justice Review concerning the Ontario Legal Aid Plan a copy of which is attached for Convocation's information as SCHEDULE E.

ALL OF WHICH is respectfully submitted

S. Goudge
Chair

April 28, 1995

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

Item B.-B.2.1 - Copy of the Report of the Statement of Income and Expenditure for the Eleven Months ended February 28, 1995. (Schedule A)

Item B.-B.3.2 - Copy of the Ontario Legal Aid Account Cost. (Schedule B)

Item B.-B.4.1 - Copy of the Report on the Payment of Solicitors Accounts for March, 1995. (Schedule C)

Item B.-B.5.1 - Copy of the Report on the Status of Reviews in the Legal Accounts Department for March, 1995. (Schedule D)

Item C.-C.1.1 - Excerpts from the Civil Justice Review re: Ontario Legal Aid Plan. (Schedule E)

THE REPORT WAS ADOPTED

LEGISLATION AND RULES COMMITTEE

Meeting of April 13, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, April 13, 1995, at 11:30 a.m., the following members being present: M. Cullity (Chair), S. Thom, J. Wardlaw.

Also present: M. Heins (LPIC), C. Wishart (LPIC), A. Brockett, E. Spears.

A. POLICY

No items to report.

B. ADMINISTRATION

B.1. *LAW SOCIETY ACT*: SECTIONS 51 AND 62: PROCEDURE FOR SETTING LAWYERS FUND FOR CLIENT COMPENSATION LEVY: AMENDMENTS

B.1.1. Recommendation

B.1.1.1. That Convocation request the Attorney General to place before the Legislative Assembly, for enactment, the following amendment to the English text of the *Law Society Act*, together with the equivalent amendment to the French text of the act:

1. Subsection 51(3) of the act is amended by deleting, after the word "Society", the words "for the Compensation Fund, such sum as is prescribed from time to time by the rules" and adding the words "at such time and in such amount as Convocation may from time to time determine, a levy for the Lawyers Fund for Client Compensation".

   [The proposed subsection 51(3) reads (amended text underlined):

   Every member, other than those of a class exempted by the rules, shall pay to the Society, at such time and in such amount as Convocation may from time to time determine, a levy for the Lawyers Fund for Client Compensation.]

2. Paragraph 14 of subsection 62(1) of the act to be repealed and the following substituted therefor:

   "respecting the Lawyers Fund for Client Compensation and exempting any class of members from payment of all or any part of the levy for the Lawyers Fund for Client Compensation".

B.1.2. Explanation

B.1.2.1. At present, subsection 51(3) of the *Law Society Act* reads as follows:

> Every member, other than those of a class exempted by the rules, shall pay to the Society, for the Compensation Fund, such sum as is prescribed from time to time by the rules.

B.1.2.2. Therefore, if the Society wishes to make a levy for purposes of the Lawyers Fund for Client Compensation, it needs to have a rule which "prescribes" the "sum" which is to be the amount of the levy.

B.1.2.3. The power to make the necessary rule is given in paragraph 14 of subsection 62(1) of the act which gives Convocation the power to make rules,

> respecting the Compensation Fund and prescribing the amount of the levy to be paid to the Society for the Fund and exempting any class of members from all or any part of such levy.

B.1.2.4. Currently, there is no rule which "prescribes" the "sum" or "amount" of the levy to be paid for the Lawyers Fund for Client Compensation. The amount of the levy is "set" by Convocation at the same time as it sets the annual fee (*i.e.*, as part of the winter budgeting process).

B.1.2.5. On March 24, 1995, Convocation adopted a recommendation from the Lawyers Fund for Client Compensation Committee that subsection 51(3) and subsection 62(1) of the *Law Society Act* be amended so that there would no longer be a requirement to prescribe the amount of the Lawyers Fund for Client Compensation levy in the rules.

B.2. REGULATION 708 MADE UNDER THE *LAW SOCIETY ACT*: SECTION 15.2: MEMBER'S OBLIGATION TO COMPLETE FORMS 4 AND 5: AMENDMENT

B.2.1. Recommendations

B.2.1.1. That section 15.2 of Regulation 708 made under the *Law Society Act* be revoked and replaced by the following new section 15.2:

15.2 (1) In this section,

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

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

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

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

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

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

(d) a copy of the registered charge; and

(e) any supporting documents supplied by the lender.

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

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

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

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

(a) the lender,

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

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

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

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

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

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

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

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

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

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

1. Making a change in the priority of the charge that results in a reduction of the amount of security available to it.

2. Making a change to another charge of higher priority that results in a reduction of the amount of security available to the lender's charge.

3. Releasing collateral or other security held for the loan.

4. Releasing a person who is liable under a covenant with respect to an obligation in connection with the loan.

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

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

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

B.2.1.2. That Convocation request the Attorney General to arrange for similar amendments to be made to the French text of Regulation 708.

B.2.2. Explanation

B.2.2.1. On November 25, 1994, Convocation adopted a recommendation from the Legislation and Rules Committee that section 15.2 of Regulation 708 be revoked and replaced by a new section 15.2. (Section 15.2 stipulates a member's obligation to maintain certain records, including Forms 4 and 5, when arranging mortgages for clients.) Convocation approved wording for the new section 15.2.

B.2.2.2. Legislative counsel at the Ministry of the Attorney General has sent a version of new section 15.2 different from that approved by Convocation. Staff of the Legislation and Rules Committee and the Lawyers Fund for Client Compensation Committee have reviewed the Attorney General's version of new section 15.2. Amendments to the Attorney General's version of section 15.2 have been discussed with legislative counsel, and the wording set out in paragraph B.2.1.1. has been approved by legislative counsel.

B.3. PROCEDURE FOR MAKING REGULATIONS: SUGGESTED CHANGES

B.3.1. Recommendation

B.3.1.1. That the procedure for making regulations be as follows:

1. Convocation, on the recommendation of a policy committee, takes a decision in principle to make a regulation.

2. The matter goes to staff of the Legislation and Rules Committee for drafting.

3. The Legislation and Rules Committee approves the text prepared by staff.

4. The text approved by the Legislation and Rules Committee is sent to the Attorney General with a request that it be "processed". The Legislation and Rules Committee reports to Convocation that it has drafted the text of the regulation which it has sent to the Attorney General for processing.

5. The text of the regulation is considered by legislative counsel and discussed with staff. A final version of the text is agreed upon by legislative counsel and staff.

6. The final version of the text is submitted to the Legislation and Rules Committee for approval.

7. The Legislation and Rules Committee recommends that Convocation "make" a regulation in the wording that has been finally approved by the Committee.

8. When Convocation approves the final wording of the regulation, a sealed, "black-cornered" version of the regulation is prepared by legislative counsel and sent for signature by the Treasurer and the Secretary.

B.3.2. Explanation

B.3.2.1. The present procedure for making regulations is as follows:

1. Convocation, on the recommendation of a policy committee, takes a decision in principle to make a regulation.

2. The matter goes to staff of the Legislation and Rules Committee for drafting.

3. The Legislation and Rules Committee approves the text prepared by staff.

4. The Legislation and Rules Committee recommends that Convocation make a regulation in the wording that has been approved by the Committee.

5. When approved by Convocation, the text of the regulation is sent to the Attorney General who passes it to legislative counsel.

6. Legislative counsel may suggest that the text of the regulation be reworded. Staff discuss the rewording with legislative counsel.

7. When rewording has been agreed between staff and legislative counsel, it is submitted to the Legislation and Rules Committee for approval.

8. The Legislation and Rules Committee recommends that Convocation make a regulation in the (revised) wording that has been approved by the Committee.

9. When Convocation approves the (revised) wording of the regulation, a sealed, "black-cornered" copy of the regulation is prepared by legislative counsel and sent for signature by the Treasurer and the Secretary.

B.3.2.2. At present, if the text of a regulation originally approved by Convocation is revised by legislative counsel (and this appears to be increasingly the case), the matter has to go before Convocation twice.

B.3.2.3. It has been suggested that a preferred approach might be to send the text of a regulation approved by the Legislation and Rules Committee directly to the Attorney General, with a request that it be "processed". Legislative counsel would then discuss the text with staff and a final version would be agreed upon. This version would be submitted to the Legislation and Rules Committee, and if approved by the Committee, to Convocation. In this way, the matter would only go before Convocation once.

C.

INFORMATION

C.1. RULES MADE UNDER SUBSECTION 62(1) OF THE *LAW SOCIETY ACT*: RULE 50: REQUEST TO AMEND TO REQUIRE PAYMENT OF UNPAID DEDUCTIBLE

C.1.1. In March 1995, your Committee received a request from the Lawyers' Professional Indemnity Company to amend the part of Rule 50 entitled "INDEMNITY FOR PROFESSIONAL LIABILITY" to provide for the prescription of an unpaid deductible under the Law Society's policy of professional liability insurance as a levy. The Committee discussed the matter and agreed to defer it to the May meeting, at which time it will be provided with further information.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 1995

M. Cullity
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL CONDUCT COMMITTEE

Meeting of April 13, 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 13th of April, 1995 at three o'clock in the afternoon, the following members being present: M. Somerville (Chair), I. Blue, T. Carey and M. Cullity. The following staff were present: M. Devlin, D. Godden and S. Traviss.

A.
POLICY

1. R. J. MORGAN NETWORK BENEFITS INC. (RJM)

This company is in the process of setting up a prepaid legal services scheme in Ontario. It has been operating one in British Columbia for the past year and the B.C. Law Society has said that lawyers who participate in this scheme would not be acting in contravention of their Legal Profession Act, Law Society Rules and the Professional Conduct Handbook.

This would be a for profit plan which members of the public can decide to join.

The persons running the plan propose using a form of distributorship scheme to market the plan. For example, the plan's advertising would invite persons wishing to join to sign up their family and their friends. The more people you sign up the lower the annual fee you would have to pay. The lawyers would have no involvement in this distributorship scheme to market the plan. It would be a case where one member of the public is signing up other members of the public.

The T. Eaton Company markets Caldwell Legal Services (a for profit plan) by advertising it as an option that holders of an Eaton's credit card can choose.

The question considered was this: Is there anything improper in a lawyer participating in a prepaid legal services plan where the marketers of the plan do so through a distributorship scheme?

The Committee saw nothing improper with the distributorship scheme and concluded that lawyers could participate in this specific plan.

The Committee asks Convocation to adopt this policy.

2. PROPOSAL FROM PROVIZER, LICHTENSTEIN FIRM IN MICHIGAN TO SET UP A CANADIAN ENTITY TO REPRESENT CANADIAN CLIENTS BEFORE THE TRIBUNAL HEARING APPEALS UNDER THE CANADIAN PENSION PLAN AND THE QUEBEC PENSION PLAN - POLICY QUESTION TO BE ADDRESSED BY THE COMMITTEE

A Michigan lawyer, Ronald Goldstein, has written with a request for advice. His firm has a background in disability and benefits law. As such it has developed numerous contacts with insurers who provide benefits in this area.

It would like to develop a business entity here in Canada that would handle appeals from those persons unhappy with their treatment under the Canadian Pension Plan or the Quebec Pension Plan. The tribunals hearing these appeals are administrative tribunals and non-lawyers can and do appear before these tribunals.

They do not believe it will be necessary for them to advertise this entity in Canada because they expect to receive through their insurance contacts a lot of referrals. The insurers involved would pay any fees not the person making the appeal.

The persons using the services of the entity will be told by the insurance companies referring them that a law firm in Michigan is arranging for them to be represented before a pension adjudicator or board. The individuals may therefore believe that they are going to be receiving legal services. Mr. Goldstein has told me that those appealing will be advised by persons who are not lawyers in Ontario but are lawyers in Michigan.

The policy question that is raised by this proposal is this:

Should a law firm in a jurisdiction outside Ontario be permitted to open a paralegal business in Ontario providing representation before boards or tribunals?

Mr. Ajit John, the Secretary to the Unauthorized Practice Committee thought that there was nothing wrong with the proposal as long as the entity operating here in Ontario did not advertise itself as a law firm licensed to practise Ontario law and that any advertising that is done by the entity should not be in any way misleading in this regard.

The Committee agreed with Mr. John's assessment of the proposal from the Michigan law firm.

The Committee asks Convocation to adopt this position.

3. LAWYER PROPOSES TO SET UP A REFERRAL SERVICE DIRECTED TO LAWYERS THAT WILL PROVIDE THEM WITH THE NAMES OF LAWYERS WHO CAN PROVIDE EXPERIENCED INDEPENDENT LEGAL ADVICE - REQUEST FOR ADVICE

A lawyer who practises matrimonial law has formed an opinion that there is a need on the part of lawyers (not just those practising family law) to know the names of lawyers who are truly independent and who have experience in giving independent legal advice (ILA). He proposes to set up a company (the X Matching Company) that would provide lawyers with the names of lawyers (at least three names would be given out) who could give the necessary ILA. The lawyer would own the company and it would on a preliminary start-up basis focus in on the legal community in the greater Toronto area.

The lawyer giving the ILA would send an account to the client for his/her services. There would be no fee paid to the company by the lawyers who are on the referral list. Moreover, all lawyers who wished to join the panel of names provided could do if they could prove they were competent to provide the ILA.

The Committee discussed the proposal at some length and concluded that it could not proceed because of the lawyer's wish to incorporate the company doing the referrals (so as to avoid personal liability). The making of referrals by one lawyer to another is part of the practice of law and a corporation cannot carry on the practice of law. The lawyer making the proposal was present for part of the meeting to hear firsthand the concerns of the Committee.

The Committee asks Convocation to adopt this position.

ALL OF WHICH is respectfully submitted

DATED this 27th day of April, 1995

M. Somerville
Chair

THE REPORT WAS ADOPTED

PROFESSIONAL STANDARDS COMMITTEE

Meeting of April 13, 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 13th of April, at 3:00 p.m., the following members being present: C. McKinnon (Chair), D. Murphy (Vice-Chair), R. Cass, N. Graham, M. Weaver

Also Present: Bruce Durno, J. Adamowicz, S. Gale, S. McCaffrey, P. Rogerson, D. Titus

B. ADMINISTRATION

B.1. REQUEST FOR RECONSIDERATION OF AUTHORIZATION OR DEFERRAL OF PARTICIPATION IN PRACTICE REVIEW PROGRAMME

B.1.1. A 4-member firm was authorized for participation in the Practice Review Programme based on a referral from the Audit Department. In the case of one of the firm members, a separate referral was also made by the Complaints Department. The firm's counsel wrote to the Committee requesting that the authorization be reconsidered. The Committee reviewed the submissions made by counsel and the firm's history of complaints and claims, and concluded that authorization for three of the firm members should be withdrawn, and the firm's PRP file closed. The Committee recommended, however, that the particular firm member who was also referred by the Complaints department should remain in the Programme, as it appeared that due to the nature of the complaints received, the member might benefit from participation in the Programme.

B.1.2. The member was advised of the confirmation of authorization but requested that the Committee once again reconsider the authorization or defer his participation in the Programme.

B.1.3. The Committee reviewed a copy of the member's Law Society history as well as his submissions outlining reasons for his request. The Committee affirmed the authorization. In light of the member's complaints and claims history, the Committee was not prepared to conclude, without further information, that the authorization to participate should be reconsidered or deferred.

B.2. FILE CLOSURES - PRACTICE REVIEW PROGRAMME

B.2.1. Six files were closed based on the members' successful completion of the Practice Review Programme.

B.2.2. In the first case, the solicitor was authorized to participate in the Practice Review Programme in November, 1993. At the time of authorization, the solicitor had a total of 7 complaints and 11 potential LPIC claims. A reviewer attended at the solicitor's practice in December, 1993 at which time several recommendations were made with respect to the improvement of the practice. Staff

attended on three occasions to provide further assistance in implementing the recommendations made to the solicitor. The solicitor has received one further complaint and claim since the referral. The complaint was received in May, 1994 and the claim was received in December, 1993 for an event occurring prior to his authorization. The solicitor has been cooperative with the Programme, and has implemented the changes recommended.

B.2.3. In the second case, the solicitor was authorized to participate in the Practice Review Programme in February, 1991. At the time of authorization, the solicitor had a total of 9 complaints and 2 potential LPIC claims. A reviewer attended at the solicitor's practice in May, 1991, at which time several recommendations were made with respect to the improvement of the practice. Staff attended on two occasions and a review panel was held in May 1993 at which time additional recommendations were made. Staff again attended on five further occasions. Both staff and the Systems Advisor were satisfied with the progress made by the solicitor in implementing the recommendations made to him in the course of the Programme.

