

MINUTES OF CONVOCATION

Thursday, 22nd March, 1990.  
9:30 a.m.

PRESENT:

The Treasurer, (Mr. Lee Ferrier), Messrs. Bastedo and Bragagnolo, Ms. Callwood, Messrs. Campbell, Carey, Carter, Cass, Epstein, Ferguson and Furlong, Mrs. Graham, Messrs. Ground and Guthrie, Ms. Harvey, Ms. Kiteley, Mr. Lamont, Mrs. Legge, Messrs. Levy, Lyons, McKinnon, Murphy, O'Connor and Pepper, Ms. Peters, Messrs. Rock, Ruby, Somerville, Spence, Thom, Thoman, Topp and Wardlaw and Mrs. Weaver.

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"IN PUBLIC"

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RESIGNATION OF MR. IAN OUTERBRIDGE, Q.C.

The Treasurer announced that Mr. Ian Outerbridge had submitted his resignation as a Benchers as a result of his personal bankruptcy. The Treasurer remarked on the contribution that Mr. Outerbridge had made both to the profession and to the public during his period as a Benchers including his involvement with the Dial-a-Law and Lawyer Referral programs.

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ADMISSIONS COMMITTEE

Ms. Peters presented that portion of the Admissions Committee Report of March 8th, 1990 dealing with the candidates for the Call to the Bar. That portion of the Report was adopted.

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CALL TO THE BAR

The following candidates were presented to the Treasurer and Convocation and were called to the Bar, and the degree of Barrister-at-Law was conferred upon each of them by the Treasurer.

Peter Jacobus Cullen	Transfer, Province of Quebec
Arthur Evrensel	Transfer, Province of Quebec
David Charles McGreer	Transfer, Province of Alberta
Katherine Peacocke	Transfer, Province of Quebec
Lilly Ann Wong	Transfer, Province of Quebec

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DISCIPLINE COMMITTEE

Re: KEVIN JOHN MAHAN, Hamilton

Mr. Somerville presented the Report of the Discipline Committee dealing with Kevin John Mahan.

The reporter was sworn.

Mr. Reg Watson appeared for the Society and Mr. Charles Mark appeared for the solicitor who was present.

Exhibits 1 and 2 were filed in February 1990.

There were no representations by either counsel as to the Report and the Report was adopted by Convocation.

It was moved by Mr. Somerville, seconded by Mr. Ground that the Recommendation as to Penalty contained in the Report that the solicitor be permitted to resign his membership in the Society be adopted.

Both counsel made representations on the Recommendation and Mr. Mark called two witnesses Dr. Bernard Trossman a psychiatrist who had treated the solicitor and Mr. John Campbell, Q.C. a founder of the Ontario Bar Alcoholism Programme. Mr. Mark also filed as Exhibit 3 a letter from Mr. Ennis a solicitor who had employed Mr. Mahan.

It was Mr. Mark's position that the solicitor be suspended for a period of time and that during that suspension he be permitted to serve as a law clerk to Mr. Ennis. It was the Society's position that the solicitor should be disbarred.

Following the submissions the public and counsel withdrew.

It was moved by Mr. Wardlaw, seconded by Mrs. Graham that the solicitor be disbarred.

Lost

The Recommendation as to Penalty contained in the Report that is that the solicitor be permitted to resign his membership in the Society was carried.

The public, counsel and the solicitor were recalled and informed of the decision.

Mr. Mahan submitted his written resignation.

Mr. Mark then made an application to Convocation to allow Mr. Mahan to act as a law clerk to Mr. Ennis.

The public and counsel withdrew while Convocation considered the request.

It was moved by Mrs. Graham, seconded by Mr. Ground that Mr. Mahan not be permitted to be employed by Mr. Ennis.

Not Put

It was moved by Mr. Bastedo, seconded by Mr. Rock that the solicitor be informed that Mr. Ennis should make the application through the normal procedures and that Convocation would not deal with the application at this time.

Carried

Counsel and the solicitor were recalled and informed of the decision.

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#### MINUTES OF CONVOCATION

It was moved by Mr. Somerville, seconded by Ms. Kiteley that the Minutes of Convocation of January 25th, January 26th and February 23rd, 1990 be approved.

Carried

#### SPECIAL COMMITTEE ON ONTARIO SECURITIES COMMISSION PROPOSAL TO DISCIPLINE PROFESSIONALS

Mr. Ground presented the Report of the Special Committee of its meetings on March 7th and March 13th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The SPECIAL COMMITTEE ON ONTARIO SECURITIES COMMISSION PROPOSAL TO DISCIPLINE PROFESSIONALS begs leave to report:

Your Committee is composed of Messrs. Ground (Chair), Carter, Cooper, O'Connor, Spence and Thom. Messrs. Ground, O'Connor, Spence and Thom, together with the Treasurer, the Under Treasurer, the Secretary and the Senior Counsel - Professional Conduct met on Wednesday, March 7, 1990. Messrs. Ground, Carter and Thom, together with Mr. O'Brien and the Research Director and the Senior Counsel - Professional Conduct met on Tuesday, March 13, 1990.

History

This Special Committee was appointed because of the proposed changes to the Ontario Securities Act, that if implemented, would affect lawyers by subjecting them to disciplinary action by the Ontario Securities Commission.

Messrs. Ground and Spence and a representative of the Institute of Chartered Accountants of Ontario had a meeting with the Chair and the Executive Director of the Ontario Securities Commission prior to the striking of this Committee. They asked the Commission representatives at this meeting for specific examples of cases of lawyers who have misconducted themselves before the Commission. No specific examples were given. However, they were told that the Commission's two principal concerns respecting lawyers were: some lawyers were counselling clients in matters involving non-compliance with the Securities Act and Regulations and the alleged incompetence of some lawyers in advising and representing clients with respect to securities law matters.

Set out below is an excerpt from the Proposals for Amendments to the Securities Act released by the Commission:

"Concerns

It has been recognized for some time now that for the Commission to function effectively and to serve the public interest more effectively, the administrative, remedial powers possessed by the Commission must be expanded. Though a need remains for quasi-criminal prosecution through the Provincial Offences Court, that forum and its process are of limited utility in the modern regulatory context.

Proposals

It is proposed that the remedial powers of the Commission be expanded so as to provide a wider range of disciplinary and compensatory powers. Existing sections 122 to 124 would be replaced accordingly.

For example, it is intended that the Commission would acquire powers of the following nature:

- (1) to order compliance with the Act, the Regulations, and the Policy Statements;
- (2) to order compliance with the by-laws, rules, regulations, procedures, practices and directives of a self-regulatory organization;
- (3) to order a cessation in the distribution of, or the amendment to, a wide range of disclosure materials;
- (4) to order a private or public reprimand of a person (including a lawyer, accountant, engineer, valuator or other professional adviser) for misconduct in the marketplace, either with or without further sanctions attached;

- (5) to order that a person (including a lawyer, accountant, engineer, valuator or other professional adviser) found to have engaged in misconduct in the marketplace not hold office in, or be a director of, or be employed or retained by, or in any other way be associated with, any registrant or reporting issuer;
- (6) to order disgorgement;
- (7) to order a person to pay costs associated with any investigation or proceeding before the Commission.

It is proposed that the powers mentioned in items 1, 2 and 3 above would be exercisable on a temporary basis, without notice, but all would require a hearing, on notice, before being made final. Any final order of the Commission could be filed with the Registrar of the Supreme Court of Ontario and, thus, become enforceable as an order of judgment of that court.

In addition, the Commission would be given a broad power to apply to the Supreme Court of Ontario for a declaration that a person is not complying with the Act, Regulations, Policy Statements or Orders of the Commission. The Court would be further empowered to order compliance, compensation for damages, rescission of any transaction relating to trading in securities, the issuance, cancellation, purchase, exchange or disposition of any security, to prohibit voting or the exercise of any rights attaching to securities, to appoint or remove directors and to require the payment of punitive damages.

#### Commentary

While the Commission's remedial powers are in the public interest and an expansion of those powers is thought necessary and desirable for effective regulation and supervision, staff recognize that these proposals may be controversial. In particular, professionals and their governing bodies may be particularly concerned with the proposed power to reprimand and deny office, employment or retention, since it would reach lawyers, accountants, engineers, valuers and other professional advisers. On the other hand, the Commission should be able to control its own processes and, therefore, should be able to discipline or otherwise deal with those professional advisers who choose to practise before it. Staff particularly seeks comments upon this aspect of the proposals and the basis upon which these powers could be exercised."

#### Issues

The Special Committee has addressed the following issues of concern should the Proposals become law.

- (1) Lawyers would be under threat of discipline by a tribunal before which they are appearing or to which they are submitting documents on behalf of clients.
- (2) Members of the Law Society have historically been subject to discipline only by the Society, subject to a lawyer being found in contempt of court.
- (3) The proposals are extremely vague in their proscription of professional wrongdoing: the offence of "misconduct in the marketplace" is not defined.
- (4) The Law Society has always defended the right of clients to have legal representation of their own choosing. The Commission is seeking the power to prevent lawyers "found to have engaged in misconduct in the marketplace" from practising in the securities law field.

- (5) If the Commission receives these powers, it is reasonable to expect that other administrative boards will seek similar powers.
- (6) In the case of proceedings against professional advisers, it is not clear to what extent the O.S.C. would "exchange information with other regulators and law enforcement agencies".

#### Discipline

Messrs. Ground and Spence discussed the reasons why some of these proposals are being put forward. Under the present Act, a breach of the Act is treated as a quasi-criminal prosecution with the requirement of proof beyond a reasonable doubt in order for there to be a conviction. The Commission believes it has to have weapons in its arsenal to deal with lawyers who counsel their clients on how to avoid compliance with the securities laws, as well as lawyers who allegedly have demonstrated incompetence in their representation of clients before the Commission or the preparation of documents filed with the Commission. It believes that the referral of such lawyers to the Law Society would be an inadequate remedy because our discipline process is too long and cumbersome and the Law Society lacks expertise and experience in these areas.

The proposal to discipline lawyers is only one of a number of changes the Commission will be proposing to Queen's Park.

#### Recommendations

In arriving at a response, the Law Society should not be seen as in any way attempting to shield or protect lawyers who have counselled an offence or exhibit incompetence.

The Committee recommends that the submission to the Commission deal with the following matters:

1. Making lawyers subject to potential discipline proceedings by a tribunal before which they are appearing could well result in counsel being less vigorous in pursuing their client's rights and presenting their position to the tribunal. A client is entitled to have his or her case put forcefully to a tribunal without his or her lawyer being at risk of being disciplined by that same tribunal, because the advice or position taken by the counsel is ultimately found not to accord with the view of the Commission as to what is proper conduct in the marketplace.
2. The independence of the Bar is in the interests of all members of the public including the investing public and the disciplining of members of the Bar should be left to the Law Society which has historically exercised this function. The proper role of the Commission is to protect the interests of the investing public, but this can be achieved through remedies already available to the Commission e.g. the issuance of a cease trading order. It does not appear that the Commission needs to have authority to take disciplinary action directed against individual lawyers who may have been involved in the commission of an offence under the Securities Act or Regulations or may have given incompetent advice on a matter related to the Act. The interests of the investors are protected if a cease trading order is issued by the Commission and any proceedings against the lawyers involved can be left to the Law Society or the courts if charges are laid relating to an offence under the Securities Act or Regulations. It would appear that charges could be laid against any lawyer who aided or abetted a registrant or reporting issuer in committing an offence under the Act or Regulations.

3. The language of "misconduct in the marketplace" is dangerously general and could be said to sweep in all sorts of conduct. [If a new offence is to be created in the amending legislation, it should be a more concrete offence, perhaps incorporating the wording of Section 118 of the Securities Act with respect to offences and the wording of the Rules of Professional Conduct with respect to incompetence.]

Note: Amendment, see below.

4. [The effect of its proposal to bar professionals "found guilty by the Commission of misconduct in the marketplace" from practising in the securities law field would be a significant interference with the accepted principle that a client should be free to have a lawyer of his or her own choosing.]
5. The Law Society would expect to be notified by the Commission every time an investigation is commenced into the activities of a lawyer and be provided with full information with respect to such investigation.
6. The Law Society should also express concern about the proposal which grants to the Commission access to records of a "market participant" which may include lawyers in their professional capacity. The granting of such access would clearly affect the lawyers duty of confidentiality and could be an exception to the solicitor/client privilege which otherwise apply to such records.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1990

"J. Ground"  
Chair

It was moved by Mr. Somerville, seconded by Ms. Kiteley that the wording in the square brackets in Item 3 under the heading "Recommendations" be deleted.

Carried

THE REPORT AS AMENDED WAS ADOPTED

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#### SPECIAL COMMITTEE ON COMPLAINTS PROCEDURES

Ms. Callwood presented the first working paper of the Special Committee on Complaints Procedures which had been tabled in Convocation in February 1990.

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

#### IN CONVOCATION ASSEMBLED

The Special Committee on Complaints Procedures is comprised of the following members: Meg Angevine (Staff), Harry Arthurs (President, York University), Patrick Ballantyne (Staff), June Callwood, Tom Carey, Roderic Ferguson, Netty Graham, Scott Kerr (Staff), Jeff Lyons, Colin McKinnon, Ann Merritt (Observer, Attorney-General's Department), Rita Mosevich (Staff), Mark Orkin, Kevin O'Toole (Staff), Allan Rock, Clay Ruby, Arthur Scace, Jim Spence, Jim Wardlaw, John Whyte (Dean, Queen's Law School).

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This is the first in a series of working papers setting out details of the Special Committee's deliberations.

### INTRODUCTION

The Special Committee on Complaints Procedures is preparing a series of recommendations to Convocation which are evolutionary in nature, rather than revolutionary. Self-regulatory bodies are everywhere under severe pressure to be more accountable and responsive to a public which increasingly feels there is at least the appearance of conflict of interest when a professional group regulates, investigates and disciplines itself. Consumer groups in the United Kingdom, for instance, have been insisting in recent years that the Law Society cease to have any jurisdiction whatsoever over the complaints process.

Lord Benson, who chaired a Royal Commission on Legal Services in 1984, commented, "If a profession is to retain the respect of the community it must keep just ahead of public thought and opinion. If it falls behind, it will encounter trouble."

The Special Committee considered recommending that a body entirely independent of the Law Society of Upper Canada should receive and process complaints. Perhaps this alternative can be reviewed again if the changes the Special Committee is suggesting prove inadequate to the test of inspiring the confidence of the public and profession in the fairness of the process. Such separation of powers potentially strikes at the heart of self-governance however and it may be premature.

