



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Implementing the Law Society's Competence Mandate

A CONSULTATION DOCUMENT

Survey Attached: Please Respond by June 15, 2000

Approved by Convocation: March 30, 2000



Table of Contents

A CONTINUING COMMITMENT TO COMPETENCE:	
A CALL TO THE PROFESSION	4
Why You Should Read This Document	4
What This Means To You	4
The Law Society's Competence Mandate	6
Purpose of this Consultation Document	7
Evolution of the Law Society's Competence Mandate	7
Expanded Competence Mandate	8
a) The First Foundational Aspect	8
b) The Second Foundational Aspect	9
Moving Forward	10
Quality Assurance and Quality Improvement	12
Common Approaches to Quality Assurance and Quality Improvement	13
Competence Guidelines	15
a) Acceptable Performance Guidelines	15
b) Best Practices Guidelines	16
Possible Competence Models	17
Model One: Formulation of a Continuum of Professional Development	17
Noteworthy Features	19
Issues to be Addressed	20
Model Two: Random / Focused Practice Review	20
a) Focused Practice Review	20
b) Random Practice Review	21
Noteworthy Features	22
Issues to be Addressed	23

Model Three: Limited Licensing23

 a) General Requirement of Limited Licences.....24

 b) Time or Situation Limitations on Licences24

 Noteworthy Features25

 Issues to be Addressed.....26

Model Four: Broadly-Based Specialist Certification26

 Noteworthy Features27

 Issues to be Addressed28

Ongoing Work28

Description Of Book Of Appendices.....29

 Appendix 1:

 Summary of Previous Law Society Competence-Related Work29

 Appendix 2: Issues Related to Self-Regulation29

 Appendix 3: Common Approaches to Quality Assurance29

 Appendix 4:

 Summary of Quality Assurance / Improvement Measures Used by
 a Sampling of Other Professions and Other Legal Jurisdictions29

 Appendix 5:

 Excerpt from the 1997 Report of the MCLE Subcommittee
 Post-call Learning for Lawyers29

 Appendix 6: Common Features of Random Practice Review Programs29

Endnotes30

GLOSSARY OF QUALITY ASSURANCE/IMPROVEMENT
APPROACHES31

CONSULTATION SURVEY QUESTIONS.....33



A Continuing Commitment to Competence: *A CALL TO THE PROFESSION*

Why You Should Read This Document

The Law Society is embarking on an initiative to enhance the legal profession's long-standing commitment to quality and competence. Over the past 25 years, the profession and the environment in which lawyers work have undergone many changes. As change continues to occur, and the environment becomes more complex, new strategies are needed to ensure that the legal profession thrives in the 21st century. Our legal profession is not alone in facing the challenges of change. Other professions have been moving to ensure that their commitment to quality keeps pace with a dynamic environment. The Law Society's own legislative mandate to address competence issues has recently been expanded. The Law Society is committed to developing strategies that further its mandate to govern in the public interest and support lawyers' commitment to competence and quality.

The Law Society's initiative is about building upon the commitment you make to professional competence and ensuring you have the necessary tools to maintain and enhance your competence, in the public interest, your interest, and the interest of the profession overall. As you read this document, you will see that the Law Society is exploring a number of possible models for implementing its competence mandate. This document is the first step in identifying for the profession the issues and the models under discussion. It is your first opportunity to have input into the process, at its earliest stage.

What This Means To You

The legal profession plays a fundamental role in society in ensuring that the values reflected in our legal system are preserved. Every day, thousands of lawyers in the province of Ontario advance that fundamental role in numerous ways, both in service to individual, corporate, or government clients and in non-practice environments. It is a demanding, crucial role, with constitutional implications, that places the legal profession in the forefront of public scrutiny and challenges its members to meet the highest standards of competence in everything they do. The profession takes this critical role seriously and over the years lawyers and the Law Society have recognized the need to adapt their skills and approaches to reflect a changing society.

Competence and quality are, and must continue to be, core requirements of the legal profession. They are central to self-regulation and the independence of the bar. For the public and government to continue to entrust control over the profession to lawyers themselves, there must be demonstrable and continuing evidence of the commitment to competent, quality service.

The Law Society's decision to move forward with the development of a comprehensive competence model arises from the following considerations:

- Although initial pre-call education provides the foundation for a legal career, it is unrealistic to expect it to prepare lawyers for all their future functions and work;
- The legal profession already recognizes the importance of a commitment to career-long learning and professional development in the interest of quality;
- In a competitive, changing environment the legal profession must continue to find ways to serve the public effectively to ensure its continued relevance and leadership in the delivery of legal services;
- Tools and mechanisms designed to foster quality service have been adopted with success in business and professional environments. These have benefited both the users of the services and those who provide them. Such tools and mechanisms have the dual goal of supporting the vast majority of service providers in enhancing their competence and providing remedial assistance to those demonstrating competence-related deficiencies;
- To offer “cutting-edge” service in a highly competitive environment, lawyers must have those tools and mechanisms readily available to them. The relevance of lawyers to those who use their services depends upon their ability to offer the highest quality of service; and
- The Law Society's role in competence is an active one designed to benefit the public in whose interests it regulates. The Law Society will provide those tools and mechanisms that support lawyers in their efforts to provide quality service, and will ensure compliance.

Developing a competence model will ensure that the profession's existing, strong commitment to quality is visible, relevant, and directed towards a future in which lawyers will continue to lead.



I. The Law Society's Competence Mandate

Law Society Act (the “Act”) amendments, proclaimed in February 1999, introduced a number of important changes and additions to the Law Society’s regulatory authority.

Significant among these changes is the expansion of the Law Society’s authority and obligation to regulate competence, both in the public interest and that of the profession at large. The *Act* now provides that, under specified circumstances, the Law Society may require members to participate in a review of their practices and may initiate a competence proceeding in respect of a member.

In recent years, the Law Society also determined to adopt an active, preventive approach to member competence designed to support members in their efforts to provide quality service and legal work.

The Law Society must now implement its expanded competence mandate. **This mandate complements, but does not replace, the primary responsibility of lawyers to maintain and enhance their own competence throughout their careers.** That responsibility has always been, and continues to be, one of the hallmarks of a self-regulating profession. Legal education in substantive and procedural law, skills, values, and judgment, and in professional responsibility and ethics is intended to provide members of the profession with the necessary foundation for career-long learning and experiential growth.

Implementing its competence mandate will provide the Law Society with,

- the scope for supporting and assisting members in their commitment to maintaining and enhancing their own competence; and
- the tools necessary to address instances in which a member’s competence to provide quality services to the public is in issue.

The importance of the Law Society’s statutory mandate concerning competence and its commitment to an active approach cannot be overstated. To discharge its responsibilities to the public and the profession the Law Society must introduce systemic measures for fostering, measuring, and monitoring competence and the quality of legal services.

It is of fundamental importance to the future of the legal profession in Ontario that the competence model adopted by the Law Society in the 21st century be comprehensive, integrated with the Law Society’s other regulatory responsibilities and programs, and informed by the profession’s and the public’s advice.

The Law Society strongly urges you to consider the matters raised in this consultation document and to participate in this consultation process. The Law Society wishes to ensure that potential competence models, and Convocation’s ultimate debate and decision-making on competence issues, are informed by and responsive to a broad range of views.

II. Purpose of this Consultation Document

This document is the first step in the Law Society's consultation process concerning its competence-related responsibilities. It is being distributed to all members to assist them in participating in the consultation process. A Book of Appendices, which provides additional detail on some of the matters discussed in this consultation document, together with the consultation document, is being provided to legal organizations and professional and public groups, and will be available on the Law Society's web site, in all county libraries, the Great Library, and upon request.