B.2.4. In the third case, the solicitor had a total of 17 complaints and 9 potential LPIC claims at the time of authorization in May 1993. A reviewer attended at the solicitor's practice in September 1993, at which time several recommendations were made. Staff also attended on three occasions, at which times further recommendations were made. Staff concluded that the solicitor had made significant changes to his practice since he began participation in the Programme and that the cause of the complaints had been addressed.

B.2.5. In the fourth case, the solicitor was authorized to participate in the PRP in March 1993 based on a referral from a Complaints Review Commissioner. At the time of authorization, the solicitor had a total of 11 complaints and 22 potential LPIC claims. A reviewer attended at the solicitor's practice in December 1993 and made several recommendations. The solicitor received one new complaint in July 1993 and no new claims since the initial referral. Staff attended on two occasions and concluded that the solicitor had made significant changes to his practice. The solicitor's file was monitored for four months to assess the impact of the changes made and no additional complaints or claims were received.

B.2.6. In the fifth case, the solicitor's profile was reviewed by the Professional Standards department when he applied for Certification as a Specialist. It was revealed that the solicitor had received a total of 10 complaints and 2 potential LPIC claims since 1990. He was authorized to participate in the Practice Review Programme in September 1994. Professional Standards staff attended in February 1995, at which time several minor recommendations were made regarding client communications. The staff reviewer noted that the solicitor's office appeared well maintained and his files appropriately organized. There have been no more complaints or claims since the solicitor began participation in the Programme.

B.2.7. In the sixth case, the solicitor was authorized to participate in the Practice Review Programme in November 1989, based on an undertaking signed in Discipline. At the time of authorization, the solicitor had 5 complaints and no reported claims to LPIC. A reviewer attended at the solicitor's practice in March, 1990 at which time several recommendations were made with respect to the improvement of the practice. Staff attended on three occasions and improvements were noted. Since the referral, the solicitor has

received 13 additional complaints and one claim. At a Review Panel held in January 1995, the solicitor advised that she no longer handled real estate files, wherein lie most of the complaints made against her. The Review Panel therefore recommended closure of her file.

B.2.8. Two Practice Review files were closed based on the participants' unwillingness to participate in the Practice Review Programme. In the first case, in applying for Certification as a Specialist, the solicitor's profile was reviewed by the Professional Standards department and he was authorized to participate in the Programme in January 1995. The solicitor had received a total of 14 complaints and 8 potential LPIC claims since 1990. Upon receipt of the initial letter from the Professional Standards department, the solicitor wrote to the Certification department wishing to withdraw his application for re-certification. The solicitor advised that he would decrease his caseload and improve client communications. The solicitor also declined to participate in the Practice Review Programme.

B.2.9. It is Convocation's policy, where the member is authorized as a result of the Certification process, that if the member refuses to participate, the member's file in the Practice Review Programme will be closed without any referral to the Staff Committee, unless it appears, on a *prima facie* basis, that there are concerns about the member sufficient to warrant possible disciplinary action, in which case the Professional Standards Committee will be so advised. The Committee reviewed the solicitor's profile and concluded that there were *prima facie* grounds for concern regarding the solicitor. The Committee decided that a referral should be made to the Staff Committee to determine whether any additional action should be taken by the Law Society.

B.2.10. In the second case, the solicitor was originally authorized to participate in the Practice Review Programme in March, 1989. In April, 1989 the solicitor advised that he did not wish to participate in the Programme because he did not believe that any problems in his office could be attributed to incompetence on his part; he felt the problems arose due to "the chronic shortage of reliable staff in the Metro area." His file was referred to Senior Counsel, Discipline, in accordance with Committee policy at that time, but no disciplinary action ensued.

B.2.11. The solicitor was referred to the Programme again in October, 1994 by the Complaints Department. At the time of the authorization the solicitor had accumulated a total of 33 complaints and 20 LPIC claims. Upon receiving the letter inviting him to participate in the Programme, the solicitor requested a list of his complaints history with the Law Society. That list was provided to him. The solicitor then sent a letter requesting a more detailed description of the complaints, which was also provided to him. No further response was received. Four reminder letters have been sent to the solicitor, but no response has been received. The Committee referred the file to the Staff Committee to decide what alternatives, if any, should be considered by the Law Society.

B.2.12. Two Practice Review files were closed based on the members' unwillingness to cooperate with the Practice Review Programme. In the first case, the solicitor signed an undertaking in the Discipline process to participate in the PRP and to pay costs, and in September, 1992 the solicitor was authorized to participate in the Programme. Staff attended on five occasions in 1993 and 1994.

A report of the last attendance was sent to the solicitor, as well as an account of the costs to date. A response was received from the solicitor, who disagreed with many of the issues identified by staff and has disputed the costs owing. A further staff attendance was scheduled for October, 1994, but the solicitor cancelled the appointment and advised that she was considering ceasing her participation in the Programme. Despite several attempts to pursue this issue with the solicitor, nothing further has been heard from her. Discipline counsel has been advised of her breach of undertaking.

B.2.13. In the second case, the solicitor was authorized to participate in the PRP in March 1993 based on a referral to the Programme by the Audit department, which had concerns regarding the solicitor's books and records. At the time of authorization, the solicitor had a total of 11 complaints and 1 potential LPIC claim. The solicitor was called to the Bar in 1991.

B.2.14. A reviewer attended at the solicitor's practice January 1994 at which time many recommendations were made regarding improvement of the practice. Staff attended in November 1994 and it was felt that the solicitor required further assistance and that he should continue to work with the staff of the Professional Standards department. A copy of the staff report was sent to the solicitor for his comments but a reply was not received. Three further reminder letters sent to the solicitor failed to elicit a response.

B.2.15. Seventeen complaints and 4 claims have been received against the solicitor since the initial referral and he is currently involved in the Discipline process. The file was referred to the Staff Committee to decide what alternatives, if any, should be considered by the Law Society.

B.2.16. One Practice Review file was closed based on the fact that the member is no longer practising law. The solicitor's file has been closed and staff will monitor the solicitor's status twice-yearly in the event that the member returns to practice, at which time the file can be re-opened, if appropriate to do so.

C. INFORMATION

C.1. CRIMINAL DEFENCE CHECKLIST - STANDARDS FOR CROWN ATTORNEYS

C.1.1. Bruce Durno, Chair of the Criminal Defence Checklist Sub-committee, reported on the status of the checklist. He advised that the checklist is almost complete, and a draft copy will be circulated for comments from the profession, including the CBAO Criminal Justice Section, the Criminal Lawyers Association, and Crown Attorneys.

C.1.2. At January Convocation, the Chair of the Professional Standards Committee undertook that the Committee would examine the possibility of developing a checklist to set standards for Crown Attorneys. Mr. Durno advised that Crown Attorneys are provided by the Ministry of the Attorney General with a manual containing policy guidelines and other relevant materials. Discussion also occurred regarding the *Rules of Professional Conduct*, and their application to Crown Attorneys; it was noted that Rule 10, commentary 9, is directed specifically to the duties of a prosecutor.

C.1.3. The Committee concluded that consultation with Crown Attorneys should occur; an invitation will therefore be extended to Michael Code, the Assistant Deputy Minister in the Ministry of the Attorney General, the Director of Crown Attorneys, and interested Benchers to attend a meeting of the Professional Standards Committee, in order to discuss this issue further.

C.2. CAPACITY INVESTIGATIONS

C.2.1. The Practice Review Programme recently had referred to it by Audit & Investigation two members whose capacity to practise law has been called into question. In the first instance, authorization was granted for an "exploratory meeting" only, which occurred on February 10, 1995. The member was born in 1905, called to the Bar in 1930, and has no immediate intention of retiring from the practice.

C.2.2. The Director met with the member; the member appeared to be mentally competent, in that he was fully cognizant of the reasons for the attendance, replied lucidly to the questions asked of him, and did not demonstrate any signs of disorientation. Four estates files were reviewed: complaints had been received with respect to two files, and the other two were chosen at random. The files were well organized and, generally speaking, the appropriate steps appeared to have been taken. Both complaints arose (at least in part) because of delay in distribution of the estate.

C.2.3. The Department of Audit and Investigation is concerned that anyone purchasing the solicitor's practice in the future may discover problems with negligence implications. The exploratory meeting was not extensive enough to allay these concerns. Rather than conducting a practice review, however, a review of several of the member's files, by a reviewer experienced in the area of wills and estates, should occur. A review of this nature will be subject to the member's consent. The reviewer can then advise as to whether Audit's concerns are well-founded and, if so, what steps should be taken to address those concerns.

C.2.4. In the second matter referred to the Programme, contact by a member of Audit staff has raised directly the issue of competence; the member, who is 68 years of age and had undergone quadruple by-pass surgery, was frequently unable to recall details of the transactions investigated, had been very depressed, was worried that he might be disbarred, and broke down in tears during the Audit attendance. Concerns about the solicitor's competence have apparently existed since at least July of 1994, when an LPIC adjuster noted that the solicitor constantly asked who he was and why he was there, and had difficulty retaining this information for more than 5 minutes. Rather than invoking the practice review procedure, a member of the Department's staff will contact the solicitor and arrange to meet with him, in order to determine whether an application should be brought under section 35 of the *Law Society Act*.

C.2.5. Both referrals raise the question of the Professional Standards Department's role in investigating the capacity of members. At present, section 35 of the *Law Society Act* provides for a hearing by a "committee of Convocation", to determine whether a member is incapable of practising law. The amendments to the *Law Society Act*, as envisaged by the Reform Implementation provisions, bring responsibility for considering issues of incapacity within the mandate of the Professional Standards Committee: an investigation

will be conducted into the member's capacity, a report written, and a hearing held before a panel which can make a variety of orders intended to protect the member's clients and the public. "Incapacity" encompasses excessive use of alcohol or other drugs, physical or mental illness, or other infirmity.

C.2.6. In preparation for the reforms, and in order to respond more effectively to referrals which raise capacity issues, training of the department's lawyers may be required, to alert them to the danger signs which may indicate incapacity, including drug and other substance abuse. Staff have been directed to investigate the training programs available, and the cost thereof, and report the results of the investigation to the Committee, for further discussion on this issue.

C.3. PRACTICE ADVISORY SERVICE REPORT

C.3.1. The volume of calls received in February decreased to 751 enquiries, emphasizing the topics of fees and disbursements, solicitors' liens and file transfers, client instructions, LPIC information, forms of association, and retirement. Rules 4 and 5 generated the most discussion, of the *Rules of Professional Conduct*.

C.3.2. Felecia Smith is on maternity leave effective March 31, 1995, and Douglas Titus is replacing her. Mr. Titus was called to the Bar in 1977, and will be with the Service for 4 to 6 months.

C.3.3. The Start-Up Workshop was held in March. Lawyers from the Service participate in other initiatives, reporting to committees other than Professional Standards, such as Don Godden's involvement with electronic transfers of trust funds. That group reports to the Discipline Policy Committee. The Director continues to be involved with the MCLE sub-committee.

C.4. PROFESSIONAL STANDARDS DEPARTMENTAL REPORT

C.4.1. Sarah Gale has joined the Department on contract as Programme Co-ordinator, during Nancy Amico's maternity leave, and is warmly welcomed.

C.4.2. The total number of open files in the Practice Review Programme in March was 152, due to six members being authorized to participate, and three files being closed. Benchers Paul Copeland, Laura Legge and Dennis O'Connor sat as review panellists for two members in the Programme. Their assistance is greatly appreciated.

C.4.3. Department staff conducted 25 attendances in lawyers' offices ranging from Windsor, London, Ottawa and points between.

C.4.4. The Director attended a two-day meeting of the MCLE sub-committee, which was addressed by Frank Harris, the Director of Minnesota CLE since 1976. He reported on that program, and the strong support given to it by members of the Minnesota State Bar. Statistics were provided to the sub-committee from both the Complaints Department and Professional Standards. The sub-committee is proposing significant consultation with the Bar, as the next step in the process.

C.4.5. The Directors of both the Practice Advisory Service and the Professional Standards Department attend the monthly meeting of the Council of the Ontario Bar Assistance/Bar Alcoholism Program (OBAP) of the CBAO. The Council provides support, guidance and education for the profession, on issues of substance abuse, stress, and other impairments of a lawyer's ability to practise. At least once per month a member is referred by one of the Directors to the Council for assistance, indicating the stress being experienced by members.

ALL OF WHICH is respectfully submitted.

DATED this 28th day of April, 1995.

C. McKinnon
Chair

THE REPORT WAS ADOPTED

SPECIALIST CERTIFICATION BOARD

Meeting of April 13, 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 13th of April 1995 at nine o'clock in the morning, the following members being present: R. Yachetti (Chair), J. Callwood, P. Furlong, C. McKinnon, M. Pilkington and G. Sadvari. C. Giffin, of the Law Society, was also present.

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

The Civil Litigation Specialty Committee met on Tuesday, the 14th day of March 1995 at eight-thirty in the morning.

The Workers' Compensation Law Specialty Committee met on Thursday, the 30th day of March 1995 at five-fifteen in the afternoon.

The Criminal Law Specialty Committee met (conference call) on Friday, the 31st day of March 1995 at one o'clock in the afternoon.

The Labour Law Specialty Committee met on Monday, the 3rd day of April 1995 at five o'clock in the afternoon.

The Civil Litigation Specialty Committee met on Tuesday, the 11th day of April 1995 at eight-thirty in the morning.

A.
POLICY

No items.

B. ADMINISTRATION

B.1. WORKERS' COMPENSATION LAW SPECIALTY COMMITTEE MEMBERSHIP - 1995

B.1.1. The Workers' Compensation Law Specialty Committee recommends that membership for 1995 be composed as follows. In addition, the Board will ask this Committee to add one additional out-of-Toronto, female member:

David Brady (Chair) (of Toronto)
Ian Anderson (of Toronto)
Terry Copes (of Sudbury)
David Craig (of Brampton)
S. David Gorell (of Toronto)
Perry McCuaig (of Ottawa)
Daniel Revington (of Toronto)
Roslyn Pauker (of Toronto)

C. INFORMATION

C.1. CERTIFICATION OF SPECIALISTS

C.1.1. Your Board is pleased to report the certification of the following lawyers as Civil Litigation Specialists:

Peter Lingard (of St. Catharines)
Lawrence Zaldin (of North York)

C.1.2. Your Board is pleased to report the certification of the following lawyers as Criminal Law Specialists:

Gary Chayko (of Ottawa)
Michael McArthur (of Simcoe)

C.2. RECERTIFICATION OF SPECIALISTS

C.2.1. Your Board is pleased to report the recertification for an additional five years of the following lawyers as Civil Litigation Specialists:

John Brownlie (of Toronto)
John Campion (of Toronto)
Randall Echlin (of Toronto)
James Hodgson (of Toronto)
Paul Iacono (of Toronto)
Kristopher Knutsen (of Thunder Bay)
Rudolph Lobl (of Toronto)
H. James Marin (of King City)
W. Ross Murray (of Toronto)
John Nesbitt (of Ottawa)
J. Brian Parnega (of Ottawa)
Richard Rose (of Toronto)
Robert Roth (of Toronto)
Jack Shinehoft (of Hamilton)
Harvey Spiegel (of Toronto)

C.2.2. Your Board is pleased to report the recertification for an additional five years of the following lawyers as Criminal Law Specialists:

Donald Bayne (of Ottawa)
Thomas Carey (of Mississauga)
Ronald Charlebois (of St. Catharines)
Joseph Donahue (of Sarnia)
Bruce Durno (of Toronto)
Frederick Forsyth (of Burlington)
Michelle Fuerst (of Toronto)
Michael Gordner (of Windsor)
John Hobson (of Newmarket)
Raymond Houlahan (of St. Catharines)
Richard Jennis (of Hamilton)
Jeffrey Manishen (of Hamilton)
Leonard Miller (of Toronto)
Norman Peel (of London)
Geoffrey Read (of Hamilton)
James Ramsay (of Toronto)
Mark Sandler (of Toronto)
Rodney Sellar (of Ottawa)
Keith Wright (of Toronto)

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

R. Yachetti
Chair

REPORT WAS ADOPTED

WOMEN IN THE LEGAL PROFESSION COMMITTEE

Meeting of April 13, 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 13th of April, 1995, at 9:45 a.m., the following members being present: P. Copeland (Chair), N. Angeles-Richardson, J. Lax, B. Luke.

Also present: A. Brockett, A. Singer, E. Spears.

A. POLICY

A.1. STATEMENT OF VALUES

A.1.1. When Convocation adopted the Transitions Report in May, 1991, it adopted, as part of the recommendations in that report, a "Statement of Policy" which referred to changes in the legal profession, enunciated the responsibility of the Law Society to provide leadership in responding to change, and identified various responsibilities including the elimination of discrimination, the improvement of working conditions, the encouragement of alternative work arrangements and the development of parental responsibility policies.