It is submitted that the present mandate of the complaints process is overly restrictive. Existing procedures focus exclusively on the investigation of complaints in order to determine if a lawyer's conduct warrants disciplinary action. Of the some 4000 complaints processed last year by the Complaints Department (with each staff lawyer and complaints officer carrying a staggering number, on average, of 300 to 350 open files at any given time) only 2.5%, about 100 complaints, result in any form of hearing before a Discipline Committee.

These figures raise the fundamental question of whether a complaints process geared exclusively toward developing cases for prosecution properly serves and protects the public. Your Committee is of the view that complaints procedures need to be changed so that the Law Society can more effectively respond to a much wider range and variety of complaints.

It is recognized that many complaints have no merit or involve matters over which the Law Society has no jurisdiction at present (fees, for instance, or negligence suits). A great number however fall into a category that the United Kingdom likes to call "shoddy work": minor acts of tardiness, indifference or sloppiness on the part of lawyers who may be incompetent or merely overworked. While technically in such cases the lawyer has violated Rule 2 or Rule 13, the Law Society has traditionally taken no action to satisfy the distress and indignation of the complainant or to address the inadequacy of the lawyer.

This unhappy state of affairs has been recognized by the Law Society for many years. It resulted in the establishing of a committee, headed by Allan Rock, whose recommendations led to the formation some years ago of a new standing committee, Professional Standards, which itself has been frustrated by a lack of statutory power to oblige lawyers to take steps to remedy the situation or to improve their skills. In Working Paper 2 to be presented at the March Convocation, the Special Committee on Complaints Procedure will be bringing

recommendations to establish a new category of professional misconduct, to be known (tentatively) as Unsatisfactory Professional Practice, with a series of remedies that will require approaches to the Attorney General to expand the Law Society's statutory powers. At the April Convocation, the Special Committee will submit its final Working Paper dealing principally with the issue of minor negligence matters that at the moment are lost in the system.

Convocation will be interested to know that the largest number of complaints arise from the practice of real estate law (33% in 1988), followed by civil litigation (21%) and matrimonial law (12%). Fully 40% of all files opened fall into the "shoddy work" category.

A major shift in style is proposed for the Complaints Department. Except in acute situations, both complainants and lawyers would be better served by a conciliatory, problem-solving approach rather than an adversarial one. The present system, relying as it does on written complaints and responses, is admirable in its ponderous and judicious dignity when there is evidence of serious misconduct, but it is cumbersome and almost useless for most other matters. The result has been that minor complaints languish in open files for one or two years, or even more; the Complaints Department at present is choking on paper.

It is also submerged in telephone calls. Each staff lawyer handles about 780 general calls a year and each complaints officer about 5,000. Many of these calls are inquiries which can be satisfied by a reference to such Law Society of Upper Canada services as Dial-A-Law, Lawyer Referral, and the Compensation Fund. In those cases where the complainant requests an investigation, the Law Society is obliged to open a file. The process commences with the requirement of a written complaint, followed by a written request to the lawyer asking for an explanation of the events in the complaint, followed by a wait for the reply from the lawyer, after which there is a letter to the complainant from the lawyer, after which there is a letter to the complainant outlining the lawyer's reply, and then a letter to the lawyer, and so on....

It is submitted that a uniform approach to complaints handling which requires each matter to be dealt with in the same manner regardless of subject matter and gravity is overly formal and cumbersome and inappropriate. It should be replaced with a multifaceted process operated by a restructured Complaints Department equipped to respond to a wide variety of complaints. It is proposed that a number of "streams" be created within the complaints process with each stream employing different methods to achieve the various objectives of the Complaints Department.

A major area of concern for the Special Committee on Complaints Procedure for example is the necessity to develop a speedier process to handle complaints of a minor nature which show little likelihood of resulting in a discipline hearing. One useful step already has been taken. The Complaints Department, has been restructured into teams, with each team made up of a staff lawyer, a complaints officer and two clerk typists who work together on a cluster of files. This has proved efficient and effective and the Committee supports and encourages this approach.

Team management of a case is a promising beginning but further restructuring is essential. In particular, the different "streams" within the complaints process should be able to interact effectively with the various other departments of the Law Society which have an interest in a particular complaint. In its deliberations, the Committee has sought out and obtained the participation of not only the Discipline Department but also Errors & Omissions, Professional Standards and Audit. The existing computer system operated by the Complaints Department enables staff to monitor a complaint but changes to the programme may be necessary to reduce delays and improve the flow of information between departments.



When handling complaints, staff should have guidelines and authority to mediate difficulties promptly between solicitors and clients, before they exacerbate into bitter confrontation. The accusatorial style of the formal discipline process is simply unsuited to the overwhelming majority of complaints received by the Society.

The Special Committee has reviewed innovations in the complaints procedures of a number of jurisdictions -- Australia, New Zealand, other Canadian provinces, the United States and the United Kingdom -- and has synthesized some of the most promising of these to merge them harmoniously with the Law Society of Upper Canada's long standing traditions and procedures.

#### GOALS AND OBJECTIVES

The Treasurer asked the Special Committee to draw up goals and objectives for the Complaints Department. This was the easiest part of the exercise.

1. The Complaints Department's process should be readily accessible to the public.
2. The public should be satisfied that the complaints procedure is fair.
3. Lawyers should be satisfied that the complaints procedure is fair.
4. The process should involve no avoidable delay.
5. The Complaints Department should expand its mandate beyond its traditional investigative function to encompass mediation and resolution-oriented activities.
6. The Complaints Departments must have means to address complaints which involve minor professional misconduct, minor amounts of money lost through negligence, and other types of deficient service which fell under the general heading of UPP.
7. The complaints process, in its entirety, should be evaluated by an independent body at regular intervals of three to five years to determine the following:
  - (i) its efficiency, effectiveness, and credibility with the public and the profession;
  - (ii) patterns of complaints which might require analysis and remedy.

#### RECOMMENDATIONS

##### 1. Recommendation

The Complaints Department immediately should have a toll-free number accessible from any place in Ontario.

##### Explanation

People living outside the Metro Toronto dialing area are at an unfair disadvantage. In the years 1987-89, a breakdown of complaints by geographical location showed that a substantial number of complaints came from outlying parts of the province. For instance, Algoma had 73, Cochrane District 59, Kent 45, Ottawa/Carleton 523, Parry Sound 31, Peterborough 31, Prescott/Russell 26, Niagara 196, Rainy River 13, Simcoe 235, Thunder Bay 80, Sudbury 84. In contrast, the City of Toronto had 4,117, North York 606, York 501, Scarborough 345, Peel 716, Hamilton/Wentworth 379. The suggestion is that the closer to Osgoode Hall, the more likely dissatisfied clients are to avail themselves of remedies such as Complaints Review.

##### 2. Recommendation

The Law Society of Upper Canada should establish Telephone Resolution as part of its Complaints Department as soon as the following considerations can be met:

- (i) assessment of staffing needs to implement TR and approval of the budgetary considerations involved;
- (ii) guidelines for staff to determine which complaints can be handled this way, by whom, and at what point the effort should be deemed a failure and a written process be commenced;
- (iii) staff training in conciliatory style and approaches.

#### Explanation

The quickest and simplest way to resolve complaints about minor practice problems that do not seem to warrant disciplinary action or involve ethical issues is a telephone call from the Law Society to the lawyer whose behaviour is at issue. In most cases the complainants are not seeking disciplinary action. They merely want the Law Society's assistance in getting a lawyer to complete a task which can be readily completed.

Examples include failure to pay a bill incurred in connection with the practice of law, failure to complete a real estate report, failure to render an account or to explain an item on an account, failure to turn over a client file, failure to honour an undertaking. The Law Institute of Victoria (Australia) finds that telephone conciliation has the greatest success in such areas as: delays in answering calls and letters, delays in transferring files, lawyer error resulting in the loss of small amounts of money where the lawyer may be willing to repay or reduce some of the fee, and the failure of the lawyer to explain a delay.

In cases where the lawyer has demonstrated a pattern of such conduct in the past, an attempt will be made to deal with the immediate concern by TR but at the same time Professional Standards will be notified so that possible underlying problems in the lawyer's practice can be identified and addressed.

The Law Society of England disposes of 20% of all complaints by TR. In Victoria (Australia) where the Law Institute launched Telephone Complaints Conciliation in 1986, some 30% of complaints are resolved by this means. In its first year of operation, open files were reduced from 600 to 100.

Staff lawyers in the Law Institute make what is described as "a friendly telephone call." Accordingly, disputes are not prolonged. It has been found that lawyers are more likely to be truthful and admit fault, and more likely to remedy the situation, if the approach is by telephone.

Scott Kerr of the Law Society of Upper Canada's Complaints Department spoke with Michael Power, deputy Director of Professional Standards for the Law Institute. Mr. Power described a dramatic reduction in the turn-around time of complaint files since the telephone process was introduced. In a great number of cases, the complaint is successfully conciliated and withdrawn by the complainant. Both complainant and lawyer seem to appreciate the more informal and personal intervention by Institute staff lawyers. As a result there has been a decrease in the number of appeals to lay commissioners.

Significantly, the Victoria Law Institute obtained the required legislative authority to arbitrate fees' disputes by the telephone resolution process. The possibility of binding arbitration is something the Law Society might wish to consider, but what is envisioned by TR at this time is that the staff have the authority to negotiate a voluntary fee adjustment. Complaints staff anticipate that the most frequent use of telephone resolution by the Law Society is likely to be in cases where there is a delay in releasing a file, a delay in preparing a report on closing a real estate transaction, a delay in honouring an undertaking, and delay in the rendering of a fee billing. The incidence of complaints involving fee disputes is also expected to be high.

Telephone Resolution will enable the staff to negotiate a solution to the dispute with which the lawyer concurs. Compliance is wholly voluntary. In such cases where, for instance, a letter of apology is sought and is appropriate (a not uncommon situation) the lawyer must be protected against abuse of such a well-intended gesture. Complainants would be obliged to sign a suitable release to that effect. A complainant who is not satisfied with the staff's handling of the matter may appeal, as is presently the case, to the lay Benchers who sit as Complaint Appeal Commissioners. When a lawyer refuses to cooperate with what the staff views as a reasonable resolution of the matter, the procedure immediately becomes formal; letter-writing commences and a staff request for mandatory action can be presented through the "minor discipline remedies" stream being developed by the Committee.

The client whose complaint is dealt with expeditiously by telephone is very often a satisfied and cordial client. In many cases, a good relationship between lawyer and client resumes.

The process is not lacking in record-keeping. In all cases, lawyers or complaints officers making the telephone calls to lawyers will maintain a careful record of the conversation and a memo concerning it will be placed in the lawyer's file. In order to monitor the frequency of minor complaints against a lawyer (numbers approaching 100 are not unknown) a computer record of the complaint and resolution will be kept.

The tone of voice and attitude of the staff lawyer or complaints officer making the telephone calls are key factors in the success of the effort to mediate. An overbearing or hesitant manner would destroy effectiveness totally. Staff training in conciliatory approaches therefore is essential. The Law Society of British Columbia, which adopted a telephone resolution program recently, provided staff training before the program was introduced and this appears a good example to follow.

Since the team approach introduced in the Complaints Department appears to be working well, it is proposed that it be used for the new telephone resolution service. Complaints officers, who are law clerks and have developed enormous expertise in the complaints field, could handle most telephone complaints, with the discretion to refer more contentious matters to a staff lawyer.

### 3. Recommendation

The Law Society of Upper Canada in cooperation with the County and District Law Associations and the Legal Aid Plan establish Complainants Assistance panels in every part of the province to assist those clients, referred by Law Society staff, who appear to have difficulty formulating written complaints. This service will commence as soon as the following conditions are met:

- (i) panels of lawyers of suitable temperament and expertise are found and some training has been done to ensure consistency;
- (ii) the budgetary considerations to establish the program (solicitors' fees, advertising the service, etc.) have been approved.

### Explanation

The Law Society will continue to require that most complaints be submitted in writing. In a considerable number of situations, however, complainants are unable to formulate the complaint this way. Either the client has trouble writing in the English or French language, or writing in any language at all. Not infrequently clients are understandably confused. They may not appreciate the fine distinctions that sometimes arise between negligence and professional misconduct. Not infrequently, they fasten on a grievance of scant interest to the Law Society while overlooking another issue, less vexatious to themselves but of compelling relevance to the Law Society's discipline mandate. In their mood of undifferentiated wrath, clients may miss the real substance of their complaint.

The Law Society of Upper Canada has a responsibility to assist all clients who wish to lodge a complaint, not only those who are literate, perceptive, informed and articulate. The Special Committee therefore proposes that the staff have the discretion to refer clients with perceived difficulties to a lawyer in that client's community or adjacent community who, without cost to the complainant, will provide two hours of time helping the person compose a written complaint.

The costs to the Law Society may be insignificant but much would be accomplished. For one, the goal of accessibility to the complaints procedure would be met handsomely for a substantial number of people in Ontario who are uncomfortable in English or who may suffer the great indignity of being illiterate.

In the United Kingdom, where this process has been in place for some time (and is indifferently used) such lawyers are recruited on the basis of "innate sympathy and humanity." It is envisioned by the Special Committee that the lawyers who will assist complainants to the Law Society will perform no judicial function and will not attempt to mediate. Some years ago, the Law Society experimented with a program of referring minor complaints to County and District Law Associations. The results were erratic at best. Complaints often took longer to be resolved, inconsistency reigned, clients were unhappy, lawyers were unwilling to police one another, and it was impossible for the Law Society to monitor what was going on.

The lesson from this has been learned. Lawyers who assist complainants need not feel themselves involved in an attack on a colleague. It is not only acceptable but preferable that lawyers can excuse themselves from complaints involving other lawyers. Similarly, it is not only acceptable but preferable that clients who feel a lack of confidence in the assigned lawyer can request someone else on the roster.

Lawyers on Complaints Assistance panels will be paid by the Law Society according to the Legal Aid tariff, which retains an element of pro bono that will comfort idealists.

#### 4. Recommendation

The Law Society of Upper Canada launch a program to educate the public and the profession about the changes in the Complaints Department.

#### Explanation

The public needs simple, graphic pamphlets and non-print material in order to be informed of the operation of the Complaints Department and the Law Society's sincere, ongoing efforts to deal speedily, fairly and effectively with evidences of dissatisfaction with the profession. The profession, on the other hand, needs to be cautioned that Rules 2 and 13 will be taken seriously in future and new remedies will be in place. The profession should be alerted to recent indications of confusion about such ethical issues as conflict of interest.

While these cautionary messages need to be communicated, and perhaps law schools, Continuing Legal Education and the Bar Admission courses have a role to play in preventing the need for them, it is also imperative that lawyers see the Law Society as a valuable and sympathetic resource rather than something on the order of Vlad the Impaler. Practice Advisory is a very helpful service, and little understood. The powers proposed for Professional Standards will work to the betterment of the profession as a whole and will address the factor of acute stress with which so many lawyers are burdened. The perception of the Law Society as an ogre rather than a friendly support is unfortunate and largely untrue, and should be corrected.