The Law Society will also conduct a variety of direct consultations and focus group meetings in various locations throughout the province during the fall of 2000. Times and locations for those consultations will be provided in the *Ontario Reports*, the *Ontario Lawyers' Gazette*, and on the Law Society's web site.

III. Evolution of the Law Society's Competence Mandate

The Law Society's responsibility to govern the legal profession in the public interest includes upholding and advancing the base principles that justify self-regulation. The methods used to discharge this responsibility have evolved over the decades to reflect the changing societal context in which the profession exists.

Traditional measures directed at promoting competence have included pre-call legal education, the bar admission course, continuing legal education, and the library system. Historically, the Law Society has addressed member *incompetence* through discipline proceedings initiated when a member's deficiencies arguably constituted professional misconduct. The sufficiency and value of this approach began to be questioned in the 1980s. By that time, discipline proceedings had begun to be perceived as too blunt an instrument to deal with lawyer incompetence, particularly because,

- harm or potential harm to the public may exist before the regulator is ever involved; and
- the range of measures then available to address incompetence only incidentally included remedial approaches.

The Law Society urges the profession to take this opportunity to engage in a full discussion on the issue of implementing the Law Society's competence mandate and to provide input to the Law Society on possible competence models.



Definition of the Competent Lawyer

A competent lawyer has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client.

These include:

- i. knowing general legal principles and procedures, and the substantive law and procedure for the areas of law in which the lawyer practices;
- ii. investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate course(s) of action;
- iii. implementing the chosen course of action through the application of appropriate skills including:
 - (a) legal research,
 - (b) analysis,
 - (c) application of the law to the relevant facts,
 - (d) writing, and drafting,
 - (e) negotiation,
 - (f) alternative dispute resolution,
 - (g) advocacy, and
 - (h) problem solving ability as each matter requires;
- iv. communicating in a timely and effective manner at all stages of the matter;
- v. performing all functions conscientiously, diligently, and in a timely and cost effective manner;
- vi. applying intellectual capacity, judgment, and deliberation to all functions;
- vii. complying in letter and in spirit with the Rules of Professional Conduct;
- viii. recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
- ix. managing one's practice effectively;
- x. pursuing appropriate professional development to maintain and enhance legal knowledge and skills; **and**
- xi. adapting to changing professional requirements, standards, techniques, and practices.

In the last fifteen years the Law Society has undertaken a number of initiatives and programs reflective of a growing belief that *active, preventive, and remedial* tools are necessary components of an effective approach to competence.

These include,

- a practice advisory service to answer telephone inquiries on practice-related and ethical matters (1980);
- a voluntary practice review program to provide assistance to members with practice deficiencies (1988);
- a specialist certification program to accredit as specialists those members who have attained defined levels of expertise in identified practice areas (1986);
- the development of practice checklists to provide guidance on approaches to practice in specific practice areas (1988); and
- development of a comprehensive definition of the “competent lawyer”(1997). (See sidebar box.) ¹

IV. Expanded Competence Mandate

The Law Society's competence mandate has two foundational aspects: an expanded legislative authority to regulate competence; and a commitment to an active approach to competence.

a) The First Foundational Aspect

The 1999 legislative amendments that expanded the Law Society's statutory competence mandate address incompetent performance. Specifically, section 41 of the *Act* provides that a member fails to meet standards of professional competence if,

- (a) *there are deficiencies in,*
 - (i) *the members's knowledge, skill, or judgment,*
 - (ii) *the member's attention to the interest of clients,*
 - (iii) *the records, systems, or procedures of the member's practice, or*
 - (iv) *other aspects of the member's practice; and*
- (b) *the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.*

Two features of the statutory provisions relating to competence should be emphasized. The first relates to the process of directing a practice review where there are reasonable grounds for believing that a member has failed or is failing

to meet standards of professional competence as defined in the *Act*, such that the *quality of service* to clients may be adversely affected. The second relates to the authority of the Law Society to conduct a competence hearing, that is, to apply to a Hearing Panel for a determination of whether a member is failing or has failed to meet defined standards of competence.

The primary goal of the practice review process is to assist members who have competence-related difficulties. Under this process, the member is given the opportunity to address and rectify practice and client service problems, rather than face discipline proceedings as he or she might have in the past. Depending upon the outcome of a competence proceeding, the Hearing Panel may make a wider range of remedial orders than would previously have been available in a discipline proceeding. Under either process remedial steps are statutorily authorized, including that the member,

- institute new records, systems or procedures in his or her practice;
- obtain professional advice with respect to the management of his or her practice;
- retain the services of a person qualified to assist in the administration of his or her practice;
- participate in specified programs of legal education or professional training or other programs to improve his or her professional competence; or
- restrict his or her practice to specified areas of law.

The *Act* makes it clear, however, that where the public interest requires more intrusive intervention members may be suspended, ordered to work under supervision, or ordered to obtain, or continue, treatment or counselling for such problems as addiction to or excessive use of alcohol or drugs.

b) The Second Foundational Aspect

In the last three years the Law Society has established two Task Forces to consider its approach to competence. The first Task Force developed the definition of the “competent lawyer” described earlier in this document, which Convocation approved in 1997. The report of the Law Society’s second competence Task Force recommended that steps be taken to develop a blueprint for the Law Society’s role in developing, maintaining, improving, and enforcing competence in the profession. The following principles, articulated in the report and approved by Convocation in 1999, reflect the context for implementing the Law Society’s competence mandate:

- *The Law Society should clarify the competence-related obligations of members under the Law Society Act and in particular, the competence sections of Part II of the Act.*



- *The Law Society should support lawyers in their efforts to meet their responsibility to maintain competence.*
- *Quality of service should be a major element of the Law Society's interest in competence.*
- *The Law Society's mandate should and does include a responsibility to ensure that the public is served by competent lawyers.*
- *The Law Society's approach to its competence mandate should be proactive and wide-ranging.*
- *The clear articulation of competence standards is an essential component of the Law Society's mandate.*
- *The competence definition underlies the development of standards and competence-related activities.*

V. Moving Forward

No decisions have been made on the approach or combination of approaches to be adopted by the Law Society to fulfill its competence mandate. The Law Society considers this to be an issue upon which member and public input is essential. All members are encouraged to provide input and to respond to some or all of the questions set out in the survey at the end of this document.

To fulfill its competence mandate, the Law Society must administer, approve, monitor, and enforce a combination of activities, policies, and requirements whose overall purpose is to ensure that the public is *served* by competent lawyers. The Law Society's Role Statement reflects this objective. It provides as follows:

The Law Society of Upper Canada exists to govern the legal profession in the public interest by,

- *ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence, and professional conduct; and*
- *upholding the independence, integrity and honour of the legal profession,*

for the purpose of advancing the cause of justice and the rule of law.

Commentary 5.3 of the Role Statement confirms that the Law Society has “an obligation to ensure that its members *continue* to be fit [to practise], qualified, and competent”.

Through the introduction of mandatory practice review (in specified circumstances) and competence hearings, the new legislative amendments add a new component to the Law Society's competence mandate. It is important to emphasize, however, that the vast majority of members will never demonstrate performance that requires either a practice review or a competence hearing.

Accordingly, the other components of the mandate should consist of mechanisms that,

- support all members in their pursuit of competence; and
- encourage and demonstrate that the profession is providing quality service.

Currently, the Law Society's competence-related initiatives and programs consist of,

- voluntary continuing legal education ("CLE");
- the county and district libraries and the Great Library;
- the teaching component of the bar admission course;
- specialist certification;
- the re-organization of advisory services to include a more active approach to advice services, an enhanced law practice start-up workshop, and development of practice management tools;
- practice review and competence hearings; and
- requalification for those not making substantial use of legal skills for a specified period.