A.1.2. The report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession (Wilson Task Force) (August, 1993) contains the following recommendation (#12.1):

> The Task Force recommends that law societies propound a statement that the legal profession is enormously enriched by, and values deeply, the full participation of men and women in our profession regardless of age, disability, race, religion, marital or family status, or sexual orientation.

A.1.3. Your Committee is of the view that the proposed statement is consistent with the policies adopted by Convocation in the Transitions Report, the proposals that led to the establishment of the Equity in Legal Education and Practice Committee, and the principles of Rule 28 of the Rules of Professional Conduct ("Discrimination").

A.1.4. The grounds on which discrimination is prohibited by Rule 28 are wider than the categories enumerated in the proposed statement. Nevertheless, your Committee considers that it would be appropriate to adopt a statement in precisely the terms recommended by the Wilson Task Force.

A.1.5. Recommendation

Your Committee recommends that Convocation adopt the following statement:

> The Law Society of Upper Canada declares that the legal profession in Ontario is enormously enriched by, and values deeply, the full participation of men and women in our profession regardless of age, disability, race, religion, marital or family status or sexual orientation.

B. ADMINISTRATION

No items to report.

C.
INFORMATION

C.1. FOLLOW-UP TO THE TRANSITIONS REPORT AND OTHER RESEARCH PROJECTS

C.1.1. Your Committee has $25,000 in its 1994-1995 budget for research projects. It has requested a similar amount for the fiscal year 1995-1996.

C.1.2. In February, your Committee reported to Convocation that it was proposing to retain an expert consultant to study changes in the legal profession since publication of the Transitions Report in 1991.

C.1.3. Staff have spoken with Dr. Fiona Kay (Department of Anthropology and Sociology, University of British Columbia) who was the researcher and primary author of the Transitions Report.

C.1.4. Dr. Kay has proposed three possible areas of research:

C.1.4.1. A "longitudinal" study of the 1,597 members who responded to the 1990 survey on which the Transitions Report was based. Such a study could ascertain the current career status of the respondents and compare it with their status in 1990. It provides an opportunity to examine advances and setbacks in the progress of women in the legal profession. It will examine issues such as promotions, career diversification and attrition rates from the practice of law. It will also enable a further study of how family responsibilities have affected career paths and the extent to which workplace supports have been introduced for lawyers with family responsibilities. The study will provide information about the extent to which inequities existing in the 1990 sample have been reduced or corrected. It will also give up-dated information on the careers of lawyers who, in 1990, were engaged in positions outside the traditional private practice of law.

C.1.4.2. Another study could be based on the membership data collected from the Law Society's annual fee form. Those data would allow for a report on changes over the past six years in the representation of women and men in various employment positions (*i.e.* sole practitioners, partners, associates etc.). The data would provide an overview of changes in the representation of women in sectors of law practice and employment positions. They would also permit a preliminary assessment of timing of promotions. A brief report could probably be completed by September 1995.

C.1.4.3. Another possibility is an entirely new survey of women and men in the legal profession in co-operation with a research project that is just beginning under the leadership of Dr. Kay and Dr. John Hagan (Faculty of Law, University of Toronto). This project concentrates on a comparative study of new entrants to the legal profession in Quebec and Ontario. It will provide important information about ethnic minorities and women as they complete their articles and enter the practice of law. It will address issues of race and ethnicity and the way in which these factors affect entry to the profession, articles, fields of law, work settings and earnings.

C.1.5. Any of these projects may have the incidental effect of providing information as to how increased insurance levies are affecting younger women in the profession, particularly those with family responsibilities.

C.1.6. A major new study will take approximately fifteen months to complete.

C.1.7. It is recognized that the decision as to whether to proceed with any of these research projects ought not to be made until after the 1995 bencher election.

C.1.8. It is hoped that the Committee will be able to meet with Dr. Kay in June to discuss her proposals and to obtain a budget for the project.

C.1.9. Your Committee will be asking the Finance and Administration Committee to approve the carry-forward of the $25,000 (allocated for research projects) from the 1994-1995 budget so that it can be added to funds available in the 1995-1996 budget to provide adequate funding for a major research project of this nature. On receipt of the response from the Finance and Administration Committee, your Committee will bring the proposed carry-forward to Convocation for approval.

C.1.10. It is recognized that if the carry-forward for the specific purpose of conducting a major research project is approved, the new Committee appointed after the bencher election will not be bound to undertake the project. The intention is to have funds available if they decide to proceed.

C.2. REVIEW OF COMMITTEE PROGRAMS AND ACTIVITIES

C.2.1. Your Committee considered a first draft of a list of its programs and activities.

C.2.2. Consideration of the question "Who are the programs and activities intended to serve?" led to a discussion of the role of the Committee and a suggestion that an amendment of its terms of reference might be appropriate. The matter will be considered further at the Committee's next meeting.

C.3. FEDERATION OF LAW SOCIETIES: ANNUAL MEETING, WINNIPEG, AUGUST 1995: WORKSHOP ON WOMEN IN THE LEGAL PROFESSION

C.3.1. Your Committee considered a letter from Denise Bellamy, Vice-President of the Federation of Law Societies of Canada, pointing out that the workshop topic at the Federation's Annual Meeting in Winnipeg in August 1995 will be "Women in the Legal Profession."

C.3.2. Members of the Committee have been invited to suggest names of persons who might serve as panellists or facilitators for the workshop.

C.3.3. Your Committee will discuss with the Secretary whether it is appropriate to send a member of the Women in the Legal Profession Committee to attend the workshop.

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

P. Copeland
Chair

THE REPORT WAS ADOPTED

MOTIONS - COMMITTEE APPOINTMENTS

It was moved by Ms. Weaver, seconded by Ms. Graham THAT Madam Justice Kiteley continue as a member of the Special Committee on the Bicentennial.

It was moved by Ms. Weaver, seconded by Ms. Graham THAT Gerald Sadvari be appointed to the Family Rules Committee.

Carried

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

LEGAL EDUCATION COMMITTEE

Meeting of April 13, 1995

Mr. Epstein presented Item A.-A.4 re: Notices of Motion - Annual General Meeting, November 9, 1994 for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

THE LEGAL EDUCATION COMMITTEE asks leave to report:

The Committee met on Thursday, the 13th of April, 1995, at 10:30 a.m.

The following members attended: Philip Epstein (Chair), Susan Elliott (Vice-chair), Colin McKinnon (Vice-chair), Ian Blue, Lloyd Brennan, Tom Carey, Dean Donald Carter (Queen's University), Allan Lawrence, Joan Lax, Dean Marilyn Pilkington (Osgoode Hall Law School), Mohan Prabhu (non-Bencher member), Marc Rosenberg (non-Bencher member). Bencher Maurice Cullity also attended. The following staff attended: Marilyn Bode, Katherine Corrick, Brenda Duncan, Ronald Fallis, Marie Fortier, Mimi Hart, Ian Lebane, Margaret McSorley, Alexandra Rookes, Lynn Silkauskas, Sophia Sperdakos, Alan Treleaven.

A.
POLICY

A.1 BAR ADMISSION COURSE REVIEW SUBCOMMITTEE

A.1.1 The Bar Admission Course Review Subcommittee held meetings on each of the following dates: February 26, 1994, March 26, 1994, April 23, 1994, May 28, 1994, June 25, 1994, October 29, 1994, March 11, 1995 and April 8, 1995.

A.1.2 In addition to its own meetings, members of the Subcommittee held consultation meetings as follows: October 3, 1994 (meeting with representatives of the profession, judiciary and the law faculties), November 21, 1994 (meeting with Law Deans), December 9, 1994 (meeting with student representatives of Phase Three), December 19, 1994 (meeting with Toronto Section Heads), February 9, 1995 (meeting with Ottawa Senior Instructors), February 13, 1995 (meeting with Toronto students from Phase Three 1994), February 14, 1995 (meeting with London Senior Instructors), and March 21, 1995 (meeting with lawyers called in 1993 and 1994).

A.1.3 At its most recent meeting, the Subcommittee continued to examine a proposal for a new model of Bar Admission Course. Principal features of the proposed model, contained in the Bar Admission Course Review Subcommittee Report (pages 1 - 36), are as follows:

1) There would be a single teaching term, preceding articling, and running for approximately eight weeks.

2) The program would focus, in small group interactive format, on teaching and testing professional responsibility, practice management, loss prevention techniques, lawyering skills (including legal research, writing and drafting, advocacy, client interviewing, negotiation and alternate dispute resolution), and completion of client transactions.

3) The single teaching term would be followed by a year of articling, during which the students would write licencing examinations based on the Bar Admission Course Reference Materials.

4) Apart from skills tests, there would be no examinations during the teaching term.

5) The teaching term would feature a "how to" approach to the practice of law, and would expressly not be geared toward the licencing examinations.

A.1.4 Recommendation: It is recommended that

1) the Bar Admission Course Review Subcommittee Report be provided to the profession, law schools, law students and law related organizations,

2) the Bar Admission Course Review Subcommittee consult widely on the recommendations in the Report, and

3) the Bar Admission Course Review Subcommittee report further to the Legal Education Committee and Convocation with a fully detailed proposal and budget.

A.2 MANDATORY CONTINUING LEGAL EDUCATION SUBCOMMITTEE

A.2.1 At the two day meeting of the M.C.L.E. Subcommittee held on March 3 and 4, 1995, Subcommittee members discussed the appropriate content for and focus of the discussion paper to be presented to the Legal Education Committee.

A.2.2 The focus of the discussion was on

1) the evolution of the Subcommittee's mandate over the course of its deliberations to date,
2) the most meaningful context within which to discuss the issue of a mandatory continuing education component, and
3) the critical need to engage in further consultation with the Bar on the issues the Subcommittee is discussing.

A.2.3 The Discussion Paper and Executive Summary, accompanying this Agenda (pages 37 - 77), present the Subcommittee's view of its ongoing mandate, the process it considers appropriate to discharge that mandate, and the analysis it has done to date.

A.2.4 The Discussion Paper and Executive Summary also emphasize the consultation process that the Subcommittee has decided is essential to the validity of the process in which it is engaged.

A.2.5 Recommendation: It is recommended that Convocation approve:

1) the circulation of the M.C.L.E. Discussion Paper and Executive Summary to the profession, and
2) the consultation process recommended in Section VII of the Discussion Paper.

A.3 PROPOSAL FOR FINANCIAL ASSISTANCE TO BAR ADMISSION COURSE STUDENTS

A.3.1 At the April and May 1994 meetings of Convocation, the Legal Education Committee presented a proposal to provide additional assistance to needy students in the Bar Admission Course to alleviate financial hardship for the most needy. The proposal recognized the severe financial difficulties being experienced by some Bar Admission Course students as a result of increased tuition fees, mounting student loan debt, the recession, and the changing composition of the law school class, which includes single parents and students supporting families as well as single students without family support. The proposal recommended that $100,000 be allocated to the Bar Admission Course to enhance its existing bursary (grant) fund of $30,000. At that time the proposal was reduced from the original request of $300,000, recognizing the constraints under which the Priorities and Planning Subcommittee was operating. Student need beyond the $100,000 level was to be referred to the existing Law Society Student Loan Program. The $100,000 was to be allocated to the most financially needy students, many of whom, due to existing debt or other compelling circumstances, might not be able to repay a loan or might suffer so much hardship that their call to the bar could be affected. At that time the proposal was not accepted by Convocation.

A.3.2 At the March 24, 1995 meeting of Convocation, the proposed Bar Admission Course pilot projects in Kingston and in Windsor were considered. Convocation decided not to proceed with the pilot projects at this time. Convocation asked the Bar Admission Course Review Subcommittee to give the issues raised by the Kingston and Windsor students consideration in its deliberations, and asked the

Legal Education Committee to revisit the pilot project proposals at the earliest opportunity in the Fall term. A primary concern of students supporting the proposal is the additional cost to students who attend law school in a location in which the Bar Admission Course is not offered.

A.3.3 The pilot project proposals will be reviewed by the Committee in the Fall. As an interim measure to address the financial hardship experienced by students who must commute long distances to attend the Bar Admission Course teaching terms or make other costly arrangements for accommodation, the Committee is asked to revisit the proposal for student bursaries. The existing bursary fund is not sufficient to meet this special need, but an enhanced bursary fund could make one of its priorities the easing of the disadvantage experienced by students who suffer serious financial hardship as a result of the need to maintain two residences or meet exceptional costs of travelling to and from class.

A.3.4 The attached chart (pages 78 - 79) entitled "Bursary Proposal for 1995" is a re-design of the 1994 proposal. It is based on a supplemental fund of $100,000.

A.3.5 Recommendation: It is recommended that an enhanced bursary program be funded in the amount of $100,000 from the General Fund budget surplus.

A.4 NOTICES OF MOTION - ANNUAL GENERAL MEETING, NOVEMBER 9, 1994

A.4.1 The Articling Subcommittee and the Legal Education Committee have considered the three motions that passed at the Annual General Meeting of the Law Society on November 9, 1994. A copy of the notices of motion is attached. (page 80) A summary of the consultation process, the matters considered and the recommendations of the Articling Subcommittee and Legal Education Committee follow.

A.4.2 Background: The Notices of Motion were put forward by the Ad Hoc Committee of Unpaid and Unplaced Articling Students. Motions 1, 3 and 4 passed at the Annual General Meeting. Motion 2 was defeated. Therefore, Motions 1, 3 and 4 must be debated at Convocation within six months of the Annual General Meeting. The Articling Subcommittee would like, however, to work with the Equity Committee on these and other issues of mutual interest related to articling.

A.4.3 At its November 1994 meeting, the Articling Subcommittee discussed the Motions and considered how to proceed. The Subcommittee decided to make recommendations to the Legal Education Committee. The Subcommittee undertook to consult with students on the issues and obtain a legal opinion on whether the Law Society could make rules or regulations setting maximum hours of work and minimum rates of pay.

A.4.4 Consultation Process: The Subcommittee consulted widely, which included holding formal meetings with Phase Two (articling) and Phase Three students, and informal discussions with students and members of the profession. The Chair of the Legal Education Committee, the Chair of the Articling Subcommittee and staff met with Phase Three student representatives on December 9, 1994. Widely divergent views were expressed on the possibility of the Law Society regulating maximum hours of work and minimum rates of pay. Some students clearly agree with the views of the Ad Hoc Committee of Unplaced and Unpaid Articling Students; others do not.

A.4.5 The Chair of the Articling Subcommittee and Articling Department staff also met with articling student representatives and members of the Student Division of the C.B.A.O. on January 26, 1995. Students articling at downtown Toronto law firms were invited by the executive of the student division. The student division circulated a questionnaire, which is attached. (pages 81 - 82) The report on the consultations is attached. (pages 83 - 89)

A.4.6 MOTION 1: Set Maximum Hours of Work and Minimum Rates of Pay

1) Motion 1 requests that the Law Society consider the enactment of rules and regulations establishing maximum hours of work and minimum rates of pay for articling students pursuant to sections 62 and 63 of the *Law Society Act ("the Act")*.

2) Legal research on sections 62 and 63 of *the Act* has been completed to determine if the Law Society can set maximum hours of work and minimum rates of pay for articling students. A copy of the research memorandum from Elliot Spears of the Research and Planning Department of the Law Society, dated March 14, 1995, is attached. (pages 90 - 108)

3) Ms. Spears concludes that the Law Society does not have the power to make regulations establishing employment standards for articling students. This would include setting maximum hours of work and minimum rates of pay. A brief summary of her memorandum follows.

4) Ms. Spears suggests the Law Society's interest in the articling process extends to the educational component of articles, such as the tasks students can (or should) undertake. (See paragraph 6.3.3 of the memorandum.) Rules and regulations made under *the Act* must relate to the business and domestic "affairs of the Society". Employment standards of articling students do not relate to the "affairs of the Society", which Borins, J. in the *Law Society of Upper Canada v. Ontario (A.G.)* found to mean the professional or public business of the Society. (See paragraph 6.4.2 of the memorandum.)

5) The educational value of articling is therefore the business of the Society. Ms. Spears suggests that hours of work and rates of pay are matters of private contract between articling employers and students. The extent of impingement on the freedom of contract is a question of policy and not a question in relation to the administration and domestic affairs of the Society. (See paragraph 6.4.7 of the memorandum.) Furthermore, employment standards appear to be a matter of public concern, not a matter of administration or a domestic affair of the Law Society as the Ontario government has legislated in these areas. (See paragraph 6.4.8 of the memorandum.) The *Employment Standards Act* excludes students in training for any profession from the maximum hours of work and minimum rates of pay provisions.