5. Recommendation

The Law Society should obtain the immediate assistance of computer experts to enable the staff to establish a base line of statistical gathering of some subtlety and sophistication.

Explanation

The operation of the Complaints Department should be accessible for easy monitoring and quick analysis in order to facilitate evaluation of performance and quality of service. As well, it will be a valuable tool for future generations of the profession if the Law Society can maintain a profile of complaints, a dowsing rod by which to judge the efficacy of legal education and Law Society governance.

All of which is respectfully submitted

"J. Callwood"  
Chair

Convocation approved in principle the following items in the Report:

- (a) The installation of a toll free line to allow persons outside of Toronto to call the Law Society at no cost in regard to their complaints against solicitors and the addition of two staff to deal with the phone calls;
- (b) The concept of telephone resolution.

In regard to the suggestion in the Report that on a trial basis the Law Society of Upper Canada through the Legal Aid Plan staff assist those clients referred by Complaints staff who appear to have difficulty formulating complaints it was moved by Mr. Ferguson, seconded by Mr. McKinnon that the recommendation be referred to the Legal Aid Committee for consideration. Ms. Callwood accepted the amendment.

The recommendations in the Report regarding public education and the need for pamphlets and computerization of the Complaints database were adopted by Convocation.

Working paper number 2 was tabled and will be considered by Convocation in April.

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LEGAL EDUCATION COMMITTEE

Mr. Rock presented two Reports of the Legal Education Committee of its meetings on March 8th and March 22nd, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of March, 1990. The following member were present: A. Rock (Chair), D.H.L. Lamont (Vice-chair), T. Bastedo, D. Bellamy, R. Ferguson, L. Legge, P. Peters, J. Spence, S. Thom, R. Yachetti, J. MacPherson.

A.  
POLICY

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1. BAR ADMISSION COURSE FAILURES

Failed students have an automatic right to repeat the teaching term of the Bar Admission Course, running from September 17, 1990 to January 31, 1991. Those students have the right to appeal to the Committee to be granted a Certificate of Successful Completion of the Bar Admission Course based on extenuating or exceptional circumstances. It is anticipated that some of the students will appeal in writing only, while others will elect to appeal in person or in person with the assistance of counsel.

The Chair appointed a Subcommittee of three to deal with the appeals from failure of the Bar Admission Course. It is recommended that the Subcommittee be guided by the Policies Relating to Appeals from Failure of the Bar Admission Course drafted by the Director. (page 1)

Approved

2. BAR ADMISSION COURSE: FAILURE OF SPECIAL EXAMINATIONS

The Special Examinations Policy indicates that students who are unable to write a regularly scheduled examination for substantial reasons beyond their control will be permitted to write a special examination. Students who do not pass a special examination are entitled to write a supplemental examination.

Some students have failed special examinations. In some cases students may wish to write supplemental examinations in time to be admitted to the Bar at the regular March, 1990 Call ceremonies. Such a schedule, however, would place considerable pressure on each Head of Section who must draft and mark the supplemental examinations. Such a schedule also would place considerable pressure on Law Society staff.

It is recommended that supplemental examinations be scheduled as soon as reasonably possible for students who have not successfully completed special examinations, and that reasonable efforts be made to schedule such supplemental examinations so that admission to the Bar for successful students not be delayed beyond the April Call.

Approved

B.  
ADMINISTRATION

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1. MARGARET JOANNE DURANT

Margaret Joanne Durant requests abridgment of the articling requirement by 10 weeks for pregnancy and child care leave. In summary, Ms. Durant's submission is that the combination of her articling experience and her work with the Community and Legal Aid Services Programme while attending as a student at Osgoode Hall Law School are sufficient to satisfy the articling requirement.

Her application is unique in that she normally would be permitted to defer completion of the final 10 weeks of the articling requirement until after the teaching term of the Bar Admission Course. Ms. Durant submits that her circumstances and experience justify exemption from the final 10 weeks of the articling requirement.

It is recommended that a decision in Ms. Durant's case take into account any comments or recommendations of the Women in the Legal Profession Subcommittee, and that a final decision be deferred to the April agenda.

Approved

2. DEPARTMENT OF EDUCATION 1990 - 91 BUDGETS

The draft budgets for 1990-91 were received by the Committee. It is recommended that the draft budgets be referred to the Finance Committee.

Approved

C.  
INFORMATION

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1. BAR ADMISSION COURSE FACULTY

Six lawyers have recently joined the new Faculty of the Bar Admission Course. The new members are:

- a) Ronald Fallis (Toronto),
- b) Jacqueline Huston (Ottawa),
- c) Michel Landry (Ottawa),
- d) Margaret McSorley (London),
- e) Alexis Singer (Toronto),
- f) Sophia Sperdakos (Toronto).

These new Faculty members will work with Erika Abner, a member of the Toronto Faculty who joined the Law Society staff in September of 1989, and Ainslie Lamb, Course Designer. The Faculty in Toronto will be joined by Christine Medycky on June 1, 1990. There remain three vacancies on the Toronto Faculty.

2. TREASURER'S ANNUAL DINNER: Bar Admission Course Section Heads and Senior Instructors: May 10, 1990.

The Treasurer is hosting a special dinner in the Benchers' Dining Room. The dinner will be preceded by a meeting in Convocation Room followed by refreshments. All members of the Legal Education Committee are invited to attend.

The 5:30 p.m. business meeting will be to consider the most recent Bar Admission Course, with a view to making improvements. The dinner will be to honour the Heads of Section and Senior Instructors for their considerable contribution to the Bar Admission Course.

3. TORONTO STUDENTS CALL TO THE BAR DINNER

The Toronto Bar Admission Course students' Call to the Bar dinner and dance will take place at Inn on the Park on Saturday, March 31, 1990. The students have sent invitations to each member of the Legal Education Committee to attend with a guest if desired. Heads of Section have also been invited. The invitation requests that RSVP's be sent to the Toronto Bar Admission Course office.

4. FRENCH LANGUAGE

Dominique Paquet Broad joined the Law Society staff on February 1, 1990 as its first French Language Services Coordinator. One of her important functions is to provide leadership and direction to the Department of Education in providing French language services in both the Bar Admission Course and in Continuing Legal Education.

Holly Harris, Regional Director of Education in Ottawa, is directing translation of Bar Admission Course materials in consultation with the Chair, the Chair of the Special Committee on French Language Services, Colin McKinnon, the Under Treasurer, the Director, and Ms. Paquet Broad. The Law Foundation has provided \$155,000 for the year 1990 for translation. Other funding sources are being sought by the Special Committee on French Language Services and the Under Treasurer.

Translation of Bar Admission Course materials in Family Law and Estate Planning and Administration has just begun.

5. ARTICLING REFORM SUBCOMMITTEE

The Chair of the Articling Reform Subcommittee, Philip Epstein, has provided copies of the Draft Report to members of the Legal Education Committee and a broad range of individuals representing the practising Bar, the judiciary, and legal educators. Availability of the Draft Report has been announced in the Ontario Reports, and copies are being provided in response to requests. Each recipient of the Draft Report has been requested in writing to provide comments and suggestions.

Members of the profession have just begun to submit letters containing comments and suggestions. These comments and suggestions are being compiled for consideration by the Subcommittee.

The Bar Admission Advisory Committee has met twice and has scheduled further meetings to give detailed attention to the Draft Report.

The Subcommittee will consider all comments and suggestions before presenting the Report to the Legal Education Committee for consideration and approval.

6. BAR ADMISSION COURSE REFORM

Final design is being completed and arrangements made in time for the first offering of the new Bar Admission Course beginning on May 14, 1990.

ALL OF WHICH is respectfully submitted

DATED this 8th day of March, 1990

"A. Rock"  
Chair

Attached to the original Report in Convocation File, copy of:

A-Item 1 - Copy of the "Policies Relating to Appeals from Failure of the Bar Admission Course" drafted by the Director.

(Page 1)

THE REPORT WAS ADOPTED

.....

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGAL EDUCATION COMMITTEE begs leave to report:

Your Committee met on Thursday, the 22nd of March, 1990. The following members were present: D.H.L. Lamont, S. Thom, J.J. Wardlaw.



B.  
ADMINISTRATION

1. SCHOLARSHIPS AND PRIZES

The Committee was asked to approve the attached list of prizewinners in the 31st Bar Admission Course. (pages 1 - 4)

Approved

ALL OF WHICH is respectfully submitted

DATED this 22nd Day of March, 1990

"A. Rock"  
Chair

Attached to the original Report in Convocation File, copy of:

B-Item 1 - List of prizewinners in the 31st Bar Admission Course.  
(Pages 1 - 4)

THE REPORT WAS ADOPTED

.....

CERTIFICATION BOARD

Mr. Rock presented the Report of the Certification Board of its meeting on February 28th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The CERTIFICATION BOARD begs leave to report:

Your Board met on Wednesday, the 28th of February, 1990 at three thirty in the afternoon, the following members being present: A.M. Rock (Chair), G.P. Sadvari (Vice-Chair), J. Callwood, and R.D. Yachetti. R. Tinsley and S. Thomson (Co-ordinator) from the Law Society were present. Also present were T.G. Bastedo (Chair - Family Law Specialty Committee) and P. Webb (Chair - Civil Litigation Specialty Committee).

Specialty Committees met as follows:

The Family Law Specialty Committee met on Monday, the 12th of February, 1990 at three o'clock in the afternoon.

The Criminal Litigation Specialty Committee met on Friday, the 23rd of February, 1990 at one o'clock in the afternoon.

B.  
ADMINISTRATION

1. INTELLECTUAL PROPERTY SPECIALTY COMMITTEE

The Certification Board recommends to Convocation that an Intellectual Property Specialty Committee be struck, to be chaired by Ronald E. Dimock (of Toronto). The Committee will have as its first task the recommendation to the Board of the standards required for certification of Intellectual Property Specialists.

C.  
INFORMATION

1. CERTIFICATION OF CRIMINAL LITIGATION SPECIALISTS

The Board is pleased to report the certification of the following lawyers as Specialists in Criminal Litigation:

Patrick J. Ducharme	(of Windsor)
Robert E. Houston	(of Ottawa)
Ronald B. Lester	(of Thunder Bay)
Philip Patterson	(of Toronto)

2. FAMILY LAW APPLICATION PACKAGE

The complete Family Law application package was approved by the Certification Board on February 28, 1990.

A notice is to be submitted for publication in the Ontario Reports indicating that interested members are invited to contact the Co-ordinator at the Law Society to obtain an application package.

3. NEW SPECIALTY COMMITTEES

The Law Society has received a number of letters from the profession indicating interest in participating as members of the proposed new Specialty Committees, in response to the following notice which appeared in the February 23, 1990 edition of the Ontario Reports:

"... the Certification Board is planning to expand the program to include other areas of specialty. In particular, the Board is considering the establishment of Specialty Committees in the following areas of practice:

- Immigration Law	- Administrative Law
- Intellectual Property Law	- Labour Law
- Bankruptcy and Insolvency Law	- Environmental Law
- Taxation Law	- Entertainment Law
- Wills and Estates Law	- Real Estate Law
- Estate Planning Law	- Defamation and Libel Law
- Worker's Compensation Law	

Those members of the Law Society whose practice is devoted to these areas, and who are interested in serving as members of a Specialty Committee, with a mandate to establish standards for certification and receive and consider applications from practitioners, should communicate their interest to the Law Society ..."

4. RESPONSE TO REPORT ON WOMEN IN THE LEGAL PROFESSION

The Board considered the Report on Women in the Legal Profession, which has been distributed for Committee review by Bencher Fran Kiteley. The Board recommended that a letter be sent to all women lawyers in the

province reminding them of the areas for which Specialist certification may be obtained and encouraging them to participate in the process as a member of one of the proposed new Specialty Committees.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1990

"A. Rock"  
Chair

THE REPORT WAS ADOPTED

.....

ADMISSIONS COMMITTEE

Ms. Peters presented the balance of the Report of the Admissions Committee of its meeting on March 8th, 1990 and the Report of the Committee's meeting on March 22nd, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of March, 1990 at 9:30 a.m., the following members being present: Ms. Peters (Chair), Mrs. Weaver (Vice-Chair) and Messrs. Ground, Lamont and Strosberg.

A.  
POLICY

1. GOOD CHARACTER - LETTERS OF REFERENCE

The Committee decided, as a matter of policy, that all letters of reference sent to the Committee with regard to matters of good character must outline what knowledge they have with respect to the applicant's questionable background to indicate that they are fully aware of what gave rise to the need to consider whether or not the applicant is of good character.

B.  
ADMINISTRATION

1. DIRECT TRANSFERS - COMMON LAW - REGULATION 4(1)

David Graham Bell (B.A. 1975 and M.A. 1976 both from Queen's University, LL.B. in 1980 from the University of New Brunswick and an LL.M. 1981 from Harvard University) was called to the Bar of the Province of New Brunswick on the 22nd day of January 1982 and practised in that province from the 22nd January 1982 to the 1st July 1985 (5 mos. within the last five years - when looking at the date of his application).

In his letter of the 30th January, 1990, he states that from the 1st July 1985 to the present he has been a member of the Faculty of Law of the University of New Brunswick, first as an Assistant and now as an Associate Professor.

He states that from July 1985 to October 1988 he continued to practise law on a part-time basis. His practice consisted chiefly of acting as counsel to the New Brunswick Department of Justice and as legal counsel to an association of school trustees.

Mr. Bell presents a Certificate of Good Standing and seeks to proceed under Regulation 4(1). He asks the Committee whether his legal experience as outlined in his letter of the 30th January, 1990 meets the transfer requirements.

The Committee was of the opinion that as the requirements are set out in the Regulation it has no discretion in this matter and accordingly Mr. Bell's teaching and part-time practice experience cannot be counted toward the necessary three years in active practice.

Stindar Kumar Lal (granted degree of the Utter Bar 1965 by the Middle Temple, London, U.K. and passed the Common Law Examinations of the L.S.U.C. in October and November 1975) was called to the Bar of the Province of Nova Scotia on the 8th day of March 1977 and practised in that province from March 1977 to August 1977. Mr. Lal was then called to the Bar of the Northwest Territories on the 12th day of September 1977 and practised in the capacities of Deputy Minister of Justice and Legal Advisor to the government of the Northwest Territories from September 1977 to June 1987. He then practised in the capacity of General Counsel to the Canadian Human Rights Commission in Ottawa from June 1987 to March 1988. He was appointed Deputy Solicitor General in and for the Province of Ontario on the 9th day of March, 1988 and currently holds that appointment.

Mr. Lal presents Certificates of Good Standing from both the Nova Scotia and Northwest Territories Bars and seeks to proceed under Regulation 4(1). There is nothing unusual about application.