Each of these initiatives or programs to date has operated more or less autonomously, rather than as an integrated part of an overall competence model. The following factors contribute to the need for a specific, integrated competence model:

- Principles of risk avoidance point to the importance of quality assurance measures in reducing professional liability claims. An increase in such measures can further assist in improving the quality of practice, while working simultaneously to reduce liability exposure;
- Unless the Law Society and members demonstrate their ability to assure the availability of competent legal services, there is a real risk of losing or having limitations imposed on the right to self-regulation;²
- There is a growing recognition within the profession that serious attention must be paid to addressing competence and creating tools to oversee the quality of service. This contrasts with the traditional view that once a member obtained a licence to practise, it was not necessary to formally monitor his or her competence thereafter;
- If the new legislative provisions and the definition of the competent lawyer are to be useful mechanisms for addressing competence, they must exist within a well developed framework; and
- The *Legal Aid Services Act*, which affects a significant portion of the Law Society's members who are legal aid service providers, clinic lawyers, or



duty counsel, contains a requirement for a quality assurance program. The substance of the program is not yet defined, but includes the option of conducting “quality audits” (also undefined). Under that statute, the Legal Aid Corporation cannot conduct the audits of lawyers, but is empowered to direct the Law Society to do so. The Law Society must be positioned to participate in developing and carrying out such audits.

VI. Quality Assurance and Quality Improvement

Quality assurance measures are planned and systematic actions developed to provide the user of a service with adequate confidence that the service will satisfy requirements for quality. It involves a retrospective review or inspection of services intended to identify problems and provide tools to address them.

Quality improvement involves the continuous study and improvement of processes and practices. Applied to professions, it entails continuous analysis and improvement of the components that make up professional practice or work.

Quality assurance and quality improvement are the terms some professions use to describe their methods for promoting competence. These concepts are not new in either the public or private sector. In the private sector, the interest in quality service has resulted in the development of a variety of international quality standards to which companies must conform if they wish to receive internationally recognized ratings of excellence, such as “ISO” ratings.³

“Quality assurance” focuses on ensuring compliance with clearly established standards. “Quality improvement” addresses both compliance with clearly established standards and development of tools designed to facilitate improved practices.

Both types of measures focus on creating systems for promoting quality and developing techniques that can be applied repeatedly to minimize the risk of inadequate performance. The purpose of such measures is to support a professional environment in which,

- the vast majority of members provide quality service and work within the ethical framework that underlies the profession;
- fewer members fall below acceptable levels of service and professionalism;
- those who do fall below acceptable levels are identified as early as possible and are quickly and efficiently provided with remedial measures; and
- members who are unable or unwilling to change are removed from areas of practice or positions in which they can do harm.

Consideration of quality assurance and quality improvement measures in the context of the Canadian legal profession is not new. The 1996 report of the Canadian Bar Association (CBA) National Task Force on Systems of Civil Justice, adopted by the National Council of the CBA in early 1997, made specific recommendations with respect to quality assurance. The report recommended that,

- lawyers develop quality assurance programs and standards so that clients are able to evaluate the legal services provided;
- the CBA provide analysis and information to establish quality assurance programs and standards, and develop model quality assurance programs and standards; and
- law societies take the necessary steps to place greater emphasis on the enforcement of competence standards and, where necessary, seek legislative amendments to permit them to do so.

The Law Society must consider whether to focus on a competence model that emphasizes quality assurance, quality improvement, or some combination of both.

VII. Common Approaches to Quality Assurance and Quality Improvement

The following charts compare approaches to competence and quality of service used by a number of professions, including the legal profession in Canada and other selected jurisdictions. Many of the professions follow a combination of approaches, or are in a state of transition and are considering a number of options. The choice of which approach to adopt usually involves balancing views about quality assurance, quality improvement, priorities, and allocation of resources. The following list of common approaches, used alone or in combination, is not exhaustive, but reflects common trends and means used to promote quality:

- Continuing Education (mandatory or voluntary)
- Limited Licensing
- Specialist Certification
- Random Practice Review⁴
- Focused Practice Review
- Reflective Practice and Self-Assessment Tools
- Publication of Standards and Guidelines for Practice
- Voluntary Practice Standards Accreditation
- Re-Testing
- Discipline/Competence Proceedings for those Demonstrating Incompetence

The *glossary* at the end of this document describes each approach and indicates whether it is primarily a quality assurance or quality improvement measure. The charts that follow indicate the approaches used by a number of other professions and other legal jurisdictions, where known.⁵



CHART 1

Approaches to Professional Competence and Quality used by Provincial Law Societies in Canada, Australia (New South Wales -NSW), England and Wales (EW), and the United States (US)

	BC	Alta	Sask	Man	Ont	Que	PEI	NB	NS	Nfld	NSW	EW	US
Mandatory CLE											x	x	38
Specialist Certification					x						x	x	x
Limited Licensing*											x	x	
Random Practice Review†						x							
Focused Practice Review	x	x	x	x	x	x	x	x	x	x			
Reflective Practice													
Practice Guidelines/Checklists	x	x	x		x	x		x	x	x			
Voluntary Practice Standards Accreditation											x	x	
Periodic Mandatory Re-testing													
Discipline/Competence Proceedings	x	x	x	x	x	x	x	x	x	x	x	x	x

* This column refers only to practice requirements or pre-requisites applicable to all members, not to restrictions placed on barristers/solicitors as a result of conduct, capacity, or competence proceedings.

† Random practice review is also known as random practice inspection/peer assessment. Alberta, Prince Edward Island, and Ontario conduct random spot audits of financial books and records.

CHART 2

Approaches to Professional Competence and Quality Used by Other Professions in Ontario**

	CPSO	CNO	RCDS	RCPSC	ICAO	CGA	CIA	OAA	PEO	CTO
Mandatory CLE			x	x		x	x	x		
Specialist Certification	x		x	x						
Limited Licensing	x	x	x	x						
Random Practice Review	x		x		x	x				
Focused Practice Review	x	x	x		x					
Reflective Practice		x		x						
Practice Guidelines/Checklists	x	x			x	x	x	x	x	
Voluntary Practice Standards Accreditation		x			x					
Periodic Mandatory Re-testing										
Discipline/Competence Proceedings	x	x	x	x	x	x	x	x	x	x

** CPSO = College of Physicians and Surgeons of Ontario
 RCDS = Royal College of Dental Surgeons of Ontario
 ICAO = Institute of Chartered Accountants of Ontario
 CIA = Canadian Institute of Actuaries
 PEO = Professional Engineers of Ontario

CNO = College of Nurses of Ontario
 RCPSC = Royal College of Physicians and Surgeons of Canada
 CGA = Certified General Accountants of Ontario
 OAA = Ontario Association of Architects
 CTO = College of Teachers of Ontario

VIII. Competence Guidelines

Under any competence model, competence guidelines will play an important role. Practice guidelines used by other professions generally consist of two types, namely,

- a) those that articulate acceptable performance in given areas; and
- b) those that articulate “best practices” or recommended performance with a view to raising overall levels of performance across the profession.

The former type of guideline is used as a quality assurance tool; the latter is more often viewed as a voluntary quality improvement measure. Both types are discussed below.

a) **Acceptable Performance Guidelines**

In view of the provisions of the *Act* that expressly provide for the assessment of member competence, the Law Society must develop recognized and accepted performance guidelines against which member performance in pre-determined areas can be evaluated. Guidelines will assist members to know what the Law Society expects of them. They will also inform the public of the service and quality expectations to which the profession is committed.