6) In summary, it appears that because there is no specific delegation to the Law Society on the part of the legislature of the power to make rules or regulations in the area of employment standards for articling students, the Law Society has no jurisdiction to set maximum hours of work and minimum rates of pay.

7) The Chair of the Articling Subcommittee also wrote to the Director of Investigation and Research, Competition Act, Advisory Opinion Program on February 21, 1995. (page 109) The written opinion from that office dated March 23, 1995 is also attached. (pages 110 - 113) The position of the Director can be summarized by his statement in the first paragraph on page 3 of his opinion. He states: "...the setting of mandatory minimum wages would likely have the exclusionary effect of limiting the number of new lawyers entering the profession."

8) He continues in the fourth paragraph on page three:

> ...the proposed rules and regulations may have the effect of limiting the entry of new lawyers into the profession in the Province of Ontario which over the long term, may lessen unduly competition in the supply of legal services in particular geographic markets as well as specialty areas of practice. Under these circumstances, the Director could have belief on reasonable grounds to commence an inquiry under section 45 of the Act.

9) Therefore, even assuming the Law Society has the power to regulate in the employment standards area, to do so may be a violation of the *Competition Act*.

10) For purposes of the consultation process with the students and while the Articling Subcommittee was awaiting the legal opinions, it proceeded on the assumption that the Law Society had the power to regulate maximum hours of work and minimum rates of pay. The consultations with students revealed no consensus of opinion on these issues.

11) Students often said that the hours of work they maintain during their articles is their choice, not a requirement of their employers. It would appear that students are still driven by hire-back decisions. Furthermore, it may take students time to adjust to the law office environment. Some students may require more time to complete an assignment, whether they are at the start of the learning curve, or require a longer time to assimilate information and organize their workload. Students who are disabled may need more time to complete assignments. Setting maximum hours of work would hinder these students' ability to do an acceptable (or superior) job. It would also place additional pressure in what is already a pressured environment for students to complete the tasks in a limited period of time. This could conceivably have a negative impact on the learning environment. Some students expressed concern at the notion that the Law Society could effectively prevent them from trying to excel in their articles.

12) The ability to monitor any such requirements was also a subject of discussion. To make any such regulations effective, the Law Society would have to follow up in some way with articling employers. At a minimum, articling employers would be required to certify that their student(s) do not exceed the

maximum allowable hours. This would require significant additional paperwork for articling employers and the Law Society, and be an additional administrative burden for both parties. The administration of the educational requirements for articling is already considerable. It is anticipated that busy practitioners would not welcome this requirement. The Articling Subcommittee is aware of this and has taken much time over the last two years to ensure that the administrative requirements of articling reform are kept to an absolute minimum. There is a real concern that firms might hire unemployed junior lawyers rather than articling students if the burden becomes more extensive.

13) Monitoring the maximum hours of work would also disrupt the conduct of matters in the office. For example, would the articling principal have to dismiss the student in the middle of a client meeting when the maximum number of hours in a week had been reached?

14) To monitor minimum rates of pay, the Law Society would require information on the rates of pay for students from articling employers and students. Confidentiality of that information would be compromised.

15) Finally, staff resources in the Articling Department are already stretched. Additional staff would have to be hired to monitor any such regulations.

16) The Subcommittee believes, that in addition to the legal opinions, the disadvantages significantly outweigh the benefits of regulating maximum hours of work and minimum rates of pay.

17) The Subcommittee expects that the problem of unpaid positions is short term, primarily related to the sluggish economy. The economy appears to be slowly recovering. Members of the profession understand their obligation to pay a reasonable wage to students. The fact that the vast majority of students are paid, and that many are well paid, is evidence of this. Also, market forces continue to operate even in a sluggish economy to ensure students are reasonably compensated for their efforts. Students are not required to work on a voluntary basis. However, for some it is a viable option which the Subcommittee does not wish to foreclose. The Subcommittee believes that in the long term the marketplace will ensure that students are reasonably well compensated for their efforts.

18) The Subcommittee also considered whether it should, in lieu of regulations, establish policy statements or guidelines suggesting maximum hours of work and minimum rates of pay. It decided that it would prefer not to set guidelines. The Subcommittee believes a more effective way to alert principals to the Law Society's concerns is through the education of principals.

19) Recommendation: It is recommended that the Law Society not set maximum hours of work and minimum rates of pay for articling students. The Subcommittee further recommends that workload issues be raised in educational materials provided to principals.

A.4.7 MOTION 3: Cease Advertising Unpaid Articling Positions

1) Motion 3 recommends that the Law Society discontinue advertising on behalf of prospective articling principals who offer positions without pay.

2) The Subcommittee considered the consensus among students, which is that the Law Society should not advertise unpaid positions on behalf of prospective articling principals within private firms, as this may have the effect of encouraging unpaid positions. Most students suggested that unpaid positions be allowed. This is consistent with the current policy on unpaid positions, approved by Convocation. A copy of the policy is attached. (page 114) Students recognize that there may be a few practitioners and firms that do a large percentage of pro bono or legal aid work that could provide a quality articling experience. However, most private firms have billable work for which students could receive some compensation. Students expressed the view that the offer to establish an unpaid articling position within a private firm should ideally come from the student. The Subcommittee agrees.

3) The Subcommittee believes that if the Law Society's Placement Office discontinues providing information about firms and others prepared to take articled students on an unpaid basis, fewer students will obtain articles. The Subcommittee noted that most of such offers come from firms and members wishing to assist unplaced students to commence articles while they continue to seek a remunerated position. The Subcommittee believes the practice of unpaid articles will diminish as the market improves. In the meantime, the Subcommittee does not wish to take any action that would minimize the number of articling positions available.

4) Recommendation:

a) It is recommended that the Placement Office maintain an unpublished register of private firms that have expressed an interest in taking a student on an unpaid basis. This information would be provided to students on request only. The Subcommittee agreed that the existence of the register of unpaid positions should be advertised to students.

b) It is further recommended that the Law Society's Articling Vacancy List continue to advertise paid articling positions and unpaid positions with non-profit organizations (e.g. Community Legal Aid Clinics).

c) It is further recommended that students articling without compensation continue to be free to assign their articles upon reasonable notice to their current employer when a position offering compensation is found.

A.4.8 MOTION 4: Waiving-Refunding Tuition Fees for Students Articling at Community Legal Aid Clinics for Nominal Compensation or No Salary

1) Motion 4 recommends that the Law Society recognize the contribution and sacrifice made by students who article for no or nominal compensation at Community Legal Aid Clinics by waiving or refunding their Bar Admission Course tuition fees.

2) The Subcommittee considered the arguments in favour of the Motion, including that students who article for no or nominal compensation at Community Legal Aid Clinics perform a service to the community and the Law Society. The Subcommittee also considered the funding structure of the Bar Admission Course. Currently the two sources of funding (the Law Foundation of Ontario and student tuition fees) are the only ones available. Members of the profession are not expected to fund the Bar Admission Course. The Subcommittee believes a waiver of tuition fees for some students would necessitate an increase in student tuition for other students.

3) The consensus among students is that any tuition subsidy should be allocated on a "needs basis" so as to prevent those individuals who are on a sound financial footing from benefiting. Only one student surveyed by the C.B.A.O. Student Division was prepared to accept an increase in student tuition in order to fund a subsidy program.

4) The Subcommittee considered whether articling employers who hire students for no or nominal compensation should be required to fund the Phase Three tuition of their students. The Subcommittee is of the firm view that this would eliminate the articling positions with those employers.

5) The Subcommittee acknowledged the contribution of students who volunteer their time at community legal clinics. However, it did not believe the contribution should be recognized by effectively placing a tuition tax on other students. The Subcommittee noted that in the 1993-94 articling year the Society's Relief and Assistance Committee recognized the contribution made by students articling at the clinics without salary by making bursary funds available. Seven students were invited to apply to the fund. Four of the six applicants for assistance shared in an allocation of $23,000.

6) The Subcommittee also noted that the Bar Admission Course has a bursary program and a student loan program in place. Bursary decisions are made after a comprehensive review of an applicant's financial circumstances, including the student's articling salary, personal assets and spousal resources. The Subcommittee believes that students who article without salary should be considered with all students to determine eligibility for financial assistance from the Law Society.

7) On a principled basis, the Subcommittee does not wish to distinguish between students who article without salary in the clinics and those who article without salary in other non-profit settings.

8) Recommendation: It is recommended that students who article without salary or for nominal compensation, including those at Community Legal Aid Clinics, not be entitled to a tuition waiver, but continue on the basis of financial hardship to apply in the usual way for financial assistance from the Law Society.

A.5 GUIDELINES FOR 1995 ARTICLING INTERVIEWS

A.5.1 The Law Society receives reports from students that some lawyers conducting articling interviews ask questions that appear to contravene the Ontario Human Rights Code and Rule 28 of the Rules of Professional Conduct.

A.5.2 The Placement Office in conjunction with the Legal Education Committee and the Equity Committee published guidelines in 1993 and in 1994 to assist lawyers in reviewing their interview practices to ensure conformity to the ethical standards of the profession and with human rights legislation.

A.5.3 A draft document entitled "Guidelines for 1995 Articling Interviews" is attached. (pages 115 - 120) This document has been reviewed and revised in consultation with those who are developing educational material for the profession dealing with Rule 28 of the Rules of Professional Conduct.

A.5.4 The Legal Education Committee approved the Guidelines and also supports their being used to assist lawyers in interviewing summer students.

A.5.5 Recommendation: It is recommended that Convocation approve the Guidelines for 1995 Articling Interviews to apply to the recruitment of articling students in the summer of 1995.

B. ADMINISTRATION

There is no Regular Business and Administration to report this month.

C. INFORMATION

C.1 SUPPLEMENTAL EXAMINATION REQUESTS

C.1.1 A Phase Three 1994 Bar Admission Course student passed only the computerized Accounting examination and one of the eight written examinations during Phase Three. Accordingly, the student was required to write seven supplemental examinations. The student failed four of the seven supplemental examinations.

C.1.2 Sections 10(3) and 3(1) of the Requirements for Standing prevent the student from writing further supplemental examinations, and require completion of Phase Three in its entirety. Sections 10(3) and 3(1) read as follows:

> 10(3) A student who fails a supplemental examination may apply in writing to the Registrar for permission to write a further supplemental examination, but a student may write no more than three further supplemental examinations.
>
> 3(1) A student who does not satisfy the requirements for successful completion of Phase Three must repeat Phase Three in its entirety.

C.1.3 Based on difficult personal circumstances, the student asked to be permitted to write the four further supplemental examinations (Business Law, Criminal Procedure, Public Law, and Real Estate), and alternatively to be required to attend Phase Three and write examinations only in the four subjects not successfully completed.

C.1.4 Another Phase Three 1994 Bar Admission Course student asked for permission to write a third supplemental examination in Criminal Procedure, based on "unidentified abdominal pain" during the most recent sitting of the supplemental examination. The request is outside of section 10(1) of the Requirements for Standing. Section 10(1) reads as follows: "A student is not permitted a third attempt at a supplemental examination."

C.1.5 The Requirements for Standing do not allow exceptions to section 10(1), 10(3) and 3(1), based on the concern that a student, regardless of personal circumstance, who has demonstrated such significant weakness in Phase Three should be disentitled to write further supplemental examinations and should be required to repeat and pass the entire Phase Three program.

C.1.6 The Committee decided to deny the students' requests for relief from the application of sections 10(1), 10(3) and 3(1) of the Requirements for Standing.

C.2 DATA ON EMPLOYMENT OF GRADUATES OF THE BAR ADMISSION COURSE

C.2.1 A table depicting graduate placement results over an eight year period at the time of Call to the Bar is attached. (page 121) The number of students employed by their Call to the Bar in 1994-1995 is in line with overall averages. A significant shift, apparent in the 1993-1994 and the 1994-1995 results, is the decrease in the number of students reporting that they have been hired back by their articling firm, and the increase in the number of students reporting their employment status as "employed other". In part, this appears to be the result of increased numbers of students reporting at the Call that they intend to start up their own practice. Further analysis would be required to establish whether students follow through with this intention.

C.2.2 The attached chart (page 122), entitled "Data re: 1994 Graduates of the Bar Admission Course as at: March 23, 1995", depicts the employment status of 1994 graduates one year following their call to the bar.

C.2.3 The data indicates that 89% of 1994 graduates are employed. Of the 11% who are categorized as Not Working or Suspended, some are not currently seeking employment.

C.3 ARTICLING PLACEMENT UPDATE REPORT FOR THE 1995-96 TERM

C.3.1 The 1995 Bar Admission Course application form asks students whether they have secured an articling position.

C.3.2 As of April 12, 1995, 1177 applications for Phase One 1995 have been received. If enrolment reaches 1,200, applications on file will represent 98.08% of the incoming class.

C.3.3 985 students representing 83.69% of the class have secured an articling position. 192 students representing 16.31% are without articles.

C.3.4 Approximately one year ago, 1219 applications for Phase One 1994 had been received. At that time, 1003 students representing 82.2% of the class had secured an articling position while 216 students representing 17.7% of the class had not. By December 1994, 97% of the 1,270 students who sought articles in the 1994-1995 term had commenced articling while 31 students remained unplaced.

C.3.5 On March 9, 1995, the Director of Financial Aid and Placement, Mimi Hart, wrote to the students who continue to seek articles in the 1995-1996 articling year outlining the Law Society's articling placement program. Ms Hart's letter, excluding the enclosure, is attached (pages 123 - 126)

C.4 ARTICLING SUBCOMMITTEE

C.4.1 The Subcommittee met at 8:00 a.m. on March 31. In attendance were Marc Rosenberg (Chair), Philip Epstein, Mohan Prabhu, Jay Rudolph, Kathy Nedelkopoulos, and Susan So. Staff members attending were Marilyn Bode, Mimi Hart and Lynn Silkauskas.

C.4.2 The Subcommittee gave conditional approval to a further 38 applications from prospective articling principals for the 1994-95 articling term. To March, approximately 1600 members have been 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. Another member's application has been deferred pending receipt of additional information.

C.4.3 The Subcommittee also gave conditional approval to 115 applications from prospective articling principals for the 1995-96 articling term. To March, approximately 726 members have been approved to serve as principals for the 1995-96 articling term.

C.4.4 The Subcommittee gave special consideration to the applications of five members applying for the 1994-95 articling term. Four of the five applications were approved. One application has been deferred pending receipt of additional information.

C.4.5 The Subcommittee considered four policy items. The first was a consideration of articling placement issues. Mimi Hart provided updated statistics on 1994-95 articling placement. As at the March meeting of the Subcommittee 1,221 of the 1,269 or 96% of students enroled in the 37 B.A.C. have articling positions. Approximately 3%, or 44 students, still seek employment. Less than one percent of students (4) have not responded to several attempts by the Placement Office to ascertain their articling status. Of the 44 students, 18 have undertaken voluntary articling arrangements or are articling for very modest remuneration on the understanding that they will be released from their articling commitment on finding a paid position. Nine positions were on the Articling Vacancy list for 1994-95 at the end of March.

C.4.6 Mimi Hart also provided an update on 1995-96 articling placement. See item C.3.

C.4.7 The second policy item was the consideration of the three Motions passed at the Law Society's Annual General Meeting on November 9, 1994. See item A.4.

C.4.8 The third policy item was the consideration of a second draft of a script for the Articling Video. The Subcommittee had a useful discussion and made suggestions for improvements or additions to the script, particularly in the area of professional responsibility. It is expected that a final draft of a script for the video will be considered at the April meeting of the Subcommittee.

C.4.9 The fourth policy item was the consideration of a request for part-time articles from a student with an abridgment to four months. The proposal was to article for two months in the summer of 1995, complete Phase Three in the fall of 1995, and complete the remaining two months of articling immediately following Phase Three. The request was approved.

C.4.10 There were three information items. The first item related to corporations employing articling students. As the Committee has already been informed, a special Corporate Articling Subcommittee has been created to explore the creation of additional articling positions with corporations. The Chair of the Articling Subcommittee, Marc Rosenberg, and the Articling Director met with Dorothy Quann, Senior Counsel of Xerox Corporation, and other senior corporate counsel on November 23, 1994 to discuss how to proceed. It was agreed that the first step would be to conduct a telephone survey of corporations who might employ articling students or employ them in greater numbers. A short survey was developed and has been completed. The work of the Corporate Articling Subcommittee is ongoing.

