

MINUTES OF CONVOCATION

Friday, 28th May, 1999
9:00 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Angeles, Armstrong, Arnup, Backhouse, Bindman, Braithwaite, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cherniak, Cronk, Crowe, Curtis, Diamond, DiGiuseppe, Ducharme, Elliott, Epstein, Gottlieb, Hunter, Jarvis, Krishna, Lamek, Lamont, Lawrence, MacKenzie, Manes, Marrocco, Martin, Millar, Mulligan, Murphy, Murray, O'Brien, Ortved, Pilkington, Potter, Puccini, Robins, Ross, Ruby, Simpson, Swaye, Topp, Wardlaw, White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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REPORT OF THE ACTING DIRECTOR OF EDUCATION

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that the Report of the Acting Director of Education be adopted.

Carried

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Acting Director of Education asks leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, May 28th, 1999:

Deborah Elizabeth Bennett	Bar Admission Course
Meera Bharadwai	Bar Admission Course
Barry Irl Ditto	Bar Admission Course
Patrizia Huot	Bar Admission Course
Rashid Abdur Khandaker	Bar Admission Course
Hyun Suk Kim	Bar Admission Course
Aamir Mirza	Bar Admission Course
Lennox O'Riley Picart	Bar Admission Course
Tripti Prinja	Bar Admission Course
Dharamjit Singh	Bar Admission Course
Mattew David Stone	Bar Admission Course
Sophia Tolias	Bar Admission Course
Glenn John Williams	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, May 28th, 1999:

Howard Abrams	Province of Quebec
Gwenyth Aileen Benjamin	Province of British Columbia
Jody Howard Berkes	Province of British Columbia
Peter David Brady	Province of British Columbia
Mary Ellen Cavett	Province of Manitoba
Laura Elizabeth House	Province of New Brunswick
Heather Keating	Province of Manitoba
Rozrin Reena Lalji	Province of British Columbia
Donald Bradford Padget	Province of Alberta
Archie Brent Palinka	Province of Alberta
David Douglas Robertson	Province of British Columbia
Stephen Garrett Spracklin	Province of Newfoundland
Erica Mary Stone	Province of British Columbia
Christopher Scott Winrow	Province of British Columbia

ALL OF WHICH is respectfully submitted

DATED this the 28th day of May, 1999

THE REPORT WAS ADOPTED

CALL TO THE BAR

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

Deborah Elizabeth Bennett	Bar Admission Course
Meera Bharadwaj	Bar Admission Course
Barry Irl Ditto	Bar Admission Course
Patrizia Huot	Bar Admission Course
Rashid Abdur Khandaker	Bar Admission Course
Hyun Suk Kim	Bar Admission Course
Aamir Mirza	Bar Admission Course
Lennox O'Riley Picart	Bar Admission Course
Tripti Prinja	Bar Admission Course
Dharamjit Singh	Bar Admission Course
Mattew David Stone	Bar Admission Course
Sophia Talias	Bar Admission Course
Glenn John Williams	Bar Admission Course
Howard Abrams	Province of Quebec
Gwenyth Aileen Benjamin	Province of British Columbia
Jody Howard Berkes	Province of British Columbia
Peter David Brady	Province of British Columbia
Mary Ellen Cavett	Province of Manitoba
Laura Elizabeth House	Province of New Brunswick
Heather Keating	Province of Manitoba
Rozrin Reena Lalji	Province of British Columbia
Donald Bradford Padget	Province of Alberta
Archie Brent Palinka	Province of Alberta
David Douglas Robertson	Province of British Columbia
Stephen Garrett Spracklin	Province of Newfoundland
Erica Mary Stone	Province of British Columbia
Christopher Scott Winrow	Province of British Columbia

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IN CAMERA

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IN PUBLIC

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The Treasurer welcomed Professor Robert Martin back to Convocation.

DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Crowe, seconded by Ms. Elliott that the Draft Minutes of Convocation for April 29th and 30th, 1999 be adopted.

Carried

(see Draft Minutes in Convocation file)

MOTIONS - APPOINTMENTS

It was moved by Mr. Crowe, seconded by Ms. Elliott that Abraham Feinstein be re-appointed to the Board of Directors of the Federation of Law Societies of Canada.

Carried

It was moved by Mr. Topp, seconded by Mr. MacKenzie that Susan Elliott, Seymour Epstein, Neil Finkelstein, Vern Krishna and Malcolm Heins be appointed to review and negotiate the Law Society's contract with regard to the publication of the Ontario Reports.

Carried

MOTION - AMENDMENTS TO BY-LAWS 14 to 24 and BY-LAW 26 (French version)

It was moved by Ms. Cronk, seconded by Ms. Ross that By-Laws 14 to 24 and By-Law 26 be amended by adding to each By-law its French version.

Carried

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS
made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 28, 1999

By-Laws 14 to 24 and By-Law 26

I MOVE that By-Laws 14 to 24 and By-Law 26 be amended by adding to each by-law its French version as follows:

RÈGLEMENT ADMINISTRATIF N^o 14

LA DÉMISSION

Procédure de démission

1. (1) Sous réserve de l'article 3, les membres du Barreau qui désirent démissionner en font, par écrit, la demande au ou à la secrétaire.

Déclaration solennelle ou affidavit

(2) Toute demande présentée conformément au paragraphe (1) est accompagnée d'une déclaration solennelle ou, lorsque le membre n'est pas résident du Canada, d'un affidavit précisant :

- a) son âge, la date de son admission au barreau ainsi que la date de son admission en tant que procureur, son lieu de résidence, l'adresse de son bureau, le cas échéant, le nombre d'années d'exercice de la profession, le cas échéant, et l'énoncé des raisons de sa démission;
- b) que le membre a rendu compte de tous les fonds et biens détenus en fiducie don't il était responsable et qu'il les a remis aux personnes y ayant droit, ou, selon le cas, qu'il n'est responsable d'aucune somme ou d'aucun bien détenu en fiducie;
- c) que le membre a réglé toutes les affaires qui lui avaient été confiées par ses clients et clientes ou qu'il a pris, à la satisfaction de ces derniers, les mesures nécessaires pour leur remettre leurs documents ou pour les transmettre à un autre avocat ou une autre avocate ou, selon le cas, qu'il n'a pas exercé la profession;
- d) que le membre n'a connaissance d'aucune réclamation à son égard à titre professionnel ou dans le cadre de l'exercice de sa profession;
- e) tous les renseignements ou explications supplémentaires concernant les données précitées.

Idem

(3) L'attestation d'un ou d'une comptable, certifiant que le membre a rendu compte de tous les fonds et biens en fiducie don't il était responsable et qu'il les a remis aux personnes y ayant droit, est jointe à la demande, à titre de pièce à l'appui de la déclaration solennelle ou de l'affidavit exigé au paragraphe (2).

Publication de l'avis d'intention de démissionner

2. (1) Les membres qui désirent démissionner du Barreau font paraître dans le *Recueil de jurisprudence de l'Ontario*, au moins trente jours avant la date de la demande visée au paragraphe 1 (1) qui est adressée au ou à la secrétaire, un avis d'intention de démissionner.

Avis d'intention de démissionner

(2) L'avis d'intention de démissionner visé au paragraphe (1) est rédigé selon le Formulaire 14A [Avis d'intention de démissionner].

Preuve de la publication de l'avis

(3) La demande présentée selon le paragraphe 1 (1) est accompagnée de la preuve de publication de l'avis d'intention de démissionner, conformément au paragraphe 2 (1).

Demande de démission par procuration

3. (1) Le ou la secrétaire qui est d'avis que, pour une raison quelconque, un membre est incapable de présenter sa demande de démission peut permettre à une autre personne de présenter, au nom du membre, la demande de démission visée au paragraphe 1 (1).

Application des paragraphes 1 (2) et 1 (3) et des articles 2, 4 et 5

(2) Les paragraphes 1 (2) et 1 (3) et les articles 2, 4 et 5 s'appliquent, avec les adaptations nécessaires, à la demande visée au paragraphe 1 (1) qui est présentée au nom d'un membre.

Examen de la demande par le secrétaire

4. (1) Sous réserve du paragraphe (2), le ou la secrétaire examine chaque demande présentée conformément au paragraphe 1 (1) qui répond aux exigences des paragraphes 1 (2), 1(3) et 2 (3), et peut examiner une demande présentée conformément au paragraphe 1 (1) mais qui ne répond pas aux exigences des paragraphes 1 (2), 1 (3) et 2 (3) et, selon le cas :

- a) la demande est acceptée si le ou la secrétaire est d'avis :
 - (i) que le membre qui présente la demande a rendu compte de tous les fonds et biens en fiducie dont il était responsable et qu'il les a remis aux personnes y ayant droit, ou, selon le cas, qu'il n'est responsable d'aucune somme ou d'aucun bien détenu en fiducie;
 - (ii) que le membre a réglé toutes les affaires qui lui avaient été confiées par ses clients et clientes ou qu'il a pris, à la satisfaction de ces derniers, les mesures nécessaires pour leur remettre leurs documents ou pour les transmettre à un autre avocat ou une autre avocate ou, selon le cas, qu'il n'a pas exercé la profession;
 - (iii) que le membre n'a connaissance d'aucune réclamation à son égard à titre professionnel ou dans le cadre de l'exercice de sa profession;
 - (iv) que le membre qui fait la demande s'est conformé au paragraphe 2 (1);
- b) la demande est rejetée si le ou la secrétaire n'est pas convaincu de la conformité à une ou plusieurs des exigences de l'alinéa a).

Refus du secrétaire d'examiner des demandes

(2) Le ou la secrétaire n'examine pas les demandes présentées conformément au paragraphe 1 (1) si les membres sont parties à une procédure engagée selon la Partie II de la Loi.

Documents et explications

(3) Afin de faciliter l'examen de leur demande, les membres fournissent au ou à la secrétaire les documents et explications nécessaires.

Rejet de la demande

5. Le ou la secrétaire qui rejette une demande aux termes de l'alinéa 4 (1) (b) peut préciser les modalités à remplir pour que la demande soit acceptée; le ou la secrétaire qui est d'avis que le membre se conforme alors à ces modalités en accepte la demande.

Entrée en vigueur

6. Le présent règlement administratif entre en vigueur le 1^{er} février 1999.

Formulaire 14A

Avis d'intention de démissionner

(Nom du/de la membre désirant démissionner, en majuscules)

En vertu de l'article 30 de la *Loi sur le Barreau* et du Règlement administratif n° 14 pris en application du paragraphe 62 (0.1) de la *Loi sur le Barreau*, la personne susmentionnée donne avis de son intention de démissionner en tant que membre du Barreau.

La personne susmentionnée a exercé le droit à (*indiquer son lieu de pratique*) [ou n'a pas exercé le droit depuis (date)] (*ou n'a jamais exercé le droit en Ontario*).

Fait à (*lieu*)

le (*Date*)

(Nom et prénoms du/de la membre désirant démissionner)

RÈGLEMENT ADMINISTRATIF N° 15

LA COTISATION ANNUELLE

Versement obligatoire de la cotisation annuelle

1. (1) À moins d'en avoir été exonérés, les membres versent à chaque année leur cotisation annuelle, conformément aux articles 2 et 3.

Exonération de la cotisation annuelle : membres à vie et membres honoraires

(2) Les membres à vie et les membres honoraires ne sont pas tenus de verser la cotisation annuelle.

Idem : membres à la retraite et membres invalides

(3) Les membres dont la demande d'exonération est acceptée aux termes de l'article 4 ne sont pas tenus de verser la cotisation annuelle.

Montant de la cotisation annuelle

2. (1) Le montant de la cotisation annuelle est fixé par le Conseil.

Prélèvement pour le Fonds d'indemnisation de la clientèle

(2) Une partie de la cotisation annuelle est versée au Fonds d'indemnisation de la clientèle.

Date de paiement

(3) La cotisation annuelle est exigible le 1^{er} janvier de chaque année.

Montant exigible

(4) Sous réserve des paragraphes (5) et (6), les membres versent au Barreau le montant total de la cotisation annuelle et les taxes connexes que le Barreau est tenu de percevoir.

Idem

(5) Les membres qui n'exercent pas le droit, notamment les membres travaillant dans le milieu de l'éducation, pour le gouvernement ou pour une personne morale et dont les fonctions ne consistent pas à exercer le droit, versent au Barreau un montant équivalent à cinquante pour cent de la cotisation annuelle, ainsi que les taxes connexes que le Barreau est tenu de percevoir.

Idem

(6) Les membres suivants sont tenus de verser au Barreau un montant équivalent à vingt-cinq pour cent de la cotisation annuelle, ainsi que les taxes connexes que le Barreau est tenu de percevoir :

1. Les membres qui ne se livrent pas à des activités rémunérées, notamment à l'exercice du droit en Ontario ou à l'extérieur de la province.
2. Les membres qui, aux termes de la *Loi de l'impôt sur le revenu* (Canada), suivent des cours à temps plein dans un collège universitaire ou dans tout autre établissement d'enseignement désigné, et qui n'exercent pas le droit.
3. Les membres qui sont en congé de maternité, de paternité ou d'adoption et qui n'exercent pas le droit.

Interprétation : exercice du droit

(7) Pour l'application des paragraphes (5) et (6), exercent le droit les membres qui donnent des conseils juridiques concernant les lois de l'Ontario ou du Canada ou qui fournissent des services juridiques.

Application des paragraphes (3) à (6)

(8) Les paragraphes (3) à (6) ne s'appliquent qu'aux personnes qui sont membres en date du 1^{er} janvier.

Personnes admises après le 1^{er} janvier

(9) Les personnes qui sont admises ou réadmisses en tant que membres après le 1^{er} janvier, ou qui regagnent leur statut de membre après cette date, versent, pour l'année durant laquelle elles sont admises ou réadmisses, ou durant laquelle elles regagnent leur statut de membre, une cotisation annuelle dont le montant est calculé selon la formule suivante :

$$(A \div 12) \times B$$

où

A représente le montant de la cotisation annuelle que ces personnes auraient été tenues de verser conformément aux paragraphes (4), (5) ou (6), si elles avaient été membres en date du 1^{er} janvier;

B représente le nombre de mois civils entiers restant dans l'année suivant le mois durant lequel ces personnes sont admises ou réadmisses, ou durant lequel elles regagnent leur statut de membre.

Idem : date de paiement

(10) La cotisation annuelle des personnes visées au paragraphe (9) est exigible le jour où elles sont admises ou réadmissées en tant que membres, ou le jour où elles regagnent leur statut de membre.

Membres étudiants admis en tant que membres

(11) Malgré le paragraphe (9), les membres étudiants qui sont admis en tant que membres après le 1^{er} janvier mais avant le 31 mars versent, pour l'année durant laquelle ils sont admis en tant que membres, la cotisation annuelle applicable aux membres admis en date du 1^{er} avril.

Idem : date de paiement

(12) La cotisation annuelle des membres étudiants visés au paragraphe (11) est exigible le 1^{er} avril de l'année durant laquelle ces membres étudiants sont admis en tant que membres.

Changement de situation professionnelle

3. (1) Les membres tenus de verser le montant total ou cinquante pour cent du montant de la cotisation annuelle qui sont par la suite autorisés à verser cinquante pour cent ou vingt-cinq pour cent du montant de la cotisation annuelle versent alors le total des montants suivants :

a) le montant calculé selon la formule

$$(A \div 12) \times B$$

où

A représente le montant total ou cinquante pour cent du montant de la cotisation annuelle;

B représente le nombre de mois civils partiels ou entiers restant à l'année au cours de laquelle les membres sont tenus de verser le montant total ou cinquante pour cent du montant de la cotisation annuelle;

b) le montant calculé selon la formule

$$(C \div 12) \times D$$

où

C représente cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle;

D représente le nombre de mois civils entiers au cours desquels les membres sont tenus de verser cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle.

Idem

(2) Les membres tenus de verser cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle qui doivent par la suite verser le montant total ou cinquante pour cent du montant de la cotisation annuelle versent alors, pour la période durant laquelle ils sont tenus de verser un montant moins élevé de la cotisation annuelle et pour la période durant laquelle ils sont tenus de verser un montant plus élevé, le total des montants suivants :

a) le montant calculé selon la formule

$$(E \div 12) \times F$$

où

E représente cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle;

F représente le nombre de mois civils entiers durant lesquels les membres sont tenus de verser cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle;

b) le montant calculé selon la formule

$$(G \div 12) \times H$$

où

G représente le montant total ou cinquante pour cent du montant de la cotisation annuelle;

H représente le nombre de mois civils partiels ou entiers au cours desquels les membres sont tenus de verser le montant total ou cinquante pour cent du montant de la cotisation annuelle.

Idem

(3) Les membres tenus de verser le montant total, cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle qui sont par la suite exonérés du versement de la cotisation annuelle versent alors le montant calculé selon la formule

$$(I \div 12) \times J$$

où

I représente le montant total, cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle;

J représente le nombre de mois civils partiels ou entiers au cours desquels les membres sont tenus de verser le montant total, cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle.

Date de paiement

(4) Si, en vertu du présent article, un membre est tenu de verser, pour une année donnée, un montant supérieur à celui qui est prévu à l'article 2, la différence entre le montant que le membre est tenu de verser selon le présent article et le montant que le membre est tenu de verser selon l'article 2 est exigible à la date déterminée par le ou la secrétaire.

Demande de remboursement

(5) Si, en vertu du présent article, un membre est tenu de verser, pour une année donnée, un montant inférieur à celui qui est prévu à l'article 2, sous réserve des paragraphes (6) et (7), le membre a droit à un remboursement équivalant à la différence entre le montant qu'il est tenu de verser selon l'article 2 et le montant qu'il est tenu de verser selon le présent article.

Demande de remboursement

(6) Les membres présentent au Barreau la demande de remboursement visée au paragraphe (5).

Délai de présentation d'une demande de remboursement

(7) La demande de remboursement visée au paragraphe (6) est présentée au Barreau avant la fin de l'année durant laquelle le membre prétend avoir droit au remboursement aux termes du paragraphe (5).

Inadmissibilité au remboursement

- (8) Les membres qui ne respectent pas le paragraphe (7) n'ont pas droit à un remboursement.

Membres à la retraite et membres invalides

4. (1) Peuvent présenter au Barreau une demande d'exonération du paiement de la cotisation annuelle :
- a) les membres âgés de plus de soixante-cinq ans qui n'exercent plus le droit en Ontario;
 - b) les membres incapables d'exercer le droit en raison d'une invalidité permanente.

Demande

- (2) La demande présentée selon le paragraphe (1) est rédigée selon le formulaire du Barreau.

Examen de la demande

- (3) Le ou la secrétaire examine chaque demande présentée en vertu du paragraphe (1) et, s'il est d'avis que la demande répond aux exigences de l'alinéa (1) a) ou (1) b), accepte la demande.

Date d'entrée en vigueur de l'exonération

- (4) Les membres dont la demande d'exonération est acceptée sont exonérés du paiement de la cotisation annuelle à compter du premier jour du mois suivant celui au cours duquel les membres ont présenté une demande d'exonération considérée comme étant complète par le ou la secrétaire.

Interprétation : exercice du droit

- (5) Pour l'application du paragraphe 4 (1), exercent le droit les membres qui donnent des conseils juridiques concernant les lois de l'Ontario ou du Canada ou qui fournissent des services juridiques.

Non-paiement de la cotisation annuelle

5. (1) Si un membre ne verse pas la cotisation annuelle requise selon le présent règlement administratif dans les quatre mois de la date à laquelle elle est exigible, une conseillère ou un conseiller élu que le Conseil nomme à cette fin peut, par ordonnance rendue aux termes du paragraphe 46 (1) de la Loi, suspendre les droits et privilèges du membre.

Conditions de paiement et date présumée du non-paiement

- (2) Lorsque le Barreau prend des dispositions particulières de paiement avec un membre ou qu'il lui permet d'acquitter sa cotisation annuelle par versements ou selon les termes d'une autre entente, et qu'un versement exigible n'a pas été effectué à la date prévue, le non-paiement de la cotisation annuelle est réputé avoir eu lieu le 1^{er} janvier.

Rétablissement des droits et privilèges

- (3) Si, en raison du non-paiement de la cotisation annuelle, les droits et privilèges d'un membre ont été suspendus aux termes du paragraphe 46 (1) de la Loi, la suspension reste en vigueur jusqu'à ce que le membre verse au Barreau, conformément au présent règlement administratif, la cotisation annuelle en question et des frais de réadmission dont le montant est fixé par le Conseil.

Entrée en vigueur

6. Le présent règlement administratif entre en vigueur le 1^{er} février 1999.

RÈGLEMENT ADMINISTRATIF N° 16

LES COTISATIONS D'ASSURANCE RESPONSABILITÉ CIVILE
PROFESSIONNELLE

Définition : « Régime d'assurance du Barreau »

1. (1) Dans le présent règlement administratif, le « Régime d'assurance du Barreau » s'entend du régime d'assurance responsabilité civile professionnelle du Barreau, y compris de toute police d'assurance responsabilité civile professionnelle négociée par le Barreau au nom de ses membres.

Interprétation : exercice du droit

(2) Dans le présent règlement administratif, se livrent à l'exercice du droit les personnes qui rendent des services professionnels en qualité d'avocat ou d'avocate ou qui offrent des conseils juridiques.

Obligation de verser les cotisations d'assurance

2. (1) À moins d'en avoir été exonérés, les membres du Barreau qui sont admissibles au régime d'assurance du Barreau et qui se livrent à l'exercice du droit au cours d'une année donnée versent les cotisations d'assurance requises pour l'année en question, conformément au présent règlement administratif.

Idem

(2) Les membres tenus de verser au Barreau une cotisation d'assurance versent le montant de la cotisation d'assurance et les taxes connexes que le Barreau est tenu de percevoir.

Cotisations d'assurance

3. Les cotisations d'assurance visées à l'article 2 consistent en une cotisation de base, une surprime de garantie des tiers, une surprime pour réclamations antérieures, ainsi que toute autre cotisation fixée par le Conseil ou exigée par l'assureur du régime d'assurance du Barreau.

Date de paiement des cotisations d'assurance

4. (1) La cotisation de base, la surprime de garantie des tiers et la surprime pour réclamations antérieures sont exigibles le 1^{er} janvier de l'année applicable.

Idem

(2) Toute autre cotisation fixée par le Conseil ou exigée par l'assureur du régime d'assurance du Barreau est exigible aux dates précisées par le Conseil ou par l'assureur du régime d'assurance du Barreau.

Non-paiement des cotisations d'assurance

5. (1) Si un membre ne verse pas la cotisation d'assurance requise selon le présent règlement administratif dans les quatre mois de la date à laquelle elle est exigible, une conseillère ou un conseiller élu que le Conseil nomme à cette fin peut, par ordonnance rendue aux termes du paragraphe 46 (1) de la Loi, suspendre les droits et privilèges du membre.

Conditions de paiement et date présumée du non-paiement

(2) Lorsque le Barreau ou l'assureur du régime d'assurance du Barreau prend des dispositions particulières de paiement avec un membre ou qu'il lui permet d'acquitter sa cotisation d'assurance par versements ou selon les termes d'une autre entente, et qu'un versement exigible n'a pas été effectué à la date prévue, le non-paiement de la cotisation d'assurance est réputé avoir eu lieu le 1^{er} janvier de l'année applicable.

Rétablissement des droits et privilèges

(3) Si, en raison du non-paiement de la cotisation d'assurance, les droits et privilèges d'un membre ont été suspendus aux termes du paragraphe 46 (1) de la Loi, la suspension reste en vigueur jusqu'à ce que le membre verse au Barreau, conformément au présent règlement administratif, la cotisation d'assurance en question et des frais de réadmission dont le montant est fixé par le Conseil.

Remboursement de la partie inutilisée de la cotisation d'assurance

6. Lorsqu'un membre, après avoir au moins versé la cotisation de base, la surprime de garantie des tiers ou la surprime pour réclamations antérieures, décède, prend sa retraite, cesse d'être admissible au régime d'assurance ou est exonéré par le Barreau d'au moins une cotisation au cours de l'année où ces cotisations étaient exigibles, la partie inutilisée de la cotisation ou des surprimes fait l'objet d'un remboursement au prorata, sous réserve d'une cotisation minimale équivalant à deux mois.

Fonds d'assurance du Barreau

7. (1) Les cotisations d'assurance versées par les membres sont affectées au Fonds d'assurance responsabilité civile professionnelle, ou servent à couvrir les primes d'assurance de l'assureur du régime d'assurance du Barreau, les réserves, les franchises collectives, les frais d'expertise, les honoraires d'avocats et les frais de justice, les frais d'administration et autres dépenses normalement occasionnées par le régime d'assurance responsabilité civile professionnelle.

Reliquat au Fonds d'assurance

(2) Si le Fonds d'assurance n'est pas épuisé à la fin de l'exercice, le reliquat est reporté à l'exercice suivant.

Admissibilité au régime d'assurance

8. (1) Les membres du Barreau, à l'exception des membres honoraires et des membres étudiants, sont admissibles au régime d'assurance du Barreau, pourvu que leurs droits et privilèges de membres n'aient pas été suspendus.

Proposition d'assurance

(2) Les membres qui sont admissibles au régime d'assurance du Barreau mais qui ne sont pas tenus par le présent règlement administratif de verser les cotisations d'assurance peuvent transmettre une proposition d'assurance au Barreau ou à l'assureur du régime d'assurance du Barreau et, si leur proposition est acceptée, versent les cotisations d'assurance requises, conformément au présent règlement administratif.

Exonération des cotisations d'assurance

9. (1) Les personnes suivantes peuvent demander à être exonérées du paiement des cotisations d'assurance :

1. Les membres qui, au cours de l'année où les cotisations sont exigibles, ne se livreront pas à l'exercice du droit en Ontario.
2. Les membres qui, au cours de l'année où les cotisations sont exigibles,
 - i. résideront dans un ressort canadien autre que l'Ontario,
 - ii. ne se livreront que d'une façon occasionnelle à l'exercice du droit en Ontario,
 - iii. font la preuve que la protection offerte pour l'exercice du droit en Ontario, sous le régime d'assurance responsabilité civile professionnelle obligatoire d'un autre ressort canadien, est de qualité au moins équivalente à celle requise sous le régime d'assurance du Barreau.

3. Les membres qui, au cours de l'année où les cotisations sont exigibles,
 - i. seront au service d'un seul employeur,
 - ii. fourniront des services juridiques à leur seul employeur ou en son nom à l'un des titres suivants :
 - A. avocat du gouvernement du Canada ou du gouvernement de l'Ontario,
 - B. procureur de la Couronne,
 - C. avocat d'une personne morale, à l'exception d'une société juridique professionnelle,
 - D. procureur de la ville,
 - iii. ne se livreront pas à l'exercice du droit en Ontario et n'offriront pas de services juridiques à des personnes autres que leur employeur.
4. Les membres employés comme professeurs et professeuses de droit qui, au cours de l'année où les cotisations sont exigibles, ne se livreront pas à l'exercice du droit en Ontario et n'offriront pas de services juridiques hormis l'enseignement.

Idem

(1.1) Les membres qui sont exonérés du paiement des cotisations d'assurance aux termes de la disposition 1, 2, 3 ou 4 du paragraphe (1) le demeurent même s'ils se livrent à l'exercice du droit en Ontario contrairement à la disposition les exonérant des cotisations en question à condition que les conditions suivantes soient réunies :

1. L'exercice du droit en Ontario, bien que contraire à la disposition exonérant les membres du paiement des cotisations d'assurance, se limite à l'offre bénévole de conseils ou de services juridiques uniquement à des organismes à but non lucratif ou au nom de tels organismes.
2. Avant de se livrer à l'exercice du droit en Ontario d'une façon qui est contraire au paragraphe exonérant les membres des cotisations d'assurance, les membres demandent le maintien de leur exonération à l'assureur du régime d'assurance du Barreau, selon les modalités établies par l'assureur, lequel approuve leur demande.

Interprétation : exercice occasionnel du droit

(2) Pour l'application de la disposition 2 du paragraphe (1), exercent le droit occasionnellement les membres qui, au cours de l'année :

- a) closent un maximum de dix transactions immobilières;
- b) exécutent un maximum de quatre-vingts heures de travail, facturées à l'heure;
- c) closent un nombre de transactions immobilières ou exécutent un nombre d'heures de travail autorisés par le Barreau.

Définition : « employeur »

(3) Pour l'application de la disposition 3 du paragraphe (1), « employeur » s'entend d'une personne morale, des compagnies qui sont membres du même groupe que la personne morale, qui sont sous son contrôle ou qui en sont des filiales, et de toute autre entité employant les membres.

Définition : « membre du même groupe », « sous le contrôle » et « filiale »

(4) Pour l'application du paragraphe (3), « membre du même groupe », « sous le contrôle » et « filiale » s'entendent au sens de la *Loi sur les valeurs mobilières*.

Membres honoraires exonérés des cotisations d'assurance

10. Les membres honoraires sont exonérés du paiement des cotisations d'assurance.

Entrée en vigueur

11. Le présent règlement administratif entre en vigueur le 1^{er} février 1999.

RÈGLEMENT ADMINISTRATIF N^o 17

LES DÉCLARATIONS OBLIGATOIRES

Avis concernant l'exercice financier

1. Les membres qui exercent la profession d'avocat à titre privé en Ontario informent par écrit le ou la secrétaire de la date de la fin de leur exercice financier et déposent auprès de cette personne un avis de toute modification de leur exercice financier dans le mois qui suit la modification.

Obligation de présenter un rapport

2. (1) Les membres présentent au Barreau, au plus tard le 31 janvier de l'année, un rapport traitant de l'exercice de leur profession en Ontario au cours de l'année précédente.

Idem

(2) Outre le rapport prescrit par le paragraphe (1), les membres présentent au Barreau les rapports suivants :

1. Les membres qui exercent la profession d'avocat à titre privé en Ontario, à l'exclusion des personnes visées à la disposition 2 ou 3, présentent au Barreau, dans les 90 jours suivant la fin de leur exercice financier un rapport traitant de l'exercice de leur profession à titre privé en Ontario au cours de l'exercice financier.
2. Les membres qui, au cours d'une année, exercent la profession d'avocat à titre privé en Ontario exclusivement à titre d'employé d'un praticien ou d'une praticienne autonome ou d'un cabinet d'avocats présentent au Barreau un rapport traitant de l'exercice de leur profession à titre privé en Ontario au cours de l'année et de leur emploi auprès de chaque praticien ou praticienne autonome ou cabinet les ayant employés au cours de l'année.
3. Les membres qui, au cours d'une année, exercent la profession d'avocat en Ontario exclusivement à titre d'employé d'une personne morale qui n'est pas membre du Barreau ou à titre d'employé d'une association sans personnalité morale qui n'est ni un cabinet d'avocats ni un membre du Barreau présentent à ce dernier un rapport traitant de l'exercice de leur profession en Ontario au cours de l'année et de leur emploi auprès de chaque personne morale ou association sans personnalité morale les ayant employés au cours de l'année.

4. Les membres qui, au cours d'une année, n'exercent pas la profession d'avocat à titre privé en Ontario mais qui continuent de s'occuper, à quel titre que ce soit, de fonds ou de biens d'autrui qui leur avaient été confiés lorsqu'ils exerçaient auparavant à titre privé présentent au Barreau un rapport à l'égard des biens de chaque personne dont ils se sont occupés au cours de l'année.

Date d'échéance

- (3) Le rapport prescrit par la disposition 2, 3 ou 4 du paragraphe (2) est présenté au Barreau au plus tard le 31 mars de l'année suivant l'année à l'égard de laquelle il doit être présenté.

Profil des membres

- (4) Le rapport prescrit par le paragraphe (1) est rédigé selon le Formulaire 17A [Profil des membres].

Rapport de l'avocat de pratique privée

- (5) Le rapport prescrit par le paragraphe (2) est rédigé selon le Formulaire 17B [Rapport de l'avocat de pratique privée].