If the language of the *Act* is used as an indicator of the specific areas in which guidelines could be developed, these could include some or all of the following:

- members’ knowledge, skill, or judgment;
- members’ attention to the interest of clients;
- the records, systems, or procedures of members’ practices; or
- other aspects of members’ practices.

Guidelines concerning these subject areas would serve as a preventive tool (if members are made aware of approaches they should take to specific issues, they may avoid making errors). Further, they would help to ensure fairness in mandatory processes such as practice review and competence hearings. They may also assist in addressing commonly observed practice deficiencies concerning practice management issues and client relations that are routinely identified by both LPIC and the Law Society’s complaints unit.

Whatever specific model the Law Society adopts to implement its competence mandate, acceptable performance guidelines will be an essential component so that the effectiveness of the model may be assessed. They will assist those who practise poorly to know what they must do to improve. They will provide those who practise competently with tools to stay abreast of changing approaches.



Finally, they will focus attention on the minority who do not use them appropriately, so that the Law Society can intervene.

To be effective and useful for the entire profession, such guidelines must reflect acceptable practice experience and approaches throughout the province, and in all settings, by taking into account geographic diversity, practice specific realities, and complexity of client files.⁶ They must not be so specific and detailed as to suggest that the practice of law can be reduced to a finite number of pre-identified steps. Moreover, the development of such guidelines must be prioritized to reflect the time commitment involved in developing them.

b) Best Practices Guidelines

“Best practices” tend to be voluntarily adopted approaches undertaken at the option of individual members or firms. Voluntary accreditation systems using best practices tools are employed in a number of professions. For example, the Law Society of England and Wales introduced the voluntary Lexcel Certification program in 1998 following a long developmental period, using the *Practice Management Standards (the “Standards”)* published by that Law Society in 1993. The program involves an independent assessment of practices to determine if they have met the core requirements of the *Standards*. Members interested in pursuing certification are provided with manuals to assist them in the process. Assessors are independent of the Law Society, report their findings to the Law Society and, where the standards are met, the Society grants the certification. The Law Society of New South Wales also has a best practices program, with training and a certification process.

In 1999 the Law Practice Management Section of the American Bar Association indicated that, having acquired the Law Society of England and Wales’ permission, it would begin exploring the development of a competence model for lawyers in North America, using the *Standards* as a starting point.

In Ontario, other regulators have adopted or are exploring best practices approaches. For example, as part of its quality assurance program the College of Nurses of Ontario has begun a Practice Setting Consultation Program. The program has resulted in the identification of the key attributes of a quality practice setting and a six-step self-directed process that assists each organization to measure the extent to which it is a quality setting, what strengths need to be built upon, and what areas need improvement. The program allows organizations to engage in critical self-analysis.

In the context of the Ontario legal profession LPIC is also promoting best practices through its *practicePro* program, with particular attention to risk management. The current *practicePro* booklets focus on two areas identified as

contributing to claims. The booklets are entitled, “Managing the Lawyer/Client Relationship” and “Managing Conflict of Interest Situations”.

Any involvement of the Law Society in the development or use of best practices guidelines requires a cautionary approach. Addressing both quality assurance guidelines, in the form of acceptable performance guidelines, and quality improvement guidelines, in the form of best practices tools, must be done without confusing the fundamentally different purposes and objectives of the two types of guidelines. The pursuit of best practices is a laudable goal, but those standards should not establish acceptable performance for regulatory purposes.

IX. Possible Competence Models

Having examined various approaches to competence regulation, the Law Society is considering in detail the following four potential models.

- Model 1: formulation of a continuum of professional development;**
- Model 2: random / focused practice review;**
- Model 3: limited licensing; and**
- Model 4: broadly-based specialist certification.**

Each potential model should be assessed in the context of whether it,

- addresses the public’s and the profession’s interest in quality of service;
- is adaptable to a wide range of work realities, including private/non-private practice, geographical location, firm size, and years of legal experience;
- is cost effective as a delivery model;
- addresses the Law Society legislative obligations; and
- meets the Law Society’s chosen emphasis on quality assurance or quality improvement.

Model One: Formulation of a Continuum of Professional Development

It has long been recognized that competent professionals never stop learning. They maintain and enhance their knowledge, skills, and judgment through a combination of experiential learning and observation, reading, studying, reflecting, attending continuing legal education programs, and discourse with colleagues and mentors.

Although articulated in this document as individual approaches, components of the models could be intermingled to combine both quality assurance and quality improvement features if it is determined that such an approach is preferable.



The Law Society's definition of the "competent lawyer" recognizes that he or she will pursue "appropriate professional development to maintain and enhance legal knowledge and skills" and "adapt to changing professional requirements, standards, techniques, and practices". Rule 2 of the current Rules of Professional Conduct states that the lawyer should "keep abreast of developments in the branches of the law wherein the lawyer's practice lies by engaging in continuing study and education". Law school, bar admission and continuing legal education, along with the county and district library and Great Library system, are current programs that contribute to professional development.

A continuum of professional development model would focus on ensuring a systematic approach to professional development that is progressive and relevant to the various stages of a lawyer's career. Such a model could include,

- tools that will allow members to engage in professional development throughout their careers (quality improvement); and
- mechanisms for monitoring whether such professional development is taking place (quality assurance).

The development of such a model would include an analysis of the appropriateness of a voluntary or mandatory approach to professional development, or some combination thereof.

In assessing whether the model should entail mandatory professional development requirements, consideration could be given to possible mandatory requirements based on,

- **topics** (eg. annual ethics requirements; changing legislation; equity matters);
- **situations** (eg. professional development requirements for the newly-called who intend to do trial work, similar pre-requisites for those handling legal aid files or commencing private practice; or specialist certification designations); or
- **members** (eg. all those in private practice; all members).

The model would recognize that the nature of members' professional development requirements change as they move through their careers. It would focus on how post-call professional development could be broadly designed and used for supportive, remedial, and monitoring purposes. The model could,

- identify various segments of the profession for whom particular development tools may be required, including lawyers who are newly-called; are interested in changing practice areas or who wish to specialize; are not in private practice and whose professional development needs are diverse; are in practice review; have been identified in a spot or focused audit as having

deficient financial records; are ordered, in a capacity, competence, or conduct proceeding, to undertake professional development; practise in high claims risk areas; or are required to requalify as a result of not having made substantial use of their legal skills for a specified period;

- consider the goals of professional development for each of these areas, including whether the priority is to remediate, support, or monitor the lawyer;
- determine the range of learning tools that could be most effective in each area and that could best complement the Society's competence mandate under the *Act*;
- determine what aspects of the continuum, if any, should be mandatory, and for whom;⁷
- determine how to evaluate whether the chosen professional development tools actually affect or change behaviours or performance; and
- consider whether bar admission course training might be designed more directly as part of the professional development continuum.

Noteworthy Features of a Professional Development Continuum Model

- Generally speaking, professional development is a well-known and widely accepted part of the legal profession.
- Existing infrastructures, such as CLE organizations and the library system, can be used for the model's development.
- The model is well-positioned to take advantage of current and future technological developments to deliver professional development tools across a broad range of geographic settings throughout the province.⁸
- Specific learning tools that address risk management issues identified from practice reviews, spot and focused audits, practice advisory, complaints, and conduct and competence proceedings could be developed that would reach a wide audience of members.
- The model could accommodate both a quality assurance and quality improvement focus by continuing the tradition of offering voluntary professional development designed to meet lawyer-identified needs, and by having mandatory components designed to address specific quality of service issues.
- The model can be developed to match professional development opportunities and requirements to members' evolving levels of experience and practice, thereby providing both supports for maintenance and enhancement of competence, and, if there is a mandatory component, tools by which the Law Society could monitor such evolving development.
- The model provides opportunities for the Law Society to partner with other organizations in developing the range of tools that would meet the needs of the public and the profession.