Approved

Robert John Pitt (B.Comm. 1966 and LL.B. 1969 both from the University of Alberta) was called to the Bar of the Province of Alberta on the 17th day of June, 1970 and practised in that province from the 17th June 1970 to the 13th February 1990. Mr. Pitt presents a Certificate of Good Standing and seeks to proceed under Regulation 4(1). There is nothing unusual about his application.

Approved

Nadine Lian Sandercock (LL.B. 1982 from the University of Saskatchewan) was called to the Bar of the Province of Saskatchewan on the 26th day of September 1983 and practised in that province from the 26th day of September 1983 to the 31st day of March 1986 and from the 14th day of April 1986 to the 30th of November 1989. Ms. Sandercock presents a Certificate of Good Standing and seeks to proceed under Regulation 4(1). There is nothing unusual about her application.

Approved

Kevin Grant Smith (B.Comm. 1979 and LL.B. 1985 both from the University of British Columbia) was called to the Bar of the Province of British Columbia on the 13th day of June 1986 and has practised in that province from the 21st July 1986 to the present. Mr. Smith presents a Certificate of Good Standing and seeks to proceed under Regulation 4(1). There is nothing unusual about his application.

Approved

DIRECT TRANSFERS - QUEBEC - REGULATION 4(2)

Christopher Broadbent (B.C.L. and LL.B. 1984 both from McGill University) was called to the Bar of the Province of Quebec in June 1987.

From August 1st 1987 to March 31st 1988 (8 mos.) worked for the firm of Richard Lande and Associates and was responsible for drafting legal proceedings, contracts, amendments to the constitution of a non-profit organization, giving legal opinions to clients and a senior partner, pleading of provisional and permanent injunctions, and doing research.

From June 1st through July 1988 (2 mos.) the applicant worked part-time (5 days a week - 5 hours each day) for the firm of Ralph A. Cohen and Associates interviewing clients and preparing memos on the appropriate action to be taken, pleading criminal cases and bail requests as well as assisting in the preparation of criminal cases, appearing before immigration hearings in refugee cases and other proceedings.

From August 1st, 1988 to the present (1 yr. and 6 mos.) Mr. Broadbent has worked for Swabey, Ogilvy, Renault, a firm which is a merger between the firm of Swabey, Mitchell, Houle, Marcoux and Sher (dealing with patents, trade marks and other intellectual property matters) and the law firm of Ogilvy, Renault. Together the new firm is responsible for the prosecution of applications and related matters involving intellectual property in the area of trademarks.

His responsibilities with Swabey, Ogilvy, Renault have included, drafting of legal proceedings, preparation of affidavits and the accompanying exhibits in trade mark actions, preparation of arguments, including a review of jurisprudence for Oral Hearings before the Trade Marks Opposition Board, pleading of cases in Oral Hearings before the Trade Marks Opposition, providing legal advice in the areas of wills, bankruptcy, injunctions, criminal law, and property, corresponding with and reporting to clients as well as drafting cease and desist letters, research on particular subjects for partners, legal opinions on the effects of judgments, preparation of summaries of jurisprudence, the evaluation of them and reporting to partners.

Mr. Broadbent seeks to transfer to the practice of law in Ontario and asks whether the time he has spent (2 yrs. and 4 mos.) working in Quebec as described above would be considered the active practice of law so that he may decide to either (a) continue in his current position until he has 8 more months of work experience behind him at which point he would have the necessary 3 years of practice which would allow him to transfer by way of the transfer examinations or (b) allow him to apply to the Legal Education Committee now for entry into the Bar Admission Course and an abridgement of articles.

The Committee was of the view that Mr. Broadbent's part-time in practice with the firm of Ralph Cohen and Associates could not be counted toward making up the necessary three years in active practice and therefore he will be required to complete an additional ten months in practice before being eligible to apply for transfer under Regulation 4(2).

2. ADMISSION OF STUDENTS-AT-LAW

Bar Admission Course

The following candidates, having complied with the relevant Regulations, paid the required fee of \$101.00 and filed the necessary documents, now apply for admission to the Law Society as students-at-law in the Bar Admission Course:

Under Bar Admission Course Regulation 22(7)  
31st B.A.C. (Entering Articles 1988)

1145.	Boswell, Richard Cary	3 yrs. Arts, Waterloo; LL.B. Toronto/88;
1146.	Caplan-Stroeder, Bonnie Ann	B.A. Waterloo/84; LL.B. York/87;
1147.	Donnelly, Nancy Lee	B.A. Carleton/85; LL.B. Alberta/88;
1148.	Dressler, Esther Hope	B.Sc. Toronto/85; LL.B. York/88;
1149.	Fogelman, Herschel Ian	3 yrs. Arts, York; LL.B. York/88;
1150.	Goldstein, Robert Frederick	B.A. Toronto/85; LL.B. McGill/88;
1151.	Handler, Randi	2 yrs. Arts, Toronto; LL.B. Toronto/88;
1152.	Herbert, Jacinth Agnola	B.A. Wilfrid Laurier/84; LL.B. Windsor/88;
1153.	Keay, Bruce Andrew	B.A. Acadia/85; LL.B. York/88;
1154.	Khabayan, Vasken	B.A. York/85; LL.B. Toronto/88;
1155.	Kronby, Matthew Stephen	B.A. McGill/84; LL.B. Toronto/88;
1156.	Lundy, Andrew Allan	3 yrs. Arts, Western; LL.B. Western/88;
1157.	Morgan, Brendan James	B.A. York/83; M.Sc. London/84; LL.B. York/88;
1158.	Riddell, Alan	B.A. Toronto/82; LL.B. Toronto/88;
1159.	Sanson, Geraldine Ruby	B.A. York/85; LL.B. Queen's/88;
1160.	Smith, Kenneth Derrick	B.A. Simon Fraser/78; M.B.A. British Columbia/86; LL.B. British Columbia/81;
1161.	Springer, Sara Lynn	B.A. Toronto/85; LL.B. Western/88;
1162.	Steiner, Shelley Allyson Theresa	B.A. Ottawa/85; LL.B. Ottawa/88;
1163.	Taylor, Melissa Ellen	B.A. Queen's/83; LL.B. Queen's/88;
1164.	Therrien, Joseph Michel Jacques	3 yrs. Science, Ottawa; LL.B. Ottawa/88;
1165.	van den Bergh, Peter	B.A. Yale/82; LL.B. York/88;

1166. Zeldin, Eric David

B.A. McGill/85;  
LL.B. Dalhousie/88;

Approved

Under General Transfer Provisions  
To Enter Teaching Term of the Bar Admission Course

Clifford, John Charles	Province of Nova Scotia
Gerald Marvin Green	Province of British Columbia
Louise Sophia Pelly	Province of Quebec

Approved

3. EXAMINATION RESULTS - BAR ADMISSION COURSE TRANSFER EXAMINATIONS

The results of the Bar Admission Course Transfer Examinations held in February 1990 were before the Committee. Eleven transfer candidates and two requalification candidates sat the examinations for the first time and three transfer candidates and one requalification candidate sat one or two of the examinations as supplementals to ones failed at the October 1989 sitting. Eleven candidates sat in Toronto, four candidates in Ottawa and two in London, Ontario.

The following candidates passed:

Mark Dowdell Cullen  
Peter Jacobus Cullen  
Arthur Evrensel  
Michiko Hara  
Steven Mark Kmec  
David Charles McGreer  
Bonnie-Kae McPhee  
Richard Allan Monette  
Katherine Peacocke  
Jeffery Joseph Slivocka  
Gordon Christian Vadum  
Lilly Ann Wong

Five candidates failed.

Noted

4. EXAMINATION RESULTS - COMMON LAW EXAMINATION

The following candidates were approved by the Committee to proceed under Regulation 4(2). Four candidates sat the common law examination at the offices of the Law Society. Results of the examinations for three of the candidates have been returned, one passed and two failed. The candidates were identified by number only and the report of the examiners is as follows:

<u>Candidate No.</u>	<u>Paper No.</u>	<u>Marks out of 100</u>
329	5A	61
	5B.3	60
330	5A	57
	5B.3	44
331	5A	52
	5B.3	37

Candidate 329	George Glezos	Province of Quebec
Candidate 330		Province of Quebec
Candidate 331		Province of Quebec

Noted

5. CALL TO THE BAR AND CERTIFICATE OF FITNESS

Transfer from another province - Regulation 4(1)

The following candidates, having passed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee, now apply for call to the Bar and to be granted Certificates of Fitness:

David Charles McGreer	Province of Alberta
Lilly Ann Wong	Province of Alberta

Transfer from another province - Regulation 4(2)

The following candidates, having passed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee, now apply for call to the Bar and to be granted Certificates of Fitness:

Peter Jacobus Cullen	Province of Quebec
Arthur Evrensel	Province of Quebec
Katherine Peacocke	Province of Quebec

6. OTHER ITEMS

DEFERRAL OF CALL TO THE BAR - REQUEST FOR FURTHER EXTENSION

Debra Lynne Sattler successfully completed the thirtieth Bar Admission Course in February 1989. On the 19th of June 1989 Ms. Sattler received permission from the Secretary to defer her call to the Bar to June of 1990.

A letter was before the Committee dated the 22nd of February, 1990 from Ms. Sattler requesting a further deferral to the spring of 1991. Ms. Sattler requests the extension of the deferral to allow her to continue working on a degree in Social Work at the University of Toronto.

Approved

REINSTATEMENT AFTER SUSPENSION - EXEMPTION FROM EXAMINATIONS

The following item was stood over from both the January 11th and February 8th Admissions Committee meetings:

Brenda C. Spaulding was called to the Bar in April 1982 and has never practised law. She was suspended on the 25th of February, 1983 for non-payment of fees.

Ms. Spaulding now seeks to be reinstated. Her letter of the 8th November, 1989 was before the Committee in which she requests an exemption from the requalification examinations on the basis of the nature of the work she has performed over the years following her call to the Bar.

Ms. Spaulding began her most recent position as a law clerk with the firm of Paterson, MacDougall in Toronto in September 1989. She states that all of her duties are in the Professional Indemnity Insurance area. She is responsible for reviewing incoming matters, obtaining factual information for the assessment of a member of the



firm, preparing preliminary draft reports for the consideration of one of the partners, keeping up-to-date with developments in the area of Professional Negligence Insurance and preparing case briefs for the department.

In her most recent letter dated the 4th January, 1990, which was also before the Committee, she indicates that upon reinstatement she will continue with Paterson, MacDougall in the same line of work. She also states that all of her work will be directly supervised by one of the partners of the firm.

The Director of Legal Education was consulted as to what he felt would be appropriate in the way of further legal training to ensure that Ms. Spaulding had the capability to practise law as an entry-level lawyer. The Director of Legal Education recommended that she be required to article with Paterson, MacDougall for six months with some conditions attached to the articles. After discussion, the Committee adopted the following conditions:

- (a) that she and her principal file a joint statement detailing what experience and supervision she will receive as an articulated student;
- (b) that she complete with her principal the Professional Responsibility examination that all articling students are required to complete during the term of their articles;
- (c) that her principal file a letter at the conclusion of her articles detailing the experience that she has received and speaking to her ability to practise law as an entry-level lawyer; and
- (d) that she undertake that following her reinstatement she will not engage in the practice of law as a sole practitioner for at least 1 year.

#### GOOD CHARACTER - (Articling Student)

The Committee considered the case of an articling student who disclosed that some 6 years ago he was expelled from university for falsifying an academic transcript for his medical school application.

The Committee had before it letters of reference from persons who knew the student and knew of his expulsion and who were willing to act as references to his current good character. Having regard to the time that has elapsed since his expulsion, his successful completion of law school and the letters of reference, the Committee was of the view that his expulsion would not prevent him from being called to the Bar.

#### REINSTATEMENT AFTER SUSPENSION

Richard Allan Monette was called to the Bar on the 6th of April, 1983 and was suspended for non-payment of the annual fee on the 24th of February, 1984.

Mr. Monette successfully completed the February 1990 Bar Admission Course Transfer Examinations, the examinations to be sat by those who have been suspended for five or more consecutive years.

Upon meeting any conditions of the Finance Committee with regard to the payment of arrears of fees he asks to be reinstated as a member of the Law Society of Upper Canada.

Approved

7. PRELIMINARY BUDGET ESTIMATES

The budget estimates for the year 1990/91 were presented to the Committee. The Committee approved the estimates and forwarded them to the Finance Committee for consideration.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1990

"P. Peters"  
Chair

THE REPORT WAS ADOPTED

.....

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The ADMISSIONS COMMITTEE begs leave to report:

Your Committee met on Thursday, the 22nd of March, 1990 at 9:15 a.m., the following members being present: Ms. Peters (Chair), Mrs. Weaver (Vice-Chair), and Messrs. Ground and Lamont.

B.  
ADMINISTRATION

1. ADMISSION OF STUDENTS-AT-LAW

Bar Admission Course

The following candidates, having complied with the relevant Regulations, paid the required fee of \$101.00 and filed the necessary documents, now apply for admission to the Law Society as students-at-law in the Bar Admission Course:

Under Bar Admission Course Regulation 22(7)  
31st B.A.C. (Entering Articles 1988)

1167.	Ball, Stacey Reginald	B.A.Sc. Lethbridge/87; LL.B. Victoria/86;
1168.	Batten, Andrew Bentham	4 yrs. Arts, Bishops; LL.B. Ottawa/88;
1169.	Beattie, Roger William	B.A. Queen's/83; LL.B. Dalhousie/88;
1170.	Bosacki, Steven Michael	B.Comm. Windsor/81; M.B.A. Windsor/82; LL.B. Windsor/85;
1171.	Downing, Beth Anne	B.A. Toronto/85; LL.B. York/88;
1172.	Goodman, David Jason	B.Comm. McGill/85; LL.B. Ottawa/88;
1173.	Kosak, Alvin Ray Paul	B.Ed. Alberta/83; LL.B. Alberta/86;

1174.	Palios, Nicholas	B.A. York/81; M.A. McMaster/83; LL.B. Windsor/88;
1175.	Pouliot, David Foster	B.A. Manitoba/83; LL.M. Queen's/88; LL.B. McGill/86;
1176.	Richey, James Jeffrey	B.A. Toronto/82; LL.B. York/88;
1177.	Sipos, Jan	4 yrs. Arts, Toronto; LL.B. York/88;
1178.	Sullivan, Nancy Lynn Ann	B.A. Guelph/85; LL.B. Dalhousie/88;
1179.	Tollis, Aldo	B.A. Toronto/78; LL.B. Ottawa/88;

Approved

2. CALL TO THE BAR AND CERTIFICATE OF FITNESS

Bar Admission Course

A list of 1107 candidates who have successfully completed the thirty-first Bar Admission Course or one of the earlier Bar Admission Courses, filed the necessary documents and paid the required fee of \$210.00, or who have successfully completed the teaching term of the Bar Admission Course in lieu of writing the transfer examinations, paid the required fee and fulfilled all other requirements, was before the Committee. They now apply for call to the Bar and to be granted Certificates of Fitness:

99	candidates	London	Monday, March 26th, 1990
187	candidates	Ottawa	Wednesday, March 28th, 1990
394	candidates	Toronto	Friday, March 30th, 1990 (10:30 a.m. - 12:30 p.m.)
427	candidates	Toronto	Friday, March 30th, 1990 (3:15 p.m. - 5:15 p.m.)