Non-production d'un rapport prescrit par l'article 2

3. (1) Une conseillère ou un conseiller élu que le Conseil nomme à cette fin peut, par ordonnance, suspendre, en vertu du paragraphe 47 (1) de la Loi, les droits et privilèges des membres qui n'ont pas présenté un rapport prescrit par l'article 2 à la satisfaction du ou de la secrétaire dans les quatre mois de la date à laquelle le rapport devait être présenté.

Rétablissement des droits et privilèges

- (2) La suspension des droits et privilèges des membres visée au paragraphe 47 (1) de la Loi pour non-production d'un rapport prescrit par l'article 2 du présent règlement administratif reste en vigueur jusqu'à ce que ces personnes présentent au Barreau, pour tous les exercices financiers ou années à l'égard desquels elles étaient tenues de présenter un rapport, les rapports prescrits par l'article 2 et remplis à la satisfaction du ou de la secrétaire.

Utilisation de versions à jour des Formulaires 17A et 17B

- (3) Les rapports prescrits par le paragraphe (2) sont rédigés selon le Formulaire 17A et le Formulaire 17B en vigueur au moment où les membres présentent les rapports prescrits par ce paragraphe.

Obligation de présenter un rapport comptable

4. (1) Le ou la secrétaire peut demander aux membres qui doivent présenter un rapport aux termes du paragraphe 2 (2) de présenter au Barreau, outre le rapport en question, un rapport dressé par un expert-comptable ou une experte-comptable relativement aux questions à l'égard desquelles les membres doivent présenter un rapport au Barreau aux termes du paragraphe 2 (2).

Teneur du rapport et moment de sa présentation

- (2) Le ou la secrétaire précise les questions qui doivent être incluses dans le rapport et le délai dans lequel celui-ci doit être présenté au Barreau.

Obligation des membres de donner accès à leurs dossiers et autres documents

- (3) Afin que l'expert-comptable ou l'experte-comptable puisse dresser son rapport, les membres doivent

:

- a) lui permettre de consulter, sans aucune restriction, tous leurs dossiers;
- b) lui fournir les registres financiers et autres documents et pièces justificatives nécessaires;
- c) lui fournir les explications nécessaires.

Pouvoir d'obtenir une confirmation indépendante des opérations

(4) Afin de pouvoir dresser son rapport, l'expert-comptable ou l'experte-comptable peut obtenir, de façon indépendante, confirmation du contenu des opérations figurant dans les dossiers.

Frais

(5) Les frais de préparation du rapport prescrit par le paragraphe (1), y compris les frais engagés pour les services d'un expert-comptable ou d'une experte-comptable, sont à la charge des membres concernés.

Experts-comptables tenus au secret professionnel

(6) En engageant un expert-comptable ou une experte-comptable pour dresser le rapport prescrit par le présent article, les membres doivent faire en sorte que cette personne soit tenue de ne divulguer aucun renseignement dont elle a connaissance du fait des activités qu'elle entreprend pour dresser son rapport, sans toutefois l'empêcher de divulguer au Barreau les renseignements que prévoit le présent règlement administratif.

Suspension pour non-production du rapport comptable

5. (1) Une conseillère ou un conseiller élu que le Conseil nomme à cette fin peut, par ordonnance, suspendre, en vertu du paragraphe 47 (1) de la Loi, les droits et privilèges des membres qui n'ont pas présenté le rapport d'un expert-comptable ou d'une experte-comptable prévu à l'article 4 dans les deux mois suivant la date précisée par le ou la secrétaire.

Rétablissement des droits et privilèges

(2) La suspension des droits et privilèges des membres visée au paragraphe 47 (1) de la Loi pour non-production du rapport d'un expert-comptable ou d'une experte-comptable aux prévu à l'article 4 du présent règlement administratif reste en vigueur jusqu'à ce que ces personnes présentent ce rapport au Barreau.

Examen des registres financiers en cas de non-production du rapport comptable

6. (1) Si des membres ne présentent pas le rapport d'un expert-comptable ou d'une experte-comptable prévu à l'article 4, le ou la secrétaire peut exiger que la personne de son choix, laquelle n'est pas tenue d'être un expert-comptable ou une experte-comptable, examine les livres et comptes de ces membres afin d'obtenir les renseignements qui auraient dû être fournis dans le rapport.

Application des paragraphes 4 (3) et (4) en cas d'examen

(2) Les paragraphes 4 (3) et (4) s'appliquent, avec les adaptations nécessaires, à l'examen prévu au présent article.

Confidentialité

(3) La personne désignée pour examiner les registres financiers de membres en vertu du présent article ne divulgue aucun renseignement dont elle a connaissance du fait de son examen, sauf si elle doit le faire dans le cadre de l'application de la Loi ou des règlements administratifs.

Frais

(3) Les frais de l'examen prévu par le présent article sont à la charge des membres concernés.

Entrée en vigueur

7. Le présent règlement administratif entre en vigueur le 1^{er} février 1999.

RÈGLEMENT ADMINISTRATIF N° 18

LA TENUE DE REGISTRES

DISPOSITIONS GÉNÉRALES

Définitions

1. (1) Les définitions qui suivent s'appliquent au présent règlement administratif.

« cabinet » Société de personnes constituée de membres et membres employés par la société.

« client » Personne ou groupe de personnes de qui ou au nom de qui un membre reçoit des fonds ou d'autres biens.

« fonds » Monnaie courante, effets du gouvernement ou billets de banque, chèques, traites, bordereaux de cartes de crédit, mandats poste, mandats exprès et mandats bancaires.

« membre » S'entend en outre d'un cabinet.

« prêteur » ou « prêteuse » Personne qui consent un prêt garanti ou devant être garanti par une charge, et notamment par une charge détenue en fiducie, directement ou par l'intermédiaire d'une personne liée, physique ou morale.

« lien de dépendance » et « liée »

(2) Pour l'application du présent règlement administratif, les expressions « lien de dépendance » et « liée » ont le sens que leur attribue la *Loi de l'impôt sur le revenu* (Canada).

« charge »

(3) Pour l'application du présent règlement administratif, le terme « charge » a le sens que lui attribue la *Loi portant réforme de l'enregistrement immobilier*.

« Teranet »

(4) Dans la disposition 12 de l'article 2, « Teranet » s'entend de Teranet Land Information Services Inc., une personne morale constituée sous le régime de la *Loi sur les sociétés par actions*, agissant en qualité de mandataire du ministère de la Consommation et du Commerce.

Obligation de tenir des registres financiers

(2) Les membres tiennent des registres financiers dans lesquels sont inscrits les fonds et les autres biens qu'ils reçoivent, déboursent ou dont ils se départissent dans l'exercice de leur profession; à cette fin, les membres tiennent au moins les registres suivants, conformément aux articles 4, 5 et 6 :

1. un livre-journal où sont inscrits la date de réception des fonds en fiducie pour une cliente ou un client, l'identité de la personne dont ils proviennent, le montant des fonds reçus et l'identité de la cliente ou du client pour lequel les membres les reçoivent en fiducie;
2. un livre-journal où sont inscrits tous les décaissements de fonds détenus en fiducie pour une cliente ou un client ainsi que la date de chaque décaissement, le mode de décaissement, y compris le numéro ou autre élément d'identification de tout document utilisé pour le décaissement, l'identité du bénéficiaire du décaissement, le montant du décaissement et l'identité de la cliente ou du client au nom de qui il a été effectué;
3. un grand livre des clients où sont inscrits séparément pour chaque cliente ou client dont ils proviennent des fonds reçus en fiducie tous les fonds reçus et déboursés, ainsi que le solde;

4. un état de tous les virements de fonds entre les comptes du grand livre des clients, avec notes explicatives pour chaque virement.
5. un livre-journal où sont inscrits tous les fonds reçus autrement qu'en fiducie pour une cliente ou un client, la date de réception des fonds, la personne don't ils proviennent et le montant des fonds reçus;
6. un livre-journal où sont inscrits tous les décaissements de fonds qui ne sont pas des fonds détenus en fiducie pour une cliente ou un client, ainsi que la date de chaque décaissement, le mode de décaissement, y compris le numéro ou autre élément d'identification de tout document utilisé pour le décaissement, le montant du décaissement et l'identité de son bénéficiaire;
7. un livre des honoraires ou un dossier chronologique des factures indiquant tous les honoraires et autres frais facturés à une cliente ou à un client, les dates de facturation et l'identité des clients;
8. un état comparatif mensuel du total des soldes des comptes en fiducie et du total des soldes des fonds détenus en fiducie pour les clients et clientes, tels qu'ils figurent dans les registres financiers, ainsi que les raisons de tout écart, appuyé par :
 - i. une liste mensuelle détaillée faisant état des fonds détenus en fiducie pour chaque cliente ou client et de son identité,
 - ii. un rapprochement (conciliation) mensuel détaillé pour chaque compte bancaire en fiducie;
9. un état de tous les biens, fonds exclus, détenus en fiducie pour des clientes et clients et, pour chaque bien, une description du bien et la date à laquelle le membre en a pris possession, la personne qui en avait la possession immédiatement avant, la valeur du bien, l'identité de la cliente ou du client pour lequel il est détenu en fiducie, la date à laquelle le membre en remet la possession et le nom de la personne à qui il la remet;
10. les relevés bancaires ou livrets de banque, les chèques encaissés et les doubles des bordereaux de dépôt de tous les comptes en fiducie et comptes généraux;
11. les demandes de télévirement de fonds en fiducie signées et les confirmations de télévirement de fonds en fiducie imprimées et signées;
12. les autorisations de retrait par Teranet signées et les confirmations de retrait par Teranet imprimées et signées.

Obligations relatives aux hypothèques ou autres charges en fiducie

3. Les membres qui détiennent en fiducie, directement ou par l'intermédiaire d'une personne liée, physique ou morale, des hypothèques ou d'autres charges grevant un immeuble, tiennent au moins, en plus des registres financiers prescrits par l'article 2, les registres suivants, conformément aux articles 4, 5 et 6 :

1. un grand livre des créances hypothécaires où sont inscrits séparément, pour chaque hypothèque ou charge :
 - i. tous les fonds reçus et déboursés au titre de l'hypothèque ou de la charge;
 - ii. le solde du capital à rembourser pour chaque hypothèque ou charge;
 - iii. une courte description légale ou l'adresse municipale de l'immeuble grevé;

- iv. les renseignements concernant l'enregistrement de l'hypothèque ou de la charge;
2. un grand livre des dettes hypothécaires où sont inscrits séparément, pour chaque personne au nom de laquelle une hypothèque ou une charge est détenue en fiducie :
 - i. tous les fonds reçus et déboursés au titre de l'hypothèque ou de la charge détenue en fiducie pour chaque personne;
 - ii. le solde du capital investi dans chaque hypothèque ou charge;
 - iii. une courte description légale ou l'adresse municipale de l'immeuble grevé;
 - iv. les renseignements concernant l'enregistrement de l'hypothèque ou de la charge;
3. un état comparatif mensuel du total des soldes du capital à rembourser pour les hypothèques ou les charges détenues en fiducie et du total des soldes du capital détenu au nom des investisseuses ou investisseurs, tels qu'ils figurent dans les registres financiers, ainsi que les raisons de tout écart, appuyé par :
 - i. une liste mensuelle où est inscrite séparément chaque hypothèque ou charge et où figure, pour chacune, le solde du capital à rembourser;
 - ii. une liste mensuelle détaillée où est inscrit séparément chaque investisseuse ou investisseur et où figure le solde du capital investi dans chaque hypothèque ou charge.

Permanence des registres financiers

4. (1) Les données des registres financiers prescrits par les articles 2 et 3 peuvent être inscrites et reportées manuellement, mécaniquement ou électroniquement; les données manuscrites sont inscrites et reportées à l'encre.

Copies sur papier des registres financiers

(2) Les membres qui inscrivent et reportent mécaniquement ou électroniquement les données d'un registre financier sont en mesure de produire promptement, à la demande du Barreau, une copie du registre sur papier.

Registres financiers à jour

5. (1) Sous réserve du paragraphe (2), les données des registres financiers prescrits par les articles 2 et 3 sont inscrites et reportées de façon à être continuellement à jour.

Exceptions

(2) Les registres prescrits par la disposition 8 de l'article 2 et la disposition 3 de l'article 3 sont établis dans les quinze jours suivant le dernier jour du mois visé.

Conservation des registres financiers prescrits par l'article 2

6. (1) Sous réserve du paragraphe (2), les membres conservent les registres financiers prescrits par l'article 2 qui couvrent au moins les six années précédant la date à laquelle s'est terminé leur dernier exercice.

Idem

(2) Les membres conservent les registres financiers prescrits par les dispositions 1, 2, 3, 8, 9, 10 et 11 de l'article 2 qui couvrent au moins les dix années précédant la date à laquelle s'est terminé leur dernier exercice.

Conservation des registres financiers prescrits par l'article 3

(3) Les membres conservent les registres financiers prescrits par l'article 3 qui couvrent au moins les dix années précédant la date à laquelle s'est terminé leur dernier exercice.

Obligations des membres qui agissent au nom d'un prêteur

7. (1) Les membres qui reçoivent des fonds d'une prêteuse ou d'un prêteur ou qui agissent en son nom tiennent, en plus des registres financiers prescrits par les articles 2 et 3, un dossier relatif à chaque charge contenant :

- a) un formulaire d'autorisation de placement rempli, signé par chaque prêteuse ou prêteur avant la première avance de fonds à l'emprunteuse ou à l'emprunteur ou en son nom;
- b) une copie du rapport de placement dûment rempli;
- c) si la charge n'est pas détenue au nom de tous les prêteurs, l'original de la déclaration de fiducie;
- d) une copie de la charge enregistrée;
- e) tout document justificatif fourni par la prêteuse ou le prêteur.

Exceptions

(2) Les alinéas (1) a) et b) ne s'appliquent pas à la prêteuse ou au prêteur dans les cas suivants :

- a) la prêteuse ou le prêteur remplit les conditions suivantes :
 - (i) il est une banque mentionnée à l'annexe I ou II de la *Loi sur les banques* (Canada), un assureur titulaire d'un permis, une société de prêt ou de fiducie inscrite, une de leurs filiales, une caisse de retraite ou toute autre entité qui prête des fonds dans le cours normal de ses affaires,
 - (ii) il a conclu un contrat de prêt avec l'emprunteuse ou l'emprunteur et il a signé un engagement écrit énonçant les stipulations de la charge éventuelle,
 - (iii) il a remis au membre une copie de l'engagement écrit avant la première avance de fonds à l'emprunteuse, à l'emprunteur ou en son nom;
- b) la prêteuse ou le prêteur et l'emprunteuse ou l'emprunteur ont un lien de dépendance;
- c) l'emprunteuse ou l'emprunteur est un employé de la prêteuse ou du prêteur ou d'une personne morale liée à la prêteuse ou au prêteur;
- d) la prêteuse ou le prêteur a signé la Formule 1 du Règlement 798 des Règlements refondus de l'Ontario de 1990, pris en application de la *Loi sur les courtiers en hypothèques*, et il a donné au membre des instructions écrites, relatives à l'opération en cause, pour qu'il accepte la formule signée comme preuve du contrat de prêt;
- e) la somme totale avancée par la prêteuse ou le prêteur ne dépasse pas 6 000 \$;
- f) la prêteuse ou le prêteur vend un bien immeuble à l'emprunteuse ou à l'emprunteur et la charge correspond à une partie du prix d'achat.

Obligation de fournir des documents au prêteur

(3) Immédiatement après la première avance de fonds à l'emprunteuse ou à l'emprunteur ou en son nom, le membre remet à chaque prêteuse ou prêteur :

- a) un original du rapport visé à l'alinéa (1) b), le cas échéant,
- b) si l'alinéa (1) c) s'applique, une copie de la déclaration de fiducie.

Pièces jointes prescrites par le paragraphe (1)

(4) Chaque fois qu'un membre ou un membre de son cabinet accomplit un acte mentionné au paragraphe (5), il joint au dossier relatif à la charge, un nouveau formulaire d'autorisation de placement visé à l'alinéa (1) a), rempli et signé par chaque prêteuse ou prêteur avant que l'acte ne soit accompli, ainsi qu'une copie du nouveau rapport de placement visé à l'alinéa (1) b), dûment rempli.

Application du paragraphe (4)

(5) Le paragraphe (4) s'applique aux actes suivants :

1. la modification du rang de la charge qui entraîne une réduction du montant de la sûreté y afférente;
2. la modification d'une autre charge de rang supérieur qui entraîne une réduction du montant de la sûreté de la prêteuse ou du prêteur;
3. la mainlevée d'une garantie accessoire ou autre, détenue relativement au prêt;
4. la décharge d'une personne qui est responsable, au terme d'un engagement, de l'exécution d'une obligation relative au prêt.

Nouvelle obligation face au prêteur

(6) Immédiatement après avoir rempli un nouveau rapport de placement en vertu du paragraphe (4), le membre en remet un original à chaque prêteuse ou prêteur.

Pièces jointes prescrites par le paragraphe (1) : substitution

(7) Chaque fois qu'un membre ou un membre de son cabinet substitue à la charge une autre garantie ou un instrument financier qui constitue une reconnaissance de dette, il joint au dossier relatif à la charge le consentement de la prêteuse ou du prêteur à la substitution, donné par écrit avant la substitution.

Exceptions

(8) Le membre n'est pas tenu de se conformer au paragraphe (4) ou (7) à l'égard d'une prêteuse ou d'un prêteur auquel s'appliquaient les alinéas (2) a), b), c), e) ou f) lors de l'opération de prêt initiale.

Autorisation de placement : Formulaire 18A

(9) L'autorisation de placement prévue à l'alinéa (1) a) est rédigée selon le Formulaire 18A.

Rapport de placement : Formulaire 18B

(10) Sous réserve du paragraphe (11), le rapport de placement visé à l'alinéa (1) b) est rédigé selon le Formulaire 18B.

Rapport de placement : solution de rechange au Formulaire 18B

(11) Le rapport de placement prescrit par l'alinéa (1) b) peut être fait sous forme de lettre de rapport adressée à la prêteuse ou au prêteur, à condition qu'elle réponde à toutes les questions figurant dans le Formulaire 18B.

Entrée en vigueur

8. Le présent règlement administratif entre en vigueur le 1^{er} février 1999.

Formulaire 18A

Autorisation de placement

[*Note à l'avocat/l'avocate : Ce formulaire doit être rempli pour toute hypothèque privée, que vous ayez ou non négocié l'opération. Demandez à votre client/cliente de répondre à toutes les questions et d'inscrire « s/o » lorsqu'une question est sans objet. Le formulaire peut être informatisé. Voir la police d'assurance responsabilité civile professionnelle des avocats pour la définition des termes (courtier en hypothèques, etc.) figurant dans la disposition qui renvoie à cette police à la fin du formulaire.*]

Destinataire : (*Nom de l'avocat, de l'avocate ou du cabinet*)

Mandat vous est donné d'agir pour mon/notre compte à l'égard d'un placement hypothécaire de (...) \$, selon les modalités qui suivent.

A) Description du placement :

1. Nom et adresse de chaque emprunteur/emprunteuse :
2. Nom et adresse de chaque caution (*le cas échéant*) :
3. Description légale et adresse municipale du bien immeuble :
4. Type de bien immeuble (*résidence, terrain vague, etc.*) : .
5. a) Montant du capital de l'hypothèque ou de la charge :
5. b) Montant du prêt consenti par moi/nous :
6. Rang de l'hypothèque ou de la charge :
7. Mon/notre placement de (...) \$ représente (...) % du prêt total consenti à l'emprunteur/l'emprunteuse.
8. a) J'estime/nous estimons la valeur approximative du bien immeuble à :
8. b) La valeur approximative du bien immeuble a été calculée de la façon suivante :
8. c) Les charges, y compris mon/notre prêt hypothécaire, représentent (...) % de la valeur du bien immeuble.
9. a) Durée du prêt : (...) mois/ans.
9. b) Date d'échéance :
9. c) Période d'amortissement : (...) ans.
0. Taux d'intérêt de (...) %, calculé semestriellement et non à l'avance, ou (*à préciser*) :

11. Description détaillée des montants et des dates de remboursement (*mensuelles, trimestrielles, etc.*) du capital et des intérêts :

12. Description détaillée des pénalités, retenues de garantie et autres conditions :

13. a) L'hypothèque doit être enregistrée au nom de :

13. b) À la conclusion de l'opération hypothécaire, l'investisseur/l'investisseuse (ou l'emprunteur/l'emprunteuse) paiera des frais d'administration ou d'encaissement de (...) \$ par versement à (*à préciser*) :

13. c) Si l'hypothèque est détenue en fiducie, le/la fiduciaire (*le cas échéant*) doit me/nous verser les sommes prévues aux dates suivantes :

14. Description détaillée des débours effectués au titre des commissions ou des frais juridiques, de courtage, etc. relativement au prêt, y compris leur montant et les noms des bénéficiaires :

B) Conditions

1. [*Instructions : Les alinéas a) et b) portent sur des renseignements que chaque investisseur/investisseuse peut demander à l'avocat/l'avocate. Veuillez apposer vos initiales sous l'alinéa correspondant aux renseignements désirés.*]

Veillez me/nous communiquer, en votre qualité d'avocat/d'avocate, les renseignements qui suivent, avant de procéder à la conclusion de l'opération et au versement des fonds, :

a) si mon/notre placement ne constitue pas une hypothèque ou charge de premier rang, une description détaillée, y compris les montants, de toutes les sûretés existantes.

b) si l'hypothèque ou la charge est une hypothèque consortiale et qu'un prospectus est nécessaire, une copie du prospectus. Je reconnais/nous reconnaissons que vous n'exprimez aucune opinion en votre qualité d'avocat/d'avocate quant à la nécessité et à la validité du prospectus.

2. [*Instructions : Chaque investisseur/investisseuse doit remplir l'alinéa a) et y apposer ses initiales. En cas de réponse affirmative, il/elle doit (au besoin) remplir l'alinéa b) et apposer ses initiales sous les alinéas b) et c).*]

a) Mandat vous est donné de faire procéder à une évaluation à jour du bien immeuble, par une personne indépendante, et de m'en/nous en communiquer les résultats avant de conclure l'opération hypothécaire. Oui (...) Non (....)

b) Les frais d'évaluation sont à ma/notre charge ou à celle de (...) (*nom à préciser*).

c) Je reconnais/nous reconnaissons que vous n'exprimez, en votre qualité d'avocat/d'avocate, aucune opinion quant à la validité de l'évaluation.

C) Divulgateion :

1. Je reconnais/nous reconnaissons qu'en votre qualité d'avocat/d'avocate, vous m'avez/nous avez déclaré n'avoir aucun intérêt, direct ou indirect, dans les affaires de l'emprunteur/l'emprunteuse. (*Répondre par oui ou par non et indiquer la date de ladite déclaration.*)

[L'avocat/l'avocate qui possède un intérêt dans les affaires de l'emprunteur/l'emprunteuse ne peut agir pour votre compte dans cette opération (Règle 7 du Code de déontologie)].

[Mise en garde :

- 1. Avis vous a été donné que l'appréciation de la valeur du placement hypothécaire incombe exclusivement à l'investisseur/l'investisseuse. La responsabilité de l'avocat/l'avocate se limite à l'enregistrement en bonne et due forme de l'hypothèque grevant le titre selon les directives reçues de l'investisseur/l'investisseuse. Il est interdit à l'avocat/l'avocate de cautionner personnellement les obligations de l'emprunteur/l'emprunteuse et d'attester que le bien immeuble constitue une garantie adéquate pour le placement hypothécaire.*
- 2. Les pertes éventuelles découlant du placement hypothécaire ne sont pas couvertes par la police d'assurance responsabilité civile professionnelle si l'avocat/l'avocate a agi comme courtier en hypothèques ou a participé à la négociation du prêt*.]*

J'accuse/nous accusons réception d'une copie du présent formulaire avant le versement des fonds à l'emprunteur/l'emprunteuse ou pour son compte. Je reconnais/nous reconnaissons avoir lu et compris les mises en garde énoncées plus haut.

Investisseur/investisseuse :

(Préciser le nom et les prénoms de chaque investisseur/investisseuse ainsi que son adresse.)

(Signature de chaque investisseur/investisseuse)

(Date de la signature)

**[Aux termes de l'alinéa g) de la Partie III de la police d'assurance responsabilité civile professionnelle des avocats, est exclue « toute RÉCLAMATION fondée sur les activités de l'ASSURÉ à titre de COURTIER EN HYPOTHÈQUES ou d'intermédiaire à l'égard de toute transaction financière habituelle pour les prêts hypothécaires ou s'y rapportant; ou toute RÉCLAMATION fondée sur des circonstances où l'ASSURÉ a exécuté des SERVICES PROFESSIONNELS afférents à de telles activités ou toute RÉCLAMATION s'y rapportant. »]*

Formulaire 18B

Rapport de placement

[Note à l'avocat/l'avocate : Vous devez remplir ce formulaire ou une lettre de rapport pour toute hypothèque privée, que vous ayez ou non négocié l'opération. Si vous remplissez ce formulaire, veuillez répondre à toutes les questions numérotées et inscrire « s/o » lorsqu'une question est sans objet. Si vous rédigez une lettre de rapport, assurez-vous de répondre à chaque question numérotée dans le formulaire, sans oublier d'indiquer celles qui sont sans objet. Une fois rempli, l'original du formulaire ou de la lettre de rapport doit être envoyé à chaque prêteur/prêteuse. Le formulaire peut être informatisé. Voir la police d'assurance responsabilité civile professionnelle des avocats pour la définition des termes (courtier en hypothèques, etc.) figurant à la disposition qui renvoie à cette police à la fin du formulaire.]

Destinataire : (Nom et adresse de l'investisseur/l'investisseuse)

A) Description du placement :

1. Nom et adresse de chaque emprunteur/emprunteuse :
2. Nom et adresse de chaque caution (*le cas échéant*) :
3. Description légale et adresse municipale du bien immeuble :
4. Type de bien immeuble (*résidence, terrain vague, etc.*) :
5. a) Montant du capital de l'hypothèque ou de la charge :
5. b) Montant du capital du prêt que vous avez consenti :
6. Rang de l'hypothèque ou de la charge :
7. Votre placement de (...) \$ représente (...) % du prêt total consenti à l'emprunteur/l'emprunteuse.
8. Date où le capital a été déboursé :
9. a) Durée du prêt : (...) mois/ans.
9. b) Date d'échéance :
9. c) Période d'amortissement : (...) ans.
10. Taux d'intérêt de (...) %, calculé semestriellement et non à l'avance, ou (*à préciser*) :
11. Description détaillée des montants et dates de remboursement (*mensuelles, trimestrielles, etc.*) du capital et des intérêts :
12. Description détaillée des pénalités, retenues de garantie et autres conditions :
13. Description détaillée des sûretés existantes, y compris leur rang, leur solde, le nom des créancier/créancières hypothécaires et les dates d'échéance :
14. Si l'hypothèque ou la charge est une sûreté accessoire ou si elle est garantie par une sûreté accessoire, décrire en détail l'autre sûreté :
15. a) Description détaillée des débours effectués au titre des commissions ou des frais juridiques, de courtage, etc. relativement au prêt, y compris leur montant et les noms des bénéficiaires :
15. b) Je déclare ne pas être en mesure de confirmer le montant des commissions et frais indépendants facturés à l'emprunteur/l'emprunteuse.
16. Numéro et date d'enregistrement, bureau d'enregistrement immobilier :
17. Description de l'assurance (*le cas échéant*) :

B) Conditions et divulgation :

Conformément à la demande de renseignements et de divulgation incluse dans le Formulaire 18A [Autorisation de placement], qui constitue une condition préalable au versement des fonds prêtés, je déclare vous avoir communiqué les renseignements suivants :

1. Description détaillée des sûretés existantes : *(Répondre par oui ou par non et, dans l'affirmative, indiquer la date de la communication.)*

2. En cas d'hypothèque consortiale avec prospectus, copie du prospectus : *(Répondre par oui ou par non et, dans l'affirmative, indiquer la date à laquelle le prospectus a été remis.)*

Je vous ai expliqué et vous avez reconnu que je n'exprimais aucune opinion quant à la nécessité et à la validité du prospectus.

3. Évaluation indépendante : *(Répondre par oui ou par non et, dans l'affirmative, indiquer la date où les résultats de l'évaluation ont été communiqués.)*

Je vous ai expliqué et vous avez reconnu que je n'exprimais aucune opinion quant à la nécessité et à la validité de l'évaluation.

4. Les pertes éventuelles découlant du placement hypothécaire ne sont pas couvertes par la police d'assurance responsabilité civile professionnelle si l'avocat/l'avocate a agi comme courtier en hypothèques ou a participé à la négociation du prêt*.

Vous reconnaissez avoir reçu, lu et compris cette mise en garde.

[Mise en garde : Avis vous a été donné que l'appréciation de la valeur du placement hypothécaire incombe exclusivement à l'investisseur/l'investisseuse. La responsabilité de l'avocat/l'avocate se limite à l'enregistrement en bonne et due forme de l'hypothèque grevant le titre selon les directives reçues de l'investisseur/l'investisseuse. Il est interdit à l'avocat/l'avocate de cautionner personnellement les obligations de l'emprunteur/l'emprunteuse et d'attester que le bien immeuble constitue une garantie adéquate pour le placement hypothécaire.]

(Nom de l'avocat/l'avocate ou du cabinet)

(Adresse de l'avocat/l'avocate ou du cabinet)

(Signature de l'avocat/l'avocate)

(Date de la signature)

**[Aux termes de l'alinéa g) de la Partie III de la police d'assurance responsabilité civile professionnelle des avocats, est exclue « toute RÉCLAMATION fondée sur les activités de l'ASSURÉ à titre de COURTIER EN HYPOTHÈQUES ou d'intermédiaire à l'égard de toute transaction financière habituelle pour les prêts hypothécaires ou s'y rapportant; ou toute RÉCLAMATION fondée sur des circonstances où l'ASSURÉ a exécuté des SERVICES PROFESSIONNELS afférents à de telles activités ou toute RÉCLAMATION s'y rapportant. »]*

RÈGLEMENT ADMINISTRATIF N^O 19

LES OPÉRATIONS TOUCHANT DES FONDS ET D'AUTRES BIENS

Définitions

1. (1) Les définitions qui suivent s'appliquent au présent règlement administratif.

« cabinet » Société de personnes constituée de membres et membres employés par la société.

« client » Personne ou groupe de personnes de qui ou au nom de qui un membre reçoit des fonds ou d'autres biens.

« fonds » Monnaie courante, effets du gouvernement ou billets de banque, chèques, traites, bordereaux de cartes de crédit, mandats poste, mandats exprès et mandats bancaires.

« membre » S'entend en outre d'un cabinet.

(2) Pour l'application des paragraphes 4(1), (2) et (3) ainsi que de l'article 8, les espèces, les chèques négociables par les membres, les chèques tirés par les membres sur leurs comptes en fiducie et les bordereaux de cartes de crédit dont ils ont la possession et le contrôle sont réputés constituer des fonds détenus dans des comptes en fiducie dès leur prise de possession et de contrôle, s'ils sont déposés dans les comptes en fiducie au plus tard le jour ouvrable suivant.

Fonds reçus en fiducie pour des clients

2. (1) Sous réserve de l'article 3, les membres qui reçoivent des fonds en fiducie pour une cliente ou un client les déposent sans délai dans un compte en fiducie, à leur nom ou au nom du cabinet dont ils sont associés ou employés, dans une banque à charte, une caisse d'épargne provinciale, une caisse ou caisse populaire ou une fédération à laquelle s'applique la *Loi de 1994 sur les caisses populaires et les Credit Unions* ou une société de fiducie inscrite.

Interprétation

(2) Pour l'application du paragraphe (1), les membres reçoivent des fonds en fiducie pour une cliente ou un client s'ils reçoivent, de quiconque :

- a) des fonds appartenant en tout ou en partie à une cliente ou à un client;
- b) des fonds qui doivent être détenus au nom d'une cliente ou d'un client;
- c) des fonds qui doivent être détenus conformément à une directive ou à un ordre d'une cliente ou d'un client;
- d) des fonds versés aux membres à titre d'honoraires provisionnels pour des services non encore rendus;
- e) des fonds versés aux membres pour des débours non encore effectués.