- The model is equally relevant to those members not in private practice as to those who are.

Issues to be Addressed

The developmental process would need to address a number of issues, including,

- whether the model could be an effective quality assurance tool if there is no mandatory component;
- whether features that would provide demonstrable and continuing evidence of quality service could exist in an entirely voluntary model;
- what types of monitoring mechanisms would be effective, including, for example, testing;
- whether improved competent lawyer performance is capable of measurement in an across-the-board mandatory component with no monitoring feature other than confirmation of attendance at or participation in professional development activities;
- how the model should be structured to measure member use of Law Society guidelines; and
- how to ensure that educational tools are delivered at an affordable cost across the entire province.

Model Two: Random / Focused Practice Review⁹

a) Focused Practice Review

The Law Society is required by the *Law Society Act* to conduct a practice review where there are reasonable grounds to believe that a member has failed or is failing to meet standards of professional competence. Accordingly, any competence model the Law Society implements must include practice review.

Focused practice review is premised on the belief that members encountering multiple practice problems cannot benefit solely, if at all, from passive learning tools. They must be directly observed, provided with tools specific to their needs, given specific instructions on steps for improvement, monitored and, where possible, re-evaluated. The program is separate from the Law Society's conduct processes, its focus being on assisting members to improve their competence.¹⁰

The value of practice review depends, in part, upon the nature of the resources available to assist, the attitude toward the review of the individual being assisted, and the extent to which the program has targets and a reasonable point of completion.

Focused practice review is primarily reactive. It addresses competence issues when members have already experienced multiple competence-related complaints or concerns. Members are chosen or focused upon precisely because problems have been identified.

b) Random Practice Review

The question for further analysis and discussion is whether practice review should be expanded and incorporated into a broader model that includes random reviews.

Random practice review has a preventive focus. Its broad goal is to monitor member adherence to articulated standards of practice. An ancillary goal is to raise the quality of service across the profession. Such programs apply to all members, randomly, and are not directed only to those who have demonstrated problems with competence or who have experienced multiple client complaints.

Random practice reviews are used by a number of other regulatory bodies as a key element of quality assurance. For example, the College of Physicians and Surgeons of Ontario, the Royal College of Dental Surgeons of Ontario, the Institute of Chartered Accountants of Ontario, the Certified General Accountants of Ontario (for members in public practice), and the Barreau du Québec all use forms of random peer inspection (practice review). In Alberta, Prince Edward Island, and Ontario the law societies conduct random audits of lawyers' financial books and records. The College of Physicians and Surgeons has recently announced that its random practice inspection program, which has existed since 1981, will be significantly expanded so as to apply to all physicians in practice in Ontario.

Random practice review programs in other professions are separate from the discipline stream of the regulatory body. Where the review reveals minor difficulties the member receives guidance on how to improve. Where more substantial remedial assistance is necessary, various professions use different means to assist members to obtain the help they need. Typically, the programs do not focus on assessing substantive knowledge, but rather on practice issues such as record-keeping or file management, attention to client interests, and compliance with required features of practice.

A model that combines focused and random practice review is primarily a quality assurance measure with some modest features of quality improvement. The quality improvement features emerge essentially from three areas:

- Prior to the random review members prepare by addressing aspects of their practices they may have overlooked and seek to improve them before the review takes place;



- Members institute changes to their practices to reflect problems identified; and
- Members of the profession at large are informed of the areas of deficiency observed in each year's reviews, so that they can consider whether to make improvements in their own work environments and practices.

Noteworthy Features of a Practice Review Model

Generally

- The model is a hands-on approach to assessing quality and competence, thereby offering a more precise analysis of the strengths and weakness of lawyers' work.
- It is directed specifically at monitoring areas that are critical to competent performance and at areas of risk, thereby focusing members' efforts where they can have the most impact on risk avoidance.
- It combines supportive and remedial perspectives with a monitoring perspective.
- Guidelines are interwoven in the development of assessment tools, namely criteria by which members' practices will be assessed.

Focused Practice Review

- It concentrates resources on those already identified as having demonstrated competence-related deficiencies. This permits more intense scrutiny where there is proven need.
- The scope of focused practice review could also be expanded to be directed to members in those areas determined by statistical profiles to be high risk areas.

Focused and Random Practice Review Model

- It has potential to be effective in monitoring competent practice and raising the standards of the profession if carried out with sufficient proficiency and frequency. This, in turn, addresses the public's and the profession's interest in quality service.
- By applying standard evaluation tools the model allows the Law Society to monitor the effectiveness of the approach and its ability to complement the Law Society's overall regulatory responsibilities. The information obtained can be used to monitor effectiveness, assess risk areas for more focused attention, and gather data on how professionals practice.
- It allows for assessment of members who work outside of private practice in corporate or government settings.
- It satisfies the requirements of the *Legal Aid Services Act* for quality assurance audits of legal service providers.

- Although it has a mandatory component it may not be as time-consuming for members as other possible quality assurance measures, such as certain forms of mandatory CLE. Reviews happen relatively infrequently.
- The existence of focused practice review provides the tool for supporting those members randomly reviewed who require more substantial assistance.

Issues to be Addressed

The developmental process would need to address a number of issues, including,

Focused Practice Review

- whether a model that is restricted only to those who have already demonstrated deficiencies can be viewed as a quality assurance model for the profession;
- whether it is appropriate for the Law Society to wait for competence-related deficiencies to appear before it acts, rather than take active steps to ensure problems are prevented;
- whether the findings from focused practice reviews will be of a nature that the profession at large will be able to learn from them - the level of competence-related deficiencies will in most instances be well below the standards of practice and work met by most lawyers;

Focused and Random Practice Review Model

- whether the model should focus primarily on reviewing practice management components of work and practice or address substantive practice areas;
- whether the model can include an effective quality improvement feature. Other professions have indicated that each year they find approximately the same percentage of members who demonstrate deficiencies in their practices; and
- whether a legislative amendment would be required to implement random practice review and, if so, whether it could be obtained.

Model Three: Limited Licensing

Upon their call to the bar, lawyers in Ontario receive a general credential entitling them to practise as barristers and solicitors. The system is premised on the view that law school and the bar admission course equip a lawyer to take on any legal work, subject to the lawyer's self-assessment of competence as set out in the Rules of Professional Conduct.

In a rapidly changing and complex legal environment, it is arguable that, by attempting to equip every new lawyer to practise in any area, the legal



education system undermines the ability to develop and maintain the competence of members of the bar. This is because there is little opportunity and no requirement in Ontario that lawyers limit their fields of practice upon call to the bar. For this reason, one of the substantive competence models the Law Society is considering involves elements of limited licensing.

The medical profession in Canada provides the best example in this country of widespread use of specialization. Its approach defines the area in which a physician will concentrate his or her skills, and effectively limits those outside of each specialty area from practising in complex areas in which they have little practical experience. The educational requirements for each specialty are developed to fit the unique needs of each group and the professional development opportunities are directed towards specific needs. This type of approach has built-in checks and balances that protect the public, so that, for example, a newly licensed doctor cannot book an operating room and undertake sophisticated surgery. This is in contrast to the legal profession in which, at least theoretically, a newly-called lawyer could take on a murder trial.