C.4.11 The second information item related to rights of appearance before courts and tribunals for articling students. The Committee approved the Rights of Appearance Before Courts and Tribunals for Articling Students at its November 1994 meeting, with one modification to the recommendation of the Articling Subcommittee: it eliminated rights of appearance for students on Crown Wardship applications. It was subsequently suggested by the Legislation and Rules Committee that the Legal Education Committee consider whether to incorporate the rights in a regulation under the *Law Society Act*, as has been done by other law societies in Canada. That requires a review of the rights of appearance for articling students in other jurisdictions in Canada. The Articling Director has written to the law societies across Canada requesting a copy of their current rights of appearance for articling students. Most law societies have responded. The Articling Director will review the rights of appearance to determine whether any additional enhancement to the rights of Ontario students might result and whether it is advisable to include them in a regulation made by the Law Society. The Articling Director will bring this matter to the Articling Subcommittee for further consideration.

C.5 CONTINUING LEGAL EDUCATION REPORT ON COURSES

C.5.1 The Continuing Legal Education Report, prepared by the Director of Continuing Legal Education, Brenda Duncan, is attached. (pages 127 - 129)

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

P. Epstein
Chair

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

Item A.-A.1.3 - Copy of a proposal for a new model of Bar Admission Course. (pages 1 - 36)

Item A.-A.2.3 - Copy of the Discussion Paper and Executive Summary. (pages 37 - 77)

Item A.-A.3.4 - Copy of a chart entitled "Bursary Proposal for 1995". (pages 78 - 79)

Item A.-A.4.5 - Copy of a questionnaire circulated by the members of the Student Division of the C.B.A.O. (pages 81 - 82)

Item A.-A.4.5 - Copy of the report on the consultations as a result of the questionnaire. (pages 83 - 89)

Item A.-A.4.6 (2) - Copy of the research memorandum from Ms. Elliot Spears dated March 14, 1995. (pages 90 - 108)

Item A.-A.4.6 (7) - Copy of a letter from Mr. Marc Rosenberg, Chair Articling Sub-Committee to the Director of Investigation and Research Competition Act dated February 21, 1995. (page 109)

Item A.-A.4.6 (7) - Copy of a written opinion from R. W. McCrone, Chief, Division 'A' Criminal Matters Branch dated March 23, 1995. (pages 110 - 113)

Item A.-A.4.7 (2) - Copy of policy on unpaid articling positions. (page 114)

Item A.-A.5.3 - Copy of a draft document entitled "Guidelines for 1995 Articling Interviews". (pages 115 - 120)

Item C.-C.21 - Copy of a Table re: graduate placement results over an eight year period at time of Call to the Bar. (page 121)

Item C.-C.2.2 - Copy of a chart entitled "Data re: 1994 Graduates of the Bar Admission Course as at March 23, 1995". (page 122)

Item C.-C.3.5 - Copy of a letter from Ms. Mimi Hart, Director of Financial Aid and Placement to the Students seeking articles in the 1995-1996 articling year outlining the placement program. (pages 123 - 126)

Item C.-C.5.1 - Copy of the Continuing Legal Education Report prepared by Ms. Brenda Duncan. (pages 127 - 129)

It was moved by Ms. Moliner, seconded by Mr. Carey that there not be unpaid articling positions.

Lost

ROLL-CALL VOTE

Arnup	Against
Blue	Against
Bragagnolo	Against
Brennan	Against
Campbell	Against
Carey	For
Carter	Against
Copeland	Against
Elliott	Against
Epstein	Against
Feinstein	Against
Goudge	Against
Graham	Against
Hickey	Against
Lamont	Against
Lax	Against
Legge	Against
Lerner	Against
McKinnon	Against
Mewett	Against
Moliner	For
Murphy	Against
Murray	Against
O'Brien	Against
D. O'Connor	Against
S. O'Connor	Against
Palmer	Against
Peters	Against
Richardson	Abstain
Scott	Against
Sealy	Against
Somerville	Against
Strosberg	Against
Thom	Against
Topp	Against
Wardlaw	Against
Weaver	Against
Yachetti	For

It was moved by Mr. Yachetti but failed for want of a seconder that the firms that offer unpaid articling positions be published.

It was moved by Mr. Epstein, seconded by Ms. Lax that Item A.-A.4 be adopted.

Carried

Convocation took a brief ten minute recess.

RESUMPTION OF THE REPORT OF THE LEGAL EDUCATION COMMITTEE

Mr. Epstein presented Item A.-A.1 re: Bar Admission Course Review Subcommittee for Convocation's approval.

The Chair accepted a recommendation that more information be provided on licencing exams in the Bar Admission Course Review Subcommittee Report.

It was moved by Mr. Epstein, seconded by Ms. Lax that the Bar Admission Course Review Subcommittee Report be circulated to the profession for consultation and a further report be brought back to Convocation with a fully detailed proposal and budget.

Carried

Ms. Elliott presented Item A.-A.2 re: Mandatory Continuing Legal Education Subcommittee for Convocation's approval.

It was moved by Mr. McKinnon, seconded by Ms. Peters that the report be accepted for information only but not be distributed to the profession.

Lost

It was moved by Ms. Elliott, seconded by Mr. Epstein that the M.C.L.E. Discussion Paper and Executive Summary be circulated to the profession and other professional groups.

Carried

DISCIPLINE POLICY COMMITTEE

Meeting of April 13, 1995

Mr. Scott presented Item A.-A.1. re: Reporting Potential Claims by the Law Society to LPIC and Item A.-A.2. re: Report of the Sub-Committee on Electronic Transfers of Trust Funds for Convocation's approval.

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 Thursday, the 13th of April, 1995 at 1:30 in the afternoon, the following members being present:

D. Scott (Chair), C. Ruby, N. Graham, K. Howie, M. Martin, C. Ruby, S. Thom and M. Weaver were present.

M. Brown, J. Yakimovich, G. Macri, J. Varro, E. McIntyre, L. Cameron, J. Ratchford and J. Brooks also attended.

A.
POLICY

A.1. REPORTING POTENTIAL CLAIMS BY THE LAW SOCIETY TO LPIC -- CRITERIA FOR MAKING REPORTS

A.1.1 In October, 1994, Convocation approved the following recommendation of the Insurance Task Force:

> "...As a matter of protocol, the Complaints section should not give notice to LPIC unless specifically instructed in writing by the Chair or one of the Vice Chairs of the Discipline Policy Committee. This procedure will ensure that serious matters only are brought to LPIC's attention, eliminating notice in marginal cases, such as those within the solicitor's deductible limits."

A.1.2. Your Committee's assistance was sought in establishing criteria for determining appropriate cases for reporting potential negligence claims to LPIC which have come to the Society's attention during the course of investigations into complaints regarding a member's professional conduct.

A.1.3. The Committee considered a Background Paper prepared by staff which set out the relevant issues and outlined three options for possible recommendations for criteria in referring matters to LPIC. A copy of the Background Paper is Attachment "A".

A.1.4. The Background Paper noted that the objective of the recommendation of the Insurance Task Force was to eliminate the referral of potential claims where (a) the member would not likely have reported because of the likelihood of liability was remote; and (b) the level of the member's exposure would be under the deductible limit.

A.1.5. Your Committee considered and rejected the three recommendations outlined at pages 5 and 6 of the Background Paper, namely:

A. Limit the class to cases where the member's ability or willingness to self-report is in doubt;

B. Establish a class which encompasses a broad but clearly defined set of criteria such as the "type of cases" outlined at page 3 of the Background Paper; and

C. Set no limits with respect to type of case, thereby leaving it to staff and the Chair and Vice Chairs of the Discipline Committee to identify appropriate cases for referral to LPIC.

A.1.6. Members of your Committee expressed concern that in failing to refer a potential claim to LPIC, the public may be deprived of the right to make a claim against a lawyer. Your Committee noted that the individual circumstances of a client/complainant might warrant referral of the matter to LPIC.

A.1.7. Your Committee recommends that Convocation adopt a policy that reports of potential negligence claims will generally be made to LPIC but exceptions to that general rule shall, on a case by case basis, take into consideration:

(a) the relationship between the amount of the potential claim and the amount of the member's deductible; and

(b) the relationship between the amount of the potential claim and the means and economic circumstances of the client/complainant.

A.1.8. Your Committee also considered whether it would be appropriate for the Society notify clients/complainants of the existence of LPIC and its role. The Committee asked staff to prepare a draft standard letter for review at the next meeting.

A.2. REPORT OF THE SUB-COMMITTEE ON ELECTRONIC TRANSFERS OF TRUST FUNDS

A.2.1. The Sub-Committee on Electronic Transfers of Trust Funds presented its report to the Committee. The Sub-Committee was composed of Kenneth E. Howie, Q.C. (Chair), and staff members, G. Macri, W. Edward and D. Godden. The Sub-Committee was established to study electronic trust account transfer systems, identify security concerns, and recommend whether such systems should be permitted and, if so, upon what basis.

A.2.2. The Sub-Committee also reviewed the relevant sections of Regulation 708 governing the handling of trust funds to determine whether amendments to the Regulation would be required in order to permit such Electronic Transfers from trust accounts.

A.2.3. The Sub-Committee noted that over the past several years the banking industry has been encouraging their customers to conduct more of their banking electronically and to reduce their dependence on cheque writing. Most of the chartered banks have developed software packages which enable their business customers to bank electronically from their own premises. In order to bank electronically the customer has to have as a minimum a personal computer and a modem in order to communicate with the bank.

A.2.4. Issues considered by the Sub-Committee included:

a) The security and safety of client funds;

b) No trust cheque is issued or signed in this process;

c) No assurance that only the authorized person is making the entry to transfer funds from trust; and

d) The lack of an "audit trail".

A.2.5. The Sub-Committee took into account the following:

a) Protecting client trust funds;

b) Amending the Regulation to specifically permit electronic transfer of funds;

c) Amending the Regulation to ensure that only lawyers may authorize transfers, electronically or otherwise;

d) Providing guidelines to members as to the minimum level of security that is acceptable.

A.2.6. The Sub-Committee noted that the main objection to electronic banking systems were security concerns and the lack of an audit trail. The Sub-Committee considered these concerns valid and was reluctant to encourage the widespread use of such systems without first addressing those concerns. However, in order to accommodate those members who wish to transfer funds electronically from time to time, the Sub-Committee was prepared to recommend that Regulation 708 be amended to permit the electronic transfer of trust funds provided that certain procedures are complied with (outlined in A.2.7.) It was the Sub-Committee's view that these procedures would be the minimum steps required to permit and Electronic Transfer of funds, in order to minimize the risks associated with such transfers. It was the Sub-Committee's view that these steps would reduce the Society's security concerns and provide for an "audit trail".

A.2.7. Your Committee recommends the Convocation adopt the following proposals of the Sub-Committee:

That Regulation 708 be amended to permit the electronic transfer of trust funds provided that the following four procedures are complied with:

a) Money drawn from the trust account by electronic transfer shall be drawn only if a member has signed an electronic transfer requisition in a form prescribed by the Rules.

b) The Electronic Transfer system must require a separation of duties between the person entering the information into the computer and the person authorizing the transfer at the computer terminal (as distinct from the written electronic transfer requisition signed by the member), except when no one else but the member is available to enter the information into the computer and authorize the transfer.

c) The Electronic Transfer system must produce a confirmation in writing of the funds transferred containing the information required in a form prescribed by the Rules and signed by a member not later than the following banking day.

d) The transfer requisitions and confirmations shall be preserved for the same length of time as cashed cheques.

A.2.8. The proposed amendments to the Regulation and the proposed forms referred to in A.2.7. (a) and (c) shall be referred to the Legislation and Rules Committee for consideration.

A.3. REPORT OF THE SUB-COMMITTEE ON THE ACCEPTANCE, RETRIEVAL AND STORAGE OF MEMBERS' CLIENT FILES

A.3.1. The Sub-Committee on the acceptance, storage and retrieval of members' client files presented its report to the Committee. The Sub-Committee was composed of N. Graham (Chair), R. D. Manes and staff member, E. McIntyre. The Sub-Committee was established to consider the following questions:

a) Should the Law Society assume responsibility for client files of members who are no longer in practice?

b) If the answer to (a) is yes, then under what conditions?

c) Should the Law Society implement a fee payable by clients requesting their file(s) from off-site storage?

A.3.2. The Sub-Committee reported that the Staff Trustees routinely receive requests to take possession of closed client files from sole practitioners and members of small firms in situations such as: a member disappears or abandons a practice; the breakup of a small firm with disagreement over who will take responsibility for old files; the bankruptcy of a member in good standing who cannot pay file storage costs; the discipline of a member by disbarment or long term suspension or; the death of a member. Files may be abandoned whenever a (former) member anywhere in the province cannot or will not take responsibility for client files. The Staff Trustee may also accept files for storage at the Society's expense following a discipline matter.

A.3.3. Where a Trusteeship Order is obtained pursuant to s.43 of the Law Society Act, client files become the legal responsibility of the Law Society. In a few cases, local agents have agreed to store such files at their own expense. Aside from the terms of a Trusteeship Court Order under s.43, there is no statutory requirement whereby the Law Society is made or deemed to be made responsible for the property or client files of its members or former members.

A.3.4. The Sub-Committee reported that provision is made by the Office of the Staff Trustees for off-site storage at various locations across the province. Storage commenced by 1980-81 on a very limited basis but the volume has increased significantly in the 1990s. For example, in May, 1994 client files from over 80 former lawyers' practices were stored off-site by the Staff Trustees; they comprised about 1525 boxes. By March, 1995 the figure had risen to 2196 boxes off-site and 524 on-site. This represents about 68,000 old files and records. In the 1993-94 fiscal year only 65 individuals requested their files from off-site storage; being 0.170% of the total files then stored. Files are not shipped off-site until several months after the Staff Trustees have taken possession of them so most requests for urgent or pending files are received and dealt with prior to shipping off-site. As the requests for files are so few, the costs of long term, off-site storage are increasingly disproportionate to the value of these files.

A.3.5. The Sub-Committee reported that all storage and retrieval costs are borne by the Society. The 1993-94 cost was $13,079. For the fiscal year 1994-95, the budgeted amount is $10,000. This figure consists of the off-site, long-term storage costs only and does not take into account, for example, staff time, transportation and other retrieval costs. There has not been any mechanism for charging a client or party requesting a file from off-site storage. The Society also incurs all the costs of accessing the files, (re)boxing them for transport and transporting them to the Society, frequently, from dangerous or undesirable locations. The Society then incurs the further costs of organizing, reviewing and indexing the files prior to storing them at the Society, for on average a year, prior to shipping them off-site.

A.3.6. The Sub-Committee noted the following policy issues:

a) Except for trusteeship court orders, there is no policy or mandate requiring the Law Society to assume responsibility for client files of (former) members even for purposes of client confidentiality or offering former clients the opportunity to reclaim their files.

b) It could be argued that the Law Society, as guardian of client interests, should assume responsibility for indexing, boxing, transporting, storing and ultimately, disposing of client files, where there is a real or perceived risk to the clients' interests or confidentiality. The Sub-Committee assessed the annual cost in this role to be $60,000.00 on the basis that one law clerk could handle the workload under the supervision of the Staff Trustees.

c) Members are responsible for storage and disposition of their client files and the Law Society does not require that they be kept for any specific length of time. If the Society broadens its present practices to accept responsibility for members' client files in situations such as those described above, or to recover them from bankrupt estates of deceased or practising members, then additional full-time staff and additional budget increases are pre-requisites to enabling the Society to fulfil such a mandate.

d) In view of the increasing expenses incurred for off-site storage and retrieval, it may be reasonable to implement a nominal fee for each file retrieved from off-site for a former client and member's representatives other than the Lawyers Fund for Client Compensation so long as the cost reimbursement system continues.

A.3.7. Your Committee considered the report of the Sub-Committee and approved the current practice of accepting client files for storage and retrieval.

A.3.8. Your Committee discussed the length of time for which files should be stored, whether the files are received pursuant to a Trusteeship Order or otherwise. The Committee considered, and rejected as inefficient, the proposal that files obtained other than by a Trusteeship Order be maintained in storage for a period of 5 years after expiry of 5 years from the date of the last request for a client file from a practice or eight years from the date of acceptance whichever first occurs.

A.3.9. Your Committee discussed the fee to be charged for the retrieval of files. Your Committee agreed that it was appropriate that the actual cost of retrieval be charged but that discretion be exercised to waive the fee where appropriate.