Approved

Transfer from another province - Regulation 4(1)

The following candidate having passed the Bar Admission Course Transfer Examinations, filed the necessary documents and paid the required fee, now applies for call to the Bar and to be granted a Certificate of Fitness:

Jeffery Joseph Slivocka	Province of Nova Scotia
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Mr. Slivocka is scheduled to be called to the Bar at the March 26th, 1990 Special Convocation in London.

Approved

ALL OF WHICH is respectfully submitted

DATED this 22nd of March, 1990

"P. Peters"  
Chair

Attached to the original Report in Convocation File, copy of:

List of 1107 candidates who have completed the thirty-first Bar Admission Course or one of the earlier Bar Admission Courses and now apply to the Bar and to be granted Certificates of Fitness.

(Pages 1 to 18)

THE REPORT WAS ADOPTED

.....

PROFESSIONAL STANDARDS COMMITTEE

Mr. Lyons presented the Report of the Professional Standards Committee of its meeting on March 8th, 1990,

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 7th of March, 1990 at eleven thirty in the morning the following members being present: Mr. Lyons (Chair), Mr. Farquharson (Vice-Chair), Ms. Bellamy, Mr. Ferguson, Mr. Furlong, Mr. Guthrie, Ms. Harvey, Mr. Thoman and Mrs. Weaver. Also present were Ms. Angevine, Ms. McCaffrey, Ms. Poworoznyk, and Messrs. Kerr, Marshall and Stephany.

Note: correction, see Page 29.

A.

POLICY

1. PROFESSIONAL STANDARDS COMMITTEE - PRACTICE REVIEW PROGRAMME  
AMENDMENTS TO THE LAW SOCIETY ACT

The Committee approved in principle significant revisions to the existing Practice Review Programme. Amendments to the Rules of Professional Conduct and the Law Society Act will be required before revised procedures can be implemented.

A working paper has been prepared and will be circulated to various Committees for consideration. Benchers interested in obtaining a copy of the working paper should contact the Secretary.

B.

ADMINISTRATION

1. BUDGET FOR 1990 - 91 FISCAL YEAR

The Committee approved the preliminary budget estimates for the up-coming fiscal year.

C.

INFORMATION

1. PRACTICE ADVISORY SERVICE  
STATUS REPORT

Attached as C1 - C2 is a copy of a report on recent activities of the Practice Advisory Service.

2. SUB-COMMITTEE ON WILLS AND ESTATES

Mrs. Weaver reported on the sub-committee meeting which was held on March 7, 1990.

3. SUB-COMMITTEE ON FAMILY LAW

Ms. Harvey updated the Committee on recent developments relating to the Family Law Checklist.

4. SUB-COMMITTEE ON CIVIL LITIGATION

The composition of the sub-committee has been completed. The first meeting of the sub-committee is scheduled for April, 1990.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1990

"J. Lyons"  
Chair

Attached to the original Report in Convocation File, copy of:

C-Item 1 - Copy of a report on recent activities of the Practice  
Advisory Service from Ms. Susan L. McCaffrey, Staff Lawyer.  
(Marked C1 to C2)

The Professional Standards Committee Report should read that the Committee met on Thursday, March 8th, 1990 and not March 7th.

THE REPORT WAS ADOPTED

.....

CONVOCATION ADJOURNED AT 12:45 P.M. and the Benchers had as their guest Mr. Alan Marshall, Q.C. the retiring Director of the Practice Advisory Service of the Law Society.

.....

CONVOCATION RECONVENED AT 2:45 p.m. the following being present:

The Treasurer, (Mr. Lee Ferrier), Mr. Bastedo, Ms. Bellamy, Mr. Bragagnolo, Ms. Callwood, Messrs. Campbell, Carey, Carter, Cass, Ferguson and Furlong, Mrs. Graham, Mr. Ground, Ms. Kiteley, Messrs. Lamont, McKinnon, Pepper, Somerville, Spence, Thom and Topp and Mrs. Weaver.

.....

MOTIONS

COMMITTEE APPOINTMENTS

It was moved by Mr. Topp, seconded by Mr. McKinnon THAT Mr. Colin Campbell be added as a member of the Professional Conduct Committee, Research and Planning Committee and the Legal Education Committee.

It was moved by Mr. Topp, seconded by Mr. McKinnon THAT Mr. Robert J. Carter be appointed Chair of the Professional Conduct Committee.

.....

FEDERATION OF LAW SOCIETIES' SPECIAL COMMITTEE ON INTERJURISDICTIONAL  
LAW PRACTICES

Mr. Spence presented a summary of the salient points of the Report of the Federation's Committee on Interjurisdictional Law Practices.

.....

FINANCE COMMITTEE

Mr. Ground presented the Report of the Finance Committee of its meeting on March 8th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The FINANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of March, 1990 at three o'clock in the afternoon, the following members being present: Messrs Ground (Chair), Guthrie (Vice Chair), Furlong, Lamont, Noble, Pepper, Topp, Wardlaw and Mrs. Weaver.

B.  
ADMINISTRATION

1. FINANCIAL REPORT

The Director presented the highlights memorandum for the three Law Society Funds together with supporting financial statements for the eight months ended February 28th 1990.

Approved

2. ONTARIO LEGAL AID PLAN - LAW SOCIETY 1989/90 CONTRIBUTION

The Deputy Director, Finance of the Ontario Legal Plan has requested an advance of \$500,000 with the balance of \$3,575,000 to be paid in March in accordance with section 91(a) of the Regulations of the Legal Aid Act. (Letter attached.)

The Committee was asked to approve payment of this amount.

Approved

3. SUSPENSION OF MEMBERS - LATE FILING FEE

There are 13 members who have not complied with the requirements respecting annual filing and who have not paid the late filing fee.

In all 13 cases all or part of the late filing fee has been outstanding four months or more. The 13 members owe \$7,800.00 of which \$2,060.00 has been owing for more than four months.

The Committee was asked to recommend that the rights and privileges of the 13 members be suspended on March 22nd 1990 if the late filing fee remains unpaid on that date and remain suspended until the late filing fee has been paid.

Approved

Note: Motion, see Page 33.

4. MEMBERSHIP UNDER RULE 50

(a) Retired Members

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

James Baldwin Beckett	Ottawa
* John Harty Osler	Toronto

\* See also Membership Restored

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

Approved

5. RESIGNATION - REGULATION 12

(a) Joseph Bitton of Willowdale has applied for permission to resign his membership in the Society and has submitted a Declaration in support. Mr. Bitton was called to the Bar on the 10th of April 1986 and practised law in Ontario for only 9 months. Mr. Bitton has never paid his fees to the Society having applied for, and been granted, deferral of annual fees from the 1986/87 year onward. Annual fees owing now total \$2,258.00. Mr. Bitton has submitted a special request to be relieved of publication in the Ontario Reports giving for a reason the expense of publication.

(b) William Alan Higgins of Kingston, has applied for permission to resign his membership in the Society and has submitted a Declaration in support. Mr. Higgins was called to the Bar on the 28th of June 1956 and practised law in Ontario from that date to 1969. His rights and privileges as a member of the Society were suspended on the 19th of February 1971 for his failure to pay the 1970/71 fees. Arrears of fees now total \$8,879.00. Mr. Higgins wishes to resign because he has no desire to ever practise law again and does not wish to continue filing annual returns.

Their applications are in order and the Committee was asked to approve them without publication and without payment of arrears of fees.

Approved

6. MEMBERSHIP RESTORED

The Honourable Mr. Justice John H. Osler gave notice under section 31 of The Law Society Act that he had retired as a Judge of the Supreme Court, and wishes to be restored to the Rolls of The Law Society. Accordingly, his membership was restored effective the 1st of March 1990.

Approved

\* See also Membership in Rule 50

C.  
INFORMATION

1. CHANGES OF NAME

(a) Student Members

<u>From</u>	<u>To</u>
Elizabeth Louise Mitchell	Eliza Louise Mitchell (Change of Name)

22nd March, 1990

Kelly Elizabeth Stark

Kelly Elizabeth Stark-Anderson  
(Change of Name)

Guylaine Sylvie Noel

Guylaine Sylvie Noel-Wade  
(Married Name)

Chi-Tai Liang

Robert Chi-Tai Liang  
(Change of Name)

Henry Loy

Henry Chong  
(Change of Name)

Noted

2. ROLLS AND RECORDS

(a) Deaths

The following members have died:

John Eddington Kerr  
Toronto (Life Member)

Called September 13th 1923  
Died December 1st 1988

William Samuel Eplett  
Toronto

Called June 22nd 1960  
Died December 20th 1989

Bernard Ignatius Black  
Thunder Bay

Called June 29th 1950  
Died January 27th 1990

Noted

3. LEGAL MEETINGS AND ENTERTAINMENT

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

March 26, 1990

C.B.A.O.  
Convocation Hall

April 27, 1990

Supreme Court (Justice Osler)  
Convocation Hall

April 28, 1990

Lawyers Club  
Convocation Hall

May 5, 1990

Class of 1960  
Benchers Reception

May 12, 1990

Class of 1955  
Small Dining Room, Convocation Hall

May 24, 1990

Lawyers Club  
Small Dining Room, Convocation Hall

May 30, 1990

Medico-Legal  
Small Dining Room, Convocation Hall

June 15, 1990

Osgoode Law School  
Convocation Hall

Approved



Spring 1990

Canadian Tribute to Human Rights

Denied

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March 1990

"J. Ground"  
Chair

Attached to the original Report in Convocation File, copy of:

B-Item 1 - Copy of Memorandum dated March 5, 1990 re: Financial  
Statements - Highlights as at February 28, 1990 together  
with supporting financial statements.

(Marked Bl, Pages 1 - 7)

THE REPORT WAS ADOPTED

.....

MOTION TO SUSPEND: LATE FILING FEE

It was moved by Mr. Ground, seconded by Mr. Wardlaw THAT the rights and privileges of each member who has not paid the fee for the late filing of Form 2/3 within four months after the day on which payment was due and whose name appears on the attached list be suspended from the 22nd of March 1990 for one year and from year to year thereafter or until that fee has been paid together with any other fee or levy owing to the Society which has then been owing for four months or longer.

Carried

(List of Names in Convocation File)

DISCIPLINE POLICY COMMITTEE

Mr. Somerville presented the Report of the Discipline Committee of its meeting on March 8th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

Your committee met on Thursday, the 8th of March, 1990 at one thirty in the afternoon, the following members being present: Mr. Cass (Acting Chair), The Honourable Allan Lawrence, Messrs. Carey, McKinnon, Strosberg, Topp and Ms. Peters.

A.  
POLICY

1A. Increase of late filing Levies

Attached at A-1 is a memorandum from the Society's Audit Department requesting an increase in the levy for late filing of Form 2 or Form 3 as required by the Regulation. One of the members of your Committee suggested at the October 1989 meeting, that the late filing fee be increased from \$5 to \$10 per day. Your Committee was also asked to consider increasing the maximum levy from \$600 to \$1500.

Your Committee recommends approval of the increases set out above.

B.

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ADMINISTRATION

1B. Budget Estimates for 1990/91

The Chair of Finance asked each Committee for details of new expenditures for additional equipment, staff or programmes for the next fiscal year. Your Committee has approved formation of a subcommittee to deal with budgetary matters related to the the Discipline, Complaints and Audit Departments. The Chair will determine the composition of this subcommittee.

2B. Michael A. Spensieri (Former Member)

On the basis of an Agreed Statement of Facts, Convocation permitted Mr. Spensieri to resign on October 26th, 1989.

The Society has received a request from Counsel for the Children's Aid Society of Metropolitan Toronto to employ Mr. Spensieri as a Law Clerk without remuneration.

Your Committee was asked to consider the application in light of Rule 20 which reads as follows:

No lawyer shall, without the express approval of Convocation, retain, occupy office space with, use the services of or employ in any capacity having to do with the practice of law any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, or suspended, or who has been involved in disciplinary action and been permitted to resign as a result thereof, and has not been reinstated or yet been readmitted.

Discipline counsel, Shaun Devlin advised the Committee about the Spensieri investigation and the outstanding claims against the Compensation Fund.

At the request of counsel for the Children's Aid Society your Committee has deferred the matter to allow for further consideration of the application.

3B. Applications for exemption from prohibition against member of Benchers firm representing solicitor in Discipline Proceedings.

Attached and numbered as B-1 to B-2 is an extract from a report of the Discipline Committee to Convocation in October, 1983. A brief history of the Committee's views on the issue of members of benchers firms acting as counsel is set out therein. Although the Committee in 1983 asked that the prohibition be revoked, Convocation did not agree. Applications for exemption from the Practice Direction, as set out on page B-1, have been made to the Committee and to Convocation on a regular basis since that time.

The Chair has received correspondence from two counsel requesting exemptions.

1. Attached at pages B-3 & B-4 is a letter from Patrick D. Schmidt dated February 12th, 1990.

22nd March, 1990

2. Attached at pages B-5 to B-9 are two letters from Gavin MacKenzie dated February 20th, 1990 and December 20th, 1989.

Your Committee approved the application of Patrick D. Schmidt.

In connection with the issues raised by Gavin MacKenzie your Committee reviewed a recent Decision of the Discipline Committee dated February 13, 1990 (attached as pages B-10 to B-12). Because the existing policy appears to operate unfairly, your Committee recommends that the Practice Direction prohibiting members of benchers firms from appearing before Discipline Committees or Convocation, be referred to the Special Committee on Discipline Procedures.

C.  
INFORMATION

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1C. Authorization of Discipline Charges

Once each month, the Chair and/or one or both of the two Vice Chairs of the Discipline committee meet with the Complaints and Discipline Staff to consider requests for formal disciplinary action against individual lawyers.

The following table shows the number of requests made by Discipline and Complaints Staff for February, 1990.