Fonds déposés dans un compte en fiducie

(3) Outre les fonds qui doivent être déposés en application du paragraphe (1), les membres déposent les fonds suivants dans un compte en fiducie :

1. les fonds qui, par inadvertance, ont été retirés du compte en fiducie contrairement à l'article 4;
2. les fonds versés aux membres qui appartiennent en partie aux clientes ou clients et en partie aux membres, lorsqu'en divisant le versement n'est pas pratiqué.

Retrait de fonds d'un compte en fiducie

(4) Les membres qui déposent dans un compte en fiducie des fonds décrits à la disposition 2 du paragraphe (3) retirent les fonds qui leur appartiennent du compte en fiducie dès que possible.

Nombre de comptes en fiducie

(4) Les membres peuvent avoir plus d'un compte en fiducie.

Fonds n'ayant pas à être déposés dans un compte en fiducie.

3. (1) Les membres ne sont pas tenus de déposer dans un compte en fiducie les fonds reçus en fiducie pour une cliente ou un client dans l'un des cas suivants :

- a) la cliente ou le client leur demande, par écrit, de ne pas déposer les fonds dans un compte en fiducie;
- b) les membres déposent les fonds dans un compte ouvert au nom de la cliente ou du client ou d'une personne désignée par la cliente, le client ou son mandataire;
- c) les membres remettent immédiatement les fonds à la cliente ou au client ou au nom de celui-ci conformément aux pratiques commerciales courantes.

Idem

(2) Les membres ne doivent pas déposer dans un compte en fiducie :

1. les fonds qui leur appartiennent entièrement ou qui appartiennent à d'autres membres du cabinet dont ils sont associés ou employés, notamment les honoraires provisionnels généraux dont les membres ne sont pas tenus de rendre compte ou à l'égard desquels ils n'ont pas de service à rendre;
2. les fonds qui sont reçus par les membres en paiement d'honoraires pour lesquels une facture a été remise ou en paiement de services déjà rendus pour lesquels la facture sera remise immédiatement après la réception des fonds, ou en remboursement de débours ou de dépenses effectués par les membres au nom d'une cliente ou d'un client.

Obligation de tenir des registres

(3) Les membres qui, conformément au paragraphe (1), ne déposent pas dans un compte en fiducie des fonds reçus en fiducie pour une cliente ou un client inscrivent toutes les opérations relatives à ces fonds dans les registres prescrits par le règlement administratif n^o 18.

Retrait de fonds d'un compte en fiducie

4. (1) Les membres ne peuvent retirer que les fonds suivants d'un compte en fiducie :

1. les fonds légitimement requis pour effectuer un paiement à une cliente, à un client ou au nom d'une cliente ou d'un client;
2. les fonds requis pour se rembourser des fonds dépensés ou engagés légitimement au nom d'une cliente ou d'un client;
3. les fonds légitimement requis pour régler les honoraires des membres relativement à des services rendus et pour lesquels une facture a été remise;
4. les fonds directement virés dans un autre compte en fiducie et détenus au nom d'une cliente ou d'un client;

5. les fonds déposés par inadvertance dans le compte en fiducie contrairement au présent règlement administratif.

Autorisation de retirer d'autres fonds

(2) Les membres peuvent retirer d'un compte en fiducie des fonds autres que ceux décrits au paragraphe (1) avec l'autorisation du secrétaire.

Montant maximal des retraits d'un compte en fiducie

(3) Le montant des fonds retirés d'un compte en fiducie pour une cliente ou un client en application du présent article ne peut jamais excéder le montant alors détenu au nom de cette personne dans ce compte en fiducie.

Modalités de certains retraits d'un compte en fiducie

5. Les membres ne peuvent retirer d'un compte en fiducie les fonds visés à la disposition 2 ou 3 du paragraphe 4(1) que de l'une des façons suivantes :

- a) par un chèque libellé à leur ordre;
- b) par un virement dans un compte en banque à leur nom, autre qu'un compte en fiducie;
- c) par télévirement.

Retrait par chèque

6. Un chèque tiré sur un compte en fiducie ne doit pas être :

- a) soit payable au porteur;
- b) soit signé par une personne autre que des membres, sauf circonstances exceptionnelles et sauf si cette personne a reçu l'autorisation de signer à l'égard du compte en fiducie sur lequel le chèque est tiré et qu'elle a fourni un cautionnement pour un montant au moins égal au solde maximal des sommes déposées, au cours de l'exercice précédent des membres, dans tous les comptes en fiducie à l'égard desquels cette personne a reçu l'autorisation de signer.

Retrait par télévirement

7. (1) Le retrait de fonds d'un compte en fiducie par télévirement ne peut se faire que conformément au présent article.

Cas dans lesquels le télévirement est autorisé

(2) Des fonds ne peuvent être retirés d'un compte en fiducie par télévirement que si les conditions suivantes sont réunies :

1. Le système de télévirement utilisé par les membres ne permet le télévirement de fonds que si :
 - i. d'une part, une personne entre dans le système, en utilisant un mot de passe ou code d'accès, les données relatives au virement;
 - ii. d'autre part, une autre personne entre dans le système, en utilisant un autre mot de passe ou code d'accès, les données qui autorisent l'institution financière à effectuer le virement.
2. Le système de télévirement utilisé par les membres produit, au plus tard à la fermeture du jour ouvrable qui suit le jour où le télévirement de fonds est autorisé, une confirmation de l'institution financière qui indique que les données relatives au virement et celles autorisant l'institution financière à effectuer le virement ont été reçues.

3. La confirmation exigée par la disposition 2 comprend les renseignements suivants :
 - i. le numéro du compte en fiducie duquel les fonds sont retirés;
 - ii. le nom, la succursale et l'adresse de l'institution financière où se trouve le compte dans lequel les fonds sont virés;
 - iii. le nom de la personne ou de l'entité au nom de laquelle est gardé le compte dans lequel les fonds sont virés;
 - iv. le numéro du compte dans lequel les fonds sont virés;
 - v. l'heure et la date auxquelles les données relatives au virement et celles autorisant l'institution financière à effectuer le virement sont reçues par l'institution financière;
 - vi. l'heure et la date auxquelles l'institution financière envoie la confirmation aux membres.
4. Avant d'entrer les données relatives au virement ou celles autorisant l'institution financière à effectuer le virement dans le système de télévirement de fonds en fiducie, une demande de télévirement de fonds en fiducie est signée, selon le cas :
 - i. par les membres;
 - ii. dans des circonstances exceptionnelles, par une personne autre que des membres si elle a reçu l'autorisation de signer à l'égard du compte en fiducie duquel les fonds sont retirés et qu'elle a fourni un cautionnement pour un montant au moins égal au solde maximal des sommes déposées, au cours de l'exercice précédent des membres, dans tous les comptes en fiducie à l'égard desquels cette personne a reçu l'autorisation de signer.
5. Les données relatives au virement et celles autorisant l'institution financière à effectuer le virement qui sont entrées dans le système de télévirement de fonds en fiducie sont identiques à celles qui figurent dans la demande de télévirement de fonds en fiducie.

Application de la disposition 1 du paragraphe (2) aux praticiens autonomes

(3) La disposition 1 du paragraphe (2) ne s'applique pas aux membres qui pratiquent le droit sans avoir d'autres membres ayant le statut d'associé ni d'autres membres ou personnes ayant qualité d'employé, à condition que les membres entrent personnellement, dans le système de télévirement de fonds en fiducie, les données relatives au virement et celles autorisant l'institution financière à effectuer le virement.

Idem

(4) Dans des circonstances exceptionnelles, une personne autre que des membres peut entrer les données visées au paragraphe (3), si elle a reçu l'autorisation de signer à l'égard du compte en fiducie duquel les fonds sont retirés et qu'elle a fourni un cautionnement pour un montant au moins égal au solde maximal des sommes déposées, au cours de l'exercice précédent des membres, dans tous les comptes en fiducie à l'égard desquels cette personne a reçu l'autorisation de signer.

Obligations additionnelles concernant la confirmation

(5) Au plus tard à la fermeture du jour ouvrable qui suit le jour où la confirmation exigée par la disposition 2 du paragraphe (2) leur est envoyée, les membres :

- a) produisent une copie imprimée de la confirmation;

- b) comparent la copie imprimée de la confirmation à la demande de télévirement de fonds en fiducie signé e qui porte sur le virement pour vérifier si les fonds ont été retirés du compte en fiducie conformément à la demande signé e;
- c) inscrivent sur la copie imprimée de la confirmation le nom de la cliente ou du client, l'objet du dossier et tout numéro de dossier à l'égard duquel des fonds ont été retirés du compte en fiducie;
- d) après s'être conformé aux alinéas a) à c), signent et datent la copie imprimée de la confirmation.

Idem

(6) Dans des circonstances exceptionnelles, une personne autre que des membres peut exécuter les tâches exigées par le paragraphe (5), si elle a reçu l'autorisation de signer à l'égard du compte en fiducie duquel les fonds sont retirés et qu'elle a fourni un cautionnement pour un montant au moins égal au solde maximal des sommes déposées, au cours de l'exercice précédent des membres, dans tous les comptes en fiducie à l'égard desquels cette personne a reçu l'autorisation de signer.

Demande de télévirement de fonds en fiducie

(7) La demande de télévirement de fonds en fiducie visée à la disposition 4 du paragraphe (2) est rédigée selon le Formulaire 19A.

Obligation de conserver un solde suffisant dans un compte en fiducie

8. Malgré toute autre disposition du présent règlement administratif, les membres doivent conserver en permanence un solde suffisant dans leurs comptes en fiducie pour s'acquitter de toutes leurs obligations relatives aux fonds détenus en fiducie pour leurs clientes et clients.

RETRAITS AUTOMATIQUES DES COMPTES EN FIDUCIE

Définition : « Teranet »

8.1. (1) Pour l'application des articles 8.2 et 8.3, « Teranet » s'entend de Teranet Land Information Services, Inc., une personne morale constituée sous le régime de la *Loi sur les sociétés par actions*, agissant en qualité de mandataire du ministère de la Consommation et du Commerce.

Interprétation : délai expirant un jour férié

(2) Sauf indication contraire, lorsque le délai imparti pour accomplir un acte en vertu de articles 8.2 et 8.3 expire un jour férié, cet acte peut être accompli le premier jour qui suit et qui n'est pas un jour férié.

Interprétation : calcul des délais

(3) Pour l'application du paragraphe 8.3(4), les jours fériés sont exclus du calcul servant à déterminer si des fonds ont été conservés dans un compte en fiducie décrit au paragraphe 8.3(1) pendant plus de cinq jours.

Définition : « jour férié »

(4) Pour l'application du présent article, les jours suivants sont des jours fériés :

- a) les samedis et les dimanches;
- b) le Jour de l'An;
- c) le Vendredi saint;
- d) le lundi de Pâques;
- e) la fête de la Reine (Jour de Victoria);

- f) la fête du Canada;
- g) le congé municipal;
- h) la fête du travail;
- i) l'Action de grâces;
- j) le jour du Souvenir;
- k) le jour de Noël;
- l) le lendemain de Noël;
- m) tout congé spécial proclamé par le gouverneur général ou le lieutenant gouverneur.

Idem

(5) Lorsque le Jour de l'An, la fête du Canada ou le jour du Souvenir tombent un samedi ou un dimanche, le lundi suivant est un jour férié.

Idem

(6) Lorsque le jour de Noël tombe un samedi ou un dimanche, le lundi et le mardi suivants sont des jours fériés.

Idem

(7) Lorsque le jour de Noël tombe un vendredi, le lundi suivant est un jour férié.

Autorisation de retrait de fonds d'un compte en fiducie par Teranet

8.2 (1) Sous réserve du paragraphe (2), les membres peuvent autoriser Teranet à retirer d'un compte en fiducie décrit au paragraphe 8.3(1) les fonds requis pour acquitter les droits d'enregistrement d'un document et les droits de cession immobilière éventuels relativement à une opération immobilière effectuée au nom d'une cliente ou d'un client.

Conditions

(2) Les membres ne peuvent autoriser Teranet à retirer d'un compte en fiducie décrit au paragraphe 8.3(1) les fonds requis pour acquitter les droits d'enregistrement d'un document et les droits de cession immobilière éventuels relativement à une opération immobilière effectuée au nom d'une cliente ou d'un client, à moins que Teranet ne convienne de leur fournir, conformément au paragraphe (3), une confirmation du retrait contenant les renseignements mentionnés au paragraphe (4).

Réception de la confirmation

(3) Les membres doivent recevoir la confirmation prescrite par le paragraphe (2) au plus tard à 17 h le lendemain du jour où le retrait est autorisé.

Contenu de la confirmation

- (4) La confirmation prescrite par le paragraphe (2) contient les renseignements suivants :
- a) le montant des fonds retirés du compte en fiducie;
 - b) l'heure et la date auxquelles l'autorisation de retirer des fonds est reçue par Teranet;
 - c) l'heure et la date auxquelles Teranet envoie la confirmation aux membres.

Consignation de l'autorisation

(4) Les membres qui autorisent Teranet à retirer d'un compte en fiducie décrit au paragraphe 8.3(1) les fonds requis pour acquitter les droits d'enregistrement d'un document et les droits de cession immobilière éventuels relativement à une opération immobilière effectuée au nom d'une cliente ou d'un client consignent cette autorisation par écrit.

Idem

(5) L'autorisation prescrite par le paragraphe (4) est consignée conformément au Formulaire 19B, que les membres doivent remplir avant d'autoriser Teranet à retirer, d'un compte en fiducie décrit au paragraphe 8.3(1), les fonds requis pour acquitter les droits d'enregistrement d'un document et les droits de cession immobilière éventuels relativement à une opération immobilière effectuée au nom d'une cliente ou d'un client.

Obligations additionnelles relatives à la confirmation

(6) Au plus tard à 17 h le lendemain du jour où la confirmation prescrite par le paragraphe (2) leur est envoyée, les membres :

- a) produisent une copie imprimée de la confirmation, si celle-ci leur a été envoyée par voie électronique;
- b) comparent la copie imprimée de la confirmation à la consignation de l'autorisation relative au retrait pour vérifier si Teranet a retiré les fonds du compte en fiducie conformément à l'autorisation que lui ont donnée les membres;
- c) inscrivent sur la copie imprimée de la confirmation le nom de la cliente ou du client et tout numéro de dossier à l'égard duquel des fonds ont été retirés du compte en fiducie, à moins que la confirmation ne contienne déjà ces renseignements;
- d) après s'être conformés aux alinéas a) à c), signent et datent la copie imprimée de la confirmation.

Compte en fiducie spécial

8.3 (1) Les membres ne peuvent autoriser Teranet à retirer des fonds d'un compte en fiducie que si ce compte satisfait à toutes les conditions suivantes :

- a) il est ouvert au nom du membre ou du cabinet dont le membre est un associé ou un employé, dans une banque à charte, une caisse d'épargne provinciale, une caisse ou caisse populaire ou fédération à laquelle s'applique la *Loi de 1994 sur les caisses populaires et les credit unions* ou une société en fiducie inscrite;
- b) le membre y dépose uniquement :
 - (i) les fonds reçus en fiducie pour une cliente ou un client afin d'acquitter les droits d'enregistrement du document et les droits de cession immobilière éventuels relativement à l'opération immobilière effectuée au nom de la cliente ou du client;
 - (ii) les fonds retirés légitimement d'un autre compte en fiducie afin d'acquitter les droits d'enregistrement du document et les droits de cession immobilière éventuels relativement à l'opération immobilière effectuée au nom de la cliente ou du client.

Nombre de comptes spéciaux en fiducie

(2) Les membres peuvent avoir plus d'un compte en fiducie décrit au paragraphe (1).

Dépôt de fonds dans le compte spécial en fiducie

(3) Les membres ne doivent pas déposer dans un compte en fiducie décrit au paragraphe (1) des fonds excédant le montant requis pour acquitter les droits d'enregistrement du document et les droits de cession immobilière éventuels relativement à une opération immobilière effectuée au nom d'une cliente ou d'un client; si des fonds excédentaires sont déposés, par inadvertance, dans le compte en fiducie, les membres les virent du compte en fiducie décrit au paragraphe (1) dans un autre compte en fiducie qui n'est pas un compte en fiducie décrit au paragraphe (1).

Durée maximale de conservation des fonds dans un compte spécial en fiducie

(4) Les membres qui déposent des fonds dans un compte en fiducie décrit au paragraphe (1) ne les conservent pas dans ce compte pendant plus de cinq jours; si les fonds ne sont pas retirés légitimement de ce compte par Teranet dans un délai de cinq jours suivant le jour où ils y ont été déposés, les membres virent les fonds de ce compte dans un autre compte en fiducie qui n'est pas un compte en fiducie décrit au paragraphe (1).

Application des articles 4, 6, 7 et 8

8.4 Les articles 4, 6, 7 et 8 s'appliquent, avec les adaptations nécessaires, à un compte en fiducie décrit au paragraphe 8.3(1).

Entrée en vigueur

9. Le présent règlement entre en vigueur le 1^{er} février 1999.

Formulaire 19A

Demande de télévirement de fonds en fiducie

Demande n^o :

Montant du virement : (... \$)

Objet :

Nom du client/de la cliente : (...)

Numéro de dossier : (...)

Raison du versement : (...)

Compte en fiducie à débiter :

Nom de l'institution financière : (...)

Numéro de compte : (...)

Nom du/de la bénéficiaire : (...)

Compte à créditer :

Nom de l'institution financière : (...)

Nom et adresse de la succursale bancaire : (...)

Numéro de compte : (...)

Personne demandant le télévirement des fonds en fiducie : *(Nom en caractères d'imprimerie)*

(Date)

(Signature)

Données additionnelles concernant l'opération :

(Cette section doit être remplie à la suite de l'entrée des données relatives au virement et de l'autorisation du virement par les personnes respectivement responsables de le faire.)

Personne ayant entré les données relatives au virement :

(Nom en caractères d'imprimerie)

(Signature)

Personne ayant autorisé le virement à l'ordinateur :

(Nom en caractères d'imprimerie)

(Signature)

Formulaire 19B

Autorisation de retrait par Teranet

Autorisation n^o :

Montant des fonds à retirer : (... \$)

Objet :

Nom du client/de la cliente : (...)

Numéro de dossier : (...)

Raison du retrait : *(par ex. le paiement des droits de cession immobilière, des droits d'enregistrement du document)*

Compte en fiducie à débiter :

Nom de l'institution financière : (...)

Numéro de compte : (...)

Nom de la personne qui autorise le retrait : *(en caractères d'imprimerie)*

(Date)

(Signature)

RÈGLEMENT ADMINISTRATIF N° 20

LA RÉVISION DES PLAINTES

Commissaires au règlement des plaintes

1. Chaque conseiller ou conseillère non juriste est commissaire au règlement des plaintes.

Fonction

2. (1) Sous réserve du paragraphe (2), les commissaires au règlement des plaintes ont pour fonction d'examiner les décisions du Barreau à l'égard de plaintes déposées contre ses membres.

Idem

(2) Les commissaires au règlement des plaintes ne doivent pas examiner les décisions qu'ont prises les personnes ou organes suivants à l'égard de plaintes déposées contre des membres :

- a) les personnes assumant la présidence ou la vice-présidence du Comité de discipline, tel qu'il était constitué avant le 1^{er} février 1999;
- b) un comité de conseillers et conseillères agissant aux termes de l'article 33 de la Loi, tel qu'il existait avant le 1^{er} février 1999;
- c) le Conseil agissant aux termes de l'article 33 de la Loi, tel qu'il existait avant le 1^{er} février 1999;
- d) le Comité d'autorisation des instances;
- e) le Comité d'audition;
- f) le Comité d'appel.

Demande d'examen de la décision prise à l'égard d'une plainte

3. (1) La personne qui a déposé une plainte et qui n'est pas satisfaite de la décision du Barreau à l'égard de sa plainte contre un membre peut demander au ou à la secrétaire de renvoyer cette décision à l'un des commissaires au règlement des plaintes pour qu'elle soit examinée.

Renvoi de la décision au commissaire

(2) Si une demande est présentée en vertu du paragraphe (1), à moins que les personnes ou organes visés au paragraphe 2 (2) n'aient statué sur cette plainte, le ou la secrétaire renvoie la décision prise à l'égard de la plainte à l'un des commissaires au règlement des plaintes pour qu'elle soit réexaminée.

Examen de la décision prise à l'égard de la plainte

4. (1) Le ou la commissaire au règlement des plaintes examine toute décision qui lui est renvoyée aux termes du paragraphe 3 (2) et détermine si le Barreau a pris une décision appropriée à l'égard de la plainte.

Renvoi au secrétaire pour complément d'enquête

(2) Le ou la commissaire au règlement des plaintes peut, avant ou après avoir déterminé si le Barreau a pris une décision appropriée à l'égard d'une plainte, renvoyer la plainte au ou à la secrétaire et lui demander de procéder à une enquête plus approfondie.

Procédure d'examen

5. Le ou la commissaire au règlement des plaintes détermine, dans chaque cas, la procédure applicable à l'examen de la décision du Barreau à l'égard d'une plainte et décide notamment qui peut lui présenter des observations, quand et de quelle manière.

Avocats indépendants

6. Les commissaires au règlement des plaintes peuvent retenir les services d'avocates ou avocats indépendants aux conditions qu'ils jugent appropriées pour les conseiller sur l'exercice de leurs fonctions aux termes du présent règlement administratif.

Examen de la décision par deux commissaires ou plus

7. Malgré toute disposition du présent règlement administratif, deux commissaires au règlement des plaintes ou plus examiner ensemble la décision du Barreau à l'égard d'une plainte; les articles 2, 4 et 5 s'appliquent, avec les adaptations nécessaires, à un tel examen par deux commissaires ou plus.

Entrée en vigueur

8. Le présent règlement administratif entre en vigueur le 1^{er} février 1999.

RÈGLEMENT ADMINISTRATIF N^O 21

LE COMITÉ D'AUTORISATION DES INSTANCES

Définitions

1. (1) Les définitions qui suivent s'appliquent au présent règlement administratif.

« avocat de l'extérieur » Personne nommée aux termes de l'article 49.53 de la Loi pour représenter le Barreau dans une instance introduite sous le régime de la partie II de la Loi devant le Comité d'audition, le Comité d'appel ou un tribunal et qui concerne un conseiller ou un employé du Barreau.

« Comité » Comité d'autorisation des instances.

« enquêteur externe » Personne nommée aux termes du paragraphe 49.5(2) de la Loi pour effectuer une enquête sur la conduite ou la capacité d'un conseiller ou d'un employé du Barreau.

« inspecteur externe » Personne nommée aux termes du paragraphe 49.6(2) de la Loi pour effectuer une inspection portant sur les activités professionnelles d'un conseiller.

Constitution du Comité d'autorisation des instances

2. (1) Est constitué un comité, connu en français sous le nom de Comité d'autorisation des instances et en anglais sous le nom de *Proceedings Authorization Committee*.

Composition

(2) Le comité est composé de quatre conseillères et conseillers nommés par le Conseil.

Présidents et vice-présidents de certains comités permanents

(3) Sont membres du comité :

- a) la personne assumant la présidence ou la vice-présidence du Comité de réglementation de la profession;
- b) la personne assumant la présidence ou la vice-présidence du Comité du perfectionnement professionnel et de la compétence.

Restrictions applicables aux nominations

(4) Ne peuvent être nommés membres du Comité les conseillères ou conseillers d'office visés aux dispositions 1 ou 2 du paragraphe 12(1) ou à la disposition 1 du paragraphe 12(2) de la Loi.

Mandat

(5) Sous réserve du paragraphe (6), le mandat des membres du Comité est d'une durée d'un an et peut être renouvelé.

Nomination à titre amovible

(6) Les membres du Comité sont nommés à titre amovible.

Président

3. (1) Le Conseil nomme à la présidence du Comité l'un des conseillers élus qui en sont membres.

Durée du mandat

(2) Sous réserve du paragraphe (3), le mandat de la personne assumant la présidence est d'une durée d'un an et peut être renouvelé.

Nomination à titre amovible

(3) La personne assumant la présidence est nommée à titre amovible.

Fonctions du Comité

(4) Le Comité examine les affaires qui lui sont renvoyées conformément au présent règlement administratif ou à un autre règlement administratif et détermine, dans chaque cas, si les mesures prévues au paragraphe 9(1) doivent être prises.

Quorum du Comité

5. (1) Deux membres du Comité forment le quorum pour l'examen d'une affaire et la prise de mesures à son égard.

Membres provisoires

(2) S'il est impossible d'atteindre le quorum fixé à deux membres du Comité, pour cause d'empêchement, pour quelque raison que ce soit, d'au moins trois membres du Comité, la présidente ou le président du Comité peut, sous réserve du paragraphe (3), nommer un ou plusieurs conseillers ou conseillères en qualité de membres provisoires du Comité afin de constituer le quorum; ces membres provisoires sont réputés être membres du Comité pour l'application du paragraphe (1).

Conseillers inadmissibles

(3) Ne peuvent être nommés membres provisoires du Comité les conseillères ou conseillers d'office visés aux dispositions 1 ou 2 du paragraphe 12(1) et à la disposition 1 du paragraphe 12(2) de la Loi.

Examen par téléconférence, etc.

6. Le Comité peut examiner une affaire en communiquant par téléconférence ou par d'autres moyens de communication, notamment électroniques, afin que toutes les personnes participant à la réunion puissent communiquer les unes avec les autres simultanément.

Absence de droit de participation

7. (1) Sous réserve du paragraphe (2), nul ne peut participer à l'examen d'une affaire par le Comité.

Participation à la demande du Comité

(2) Le Comité peut demander à l'une ou plusieurs des personnes énumérées ci-dessous de participer à l'examen d'une affaire pour répondre aux questions du Comité sur cette affaire ou sur les mesures qui peuvent être prises par le Comité relativement à cette affaire :

1. une personne qui a renvoyé une affaire au Comité;
2. un personne qui est dirigeant, employé, mandataire ou représentant du Barreau et qui participe ou a participé à une vérification, une enquête, une inspection, une perquisition ou une saisie relativement à une affaire.

Renvoi par le secrétaire, un enquêteur externe ou un inspecteur externe

8. (1) Sous réserve du paragraphe (2), le ou la secrétaire, une enquêteuse ou un enquêteur externe, ou une inspectrice ou un inspecteur externe peut, pendant ou après une vérification, une enquête ou une inspection, renvoyer au Comité une affaire relative à la conduite d'un membre, d'un groupe de membres ou d'un membre étudiant, à la capacité d'un membre ou d'un membre étudiant ou à la compétence professionnelle d'un membre, à l'une ou plusieurs des fins suivantes :

1. obtenir des directives relativement à la tenue d'une vérification, d'une enquête ou d'une inspection;
2. faire approuver le règlement informel de l'affaire ou obtenir des directives à son égard;
3. autoriser le Barreau à demander, dans une instance en cours ou envisagée, si le Comité d'audition n'a pas entamé l'audition sur le fond, une ordonnance interlocutoire suspendant les droits et privilèges d'un membre ou d'un membre étudiant ou restreignant la façon dont un membre peut pratiquer le droit;
4. autoriser le Barreau à demander au Comité d'audition d'établir si :
 - i. un membre ou un membre étudiant a contrevenu à l'article 33 de la Loi;
 - ii. un membre ou un membre étudiant est ou a été incapable;
 - iii. un membre n'a pas respecté ou ne respecte pas les normes de compétence de la profession.

Restriction applicable aux renvois par le secrétaire ou un enquêteur externe

(2) Le ou la secrétaire, ou une enquêteuse ou un enquêteur externe ne peut renvoyer au Comité une affaire portant sur la conduite d'un membre ou d'un membre étudiant si cette affaire constitue une plainte qui a été renvoyée à l'un des commissaires au règlement des plaintes pour qu'il la règle ou l'examine, et si cette personne n'a pas encore rendu de décision relativement à l'affaire.

Renvoi par un conseiller élu

(2.1) Sous réserve du paragraphe (2.2), une conseillère ou un conseiller élu chargé, en vertu du paragraphe 42(6) de la Loi, d'examiner une proposition d'ordonnance faite à un membre peut renvoyer au Comité une affaire concernant la compétence professionnelle du membre afin que le Barreau ait l'autorisation de demander au Comité d'audition d'établir si le membre n'a pas respecté ou ne respecte pas les normes de compétence professionnelle.

Restriction applicable au renvoi par un conseiller élu

(2.2) Une conseillère ou un conseiller élu chargé, en vertu du paragraphe 42(6) de la Loi, d'examiner une proposition d'ordonnance faite à un membre ne peut renvoyer au Comité une affaire concernant la compétence professionnelle du membre à moins d'avoir, à la fois :

- a) rencontré le membre et le ou la secrétaire, comme l'exigent les articles 11 et 12 du Règlement administratif n° 24, conformément aux articles 13 et 14 du Règlement administratif n° 24;
- b) refusé de rendre une ordonnance en vertu du paragraphe 42(7) de la Loi.

Recommandations

(3) La personne qui renvoie une affaire au Comité peut lui recommander de prendre certaines mesures relativement à l'affaire et n'est pas tenue de limiter ses recommandations aux mesures énumérées aux dispositions 1 à 5 du paragraphe 9(1).

Examen d'une affaire

9. (1) Après avoir examiné une affaire, le Comité peut décider qu'aucune mesure ne doit être prise à son égard ou, sous réserve des paragraphes (2) à (4), prendre l'une ou plusieurs des mesures suivantes :

- 1. approuver le règlement informel de l'affaire ou donner des directives à cet égard;
- 2. autoriser le Barreau à demander au Comité d'audition d'établir si :
 - i. un membre ou un membre étudiant a contrevenu à l'article 33 de la Loi;
 - ii. un membre ou un membre étudiant est ou a été incapable;
 - iii. un membre ne respecte pas ou n'a pas respecté les normes de compétence de la profession;
- 3. inviter un membre ou un membre étudiant à comparaître devant un comité de conseillers et conseillères pour recevoir des conseils sur sa conduite;
- 3.1 inviter un membre à comparaître devant un comité de conseillers et conseillères pour recevoir des conseils sur sa compétence professionnelle;
- 4. envoyer à un membre ou un membre étudiant une lettre lui donnant des conseils sur sa conduite;
- 4.1 envoyer à un membre une lettre lui donnant des conseils sur sa compétence professionnelle;
- 5. autoriser le Barreau à présenter, dans une instance en cours ou envisagée, si le Comité d'audition n'a pas entamé l'audition sur le fond, une ordonnance interlocutoire suspendant les droits et privilèges d'un membre ou d'un membre étudiant ou restreignant la façon dont un membre peut pratiquer le droit;
- 6. prendre toute autre mesure que le Comité juge indiquée.

Restriction applicable à l'autorisation des instances portant sur la conduite

(2) Le Comité ne peut autoriser le Barreau à demander au Comité d'audition d'établir si un membre ou un membre étudiant a contrevenu à l'article 33 de la Loi, à moins d'être convaincu qu'il existe des motifs raisonnables de croire que cette personne a effectivement contrevenu à l'article 33 de la Loi.

Restriction applicable à l'autorisation des instances portant sur la capacité

(3) Le Comité ne peut autoriser le Barreau à demander au Comité d'audition d'établir si un membre ou un membre étudiant est ou a été incapable, à moins d'être convaincu qu'il existe des motifs raisonnables de croire que cette personne est ou a été incapable.

Restriction applicable à l'autorisation des instances portant sur la compétence professionnelle

(4) Le Comité ne peut autoriser le Barreau à demander au Comité d'audition d'établir si un membre ne respecte pas ou n'a pas respecté les normes de compétence de la profession, à moins d'être convaincu qu'il existe des motifs raisonnables de croire que cette personne ne respecte pas ou n'a pas respecté les normes de compétence de la profession.