A.3.10 Your Committee recommends that Convocation adopt the following recommendations in respect of acceptance, retrieval and storage of client files:

a) Where the Office of the Staff Trustee obtains members' client files pursuant to a Trusteeship Court Order that off-site storage and retrieval be maintained pursuant to the time specified in the order, and in the absence of a specified time, for a period of 5 years from the date of the Order following which the members' client files should be destroyed.

b) Where the Office of the Staff Trustee obtains members' client files other than by a Trusteeship Court Order that off-site storage and retrieval be maintained for a period of 5 years.

c) That the existing practice of the Office of the Staff Trustees be continued with the Trustees exercising their discretion, generally by declining acceptance of client files other than in formal trusteeships cases, and where practicable, practising members in the same legal community may be approached and encouraged to assume custody of such files.

d) That a fixed fee of $40.00 per file recovered be charged by the Office of the Staff Trustees to those clients and member representatives whose file(s) is/are retrieved from off-site storage as a means of recovering the costs of storage and retrieval with discretion by the Staff Trustees to waive or reduce the charge if the client is unable to afford it. Provided that the fee shall be waived in respect of file requests from the Lawyers Fund for Client Compensation so long as the cost reimbursement system from the Lawyer Fund continues.

B. ADMINISTRATION

No items.

C, INFORMATION

C.1. AUTHORIZATION OF DISCIPLINE CHARGES

C.1.1. Once a month, the Chair and Vice-Chairs of your Committee meet with staff to consider requests for formal disciplinary action against members. The following table provides a summary of Complaints authorized in 1995.

Total number of charges authorized to date in 1995	
January	30
February	45
March	45
April	36
TOTAL	156

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

D. Scott
Chair

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

Item A.-A.1.3. - Copy of Background Paper re: Reporting Potential Claims by the Law Society to LPIC - Criteria for making Reports. (Attachment "A", pages 1 - 6)

It was moved by Mr. Strosberg, seconded by Mr. Wardlaw that the item re: Reporting Potential Claims be deferred until the LPIC Board has had an opportunity for consultation.

Lost

It was moved by Mr. Scott, seconded by Mr. Howie that Items A.-A.1. and A.2. be adopted.

Carried

THE REPORT WAS ADOPTED

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Meeting of April 13, 1995

Mr. Ruby advised that Item A.-2. re: Revisions to Forms 4 and 5 be withdrawn.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

Your Committee met on Thursday, the 13th of April, 1995, at 10:30 a.m., the following members being present: N. Graham (a Vice-Chair in the Chair), D. Murphy, S. Thom and R. Wise; J. Yakimovich, S. Hickling and D. McKillop (secretary) also attended.

A. POLICY

1. DE MINIMIS RULE WITH RESPECT TO CLAIMS TO THE FUND

At the March 1995 Committee meeting, staff presented a proposal concerning the need for a *de minimis* rule in order to concentrate valuable and limited resources on larger claims. This problem appears most often as a result of work performed by the Office of the Staff Trustee. When that office takes control of a solicitor's practice, it is routinely discovered that large numbers of closed files have never been reported out. The Staff Trustee will retain counsel to complete the reports to clients and it is sometimes found that small trust balances remain owing to the client or disbursements need to be made on their behalf; disbursements for which the client has already paid the lawyer. Typically, there are no funds in the trust account to cover these relatively small obligations.

It was decided at the March meeting to initiate a pilot project whereby the Staff Trustee, having already conducted an investigation and discovering a small trust shortage ($500.00 or less), would have the affected client fill out a simplified application form. Once all the affected clients of a particular practice had done this, an omnibus proposal recommending a grant would be placed before the Review Sub-Committee for determination. Thereafter, the grant would be processed in the usual manner.

Following the March meeting Compensation Fund staff reflected on the decision and decided that the simplified procedure would result in minimal resource savings. As a result, the proposed procedure was once again discussed at the April meeting. There, members of the Committee clarified their March decision stating that approval of the Review Sub-Committee would no longer be required for proposed grants of less than $500.00. Staff were of the opinion that this would greatly assist in streamlining the procedure for processing small dollar claims.

IT IS RECOMMENDED that staff continue with the pilot project for processing Lawyers Fund For Client Compensation claims of $500.00 or less. As long as the staff lawyer responsible for processing the claim is of the opinion that it meets Compensation Fund guidelines, the approval of the Review Sub-Committee to make such a grant is not required. In all cases, notification of the intended grant will still be made to the dishonest member or former member.

Approved

2. REVISIONS TO FORM 4 AND FORM 5

As is noted in the Information section of this report, revised forms for annual filing have been mailed to the membership. Included in the package are revised Forms 4 and 5.

Form 4 sets out the instructions of clients to lawyers relating to mortgages or charges on real property. Form 5 is a report to the client on the mortgage investment. Both forms are required in all private mortgage transactions whether or not the mortgage was arranged by the member.

Near the top of the current Form 4, a caution statement to clients appears which states "Losses on this mortgage investment will not be covered by the lawyer's negligence/malpractice insurance policy". Form 4, section C, question 2 and Form 5, section B, question 4 contain similar provisions indicating that the client has been advised that "...any losses incurred as a result of investing in this mortgage, regardless of cause, are not covered by my/our lawyers' negligence/malpractice insurance policy" (emphasis added).

Following receipt of the new forms, some members have contacted the Society concerned that these statements are too broad and may unduly alarm clients. It has been suggested that if the member did not "broker" the mortgage, then it is not necessarily true that errors and omissions insurance will not be available should problems result. Your Committee is of the opinion that the members' concerns are valid and that the current wording is too restrictive.

IT IS RECOMMENDED that members be advised that if they are satisfied they did not "broker" the subject mortgage, the following amendments to Forms 4 and 5 be permitted. The amendment to the Form 4, Caution may be made by striking out or deleting the word "will" and substituting the word "may". The amendments may be made to Form 4, section C, question 2 and Form 5, section B, question 4 by striking out or deleting the words "are not covered" and substituting the words "may not be covered". The Committee further recommends that this decision be brought to the attention of the membership by appropriate means and that subsequent printings of the Forms 4 and 5 reflect this change.

Approved

Note: Item withdrawn

B.

ADMINISTRATION

1. NEW STAFF LAWYER HIRING

Janet Brooks, our new full-time staff lawyer, commenced her employment with the Fund effective Monday, April 10th 1995.

Noted

C.

INFORMATION

1. REVISIONS TO FORMS 4 AND 5; SCHEDULE A TO FORM 4; AND SCHEDULE A TO FORM 3

The amendments to Forms 4 and 5, Schedule A to Form 4 and Schedule A to Form 3 were adopted by Convocation on February 24, 1995. Samples of the new forms together with an explanatory note drafted by staff were mailed to the profession in the first week of April. A notice concerning the revised forms will also appear in the next addition of the Adviser.

Noted

2. STAFF MEMORANDA

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

Approved

3. A copy of the Financial Summary as of February 1995 is attached. (Pgs. C1 - C2)

Noted

4. Accounts approved by staff in March amounted to $6,381.

Noted

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

C. Ruby
Chair

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

Item C.-2. - Copy of Schedule "A" re: Grants approved by the Review Committee and by the Lawyers Fund for Client Compensation Committee Thursday, April 13, 1995. (Schedule "A")

Item C.-3. - Copy of the Financial Summary as of February 1995. (pages C1 - C2)

It was moved by Mr. Ruby, seconded by Ms. Graham that the balance of the Report be adopted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:40 P.M.

The Treasurer and Benchers had as their guests for luncheon Madam Justice Kiteley, Mr. Justice James Spence and Madam Justice Sandra Chapnik.

CONVOCATION RECONVENED AT 2:20 P.M.

PRESENT:

The Treasurer, Arnup, Bastedo, Blue, Bellamy, Brennan, Campbell, Carey, Carter, R. Cass, Copeland, Cullity, Elliott, Epstein, Feinstein, Finkelstein, Goudge, Graham, Hickey, Lamont, Lawrence, Lax, Legge, Levy, McKinnon, Moliner, Murphy, Murray, O'Brien, S. O'Connor, Palmer, Peters, Richardson, Scott, Sealy, Somerville, Thom, Topp, Wardlaw, Weaver and Yachetti.

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AGENDA - Reports or Specific Items requiring Convocation's Consideration and Approval

BOARD OF LAWYERS PROFESSIONAL INDEMNITY COMPANY

Mr. Strosberg presented Item A.-A.1 re: LPIC's Board of Directors and Item A.-A.2 re: Insurance Issues, for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BOARD OF LAWYERS' PROFESSIONAL INDEMNITY COMPANY begs leave to report:

The Board of Directors last met on April 12, 1995.

The current members of the Board are Messrs. Strosberg (Chairman), Feinstein, Murray, Wardlaw, Bastedo, Heins and Mesdames Elliott and Palmer.

A.
POLICY

A.1 LPIC'S BOARD OF DIRECTORS

A.1.1 LPIC's Board of Directors has considered the remuneration of Directors and recommends that a by-law be implemented paying Directors who are not Benchers or employees of LPIC as follows:

(i) $3,000 retainer per annum, paid half-yearly to all outside Directors;

(ii) $500 per full day and $250 per half-day or less for each outside Director in attendance at a meeting of the Board of Directors or Committee thereof.

A.1.2 LPIC's Board of Directors is pleased to advise that directors and officers insurance has now been arranged for its Board of Directors in the amount of $15,000,000 to be effective December 1, 1994. Until the directors and officers insurance policy was put into effect, outside directors would not sit on LPIC's Board.

A.1.3 LPIC's Board of Directors has considered the resumes and qualifications of the following individuals and intends to appoint them to its Board of Directors with the approval of Convocation.

Felicia Salomon	-	barrister and solicitor, presently Vice-President and counsel of Continental Insurance Corporation. Ms. Solomon was nominated by the Canadian Bar Association and was previously appointed to LPIC's Board of Directors, however, she resigned pending the placement of the Directors' and Officers' Insurance.
Robert J. McCormick	-	presently consulting and former President of Chateau Insurance Company and past Chair of the Insurance Bureau of Canada.
Ian Croft	-	chartered accountant, senior Vice-President and Treasurer of the Woodbridge Company Ltd., the holding company for Thompson Corporation, and a former member of the Board of Directors of the Canadian General Insurance Group.
William Holbrook	-	consultant in the field of insurance and reinsurance and formerly President and Chief Operating Officer of Scotish & York Insurance Company.
Roderick Sonley	-	barrister and solicitor, nominated by the County & District Law Presidents' Association.
Douglas Cutbush	-	nominated by the Advocates' Society, presently consulting with respect to claims management, recently retired from Gerling Global Insurance Company where he was Senior Vice-President and Claims Manager.

A.1.4. The Board of Directors of LPIC recommends that the indemnity agreement presently in place whereby the Law Society indemnifies bencher directors and employee directors remain in place for bencher directors and employee directors but not outside directors. The indemnity will be amended so as to clarify that it only will be applicable excess of any collectible directors and officers insurance.

A.1.5. LPIC's Board considered a number of issues surrounding the composition of its Board and procedures to nominate directors and wishes to advise Convocation that it will come forward at a subsequent meeting with recommendations in this regard. A full directors' policy should be in place prior to LPIC's annual meeting in November of 1995 when the current Board would be due for re-consideration.

A.2. INSURANCE ISSUES

A.2.1 Vicarious Liability

The Task Force's intention was that a $400 surcharge for 1995 would apply to all lawyers other than sole practitioners. The documentation implementing the insurance program for 1995 has been interpreted by some members to mean that the "vicarious liability surcharge" is not applicable to them by reason of their contractual relationship with the firm with which they practice. This is particularly true of employed lawyers and associates. In order to make the application of this levy surcharge uniform and in accordance with the Task Force report, it is proposed to amend the LPIC Policy to clearly state that for the year 1995 every lawyer in private practice must pay the vicarious liability surcharge of $400, save and except those lawyers who are sole practitioners. "Sole practitioner" will be defined in the endorsement as a lawyer who practices on his or her own without partners, associates or employed lawyers.

A.2.2 Tail Levy

Considerable discussion has taken place with respect to the tail levy or premium which was to go into effect for those lawyers retiring after June 30th, 1995. Having regard to the fact that discussions are taking place with respect to substantial changes to the insurance program for 1996 and given that a minimal amount of premium would be raised by reason of the tail levy in 1995 it is proposed that Convocation delay the implementation of the tail levy until a date not earlier than January 1, 1996. This will give additional time to consider who should pay the tail levy, and in what circumstances having regard to the 1996 insurance program.

A.2.3. Territory Provision

Part II(a)(ii) of the insurance policy reads as follows:

The insurance afforded by this policy applies:

(ii) to the performance of PROFESSIONAL SERVICES outside of Canada where such services are performed with respect to the practice of the Law of Canada, its provinces and territories, and where such services occupy less than ten percent (10%) of an INSURED'S time docketed or gross billings for PROFESSIONAL SERVICES in each calendar year.

This section should be amended as a result of concerns expressed by a number of firms (particularly those practicing immigration law) to the effect that it was difficult for them to appropriately determine where they were actually providing their services. Accordingly, it is recommended that Convocation approve amendments to the policy so as to include coverage even though more than 10% of the insured's time might be docketed or billed outside of Canada provided that a claim or lawsuit against the insured member is commenced in Canada and the issue of liability and damages are determined and assessed pursuant to the laws of Canada or a Province thereof by a Court in Canada. This solution was viewed as acceptable by those who raised the issue.

A.2.4 The County & District Liaison Committee wrote to LPIC regarding Manitoba lawyers who are also members of the Ontario Bar who are engaging in real estate practice in Ontario on a regular basis.

LPIC has written the Manitoba Law Society and been advised that as long as the lawyers in question are resident in Manitoba then they are covered under the Manitoba insurance program. This exempts these lawyers from the real estate transaction levy surcharges since under Rule 50 they are not required to pay the insurance levy by reason of their extra-provincial residence and their enrolment in another provincial insurance program. An amendment to Rule 50 would be required requiring lawyers insured under another provincial insurance program to pay the Ontario insurance levies when practising in Ontario if this concern is to be addressed.

B.1 ADMINISTRATION

B.1.1 Given that LPIC and the LSUC have agreed that effective June 1, 1995 all administrative responsibility for the professional liability insurance program will move to LPIC including responsibility for all aspects of insurance levy collection, investment of the LSUC's Errors & Omissions Fund and all claims administration. LPIC's Board of Directors has authorized LPIC to lease new space to accommodate the additional personnel required as well as to install new computer software and hardware. The LSUC is no longer a signatory to LPIC's lease and by the end of 1995 LPIC will no longer utilize the LSUC's computer systems.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 1995

H. Strosberg
Chair

It was moved by Mr. Strosberg, seconded by Mr. Feinstein that Items A.-A.1 and A.2 be adopted.

Carried

It was agreed that the Board of Directors reconsider the year-end issue involving the gross income levy.

THE REPORT WAS ADOPTED

LEGAL EDUCATION COMMITTEE (cont'd)

Mr. Epstein presented Item A.-A.3 re: Proposal for Financial Assistance for Convocation's approval.

It was moved by Mr. Epstein, seconded by Mr. Somerville that the bursary program be funded in the amount of $100,000 from the surplus of the General Fund budget.

Carried

It was moved by Mr. Epstein, seconded by Ms. Lax that the balance of the Report be adopted.

Carried

THE REPORT WAS ADOPTED

FINANCE AND ADMINISTRATION COMMITTEE

Meeting of April 13, 1995

Mr. Bastedo presented Items B.-4., 5., 6., and 7. re: Suspensions for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The FINANCE AND ADMINISTRATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of April, 1995 at 10:30 a.m., the following members being present: T.G. Bastedo (Chair), R.W. Murray (Vice Chair), J.J.Wardlaw, R.W. Cass, C. Curtis, A. Feinstein, P. Furlong, K. Howie, B. Pepper, and M. Weaver. Staff in attendance were R. Tinsley, M. Angevine, D. Crack, D. Carey, M. Farrell and L. Johnstone.

B.

ADMINISTRATION

1. FINANCIAL REPORT

The Director of Finance presented the highlights memorandum for the General Fund and the Lawyers Fund for Client Compensation for the 8 months ended February 28, 1995. [pages 4 - 5]

Approved

2. RECOMMENDATION FOR THE 1995/96 ANNUAL FEE
(REPORT OF THE PRIORITIES AND PLANNING SUBCOMMITTEE)

A report from the Priorities and Planning Subcommittee will follow under separate cover.

3. L.S.U.C./L.P.I.C. ADMINISTRATION ISSUES

A motion was made to retain Mr. Lorie Waisberg, Q.C. of Goodman, Phillips & Vineberg as legal counsel to the Law Society to assist with legal and administrative issues arising from the separation of LPIC from the Law Society.