	<u>Sought</u>	<u>Obtained</u>
Discipline	37	37
Complaints	11	10

Total # of charges for 1990

January 17

February 47

64

ALL OF WHICH is respectfully submitted

DATED this 9th day of March, 1990

"M. Somerville"  
Chair

Attached to the original Report in Convocation File, copy of:

- A-Item 1A. - Memorandum from Mr. Robert Anderson (Audit Department) to Mr. Ajit John dated November 20, 1989 re: Discipline Policy - Late Filing Levy. (Marked A-1)
- B-Item 3B. - Extract from a report of the Discipline Committee to Convocation dated October 28, 1983 re: Members of "Bencher Firms" Acting as Counsel before the Discipline Committee. (Marked B-1 - B-2)

- B-Item 3B. - Letter from Mr. Patrick D. Schmidt to Mr. Paul Lamek dated February 12, 1990 re: John William Wright, Formal Complaint issued January 22, 1990, Reference: Mr. H. Reginald Watson, Our File Number 75/205.  
(Marked B-3 - B-4)
- B-Item 3B. - Two letters from Mr. Gavin MacKenzie dated December 20, 1989 and February 20, 1990 to Mr. Paul Lamek regarding an application for exemption.  
(Marked B-5 - B-9)
- B-Item 3B. - Copy of Decision of the Discipline Committee re: Lorne Frederick Samuel and William Gordon Winsor.  
(Marked B-10 - B-12)

THE REPORT WAS ADOPTED

.....

CLINIC FUNDING COMMITTEE

Mr. Bastedo presented the Report of the Clinic Funding Committee of its meeting on March 20th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Legal Aid begs leave to report:

CLINIC FUNDING

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

The Director recommends to Convocation that the report of the Clinic Funding Committee dated March 21, 1990 be adopted.

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

ALL OF WHICH is respectfully submitted

Robert L. Holden,  
Director,  
Legal Aid.

March 21, 1990

ATTACHMENT:

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

The Clinic Funding Committee met on March 20, 1990. Present were: Philip Epstein, Q.C., Chair, Earl Levy, Q.C., Thea Herman, Jim Frumau.

A. DECISIONS

1. Applications to the Clinic Funding Committee

(a) Supplementary legal disbursements

Pursuant to s.6(1)(m) of the Regulation on clinic funding, the Committee has reviewed and approved applications for supplementary legal disbursements from the following clinics:

Clinique juridique Stormont, Dundas and Glengarry  
Legal Clinic - up to \$3,500

Peterborough Community Legal Centre - up to \$7,517

Rexdale Community Information & Legal Services -  
up to \$2,000

Waterloo Region Community Legal Services -  
up to \$3,500

2. Capital Purchases

The Clinic Funding Committee has reviewed the initial decisions of the clinic funding staff on the allocation of funds for capital purchases, and has approved up to \$40,000 to community legal clinics. Capital purchases in this category include dictating equipment, office furniture, office equipment, and some minor office renovations. As is the Committee's normal practice, surplus funds held by clinics at March 31 of the previous fiscal year are allocated for these purposes rather than using funds from the Committee's current operating budget.

3. Additional Staff

The Clinic Funding Committee reviewed the initial decision of the clinic funding staff on applications for additional staff from established clinics. Funds for up to 6.5 additional staff positions were included in the Committee's 1989/90 budget, as approved by Convocation. The Committee is recommending approval of six and one-half additional staff positions at this time, as follows:

Brant County Community Legal Clinic - up to \$27,350  
Windsor/Essex Bilingual Legal Clinic - up to \$27,350  
South Ottawa Community Legal Services - up to \$27,350  
Community Legal Assistance Sarnia - up to \$27,350  
Metro Toronto Chinese & Southeast Asian Legal Clinic  
- up to \$27,350  
West Scarborough Community Legal Clinic - up to \$27,350  
Rainy River District Community Legal Clinic  
- up to \$13,000

4. East Toronto re. move/renovations

The Committee has approved a move to new premises for the above clinic, effective April 1, 1990. The Committee is therefore recommending Convocation's approval of costs related to this move, in an amount up to \$50,000.

5. 1989/90 Funding Designations

The Clinic Funding Committee approved the allocation of funds to existing clinics in the amount of \$18,634,241. Attached as Schedule 1 is the annual amount paid to each clinic.

ALL OF WHICH is respectfully submitted

"T. Bastedo"  
Chair

March 21, 1990

Attached to the original Report in Convocation File, copy of:

A-Item 5 - Schedule listing existing clinics and annual amount of funds  
paid to each. (Schedule I)

THE REPORT WAS ADOPTED

.....

LIBRARIES AND REPORTING COMMITTEE

Mr. Topp presented the Report of the Libraries and Reporting Committee of its meeting on March 8th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCAATION ASSEMBLED

The LIBRARIES AND REPORTING COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of March, 1990 at 9:30 a.m. the following members being present: Messrs Murphy (Chair), Bragagnolo (Vice-Chair), Ms Bellamy, Cullity, Farquharson, Lalande, Thoman, and Topp. D. Crosbie, P. Bell and G. Howell also attended.

A.

POLICY

No items.

B.

ADMINISTRATION

1. BUDGET ESTIMATES FOR THE  
LIBRARIES AND REPORTING COMMITTEE

The Chief Librarian submitted the budget estimates for the fiscal year 1990-91. The Chief Librarian reported to the Committee on important matters in the budget estimates.

RECOMMENDATION: Your Committee recommends that a Sub-Committee of three, to be appointed by the Chair, consider and approve the budget estimates to be forwarded to the Finance Committee.

C.

INFORMATION

1. MEETING WITH LAW BOOK PUBLISHERS

The Chair and staff met with representatives of Canada Law Book to discuss the prices of subscriptions of loose leaf series. All of the publishers are to make submissions to the Chair and, if necessary, a future meeting will be arranged.

2. ONTARIO REPORTS - TENDER DOCUMENTS

The Secretary reported that the tenders for the weekly parts, data base and CD-ROM version of the Ontario Reports were considered by the Sub-Committee on the Ontario Reports Data Base on Wednesday, February 21st, 1990. The Sub-Committee instructed that further meetings are to be scheduled on April 12th, 1990, meeting day, to consider the tenders.

3. BOOK LIST

The Great Library will be adding 53 new titles to its book collection for March 1990.

4. FINANCIAL STATEMENT

The Financial Statement for the eight months ending February 28th, 1990 was received.

ALL OF WHICH is respectfully submitted

DATED the 22nd day of March, 199.

"R. Topp"  
Chair

THE REPORT WAS ADOPTED

.....

UNAUTHORIZED PRACTICE COMMITTEE

Mr. McKinnon presented the Report of the Unauthorized Practice Committee of its meeting on March 8th, 1990.

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 8th of March, 1990 at 10:30 a.m., the following members being present: Messrs. McKinnon (Vice Chair), Cass, Farquharson, Ms. Harvey, Messrs. Hickey, Lawrence and Mrs. Weaver. Also in attendance were: Messrs. Ballantyne and Bell.

B.  
ADMINISTRATION

1. ACCOUNTS

Accounts of counsel and investigators were approved in the total amount of \$3,895.88.

2. INVESTIGATIONS

The Society does not have sufficient evidence in any of these cases to commence a prosecution. The Committee authorized a request to the Treasurer for the use of an investigator who will not disclose that he/she is from the Law Society and to authorize the commencement of prosecutions when the necessary evidence is obtained.

3. UNAUTHORIZED PRACTICE - DISCHARGE OF MORTGAGE

Your Committee has received two inquiries from members complaining of the practice of paralegals discharging mortgages. He identifies a discharge of mortgage as a "legal document" and queries "whether it is proper for this document to be prepared and a fee charged as per the enclosure". Another complaint was received about a paralegal in Owen Sound preparing mortgage discharges. Your Committee was of the view that the preparation of a discharge of mortgage was not necessarily within the exclusive domain of lawyers. Your Secretary was instructed to contact the member and so advise him.

4. BUDGET - 1990/91

The Unauthorized Practice Department's budget estimate for the 1990/91 year is \$224,250 as compared to last year's final budget of \$229,150, representing a 2.14 percentage decrease. These figures do not represent amounts for salaries and employee benefits.

Approved

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1990

"C. McKinnon"  
Chair

Prosecutions

Next Court Date

Paralegal Associates Inc.  
c.o.b. "Paralegal Associates"  
(Mississauga)

February 28, 1990 at 9:00 a.m.  
Courtroom 2 - St. Catharines  
To be spoken to

Randy Mitter  
(Paralegal Associates Inc.  
c.o.b. "Paralegal Associates")  
(Mississauga)

February 28, 1990 at 9:00 a.m.  
Courtroom 2 - St. Catharines  
To be spoken to

Heather Daer  
(Paralegal Associates Inc.  
c.o.b. "Paralegal Associates")  
(Mississauga)

February 28, 1990 at 9:00 a.m.  
Courtroom 2 - St. Catharines  
To be spoken to

Richard Perry  
(Regional Paralegal)  
(Hamilton)

March 2, 1990 at 9:00 a.m.  
Courtroom 9  
To set a date

Peggy Wilson  
Divorce Easy  
(London)

March 2, 1990 at 10:00 a.m.  
Courtroom 2  
Trial

Susan Merchant  
(Paralegal Associates)  
(Ottawa South)

March 6, 1990 at 8:30 a.m.  
Courtroom 5  
To set a date for pre-trial

Lynn Pattison  
(Hyatt Paralegal)  
(Kingston)

March 6, 1990 at 9:30 a.m.  
Courtroom 3  
For plea

Andrew Czornyj  
(Jacobi & Myers)  
(Toronto)

March 6, 1990 at 10:30 a.m.  
Courtroom 1-Brampton Prov.  
Court  
To set a date

Douglas Traill  
(Jacobi & Myers)  
(Toronto)

March 6, 1990 at 10:30 a.m.  
Courtroom 1-Brampton Prov.  
Court  
To set a date

Jacobi & Myers  
(Toronto)

March 6, 1990 at 10:30 a.m.  
Courtroom 1-Brampton Prov.  
Court  
To set a date

Canada United Paralegal  
Association Inc.  
(Toronto)

March 7, 1990 at 10:00 a.m.  
Courtroom 140  
Trial



Jane Baker Ontario Paralegal (Chatham)	March 9, 1990 at 10:00 a.m. Courtroom 3 Plea & Trial
Personal Paralegal (Toronto)	March 13, 1990 at 10:00 a.m. Courtroom 140 To be spoken to
Christian Vadum (Personal Paralegal) (Toronto)	March 13, 1990 at 10:00 a.m. Courtroom 140 To be spoken to
Marc Monson (Action Paralegal) (Downsview)	Apr 4,5,6, 1990 at 10:00 a.m. Courtroom 302 Trial
786301 Ontario Ltd. (Action Paralegal) (Downsview)	Apr 4,5,6, 1990 at 10:00 a.m. Courtroom 302 Trial
Natalie MacPhee (Paralegal Consultants Inc.) (Ottawa)	May 4, 1990 at 12:00 p.m. Courtroom 7 Trial (1 day)
Paralegal Consultants Inc. (Ottawa)	May 4, 1990 at 12:00 p.m. Courtroom 7 Trial (1 day)
Dorothy Thiry Divorce Aid (London)	May 28, 1990 at 10:00 a.m. Courtroom 3 Trial
Norine Earl (Toronto Divorce Services) (Toronto)	Jun 25,26,27,1990 at 9:00 a.m. Old City Hall Courtroom 111 Trial
Fred May (Paralegal Associates) (Downsview)	Jun 28&29, 1990 at 10:00 a.m. Courtroom 306 Trial
David Nancoff  (Ontario Paralegal) (Toronto)	July 30-August 4, 1990 at 10:00 a.m. Ottawa Prov. Court Trial Continuation
Ontario Paralegal Ltd.  (Toronto)	July 30-August 4, 1990 at 10:00 a.m. Ottawa Provincial Court Trial Continuation
696631 Ontario Ltd. (Stephen Kuz) (Etobicoke)	August 8, 1990 at 10:00 a.m. Courtroom 203 Trial

THE REPORT WAS ADOPTED

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PUBLIC INFORMATION COMMITTEE

Mr. McKinnon presented the Report of the Public Information Committee of its meeting on March 8th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PUBLIC INFORMATION COMMITTEE begs leave to Report.

Your Committee met on Thursday, the 8th of March, 1990, the following members were present: Mr. Outerbridge (Chair), Messrs. Guthrie, McKinnon, Thom, Welch and Yachetti. Also in attendance were Ms. Angevine, Ms. Starkes, Ms. Tillmann and Messrs. Crosbie, Daniher and Tinsley.

A.

POLICY

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1. DRAFT PUBLIC INFORMATION BUDGET

A draft budget was presented for preliminary consideration by the Public Information Committee. Discussion of this item will continue at the next Committee meeting.

Mr. Daniher of Advance Planning was asked by the Committee to provide an advertising proposal for the next fiscal year. This item will be brought forward at the next Committee meeting.

The Committee discussed staffing in the Public Information Department. There are two Lawyer Referral Service positions vacant due to lack of office space at 204 Richmond West. The Information Department will be moving in October. The Committee strongly recommends that additional office space be provided so that these positions may be filled. The Committee plans to implement an advertising plan to increase public awareness of the Dial-A-Law system. As each Dial-A-Law tape includes information regarding the Lawyer Referral Service, the implementation of this advertising plan will result in a dramatic increase of calls to the Lawyer Referral Services thus magnifying the need for the two additional operators.

B.

ADMINISTRATION

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1. MEDIA CAMPAIGN

Mr. Daniher and Ms. Tillmann of Camp Associates presented an overview of the communications issues and options surrounding the information services provided by the Public Information Department. The presentation centred on three topics:

a. Background:

- previous advertising activities in support of Dial-A-Law were reviewed, as were the results thereof. The Committee reviewed the statistics during the past three years and the increased numbers of telephone inquiries generated during the period in which advertising appeared.

b. Current issues:

- the presentation reviewed the policy environment, relevant issues and upcoming events at Queen's Park.

c. Recommendations:

- the presentation reviewed the various media available to the Department and provided a detailed recommendation for newspaper and radio promotion of Dial-A-Law during the balance of the fiscal year. The promotion would be directed towards three objectives:

22nd March, 1990

- i. increase awareness and use of the Dial-A-Law service;
- ii. inform Ottawa area residents of the new local telephone number to access the satellite Dial-A-Law facility in that region, and,
- iii. inform French speaking Ontarians of the availability of French Language Dial-A-Law tapes at the appropriate time.

The Committee voted to adopt the recommendation subject to certain revisions and to place the matter before Convocation.

C.  
INFORMATION

1. CALL USAGE STATISTICS

Updated call usage statistics for the Lawyer Referral Service and Dial-A-Law programs are attached (C-1).

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1990

"C. McKinnon"  
Chair

Attached to the original Report in Convocation File, copy of:

C-Item 1 - Updated call usage statistics for the Lawyer Referral Service and Dial-A-Law. Marked C-1)

THE REPORT WAS ADOPTED

.....