Nomination d'un représentant

10. (1) Lorsqu'il autorise le Barreau à demander au Comité d'audition d'établir si un membre ou un membre étudiant est ou a été incapable, le Comité peut nommer un autre membre pour représenter cette personne dans l'instance introduite sous le régime de la partie II de la Loi devant le Comité d'audition, le Comité d'appel ou un tribunal, s'il est convaincu que les conditions suivantes sont réunies :

- a) le membre ou le membre étudiant n'est pas en mesure de participer à l'instance ni de donner des instructions à une avocate ou à un avocat à cet égard;
- b) le membre ou le membre étudiant n'est pas représenté par une avocate ou un avocat;
- c) le membre ou le membre étudiant n'a pas de tuteur, de fondé de pouvoir ni d'autre personne autorisée à le représenter dans l'instance.

Frais

(2) Les frais découlant d'une nomination faite en vertu du paragraphe (1) sont payés par le Barreau.

Décision rédigée par écrit

11. Le Comité énonce par écrit sa décision sur toute affaire qui lui est renvoyée.

Avis

12. Le Comité avise le ou la secrétaire de sa décision sur toute affaire qui lui est renvoyée.

Motifs

13. Le Comité n'est jamais tenu de fournir à qui que ce soit les motifs de sa décision.

Retrait de la demande au Comité d'audition

14. (1) Si le Comité autorise le Barreau à demander au Comité d'audition de trancher une question visée à la disposition 2 du paragraphe 9(1) et que le Comité d'audition n'a pas entamé l'audition sur le fond, le Barreau ne peut retirer sa demande au Comité d'audition qu'avec l'autorisation préalable du Comité.

Procédure de retrait

(2) La demande d'autorisation de retirer une demande au Comité d'audition est présentée au Comité par le ou la secrétaire, une avocate ou un avocat de l'extérieur, selon le cas, et les articles 5, 6, 7, 11, 12 et 13 s'appliquent, avec les adaptations nécessaires, à l'examen de cette demande par le Comité.

Entrée en vigueur

15. Le présent règlement administratif entre en vigueur le 1^{er} février 1999.

RÈGLEMENT ADMINISTRATIF N^o 22

LA COMPARUTION EN QUALITÉ D'AVOCAT DANS UNE INSTANCE DONNÉE

Personnes autorisées à comparaître en qualité d'avocat dans une instance donnée

1. Sous réserve de l'assentiment du tribunal, une personne qui n'est pas membre peut se présenter en qualité d'avocat dans une instance donnée devant un tribunal de l'Ontario si elle satisfait aux conditions suivantes :

1. être citoyenne canadienne ou résidente permanente du Canada;
2. être de bonnes moeurs;
3. être habilitée à exercer la profession d'avocat dans une province autre que l'Ontario ou dans un territoire du Canada.

Demande adressée au Barreau

2. (1) La personne qui n'est pas membre et qui désire comparaître en qualité d'avocat dans une instance donnée devant un tribunal de l'Ontario demande par écrit au Barreau l'autorisation de comparaître en qualité d'avocat dans l'instance.

Droits de demande

(2) Chaque demande présentée en vertu du paragraphe (1) est accompagnée des droits de demande dont le montant est fixé par le Conseil.

Examen de la demande par le secrétaire

(3) Chaque demande présentée en vertu du paragraphe (1), à l'égard de laquelle les droits exigibles en vertu du paragraphe (2) ont été payés, est examinée par le ou la secrétaire, qui prend l'une ou l'autre des décisions suivantes :

- a) le ou la secrétaire qui est convaincu qu'elle satisfait aux conditions énoncées à l'article 1 avise par écrit la personne qui a présenté la demande qu'elle est autorisée à comparaître en qualité d'avocat dans l'instance donnée;
- b) le ou la secrétaire qui est convaincu qu'elle ne satisfait pas aux conditions énoncées à l'article 1 avise par écrit la personne qui a présenté la demande qu'elle n'est pas autorisée à comparaître en qualité d'avocat dans l'instance donnée.

Réexamen de la décision du secrétaire

(4) La personne à laquelle le ou la secrétaire refuse l'autorisation de comparaître en qualité d'avocat dans une instance donnée devant un tribunal de l'Ontario, en application du paragraphe (3), peut lui demander de renvoyer sa demande au Comité d'admission et d'équité pour qu'il la réexamine.

Idem

(5) Le ou la secrétaire qui reçoit une demande à cet effet en vertu du paragraphe (4) renvoie au Comité d'admission et d'équité la demande d'autorisation de comparaître en qualité d'avocat dans une instance donnée devant un tribunal de l'Ontario.

Examen de la demande par le Comité d'admission et d'équité

(6) Le Comité d'admission et d'équité examine chaque demande qui lui est renvoyée en vertu du paragraphe (5) et prend l'une ou l'autre des décisions suivantes :

- a) s'il est convaincu qu'elle satisfait aux conditions énoncées à l'article 1, le Comité demande au ou à la secrétaire d'aviser par écrit la personne qui a présenté la demande qu'elle est autorisée à comparaître en qualité d'avocat dans l'instance donnée;
- b) s'il est convaincu qu'elle ne satisfait pas aux conditions énoncées à l'article 1, le Comité demande au ou à la secrétaire d'aviser par écrit la personne qui a présenté la demande qu'elle n'est pas autorisée à comparaître en qualité d'avocat dans l'instance donnée.

Documents et explications

(7) Pour aider le ou la secrétaire ou le Comité d'admission et d'équité à examiner sa demande d'autorisation de comparaître en qualité d'avocat dans une instance donnée devant un tribunal de l'Ontario, la personne qui la présente fournit au secrétaire ou au Comité, selon le cas, les documents et les explications demandés par ces derniers.

Exercice des pouvoirs du Comité d'admission et d'équité

(8) L'exercice de fonctions ou de pouvoirs attribués au Comité d'admission et d'équité par le présent règlement administratif n'est pas assujéti à l'approbation du Conseil.

3. Malgré l'article 1, ainsi que les alinéas 2(3)a) et 2(6)a), nul n'est autorisé à comparaître en qualité d'avocat dans une instance donnée devant un tribunal de l'Ontario, à moins d'avoir :

- a) déposé au Barreau le consentement d'un mandataire résident de l'Ontario qui est membre du Barreau et qui s'engage à accepter la signification de tout document relatif à l'instance, ainsi que le nom et l'adresse ontarienne de ce mandataire;
- b) payé au Barreau les droits dont le montant est fixé par le Conseil.

Entrée en vigueur

4. Le présent règlement entre en vigueur le 1^{er} février 1999.

RÈGLEMENT ADMINISTRATIF N^o 23

LA PUBLICATION DES DÉCISIONS JUDICIAIRES

LE RECUEIL DE JURISPRUDENCE DE L'ONTARIO

Exemplaires du Recueil de jurisprudence de l'Ontario

1. (1) Sous réserve du paragraphe (2), des exemplaires du Recueil de jurisprudence de l'Ontario («Recueil») sont fournis, aux frais du Barreau, aux membres suivants :

- a) les membres dont les droits et privilèges ne sont pas suspendus et qui ont payé leur cotisation annuelle;
- b) les personnes désignées par le Conseil.

Exceptions

(2) Des exemplaires du Recueil ne sont pas fournis aux membres suivants :

- a) les membres qui ne paient pas la cotisation annuelle intégrale et qui ont choisi de ne pas recevoir cette publication;
- b) les membres à vie qui ont choisi de ne pas recevoir cette publication.

Autres recueils

(3) Le Conseil peut décider de fournir, en plus du Recueil, d'autres recueils de jurisprudence aux personnes mentionnées au paragraphe (1).

Application du paragraphe (2)

(4) Le paragraphe (2) s'applique, avec les adaptations nécessaires, à la remise aux membres de recueils de jurisprudence autres que le Recueil qui est prévue au paragraphe (3).

Publicité dans le Recueil de jurisprudence de l'Ontario

2. Le Barreau peut permettre à l'éditeur de publier, aux frais de ce dernier, des annonces dans chaque numéro du Recueil de jurisprudence de l'Ontario, dans la mesure où le Barreau n'y voit pas d'objection et si elles sont publiées séparément du texte des décisions.

MOTIFS DE JUGEMENT

Diffusion

3. Le Conseil peut prendre des dispositions pour diffuser des copies des motifs de jugement, selon les modalités qu'il peut préciser.

Entrée en vigueur

4. Le présent règlement administratif entre en vigueur le 1^{er} février 1999.

RÈGLEMENT ADMINISTRATIF N° 24

LA COMPÉTENCE PROFESSIONNELLE

Exercice des pouvoirs du Comité du perfectionnement professionnel et de la compétence

1. Le Comité du perfectionnement professionnel et de la compétence peut se passer de l'approbation du Conseil pour exercer les pouvoirs et les fonctions que lui attribue le présent règlement administratif.

Délégation des pouvoirs et des fonctions du secrétaire: directeur des normes professionnelles

2. La personne qui occupe le poste de directeur des normes professionnelles du Barreau peut, sous réserve des conditions qu'impose le ou la secrétaire, exercer les pouvoirs et les fonctions qu'attribuent à ce dernier ou à cette dernière :

- a) les paragraphes 42 (3), (4), (5), (6) et (8) de la Loi;
- b) l'article 8 du règlement administratif n° 21;
- c) le présent règlement administratif.

RENSEIGNEMENTS

Demande de renseignements

3. (1) Le ou la secrétaire peut exiger que des membres fournissent au Barreau des renseignements précis sur la qualité des services dispensés à leurs clientes et clients, notamment sur ce qui suit :

- a) leurs connaissances, habiletés ou jugement;
- b) l'attention portée aux intérêts de leur clientèle;

- c) les dossiers, les systèmes ou les méthodes utilisés pour leurs activités professionnelles;
- d) les autres aspects de leurs activités professionnelles.

Avis de demande de renseignements

(2) Le ou la secrétaire avise par écrit les membres de la demande de renseignements prévue au paragraphe (1) et leur envoie une liste détaillée des renseignements à fournir.

Délai

(3) Les membres fournissent au Barreau les renseignements précis qui leur sont demandés dans les trente jours de la date que précise l'avis de demande de renseignements.

Prorogation du délai

(4) Malgré le paragraphe (3), le ou la secrétaire peut, à la demande des membres, proroger le délai dans lequel les renseignements précis qui leur sont demandés sont à fournir au Barreau.

Demande de prorogation de délai

(5) Les membres présentent la demande de prorogation prévue au paragraphe (4) au ou à la secrétaire par écrit, au plus tard le jour où ils sont tenus, aux termes du paragraphe (3), de fournir au Barreau les renseignements précis qui leur sont demandés.

INSPECTION PROFESSIONNELLE

Nomination des personnes chargées de procéder aux inspections

4. Le Comité du perfectionnement professionnel et de la compétence charge une ou plusieurs personnes de procéder à l'inspection des activités professionnelles des membres aux termes de l'article 42 de la Loi.

Inspection obligatoire

5. (1) À la demande du ou de la secrétaire, la personne assumant la présidence ou la vice-présidence du Comité du perfectionnement professionnel et de la compétence à qui est présentée la demande ordonne l'inspection des activités professionnelles d'un membre si elle est convaincue qu'il existe des motifs raisonnables de croire que ce dernier ne respecte pas ou n'a pas respecté les normes de compétence de la profession.

Inspection obligatoire: conseillers

(2) Le trésorier ou la trésorière exerce le pouvoir que le paragraphe (1) confère à la personne assumant la présidence ou la vice-présidence du Comité du perfectionnement professionnel et de la compétence lorsque le ou la secrétaire demande l'inspection des activités professionnelles d'un conseiller ou d'une conseillère.

Inspection des activités professionnelles d'un membre

6. (1) Le ou la secrétaire charge une ou plusieurs personnes nommées aux termes de l'article 4 d'inspecter les activités professionnelles d'un membre.

Affectation d'autres personnes à l'inspection

(2) Après le début de l'inspection, le ou la secrétaire peut charger une ou plusieurs autres personnes nommées aux termes de l'article 4 d'aider ou de remplacer les personnes chargées en premier lieu de l'inspection.

Inspection des activités professionnelles d'un conseiller

(3) Les paragraphes (1) et (2) ne s'appliquent pas à l'inspection des activités professionnelles d'un conseiller ou d'une conseillère que le ou la secrétaire ordonne aux termes de l'article 5.

Rapport

7. (1) Les personnes qui ont procédé à l'inspection des activités professionnelles d'un membre présentent un rapport d'inspection au ou à la secrétaire.

Contenu du rapport

(2) Le rapport d'inspection des activités professionnelles du membre contient ce qui suit :

- a) l'opinion des personnes qui ont procédé à l'inspection sur le respect ou l'inobservation des normes de compétence de la profession;
- b) les recommandations des personnes qui ont procédé à l'inspection si elles sont d'avis que le membre visé ne respecte pas ou n'a pas respecté les normes de compétence de la profession.

Rapport : obligation du secrétaire

(3) Le ou la secrétaire étudie chaque rapport qui lui est présenté et en fournit une copie au membre visé.

Recommandations

8. (1) Le ou le secrétaire qui, à l'issue de l'inspection des activités professionnelles et après avoir reçu le rapport, décide de faire au membre des recommandations en vertu du paragraphe 42 (3) de la Loi sans les inclure dans une proposition d'ordonnance prévue au paragraphe 42 (4) de la Loi en avise le membre par écrit.

Idem

(2) Le ou la secrétaire peut faire des recommandations au membre lorsqu'il lui donne l'avis prévu au paragraphe (1) ou dans un délai raisonnable par la suite.

Proposition d'ordonnance

9. (1) Le ou la secrétaire qui, à l'issue de l'inspection des activités professionnelles et après avoir reçu le rapport, décide de faire au membre des recommandations en vertu du paragraphe 42 (3) de la Loi et de les inclure dans une proposition d'ordonnance prévue au paragraphe 42 (4) de la Loi en avise le membre par écrit.

Idem

(2) La proposition d'ordonnance est jointe à l'avis prévu au paragraphe (1).

Forme de la proposition d'ordonnance

(3) La proposition d'ordonnance est rédigée, dans la mesure du possible, selon le même formulaire que l'ordonnance rendue en vertu du paragraphe 42 (7) de la Loi.

Délai de réponse

(4) Dans les trente jours de la date que précise l'avis qui lui est donné aux termes du paragraphe (1), le membre qui reçoit une proposition d'ordonnance avise par écrit le ou la secrétaire s'il l'accepte ou non.

Prorogation

(5) Malgré le paragraphe (4), le ou la secrétaire peut, à la demande du membre ou de sa propre initiative, proroger le délai dans lequel le membre doit répondre à la proposition.

Demande de prorogation

(6) Le membre présente par écrit au ou à la secrétaire la demande de prorogation prévue au paragraphe (5), au plus tard le jour où il est tenu, aux termes du paragraphe (4), de répondre à la proposition.

Modification de la proposition d'ordonnance

(7) Le ou la secrétaire peut modifier la proposition d'ordonnance, si le membre y consent, avant l'expiration du délai de réponse; la proposition modifiée est alors réputée celle à laquelle le membre est tenu de répondre aux termes du paragraphe (4).

Omission de répondre

(8) Est réputé avoir refusé d'accepter la proposition d'ordonnance le membre qui n'y répond pas par écrit dans le délai de trente jours imparti au paragraphe (4) ou dans le délai prorogé que précise le ou la secrétaire en vertu du paragraphe (5).

Examen de la proposition par un conseiller : documents

10. Le ou la secrétaire fournit les documents suivants à la conseillère élue ou au conseiller élu chargé, aux termes du paragraphe 42 (6) de la Loi, d'examiner la proposition d'ordonnance communiquée à un membre :

1. Le rapport d'inspection des activités professionnelles du membre.
2. La réponse écrite éventuelle du membre au rapport, y compris sa réponse écrite éventuelle aux recommandations des personnes qui ont procédé à l'inspection.
3. La proposition d'ordonnance communiquée au membre.
4. La réponse écrite éventuelle du membre à la proposition.

Examen de la proposition par le conseiller : refus de rendre une ordonnance

11. La conseillère élue ou le conseiller élu chargé, aux termes du paragraphe 42 (6) de la Loi, d'examiner une proposition d'ordonnance ne peut refuser de rendre une ordonnance lui donnant effet qu'après avoir rencontré le membre visé et le ou la secrétaire.

Examen de la proposition par le conseiller : modifications

12. La conseillère élue ou le conseiller élu chargé, aux termes du paragraphe 42 (6) de la Loi, d'examiner une proposition d'ordonnance ne peut rendre d'ordonnance incluant des modifications apportées à la proposition qu'après avoir rencontré le membre visé et le ou la secrétaire.

Interdiction de communiquer avec le membre et le secrétaire

13. La conseillère élue ou le conseiller élu chargé, aux termes du paragraphe 42 (6) de la Loi, d'examiner une proposition d'ordonnance ne peut communiquer avec le membre visé ou avec le ou la secrétaire à propos de celle-ci que conformément à l'article 14.

Réunion avec le membre et le secrétaire

14. (1) La conseillère élue ou le conseiller élu chargé, aux termes du paragraphe 42 (6) de la Loi, d'examiner une proposition d'ordonnance peut tenir une réunion avec le membre visé et le ou la secrétaire par téléphone ou par d'autres moyens de communication, notamment électroniques, afin que toutes les personnes y participant puissent communiquer les unes avec les autres simultanément.

Présence des deux parties

(2) Sous réserve du paragraphe (3), la conseillère élue ou le conseiller élu chargé, aux termes du paragraphe 42 (6) de la Loi, d'examiner une proposition d'ordonnance ne doit pas tenir de réunion avec le membre visé ou avec le ou la secrétaire seulement, en vue de discuter de la proposition; toutefois, le présent paragraphe n'a pas pour effet de priver le membre de son droit à l'assistance d'un avocat.

Exception

(3) La conseillère élue ou le conseiller élu chargé, aux termes du paragraphe 42 (6) de la Loi, d'examiner la proposition d'ordonnance peut tenir une réunion avec le ou la secrétaire seulement si les conditions suivantes sont réunies :

- a) la réunion ne se tient pas aux termes de l'article 12;
- b) le membre est avisé de la réunion conformément aux paragraphes (4) et (5) et ne s'y présente pas.

Avis

(4) Le ou la secrétaire donne au membre un préavis raisonnable de la réunion avec la conseillère élue ou le conseiller élu chargé, aux termes du paragraphe 42 (6) de la Loi, d'examiner la proposition d'ordonnance qui le vise.

Idem

- (5) L'avis de réunion se donne par écrit et précise ce qui suit :
- a) la date, l'heure et le lieu de la réunion, ainsi que son objet;
 - b) le fait que, si le membre ne se présente pas à la réunion, la conseillère élue ou le conseiller élu chargé, aux termes du paragraphe 42 (6) de la Loi, d'examiner la proposition d'ordonnance peut tenir la réunion avec le ou la secrétaire seulement en vue de discuter de la proposition.

Ordonnance

15. (1) L'ordonnance rendue en vertu du paragraphe 42 (7) de la Loi est rédigée selon le Formulaire 24A [Ordonnance] et contient ce qui suit :

- a) le nom du conseiller élu ou de la conseillère élue qui l'a rendue;
- b) la date où elle a été rendue;
- c) l'énoncé des détails nécessaires à sa compréhension, y compris la date de toute réunion tenue à son propos et le nom des personnes qui ont assisté à cette réunion.

Idem

(2) Le dispositif de l'ordonnance rendue en vertu du paragraphe 42 (7) de la Loi est divisé en dispositions numérotées consécutivement.

Avis d'ordonnance

(3) Le ou la secrétaire envoie au membre visé par l'ordonnance rendue en vertu du paragraphe 42 (7) de la Loi une copie de celle-ci par l'un des moyens suivants :

- 1. en la faisant remettre en personne au membre.
- 2. par courrier ordinaire, à la dernière adresse connue du membre.
- 3. par télécopieur, au dernier numéro de télécopieur connu du membre.
- 4. par courrier électronique, à la dernière adresse électronique connue du membre.

Date de réception : courrier

(4) Le membre est réputé avoir reçu la copie de l'ordonnance envoyée par courrier ordinaire le cinquième jour de sa mise à la poste.

Date de réception : télécopie ou message électronique

(5) Le membre est réputé avoir reçu la copie de l'ordonnance envoyée par télécopieur ou par courrier électronique le lendemain, sauf s'il s'agit d'un jour férié, auquel cas il est réputé l'avoir reçue le premier jour non férié suivant.

Date d'entrée en vigueur de l'ordonnance

(6) Sauf disposition contraire y figurant, l'ordonnance rendue en vertu du paragraphe 42 (7) de la Loi entre en vigueur à la date où elle est rendue.

Définition : «jour férié»

(7) Pour l'application du présent paragraphe, les jours suivants sont des jours fériés :

- a) les samedis ou les dimanches;
- b) le Jour de l'An;
- c) le Vendredi saint;
- d) le lundi de Pâques;
- e) la fête de la Reine (Jour de Victoria);
- f) la fête du Canada;
- g) le congé municipal;
- h) la fête du Travail;
- i) l'Action de grâces;
- j) le jour du Souvenir;
- k) le jour de Noël;
- l) le lendemain de Noël;
- m) tout congé spécial proclamé par le gouverneur général ou le lieutenant-gouverneur.

Formulaire 24A

Ordonnance

(N^o de dossier, le cas échéant)

Le Barreau du Haut-Canada

(Nom du conseiller élu/de la conseillère élue)

(Jour et date de l'ordonnance)

Affaire intéressant la *Loi sur le Barreau*
et *(nom du/de la membre)*, membre du Barreau du Haut-Canada

ORDONNANCE

Le *(préciser la date)*, le/la secrétaire a communiqué, en vertu du paragraphe 42 (4) de la *Loi sur le Barreau*, UNE PROPOSITION DE LA PRÉSENTE ORDONNANCE à *(nom du/de la membre)*, membre du Barreau, qui l'a acceptée le *(préciser la date)*.

(OU, si l'ordonnance inclut des modifications à la proposition,

Le (préciser la date), le/la secrétaire a communiqué, en vertu du paragraphe 42 (4) de la Loi sur le Barreau, UNE PROPOSITION D'ORDONNANCE à (nom du/de la membre), membre du Barreau.)

APRÈS AVOIR LU le rapport d'inspection des activités professionnelles du/de la membre, *(la réponse du/de la membre au rapport)* *(et la proposition d'ordonnance (et la réponse du/de la membre à la proposition d'ordonnance),*

(APRÈS AVOIR TENU UNE RÉUNION avec le/la membre et le/la secrétaire (ou avec le/la secrétaire seulement, en l'absence du/de la membre ou de son représentant/sa représentante, malgré un préavis donné en bonne et due forme) et après avoir entendu les observations du/de la membre et du/de la secrétaire (ou du/de la secrétaire seulement),
OU

APRÈS AVOIR TENU UNE RÉUNION avec le/la membre et le/la secrétaire et après avoir entendu leurs observations quant à une ordonnance qui inclurait les modifications apportées à la proposition par le/la secrétaire et communiquées au/à la membre (le cas échéant, ajouter : et avoir reçu leur consentement à une telle ordonnance),)

LE SOUSSIGNÉ/LA SOUSSIGNÉE ORDONNE ce qui suit :

1. ...
2. ...

(Signature du conseiller élu/de la conseillère élue)

RÈGLEMENT ADMINISTRATIF N^O 26

LES SOCIÉTÉS À RESPONSABILITÉ LIMITÉE

ASSURANCE RESPONSABILITÉ CIVILE PROFESSIONNELLE

Exigences relatives à l'assurance

1. Les sociétés à responsabilité limitée souscrivent l'assurance responsabilité civile professionnelle de chaque membre en vertu du Règlement administratif n^O 16.

DIVULGATION

Maintien des sociétés en tant que sociétés à responsabilité limitée

2. (1) Lorsqu'une société est maintenue en tant que société à responsabilité limitée, dès la première occasion après le maintien, la société à responsabilité limitée en fait la divulgation à toute personne qui était cliente immédiatement avant la modification et qui continue d'être cliente après la modification, conformément à la *Loi sur les sociétés en nom collectif*.

(2) La société à responsabilité limitée répond aux critères de divulgation du paragraphe (1) si elle publie, dans un journal régional, un avis relatif aux questions prévues au paragraphe (1).

(3) Pour l'application du paragraphe (2), l'expression « journal régional » s'entend de tout journal distribué dans la région où la société à responsabilité limitée conduit ses affaires.

It was noted that the French version amendments to By-Laws 14 to 24 and By-Law 26 be circulated to the AJEFO for review.

PHASE II REPORT - BEYOND 2000: The Future Delivery of County Library Services to Ontario Lawyers

Ms. Elliott presented the Phase II Report of the Library Working Group on Delivery of Library Services.

BEYOND 2000: The Future Delivery of County Library Services to Ontario Lawyers

Phase II

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1 INTRODUCTION

PHASE I REPORT

1. On October 23, 1998 Convocation adopted the Phase I report of this Working Group, entitled *Beyond 2000: The Future Delivery of County Library Services to Ontario Lawyers*. The Executive Summary of that report is attached as an Appendix to this report.
2. Convocation made two key policy decisions in adopting the Phase I report:
 - a. that the County Libraries be formed into a library system and,
 - b. that the delivery model for library services be the one called the "Blended System", as informed by the model called the "Electronic Library".
3. Following those policy decisions, the Working Group undertook to develop further the details of the Blended System and to provide an administrative outline for it. The Working Group also was charged with considering whether all members of the Law Society ought to contribute to the county libraries, eliminating local fees.
4. The County and District Law Presidents' Association (CDLPA) debated the Phase I report and adopted the following resolution on November 13, 1998:

"That a Joint Working Group, involving the Law Society Professional Development and Competency Committee and the CDLPA Law Library Trustees and the Metro Toronto Lawyers Association should be struck immediately to:

 - a) Review the recommendations of "Beyond 2,000";
 - b) Plan the implementation of the so-called "Blended Model" before any further recommendations or reports are submitted to Convocation."
5. It is understood that the Working Group which prepared this report, the same in most particulars as that which prepared the Phase I report, satisfies this resolution.

PHASE II PROCESS

6. With one addition, Mike Hennessy, the members of the Working Group have remained the same, being:

Susan Elliott (Chair)
Rich Wilson (Bencher)
Mike Adams (Bencher)
Holly Harris (CBA-O)
Mike Hennessy (CDLPA)

Peter Bourque (CDLPA)
Cynthia Simpson (Middlesex Librarian)
Anne Matthewman (MTLA Librarian)
Janine Miller (Director of Libraries, LSUC)

7. Throughout its deliberations, the Working Group has been guided by the Professional Development and Competence Committee ("PD & C") when policy issues arose. The Chair of PD & C, Mary Eberts, has been extremely supportive of the Working Group and of county law libraries in general. It is only through her skills in editing both the Phase I and II reports that the mass of information produced by the Working Group has become readable at all. Without her assistance the good work of the Working Group might well have been lost.
8. The Working Group has met for eight full days in discussion about this Phase II report. Even with that, it is clear that the many details to be determined in implementing the Blended System should be left to an implementation body to develop, which is one of the recommendations in this Phase II report.
9. A number of letters from individual law associations were received by the Working Group in response to the Phase I report. These letters and some telephone calls to members of the Working Group expressed concerns over various aspects of the change to a new system. As there were three common themes across the letters and telephone calls, the concerns are separately addressed in this report. (See par. 92)

CDLPA LIBRARY COMMITTEE

10. Throughout the deliberations of the Working Group Peter Bourque, the Chair of the CDLPA Library Committee and Working Group member, has sent reports to the CDLPA Presidents, the CDLPA Library Committee and the CDLPA Executive following each meeting of the Working Group, summarizing the discussion and seeking feedback. An ongoing consultation has taken place as a result of these memos.
11. On March 26, 1999 the CDLPA Library Committee met for a full day during the course of which they discussed the work of the Working Group on Phase II. As a result of that meeting, the following two resolutions were passed by the CDLPA Library Committee:

"That the CDLPA Library Committee supports the principle of universal funding and universal access, provided the system of universal access must be designed to ensure a continuing significance for membership in local Associations."

"That the CDLPA Library Committee supports the creation of an independent corporation to coordinate the County Library system and we support the creation of a Transitional Board with adequate funding to bring this purpose about."

2 EXECUTIVE SUMMARY

CONTENTS OF THIS REPORT

12. Unlike the Phase I report, which presented various policy options to Convocation, the main thrust of this report is to present implementation proposals. This report sets out in more detail how the Blended System will work, what the design principles are for it and suggests an administrative structure within which it ought to operate. There is also a recommendation that the detailed implementation of the Blended System be turned over to a Transition Board and that the new system be up and running as of January 1, 2000.
13. There are five major recommendations in this report, for approval of Convocation. None of the recommendations appear to the Working Group to be controversial and, given the resolution of the CDLPA Library Committee, it appears the profession is in agreement with the recommendations. All recommendations and tasks are shown in boldfaced type in the report.
14. The five implementation decisions which Convocation is asked to support are:
 1. Approval of the further description of the Blended System and how it will operate. (Paragraph 62)
 2. Creation of a corporation, which will be in place by January 1, 2000, to manage the Blended System (Library Co.) (Paragraph 171)
 3. Creation of a Transition Board to continue the implementation decisions in the period between approval of the Phase II report and Library Co. becoming fully functional. (Paragraph 239)
 4. Approval of the concept of a Universal Library Fee, subject to future approval of the amount of the fee, within general guidelines. (Paragraph 233)
 5. Approval of a starting date of January 1, 2000 for the Blended System and its multi-year funding. (Paragraph 259)

THE BLENDED SYSTEM

15. The design principles and objectives for a new system of county law libraries adopted by Convocation on the basis of the Phase I report are designed to replace the existing *ad hoc* state of county law libraries with an organized system of libraries, building on the existing categories of large, medium and small libraries.
16. In the Blended system, libraries are either Regional, Area or Local and Phase I included a number of principles for deciding upon the categorization of the libraries.. This report adds the further design principle that categorization of a library is based primarily on usage and no categorization is to be static. The Blended System will remain flexible and responsive to changing circumstances.
17. Within categories of libraries, there may well be different budgets. A large Area library could receive more funding than a small Regional library, given usage patterns and demands on the library. The categorization is important to establish initial staffing and service levels but usage determines budget.
18. Prior to final categorization of libraries, a comprehensive analysis of the existing on-site services and expected demands on the library should be undertaken by a consultant and the Transition Board should then make the final decision as to whether a library is Regional, Area or Local.

SERVICES PROVIDED LOCALLY OR BY SYSTEM

19. Whether a particular library service is provided by the system administration or the local library committee is an ongoing issue that requires balancing the benefits of a system with the need for local input. The Transition Board will make decisions of how services are provided to strike this balance.

ROLE OF THE GREAT LIBRARY

20. The Great Library at Osgoode Hall is not part of the county law library system nor will it become a part of it.
21. The Great Library's collection is unique and comprehensive, serving a broad provincial market with an experienced staff. The Great Library is the custodian of rare legal materials that other libraries do not have and could not justify acquiring.
22. The Great Library will continue to be part of the Law Society, accountable through the CEO to Convocation, pursuing matters of broad provincial interest that do not fall under the county law library system and pursuing those library matters that best fit into the mandate of the Great Library.
23. It will be important for the Director of Libraries and the Executive Director of the county law libraries to delineate those tasks that will remain with the Great Library and, if they cannot agree, then a separate report will be made to Convocation to resolve the issue.

PUBLISHING LEGAL INFORMATION

24. One objective of the Blended System is to make legal information accessible to all members of the legal profession. While traditionally libraries simply distribute information, exploring the feasibility of publishing more legal information and disseminating it more broadly was a Phase I recommendation that is a joint responsibility of the county law libraries, the Great Library and the Law Society to implement. The Working Group foresees a significant role for the Great Library in accomplishing this objective.

FEARS ABOUT THE BLENDED SYSTEM

25. Local law associations are primarily concerned that the move to a system of libraries will be the end of their association and that local decisions will not be allowed.
26. The Blended System anticipates the existence of local library committees and the continued existence of local associations. If local associations do not want to run the local library, they can turn it over to the system administration. Otherwise, they will work with system administration to ensure standards are met and local input exists through a pool of discretionary funding they will control.
27. Through the establishment of "Library Co." the profession as represented by CDLPA and CBAO will be jointly managing the county law libraries with the Law Society. Stable, multi-year funding and a single accountable entity will ensure the local interests and system interests are both managed.