Approved

4. SUSPENSION OF MEMBERS - LATE FILING FEE

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

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

The Committee was asked to recommend that the rights and privileges of these members be suspended on April 28, 1995 if the late filing fee remains unpaid on that date.

Approved

Note: Motion, see page 445

5. SUSPENSION OF MEMBERS - N.S.F. CHEQUE

There are members who paid their Annual Fees or their Errors and Omissions Insurance levies with cheques which were subsequently dishonoured by the bank.

The Committee was asked to recommend that the rights and privileges of these members be suspended by Convocation on April 28, 1995 if the fees or levies remain unpaid on that date.

Approved

Note: Motion, see page 445

6. SUSPENSION OF MEMBERS - ARREARS OF ANNUAL FEES

There are members who have not paid all of their 1994/95 annual fees of which the second instalment was due on January 1, 1995. Two notices have been sent.

The Committee is asked to recommend that the rights and privileges of these members be suspended by Convocation on April 28, 1995 effective May 1, 1995 if the annual fees remain unpaid on that date.

Note: Motion, see page 446

7. SUSPENSION OF MEMBERS - ERRORS AND OMISSIONS LEVY

There are members who have neither paid their Errors and Omissions Insurance Levy nor filed a claim for exemption for the period January 1 to June 30, 1995. Two notices have been sent.

The Committee is asked to recommend that the rights and privileges of these members be suspended by Convocation on April 28, 1995 effective May 1, 1995 if the members have not complied with the requirements of the Errors and Omissions Insurance Plan on that date.

Note: Motion, see page 446

C.
INFORMATION

1. LAW SOCIETY EMPLOYEE PENSION PLAN - REVIEW OF INVESTMENT ADMINISTRATION MANAGEMENT

At its February meeting, the Committee considered the report of the Staff Pension Committee and requested that the estimated cost of the transfer to a new carrier be determined. The best cost estimate Standard Life could provide was $100,000 (representing costs to administer "guaranteed funds" which might remain at Standard Life for up to five years).

Subsequently, Standard Life requested a further meeting with the Staff Pension Committee to advise of changes now made to their systems which they were confident would satisfy the Society's needs for improved employee information and diversity of investment options.

The Pension Committee met with the Standard Life representatives, including not only the current service representative, but also, the Toronto Regional Manager, the Senior Vice-President, Investments, and Senior Vice-President, Customer Service, (the latter two individuals being from Standard Life's head office in Montreal). Their presentation included an update on the funds which Standard Life will offer. The investment funds offered will include, in addition to an expanded number of their own "internally" managed funds, a number of "externally" managed funds such as Trimark, Mackenzie, etc., as well as information about the newly constituted "Retirement Education Group". This group comprises professional financial planners and advisors, now hired, who will provide extensive assistance to plan members by reviewing the member's current pension status, assisting with general financial planning and, where appropriate, retirement planning.

Standard Life was asked to commit to when and how they would meet each of a series of criteria developed by the Committee. Those commitments have been received in writing (letter attached).

The rates and fees recommended by Standard are competitive with those set out by Canada Life. (The Committee also asked Canada Life to update their proposal to ensure that there had been no change to their proposal which would affect our decision.)
These issues were discussed at meetings held on Monday, April 10, 1995 with staff. By a virtually unanimous vote, it was resolved that the pension administration and investment services remain with Standard Life, but that this commitment be subject to a "performance review" at the end of one year.

Therefore, the Staff Pension Committee recommends that Standard Life be retained as the Pension Administrator and that contracts be drawn to reflect the changes set out in the Standard Life commitment letter of March 29, 1995.

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:

May 10, 1995	Medico-Legal Dinner Convocation Hall
May 11, 1995	County & District Association Convocation Hall
May 17, 1995	Lawyers Club Convocation Hall
May 26, 1995	Osgoode Law School Convocation Hall Noted

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

T. Bastedo
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 April 13, 1995 re: February 1995 Financial Statement Highlights. (pages 4 - 5)

Item C.-1. - Copy of letter from Mr. Tom McCartney, Senior Group Pension Consultant and Mr. Robert R. Coyle, Regional Group Manager to Mr. Peter Beca dated March 29, 1995 re: Law Society of Upper Canada - Gr. P.W. 73931.

Items B.-4., 5., 6., and 7. were amended by changing the effective date of suspensions from April 28, 1995 to May 12, 1995.

MOTION TO SUSPEND - LATE FILING FEE

It was moved by Mr. Bastedo, 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 May 12, 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

(see list in Convocation file)

MOTION TO SUSPEND - N.S.F. CHEQUES

It was moved by Mr. Bastedo, seconded by Mr. Feinstein THAT the rights and privileges of each member who paid the Annual Fees or the Errors and Omissions Insurance Levy with cheques which were subsequently dishonoured by the bank and whose name appears on the attached list be suspended from May 12, 1995 and until the necessary fee or levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND - ANNUAL FEES

It was moved by Mr. Bastedo, seconded by Mr. Feinstein THAT the rights and privileges of each member who has not paid all of the annual fees for 1994-95 and whose name appears on the attached list be suspended from May 12, 1995 and until their fees are paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

MOTION TO SUSPEND - ERRORS AND OMISSIONS INSURANCE LEVY

It was moved by Mr. Bastedo, seconded by Mr. Feinstein THAT the rights and privileges of each member who has neither paid the Errors and Omissions Insurance levy which was due on May 12, 1995 nor filed an approved application for exemption from coverage and whose name appears on the attached list, be suspended from May 12, 1995 and until an application for exemption has been approved or the necessary levy has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(see list in Convocation file)

1995/1996 BUDGET AND ANNUAL FEE (Item B.-2.)

Mr. Feinstein presented the recommendation for the 1995/96 Budget and Annual Fee as set out in the Report of the Priorities and Planning Subcommittee.

(Copy of Priorities and Planning Committee Report in Convocation file)

It was moved by Mr. Epstein, seconded by Ms. Elliott that $200,000 be taken out of the surplus fund and be used for Professional Standards and the balance raised by the levy.

Carried

It was moved by Mr. Topp, seconded by Mr. Blue that Convocation restore the $35 cut from the County Law Library levy.

Carried

It was moved by Mr. McKinnon, seconded by Ms. Elliott that the $14 requested by the Professional Standards Committee be approved.

Not Put

It was moved by Mr. Feinstein, seconded by Mr. Brennan that the Budget as amended be adopted.

Carried

THE REPORT AS AMENDED BE ADOPTED

RESEARCH AND PLANNING COMMITTEE

Meeting of April 13, 1995

Mr. Brennan spoke to Item A.-A.1. re: Objectives and Goals Conference.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The RESEARCH AND PLANNING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of April, 1995, at 8 a.m, the following members being present: L. Brennan (Chair), F. Carnerie, A. Feinstein, The Hon. A. Lawrence, R. Murray, H. Sealy, M. Somerville.

Staff: A. Brockett, E. Spears.

A. POLICY

A.1. OBJECTIVES AND GOALS CONFERENCE

A.1.1. Over recent months, your Committee has reported to Convocation that it was planning an Objectives and Goals Conference, to be held in October 1995, as the culmination of the program review exercise currently being undertaken by all committees. The purpose of the conference would be to adopt objectives and goals for Convocation's 1995-1999 quadrennial term.

A.1.2. The Committee has requested a sum of $50,000 in its 1995-1996 budget to provide for the conference.

A.1.3. A number of questions have arisen, raising doubts as to whether it is sensible to proceed with plans for an Objectives and Goals Conference in October 1995. The questions include:

A.1.3.1. Can a worthwhile Objectives and Goals Conference be held before the current review of governance and operations is completed?

A.1.3.2. Should issues of Law Society infrastructure - in particular the number of standing committees and their mandates - be settled before an Objectives and Goals Conference is held?

A.1.3.3. Is there an adequate commitment, on the part of Convocation, to holding an Objectives and Goals Conference in October, given the variety of other initiatives currently under way (governance review, management review, search for a Chief Executive Officer, committee program review)?

A.1.3.4. Will the fact that other reviews are under way allow benchers and staff to commit the resources, time and energy that will be needed if the Objectives and Goals Conference is to be successful?

A.1.3.5. Is there sufficient co-ordination of the program review exercise to ensure that a series of compatible reports will be available (one from each committee) in time for an Objectives and Goals Conference in October?

A.1.3.6. Are sufficient resources being allocated to the program review exercise (indeed, are sufficient resources available?) to ensure that it will produce results and reports adequate for a meaningful Objectives and Goals Conference?

A.1.3.7. Will newly elected benchers be sufficiently familiar with the various operation of the Law Society to permit them to play a significant part in a goal-setting exercise in October 1995?

A.1.4. Your Committee considered these questions and reached the following conclusions:

A.1.4.1. The Objectives and Goals Conference must take place before final decisions are made about the infrastructure of the Law Society. The Society must decide what it plans to do before deciding how to do it: structure must serve programs, not the other way round.

A.1.4.2. Committees have been asked to complete their lists of programs and activities by May. The next step will be to evaluate those programs in light of the Role Statement. It should be possible for every committee to complete the evaluation by September. Adequate material for an Objectives and Goals Conference should therefore be available by the fall.

A.1.4.3. More important than the evaluation of existing programs will be the proposals for new programs and activities to implement the Role Statement. The most significant feature of the conference will be decisions to initiate new programs.

A.1.4.4. The Objectives and Goals Conference ought not to be delayed beyond November. A conference in the fall of 1995 will be useful for new benchers. A four-year plan must be adopted before Convocation is too far into its four-year term.

A.1.4.5. Convocation should be asked to give a clear endorsement of the importance of the conference.

A.1.4.6. An Objectives and Goals Conference which adopts a four-year plan will need to be followed by decisions as to the structures required to implement the plan.

A.1.5. Recommendations

Your Committee recommends:

A.1.5.1. That Convocation approve the proposal to proceed with plans for holding an Objectives and Goals Conference no later than November 1995 and, in any event, before decisions as to the structure of the Law Society are made.

A.1.5.2. That Convocation acknowledge,

(a) the importance of the conference; and

(b) the need for a significant commitment of time and energy to the program review process by benchers, committees and staff if the conference is to be successful.

A.2. DISPUTE RESOLUTION IMPLEMENTATION SUBCOMMITTEE

A.2.1. Shortly after Convocation adopted the report of the Dispute Resolution Subcommittee (February 1993), a subcommittee was established to implement the recommendations of the report.

A.2.2. A number of recommendations in the report concerned the Rules of Professional Conduct.

A.2.3. The Dispute Resolution Implementation Subcommittee has now completed its examination of the recommendations concerning the Rules of Professional Conduct. A report from the Subcommittee on this matter will be found at appendix A.

A.2.4. The recommendations of the Subcommittee may be summarized as follows:

A.2.4.1. The Subcommittee proposes that the commentaries to Rule 3 (Advising Clients) and Rule 10 (The Lawyer as Advocate) remain unchanged.

A.2.4.2. The Subcommittee proposes that the Professional Conduct Committee be asked to consider a new Rule of Professional Conduct setting out the duty of the lawyer to advise clients about alternatives to litigation. The text of the draft rule is as follows:

Responsibility to Advise Clients of Alternatives to Litigation

1. *The lawyer must consider alternatives to court proceedings such as arbitration and mediation, that are available to resolve disputes.*

2. *The lawyer has a duty to inform the client about such alternative dispute resolution mechanisms.*

3. *The lawyer has a duty to respond within a reasonable time to proposals by an opposing party or counsel for the use of alternative methods of dispute resolution.*

4. *The lawyer has a duty to inform the client of any proposal from an opposing party concerning alternative dispute resolution and, if the proposal is rejected, the lawyer must provide reasoned advice as to why alternative dispute resolution is inappropriate.*

5. *Methods of alternative dispute resolution should be used in good faith to advance the interests of the client and should not be employed to delay a just resolution of the issues.*

Commentary

The public needs alternatives to litigation. In appropriate cases, the legal profession is obliged to assist clients to consider such alternatives. The rule requires lawyers to inform clients of such alternatives in order to assist clients in avoiding the costs and delays associated with traditional methods of dispute resolution.

Alternatives to traditional methods of dispute resolution are not restricted to arbitration and mediation. There is a wide spectrum of alternatives to dispute resolution which should be canvassed by the lawyer when advising clients.

It is good practice for the lawyer to give advice concerning alternative dispute resolution in writing to the client.

A.2.4.3. With respect to the recommendation that minimum standards be set for those who hold themselves out to be mediators, the Subcommittee recommends that the Law Society should not require minimum standards of competency for lawyers acting as mediators.

A.2.4.4. The Subcommittee reviewed the recommendation that the Law Society impose an obligation on lawyer-mediators to encourage parties to seek the advice of counsel before and during the mediation process. It concluded that it would be inappropriate to impose such a requirement.

A.2.4.5. Although the Subcommittee agreed that family mediation raises unique concerns, it was of the view that it would be inappropriate to attempt to fashion a particular set of rules for lawyers engaged in family mediation.

A.2.5. Your Committee has adopted the recommendations of the Dispute Resolution Implementation Subcommittee.

A.2.6. Recommendation

Your Committee recommends:

A.2.6.1. That the Report of the Dispute Resolution Implementation Subcommittee concerning the professional conduct recommendations contained in the 1993 report of the Dispute Resolution Subcommittee be referred to the Professional Conduct Committee.

A.2.6.2. That the Professional Conduct Committee be asked to consider the proposed new rule of professional conduct dealing with the lawyer's responsibility to advise clients of alternatives to litigation.

B. ADMINISTRATION

No matters to report.

C. INFORMATION

C.1. PROGRAM REVIEW

C.1.1. Your Committee is considering sending a communication from the Chair of the Research and Planning and the Chair of the Priorities and Planning Subcommittee to all Committee Chairs, drawing attention to the importance of the program review exercise and reminding them of the need to complete the review by September 21, 1995, in time for the Objectives and Goals Conference.

C.1.2. The letter to Committee Chairs will also emphasize the importance of proposing new programs and activities to implement the Role Statement.

C.1.3. The Committee intends to collect the lists of programs and activities prepared by each committee (due to be completed by May 11) and to provide them as a complete set to all benchers. It is thought that this will be useful information for new benchers.

C.2. SUBCOMMITTEE ON PROFESSIONALISM

C.2.1. In March 1994, your Committee appointed a Planning Subcommittee on Professionalism and the Challenge of Commercialism to propose terms of reference for a subcommittee to explore issues of commercialism in the legal profession.

C.2.2. The Planning Subcommittee presented its report. A copy will be found at appendix B.

C.2.3. The recommendations of the Planning Subcommittee are as follows:

C.2.3.1. Recommendation # 1

The Planning Subcommittee recommends that the Professionalism Subcommittee consider whether there are means to create permanent information and resources databases for all lawyers in the province, so that there is equality of access to standard precedents and jurisprudence.

C.2.3.2. Recommendation # 2

The Planning Subcommittee recommends that the Professionalism Subcommittee undertake the development of a public education strategy to assist the public in formulating realistic expectations about the length of time required for lawyers to carry out the practice of law. Part of the strategy should address how the public can assess the reasonableness of costs associated with delivering legal services at a level required to meet the required standards of care.

C.2.3.3. Recommendation # 3

The Planning Subcommittee recommends that the Professionalism Subcommittee carry out a search of literature and resources from other jurisdictions respecting the impacts of personal stress and substance abuse on the standards of law practice. If the results of those inquiries are insufficient to underpin meaningful assessment of the problem in Ontario, the Planning Subcommittee further recommends that a literature search pertaining to other disciplines be undertaken. The principal purpose of this task will be to assess if there is a problem which must be further addressed.

C.2.3.4. Recommendation # 4

The Planning Subcommittee recommends that if, after carrying out a search of literature and resources from other jurisdictions respecting the impacts of personal stress and substance abuse on the standards of law practice, the Subcommittee determines that a problem exists, the Professionalism Subcommittee should determine what action should be taken and consider, in particular, the possible allocation of resources for the amelioration of the problem.

C.2.3.5. Recommendation # 5

The Planning Subcommittee recommends that the Professionalism Subcommittee define the terms "commercialism" and "professionalism". The Planning Subcommittee is of the opinion that this recommendation should be implemented by the Professionalism Subcommittee as early as possible in its activities, as a means of controlling the scope of all its inquiries.

C.2.3.6. Recommendation # 6

The Planning Subcommittee recommends that the Professionalism Subcommittee undertake a detailed examination of the alternatives to billing according to the docketed hour.

C.2.3.7. Recommendation # 7

The Planning Subcommittee recommends that the Professionalism Subcommittee examine the issue of "cut-rate" fees for legal services from the perspectives of competition law and ethical implications.