FRENCH LANGUAGE SERVICES COMMITTEE

Mr. McKinnon presented the Report of the French Language Services Committee of its meeting of March 5th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA  
IN CONVOCATION ASSEMBLED

The French Language Services Committee begs leave to report:

Your Committee met on Wednesday, March 5th, 1990 at 3:30 p.m. The following benchers were present: C.D. McKinnon (Chair), D.E. Bellamy (Vice-Chair), J.D. Ground and P.J. Peters. The following Law Society members were present: D. Crosbie, A. Treleaven, H. Harris, S. Kerr, S. Thomson and D. Paquet (Coordinator).

Note: correction, see Page 45.

C.  
INFORMATION

1. French Language Services Implementation Plan

The Committee reviewed in detail the French Language Services Implementation Plan submitted by the Coordinator, attached hereto. Ms. Paquet and Mr. Crosbie explained that the purpose of the plan was to fulfill the directions contained in the June 1989 French Language Services Policy Report to Convocation, to review requirements and project costs to the end of June 1992. Ms. Paquet indicated that the plan did not cover all areas and programmes at The Law Society, i.e. Admissions, Treasurer's Office, Practice Advisory and Audit, since immediate priorities had to be addressed first. She reassured the Committee members, however, that the outstanding needs of these areas or programmes would be reviewed, as well as the implementation plan itself, in six months from now. Mr. Crosbie emphasized the lack of history or benchmark in the French Language Services area.

Mr. McKinnon recognized the amount of work and research for the preparation of this plan and invited all Committee members to share their comments as he reviewed each page of the document. The following is a summary of the conclusions reached by the members:

- a) While the three target markets (members, students and the public) were not identified in order of priority, an effort should be made to distribute the funds as fairly as possible among them. At the moment, because of the considerable volume of translation in the Bar Admission Programme area, most of the funds are allocated to education which benefits the members and student members. The Law Society recognizes the importance of communicating in French with the public and is addressing the priorities in this area through the French Language Dial-A-Law Programme and Lawyer Referral Service.
- b) The Continuing Legal Education Department is strongly encouraged to form a task force with l'Association des juristes d'expression française de l'Ontario and the Canadian Bar Association of Ontario to plan and promote French seminars. This initiative is dictated by poor attendance, the shortage of interesting speakers in French and costs resulting from the setting-up of competing programmes. It was agreed that the Continuing Legal Education Department is self-funding and no budget allocations should be made in the implementation plan for this area.
- c) The Professional Conduct Handbook, which is listed as a translation requirement, has already been translated, but there are concerns about the accuracy, quality and status of the translation. This issue is to be reviewed with the department head as soon as possible, and addressed by the Committee at a later date.
- d) In the area of oral communications, it was agreed that a bilingual receptionist would be required as soon as possible and that, since an additional receptionist position was budgeted for next year, the present receptionist would not be at a disadvantage. All Committee members agreed that the measures adopted under the French Language Services Implementation Programme would not affect or jeopardize in any way the job security of existing employees.
- e) It was agreed that future requests for grants to the Ontario Law Foundation should be broadened to include not only the translation of Bar Admission Course documents and book acquisitions, but other programmes as well.
- f) All translation requests should be processed in consultation with the Coordinator and only those translators whose services have been officially retained by The Law Society should be used.

- g) The Chair suggested that some of the Standing and Special Committee reports, including those of the French Language Services Committee, be translated on an 'as needed' basis.
- h) It was suggested and agreed that the French Language Services Committee create its own operating budget for the next two years to cover certain translation, advertising and equipment requirements. This is not intended to replace translation expenditures planned by each department head.
- i) It was agreed that word processing equipment with French capability should be available in key designated areas of The Law Society.

2. LAUNCH OF FRENCH DIAL-A-LAW PROGRAMME IN OTTAWA

The Chair requested that the Coordinator attend the launch and participate in the promotion of the French Dial-A-Law Programme in Ottawa in early April, 1990.

The meeting was adjourned at 5:45 p.m.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1990

"C. McKinnon"  
Chair

Attached to the original Report in Convocation File, copy of:

C-Item 1 - French Language Services Programme Implementation Plan  
(Pages 1 - 27)

It was moved by Mrs. Weaver but not seconded that the policy contained in the French Languages Services Report regarding hiring be deleted and replaced with a hiring policy based on need with monitoring as to whether or not there is an ongoing need for a position to be designated bilingual.

The French Language Services Report should read that the Committee met on Wednesday, March 7th, 1990 and not March 5th.

THE REPORT WAS ADOPTED

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PROFESSIONAL CONDUCT COMMITTEE

Mr. Carter presented the Report of the Professional Conduct Committee of its meeting on March 8th, 1990.

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 8th of March, 1990 at three o'clock in the afternoon, the following members being present: Messrs. Strosberg (Vice-Chair in the Chair), Carey and Hickey.

A.  
POLICY

1. THE USE OF THE TERM "PRIVATE COURT"

As part of the development of the alternative dispute resolution vehicles in Ontario, a group of lawyers created an entity called The Private Court. Parties to a dispute may agree to have their disagreement heard by The Private Court as opposed to being resolved through the litigation process. A lawyer will act as the judge in the case and render a decision.

The Law Society has welcomed the involvement by lawyers in alternative dispute resolution.

Paragraph 11 of the Commentary under Rule 5 (Conflict of Interest) recognizes the role a lawyer may play in acting as an arbitrator or judge.

The Rule will not prevent a lawyer from arbitrating or settling, or attempting to arbitrate or settle, a dispute between two or more clients or former clients who are sui juris and who wish to submit the dispute to the lawyer.

There would be even more reason for a lawyer to arbitrate or settle a dispute between two persons who had never been his clients.

The reason this item was discussed was due to an inquiry from the Bench and Bar Committee as to whether the use of the word "court" in the name was misleading or inappropriate.

The Committee was of the opinion that there was nothing inappropriate or misleading in the name Private Court. The adjective "private" clearly distinguishes this institution from a regular court.

The Committee asks Convocation to adopt this opinion.

2. RETIRED JUDGES RETURNING TO PRACTICE (RULE 15)

The CBAO and the Advocates' Society have been asked for their response. Neither body was in a position to respond by Meeting Day. It is hoped that they will be in a position to do so by the April meeting.

In order to get some public input a letter was sent to Professor Peter Russell who is the Chair of the Judicial Appointments Advisory Committee. Set out below is his response:

I was pleased to see that Rule 15 does not apply to Provincial Court Judges and to learn that the Law Society did not intend to amend the rule in this respect. This certainly fits in with our Committee's approach. We are very sensitive to the problem of "burn out" on the Provincial Court bench and would not like to see any barriers erected that would make it difficult for Provincial Court Judges who have served for some years to return to practice. Indeed, in our published criteria we state that, "The provincial judiciary should be open to those who wish to serve for a limited number of years and resign before reaching retirement age as well as those who wish to finish their professional career on the bench."

Please let me know if there is any change in the Law Society's thinking on this point.

The Committee will be reporting to Convocation in either April or May when the CBAO and the Advocates' Society have submitted their responses.

The reason this item is in the report is to keep Convocation informed.

No recommendation is being made.

3. REPORT OF THE SUB-COMMITTEE ON RULE 23  
(LAWYERS IN MORTGAGE TRANSACTIONS)

This sub-committee composed of Mr. Somerville (Chair), Mrs. Legge and Mr. Wardlaw held a meeting on March 8th to examine one aspect of Rule 23: whether a lawyer could invest in a syndicated mortgage with a client. Mr. Hickey was invited to join the deliberations. Mr. Somerville was unable to attend the meeting.

Paragraph 2(b) now reads:

2. No lawyer engaged in the private practice of law in Ontario shall directly, or indirectly through a corporation, syndicate, partnership, trust or other entity in which the lawyer or a related person has a financial interest:

(b) arrange or recommend the participation of a client as an investor in a syndicated mortgage where the solicitor is an investor; or

The sub-committee was of the opinion that a lawyer should be able to invest in a syndicated mortgage with a client if the client is either independently represented or is a sophisticated investor. The onus would be on the lawyer to prove it.

The sub-committee recommends to the Professional Conduct Committee that paragraph 2(b) of Rule 23 be amended to read:

2. No lawyer engaged in the private practice of law in Ontario shall directly, or indirectly through a corporation, syndicate, partnership, trust or other entity in which the lawyer or a related person has a financial interest:

(b) arrange or recommend the participation of a client as an investor in a syndicated mortgage where the solicitor is an investor unless the solicitor can demonstrate that the client had competent independent advice in making the investment or that the client is a knowledgeable investor; or

The Committee accepted the sub-committee's recommendation, finding it to be thoroughly reasonable.

The Committee recommends to Convocation that Rule 23 be amended accordingly.

B.  
ADMINISTRATION

1. REQUEST FOR ADVICE

A law firm has been approached by a real estate company which wishes to advertise the fact that if vendors list their property with the real estate company it will pay their legal fees. Set out below is the law firm's description of the proposal:

22nd March, 1990

The writer's law firm represents Mr. Art Chester who is the owner/broker of Elsley & Associates Limited, Real Estate Brokers, who have real estate sales offices in Niagara Falls and St. Catharines.

Mr. Chester has approached us to see if we are interested in representing his Company as solicitors by closing the sale of real estate transactions (house sales only) wherein his Company has advertised "List with Elsley and we pay the legal fees on the sale of your home".

Mr. Chester wants it understood by his clients that they have no choice but to use his solicitors, since he is paying our fees.

Could you please review this matter and contact the writer as soon as possible as Mr. Chester is most anxious to proceed.

At least two issues are raised by this proposal: steering; and conflict of interest.

The Committee was of the opinion that the proposal as presented was unacceptable because of the steering and the potential for conflict of interest problems to arise.

The Committee was of the opinion that the problems could be corrected if a vendor could choose his or her own lawyer and the realtor would pay the fees of that lawyer subject to a maximum.

Note: Amendment, see below.

The Committee asks Convocation to adopt this opinion.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1990

"R. Carter"  
Chair

Mr. Lamont moved that the penultimate paragraph under B-Item 1 on page 3 be deleted from the Report.

Mr. Carter accepted the amendment.

Messrs. Spence, Bastedo and Campbell did not vote on the item regarding the Private Court.

THE REPORT AS AMENDED WAS ADOPTED

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#### LEGISLATION AND RULES COMMITTEE

Mr. Lamont presented the Reports of the Legislation and Rules Committee of its meetings on March 8th and March 22nd, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:



Your Committee met on Thursday, the 8th of March, 1990 at 11:15 a.m. the following members being present: Messrs Noble (Chair), Cass and Murphy; D. Crosbie and P. Bell also attended.

A.

POLICY

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No items

B.

ADMINISTRATION

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1. THE AMENDMENT TO REGULATION 573

The Admissions Committee on January 11th, 1990, and Convocation on January 26th, 1990 approved of an amendment to the above Regulation to provide that no person who is eligible for call to the Bar, under Section 2, shall be called more than three years after successful completion of the Bar Admission Course, except with the permission of the Admissions Committee which may impose such conditions as it deems fit. The Committee discussed the draft wording as proposed by counsel for the Law Society.

RECOMMENDATION: The Committee recommends that Section 22 of Regulation 573 be amended by adding thereto the following subsection:-

- (5a) Where three years have elapsed after a person has successfully completed the Bar Admission Course during which the person has not been called to the bar and enrolled as a solicitor, the Bar Admission Course shall be deemed not to be completed and such person shall not be eligible for call to the Bar until such conditions as may be imposed by Convocation are satisfied.

2. BUDGET ESTIMATES FOR 1990-1991

The Secretary submitted a copy of the budget estimates for the fiscal year 1990-91 to be approved by the Committee.

RECOMMENDATION: Your Committee recommends that the budget estimates for 1990-91 be approved as amended and forwarded to the Finance Committee.

C.

INFORMATION

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1. WOMEN IN THE LEGAL PROFESSION

The Secretary reported that the Rules under The Law Society Act, are being reviewed by Arthur Stone to ensure that they are gender neutral.

2. TEMPORARY MEMBERS FROM OUTSIDE ONTARIO PERMITTED TO ACT AS BARRISTERS AND SOLICITORS EMPLOYED BY THE ATTORNEY GENERAL

Donald Crosbie, the Under-Treasurer, as a result of concerns raised by the proposed amendment, has spoken to Chief Justice Callaghan on the instructions of this Committee. As a result of that conversation, Mr. Crosbie has been in touch with the Ministry of the Attorney General concerning the draft legislation that was considered last December. The proposed amendment is under discussion and review, and will be the subject of a further report.

3. AMENDMENT OF REGULATION 573-22(4) RE BAR ADMISSION REFORM

The Secretary reported that discussions have taken place at Queen's Park between the Society and legislative counsel, and counsel for the Attorney General. As a result of that discussion, counsel for the Law Society has redrafted the proposed amendment to Regulation 22(4) dealing with Bar Admission Reform and it will be the subject of a further report.

4. INCORPORATING AN INSURANCE COMPANY FOR PROFESSIONAL LIABILITY

The Under-Treasurer, D. Crosbie, reported on the proposed Bill to incorporate an insurance company for professional liability insurance. It appears that the Bill will not be introduced before the first week in May.

ALL OF WHICH is respectfully submitted

DATED the 22nd day of March, 1990

"D. Lamont"  
Chair

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The LEGISLATION AND RULES COMMITTEE begs leave to report:

Your Committee met on Thursday, the 22nd of March, 1990 at 9:00 a.m. the following members being present: Messrs Murphy, Lamont & Guthrie (ad hoc); D. Crosbie, P. Bell, and A. Stone also attended.

A.  

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POLICY

No items

B.  

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ADMINISTRATION

1. AMENDMENT OF REGULATION 573-22(4) RE BAR ADMISSION REFORM

The Secretary reported that Convocation, on October 27th, 1989, in order to implement Bar Admission Reform, passed the following amendment to subsection 22(4) of Regulation 573:-

Subsection 22(4) of Regulation 573 is hereby revoked and the following substituted therefor:-

22(4)

The Bar Admission Course shall consist of:

- (a) service under articles of clerkship for such period of time as is recommended by the Legal Education Committee of the Society and approved by Convocation.
- (b) teaching term or terms to be taken at such times and places and for such periods as are required by the Legal Education Committee of the Society and approved by Convocation.

When the above amendment was sent to the Attorney General, legislative counsel, in discussions, indicated that the delegation of discretion to the Legal Education Committee should be defined.

As a result of a meeting at Queen's Park with legislative counsel, Arthur Stone, Counsel for The Law Society, redrafted subsection 22(4).