Two possible approaches to limited licensing are being considered, as follows.

a) General Requirement of Limited Licences

Under this approach lawyers could qualify initially to practise in one or two areas of law. Through well-developed and highly accessible professional development streams they could build upon their expertise either to obtain a licence in additional practice areas, or to develop more specialized expertise in their initial fields. This approach could complement a system of specialist certification (discussed below as Model 4). It would also provide appropriate education and skills development for general practitioners, focused on those fields and matters within a range of general practice.

b) Time or Situation Limitations on Licences

Under this approach to licensing, the limitations on licences are more time or situation-limited. In New South Wales, Australia, and in England and Wales, for example, solicitors must work as employees in a firm for a specified period and meet certain other requirements (such as successful completion of a practice management course), before being entitled to establish a sole practice offering services to the public. Once these requirements are met, lawyers may practise in the areas they choose.

In Ontario a model could also be designed to include situation-limited restrictions such as introducing the requirement of,

- completing a trial advocacy program before being entitled to practise in the courts or before tribunals; or

- completing a program on representing legally-aided clients as a pre-requisite to being entered upon the legal aid panel.

Regardless of which limited licensing approach is followed, the intent of such a model is to address the increasingly complex and rapidly changing nature and demands of legal practice. By focusing lawyers' knowledge and skills in more clearly defined ways, and at an early stage, a limited licensing model seeks to integrate the importance of quality service into how lawyers develop their work from the outset of their professional lives and throughout their careers.

Noteworthy Features of a Limited Licensing Model

Generally

- This kind of approach may assist in distinguishing the legal profession even more clearly from non-lawyers seeking to provide legal services, because issues of quality, expertise, specialized training, and professional development would be focused, direct, and demonstrable.
- This type of model provides direct regulatory checks and balances to ensure members do not take on matters outside their expertise. While there is a rule of professional conduct that requires that members be competent to take on specific services, there is no mechanism other than the reactive tool of the complaints process to monitor adherence to the rules. Limited licensing is such a mechanism.

General Requirement of Limited Licences

- Professional development opportunities would be more focused and developed in a progressive manner to reflect changing career needs.
- Quality assurance and improvement would be combined and could be developed to meet the specific needs of each licencing area, rather than as a one-size-fits-all approach.
- The public may find it easier to access lawyers who can meet their specific needs, because they would be readily identifiable, as with the medical profession.

Time or Situation Limitations on Licences

- These approaches to limited licences seek to ensure that inexperienced practitioners receive the supervision or formal exposure to practice issues, including management, they might not otherwise receive if they were to open an office immediately as sole practitioners or attempt particular kinds of work with no prior experience.
- This approach is not as comprehensive as a general requirement of limited licences would be, but it would still offer some important focused quality assurance and improvement measures.



Issues to be Addressed

The developmental process would need to address a number of issues, including,

Generally

- whether adoption of a limited licensing model would require a shift in law school education and, if so, how that would be undertaken;
- how lawyers already called to the bar would be affected by the model;

General Requirement of Limited Licences

- whether the developmental time for pursuing this model necessitates that other quality measures be implemented in the interim;
- whether quality assurance/ improvement processes would be developed within each area of practice;

Time or Situation Limitations on Licences

- whether the supervised practice pre-requisite may apply an overly broad brush to the issue of quality service, beginning from the assumption that the only way to acquire good practice management exposure and practice wisdom is in the service of a more experienced practitioner. This issue does not arise under the general requirement of limited licences model;
- whether the supervised practice pre-requisite may restrict lawyers from practising at all in poor economic times, because they are unable to find employment;
- whether a supervised practice model might become an unreasonable barrier to practice, if it is difficult to provide quality placements; and
- whether successfully completed situation-limited and time-limited licences would provide sufficient and continuing evidence of quality and competence.

Model Four: Broadly-Based Specialist Certification

Specialist certification is a quality improvement program. Lawyers voluntarily choose to develop and seek accreditation for having attained established standards of practice and expertise. In its current form the Law Society's program does not preclude certified specialists from practising in other areas.

Specialist certification of lawyers is not unique to Ontario. For example, a number of American legal jurisdictions as well as the Law Society of New South Wales in Australia have certification programs. These programs have multiple goals of providing the public with access to lawyers who meet their specialized legal needs, enhancing the quality of service provided to the public, and potentially

raising the standards of all members in a particular area of practice. The programs have a variety of educational and testing requirements.

It is important to recognize that, at the present time, certification of specialists in Ontario is a recognition program, not a developmental one. This means that members are certified for having already met operative standards and are periodically re-certified for maintaining them. Lawyers are not directed on a developmental path leading to specialization. Very few lawyers in Ontario have sought to be certified as specialists under the current program. What is now under consideration as a potential competence model is a fundamentally revised and expanded certification program having distinct developmental aspects.

An effective broadly-based specialist certification model would be based on standards that are perceived to be objective, rigorous, and fair. Under this new type of program it would be possible for lawyers throughout the province to satisfy the knowledge requirements for specialist certification through study and assessment. This would contrast with the current requirement that a candidate concentrate his or her practice and establish broad experience in the field in which he or she seeks certification, a requirement that excludes many lawyers.

The model would identify a process consisting of educational opportunities and indicia of experience that could lead a junior member of the bar on a path toward certification. This could also be developed to enable those lawyers in general practice to be recognized as specialists in that field, akin to a family practice specialty in the medical field.

Noteworthy Features of a Revised Specialist Certification Model

- This model is, potentially, a powerful quality improvement tool, providing opportunities for a broad range of younger and less experienced lawyers to develop expertise through a developmental path of education, progressive experience, and satisfaction of specified standards of performance.
- It can be seen as having a quality assurance feature that allows the public to assess effectiveness, provided it includes some measurement tools.
- Recognizing the reality that most lawyers voluntarily narrow the focus of their work from an early stage in their careers, it provides guidance and incentives to doing so in the most competent manner.
- The model entails the development of accepted standards of performance and best practices in each specialty area that could have the indirect effect of raising minimum standards across the profession.
- It could have significant relevance to sole and small firm practitioners many of whom have not been able to qualify for specialist certification under the current program because they practise as “generalists”.



- It may assist in distinguishing the legal profession even more clearly from non-lawyers seeking to provide legal services, if embraced widely by the profession.
- It could complement a system of limited licences, discussed in Model 3.

Issues to be Addressed

The developmental process would need to address a number of issues, including,

- whether specialist certification, as a voluntary program, would be sufficient to meet the Law Society's competence mandate;
- whether such an approach would require a shift in law school education and, if so, how that would be undertaken;
- how lawyers already called to the bar would be affected by the model;
- whether the developmental time for pursuing this model necessitates that other quality measures be implemented in the interim;
- whether it is possible to develop sufficient professional development tools across the province to make broadly-based specialist certification feasible; and
- how standards for the assessment process leading to certification would be developed and by whom.

All comments, completed surveys, questions and requests for the Book of Appendices that supplements this consultation document should be directed to:

Sophia Sperdakos
Policy Advisor
Policy Secretariat

Law Society
of Upper Canada
130 Queen Street West
Toronto, Ontario
M5H 2N6

Telephone (416) 947-5209

Facsimile (416) 947-7623

e-mail:
ssperdak@lsuc.on.ca

X. Ongoing Work

The possible competence models identified in this consultation paper are intended to stimulate discussion within the legal profession and the public, with a view to guiding the selection and development of an appropriate future approach to implementing the Law Society's competence mandate. This issue is of fundamental importance to the profession. Members of the profession are urged to consider the issues raised in this consultation document and to provide their views and suggestions to the Law Society. Comments will greatly assist the Law Society and will be gratefully received.

In addition, those members wishing to complete the attached survey are requested to return it to the Law Society by no later than **June 15, 2000**. Completion and return of the survey would be much appreciated.