STANDARDS

28. Librarians are used to operating with standards that represent the "best practices" for the system. Standards enable a co-ordinated approach to utilization of resources and let each system component know their responsibilities. They help achieve the design principles and objectives for the system.
29. The standards suggested for the Blended System are largely based upon the *Canadian Courthouse and Law Society Library Standards* and have been modified to reflect the unique characteristics of the county law libraries.

30. Standards will continue to develop and evolve with the system. It will be the task of Library Co.'s board to make sure system standards change with the times to reflect advances in technology and increased demands for information.

GOVERNANCE STRUCTURE

31. At least 10 different groups and hundreds of individuals are currently involved in making key decisions for county law libraries. No single group is accountable for the approximately \$6 million budget and there is no systematic approach to the provision of library services across the province.
32. Just as the administrative structure requires standards, so too the governance structure should adhere to standards. Governors should be appointed based upon criteria including an interest in and knowledge of county law libraries.
33. Proper operating by-laws, policies and procedures must be instituted. An annual report and a long range plan must be produced.

"LIBRARY CO."

34. A new corporation, yet to be named, should be established to operate the Blended System. A board of 15 people should be appointed with 3 or 4 appointees based upon affiliation with a group and the balance appointed jointly by the Law Society and the profession, represented by CDLPA or, if merged, CDLPA/CBAO.
35. The Transition Board should return to Convocation with a report as to whether the new corporation ought to be non-profit, without share capital or a business corporation.
36. An Executive Director is to be hired by Library Co., to oversee the implementation and operation of the Blended System.

UNIVERSAL ACCESS

37. The Blended System envisions legal information being available to all members of the Law Society, throughout the province. This in turn requires what is called "Universal Access" to the libraries, permitting any member of the Law Society to obtain the information.
38. Over the years, members of the Law Society have paid an increasing levy to support county law libraries so that the amount of the current levy approaches an amount sufficient to fully fund the system. With Universal Access, Convocation should adopt a principle that a Universal Library Fee be instituted.

TRANSITION/IMPLEMENTATION BOARD

39. The Working Group has, in Phase I and II, set out the design principles, objectives, standards and policies governing the Blended System. The remaining detailed implementation decisions should be made by a separate group whose sole function is to see to the realization of the Blended System - a Transition/Implementation Board.
40. This board should contain 11 members. Five members will be appointed by 1 each from CBAO, MTLA, LSUC, OCLA and CDLPA. Also, the Director of Libraries for the Law Society, 2 other members of the Working Group and a chair jointly appointed by LSUC and CDLPA. The term of appointment is to December 31, 1999. The Chair will be paid and honourarium and members will receive a meeting fee.

41. The Transition Board will work closely with the Executive Director and will be responsible for establishing Library Co. A budget of \$368,000 for operating the Transition Board, paying the Executive Director and legal and accounting fees is recommended as well as a discretionary budget of \$150,000 to allow upgrading libraries to minimum standards this year.
42. The Transition Board will produce a three-year budget so that stable funding can be granted to county libraries. To the extent possible, the budget shall reflect existing funding of approximately \$6 million however the board of Library Co. will assess this once the standards have been fully designed, the Executive director hired and the Blended system implemented.
43. The annual general administrative costs of operating Library co. are anticipated to be approximately \$220,000. The board of Library Co. should endeavor to bring forward an operating budget that achieves the objectives of the Blended System, including Universal Access, for a per member Law Society levy that is within 10% of the current \$200 per member being levied. As a guideline, the existing level of funding should be used in planning the budgets.

WHEN AND HOW SHOULD THE BLENDED SYSTEM BEGIN?

44. A number of factors were taken into account in recommending a start date of January 1, 2000 for the Blended System. By this date the Transition Board should be finished its work and Library Co. should be incorporated, with a new board in place.
45. The report sets out various tasks, primarily legal and accounting/financial, that need to be accomplished each month to meet this date. It is expected that the Transition Board may have to turn over some unfinished tasks to the board of Library Co.
46. The general approach to the implementation of the new system ought to be to implement it as quickly as possible but not in a way which disrupts local associations. The long range needs of the new system must be considered as well as the transition to the new system. If there are areas of deficiency capable of immediate rectification, that should be done. A thoughtful, planned implementation with maximum benefit in return for minimum disruption is to be sought.

3 THE BLENDED SYSTEM (as informed by the Electronic Model)

A NEW SYSTEM

47. The new system of county law libraries will replace the existing ad hoc situation. The new system is to be designed so that there will be a mechanism for organizing, categorizing, disseminating and making available reliable, relevant, current and historic legal information without the necessity of each library, regardless of location, having to provide this information. The new system is not a structure so much as it is a process. It will never be finished, it will continually improve and respond to changing times.
48. A separate section of this Phase II report details the system standards and the administrative and governance structures that the new system should adopt to meet its objectives. This section of the report elaborates on the basic principles underlying the Blended System so that those charged with implementation of it will have a more complete set of criteria and principles to follow.

49. The Working Group has realized that detailed definition of the Blended System is not possible in the current time frame, nor is it required. For example, whether the profession should have e-mail access to all Area libraries or whether inter-library loans ought to exist should be determined only as part of the detailed implementation undertaken by either the Transition Board or the board of Library Co. The standards applying to and principles underlying each kind of library is set out in this report to better inform the future detailed decision-making process.

HIGHLIGHTS FROM PHASE I

50. Libraries are to be divided into Regional, Area and Local libraries, roughly following existing Large, Medium and Small classifications. Relative to each other, the libraries are distinguished by differences in their:
- ◆ funding and budget estimates
 - ◆ staffing levels and expertise
 - ◆ on-site collections, size and extent
 - ◆ level of service provided on-site
 - ◆ nature of services provided to those outside the county, if any
51. Regional libraries will contain more specialized collections and will be located throughout the province so that any member of the profession can access the collection in person, although in some areas, a considerable drive may be involved for specialized services and resources.
52. Lawyers across the Province who do not have the materials or professional staff in their local or area library to assist them should be encouraged to use the 1-800 telephone number to the Great Library where staff will answer the question if appropriate or will direct the call to the Regional library.
53. Regional libraries will have larger collections than others and will be multi-staffed, including at least 1 professional librarian with a Masters of Library Information Services.
54. Some regional libraries, such as Ottawa, may be larger than other Regional libraries, depending on the size of the user population.
55. More Area libraries will be located in the north, where driving distances prohibit travel.
56. Local library collections will be organized, developed and superior to the existing collection and services of small libraries, but not necessarily in print.
57. Roving librarians will assist local libraries and area libraries with maintenance of the collection, including electronic products.

EXPANDING PHASE I PRINCIPLES

58. Following release of the Phase I report, the Working Group received comments on the classification of libraries into Area and Local. As these classifications had been offered only as an illustration of the possibilities, the Working Group welcomed the comments and has taken them into account in preparing its Phase II report.

The Peel & Halton Examples

59. Several thoughtful letters were received from both Peel Law Association members and Halton County Law Association members concerned over the categorization of their libraries as Area and Local respectively. The Working Group discussed the concerns outlined in the letters in order to further develop the principles upon which the Blended System will be implemented.
60. There is a consensus in the Working Group that the classification system is for general guidance and that individual libraries may well fall in one category or another for reasons related to the circumstances and clientele of a particular county. Classification is required to assist with the allocation of scarce resources and the determination of appropriate standards; it is not intended to establish a rigid hierarchy. Funding allocations will not be uniform across categories of libraries, in any event, since the major determinant of funding will be expected usage and the need for specialized staff to support the facility.
61. The Working Group views usage of the library facility as the primary determinant of which category a library ought to occupy. For example, Peel and Halton each make the case that they serve many lawyers who travel to their court facilities but reside in other counties. A survey by the Peel Crown Attorney over three different days in September and October of 1998 indicated in each case that 2 of 3 lawyers appearing in Provincial Court were not Peel County lawyers. Of 36 appearances, 10 were by Peel County lawyers and the balance were out of County lawyers. It will need to be established, by gathering accurate, reliable statistics, what usage out of county lawyers make of the local library during their appearance in the County courts.

Additional Design Principles

62. To clarify the way in which individual libraries should be classified as Regional, Area or Local, the Working Group wishes to add to its Phase I design principles¹ an additional design principle to the Blended System that:

"It will be important in implementing the Blended System to recognize:
 - (1) the regional differences that exist in the province and
 - (2) the size of the bar that the individual library may reasonably be expected to serveregardless of categorization as a Regional, Area or Local library. None of the categorizations, once made, is to be static. The system is to remain flexible and responsive to changing circumstances in the community."
63. The Working Group recognizes that within categories, there will be variations. For example, Phase I recognized that the Ottawa Regional library will be larger than the other Regional libraries. Similarly, it is expected that Peel, should it remain an Area library, may well have a budget that reflects its size as a large Area library and, in some matters, it could eclipse budget allocations of a smaller Regional library. The Blended System is to be as flexible as possible to reflect local conditions and system needs while establishing different levels of service appropriate to the library facility in the county.

¹ A number of design principles were identified in Phase I: a change to county libraries would not result in "less is received for less" at a provincial level; sufficient resources will be required to promote and facilitate competence; provide access to current and historic legal information for all members of the Law Society, throughout the province; recognize the uniqueness and diversity of the province, particularly the north; facilitate the flow of research in the profession; support the administration of justice; support and encourage collegiality in the profession. Also. Different services will be available in different libraries but, within the whole system all services are available and accessible to members, by some means.

64. Before final categorization of the libraries, the Working Group recommends a more comprehensive analysis of individual counties in terms of who is being served by the library and which existing on-site services are in place. Also, several libraries, including Hamilton, are moving to new facilities so the categorization should reflect known changes and expected growth in particular areas where plans are already in place to consolidate courthouses or otherwise recognize growth in the local community. This analysis should begin as soon as possible, under the aegis of the Transition Board, described below in Chapter 6.
65. As the proposed Phase I categorizations approximately mirror the existing state of a library as either Large, Medium or Small, it is expected that most libraries are currently categorized properly. But, to categorize each library properly as Regional, Area or Local, the Transition Board will have to examine the particulars of each individual library in the system and compare that library's current delivery of services, size of local bar, any unusual circumstances (geographic location, special demands by others etc.) and the existing staffing and collections against the standards set out in this report. In many cases, this examination will be simple and quick. In a few cases, it may take some time. In all cases, the local association should be invited to discuss the categorization and provide further information to the Transition Board.
66. Following such a review, a determination will need to be made of whether the library is capable of fulfilling its anticipated role as a Regional, Area or Local library and a decision made to either accept the categorization contained in the Phase I report "as is" or, provide assistance in improving any problem areas to allow the library to meet the standards of the categorization into which it falls, whether such categorization is changing or not.
67. Assuming Universal Access comes into being as part of the new system, there will probably be increased demands on certain libraries. The budget for those libraries expected to be most affected by Universal Access or other unusual demands, such as new court facilities increasing access, will need to reflect those expectations so that service delivery is maintained.
68. The final categorization of libraries into Regional, Area or Local will therefore have to await a determination of the Transition Board. Given the detailed analysis and the need to begin upgrading libraries where necessary, the Transition Board should be empowered to make the categorization decision without further approval from Convocation.

SERVICES: PROVIDED AT SYSTEM LEVEL OR LOCALLY?

69. Changing to a system of libraries should achieve certain benefits of a system, as outlined in Phase I, including for example:
 - ◆ utilization of all resources, particularly staff and reference services, based on need and demand, regardless of location
 - ◆ common financial planning and exploitation of common management systems and solutions
 - ◆ minimization of duplicate resources and maximum deployment of scarce resources
70. The complete list of expected benefits of a system of libraries can be found in Chapter 7 of the Phase I report. The report identified, and Convocation accepted, that the administrative model implementing the new system would have to address local concerns so that a degree of local autonomy is preserved. Balancing the benefits of a system with the legitimate interests of local associations is a delicate task which will no doubt prove unsatisfactory to many. The primary concern of local associations is that they will no longer run their libraries and will cease to exist. (See separate section of this report *Fears About the Blended System.*)

71. As part of its preparation for this report, the Working Group conducted a quick survey of local associations and county law libraries to determine what their views might be as to whether certain services ought to be provided either locally or centrally. The answers were (and are) non-binding on either the local association or on Library Co. and, given the lack of information provided with the survey, the only thing that can be taken from the survey is the general sentiment of local associations about the concept of central versus local services.
72. While at first blush review of the survey appears to indicate the local associations don't accept the need for and benefits of system administration performing many tasks, the Working Group is actually very encouraged by the answers. Local associations support a role for centralized services in spite of their intense desire to keep local decision-making and a natural mistrust of a central system. While the Executive Director and members of the Transition Board will have to do more work to explain and sell the benefits of the Blended System, there is every indication those benefits will be recognized and accepted. Copies of the survey and letter delivering it are contained in the Appendix.
73. There were 52 responses received to the survey (several associations sent multiple answers, as all had been invited to do). One area of the survey invited respondents to indicate whether they thought a particular service ought to be provided locally or centrally. They were also asked to indicate how the balance between system benefits and local autonomy ought to be struck. Many respondents indicated some services should be both locally and centrally delivered - for example, equipment purchases could be negotiated at a discount but selected locally.
74. Set out below are the tabulated results of the survey. Responses total more than 52 because many answers indicated both local and central roles were appropriate:

Resource	Prefer Locally Provided	Prefer Centrally Provided
Library staff hiring	51	1
Library staff training	19	45
Staff payroll & benefits	38	20
Training lawyers to use library services	44	20
Purchasing office equipment	38	30
Purchasing library equipment	33	37
Purchasing library collection	43	30
Decisions about collection	48	16
Systems maintenance	26	31
Legal research	39	23
Resource	Prefer Locally Provided	Prefer Centrally Provided
Financial planning & budgetting	40	23
Marketing library services	33	30

75. While many survey respondents agreed that benefits can accrue from a system, especially utilizing purchasing power and establishing minimum standards, the comments received with the survey results shared a common theme of mistrust of a central agency. The desire to preserve local decisions was perhaps best summed up by the statement from one association that "Locals know what locals need". This sentiment must be factored into the Blended System standards, without disrupting the benefits of the system. For example, once collections standards have been established, local discretionary funding could be made available for additional materials to be acquired.
76. In areas where the local associations are not presently comfortable with decisions, such as technology initiatives, the benefits of central administration are clear. Local control is most desirable in hiring staff and providing on-site services such as training library patrons. The mixed response to where and how to draw the line and balance the competing interests underscores the fact that there is a continuum at play and in some instances central control will be greater than others. With standards in place the role of central administration will often be to assist local librarians understand and meet the standards through local decisions.
77. There is a clear difference between local *input* and local *decision-making*; some services will be amenable to the former, other services to the latter. Those charged with implementing the overall system and meeting its information objectives will seek out local opinions and input but the decision of what is best for the system will be made centrally. Certain decisions, that do not affect the system integrity, can be made locally with system input. The Transition Board will need to make the final determination of how services are provided and the level of centralization versus local decision making.

ROLE OF THE GREAT LIBRARY IN THE BLENDED SYSTEM

78. The Great Library at Osgoode Hall is not part of the county law libraries nor is it to be part of the Blended System. The Great Library is a provincial library, offering province wide services. It is also the custodian of rare legal collections, specialized, experienced staff and the roots of the Law Society itself. A general overview of the role of the Great Library, and the nature of its collection is set out in the Appendix.
79. In terms of collections, the Great Library's collection is unique and comprehensive. It is the custodian of materials that other libraries do not have and could not justify acquiring.
80. Currently, the relationship between the Great Library and the county libraries is that the Great Library provides certain services to the county libraries such as cataloguing of materials, providing systems support, handling clerical and financial matters or organizing information for the libraries as a whole.
81. The Director of Libraries for the Law Society also provides advice, mentoring and consultation to local libraries and associations with respect to their individual library needs. Under the Blended System many of these personalized, individual services will be provided by the Executive Director and the Roving Librarian(s). Many of the clerical duties currently performed by the Great Library for the county libraries could be transferred to a clerical person at Library Co. if the budget permits such expense. It may be more prudent to retain these services under contract with the Great Library than add staff to the system administration. Similarly, special reference services to members served by Local and Area libraries are probably best begun at the Great Library and transferred to Regional libraries only if necessary.
82. With the restructuring of responsibility for the county libraries, the Law Society Director of Libraries will be in a better position to expand the role of the Great Library to ensure that it continues to play a leading role in the special services and collections it holds and to pursue those matters that are of provincial interest as opposed to local or county interest. The Director will be able to pursue outreach activities at the provincial level. Examples of the activities that the Great Library is uniquely capable of providing are the continuation and enhancement of the Great Library's web site (already launched); the preservation, organization and expansion of the legal research facility memorandums formerly kept by the Legal Aid Plan, which have now been turned over to the Great Library; the specialized research and reference services required by large law firms with their own in-house librarians and, perhaps most importantly, coordinating the legal publishing activities of the Law Society. (See *Publishing Legal Information*, below.)
83. The Working Group discussed whether the Great Library should be completely removed from interaction with the new system of libraries, other than at the normal level of professional courtesies which any library would provide to another library. It is not suggested that the Great Library become one of the libraries in the system, rather the issue to be determined is what affiliation and relationship with the county libraries it should have. The Great Library is unique and has a special character which deserves retaining. Over time it has grown and developed in response to the increasing complexity of legal practice and the need to effectively serve a growing number of lawyers. As new fields of law developed, so the Great Library has acquired materials to ensure that the collection is current and serves the needs of the practitioners.
84. The Great Library would continue to be part of the Law Society, accountable through the CEO to Convocation, pursuing matters of broad provincial interest that do not fall under the county law library system and pursuing those library matters that best fit into the mandate of the Great Library.

85. Given the nature of its services, its resources and the market the Great Library serves, its staff possess research expertise that is unlikely to be duplicated in any other law library in the country and should continue to be made available to all lawyers in the province. This could be done even if the Great Library is not affiliated with the county libraries. This assistance could be more efficiently delivered through the new county library system's librarians dealing with the Great Library or lawyers may continue to deal directly with the Reference Branch at the Great Library as they presently do. Lawyers across the Province who do not have the resources or professional staff available to assist them in their Local library will be encouraged to use the Blended Systems's 1-800 telephone number to the Great Library where staff will answer the question if appropriate or will direct the call to a Regional library.
86. The librarian members of the Working Group certainly held strongly to the view that the Great Library has a role to play in the Blended System, even without being an official "member" library. All members were concerned that regardless of the role assumed by the Great Library, certain "truths" need to be recognized by the Transition Board or Library Co. in determining the role for the Great Library:
- ◆ the profession pays the cost of the Great Library so, if there is a Universal Fee for county libraries, there is only "one pocket" paying for both the county law libraries and the Great Library;
 - ◆ given the budgetary imperatives in the Law Society, the Great Library may have to "sell" certain services to the county libraries but, if that is the case then Library Co. will not have to buy those services elsewhere or create them internally and so the net result to the profession should be neutral (this is an application of the "one pocket" principle);
 - ◆ in designating MTLA as a Regional library, the Transition Board or Library Co. board should consider the "one pocket" principle and take into account the proximity of the fully-stocked and superior collection of the Great Library in Osgoode Hall. As a Regional Library MTLA will continue to offer the same level of personalized services to members and maintain that library as a basic resource; the level of upgrading its collection that makes sense will need to recognize the Great Library collection;
 - ◆ in addition to the members of the profession, the Great Library serves the courts, particularly the Court of Appeal;
 - ◆ specialized or rare books that are required on an infrequent basis need only be acquired once for the profession and these should exist only in the Great Library and not necessarily be duplicated in the county libraries, indeed many historic materials owned by the Great Library cannot now be acquired even if it was decided to duplicate its resources into the county system;
 - ◆ to sever the tie between the Great Library and the county libraries entirely would result in the county libraries losing the benefit of the Great Library's institutional memory;
 - ◆ the Great Library does not possess local focus or offer some non-library services such as lockers and lounges, as do the county libraries
87. These "truths" suggest there is an important role for the Great Library in the Blended System, the exact details of which in implementation will have to be worked out by either the Transition Board or the Library Co. board in conjunction with the Executive Director and the Director of Libraries. Independent of the Blended System, the Great Library will need to maintain the integrity of its collection and receive sufficient funding on an annual basis to continue to be the specialized, unique resource it has become for the profession.

88. Services currently provided by the Director of Libraries or through the Great Library staff, including clerical matters are:
- ◆ Cataloguing collections - 1 senior cataloguer and cataloguing technicians
 - ◆ Systems Librarian provides technology advice
 - ◆ Specialized Reference and Collections Services
 - ◆ Shipping and Distribution to counties
 - ◆ Administrative support and Training to librarians
 - ◆ Clerical services to distribute funds, receive statements and conduct follow-up
 - ◆ The Director of Libraries negotiates group contracts with the publishers for bulk purchasing of materials and has expertise in this area as a result, evaluates library collections, assists in solving local problems and provides advice
89. It will be important for the Director of Libraries and the Executive Director to delineate the tasks to remain with the Great Library and those that will transfer to Library Co. The Transition Board will need to consider the cost of transferring services to Library Co. versus the cost of keeping them with the Great Library and acquiring them through some sort of cost accounting arrangement. Certainly, some of the services, if performed through the Great Library or the Director of Libraries, will reduce the need for staff in the Blended System or in Library Co. and so should be seriously examined.
90. If the Great Library and Library Co. cannot agree on the appropriate role and relationship of the Great Library to the new system then a separate report can be made to Convocation to resolve the issue. Otherwise, it should be a matter for the Transition Board, Library Co. and the Director of Libraries, together with the CEO of the Law Society to determine in the ordinary course of their duties, keeping in mind the special role of the Great Library and the objectives of the Blended System.

PUBLISHING LEGAL INFORMATION

91. The Phase I report identified the need to educate and train library users in the finer points of legal research and proper use of professional library staff. These recommendations, adopted by Convocation, were:
- “i. That libraries engage in a planned and systematic training and education of the legal profession, starting with users of library services, about:
 - (a) the electronic and online library products available;
 - (b) how to consult library staff for reference matters;
 - (c) basic library research concepts and techniques.
 - ii That libraries examine their role as providers of legal information and consider:
 - (a) what role to play, either alone or in conjunction with CLE providers, in the continuing legal education of the profession;
 - (b) whether to become more active in the dissemination of legal information (for example by becoming publishers of legal information) and move away from the traditional distribution role of a library.
 - iii. That libraries consider various ways to market all library services, both traditional and emerging non-traditional services, with a view to bettering:

- (a) the competence of the legal profession;
- (b) the administration of justice;
- (c) service to the public of Ontario, by lawyers in Ontario

and, implement the most appropriate methods.”

92. While all the recommendations ought to be detailed in the implementation of the Blended System, it is recommendation ii (b) that the Working Group wishes to comment further upon in this report. The Great Library has already begun a campaign of educating and training lawyers about using library services which the Blended system could take advantage of.
93. The recent copyright litigation between the Law Society and the legal publishers has taught those involved a valuable lesson. The legal profession cannot afford to continue to let others play such a dominant role in the publication and dissemination of legal information and law reports. Apart from the transaction cost of obtaining legal publications from third party publishers, there is a real risk to the profession that the law will become inaccessible to them because of publication policies or the movement of the databases to offshore, non-Canadian corporations. At the moment, only a very few corporations are publishing the law in Canada and, with international mergers and acquisitions, that number is diminishing.
94. Although the Law Society publishes the Ontario Reports, there is a lot of law being written and published by lawyers for others that might better be published directly to the profession through the Law Society or another organization owned by the profession, such as Library Co. After all, lawyers write the legal textbooks and provide the case annotations for the law reports. Continuing legal education programmes produce current treatises on the law and valuable precedents in specific fields of law. The Law Society's Bar Admission course materials are renowned for their merit as sources of law. The Law Society Act gives the Society control over the publication of court reports in Ontario.
95. The objective of the Blended System is to make legal information accessible to all members of the profession. As an adjunct to this report the Working Group is encouraging the Director of Libraries to begin to explore a means of keeping some control over the legal information provided to Ontario lawyers by becoming involved in publishing materials for the profession and to work with the Executive Director of "Library Co." to distribute legal materials to the lawyers in the Province. The Director of Libraries is currently responsible for the publication of the Ontario Reports and has some experience in this field. There are many ways to achieve this objective. The Working Group notes however, that the following methods should be investigated as soon as possible:
- ◆ more publication of written materials to supplement the Bar Admission Course materials and the Annual Special Lectures;
 - ◆ assessing the availability of legal materials on specific topics and encouraging the profession to write articles and commentary to fill whatever gaps have been identified by the professional staff of the Great Library
 - ◆ use of the Great Library, Law Society and LPIC web sites to disseminate legal information more broadly and increased education and training of lawyers to enable them to be able to retrieve online information using the Internet for caselaw and statutes; the Great Library web site is beginning to fill this role and should be encouraged

- ◆ exploration of the feasibility of maintaining and updating the Legal Aid Research Facility standard memoranda (the complete set, eight boxes of disks, has been received by the Great Library from The Ontario Legal Aid Plan pursuant to a request by the Working Group)
- ◆ publication of legal materials in an online format only (to save expense); if there is an initiative to deliver information electronically to lawyers in Ontario then Library Co. and the Law Society ought to consider whether special legal materials can be developed and delivered to the profession using such a mechanism; also, use of QL to deliver specialized materials (which they have already begun to do) should be considered
- ◆ development of new finding tools by librarians to better exploit the world wide web resources
- ◆ development of remote access to Library Co. catalogues through expansion of the Great Library's web site and delivery of information via remote means to members of the profession, in accordance with copyright laws (if the Law Society obtains copyright to materials or agrees to publish them for members, the copyright issues ought to be clarified and minimized since publication need not follow a for profit, bottom line model)
- ◆ increasing the availability of specialized research for members (building on the Legal Aid Research memoranda) if the cost can be recovered throughout the system

96. The Working Group has not investigated whether any of the above models for dissemination of legal information are technically or economically viable. The members of the Working Group are convinced that there is an urgent need to investigate any and all means of making legal information available to members in a timely and affordable manner. The move to the Blended System appears to permit the Great Library to focus on providing the specialized resources it can best deliver while many of the more routine administrative tasks can be undertaken by Library Co.

FEARS ABOUT THE BLENDED SYSTEM

97. The County and District Law Presidents' Association and the Ontario Courthouse Librarians Association have both endorsed the move to the Blended System. Many individual law associations also support the change to a new system although some believe more than others that the present method of operating county law libraries is seriously flawed.
98. The Phase I report tried to reassure local associations that the change to a new system would be positive and would bring with it the benefits of a system while respecting the history and roots of the county law libraries. Nonetheless, there are three concerns expressed repeatedly about the change and the Working Group wishes to acknowledge and address these fears as part of the further development of the Blended System. While the wording may vary slightly, the fears expressed by individual associations are:
1. "this will be the end of local associations"
 2. "we don't want the Law Society to take over our library or its funds" or "local decisions should be made because no one else knows what we'll use"
 3. "we don't want our library to be downgraded, we've worked hard for it"

99. None of these fears is unanticipated. Each of them has already been addressed in the Phase I report and is further addressed in this report. Change is threatening and, although the current operation of the county law libraries is unsatisfactory, it is "the devil we know". The members of the Working Group understand these issues as, by and large, we come from county law library backgrounds either as working librarians in a county library or as volunteer lawyers with many years experience in the operation of county law libraries. We have spent a lot of time in designing the Blended System, its objectives and the administrative/governance structure overseeing it to take into account the fears and concerns expressed. We are hopeful, even confident, that the proposed structure will mean that these fears will not be realized.
100. Let us address each fear in turn. Starting with, "this will be the end of local associations". We understand this sentiment to arise from two "features" of the new system: (1) a universal fee will mean there is no need to pay a local association fee since the bulk of the local fee pays for libraries and so, without a local fee, there will be no local members; (2) with the system making all the decisions, there will be no need for local library committees and nothing for local members to do.
101. While it is true that local associations tend to revolve around the local law library, that is in large measure not because they are running the library but rather because the library space is used to operate local associations and the librarian also performs local association duties. Neither of these will change. Local libraries will continue to occupy their existing space; local associations will not be displaced. There will still be a need locally for continuing legal education, social events and practice issues meetings. The good news is that the amount of local fee required to support these activities will be minimal compared to the cost of running the library.
102. The local librarian will still perform a certain level of local association business but, if those duties expand and interfere with the ability to tend to the library, it is expected that separate arrangements will be made to retain the librarian or someone else to perform the other duties under separate contract. For example, running a large CLE programme should not be done by the local librarian as part of the library duties but could be done, time permitting, as a separate contractual matter arranged between the association and the librarian. (See more details in the section "Blended System Standards - Staffing Requirements")
103. Local library committees will no doubt continue and there is a role for them. In fact, their role may be more important now that a co-ordinated system will be in place. If a local association does not wish to operate the library, then the system will respond and provide the services, working directly with the local librarian and the Roving Librarian. If a local association wants full involvement in the library operation then they will be able to do so by working closely with the Executive Director of Library Co. to implement and maintain the standards. In either case, there will be minimum standards for collections, staffing, equipment, operations and facilities and the local library will be expected to meet those minimum standards. Unlike the current *ad hoc* arrangement, the Blended System will allocate the appropriate funds to achieve those expectations.
104. The second concern: "we don't want the Law Society to take over our library or its funds" or "local decisions should be made because no one else knows what we'll use". There is no intention to take over any library. The establishment of the Blended System will not cause the closing of any library; all libraries will be categorized and provided with a set of standards and a budget to achieve those standards. Some libraries will receive funds to upgrade their facilities, equipment or collections. Some library staff will receive training to help them with duties like training lawyers to use electronic products. We expect well over 90% of all associations will continue to have a local library committee work closely with the local librarian and the Executive Director to achieve the maximum system and local benefits.

105. While a minimum standard of collections will be maintained in each library, there will also be a suitable pool of discretionary funding given to local associations to supplement their local holdings based on local practices. The Blended System does wish to avoid unnecessary duplication of resources and maximize scarce resources which should make more funds available for core resources, even with the cost of system administration. As the system aspires to make legal information available throughout the province, the absence of a particular book or report or electronic product in one library should have less of an impact than it does now since another library can respond to the information request.
106. The concern is that "we don't want our library to be downgraded." This concern may be driven by the lack of detail concerning the holdings for each category of library. There is no intention to downgrade any library and every intention to improve individual libraries as well as creating an integrated system of legal information centres. Through input at the local level and standards ensuring a minimum, consistent acceptable level of service the system of libraries should be better than currently exists. It is true that some books may be replaced by electronic products; it is also true that the need to educate and train lawyers in the use of electronic products has been identified as the first order of priority for library users. However, the increasing role of technology still allows for books in the system.
107. Helping the profession find and retrieve relevant legal information is at the heart of the Blended System. There will be more emphasis on the skills of professional librarians. Centres without a professionally trained librarian will now receive the services of a Roving Librarian as well as access to librarians in other centres. The Regional libraries will operate a form of outreach service to lawyers in their region. Area libraries will have more resources available to assist users and local libraries will have staff trained in the best way to obtain information from the system. Libraries will also be more proactive in disseminating legal information and helping lawyers better utilize their services.
108. Perhaps the main reason the Working Group is confident that the fears expressed are unwarranted is that the profession is being put in charge of its own library system through the establishment of Library Co. There will be one group responsible for the operation of county law libraries and that group will be selected jointly by the profession and the Law Society. An Executive Director will be charged with ensuring the system operates to the satisfaction and benefit of all users. The financial operation and distribution of funds will be rationalized and formalized. Funding will be predictable and stable, being on a three year cycle. A transition period will be in place and local associations will be kept fully informed of developments. The Blended System will not replace local associations or local libraries, it will provide certainty to and leverage for the county law libraries in their dealings with others, including the Law Society, legal publishers and government.
109. There are six tools built into the Blended System to support the change and enable its success:
1. Stable, multi-year funding
 2. Recognition of the need to plan for technology and funds to enable it
 3. A knowledgeable board overseeing Library Co.
 4. Good staff throughout the system, starting with the Executive Director
 5. Local discretion and local input to keep perspective in the system
 6. A formalized relationship with the Great Library
110. The goals for the Blended System are to create an intelligent, flexible and responsible way of organizing county law libraries, adding value and expertise to the libraries so that the sum of the parts is much greater than the whole. It is only through the co-operation and effort of the people involved that these goals will be met.