C.2.3.8. Recommendation # 8

The Planning Subcommittee recommends that any examination respecting billing practices undertaken by the Professionalism Subcommittee should be predicated upon the principle that overall, the cost of delivering legal services must not prohibit access to justice.

C.2.3.9. Recommendation # 9

The Planning Subcommittee recommends that as a function of exploring how access to justice may be compromised by the cost of legal services, the Professionalism Subcommittee examine elevating the monetary jurisdiction of Small Claims Court and further increasing the use of mediation and arbitration.

C.2.4. Your Committee is satisfied that all these recommendations are consistent with the role of the Law Society as defined in the Role Statement.

C.2.5. Your Committee intends to establish a Subcommittee on Professionalism to undertake the tasks identified by the Planning Subcommittee.

C.2.6. For the fiscal year 1995-1996, your Committee is satisfied that it can provide adequate funds for the work of the Professionalism Subcommittee from its own budget.

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

L. Brennan
Chair

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

Item A.-A.2.3. - Copy of the Report from the Dispute Resolution Implementation Subcommittee (Appendix A) dated April 13, 1995. **(Appendix A - A20)**

Item C.-C.2.2. - Copy of the Report of the Planning Subcommittee on Professionalism (Appendix B). **(Appendix B - B6)**

It was moved by Mr. Brennan, seconded by Ms. Palmer that the Report be adopted.

Carried

THE REPORT WAS ADOPTED

UNAUTHORIZED PRACTICE COMMITTEE

Meeting of April 13, 1995

Ms. Peters gave a brief status report on unauthorized practice review and advised that a full report was expected to be brought before Convocation in the fall.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The UNAUTHORIZED PRACTICE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of April, 1995 at 9:30 a.m., the following members being present: P. Peters (Chair), M. Cullity and N. Graham. Staff in attendance was: A. John (Secretary).

B.
ADMINISTRATION

1. **Your Committee authorized two prosecutions.**

2. LEGAL RIGHTS ADVISER - ADVOCACY COMMISSION

The Ontario Advocacy Commission is an agency that operates at arm's-length from the Government of Ontario. It is responsible for providing rights advice to people who are vulnerable because of mental or physical disabilities. The Advocacy Commission is in the process of employing Rights Advisers. The job description indicates that the Advisers will work with people "who are in danger of losing the legal right to make their own health care, financial or personal care decisions and those who have been admitted, against their will, to psychiatric hospitals". The Adviser will also help such vulnerable people "to understand what losing the ability to make their own decisions means and explain the options that are available to them". The requirements for the position have been described as follows: "A Rights Adviser must be able to learn and apply various laws that relate to people who have been found mentally incapable". There is no requirement that a Rights Adviser be a duly qualified barrister and solicitor in Ontario.

Your Committee has written to the Advocacy Commission to find out if Rights Advisers will be supervised by barristers and solicitors.

ALL OF WHICH is respectfully submitted

DATED the 28th day of April, 1995

P. Peters
Chair

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

Item B.-1. - List of Prosecutions.

THE REPORT WAS RECEIVED

LIBRARIES AND REPORTING COMMITTEE

Meeting of April 13, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 13th of April, 1995, at 8:00 a.m., the following members being present:

S. Elliott (Chair), T. Bastedo, I. Blue, M. Cullity, G. Farquharson, M. Hennessy, & D. DiGuiseppe. G. Howell also attended.

A.
POLICY

1. County Libraries - Funding - $35 Increase in County Library Levy

Attached is the following Policy Document (numbered 1 to 21):

- The Final Report of the County Library Review Subcommittee (chaired by Robert Topp), entitled "Funding of County & District Law Libraries".

The Subcommittee's Report was unanimously adopted by the full Committee at its February meeting. The Report had been extensively reviewed by the County & District Law Presidents' Association (CDLPA) and endorsed in principle at the CDLPA plenary session in November. The Report has also been fully endorsed by the County of York Law Association (by letter of the President of the Association to the Chair, Susan Elliott).

The main recommendation of the report is that "funding of County & District Law Libraries be based on a principle of obtaining, within a time period of 5 to 10 years, equal contribution from all fee paying members of the Law Society," and that, in accordance with this principle, "in the financial year 1995/96, the County Library Levy be increased by $35 from $81 to $116)."

The Libraries & Reporting Committee recommends to Convocation the adoption of the Report entitled "Funding of County & District Law Libraries". Adoption of the Report would result in a $35 increase in the County Library Levy for the 1995-96 practice year.

B.
ADMINISTRATION

1. Libraries & Reporting Committee - Budget for 1995/1996

The Committee reviewed several documents which had been previously considered by the Priorities & Planning Subcommittee of the Finance Committee at the April 4th teleconference meeting between Susan Elliott for the Committee and Abe Feinstein and Marie Moliner.

The Chief Librarian reported his understanding that the Priorities & Planning Subcommittee was satisfied with the explanation for the budgetary increases sought, and that same would be communicated by Mr. Feinstein to the Finance Committee & ultimately to Convocation.

The Committee agreed with the justification for the several Committee budgetary increases (one additional staff member, plus additional funding to cover inflation increases on subscriptions, CD-Rom's and CLE materials for the counties). The Committee recommends these budgetary increases to Convocation.

2. Ontario Reports - Alternative Paper Stock for the Weekly Parts - Butterworth Proposal to Offset the Increasing Price of Paper

The Committee reviewed a March 23rd 1995 letter addressed to the Chief Librarian by Linda Key, Publishing Director of Butterworth.

The Committee discussed various aspects of Butterworth's proposal, and asked the Chief Librarian to obtain more information before re-consideration of this matter at the next Committee meeting.

C.
INFORMATION

1. Ontario Reports - Bilingual Citation

Vern Krishna, Q.C. Chair of the French Languages Services Committee, has indicated to the Chief Librarian that the above noted item continues to be a source of concern. Professor Krishna is in the process of obtaining the comments of Professor J.G. Castel, the French Language Consulting Editor of the Ontario Reports, regarding the bilingual citation of the Ontario Reports.

The Committee decided to defer the matter until Prof. Krishna provides further material to the Committee.

ALL OF WHICH is respectfully submitted

Dated this 28th day of April, 1995

S. Elliott
Chair

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

Item A.-1. - Copy of the Policy Document re: The Final Report of the County Library Review Subcommittee. (pages 1 - 21)

THE REPORT WAS ADOPTED

COUNTY AND DISTRICT LIAISON COMMITTEE

Meeting of April 13, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COUNTY AND DISTRICT LIAISON COMMITTEE begs leave to report:

On Thursday, the 13th of April, 1995 at 11:30 a.m., the following members were present: A. Feinstein (Chair), T. Carey and D. Murphy. The following members of the County and District Law Presidents' Association Executive were in attendance: H. Arrell, D. DiGiuseppe, L. Eustace, R. Gates, M. Hornsieth, D. Lovell, J. McKay, J. Morissette, D. Sherman and R. Sonley. Staff in attendance was: A. John.

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1. PLENARY - MAY 10, 11 and 12, 1995

The County and District Law Presidents' Association will hold the next plenary on May 10, 11 and 12, 1995. All benchers are urged to attend. If any bencher would like to address the CDLPA on any issue, please advise Harrison Arrell at (905) 528 - 7963.

2. MEMBERS CALLED IN ONTARIO AND IN ANOTHER PROVINCE WHO PRACTISE ON AN OCCASIONAL BASIS

Representatives of the CDLPA expressed concern about some of the lawyers who are called in both Ontario and Manitoba. The lawyers in question live in Manitoba but act for their clients on the sale and purchase of vacation properties in Ontario. These lawyers pay full Law Society dues but are covered for their Ontario work by the Manitoba Errors and Omission Insurance plan. The Ontario lawyers, however, find themselves at a significant disadvantage in so far as the Ontario insurance premiums are two or three times what the Manitoba premiums are. The Chair and President of LPIC have been asked to consider the problem.

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

R. Topp
Chair

THE REPORT WAS RECEIVED

LEGAL AID COMMITTEE

Mr. Goudge gave a brief oral report on the status of payment of solicitors' accounts and further advised that proposals regarding the management of the legal aid fund would be brought before May Convocation.

AGENDA - Additional Matters Requiring Debate and Decision by Convocation

MOTION

THAT the tail levy imposed pursuant to the provisions of the Insurance Committee Task Force Report dated October 28th, 1994 at page 71 will not be payable by persons who cease to be a member of the Society on or before January 1, 1996.

Not Put

MOVED BY: Mary Weaver SECONDED BY: Maurice Cullity

MOTION

THAT former Treasurers should continue to have all the rights and privileges of an elected bencher except the right to vote in the election of a Treasurer.

MOVED BY: Abraham Feinstein SECONDED BY: Joan Lax

It was moved by Mr. O'Brien, seconded by Mr. Wardlaw that the Feinstein/Lax motion be put over to the September Convocation with leave to amend.

Carried

SPECIAL COMMITTEE ON AMENDMENTS TO THE LAW SOCIETY ACT

Mr. Cullity presented the Report of the Special Committee on Amendments to the Law Society Act for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON AMENDMENTS TO THE *LAW SOCIETY ACT* begs leave to report:

1 On April 22, 1994, Convocation appointed Maurice Cullity, Q.C. (Chair), Marie Moliner and Dennis O'Connor, Q.C. to serve as members of a Special Committee on Amendments to the *Law Society Act*. The Committee's terms of reference are set out later in this document at item 6.1.

2 The Special Committee presents the following interim report.

3 THE REFORM COMMITTEES OF 1989-1992

3.1 Special Committee on Complaints Procedures

In October, 1989, Convocation appointed a Special Committee on Complaints Procedures chaired by June Callwood (the "Callwood Committee"). The Committee was asked to examine the process whereby complaints were received, evaluated and reviewed by the Law Society and to make recommendations on how the process might be improved.

The Callwood Committee presented three reports to Convocation, dealing with a wide range of complaints issues. The only report relevant to the work of the present Special Committee is the second report which was debated, amended and adopted by Convocation on June 22, 1990. It recommended that the Law Society create the office of Complaints Resolution Commissioner to review cases where lawyers refuse to comply with staff suggestions for remedying isolated cases of unsatisfactory professional practice.

3.2 Special Committee on Discipline Procedures

Also in October 1989, Convocation appointed a Special Committee on Discipline Procedures chaired by Roger Yachetti, Q.C (the "Yachetti Committee"). The Committee was asked to review the *Law Society Act* and regulations insofar as they related to discipline matters, and to make such recommendations as were necessary to improve the discipline process and to provide a complete code of disciplinary procedure.

The report of the Yachetti Committee was debated, amended and adopted by Convocation over the course of two meetings on September 7 and October 26, 1990. Among the major matters covered in the report were:

Creation of a Discipline Complaints Authorization Committee.

Disclosure guidelines.

Jurisdiction and composition of discipline hearing panels.

Provisions for interim suspension.

Dispositions, terms and conditions in discipline orders.

Establishment of a designated Appeal Panel of Convocation.

Incapacity provisions.

Procedures for dealing with complaints against benchers and staff.

3.3 Special Committee on Reforms Implementation

On September 7, 1990, Convocation appointed a Special Committee on Reforms Implementation, chaired by Dennis O'Connor, Q.C., to monitor and make recommendations on the implementation of the reports concerning reforms to the discipline, complaints and standards procedures. Professor Marilyn Pilkington served as consultant to the Reforms Implementation Committee and assisted in the drafting of detailed provisions to implement some of the recommendations of the Callwood and Yachetti Committees.

The Reforms Implementation Committee presented two reports to Convocation.

The first report was debated, amended and adopted by Convocation on May 31, 1991. Its recommendations dealt with the following matters:

Participation of lay persons in the discipline process.

Participation of *ex officio* benchers in the discipline process.

Composition and procedures of the Discipline Complaints Authorization Committee.

Composition of discipline hearing panels.

Composition and term of office of the Appeal Panel.

Discipline dispositions.

Complaints Resolution Commissioner.

The first report of the Reforms Implementation Committee also included detailed statutory provisions covering:

Incapacity proceedings.

Investigative powers, confidentiality and disclosure.

The second report of the Reforms Implementation Committee was debated, amended and adopted by Convocation on February 28, 1992. Its major recommendations concerned the establishment of a professional competence scheme to permit the Society to order remedial measures where the member is found to be failing to meet standards of professional competence. The report contained detailed statutory provisions for implementation of the scheme.

3.4 The Callwood, Yachetti and Reforms Implementation Committees are hereafter in this document referred to collectively as the "Reform Committees".

4 THE PILKINGTON WORKING DRAFT OF JULY 1992

4.1 Professor Pilkington continued her work, drafting statutory provisions, through the summer of 1992. Her "working draft" of July 26, 1992, covers many, but not all, of the recommendations of the Reform Committees. In addition to the detailed incapacity, professional competence and investigative provisions included in the reports of the Reforms Implementation Committee, the "working draft" includes provisions relating to discipline and general procedure. There were also some provisions concerning the Complaints Resolution Commissioner.

4.2 The "working draft" of July, 1992, has been presented to Convocation for information on two occasions. It has not been reviewed or discussed in committee or in Convocation.

5 THE STAFF WORKING GROUP ON AMENDMENTS TO THE *LAW SOCIETY ACT*

5.1 In January, 1994, on the instructions of the Treasurer, a Staff Working Group was established to draft the legislative provisions necessary to implement the Reform Committee recommendations. With a few exceptions, the Staff Working Group has met on a weekly basis from January 26 to June 29, 1994 and from January 25, 1995 to the present.

5.2 The Staff Working Group has used the Pilkington "working draft" as its starting point. It is preparing an annotated set of amendments to the *Law Society Act* and Regulation 708. At present, the annotated draft amendments run to 130 typed pages.

5.3 In the course of its work, the Staff Working Group has identified numerous policy questions that need to be resolved by Convocation. In most cases, these questions concern matters not dealt with in the reports of the Reform Committees; in other cases, they represent departures from the recommendations of the Reform Committees.

6 SPECIAL COMMITTEE ON AMENDMENTS TO THE *LAW SOCIETY ACT*

6.1 The Special Committee on Amendments to the *Law Society Act* was appointed on April 22, 1994. Its terms of reference are:

(1) To review all questions raised by the Staff Working Group in the course of its work.

(2) To report to Convocation with recommendations as to how the questions should be answered.

6.2 The Special Committee has met with the Staff Working Group on seven occasions: June 7, June 16, June 29 and July 13, 1994; March 1, March 7 and March 15, 1995.

6.3 The Special Committee is preparing a set of recommendations for Convocation dealing with:

- Matters that were not addressed by the Reform Committees.

- Matters in respect of which the Special Committee proposes a departure from the decisions made by Convocation when the Reform Committee reports were adopted.

6.4 The Staff Working Group expects its draft amendments to be substantially complete by the end of August, 1995. Until the draft is complete, policy questions for decision by benchers will continue to arise.

6.5 Two members of your Special Committee (Maurice Cullity and Dennis O'Connor) are not seeking re-election and will therefore cease to be benchers on May 26, 1995. Convocation is asked to address the question of whether there is need to appoint a new Special Committee to prepare recommendations for Convocation in response to the policy questions that will be raised by the Staff Working Group after May 26.

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

M. Cullity
Chair

THE REPORT WAS RECEIVED

BICENTENNIAL COMMITTEE

Meeting of April 28, 1995

Mr. Wardlaw presented the Report of the Bicentennial Committee for Convocation's approval.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The BICENTENNIAL COMMITTEE begs leave to report:

Your Committee met on Friday, the 28th of April, 1995 at 12:00 p.m., the following members being present: J. Wardlaw (Chair), B. Pepper, and B. O'Brien.

B.
ADMINISTRATION

1. LAW SOCIETY BICENTENNIAL

The Bicentennial Committee has prepared an application for funding from the Law Foundation for the Bicentennial of the Law Society.

A letter from Mr. James Wardlaw, Chair of the Bicentennial Committee, to Mr. Bastedo, Chair of the Finance and Administration Committee, is attached.

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 1995

J. Wardlaw
Chair

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

Item B.-1. - Copy of a letter from Mr. J. J. Wardlaw, Q.C., Chair, Bicentennial Committee to Mr. Thomas G. Bastedo, Q.C., Chair, Finance Committee dated April 24, 1995 together with an application for Funding to the Law Foundation of Ontario.

It was moved by Mr. Wardlaw, seconded by Mr. O'Brien that Convocation approve the request of the Bicentennial Committee to make an application to the Law Foundation for $250,000.

Carried

THE REPORT WAS ADOPTED

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CONVOCATION ROSE AT 5:00 P.M.

Confirmed in Convocation this day of , 1995.

Treasurer