XI. Description Of Book Of Appendices

This consultation document does not contain a detailed discussion of all the matters raised in it. Rather, it highlights them and provides reference to a Book of Appendices for those members or organizations interested in obtaining further information. The Book of Appendices contains the following.

Appendix 1: Summary of Previous Law Society Competence-Related Work

This includes discussion of the introduction of the practice advisory service (1980), specialist certification (1986), practice review (1988), practice checklists (1988), original proposal for authority to obtain competence orders (1992), the work of the joint committee of legal aid and professional standards (1993), and the work of the Mandatory CLE Subcommittee (1995-97).

Appendix 2: Issues Related to Self-Regulation

This contains information on the changes to, and pressures facing, self-regulation of solicitors in England and Wales and New South Wales, Australia, and the medical profession in Ontario and elsewhere.

Appendix 3: Common Approaches to Quality Assurance

This provides a description of each of the common approaches to quality assurance highlighted in the glossary to this consultation document.

Appendix 4: Summary of Quality Assurance / Improvement Measures Used by a Sampling of Other Professions and Other Legal Jurisdictions

This describes, in some detail, the quality assurance and improvement measures adopted by the College of Physicians and Surgeons of Ontario; the Royal College of Dental Surgeons of Ontario; the College of Nurses of Ontario; the Royal College of Physicians and Surgeons of Canada; the Institute of Chartered Accountants of Ontario; the Certified General Accountants Association of Ontario; the Canadian Institute of Actuaries; the Ontario Association of Architects; the Professional Engineers of Ontario; the College of Teachers of Ontario; the Law Societies of Alberta and Nova Scotia and the Barreau du Québec, the Law Society of England and Wales, and the Law Society of New South Wales, Australia, and some general approaches of state bars in the United States.

Appendix 5: Excerpt from the 1997 Report of the MCLE Subcommittee

Post-call Learning for Lawyers

This sets out the pros and cons of Mandatory CLE as described in the 1997 report of the Law Society's MCLE subcommittee.

Appendix 6: Common Features of Random Practice Review Programs

This provides some further detail on random practice review programs in other jurisdictions.



Endnotes

- ¹ More information on these and other initiatives is contained in **Appendix 1** of the Book of Appendices.
- ² Further information on the threats to self-regulation in England and Wales and in New South Wales, Australia and concerning changes to self-regulation in the medical profession in Ontario and elsewhere, is set out in **Appendix 2** of the Book of Appendices. It is fair to observe that the privilege of self-regulation of solicitors in England and Wales and in New South Wales, Australia has come under serious review and, by some, attack. In Ontario, it is also of interest that an arm's length review is currently being undertaken of the quality assurance program of the College of Physicians and Surgeons of Ontario, focusing particularly on that regulator's handling of complaints.
- ³ These ratings, developed by the Geneva-based International Organization for Standardization, consist of a set of 20 internationally recognized standards for quality assurance. These standards are general statements in a variety of areas such as management, client relations, staff relations, and training. They can be adapted to whatever industry or profession seeks to apply them. The major task for those seeking the rating is to examine their operation, agree on the appropriate standards for each of the areas and then comply with those standards.
- ⁴ Random practice review is known as random practice inspection or random peer assessment by some professions. In the Law Society's lexicon it is known as practice review. Such programs allow for the random review/inspection/assessment to be conducted by practitioners who work in similar fields and practices as the member being inspected. These programs can be contrasted with focused practice review programs, which are targeted to address those with identified competence-related deficiencies. In this consultation document the term "random practice review" is used to refer to the inspection of practices or work environments chosen randomly throughout the profession. The term "focused practice review" refers to the inspection of practices or work environments specifically chosen because of evidence of actual or likely competence-related deficiencies.
- ⁵ More detailed information on each of these approaches and their uses in various jurisdictions and professions is contained in **Appendices 3 and 4** of the Book of Appendices.
- ⁶ New Brunswick, Newfoundland, and Nova Scotia have developed real estate practice standards that reflect accepted and acceptable levels of performance throughout the province. Prince Edward Island is considering this approach as well. Members of the bar were consulted on the appropriate standards. Other provinces have not developed substantive law standards, but have varying types of practice guidelines.
- ⁷ Information on the analysis done by the Law Society's Mandatory Continuing Legal Education Subcommittee on the advantages and disadvantages of mandatory CLE is contained in **Appendix 5** of the Book of Appendices.
- ⁸ A number of technologically driven initiatives are currently being investigated or developed that would facilitate both the development and the effectiveness of this model. These include Bar-Ex, an electronic forum for facilitating lawyers' business transactions, research and continuing legal education opportunities, and other commercial interaction; a Virtual Law Library that could provide lawyers with a wide range of research tools in a single electronic location; and the Law Foundation grant to the Law Society for enhancing the delivery of bar admission and continuing legal education.
- ⁹ Additional information on these approaches is contained in **Appendices 3 and 6** of the Book of Appendices.
- ¹⁰ Nothing learned in a practice review is used to initiate or continue a conduct proceeding with the exception of information that comes within Rule 13, Commentary 1 of the current Rules of Professional Conduct. The exception to this is where the practice review is ordered in the course of a conduct proceeding. In some provinces, practice reviews are not a separate program, but only arise in the course of a discipline proceeding.

Glossary of Quality Assurance/Improvement Approaches

Continuing Education (mandatory or voluntary)

This is the term used to describe the various tools by which members of a profession undertake ongoing learning throughout their careers. It can encompass formal educational programs, experiential learning, self-study, teaching, writing, discussion groups. **When voluntary, it is viewed as a quality improvement approach. When mandatory, it is viewed as a quality assurance measure.**

Discipline Proceedings for those Demonstrating Incompetence

Most professions have codes of professional conduct or statutory provisions that require members to be competent to practise and consider failure to do so to be a disciplinary offence. This is a reactive approach, allowing those who practise at sub-standard levels to continue to do so until some event, or series of events, reveals deficiencies. **This is neither a quality assurance nor a quality improvement measure, but is often considered as the final component of broadly-based quality programs.**

Limited Licensing

Members are licensed within specified areas of practice or satisfy the pre-requisites necessary to undertake certain work. This can be profession-wide (like the medical profession) or for specific requirements (necessary steps before entering private practice). **Limited licensing is primarily a quality assurance measure.**

Practice Review (Focused)

A process whereby members with a pattern of competence-related deficiencies are identified, their practices reviewed, and tools provided to assist them in improving. **This is a quality assurance measure.**

Practice Review (Random) [known as practice inspection/peer assessment in other professions]
Profession-wide review of randomly chosen members' practices or work to monitor adherence to standards. **This is primarily a quality assurance measure with some possible quality improvement features.**

Publications of Standards or Guidelines for Practice

The articulation of standards or guidelines that should govern legal work. These may be general, specific or detailed. When providing guidance as to acceptable performance and service expectations this is a **quality assurance measure.**

When directed at voluntary best practices this is a **quality improvement measure.**

Reflective Practice and Self-Assessment Tools

A process whereby members are provided with tools to assist them in reflecting upon their strengths, identified areas for improvement, and goals for the future with a view to developing professional development approaches that will enable them to maintain and enhance their competence. It requires a conscious commitment to self-analysis and reflection upon the features and components that go into making a competent professional. Reflective practice has been defined by Donald Schön, in his book *The Reflective Practitioner*, as a kind of "reflection-in-action" - "an informal improvisation that professionals undertake to deal with the myriad of unpredictable situations they face that is the essence of professional knowledge". This is primarily a **quality improvement measure**, although some professions have made this a mandatory feature of their **quality assurance program.**

Re-Testing

A process whereby members' competence is monitored by periodic membership-wide re-testing or re-certification. There is some possibility that teachers in Ontario may be required to undergo some re-testing in the future. **This is a quality assurance measure.**

Specialist Certification

Specialist certification is a voluntary exercise undertaken by those members who choose to develop and seek accreditation for the attainment of established standards of practice and expertise. The Law Society's current program does not preclude those certified as specialists in one area from practising in other areas. **Specialist certification programs are quality improvement measures.**

Voluntary Practice Standards Accreditation

Like guidelines, these provide performance expectations, but are voluntarily pursued by lawyers. Under these systems law firms or practitioners choose to take the steps necessary to comply with set program requirements in order to then market themselves as having met the accreditation standards of excellence. These programs focus on ensuring that those accredited meet identified quality control standards designed to result in more efficient, competent, and client-centred work environments. **This is a quality improvement measure.**

Please return to the Law Society by June 15, 2000
 Thank you for participation.