4 STANDARDS FOR THE BLENDED SYSTEM

BACKGROUND

111. In Phase I Convocation has accepted as a statement of principle that:

“To be effective, a library system must be planned and co-ordinated. A library system operates with standards for collections, staff, cataloguing, charges and all other major operational or administrative matters. Establishing standards does not mean all libraries would be identical, it means a minimum level of access would be established and materials required for each area would be identified and made available.” (Phase I report, page 126)

112. Professional libraries and librarians operate with standards for the libraries and for the staffing, administration and governance of libraries. The Courthouse and Law Society Library Management Group has prepared *Canadian Courthouse and Law Society Library Standards*, for which the Working Group is most appreciative. Released in 1998, these Standards are an update of the standards formerly ratified in 1986. The Standards in turn borrow from the American Association of Law Libraries.

113. These documents and the professional expertise of the three law librarian members of the Working Group have formed the basis for the recommendations of the Working Group with respect to standards. Where this report might differ from the Canadian standards, is probably because the Blended System is not just a library in a courthouse but rather a series of courthouse law libraries with a history dating back almost to Confederation and the Working Group has tried to reflect this history in its promulgation of standards.

114. The general library system standards formulated by the Working Group, including those relating to governance and administration, are set out in this section of this report. Specific standards that the Working Group has designed to apply to individual libraries are set out in the Appendix.

WHY HAVE STANDARDS?

115. The quality of any library or library system revolves around acknowledged and tested principles of operation. These principles ensure that library collections are pertinent and up-to-date, that library staff are properly qualified and compensated, that technology and equipment is current, that physical facilities are adequate and safe, that long-range planning and budgetting is ongoing, and that library services are promoted appropriately.

116. Standards enable a library system to have a co-ordinated approach to utilization of resources and a common goal in organizational planning and operation. Each component of a system (i.e. each library) has responsibilities to fulfill and has an obligation toward the other components of the system. Standards help libraries meet their individual and corporate responsibilities by knowing what is expected of them by the other members of the system, the funding bodies and the users of the system.

117. These standards will help achieve the following design principles adopted in Phase I:

- ◆ promote and facilitate competence in the profession
- ◆ provide access to current and historic legal information for all members of the Law Society, throughout the province
- ◆ recognize the uniqueness and diversity of the province, particularly the north and its huge geographic distances
- ◆ facilitate the flow of research in the profession
- ◆ support the administration of justice in the province
- ◆ different levels of services are acceptable within individual libraries but all services will be available by some means to users

SYSTEM STANDARDS

118. The standards employed in the Blended System must help achieve the design principles and objectives for the system, including maintaining at least the same quality of services as presently available without increasing the overall funding in the system. It is expected that through employing economies of scale in some areas and reducing duplication of services in other areas, a systematic, planned organization of resources will achieve the goal of providing universal access to legal information, regardless of physical location.
119. Generally speaking, the standards adopted should be easily attainable by each category of library but not without some effort and attention to the standard. The standards ensure lawyers throughout Ontario that by entering any library in the system, reasonable expectations of what services that library can provide will be met. The standards will take into account the size and location of the libraries, as well as its categorization as Regional, Area or Local.
120. Standards live in a complex and changing environment. They must be monitored, updated, changed and implemented as a cohesive whole and as part of a dynamic structure. The Transition Board and the board of Library Co. will each be charged with overseeing ongoing development and maintenance of system standards. The Executive Director is responsible for "on the ground" implementation of the standards, guiding the local librarians in implementation. The local librarians in turn are expected to advise the system administration about how the standards are operating and provide feedback from library users.
121. In determining how to operate the Blended System to obtain these results, there are several areas for which standards must be articulated:
- ◆ Information, Reference and Research Services
 - ◆ Staffing
 - ◆ Collections
 - ◆ Physical Facilities
 - ◆ Operations
 - ◆ Budgetting
 - ◆ Technology and Equipment
 - ◆ Circulation of materials
 - ◆ Public Information and communications
122. Standards must continue to develop as the system grows and matures. The establishment and maintenance of the standards will be an ongoing policy matter for both the Transition Board and the Library Co. board.

Information, Reference and Research Services

123. The success of the county law library system pivots on the excellence of its information, reference and research services. A well-used library is service-oriented. Libraries are no longer fortresses hiding books and information is not confined to what is in the library facility. Knowing how and where to get information is what professional librarians are trained to do.
124. All libraries within the system have an obligation to assist users according to their type of collection and level of staff expertise or to direct users to another library in the system if necessary.
125. No library should refuse to assist a lawyer in gaining information. Local libraries must be able to provide basic instruction for electronic materials and for the use of the core collection. This may mean that local library staff will require special library training to help them assist library users with basic reference questions.

Staffing Requirements

126. Qualified and trained staff are another essential feature of a viable library system. The system and its administration have obligations to staff at all levels and, in turn staff have obligations and responsibilities to library users and to other staff and libraries within the system.
127. The professional expertise of staff required for individual libraries is detailed in the description of the Blended System and in the Appendix. Generally, all staff should meet or exceed the educational requirements. Ongoing training must be provided to staff appropriate to their level of service and professional expertise.
128. The Blended System will be augmented by roving professional librarians, who will ensure that area and local collections are adequate and who will offer end-user training and reference assistance in local and area libraries as necessary. While it will be the responsibility of the Transition Board to determine the number of roving librarians and detail their duties, the staffing standard to be adhered to is that there must be a sufficient number of professional librarians deployed throughout the system to ensure that the information, reference and research services standards are realized.

Local Association Duties

129. The Working Group recognizes the historic importance of the local librarian to the operation and maintenance of local associations. This connection should be preserved and fostered where appropriate but only to the extent that it does not interfere with the operation and maintenance of the library to the standards for that level of library. After all, there are only so many hours available for the librarian to perform their core duties and if there are many association duties, the library duties must take precedence. It may be that local associations will wish to retain the services of the librarian (not all librarians are full time) or another person for other association purposes such as special events co-ordination and planning. If so, there should be a separate arrangement and payment if the duties involved are a significant departure from routine association business or library services. (See also discussion under *Budgetting*.)

Collections

130. A library system must support a collection of materials (print and electronic) which is related to needs of the local communities and the system as whole. To this end, the new library system should utilize the collection standards defined by the Canadian Courthouse and Law Society Management Group. These Standards recommend a mix of formats based on availability and the needs of the individual library.
131. According to these Standards, factors to consider in format selection include:

- ◆ degree of computerization
- ◆ physical attributes of electronic materials vs. print
- ◆ quality of product
- ◆ availability of similar and equivalent materials in different formats
- ◆ remote access
- ◆ cost

132. As identified in Phase I, local libraries must have at least a core collection of Canadian materials. Access to materials specified in the Standards means access within the new system of libraries and not that each library must have all materials. Collections will vary significantly across Regional, Large Area, Area and Local libraries. The Great Library's collection should also be kept in mind when reviewing the collections in the system's libraries.
133. The Working Group recommends that each library also have access to QL, the Internet and e-mail for the staff. Whether users of the library can also access any of these should be a matter for individual libraries to determine based upon a number of local factors such as physical facilities, experience of the staff and demand by members.
134. Individual libraries should make supplementary collections decisions based on access, portability and cost. Any libraries lacking the expertise to make such determinations would rely on the roving librarian or the system Executive Director for these decisions.
135. Other general collection standards which apply to the system include:
- ◆ where applicable French language materials must be available
 - ◆ there will be reference and circulating collections
 - ◆ collections should be fully catalogued
 - ◆ collections in a given area should support local courts
 - ◆ there will be a retention and weeding policy
 - ◆ beyond the core collection, there should not be unnecessary duplication of materials within a region
 - ◆ there will be a policy for management of rare books as necessary
 - ◆ maintenance and preservation of collections, particularly emergency procedures (for example, prevention of fire, smoke and water damage and handling the consequences of such damage.)

Physical Facilities

136. There is an obligation on the system to make sure facilities throughout the system are adequate to meet the other standards. So, system wide standards for physical facilities are required but they may have to be phased in over time given the unique situation of courthouse libraries. Physical facility standards have the added advantage of providing guidance for the library system when dealing with Ontario Realty Corporation over space planning and retention of space issues which seem to arise each year at one or more locations in the province. The standards also assist in negotiations for upgrading and relocating poor facilities within court houses.
137. Industry/building code standards must be followed in these areas:
- ◆ air quality
 - ◆ noise factors
 - ◆ floor load
 - ◆ lighting levels

138. Within the library system, there must be adequate provision for equipment, computers, telecommunications, and electrical wiring and cabling, keeping in mind growth factors in technology and electronic access to information.
139. The physical arrangement of library shelving, work stations and staff work areas must be as flexible as possible to allow for continuing installation of new technology, and the growth and rearrangement of libraries.
140. It will probably be necessary to conduct inspections of library facilities to determine whether they meet these standards. The Transition Board should arrange such inspections and recommend any corrective measures, together with a budget and implementation plan before January 1, 2000. The Transition Board should also be given a budget and the power to implement system upgrades immediately where appropriate and affordable.

Operations

141. The operating infrastructure of the library system must be in place at both the system-wide level and at the individual library level. The information-reference-research function is dependent on the day-to-day background operation of the libraries and the system.
142. The system administration must ensure that system-wide policies and procedures for the following are in place:
 - ◆ facilitating bulk purchases of print and electronic resources at reduced rates
 - ◆ selecting, acquiring, and cataloguing materials in all formats within the core collection, including a collection policy
 - ◆ cataloguing of materials not in the core collection for area and regional libraries
 - ◆ maintenance and system-side availability of an on-line catalogue
 - ◆ maintenance of system-wide statistics on library use, services offered, new books or electronic materials, equipment, money spent by the system and by libraries, money raised by system and locally, binding of materials
 - ◆ creation of an inventory of materials and equipment within the system
 - ◆ preservation of historic/rare materials
 - ◆ weeding materials from collections

Budgetting

143. There will be a system-wide budget for each category of library operation and individual libraries may also have budgets for enhanced collections and staffing suitable to local needs. There must be a level of common financial planning and exploitation of common management systems and solutions across the system.
144. Budgets for the operation of local associations will be kept separately and funds earmarked for libraries may not be used in the general operation of local associations. Guidelines should be established in conjunction with local associations delineating the amount of staff time/funding which can be directed to local association business (see also standard for *Staffing Requirements*).
145. When the new system has been costed and budget responsibilities assigned, there must be standards detailing:
 - ◆ annual budgetting procedures at the system and local level
 - ◆ proportion of system funds allocated to Local, Area and Regional libraries
 - ◆ proportion of system funds allocated to the administrative operation and management board
 - ◆ financial accountability at all levels
 - ◆ generation of income at the local level
 - ◆ spending decisions at the system and local level

146. These standards should be written in conjunction with local associations, taking into account local autonomy that does not diminish the standards but still adheres to the overall standards required to administer the new system in accordance with the objectives, policies and standards. Better financial and management information records developed for the management of the system take priority over local methods of bookkeeping and recording if there is any conflict between the two sets of objectives.
147. The budgets must allow for continued growth of collections and technology. Retention of qualified staff and appropriate benefits must be incorporated into the budgets. The system budget should be prepared in coordination with individual library budgets and provide guidelines for use of system money in individual libraries.
148. The budget that is developed for the system must accomplish the standards within the policy framework established for the system. The Canadian Courthouse and Law Society Library Standards document suggests that a normal mixture of operations, collections and staffing for library budgets would be:

Collections: 30 - 40%
Staff: 40 - 60%
Operations: 0 - 20%

However, the Working Group recommends that this form a guideline only for the overall system and that the Executive Director and Transition Board determine whether this mixture is appropriate for the Blended System.

149. To assist with the establishment of the budgets and financial procedures, particularly the financial reporting requirements, the Working Group recommends that the Transition Board retain accounting services commensurate with the task and provide appropriate training and guidance to all local library staff to enable them to adhere to the reporting requirements.

Technology and Equipment

150. To the greatest degree possible, software, operating systems, hardware and other equipment should be consistent across the system. Consistency allows ease of use for lawyers as they move throughout the system and facilitates easier maintenance programmes.
151. The system should upgrade technology and equipment as required and should embrace new technology when it has been proven to be reliable and useful. When considering technology, balanced use and best practices principles should be adhered to and should both filter down and percolate up through the system.
152. Technology should support access to materials in a variety of formats. After the start date of the new system (January 1, 2000 proposed) individual libraries are discouraged from making technology purchases which do not fit into the system plan without administrative approval because the benefits of the technological infrastructure will soon be lost if each library operates different technology.
153. System-wide access cards for photocopiers, fax machines and printers should be acquired.
154. A time limit may be set for associations to bring their technology and equipment into line with system standards. The Transition Board should determine the needs of each library and decide whether a one-time capital expenditure from the accumulated library funds ought to be made immediately to bring all libraries up to the appropriate technology standard.

Circulation of Materials

155. Local libraries may determine which parts of their collections may circulate but should keep in mind that materials must be available for use in court and for in-library research. Should local libraries decide to circulate materials they should establish policies and procedures regarding:
- ◆ which materials can circulate
 - ◆ loan periods
 - ◆ who can borrow - local members, members of other associations or any lawyer and procedures for borrowing so that the materials remain available when required
 - ◆ non-lawyers should not be able to borrow circulating materials other than through an Interlibrary Loan programme
 - ◆ fines for overdue materials and procedures for reclaiming overdue materials
 - ◆ how materials are checked out/library cards
156. When a decision is made regarding Interlibrary Loan at the system-wide level, policies and procedures should be established regarding:
- ◆ a separate circulating collection vis-à-vis circulation from general collections (purchase of duplicate materials)
 - ◆ a timely and efficient mechanism for moving materials throughout the system
 - ◆ loan periods
 - ◆ will books circulate within a region or throughout the entire system
 - ◆ is there Inter-Library Loan outside the immediate system
 - ◆ will borrowed materials have to be used strictly within the borrowing library

Public Information and Communications

157. System-wide information about the implementation of the new library system will be essential and must be carried out prior to actual implementation. Information and explanation of the changes and improvements being generated should be communicated regularly to all members of the profession.
158. There should also be wide publication and promotion of both the Phase I and Phase II reports together with information sessions in each region by the Transition Board. Other information initiatives must also be conducted as the Transition Board sees fit.
159. Following the initial publicity for the new system, administration must ensure that continued communications about system procedures and library services is made available to all lawyers. This publicity could be accomplished through a system web site, e-mail to listservs, advertisements in the Ontario Reports and legal newspapers, presentations at association annual meetings and organized training sessions.
160. Local libraries should also advertise services to their local members and lawyers in their areas. The system administration may assist with that information distribution for Local libraries and if requested to do so by Regional and Area libraries.
161. This information to members could take the form of:
- ◆ newsletters, bookmarks, articles, seminars, brochures
 - ◆ presentations at local association annual meetings
 - ◆ library open houses and demonstrations especially end-user computer training and seminars on research tips/techniques
 - ◆ individual web sites or pages on the system web site

162. The recommendations contained in Phase I about training and education of the legal profession (at page 128 of Phase I) must be implemented as part of the information and communications strategy for the system.

5 GOVERNANCE STRUCTURE

BACKGROUND

163. Developing an appropriate governance structure for the Blended System involves balancing the benefits of an overall system with the need for local input and preservation of a certain amount of local autonomy.
164. A new approach to the administration and governance of county law libraries is required. The current method is that any, all and each of the following have direct, uncoordinated and unclear input to the operation of the local library and the distribution of the central funds collected by the Law Society:
- ◆ 48 local association library committees with local lawyers
 - ◆ each of the local county law librarians
 - ◆ a CDLPA library funding committee
 - ◆ a full CDLPA library committee of over 25 members
 - ◆ executive members of the library committee (who meet together and with the Law Society's Director of Libraries)
 - ◆ the benchers on Professional Development and Competence Committee
 - ◆ various library working groups of PD & C
 - ◆ Convocation
 - ◆ CDLPA sitting in Plenary session twice a year
 - ◆ the Ontario Courthouse Librarians Association
165. This list does not include other groups that influence or directly affect the county libraries such as the Law Foundation of Ontario, QL Systems, the legal publishers, staff of the Law Society, the Canadian Bar Association - Ontario, the Ministry of the Attorney General, Ontario Realty Corporation, library users and other library communities.
166. The result of this arrangement, detailed in Phase I, is that there is no systematic approach to the provision of library services across the province, even though some individual county libraries provide excellent service to members. There is actually no one "in charge" of the county law libraries and there is no defined role for any of the groups outlined above, so that everyone feels they are in charge and at the same time recognize that no one is running the overall libraries.
167. This lack of clarity and precision in responsibility and accountability cannot continue given the commitment to a system of libraries. A single group has to be accountable to the profession and to Convocation for the success or failure of the Blended System. This is particularly so if there is a decision to adopt universal funding for libraries. A \$6 million budget cannot be successfully administered and governed by the loose structure of disparate groups set out above.

PRINCIPLES TO BE OBSERVED AND IMPLEMENTED

168. The Phase I report identified certain principles of a system that the administrative and governance structure must facilitate. These principles become the tasks to be supported by the administrative structure and implemented by the staff. They also form the initial policy objectives for the overall governance of the system:

- ◆ a common and co-ordinated approach to collection development achieving the objectives of the system, rather than of individual libraries
- ◆ development of levels of complexity with planning and deployment of all resources - staff, collections, funds, equipment - appropriate to those levels
- ◆ mobilization of resources, such as staff and equipment, within the system to respond to emergencies, short term needs and special circumstances
- ◆ utilization of all resources, particularly staff and reference services, based on need and demand, regardless of location
- ◆ access to all library system components by users, regardless of geographic proximity
- ◆ common financial planning and exploitation of common management systems and solutions
- ◆ minimization of duplicate resources and maximum deployment of scarce resources
- ◆ the library facility, either actual or virtual, provides the support to accomplish the goals of the law libraries
- ◆ a mechanism exists for organizing, categorizing, disseminating and making available reliable, relevant, current and historical legal information within the system without the necessity of each library, regardless of size or location, having to provide this information
- ◆ there is a planned organization of libraries as a group, to reduce demand on individual libraries

STANDARDS FOR GOVERNING

169. The purpose of the governance structure is to increase the likelihood that the system will be administered in an efficient and competent manner. The governors of the system will be held accountable for delivery of the objectives and policies established for the system.
170. In this section, we outline the standards that must be observed in creating a governance structure for the new library system, and observed by that governance structure in carrying out its mandate. Taken from various sources², these standards set out the minimum requirements for membership in the governing structure, planning and reporting requirements and policy responsibility.

"LIBRARY CO."

171. The Working Group recommends that following the work of the Transition/Implementation board (see Chapter 6) one governing body be created to oversee the new library system and carry forward the policy decisions necessary to effectively implement the objectives of the Blended System. While a committee structure could be implemented for such governance, the Working Group quickly came to the conclusion that a new corporate vehicle would be the best way to correct the governance problems now in existence and reinforce the fact that it is a new system.

² Standards are taken primarily from the Canadian Courthouse and Law Society Library Standards adopted in 1998 and the American Association of Law Libraries "County Law Library Standards" produced in 1996.

172. A corporation carries the benefits of providing clear legal status, the ability to hold assets, employ staff, separation from the funding bodies, a better focus for interested constituencies and, independence from the existing and historical relationships. It is a fresh start for a new system. It also connotes a business-like approach to the administration of the system. A corporation can be structured in various ways and only the skeletal outline is being recommended here. The Transition Board will be required to bring to Convocation for approval the draft corporate by-laws and a recommendation as to whether the corporation should be a non-share capital corporation or a business corporation.
173. The Transition Board should also recommend a name for the corporation, which for the purpose of this report only, is referred to as Library Co.
174. The Working Group recommends that the office(s) for Library Co. be located in the Greater Toronto Area to facilitate travel to county towns by road or air but that it not be located in downtown Toronto. It is important to distinguish the new system from the old and to reflect the fact that it is a county library system. The Working Group recommends that the Transition Board determine whether there is space to house Library Co. in Brampton in a suitable facility.
175. In discussing the structure of Library Co., the Working Group examined options for the size of the board, the appointment process and ownership of Library Co. Ultimately, the Working Group agreed upon these issues and determined that it should make a recommendation on these matters, rather than present options. The options dealt with whether a larger or smaller board was more suitable and whether appointments ought to be by virtue of membership in a particular organization or based on merit.
176. Once Convocation determines the general structure of the corporate entity to be established and, if the CDLPA Plenary session in May and MTLA's governors agree with such determination, then the Transition Board can begin the process of establishing the corporation, setting up the by-laws and recommending to Convocation in the fall of 1999 any further options that must be determined to make the structure operational. If there is disagreement by CDLPA and MTLA then Convocation will have to assess whether to proceed in any event or start afresh. As the CDLPA Library Committee has already endorsed the principle of Library Co., it is anticipated that CDLPA Plenary will also support it.

The Board of Directors - Size & Appointments

177. The board should have an uneven number of members. After examining various sizes, the Working Group recommends a board of fifteen (15) be appointed with a Chair and 1 or more Vice-Chair(s) as may later be recommended by the Transition Board. The board appointments should be for staggered terms of three years to preserve experience while introducing new energies and ideas on a regular basis. Initial appointments will need to be for various terms (1, 2 and 3 years) to begin the process.
178. Most significantly, the standard for appointment to the board is to be related to library knowledge and interest, as outlined elsewhere in this report.
179. The general outline of the Library Co. board structure is:

Appointees: non-political, based on criteria set out in standards;
 11 or 12 of the 15 must meet standards for governors;
 3 or 4 are appointed based on affiliation to a group and do not have to meet the criteria:

- ◆ MTLA and OCLA each are entitled to 1 appointment
- ◆ CBAO, if it does not merge with CDLPA has an appointment
- ◆ the Director of Libraries for the Law Society is automatically appointed as an *ex officio* voting member
- ◆ the balance of the appointments are jointly made on consensus of LSUC and CDLPA (see details below)

- Meetings:* initially, will meet monthly;
Expect quarterly meetings once system established
- Committees:* small, specialized committees on finance, standards, collections and technology will meet 4 - 6 times per year, as required;
outside expertise shall be added to these committees (e.g. accountant)
- Role:* the role of the board is as policy overseers;
advisory matters are the responsibility of the Executive Director to bring to the board when policy is required
- Staff:* the Executive Director reports to the board but is not a member of it;
good professional staff is the key to success of the model as it is the job of the Executive Director and any other staff to implement board decisions and monitor adherence to standards by individual libraries
- Relationship to Local Associations:* local associations may choose to have a library committee or not;
if no local committee then board, through Executive Director, provides services to local library; if there is a local library committee then board and local committee negotiate library services and arrangements, within the system principles and objectives
- Relationship to Members (Shareholders):* must report at least annually to both LSUC and CDLPA;
keep all members informed of significant developments as they occur;
requires permission of LSUC and CDLPA to change objectives, policies or principles upon which it operates

180. The Working Group does not envision a large bureaucracy for Library Co. The Transition Board will have to return a multi-year budget showing the cost of the administration, the expected savings contributed toward the cost and the quality improvements realized through the implementation.

Joint Appointments to the Board

181. The Working Group is concerned that the board of Library Co. be composed of people who meet the standards for county law library governors and have the best interests of the system in mind, rather than any other agenda. To the extent possible, Library Co. should operate as an arm's length body without influence from the members or shareholders. The policies and limitations placed upon the board by the Phase I and II reports and the by-laws and articles of incorporation will determine the scope of authority of the board and the objectives of Library Co., and therefore it will not be necessary to use board appointments as a direct way of ensuring that particular policy objectives will be followed.
182. The 11 or 12 jointly appointed positions should be selected through a shared appointment process whereby the Law Society and CDLPA would, in effect, be "locked in a room" until they agreed on the appointees. As there is to be a staggered appointment process, this may be an annual event. The appointees must meet the criteria/standards for governors and collectively the entire board must represent the diversity of the profession.

183. The discretion of the Members/Shareholders cannot and should not be fettered, in their selection of Directors. However, the work of electing directors is expected to be facilitated by a Nominating Committee of the Board. The corporate bylaws would create the Nominating Committee and set out a mandate of how it might advise the Members/Shareholders.
184. This mandate would guide the Committee in the selection of individuals whose names would be put forward as Board candidates. It is in this mandate that the delicate and important task of ensuring competent and balanced succession would begin.
185. For example the Nominating Committee mandate might include the following terms:
- ◆ that in advancing names of prospective Directors, efforts be made to ensure that the Board is both balanced and representative of the many identifiable constituencies that it serves, including:
 - different sizes of law firms
 - different sizes of communities
 - different regions of the province
 - different areas of practice
 - English and French languages
 - ◆ that consideration be given to the experience or expertise of prospective Board members to ensure competence and a diverse array of talents; being a member of the bar is not a prerequisite;
 - ◆ that fair consideration be given to all who express an interest in a commitment to serve on the Board.
186. The first board of Library Co. should take office on or about January 1, 2000. Some of the appointees should be members of the Transition Board and some should be new appointments. The Working Group recommends that the Transition Board be required to put forward a list of at least 17 names for appointment to the 11 or 12 jointly appointed positions but that neither the Law Society or CDLPA be restricted to making appointments from the list, provided the general criteria for appointment are met.

Ownership of Library Co. - Who are the Members or Shareholders?

187. The reason for establishing Library Co. is to clarify the ownership and management of the county law libraries under the new Blended System so that the former unclear, *ad hoc* arrangements are replaced by a single purpose legal entity whose function is to operate the system in accordance with stated policies and objectives. If Library Co. is a non-share capital corporation, it will be formed by two members. If it is a business corporation, it will be owned by two shareholders.
188. The focus in the Working Group has been on a non-profit, without share capital corporation, pursuant to the provisions of the *Corporations Act*, Ontario. As this is a less familiar form of corporate vehicle for many lawyers than the traditional business corporation, some of the key attributes of a non-profit, non-share corporation are outlined here.
189. The phrase non-profit implies that the corporation will be carried on without financial gain flowing to its owners / organizers. This does not prevent the corporation from acting in a business-like fashion in virtually all other respects. Nor does it mean that the corporation is somehow prohibited from holding a surplus of revenues over expenses in any given accounting period. It does mean though, that the surplus must be used to further the objects of the corporation, and any such surplus may not be handed over as a dividend or profits to the owner / organizers.

190. The phrase without share capital has a number of implications. Unlike typical business corporations, there are no shareholders and there are no shares. Instead the owners/ organizers are called Members.
191. There may be different classes of membership, and different voting rights may attach to the different classes of membership. The Working Group anticipates that if Library Co. is organized as a non-share corporation there will be only two full voting members, the Law Society, and either the CDLPA or its successor merged organization. Each will have an equal vote in electing the members of the Board of Directors of the corporation, save for those Board directors who are *ex officio*. This structure reflects the fact that the Law Society and CDLPA are the entities which historically have had the major, shared responsibility for the libraries.
192. The phrase *ex officio* means that the Board director is appointed by virtue of holding a particular office - for instance Director of Libraries, LSUC. It is anticipated that there will be either 3 or 4 *ex officio* Directors in the new corporation, on a 15 person Board. The remaining 11 or 12 governors would be elected by the 2 full voting Members.
193. Historically, county law library administration has been a loose partnership between the profession and the Law Society. Traditionally, funding has been provided roughly equally by the profession at large through Law Society levies, grants or funds and through local association membership fees. The Working Group considered whether these two parties should continue to be the ones in charge of county law libraries.
194. The Law Society collects funds from the profession for library purposes. It therefore has a responsibility to see to the application of those funds and be satisfied that value for money has been achieved.
195. With respect to libraries, the profession is currently represented by CDLPA and MTLA. CBAO currently plays no role in county law libraries but if CDLPA and the CBAO merge, the merged organization will presumably represent the profession on library matters³. Local associations are represented through CDLPA and do not require separate status, with the possible exception of MTLA which may or may not be part of any merged organization. If it is not, then its status will need to be determined.
196. The Working Group recommends that the membership or shareholding of Library Co. consist of both the Law Society and the profession as represented by CDLPA or the new merged organization. Options were examined concerning the percentage of ownership or membership in Library Co. but ultimately the only viable arrangement was felt to be equal representation by the Law Society and CDLPA or CDLPA/CBAO if there is a merger. The interests of MTLA, OCLA and the CBAO (if there is no merger) are to be acknowledged by a seat each on the board.
197. If Library Co. is a non-share capital corporation, the two members will be the Law Society and CDLPA or CDLPA/CBAO. If there is a business corporation, there will be two equal shareholders, the Law Society and CDLPA or CDLPA/CBAO.

Qualifications of Members of the Governing Body

198. To provide informed guidance and support, the members of the board of Library Co., should have the following qualifications:

3

The Business Plan for the new organization formed by the merger of CBA -O and CDLPA, dated October, 1998 states at page 5 it "does not assume a change in the method of operation of the local law associations or law libraries."

- ◆ Knowledge of and interest in county law libraries;
- ◆ Knowledge of the community being served and of its changing needs;
- ◆ Awareness of changing delivery methods (technology);
- ◆ Familiarity with the Phase I and Phase II reports and decisions made by Convocation (can be acquired after appointment);
- ◆ Time to devote to meetings of the board in person;
- ◆ Ability to make decisions independently of any particular organization.

199. When the governing body establishes subcommittees, the members must have expertise in the subject area of the committee. Subcommittees do not have to contain members of the governing body as long as the subcommittee reports to the board.

Operating By-Laws, Governing Documents, Policies and Procedures

200. The documents establishing the governing body will delineate the number of governors, the terms of governors, the appointment/selection/removal procedures for governors and for the perpetuation of the governing body. They will set out the relationship of the governing body to the system itself and to the administrative office of the system. The legal entity running the system will be described and an office established. Signing authorities and other operational by-laws will be established suitable to the legal entity created.
201. A manual of policies and procedures, taken from the Phase I and II reports, will be provided to governors which will detail the "Blended System", as informed by the model "Electronic Delivery of Library Services" and will familiarize them with the operation of the system.
202. Governors must become familiar with all the concepts, design principles and objectives of the system (collectively called "the policies") and agree to govern in accordance with those policies. Where limitations or constraints have been placed on the governors through the policies, they must observe those limitations unless they are able to obtain a change to the limitations from those responsible for formulating them.
203. There will be an explanation of the relationship between the Law Society and the governing body and between the local county law associations and the governing body. Other key relationships that might exist will also be explained. Governors while performing their governance duties will put the best interests of the county library system ahead of their own personal interest or the interest of any organization to which they may belong, although their decision-making will be informed by knowledge of other organizations and relationships to them.
204. Periodic visits to Regional, Area and Local libraries will be organized for governors to obtain first hand information and they will be expected to establish liaisons with the broader library community, with library associations, and with other legal organizations. Governors will be expected to participate in such visits to better inform their decision-making.

Long Range Plan and Reporting Requirements

205. The governing body must make an annual report to its funding bodies and to the users of the system. The annual report must provide full financial and budget information and detail the major activities of the previous year. It must also outline long range planning activities for the system.
206. In addition to annual reports, the governing body shall make such periodic and special reports as may be necessary to properly inform all relevant constituencies of key activities and significant developments affecting the library system, its viability and its ability to deliver library services as required by the policies.

207. Long range planning must be based on the policies and goals of the system and include monitoring and evaluation of the degree to which the system and individual libraries are meeting these criteria. It must also monitor the service needs of the community and governors will alter library and system services accordingly. The long range plan will set priorities for the allocation of resources within the system in accordance with the established policies and goals, given the funding available.