RECOMMENDATION: Your Committee recommends that subsection 22(4) of Regulation 573 be amended as follows:-

- 1(1) Subsection 22(4) of Regulation 573 of the Revised Regulations of Ontario, 1980, is amended by inserting at the commencement "For students-at-law who enter the Bar Admission Course before the 1st day of May, 1990, and complete the Bar Admission Course before the 1st day of May, 1991."
- (2) Section 22 of the said Regulation 573 is amended by adding thereto the following subsections:
  - (4a) For students-at-law who enter the Bar Admission Course after the 1st day of May, 1990, the Bar Admission Course shall consist of,
    - (a) a teaching term of approximately one month, attended before the commencement of service under the articles of clerkship referred to in clause (b);
    - (b) articles of clerkship served for a period of twelve months; and
    - (c) a teaching term of approximately three months.
  - (4b) Where a student-at-law has graduated from an approved law course that was conducted under a cooperative education system, the Legal Education Committee may modify the periods of time mentioned in subsection (4a) in consideration of particular experience or education in the cooperative system that is equivalent to the requirements of subsection (4a), or any part of them.
- (3) Subsection 22(6) of the said Regulation 573 is amended by inserting after "(4)" in the third line "(4a)".

ALL OF WHICH is respectfully submitted

DATED the 22nd day of March, 1990

"D. Lamont"  
Chair

THE REPORTS WERE ADOPTED

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PRACTICE AND INSURANCE COMMITTEE

Mr. Wardlaw presented the Report of the Practice and Insurance Committee of its meeting on March 8th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The PRACTICE AND INSURANCE COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of March, 1990 at one-thirty in the afternoon, the following members being present: Messrs. Furlong (Chair), Epstein, Lamont, Bragagnolo, Hickey, Smith and O'Toole.

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ITEM

1. DIRECTOR'S MONTHLY REPORT

The Director's Monthly Report is attached as Appendix "A".

2. OSGOODE HALL BUILDING EXPANSION FUNDING

Pursuant to a recommendation that the necessary financing for the Osgoode Hall building expansion be secured by a loan from The Law Society's Errors and Omissions Fund, your Committee considered the appropriateness of such an arrangement agreeing unanimously that the question of the propriety of such a loan is not at issue particularly in view of the benefits to The Law Society and its members under such an arrangement. The Errors and Omissions Fund would receive a higher rate of return than is currently generated by the present investment portfolio and the interest paid, by The Law Society, on the borrowed money would be less than current rates charged by lending institutions. A review of the Society's Errors and Omissions investment policy is recommended by your Committee in the event that amendments are required to permit such a loan.

3. PRACTICE AND INSURANCE COMMITTEE NAME CHANGE

In light of the Practice Advisory Service being placed under the jurisdiction of The Professional Standards Committee, the Chair sought a recommendation with respect to amending the Committee name to read Insurance Committee. Your Committee recommends that such an amendment is appropriate under the circumstances.

4. ERRORS AND OMISSIONS 1990/91 BUDGET

The proposed 1990/91 Errors and Omissions Budget was brought before your Committee for review. Discussion ensued and, the spending estimates prepared by the Director were approved. The budget material has since been submitted to the Finance Department for further consideration.

OUTSTANDING ITEMS

(a) Captive/Reinsurance - Pursuant to Convocation's recommendation of May 26, 1989, and following preparatory work necessary for the formation

and establishment of the Society's Insurance Corporation, the Business Plan for the proposed company was presented at the January 25, 1990 Committee Meeting. The Plan has since been submitted to the Regulatory Authorities, further advancing the process of incorporation and licensing.

After completion of the necessary search, the Director advised your Committee that the recommended name, Lawyers' Professional Indemnity Company is acceptable in its present form.

The Director also informed your Committee that The Law Society has received encouraging feedback from the Provincial Government regarding amendments to The Law Society Act necessary for the creation of the Society's Insurance Corporation.

The Chair advised the Committee the following were being proposed as officers and directors for this corporation.

Chair of the Board	The Chair of the Practice and Insurance Committee
Directors	Kenneth E. Howie C. Bruce Noble Under-Treasurer (Donald A. Crosbie) Director of Insurance (Lyn V. Whitman) John Chippindale
President	Director of Insurance (Lyn V. Whitman)
Secretary	Richard F. Tinsley
Treasurer	Director of Finance (David E. Crack)

(b) Subcommittee on Women in the Legal Profession - Pursuant to your Committee's deliberation of the Subcommittee's request for input regarding concerns resulting from the increase in the number of women lawyers, and in the absence of identifiable issues relating to the Society's Insurance Program, the Chair has corresponded with the Committee requesting identification of specific issues relating to the administration of the Insurance Program. The issue is in repose pending receipt of a reply on behalf of the Subcommittee. See Appendix "B".

(c) Research Bank - Pursuant to your Committee's concern that the briefs available to the Errors and Omissions Department and its defence counsel through the Legal Aid Research Department satisfy the needs of the Errors and Omissions defence counsel, the Director is proceeding with an analysis of the benefits and costs of this program. No additional information is available at this time.

(d) Compensation Fund - Errors and Omissions Insurance Fund - Pursuant to your Committee's recommendation that it would be appropriate to undertake a review of the pros and cons associated with the current Compensation Fund policy which dictates that claimants must first pursue the Errors and Omissions Insurance Fund to claim against innocent partners, contrasting this practice with the pros and cons of having the Compensation Fund bear the obligation to pay the claimants' losses initially thus, allowing them to pursue the Errors and Omissions Insurance Fund for recovery of the losses or expenses in excess of the Compensation Fund limit. The Chair has corresponded with Mr. Harvey Strosberg to pursue an inquiry in this regard, and to address the question of the feasibility and cost effectiveness of providing insurance to protect the Society from catastrophic claims against the Compensation Fund. The matter is in repose pending receipt of the Director's report. See Appendix "C".

(e) Undertaking - Agreement of Purchase and Sale - At the January 1988 meeting, your Committee reviewed a report on undertakings and mortgage discharge provisions submitted by Brenda A. Duncan then, Assistant Director of Practice Advisory Service. A Subcommittee chaired by Mr.

James Wardlaw was appointed to address the problems associated with such undertakings. Mr. Wardlaw wrote to the Treasurer on January 15, 1988 advising that a Statutory Amendment would be the only viable solution to the problems associated with such undertakings, and he further suggested that Ian Scott be contacted to appoint a group from his Ministry or from Consumer and Commercial Relations to consider this matter with the Subcommittee. The Treasurer elected to postpone contact with Mr. Scott until such time as a analysis of The Law Society's claims experience regarding such undertakings could be made available. The claims statistics available at the time of the Treasurer's decision could not be separated to reliably specify the experience related to this issue. The Director is pursuing the necessary steps to allow for the isolation of the statistics, and will report to the Committee at that time.

(f) Errors and Omissions In-House Legal Advisor - The role of the Errors and Omissions In-House Legal Advisor would be to provide advice and assistance to members of the Errors and Omissions staff and, if required, to Errors and Omissions defence counsel regarding matters involving litigation both prior to and following the commencement of formal legal proceedings. The Advisor's scope of activity will include advice on specific claim files as well as assisting in the advancement and development of programs to enhance control and handling of claims from a defendant's perspective. The presence of such an Advisor should also assist in standardizing the manner by which outside defence counsel and the Errors and Omissions staff handle claims that involve active litigation or that may be litigated. The benefits arising from access to such an Advisor should reflect favourably on claim settlement values and the costs associated with the involvement of defence counsel.

The Director has been requested to provide your Committee with full particulars of how the Legal Advisor will serve the Professional Liability Insurance Program, of how much time will be required to complete the Advisor's duties and what costs will be incurred by The Law Society in providing such a service. When the details for this position are agreed upon and formalized greater consideration can then be given to the qualifications and attributes candidates will require in preparation for the selection process.

ALL OF WHICH is respectfully submitted

Dated this 14th day of March, 1990

"J. Wardlaw"  
Chair

Attached to the original Report in Convocation File, copy of:

- Item 1 - The Director's Monthly Report for January 1990.  
(Appendix "A", Pages 1 - 4)
- Item 4(b) Letter from Mr. Patrick Furlong to Ms. Frances Kiteley dated February 12, 1990 re: Practice and Insurance/Errors and Omissions.  
(Appendix "B")
- Item 4(d) Letter from Mr. Patrick Furlong to Mr. Harvey Strosberg dated February 12, 1990 re: L.S.U.C. - Errors and Omissions/Compensation Fund.  
(Appendix "C")

THE REPORT WAS ADOPTED

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COMPENSATION FUND COMMITTEE

Mr. Wardlaw presented the Report of the Compensation Fund Committee of its meeting on March 8th, 1990.

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The COMPENSATION FUND COMMITTEE begs leave to report:

Your Committee met on Thursday, the 8th of March, 1990 at 11:45 a.m. the following members being present: Messrs Yachetti (Chair), Strosberg (Vice-Chair), Wardlaw (Vice-Chair), Mrs. Legge, Noble, and Thom. P. Bell, Mrs. H.A. Werry and M. Trudeau and Ms C. Cantin of Tillinghast present by invitation.

A.

POLICY

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1. THE PER CLAIMANT LIMIT

The Secretary reported that the Report from Tillinghast, Actuaries, has been received with the amount projected as payments out of the Fund for the fiscal year 1989-90 and 1990-91 based on the three scenarios that were approved by the Committee.

The three scenarios that were studied by the actuaries were the following:-

1. removal of the \$60,000 per claimant limit entirely;
2. raising of the per claimant limit to \$100,000, or
3. putting in place a two-tiered system. This system would comprise no limit per claimant for claims arising from the normal solicitor/client relationship while there would be a limit of \$100,000 per claimant on claims arising from mortgage syndication or mortgage brokerage activities.

RECOMMENDATION After a presentation explaining the Report by representative of Tillinghast and a thorough discussion by the Committee, your Committee recommends that this matter be deferred for further consideration at a special meeting of the Committee.

B.

ADMINISTRATION

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1. BUDGET ESTIMATES FOR 1990-91

The Secretary reported that the budget estimates for the fiscal year 1990-91 are to be approved at the March meeting of the Committee. After discussing the amounts in the budget estimates, the Committee approved the budget estimates for forwarding to the Finance Committee.

C.

INFORMATION

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1. The Sub-Committee on the Compensation Fund Guidelines met on Tuesday, February 20th, 1990 to consider changes to the General Guidelines for the Fund. The Sub-Committee is drafting its Report.

2. The total amount of accounts approved by Assistant Secretaries for the month of February was \$13,591.25.

3. The Financial Summary for the eight months, July 1st to February 28th, 1990, and the Activity Report are attached. (Pgs. 3-5)

ALL OF WHICH is respectfully submitted

DATED the 22nd day of March, 1990

"J. Wardlaw"  
Chair

Attached to the original Report in Convocation File, copy of:

C-Item 3 - The Financial Summary for the period July 1st, 1989 -  
February 28th, 1990 and the Compensation Fund Activity  
Report February 28th, 1990. (Numbered 3 - 5)

THE REPORT WAS ADOPTED

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RESEARCH AND PLANNING COMMITTEE

Mr. Spence presented the Report of the Research and Planning Committee of its meeting on March 8th, 1990.

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 8th of March, 1990 with the following members being present: Mr. Spence (Chair), Mr. Ferrier, Ms. Kiteley, Mr. Manes, Ms. Bellamy, Mr. Smith, Mr. Outerbridge, Ms. Birenbaum, and Mr. McKinnon.

Also present: Mr. Tinsley, Ms. Angevine, and Ms. Lee.

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1. SUB-COMMITTEE ON WOMEN IN THE LEGAL PROFESSION

Ms. Kiteley, the Chair of the Sub-Committee reported that;

(a) The survey instrument arising out of the Kay report, which is designed to measure transitions within and out of the profession has been completed. It will be distributed during the last week of March to a random sample of over 2,000 men and women in the profession. A report based on the results is expected for September.

(b) Copies of reports to Convocation of all Law Society Committees which have considered the Kay report were distributed to members of this Committee and a follow up will be done in two months to determine what further action has been taken. Mr. Treleaven, in the March Women in the Legal Profession Sub-Committee meeting, reported that the Legal



Education Committee had decided to bring gender-related issues before the Women in the Legal Profession Sub-Committee. Among present considerations is the development of a general policy with respect to pregnancy leave and Bar Admission requirements.

(c) With respect to the 1990/1991 Budget for the Research and Planning Committee \$25,000 is to be committed for the Women in the Legal Profession Sub-Committee in order to cover the cost of the survey and additional research in other areas to be undertaken.

## 2. GENDER NEUTRAL POLICY GUIDELINES

Mr. Tinsley reported that a memorandum has been prepared for circulation to all Law Society staff members reminding them of Gender Neutral Policy Guidelines.

Staff members are being asked to examine their correspondence and forms for compliance with the guidelines. It was decided that a letter is to be sent to the profession informing members that the Law Society has adopted the guidelines in its own matters and that it will facilitate the profession in its efforts with respect to gender neutral language.

## 3. BUDGET

There was a general discussion about the budget and it was determined that \$75,000 would be requested for the Research and Planning Committee for research purposes.

## 4. ALTERNATIVE DISPUTE RESOLUTION

There was a general discussion about Alternative Dispute Resolution and it was decided to circulate a memorandum to all Benchers outlining the type of alternative dispute resolutions that have been identified by the Alternative Dispute Resolution Sub-Committee of the Law Society. The Sub-Committee also identified areas in which the Law Society should be working.

Benchers and Law Society Committees will be invited to comment and raise concerns with respect to the subject.

## 5. OPEN CONVOCATION

A discussion took place with respect to Open Convocation and it was decided to produce a discussion paper to accompany the April Research and Planning Committee Report to Convocation identifying questions raised and observations made regarding the topic.

## 6. BENCHERS' RESPONSIBILITIES

Mr. Manes, Chair of the Benchers' Responsibilities Sub-Committee reported that he had been attending the Bencher Elections Special Committee meetings and that he would report on the next Committee date regarding any overlapping areas and a more clearly defined mandate of the Benchers' Responsibilities Committee.

## 7. POSSIBLE FUTURE ENDEAVOURS

There was a general discussion regarding future research endeavours of this Committee. The Chair requested that any additional Committee research needs be made known before the next meeting for

discussion at that time. It was suggested that a memorandum be sent to other Law Society Committees asking them to identify their research needs.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of March, 1990

"J. Spence"  
Chair

THE REPORT WAS ADOPTED

.....

SPECIAL COMMITTEE ON BENCHER ELECTIONS

Mr. Ferguson presented an interim Report on the work of the Special Committee.

(Copy of Report in Convocation File)

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SPECIAL COMMITTEE ON DISCIPLINE PROCEDURES - INTERIM REPORT

The Report on the Special Committee on Discipline Procedures was tabled for discussion at next Convocation.

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CONVOCATION ADJOURNED AT 4:45 P.M.

Confirmed in Convocation this 26th day of April, 1990.

Treasurer