NAME (OPTIONAL) _____

GENERAL INFORMATION

1. In what period were you called to the bar?

<input type="checkbox"/> 1921-30	<input type="checkbox"/> 1941-50	<input type="checkbox"/> 1961-70	<input type="checkbox"/> 1981-90
<input type="checkbox"/> 1931-40	<input type="checkbox"/> 1951-60	<input type="checkbox"/> 1971-80	<input type="checkbox"/> 1991-00

2. Where do you work?

<input type="checkbox"/> Central East Region of Ontario	<input type="checkbox"/> Northeast Region of Ontario
<input type="checkbox"/> Central West Region of Ontario	<input type="checkbox"/> Southwest Region of Ontario
<input type="checkbox"/> Central South Region of Ontario	<input type="checkbox"/> Toronto
<input type="checkbox"/> East Region of Ontario	<input type="checkbox"/> outside of Ontario
<input type="checkbox"/> Northwest Region of Ontario	

3. What is the nature of your work?

<input type="checkbox"/> private practice	<input type="checkbox"/> legal education
<input type="checkbox"/> corporate counsel	<input type="checkbox"/> other _____
<input type="checkbox"/> government	

4. If you are in private practice, how many lawyers are there in your firm?

<input type="checkbox"/> 1	<input type="checkbox"/> 2-5	<input type="checkbox"/> 6-10	<input type="checkbox"/> 11-50	<input type="checkbox"/> 51+
----------------------------	------------------------------	-------------------------------	--------------------------------	------------------------------

5. In how large a population centre do you work?

<input type="checkbox"/> < 10,000	<input type="checkbox"/> 51,000 - 100,000	<input type="checkbox"/> > 1,000,000
<input type="checkbox"/> 10,000 - 50,000	<input type="checkbox"/> 100,000 - 999,000	

QUALITY ASSURANCE/QUALITY IMPROVEMENT

6. In implementing its competence mandate should the Law Society focus on

quality assurance measures?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> No opinion
quality improvement measures?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> No opinion
a combination of quality assurance and quality improvement measures?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> No opinion

7. In developing guidelines to assist it in implementing its competence mandate, how should the Law Society prioritize its guideline development? *(with 3 being the highest priority and 1 being the lowest priority)*
 - (i) guidelines concerning members' knowledge, skill, or judgment,

1	2	3
---	---	---

 - (ii) guidelines concerning members' attention to the interest of clients,

1	2	3
---	---	---

 - (iii) guidelines concerning the records, systems, or procedures of members' practices

1	2	3
---	---	---

Implementing the Law Society's Competence Mandate

Return to:
 Sophia Sperdakos
 Policy Advisor
 Policy Secretariat
 Law Society of Upper Canada
 130 Queen Street West
 Toronto, Ontario
 M5H 2N6

Telephone
 (416) 947-5209

Facsimile
 (416) 947-7623

e-mail:
 ssperdak@lsuc.on.ca



8. Should the Law Society participate in the development of voluntary “best practices” guidelines as a quality improvement measure? Yes No No opinion

PROFESSIONAL DEVELOPMENT

9. In your opinion, would a voluntary professional development approach satisfy the Law Society’s obligation to ensure that the public is served by lawyers who meet high standards of competence? Yes No No opinion
10. In your opinion, should there be some mandatory requirements related to professional development? Yes No No opinion
11. If the Law Society were to consider mandatory requirements related to professional development, should they apply to: *(indicate as many categories as you wish)*
- all active members
 - those engaging in private practice for the first time or after a lengthy absence
 - those seeking to change practice areas
 - as a pre-requisite to engaging in certain kinds of practice, eg. trial advocacy, legal aid
 - those certified as specialists
 - those in identified high-risk practice areas
 - those in focused practice review
 - those who have previously demonstrated competence-related deficiencies (eg. multiple complaints)

FOCUSED / RANDOM PRACTICE REVIEW

12. Should the Law Society introduce random practice review, in addition to focused practice review? Yes No No opinion
13. If the Law Society were to introduce random practice review to assist in implementing its competence mandate, in which of the following areas should the Law Society concentrate:
- (i) members’ knowledge, skill, or judgment? Yes No No opinion
 - (ii) members’ attention to the interest of clients? Yes No No opinion
 - (iii) the records, systems, or procedures of members’ practices? Yes No No opinion

LIMITED LICENCES

14. If you are in private practice, do you limit the number of substantive areas in which you practise? Yes No
15. Do you believe that members should be required to meet established standards before changing practice areas? Yes No No opinion
16. Do you believe lawyers should continue to be able to self-elect their substantive practice areas? Yes No No opinion

A CONSULTATION DOCUMENT

17. If the Law Society were to consider the introduction of limited licences should it consider,

- (a) a general requirement of limited licences for all members? Yes No No opinion
- (b) time limitations on licences (eg. practice under supervision for a fixed period)? Yes No No opinion
- (c) situation limitations on licences (eg. take a trial advocacy course before being entitled to appear in court)? Yes No No opinion

SPECIALIST CERTIFICATION

18. In your opinion, would a revised specialist certification model be sufficient to satisfy the Law Society’s competence mandate? Yes No No opinion

19. If the Law Society were to develop a model of broadly-based specialist certification, should there be a specialty for general practitioners? Yes No No opinion

20. Would a broadly based specialist certification model, along the lines described in the attached consultation document, be useful to you? Yes No No opinion

21. The consultation document describes four potential models for implementing the Law Society’s competence mandate (please refer to Part IX of the document). The name of each of these models is listed below. Please rank each of the models, in order, assigning a “1” to the model that you consider would be **most** effective in implementing the Law Society’s competence mandate through to a “4” for the model you think would be **least** effective. Where there are sub-headings under a model you may indicate which subheading is relevant to your ranking. Simply write the number on the line beside the model. *(Please rank all the models and do not use the same number twice.)*

- Formulation of a continuum of professional development _____
 - a) entirely voluntary _____
 - b) mandatory for all members _____
 - c) mandatory for certain identified categories of members and voluntary for the balance _____
- Practice Review _____
 - a) Focused only _____
 - b) Random and focused _____
- Limited Licensing _____
 - a) General Requirement of Limited Licences _____
 - b) Time or Situation Limitations on Licences _____
- Broadly based Specialist Certification _____



22. For the model identified above as the most effective (1), please indicate why you thought the model would be most effective.

23. What, if any, modifications or enhancements would you suggest for strengthening the model you chose?

24. If the model you chose as being most effective in implementing the Law Society's competence mandate is not the model you would find most *personally* useful, please indicate which model that would be and why.

If you have any additional comments please attach them to the survey.
THANK YOU.