Relationship of Governors to Administrative Staff

208. The relationship of any staff employed by the governing body to administer the system (for example, an Executive Director) must be defined by adequate reporting relationships and job description(s) that can be readily understood by the governors and the staff.
209. In local associations, clear reporting lines and responsibilities must be established between the local library staff and the local association. Appropriate involvement of the local law librarian in the management and decision making processes of the local association should be determined in accordance with the policies and objectives of the overall library system and the unique characteristics of the local library and local association. The local librarian and the local association must each understand their respective roles and responsibilities with respect to the local law library, the library system, system staff and the governing body of the library system.
210. It is the joint responsibility of the governing board and the Executive Director to make sure that the library standards are met throughout the system.

The Executive Director

211. The key to success of the Blended System and of Library Co. is the newly created position of Executive Director of County Law Libraries.
212. The Executive Director has the overall responsibility for the day to day operation of the Blended System and the execution of system policies. He/she will act as a liaison between the Board and the individual libraries/local associations, balancing the need for local autonomy with the overall needs of the system. The Executive Director must be familiar with all libraries in the system and be able to evaluate service levels and staff performance against the standards.
213. The qualifications of the Executive Director will be:
- ◆ MLS or MLIS
 - ◆ law library experience an asset
 - ◆ broad knowledge and experience of library procedures
 - ◆ knowledge and experience of law library related technology and electronic information sources
 - ◆ knowledge of legislation affecting law libraries
 - ◆ supervisory/administrative experience, preferably of a multi-branch organization
 - ◆ budgeting/financial planning experience
 - ◆ excellent communication skills
214. The duties of the Executive Director will include, in addition to those already identified:

- ◆ planning and development for ongoing growth and operation of system
- ◆ gathering and coordinating system-wide statistics
- ◆ system budget preparation/assisting local associations as requested with local budgets
- ◆ ensuring standards for each category of library are met and maintained and assisting with attainment of standards where requested to do so by local associations
- ◆ communication of policies and procedures
- ◆ hiring other administrative office and clerical staff
- ◆ providing local associations with assistance as requested in hiring/managing staff
- ◆ personnel administration as determined in conjunction with local associations
- ◆ seeking /monitoring sources of funding
- ◆ public relations/communication of information for system
- ◆ ensure cooperation/smooth exchange of materials/reference services between libraries
- ◆ ensuring continuing education opportunities for all staff in the system
- ◆ monitoring/overseeing collections of materials (all formats) within the system
- ◆ involvement with professional associations

215. The Executive Director will become an expert on county law libraries and the Blended System. He/she will advise the board of Library Co. on issues emerging in the system and will help lead the libraries into the next century. Strong administrative and management skills will be required. The Executive Director must be able to work with all librarians in the system and earn their respect so the system can flourish.
216. As administrator of a \$6 million library system, the successful candidate for the position of Executive Director will be a senior librarian with years of practical experience in libraries. They will also need to work closely with the Director of Libraries for the Law Society to coordinate the activities handled by the Blended System with those to be handled by the Great Library. The suggested salary is in the range of \$85,000 - \$95,000 plus benefits.
217. The Executive Director will be hired by the Transition Board. The Executive Director will eventually report to the board of Library Co. and take direction from that board. Until Library Co. is created, the Executive Director will be a contract employee of the Law Society. The Working Group expects that it will take 2 to 3 months to locate and hire a suitable candidate for the position of Executive Director. Given the importance of this position to the success of the new system, it is desirable to have the position filled by June 1st, 1999 if possible so that the new system can be in place by January 1, 2000.
218. The Executive Director will be expected to work closely with the Transition Board to make sure the new system is implemented and established in accordance with the standards and decisions established by Convocation through the Phase I and II reports.
219. As a result of the importance of this position, the Working Group obtained permission from Convocation to begin advertising for the position of Executive Director before receipt of this report, on the undertaking that no offers of employment would be made or hiring interviews conducted until and unless Convocation ultimately approves the creation of the position of Executive Director through the adoption of the recommendations in this Phase II report.
220. The Working Group therefore recommends that the position of Executive Director of the County Law Libraries be created on the basis outlined in this report and that the Transition Board be instructed to immediately seek suitable candidates and hire an Executive Director as soon as possible.

6 UNIVERSAL ACCESS TO COUNTY LAW LIBRARIES

UNIVERSAL ACCESS AND UNIVERSAL FEE

- 221. Universal access to legal information is not currently guaranteed in the county law library system. As detailed in Phase I, only members of local associations may access information in that association's library even though anyone may access information in other libraries while in another county on legal business. Regulation 708 empowers local associations to prevent non-members from accessing the library.
- 222. As the Law Society library levy has increased over the years it has brought with it a demand by members of the Society to access local libraries because they pay an annual contribution through the levy. However, local associations contribute about 50% of the funds for the local library and they wish to control the access to the library in order to provide a membership benefit and reflect value for this additional contribution. This dilemma is outlined in detail in Phase I, Chapter 13, Issues in financing the County Libraries which is attached in the Appendix.
- 223. The Blended System envisions legal information being available to all members of the Law Society, regardless of location in the province. If the fee through the annual Law Society library levy is sufficient to cover the costs of running the Blended System, then there appears to be no reason to restrict access to the libraries to members of local associations. Local associations may however provide additional services for members-only, such as specialized legal research, Continuing Legal Education courses or social events.
- 224. The concept of a universal fee is inextricably linked with universal access. While it would be possible to require one without the other, it is widely expected in the county law library community that universal access requires a universal fee and, once a universal fee is in place, universal access must follow. The survey of associations conducted by the Working Group included the following question:

“The Blended Model calls for universal access to library information. In your opinion does universal access require a universal fee to cover the entire cost of the County Law Library system?”

The responses were:

Yes -	46
No -	5
No answer -	1

- 225. Another survey, conducted not by the Working Group but by bencher Larry Banack, contained the following question:

“Do you support the central collection by LSUC of library fees from all members of LSUC to fully fund the operation of the county and district law library system?”

There were 186 responses:

Yes -	76%
No -	24%

- 226. The Topp report and virtually every CDLPA library resolution for the past several years call for a Universal Library Fee. The arguments in favour of it are set out in the Appendix under “Issues in Financing County Libraries” from the Phase I Report. The Phase I report approached the issue not from the perspective of a library fee but rather from the perspective that universal access to library information is required and can be delivered using modern technology. Universal Access is a given of the Blended System.

Local Fees

227. Does a universal fee preclude a local library fee? Certainly local associations may charge a membership fee regardless of the existence of a universal library fee. But many local associations believe that lawyers pay their membership fee only or primarily to secure access to the library and they worry that a universal library fee will eliminate the need for a local association since the main purpose of supporting the library will no longer be there. Those associations that provide other membership benefits such as newsletters, CLE, and social events will be able to provide them at a substantially reduced fee if there is no charge for the library.
228. Regulation 708 requires 50% of any locally charged fee to be used for library purposes. It also permits local associations to restrict access to the library to members only. Both these aspects of regulation 708 will need to be examined as part of establishing Library Co. and funding the Blended System. It may be that successful implementation of the Blended System will require an amendment to regulation 708. The Transition Board should instruct the lawyer preparing the operating by-laws and documents for Library Co. to consider recommendations for change to regulation 708.
229. The Working Group discussed whether under Universal Access local associations could upgrade their library facilities and restrict usage of the upgraded areas to members only. While there may be circumstances where this would be possible, the general approach to Universal Access is that library collections are to be for the benefit of all members of the Law Society and if a local association upgrades their collection by buying additional materials or unique materials, then the upgraded portions are not to be restricted in access. Such upgrades, while paid for through association fees, are in fact possible because universal fees provide the basics, and so the upgrades cannot appropriately be sequestered for the benefit of only local members.
230. Librarians do not like to have to monitor membership as part of providing access to the basic library. There is a distinction here between basic materials and services and specialized, personalized services. The Blended System includes core collections, basic reference services and standards for equipment. Even if supplemented by local upgrades, these must remain generally available. Local associations may also decide to provide more specialized and personalized research services. Whether any specialized services would be restricted in access will need to be determined on a case by case basis by system administration.
231. When asked in the survey whether they would envision having a local fee even if there is a universal fee covering the cost of the system, 25 respondents said No while 21 said Yes. Those choosing Yes, indicated that they saw a local fee as being possible to supplement library collections but that it might not be necessary if they received sufficient materials from the system.
232. The Working Group does recommend that if there is a local fee charged for library related materials, equipment or services, the locally acquired goods must not negatively affect the system standards as that has a provincial impact. For example, if the system acquires PCs, local libraries cannot change to Macs and, if Macs are installed in the library, they will not be the responsibility of system administration.
233. The Working Group recommends that Convocation state that Universal Access, already adopted in the Phase I report, is best implemented with a Universal Library Fee and that the Law Society library levy in future be set at an amount sufficient to provide full funding for the Blended System. Convocation is invited to adopt as a principle that the Blended System operate with both Universal Access and a Universal Library Fee.
234. Whether local associations charge a local membership fee should remain a matter of local preference provided no local initiatives negatively affect the system standards. The experience to date following Convocation's adoption of a \$200 library levy is that many associations significantly reduced their association fees but, without stable, multi-year funding, they are hesitant to completely eliminate the local fees.

235. Finally, when dealing with local fees, it may be that a local fee is required to support the continuation of free QL in the library for association members. The existing arrangement is premised on membership in the local association and, when it is renegotiated, it will be important to consider whether membership via a universal fee is acceptable or whether a local fee is required.

7. TRANSITION/IMPLEMENTATION BOARD

PURPOSE

236. It is not possible before the expiry of the term of this bench to detail all the implementation decisions that must be made to set up the new county law library system - there are hundreds of such decisions ranging from hours of operation of the libraries to benefits for staff to collection development and acquisition of equipment. Nor is it appropriate that Convocation become involved in such micro-management.
237. As there are 48 existing libraries, some of these decisions will require extensive analysis of the current libraries before they can be made; other decisions will involve negotiations with a variety of suppliers. All decisions will have to be made within the overall context of the objectives, principles, standards and constraints placed on the Blended System by Convocation through the Phase I and Phase II reports.
238. The Working Group has every confidence that a new group can and should attend to the detailed decisions that will be made over the next six months and that the decisions must be made in concert with the advice of the new Executive Director as well as in consultation with local associations. The mandate of the Executive Director will include overseeing and developing the Blended System.
239. To accomplish this detailed, in-depth decision making, the Working Group recommends the creation of a temporary Transition/Implementation Board whose sole purpose will be to continue the establishment of the new system of county libraries. The Board will be bound by the policy of the Phase I and II reports but will be free to make decisions consistent with the reports.

STRUCTURE

240. It is proposed that the Transition/Implementation Board contain eleven members. The Transition/Implementation Board is not envisioned to be the first board of Library Co. However, to maintain continuity, it is considered desirable that some members of the Transition/Implementation Board will go on to be members of the board of Library Co.
241. The Board Chair will be expected to work virtually full time over the summer and fall months while the ten other members will attend Board meetings on a regular basis, probably monthly in person and by conference call whenever needed for many other matters. Further detail of the duties of members is set out below.
242. This group, while referred to as a Transition/Implementation Board will be a committee until there is a corporate vehicle in place. It may be that the first board of Library Co. will be the only legal "board" in the strict sense of the word but the work of the Transition/Implementation Board will form the basis for the work of the board of Library Co. and as such will act as a pre-incorporation Board.
243. The Executive Director will work closely with the Transition/Implementation Board and will take direction from the Board through the Chair. The Executive Director will also advise the Transition/Implementation Board and perform liaison work with the local libraries, the Law Society, CDLPA, the CBAO, OCLA, MTLA, the Law Foundation and any other organizations with an interest in the county law libraries.

244. While it is envisioned that the Executive Director will provide key advice to the Transition/Implementation Board on county libraries and implementing the Blended System, the Transition/Implementation Board will also need to retain advisors on legal and accounting matters and will need a library consultant to assess certain aspects of each of the 48 existing libraries. The Budget proposed for the Transition/ Implementation Board makes provisions for these advisors.

APPOINTEES

245. As it is crucial to the success of the new system the Working Group discussed at some length the proposed membership for the Transition/Implementation Board. The same criteria for appointment apply to this board as to the Library Co. board (see details in the previous section) and, in addition, the Transition/Implementation Board appointees must have the following characteristics:
- ◆ Time to devote to lengthy meetings between May and December, 1999, at least one per month;
 - ◆ Ability to make decisions independently of any particular organization;
 - ◆ The Chair should be a practicing lawyer as the Executive Director will be a law librarian.
246. Ideally, the Transition/Implementation Board will be composed of some current members of the Working Group so that the accumulated library knowledge and policy discussions will not be lost, but members not previously affiliated with the Working Group will be added so that "fresh thinking" can be applied.
247. One option discussed by the Working Group was to place a financial advisor, technology expert and systems person on the Board but it was felt that to do so would not be the best way to obtain the necessary expertise for the Transition/Implementation Board. Those services can be obtained through specialized subcommittees or by retaining them as advisors.
248. The Working Group recommends that the composition of the Transition/Implementation Board be as follows:
1. One appointment each by CBAO, MTLA, LSUC, OCLA and CDLPA for a total of 5 members.
 2. The Director of Libraries for the Law Society..
 3. Two other members of the Working Group, self-selected.
 4. A Chair to be agreed upon by the Law Society and CDLPA.
 5. The Transition/Implementation Board to select 2 appointees itself once the other nine members have been appointed as above.
249. The Board appointees or self-selected members should possess the characteristics described above. The Working Group is composed of members of each of the above organizations and is prepared to recommend qualified names for consideration by each appointing organization if so requested.

Chair - Responsibilities and Compensation

250. Just as the position of Executive Director is critical to the success of the implementation of the Blended System, the position of Chair of the Transition/Implementation Board is equally important. In addition to the normal duties of a chair of a major committee or board, the Chair of the Transition/Implementation Board will be expected to work very closely with the Executive Director to make sure all aspects of the transition to the new system are covered both administratively and operationally and that the requirements of the Phase I and II reports are met.

251. The Chair will also be charged with helping inform all county law associations and law libraries about the transition and with reporting to the stakeholder groups, acting as an ambassador for the new system.
252. It is expected that the person chairing the Transition/Implementation Board will be devoting substantial time to these tasks and that an average of 20 - 30 hours per week for the eight month period May 1st to December 31, 1999 could be consumed performing these duties.
253. As a result of the magnitude and importance of this job, the Working Group recommends that an honorarium be paid to the Chair of the Transition/Implementation Board to partially compensate for the lost billable hours and effect on the private practice of the appointee.
254. The Working Group wishes to propose to the Law Society and CDLPA the name for the position of Chair of the Transition/Implementation Board and, if that is acceptable to Convocation, will provide this recommendation together with reasons therefore and a resumé of the individual either at the time this report is before Convocation or as may otherwise be directed by Convocation. The Working Group would like to be clear that the recommendation that the position of Chair be paid an honourarium was arrived at independently of the Working Group's discussion and recommendation as to an appropriate candidate for the position. Whether any candidate will accept the responsibility of chair of the Transition/Implementation Board without an honourarium is a matter upon which there has been no speculation by the Working Group.

Compensation for Appointees to the Transition/Implementation Board

255. The Working Group also briefly discussed the issue of whether other appointees to the Transition/Implementation Board should receive compensation.
256. The Board is, in effect, a small but mightily involved working board acting more or less like an executive team, since the new organization will not have its own staff or senior managers, with the exception of the Executive Director. Until the search and hiring of the Executive director has been completed, the drive for the whole transition exercise will be coming from the board.
257. Given the nature of the tasks to be performed by the Transition/Implementation Board it is anticipated that at least 8 full day meetings will be held (one per month) along with a number of telephone conference calls of shorter (1 - 2 hour) duration, perhaps 10 or so. It is proposed that Transition Board members be paid a per diem meeting fee of up to \$500, the exact amount to be determined by the board members. The proposed budget for the Transition Board includes a sum set aside for meetings, including this per diem. Whether the librarian members should receive the per diem is a matter to be determined between them and their employers.

TERM

258. The Transition/Implementation Board should be established as quickly as possible following the April Convocation. A target date would be for appointees to be selected by May 3, 1999 and the first full day meeting held no later than May 11, 1999. (See section *When and How should the Blended System Begin*, following.)
259. It is not possible to say with certainty at this time that the work of the Transition/Implementation Board can be completed by December 31, 1999 but that is the objective. The new system should be in place and operational as of January 1, 2000 including the creation of Library Co. and appointment of its first board as separately discussed in this report. The Transition/Implementation Board should therefore expire as of December 31, 1999 unless Convocation finds it necessary to extend its term.

RELATIONSHIP TO EXECUTIVE DIRECTOR

260. One of the first tasks of the Transition/Implementation Board will be to hire the Executive Director for Library Co. The Chair of the Transition/Implementation Board will work closely with the Executive Director and will generally be in charge of supervising the activities of the Executive Director in accordance with the Phase I and II reports and the decisions of the Transition/Implementation Board.
261. The Executive Director will be an employee of Library Co. However, since there are further decisions to be made concerning the structure of Library Co. it is expected that it will not be incorporated until the Fall of 1999 at the earliest. The Executive Director will need to be a contract employee of the Society until such time as Library Co. is established but, the contract should be administered under the control of the Transition/Implementation Board, not the Society.

RELATIONSHIP TO LIBRARY CO.

262. The Transition Board is setting up much of the work for the first Library Co. board. While some members will continue from the Transition Board to the board of Library Co., we do not consider that such continuity necessarily pre-judges the issue of whether lawyer members - or any members - of the Library Co. Board will be paid. The circumstances of the Transition Board are exceptional, given the Board's hands-on role and the virtual absence of other staff, and the Library Co. board will be free to make its own decisions on board members remuneration without being bound by this precedent.
263. The Transition/Implementation Board will therefore be responsible for establishing Library Co. and making sure its corporate rules and by-laws are appropriate and in accordance with the decisions made by Convocation. Regulation 708 currently governs county libraries and legal advice will be required as to how to accommodate the new corporate structure with regulation 708 or, seek amendment to the regulation. Standardized accounting and financial reporting will have to be put in place for the county libraries and a new funding distribution system developed in keeping with the Blended System. It is anticipated the Transition/Implementation Board will retain legal and accounting services to prepare the requisite documents to incorporate and establish Library Co. and its financial systems, so an allowance has been made in the start-up budget for these services.

BUDGET

264. The Transition/Implementation Board will require a start up budget to accomplish its tasks in the time allotted. Fortunately, the county law libraries have accumulated funds on deposit with the Law Society, as outlined in Phase I, of approximately \$1.3 million derived from levies collected in what is referred to as the six month "stub" period of 1995/96 and another fund of about \$535,000 that has accumulated over the years for county law library emergencies and contingencies.
265. It was recognized in Phase I that these sums would probably be needed to implement the transition to a new system, including purchasing materials and upgrading equipment as well as general implementation costs. At that time, the Blended System had not been selected nor had the need for a Transition/ Implementation Board or a Library Co. been placed before Convocation.
266. Given the tasks before the Transition/Implementation Board and the need to hire an Executive Director immediately, it is recommended that \$368,000 be set aside from the total existing county law library funds for the use of the Transition/Implementation Board. As set out in the general budget items below, this sum would include amounts for payment of the Executive Director, retention of professional services to assist with the establishment of Library Co. and the detailed analysis of whether the local law libraries meet the standards for the new system.

267. The Transition/Implementation Board would have the ability to determine whether funds ought to be spent to bring individual libraries up to standards in collections, equipment, training of staff etc. and to begin implementing the Blended System before the start date of January 1, 2000. This discretionary spending would be to a maximum cumulative amount of another \$150,000, for which there would be no need to return to Convocation for approval. Any amount required in excess of this sum would, until Library Co. is established, require Convocation's approval.

268. The major items of expenditure anticipated for the Transition/Implementation Board eight month period from May 1, 1999 to December 31, 1999 are:

- \$52,000 Executive Director salary and benefits (6 months)
- \$30,000 Chair's honourarium
- \$40,000 Meeting costs, travel, accommodation
- \$60,000 Per diem allowance for appointees (\$500/meeting)
- \$50,000 Office rent, supplies, telephone, computer, clerical resources etc.
- \$20,000 Local association information - travel, publications
- \$25,000 Library consultant to advise whether standards met
- \$25,000 Legal fees to establish Library Co., by-laws, amend reg.708 etc.
- \$50,000 Accounting fees to establish financial and management reports
- \$16,000 Miscellaneous expenses
- \$368,000

- \$150,000 Discretionary spending to upgrade facilities to standards

269. Convocation is asked to approve the setting aside of these sums from existing county law library funds for use of the Transition/Implementation Board as outlined above. The amounts can be allocated against either of the two library funds held by the Society which in the opinion of the Society's CEO is appropriate. Control of spending of the funds is to be under the combined direction of the Chair and Executive Director of the Transition/Implementation Board as further instructed by the Transition/ Implementation Board.

270. Until such time as the Executive Director is hired, the Chair of the Transition/ Implementation Board and 1 of 2 other board members - the Director of Libraries or the CDLPA appointee - shall have signing authority over the funds. Following hiring of the Executive Director, the Chair or another board member if the Chair is unavailable shall co-sign expenditures with the Executive Director. Amounts less than \$1,000 shall require only the signature of the Executive Director.

Library Co. and Blended System Budgets

271. On a going forward basis, it is expected that the Transition Board will produce for consideration of Convocation a three-year budget so that stable funding can be granted to the county law libraries. A rolling three year strategic plan, with appropriate budgets and business plans, should be approved each year but assured for the entire three year cycle, except in extraordinary circumstances. This means that each year the budgets will be up-dated and approved but the first three years and, thereafter, the next three years, will be approved "up front" and guaranteed to be funded unless there are extraordinary circumstances dictating a change.

272. The strategic plans will set overall objectives for the Blended System, in keeping with the policy directives of the Phase I and II reports and the budgets will reflect the steps being taken to achieve those objectives. Performance measures should be incorporated into the budgets and the business plans so there is some objective measure of whether the policies have been met and the objectives achieved.

273. It will be acceptable to carry surpluses and deficits within the three year cycles but not between cycles, without the approval of the Law Society. As with the current process with LPIC and the previous process with OLAP, it is expected the budgets would be presented to the Law Society for comment and approval but that the responsibility for formulating the budgets and, after the budget is approved, for spending the funds under the budget, would be the primary task of Library Co. and would not require further approvals or ongoing supervision from the Law Society.
274. To the extent possible, the initial budget shall reflect existing funding of approximately \$6 million for the Blended System. However, once the system is fully designed, the libraries have been reviewed for standards and the Executive Director has become familiar with the system, the board of Library Co. will assess whether the funding is realistic for the implementation of the system and make any necessary recommendations to Convocation concerning the level of funding.
275. The annual general administrative costs of operating Library Co. (not the costs of operating the Blended System) are anticipated to be approximately \$220,000 being \$104,000 salary and benefits for the Executive Director, \$75,000 for rent, clerical and office expenses, \$25,000 for meeting costs and \$16,000 for communications, miscellaneous and professional services. The rent and clerical costs could be reduced if Library Co. is able to obtain favorable rent arrangements through the Peel Law Association or through Ontario Realty Corporation. Also, the clerical costs will be somewhat affected by the ultimate decision of the role of the Great Library and the provision of any services to Library Co. from the Great Library. Other costs, such as for Roving Librarians or Internet access, are system costs not included in the administrative expenses.
276. A Law Society library levy of \$200 per member is currently in place. The board of Library Co. should endeavor to bring forward an operating budget that achieves the objectives of the Blended System, including Universal Access for a per member fee within 10% of the current \$200 for each of the first three years of the new system. While it is expected that this can be done, the Working Group defers to the future expertise of Library Co. in making the actual recommendation to Convocation and the profession for the appropriate level of funding for the Blended System. As a guideline, the existing level of funding should be used in planning the budgets.

8 WHEN AND HOW SHOULD THE BLENDED SYSTEM BEGIN?

FACTORS CONSIDERED

277. The Working Group has considered the question of when the county law libraries ought to change over to the new Blended System and what steps that will involve.
278. The following factors have been considered:
- ◆ the Law Society operates on a calendar year basis
 - ◆ the county libraries prepare budgets based on the Law Society year end
 - ◆ operational changes will take months to communicate and implement
 - ◆ a new decade starts January 1, 2000
 - ◆ a bencher election is being held in May of 1999
 - ◆ CDLPA plenary session is held in May of 1999
279. Taking into account these factors, the Working Group recommends January 1, 2000 as the target date for implementing the new Blended System of county law libraries.

280. To be in a position to make the switch to the new system as of January 1, 2000 the following schedule will have to be followed:

1999	ACTION REQUIRED
April	Convocation approves Phase II report, including Transition Board and its tasks
May	Transition Board appointed, meets and prepares detailed task orders based on Phase I and II reports Executive Director candidates interviewed
June	Executive Director hired and begins work Transition Board retains legal and accounting advisors to establish Library Co., draft by-laws etc. and set up financial reporting systems, budget parameters, revenue projections and all related matters Consultant retained to review local law library standards against the required standards, recommend changes to libraries to allow them to meet the standards if they are deficient
July	Phase I and II objectives and policies reviewed and detailed for implementation following receipt of consultant's report Begin compiling board of governors manual
August	Begin funding requirements and allocations analysis Continue policy implementation decisions with consultant Review legal and accounting reports Develop communications plans for local associations
September	Work with Law Society staff on budget preparations Continue policy discussions and begin visits with local associations to communicate changes, receive input Bring interim report to Convocation, with any policy decisions requiring further approval or instruction
October	Fine tune funding requests and allocations Discuss draft budget with Law Society finance department Continue implementation decisions Evaluate whether Jan. 1 st date attainable, react accordingly
November	Library system budget goes to Finance Committee and to Convocation Complete major implementation plans CDLPA Plenary session receives status report MTLA receives status report
December	Complete minor steps in implementation plan Incorporate Library Co. and appoint 15 person board of directors

281. It is likely that the Transition Board will not be able to complete all its tasks and will have to turn over to the board of Library Co. several tasks. It is essential though that the detailed implementation plan be developed as soon as possible so that proper funding requests can be in place in time for the budget cycles of the Law Society, Law Foundation and local associations.

282. With the bench election pending, the Working Group has been conscious of the need to proceed with implementation, permitting the bench that has undertaken this project to continue it while at the same time not prematurely making key decisions that will impact all the county law libraries for years to come.
283. The result of this deliberation is a recommendation that this bench finish making the key policy matters begun in Phase I and establish a Transition Board to take those items forward to implementation. The Transition Board will have to return to Convocation in the fall of 1999 for both multi-year funding allocations and further policy decisions if the implementation decisions run into any conflict with either the objectives or limitations placed upon the Transition Board through the reports.

SHOULD IMPLEMENTATION OF THE BLENDED SYSTEM BE GRADUAL?

284. Until an analysis of the current library operations has been made against the standards for the Blended System, this question cannot be answered. It is therefore a matter for the Transition Board.
285. The general approach should be to implement the new system as quickly as possible but not to disrupt local associations. There will be funds of approximately \$1 million available to Library Co. from the former county library funds to enable the transition so there will be money available for "quick fixes" where deemed necessary. But, the money must be spent carefully, with a view to immediate implementation of the new system and the long range needs such as wider dissemination of legal information possibly through publishing materials directly through the Great Library and disseminating them through the county libraries.
286. The Transition Board should determine those areas in which gradual implementation can take place while still meeting the objectives of the system and should immediately rectify areas which are amenable to that. Overall there must be a thoughtful, planned implementation of the standards for each classification of libraries with maximum benefit in return for minimum disruption.

9 SUMMARY

287. There are a number of recommendations for approval by Convocation and several tasks set out in this report for the Transition/Implementation Board to carry out. This section sets out those recommendations for which Convocation's approval is sought and itemizes the tasks assigned to the Transition/Implementation Board so that Convocation can approve them as well.

DECISIONS FOR CONVOCATION TO APPROVE

Blended System

288. To clarify the way in which individual libraries should be classified as Regional, Area or Local, the Working Group wishes to add to its Phase I design principles for the Blended System an additional design principle that:

"It will be important in implementing the Blended System to recognize:

- (1) the regional differences that exist in the province and

(2) the size of the bar that the individual library may reasonably be expected to serve

regardless of categorization as a Regional, Area or Local library. None of the categorizations, once made, is to be static. The system is to remain flexible and responsive to changing circumstances in the community.”

(Paragraph 62)

289. The Working Group recommends that following the work of the Transition/Implementation board (see Chapter 6) one governing body be created to oversee the new library system and carry forward the policy decisions necessary to effectively implement the objectives of the Blended System. (Paragraph 171)
290. The Working Group therefore recommends that the position of Executive Director of the County Law Libraries be created on the basis outlined in this report and that the Transition Board be instructed to immediately seek suitable candidates and hire an Executive Director as soon as possible. (Paragraph 220)
291. The Working Group recommends that Convocation state that Universal Access, already adopted in the Phase I report, is best implemented with a Universal Library Fee and that the Law Society library levy in future be set at an amount sufficient to provide full funding for the Blended System. Convocation is invited to adopt as a principle that the Blended System operate with both Universal Access and a Universal Library Fee. (Paragraph 233)
292. The Transition/Implementation Board should be established as quickly as possible following the April Convocation. (Paragraph 258)
293. The new system should be in place and operational as of January 1, 2000 including the creation of Library Co. and appointment of its first board as separately discussed in this report. The Transition/Implementation Board should therefore expire as of December 31, 1999 unless Convocation finds it necessary to extend its term. (Paragraph 259)

Library Co.

294. The Working Group recommends that the membership or shareholding of Library Co. consist of both the Law Society and the profession as represented by CDLPA or the new merged organization. (Paragraph 196)
295. The board should have an uneven number of members. After examining various sizes, the Working Group recommends a board of fifteen (15) be appointed with a Chair and 1 or more Vice-Chair(s) as may later be recommended by the Transition Board. The board appointments should be for staggered terms of three years to preserve experience while introducing new energies and ideas on a regular basis. Initial appointments will need to be for various terms (1, 2 and 3 years) to begin the process. (Paragraph 177)
296. Appointees: non-political, based on criteria set out in standards;
11 or 12 of the 15 must meet standards for governors;
3 or 4 are appointed based on affiliation to a group and do not have to meet the criteria:

- ◆ MTLA and OCLA each are entitled to 1 appointment
- ◆ CBAO, if it does not merge with CDLPA has an appointment
- ◆ the Director of Libraries for the Law Society is automatically appointed as an *ex officio* voting member
- ◆ the balance of the appointments are jointly made on consensus of LSUC and CDLPA (see details below)

(Paragraph 179)

297. The first board of Library Co. should take office on or about January 1, 2000. Some of the appointees should be members of the Transition Board and some should be new appointments. The Working Group recommends that the Transition Board be required to put forward a list of at least 17 names for appointment to the 11 or 12 jointly appointed positions but that neither the Law Society or CDLPA be restricted to making appointments from the list, provided the general criteria for appointment is met. (Paragraph 186)
298. A Law Society library levy of \$200 per member is currently in place. The board of Library Co. should endeavor to bring forward an operating budget that achieves the objectives of the Blended System, including Universal Access for a per member fee within 10% of the current \$200 for each of the first three years of the new system. (Paragraph 276)

Transition/Implementation Board

299. To accomplish the detailed, in-depth decision making, required to get the system going, the Working Group recommends the creation of a temporary Transition/Implementation Board whose sole purpose will be to continue the establishment of the new system of county libraries. (Paragraph 239)
300. The Working Group recommends that the composition of the Transition/Implementation Board be as follows:
1. One appointment each by CBAO, MTLA, LSUC, OCLA and CDLPA for a total of 5 members.
 2. The Director of Libraries for the Law Society..
 3. Two other members of the Working Group, self-selected.
 4. A Chair to be agreed upon by the Law Society and CDLPA.
 5. The Transition/Implementation Board to select 2 appointees itself once the other nine members have been appointed as above.

(Paragraph 248)

301. As a result of the magnitude and importance of this job, the Working Group recommends that an honorarium be paid to the Chair of the Transition/Implementation Board to partially compensate for the lost billable hours and effect on the private practice of the appointee. (Paragraph 253)
302. The Working Group wishes to propose to the Law Society and CDLPA the name for the position of Chair of the Transition/Implementation Board and, if that is acceptable to Convocation, will provide this recommendation together with reasons therefore and a resumé of the individual either at the time this report is before Convocation or as may otherwise be directed by Convocation. (Paragraph 254)

303. It is proposed that Transition Board members be paid a per diem meeting fee of up to \$500, the exact amount to be determined by the Transition Board. (Paragraph 257)
304. Given the tasks before the Transition/Implementation Board and the need to hire an Executive Director immediately, it is recommended that \$368,000 be set aside from the total existing county law library funds for the use of the Transition/Implementation Board. (Paragraph 266)
305. The Transition/Implementation Board would have the ability to determine whether funds ought to be spent to bring individual libraries up to standards in collections, equipment, training of staff etc. and to begin implementing the Blended System before the start date of January 1, 2000. This discretionary spending would be to a maximum cumulative amount of another \$150,000, for which there would be no need to return to Convocation for approval. Any amount required in excess of this sum would, until Library Co. is established, require Convocation's approval. (Paragraph 267)
306. Convocation is asked to approve the setting aside of these sums from existing county law library funds for use of the Transition/Implementation Board as outlined above. (Paragraph 269)

TRANSITION/IMPLEMENTATION BOARD TASKS

307. Before final categorization of the libraries, the Working Group recommends a more comprehensive analysis of individual counties in terms of who is being served by the library and which existing on-site services are in place. (Paragraph 64)
308. The final categorization of libraries into Regional, Area or Local will therefore have to await a determination of the Transition Board. Given the detailed analysis and the need to begin upgrading libraries where necessary, the Transition Board should be empowered to make the categorization decision without further approval from Convocation. (Paragraph 68)
309. The Transition Board will need to make the final determination of how services are provided and the level of centralization versus local decision making. (Paragraph 77)
310. The Transition Board will need to consider the cost of transferring services to Library Co. versus the cost of keeping them with the Great Library and acquiring them through some sort of cost accounting arrangement. (Paragraph 89)
311. The establishment and maintenance of the standards will be an ongoing policy matter for both the Transition Board and the Library Co. board. (Paragraph 122)
312. While it will be the responsibility of the Transition Board to determine the number of roving librarians and detail their duties, the staffing standard to be adhered to is that there must be a sufficient number of professional librarians deployed throughout the system to ensure that the information, reference and research services standards are realized. (Paragraph 128)
313. It will probably be necessary to conduct inspections of library facilities to determine whether they meet these standards. The Transition Board should arrange such inspections and recommend any corrective measures, together with a budget and implementation plan before January 1, 2000. The Transition Board should also be given a budget and the power to implement system upgrades immediately where appropriate and affordable. (Paragraph 140)

314. However, the Working Group recommends that this form a guideline only for the overall system and that the Executive Director and Transition Board determine whether this mixture is appropriate for the Blended System. (Paragraph 148)
315. To assist with the establishment of the budgets and financial procedures, particularly the financial reporting requirements, the Working Group recommends that the Transition Board retain accounting services commensurate with the task and provide appropriate training and guidance to all local library staff to enable them to adhere to the reporting requirements. (Paragraph 149)
316. The Transition Board should determine the needs of each library and decide whether a one-time capital expenditure from the accumulated library funds ought to be made immediately to bring all libraries up to the appropriate technology standard. (Paragraph 154)
317. There should also be wide publication and promotion of both the Phase I and Phase II reports together with information sessions in each region by the Transition Board. Other information initiatives must also be conducted as the Transition Board sees fit. (Paragraph 158)
318. The Transition Board will be required to bring to Convocation for approval the draft corporate by-laws and a recommendation as to whether the corporation should be a non-share capital corporation or a business corporation. (Paragraph 172)
319. The Transition Board should also recommend a name for the corporation, which for the purpose of this report only, is referred to as Library Co. (Paragraph 173)
320. The Working Group recommends that the office(s) for Library Co. be located in the Greater Toronto Area to facilitate travel to county towns by road or air but that it not be located in downtown Toronto. It is important to distinguish the new system from the old and to reflect the fact that it is a county library system. The Working Group recommends that the Transition Board determine whether there is space to house Library Co. in Brampton in a suitable facility. (Paragraph 174)
321. The Working Group does not envision a large bureaucracy for Library Co. The Transition Board will have to return a multi-year budget showing the cost of the administration, the expected savings contributed toward the cost and the quality improvements realized through the implementation. (Paragraph 180)
322. The Transition Board should instruct the lawyer preparing the operating by-laws and documents for Library Co. to consider recommendations for change to regulation 708. (Paragraph 228)
323. The Transition/Implementation Board will therefore be responsible for establishing Library Co. and making sure its corporate rules and by-laws are appropriate and in accordance with the decisions made by Convocation. (Paragraph 263)
324. The Transition Board should determine those areas in which gradual implementation can take place while still meeting the objectives of the system and should immediately rectify areas which are amenable to that. Overall there must be a thoughtful, planned implementation of the standards for each classification of libraries with maximum benefit in return for minimum disruption. (Paragraph 286)

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

- (1) Executive Summary from Phase I Report. (Pages 60 - 64)
- (2) Covering letter and Survey to local law associations for Phase II Report. (Page 65 - 68)

- (3) Phase I Report, Chapter 13 - Issues in Financing the County Libraries. (Pages 69 - 78)
- (4) Role of the Great Library. (Pages 79 - 80)
- (5) Canadian Courthouse and Law Society Library Standards. (Page 81 - 107)
- (6) American Association of Law Libraries standards. (Pages 108 - 115)
- (7) Detailed Standards for Libraries in the Blended System. (Pages 116 - 121)

A debate followed.

Convocation took a recess at 10:30 a.m. and resumed briefly in camera.

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CONTINUATION OF THE DEBATE ON THE PHASE II REPORT - The Future Delivery of County Library Services

The following motions were moved by Ms. Cronk, seconded by Mr. Krishna and voted on by Convocation.

- (1) That Convocation approve the further description of the Blended System and how it will operate as set out in paragraph 62 on page 10 of the Report.

Carried

The vote was carried unanimously.

- (2) That there be universal funding and universal access to the libraries.

Carried

The vote was carried unanimously.

- (3) That there be a central management of the library systems. Carried
- (4) That a committee be established to be staffed by persons selected by the Treasurer in conjunction with the working committee to recommend to Convocation a vehicle for central management. Carried
- Mr. Bindman abstained from voting.
- (5) That a business plan be developed by the Law Society staff in conjunction with the committee. Carried
- (6) That a Transition group be established. Lost

Having decided against the establishment of a Transition group, the following issues were not considered by Convocation.

- (7) What powers should the Transition group have?
- (8) Should a budget of \$368,000 be allocated to the Transition group?
- (9) That an Executive Director be hired now.
- (10) That the Chair of the Transition Board be paid and should the members be paid?

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M.

The Treasurer and Benchers had as their guests for luncheon Stephen Traviss, Senior Counsel-Professional Conduct, Justice Saul Nosanchuk, Robert Bombier, and John Kagan.

The Treasurer paid tribute to Mr. Traviss and thanked him for his 27 years of service to the Law Society. The Benchers gave Mr. Traviss a standing ovation.

CONVOCATION RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Armstrong, Backhouse, Bindman, Braithwaite, Carey, R. Cass, Chahbar, Cherniak, Cronk, Crowe, Curtis, Diamond, DiGiuseppe, Ducharme, Elliott, Epstein, Gottlieb, Hunter, MacKenzie, Manes, Marrocco, Millar, Mulligan, Murphy, Orved, Potter, Puccini, Ross, Simpson, Swaye, Wardlaw, White, Wilson and Wright.

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IN PUBLIC
.....

RESUMPTION OF PHASE II REPORT - The Future Delivery of County Library Services

It was moved by Ms. Elliott, seconded by Mr. DiGiuseppe that the Business Plan Committee be given a budget of \$150,000 and the investigation of the appropriate corporate structure committee be given a budget of \$75,000 to be paid from the library funds.

Carried

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Finance and Audit Committee
May 13, 1999

Report to Convocation

Purpose of Report: Decision Making, Information Finance and Audit

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GENERAL FUND Unaudited Financial Statements for the Three Months Ended
March 31, 19995

LAWYERS FUND FOR CLIENT COMPENSATION Unaudited Statement of Changes in Fund Balance
for the Three Months Ended March 31, 19999

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on May 13, 1999.

In attendance were V.Krishna (Chair), A.Chahbar, D.Murphy, G.Swaye, R.Wilson and B.Wright.

Also in attendance were the following members of the Professional Development & Competence Committee: M. Adams, L.Banack, K.Carpenter-Gunn, R.Cass, R.Manes, H.Puccini (by phone).

Also attending were L.Braithwaite, E.Cherniak, A.Coffey, M.Crowe, G.Diamond, S.Epstein, A.Feinstein, G.Hunter, G.Mulligan, R.Murray, M.Pilkington, B.Topp, D.White.

Staff members in attendance were J.Saso, W.Tysall, G.Lalonde, J.Miller, F.Grady, R.White, K.Corrick, S.Sperdadkos.

1. The Committee had before it the Beyond 2000 Phase II Report of the Professional Development & Competence Committee's Working Group on Long-Term Delivery of County & District Library Services.
2. Rich Wilson presented the Report and sought Committee approval for \$368,000 for a start-up budget for a Transition/Implementation Board, as detailed in paragraph 268 of the Report.
3. The Committee recommends:
 - a. The expenditure of up to \$368,000 as detailed in paragraph 268 of the Beyond 2000 Phase II Report to be paid out of existing county library funds;
 - b. Benchers appointed as members of the Transition/Implementation board not be remunerated;
 - c. The position described as Executive Director be renamed Project Manager, and that this position be on a contract basis;

This recommendation does not endorse the \$200 per member library fee as a permanent base for the future funding of County & District libraries.

4. The Committee is reporting on the following matters for information:
 - the General Fund unaudited quarterly financial statements for the three months ended March 31, 1999.
 - the Lawyers Fund for Client Compensation unaudited Statement of Changes in Fund Balance for the three months ended March 31, 1999.
5. The Committee was presented with the financial statements for the three months ended March 31, 1999 and was given summary highlights for the quarter.
 - All in all, the General Fund is in good financial condition. Total assets are \$51.8 million and total liabilities are \$27.8 million. The unrestricted fund surplus for the quarter is \$1.8 million.
 - The Lawyers Fund for Client Compensation is also in good financial condition. The fund balance, or unencumbered funds, is \$13.4 million.

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

- (1) Copy of the General Fund Unaudited Financial Statements for the Three Months Ended March 31st, 1999. (Page 5- 8)
- (2) Copy of the Lawyers Fund for Client Compensation Unaudited Statement of Changes in Fund Balance for the Three Months Ended March 31st, 1999. (Page 9)

THE REPORT WAS RECEIVED

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Ms. Cronk presented the Report of the Professional Regulation Committee.

Professional Regulation Committee
May 13, 1999

Report to Convocation

Purpose of Report: Decision and Information

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 B. MOTIONS TO VARY, SET ASIDE OR SUSPEND *IN CAMERA* ORDERS 3

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II. INFORMATION

BENCHER ORIENTATION SESSION 8

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on May 13, 1999. In attendance were:
 - Eleanore Cronk (Chair)
 - Gavin MacKenzie (Vice-Chairs)
 - Niels Ortvad
 - Marshall Crowe
 - Gary Gottlieb
 - New Benchers: Earl Cherniak, George Hunter, Gillian Diamond
 - Staff: Janet Brooks, Lesley Cameron, Jonathan Fedder, Scott Kerr, Felecia Smith, Jim Varro, and Jim Yakimovich.

2. This report contains the Committee's
 - policy report on amendments to the Rules of Practice and Procedure respecting *in camera* and non-publication orders; and
 - information on the bench orientation respecting professional conduct matters.

I. POLICY

AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE RESPECTING *IN CAMERA* AND NON-PUBLICATION ORDERS

A. INTRODUCTION AND BACKGROUND

3. On April 30, 1999, Convocation reviewed a report from the Committee which dealt with issues respecting *in camera* proceedings before hearing panels, focussing on
 - the practical consequences of a decision to hold all or part of a hearing *in camera* (in the absence of the public) and specifically, the issue of who can access the record of the proceedings and how the documentary material should be handled, and
 - once material is received in the absence of the public, the circumstances, if any, in which it can be used in subsequent proceedings, and, if so, what restrictions should apply.
4. As a result of its review, Convocation adopted certain policy directives proposed by the Committee. One was the following:

The Committee proposes that the *Rules of Practice and Procedure* be amended to provide that a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made under rule 3.01, and to require service of such a motion on all parties and persons who will be affected by the order sought.

5. Accordingly, the Committee considered appropriate language for an amendment to Rule 3 on access to hearings, respecting the ability of a person to bring a motion to vary, set aside or suspend the operation of an *in camera* order. The Committee also discussed whether similar amendments should be made to that part of Rule 3 dealing with non-publication orders.
6. This report contains the Committee's proposals for amendments to Rule 3 with respect to varying, setting aside or suspending the operation of both *in camera* orders and non-publication orders.
7. The Committee acknowledges that the latter issue has not previously been canvassed by Convocation at the policy level, and the Committee is bringing this matter for policy discussion and, if Convocation agrees, rule amendment.

B. MOTIONS TO VARY, SET ASIDE OR SUSPEND *IN CAMERA* ORDERS

8. Currently, Rule 3.01 states:
 - 3.01 Subject to rule 3.04 [capacity hearings] and rule 3.04.1 [professional competence hearings], hearings shall be open to the public except where the tribunal is of the opinion that,

- (a) matters involving public security may be disclosed;
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or
- (c) it is necessary to maintain the confidentiality of a privileged document or communication.

9. The Committee considered suggested language for a new rule as a means of implementing the directive adopted by Convocation. The Committee proposes the following:

Varying, Setting Aside or Suspending an *In Camera* Order

- 3.03.1 (1) Following the completion of a conduct or discipline hearing, a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made in that conduct or discipline hearing pursuant to rule 3.01 or section 9 of the *Statutory Powers Procedure Act* that all or part of the conduct or discipline hearing be held *in camera*, except where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.
- 3.03.1 (2) A motion under sub-rule (1) shall be made in accordance with rule 7 except that the notice of motion shall be served on all parties and any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.

10. By way of explanation on the text of the proposed rule, the Committee notes the following:

- reference to section 9 of the *Statutory Powers Procedures Act* is necessary, given that it was the authority prior to February 1, 1999 for obtaining an order that all or part of a hearing be held *in camera*;
- Rule 7 is the general rule regarding the making of motions;
- since the Appeal Panel may make *in camera* orders in respect of evidence it receives, the proposed rule provides for a motion to the Appeal Panel to vary, set aside or suspend such an order made by it;
- the proposed rule applies to orders made under rule 3.01 or *in camera* orders in discipline or conduct proceedings only; it does apply to capacity or professional competence hearings which were held *in camera*;
- the ability to make the motion is not limited to the parties to the proceeding;
- the introductory language of the rule - "following the completion of a conduct or discipline hearing" - ensures that the proceeding will not be stopped for the purpose of hearing this type of motion.

11. The Committee proposes the above draft for Convocation's approval as new rule 3.03.1.

C. MOTIONS TO VARY, SET ASIDE OR SUSPEND NON-PUBLICATION ORDERS

12. When the working group of the Committee considered *in camera* orders, the Society did not have statutory jurisdiction to make non-publication orders. As a result of the amendments to the *Law Society Act* effective February 1, 1999, Convocation adopted rule 3.06 of the Rules of Practice and Procedure which permits tribunals to make such orders.

13. Rule 3.06 states:

- 3.06 (1) A tribunal may order that information disclosed in the course of a proceeding open to the public is not to be published or otherwise made public by any person, provided that the tribunal is satisfied that the information discloses,
- (a) matters involving public security;
 - (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or
 - (c) matters for which it is necessary to maintain the confidentiality of a privileged document or communication.
- (2) A motion for a non-publication order shall be made in accordance with rule 3.03 with necessary modifications.

14. The Committee considered whether a rule should be made to permit a person to move to vary, set aside or suspend a non-publication order. It was envisaged that this type of motion might be brought by a person, perhaps from the media, in situations where a non-publication order was granted at the request of counsel to protect a member's position, for example, as an accused in a criminal proceeding, where publication of the proceedings may prejudice the lawyer's defence, but where the criminal proceedings were completed and the non-publication of the information was no longer necessary to guard against such prejudice.

15. The Committee noted that prior to February 1, 1999, the Society had no statutory jurisdiction to make a non-publication order. Because these orders can now be made by hearing panels, the Committee felt that some process should be described in the rules, based on similar policy considerations respecting *in camera* orders, to deal with challenges to non-publication orders. The Committee acknowledged that the majority of these applications would be made by the media.

16. Accordingly, the Committee proposes that a rule be added to permit such applications. The following language is proposed:

Varying, Setting Aside or Suspending a Non-publication Order

- 3.07 (1) A motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made pursuant to rule 3.06, except where the order under rule 3.06 is made by the Appeal Panel, the motion shall be made to the Appeal Panel.
- 3.07 (2) A motion under sub-rule (1) shall be made in accordance with rule 3.03.1(2).

D. DECISION FOR CONVOCATION

17. Convocation is requested to make amendments to Rule 3 of the Rules of Practice and Procedure by:

- a. Adding rule 3.03.1, concerning motions to vary, set aside or suspend an *in camera* order, in the language proposed or as amended by Convocation; and
- b. Adding rule 3.07, concerning motions to vary, set aside or suspend a non-publication order, in the language proposed or as amended by Convocation.

Motions for the proposed amendments appear on the following page.

THE LAW SOCIETY OF UPPER CANADA
RULES OF PRACTICE AND PROCEDURE

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 28, 1999
RULE 3 - ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

I MOVE that rule 3 be amended by adding the following rule immediately after rule 3.03:

Varying, Setting Aside or Suspending an *In Camera* Order

- 3.03.1 (1) Following the completion of a conduct or discipline hearing, a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made in that conduct or discipline hearing pursuant to rule 3.01 or section 9 of the *Statutory Powers Procedure Act* that all or part of the conduct or discipline hearing be held *in camera*, except where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.
- 3.03.1 (2) A motion under sub-rule (1) shall be made in accordance with rule 7 except that the notice of motion shall be served on all parties and any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 28, 1999
RULE 3 - ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

I MOVE that rule 3 be amended by adding the following rule immediately after rule 3.06:

Varying, Setting Aside or Suspending a Non-publication Order

- 3.07 (1) A motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made pursuant to rule 3.06, except where the order under rule 3.06 is made by the Appeal Panel, the motion shall be made to the Appeal Panel.
- 3.07 (2) A motion under sub-rule (1) shall be made in accordance with rule 3.03.1(2).

II. INFORMATION

BENCHER ORIENTATION SESSION

18. A bencher orientation session concerning professional conduct matters has been scheduled for Wednesday, June 9, 1999 at Osgoode Hall. A subcommittee of the Committee comprised of Niels Ortvad and Marshall Crowe is assisting the Chair with the agenda for the session.

Re: Amendments to Rules of Practice and Procedure respecting In Camera and Non-Publication Orders

Ms. Cronk asked that the proposed new rule to vary, set aside or suspend in camera orders be amended by deleting the word "except" and inserting the word "but" so that the rule would then read:

"3.03.1 (1) Following the completion of a conduct or discipline hearing, a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made in that conduct or discipline hearing pursuant to rule 3.01 or section 9 of the Statutory Powers Procedure Act that all or part of the conduct or discipline hearing be held in camera, but where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel

3.03.1 (2) A motion under sub-rule (1) shall be made in accordance with rule 7 except that the notion of motion shall be served on all parties and any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal."

The Chair also asked that the proposed new rule to vary, set aside or suspend non-publication orders be amended by deleting the word "except" and inserting the word "but" so that the rule would then read:

"3.07 (1) A motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made pursuant to rule 3.06, but where the order under rule 3.06 is made by the Appeal Panel, the motion shall be made to the Appeal Panel.

3.07 (2) A motion under sub-rule (1) shall be made in accordance with rule 3.031(2)."

It was moved by Ms. Cronk, seconded by Ms. Ross that new rules 3.03.1 and 3.07, motions to vary be added as amended.

Carried

RULES OF PROFESSIONAL CONDUCT

Motion To Amend By-Law 9

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that section 15 of By-Law 9 be amended by adding the follow subsection:

"Authority of Convocation

(3) Nothing in subsection (2) is intended to derogate from the authority of Convocation at any time to prepare rules of professional conduct."

Carried

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that the version of the Rules of Professional Conduct in force as at January 31st, 1999 be confirmed.

Carried

REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Professional Development & Competence Committee

May 28, 1999

Report to Convocation

Purpose of Report: Decision Making
 Information

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on May 13, 1999. Committee members in attendance were Rich Wilson (Vice-Chair), Larry Banack (Vice-Chair), Mike Adams, Kim Carpenter-Gunn, Ron Cass, Ron Manes, and Helene Puccini. Staff in attendance were Janet Brooks, Janine Miller, Elliott Spears, and Sophia Spurdakos.
2. The Committee is reporting on the following matters:

For Decision

- Phase II Report of the Library Working Group on Delivery of Library Services

For Information

- A report from the March 1999 meeting of the Certification Working Group on new applications and recertifications as certified specialists (approved in Committee in April 1999)

FOR DECISION

PHASE II REPORT OF THE WORKING GROUP ON LONG-TERM DELIVERY OF COUNTY AND DISTRICT LIBRARY SERVICES

1. In October 1998 Convocation approved the Phase I report of the working group on the long-term delivery of county and district library services entitled *Beyond 2000: The Future Delivery of County Library Services to Ontario Lawyers*. Appendix I contains the recommendations and policy direction approved by Convocation to guide the working group's Phase II report.
2. The working group has completed its Phase II report, which was provided to Convocation at an earlier date, under separate cover.

BENCHERS ARE REQUESTED TO BRING THEIR COPY OF THE REPORT TO CONVOCATION.

3. The Professional Development and Competence Committee considered the working group's recommendations at its meeting in April, 1999 and endorsed them.
4. The Finance and Audit Committee considered certain financial implications of the working group recommendations and sets out its views in its report to Convocation.

Request to Convocation

5. Convocation is requested to consider the report of the working group, and if appropriate, to approve the report and its recommendations.

FOR INFORMATION

INFORMATION REPORT ON SPECIALIST CERTIFICATION NEW APPLICATIONS AND RECERTIFICATIONS APPROVED BY THE CERTIFICATION WORKING GROUP IN MARCH 1999 (APPROVED IN COMMITTEE ON APRIL 15, 1999)

1. The Certification Working Group is pleased to report final approval of the following lawyers as specialists in the designated areas of law:

Civil Litigation: Antonio Azevedo (of Toronto)
Brian Daly (of London)
Chris Paliare (of Toronto)

Criminal Law: Howard Cohen (of Toronto)

Family Law: Harold Berry (of Toronto)

2. The Certification Working Group is pleased to report final approval of the following lawyers for recertification as specialists in the designated areas of law:

Civil Litigation: Brian Crane (of Ottawa)
Harry Daniel (of St. Catharines)
A. Burke Doran (of Toronto)
Jack Fitch (of Toronto)
J. Peter Giffen (of Kitchener)
Jesse Glass (of Toronto)
Paul Lee (of Toronto)
William Leslie (of Barrie)
Miles O'Reilly (of Toronto)
Leon Paroian (of Windsor)
Wayne Spooner (of Ottawa)
Stanley Tick (of Hamilton)

Criminal Law: Peter Adams (of Prescott)
D. Crawford Smith (of Guelph)

Family Law: Christina MacNaughton (of St. Catharines)
Gary Joseph (of Toronto)

CONTINUATION OF CURRENT CERTIFICATION WORKING GROUP MEMBERS

1. At its meeting on April 15, 1999 the Professional Development and Competence Committee extended the term of the certification working group beyond June until new committee membership is determined following the benchers election. It was determined that the current membership of the working group, with the exception of those members not returning as benchers, would continue to meet as necessary until the new membership is established by the Committee.

2. The Committee has agreed to add Helene Puccini to the membership of the current working group to ensure a quorum is available during the summer.

APPENDIX 1

On October 23, 1998 Convocation approved the following steps be adopted pursuant to the Libraries Working Group Phase I Report:

- (a) Recommendations i. to iv. (Pages 128 - 129 of the Libraries Working Group Phase I Report)
 - i. That libraries engage in a planned and systematic training and education of the legal profession, starting with users of library services, about:
 1. the electronic and on-line library products available;
 2. how to consult library staff for reference matters;
 3. basic library research concepts and techniques.
 - ii. That libraries examine their role as providers of legal information and consider:
 - a) what role to play, either alone or in conjunction with CLE providers, in the continuing legal education of the profession;
 - b) whether to become more active in the dissemination of legal information (for example by becoming publishers of legal information) and move away from the traditional distribution role of a library.
 - iii. That libraries consider various ways to market all library services, both traditional and emerging non-traditional services, with a view to bettering:
 - (a) the competence of the legal profession;
 - (b) the administration of justice;
 - (c) service to the public of Ontario, by lawyers in Ontarioand, implement the most appropriate methods.
 - iv. That better financial and management information records be designed for use by the libraries to permit both funders and librarians to make better decisions about resources, collections and budgets. In addition to improving financial reporting mechanisms to the Law Society, libraries need to acquire financial management skills appropriate to their level of funding and responsibility.
 - v. That standardized financial reporting and accounting methods be adopted by each of the County Libraries that incorporates suitable management information to permit future analysis of all library revenues and expenses.
- (b) Policy Options (Pages 129- 130 of the Working Group Report)

That

 - (i) the County libraries should be formed into a library system;
 - (ii) in the development of a system an appropriate administrative model will be required to address local concerns and others which may be identified in the course of designing the delivery model and developing the system;
 - (iii) every library of the County libraries should be able to provide access to each of the seven types of research as described at page 14 of the report; and
 - (iv) County libraries should try to meet the needs of all three kinds of knowledge (technical, craft, and systematic) as described at page 19 of the report;

- (c) Design Principles (Pages 130 - 131 of the Working Group Report)
That Convocation adopt the design principles set out in paragraphs 546 (i) and (ii), and paragraph 548 of the report, as follows:

546. ...that a deliberate change to the County libraries in which "less is received for less" *at a provincial level*, is not an acceptable outcome of change.

ii. When designing a system of county libraries sufficient resources will be required at a system-wide level, to:

- ◆ promote and facilitate competence in the profession
- ◆ provide access to current and historic legal information for all members of the Law Society, throughout the province
- ◆ recognize the uniqueness and diversity of the province, particularly the north and its huge geographical distances
- ◆ facilitate the flow of research in the profession
- ◆ support the administration of justice in the province
- ◆ support and encourage collegiality in the profession

548. ...different levels of service are acceptable within individual libraries but, if a system approach is adopted, all services would be available by some means to users.

- (d) Delivery Models

Convocation approves and directs the working group to develop in greater detail what is referred to as the "Blended System" with the understanding that in developing that model the working group consider the relevance of factors and considerations that come under the model referred to as Electronic Library - Single Library.

THE REPORT WAS RECEIVED

REPORT 2 OF THE WORKING GROUP ON MULTI-DISCIPLINE PARTNERSHIPS IMPLEMENTATION PHASE

Mr. Armstrong presented Report 2 of the Working Group on Multi-Discipline Partnerships Implementation Phase.

Report to Convocation
May 28, 1999

The "Futures" Task Force -
Report of the Working Group on Multi-Discipline Partnerships
Implementation Phase - Report 2

Purpose of Report: Decision

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Introduction

1. On April 30, 1999, Convocation made By-Law 25 on Multi-Discipline Practices, which establishes a governance scheme for multi-discipline practices between lawyers and non-lawyers.¹
2. By-Law 25 implements the model adopted by Convocation in September 1998 for associations and partnerships of lawyers and non-lawyers in a law practice controlled by lawyers.²

¹The by-law making authority for multi-discipline practices is found in the *Law Society Act*, where Convocation may make by-laws, *inter alia*,

governing the provision of legal services by any person, partnership, corporation or other organization that also practices another profession, including requiring the licensing of those persons, partnerships, corporations and other organizations, governing the issuance, renewal, suspension and revocation of licences and governing the terms and conditions that may be imposed on licences.

²In brief, the by-law provides for the following:

- c. Only persons, as opposed to partnerships or corporations, may join with lawyers in an MDP;
- d. The relationship between individuals within the MDP may be a partnership or an association;
- e. Non-lawyers in an MDP must be actively involved in the provision of services within their areas of expertise;
- f. The MDP is a law practice, in which the services of non-lawyers support or enhance the delivery of the legal services in the practice;
- g. Effective control of the practice rests with the lawyers;
- h. Lawyers are responsible for ensuring non-lawyers' compliance with the Law Society regulatory scheme and that non-lawyers' services are provided with the appropriate level of skill and competence;
- i. An approval scheme applicable only to MDPs which are partnerships between lawyers and non-lawyers is established, requiring a lawyer to:
 - apply for approval of the practice as an MDP;

3. The following matters of implementation remain to be decided by Convocation:
 - i. An amendment to the by-law with respect to the agreements between the lawyer(s) and non-lawyer(s) in the practice;
 - ii. The approval of two forms prescribed by the by-law for the application of members to the Law Society for approval to form multi-discipline partnerships, and for the annual filing for such partnerships;
 - iii. The fee to be paid with the application;
 - iv. The amount of insurance coverage to be carried by such partnerships with respect to non-lawyer partners.

Amendment to the By-Law

4. Currently, subsection 4(2) of By-Law 25 sets out a number of matters that require agreement between the lawyer and non-lawyer in a partnership or association (some exclusive to the partnership structure) before the practice may operate as a multi-discipline partnership or association. Of these, only one, in paragraph 4(2)7, requires a *written* agreement, respecting observance by the non-lawyer of the lawyer's conflicts regime.
5. In the process of reviewing the by-law for the purpose of the drafting the two forms thereunder, the suggestion was made that it would be appropriate for all matters of agreement between the lawyer and non-lawyer as set out in subsection 4(2) to be in writing, as a means of creating an identifiable document that would be evidence of the agreements. If the practice is a partnership, these agreements could be included in the partnership agreement, for example.
6. Accordingly, it is proposed that the by-law be amended to add the words "in writing" in each of paragraphs 4(2)3, 4, 5 and 6 immediately after the words "The individual agrees with the member", as currently appears in paragraph 4(2)7.
7. A copy of By-Law 25 with the proposed amendments appears at page 16 in the appendix to the motion for amendment to the by-law in Appendix 1.

-
- within the application, provide information about the good character or standing of non-lawyer partners sufficient to satisfy the Law Society that the practice may be approved as an MDP partnership;
 - notify the Law Society of any new non-lawyer partners after approval is granted and provide the same information about the non-lawyer(s) in the same manner as an application for approval;
 - notify the Law Society of any changes in the status of the non-lawyer partners as they may affect the designation of the practice as an MDP;

Further,

- the Society's Secretary may require dissolution of the partnership if certain provisions of the by-law are breached;
- the terms "multi-discipline practice" and "multi-discipline partnership" may be used to describe entities which form such practices and partnerships pursuant to the by-law; and
- a multi-discipline partnership is required to maintain professional liability insurance for the practice which would effectively cover the non-lawyer(s).

Prescribed Forms Under By-Law 25

8. Section 6 of the by-law requires members who wish to partner with non-lawyers to complete a form of application setting out specific information identified in the by-law. This form is described in subsection 6(2) of the by-law as Form 25A, and is to be accompanied by an application fee in an amount to be set by Convocation. A proposed draft of Form 25A appears after the motion for amendment to the by-law at Appendix 1 (page 7).
9. Convocation approved the nature of this application form on April 30, 1999 when it made By-Law 25, on the basis that a facility should be established for the Law Society to obtain information about and monitor the constituency involved in multi-discipline practices, and implement a scheme that set a strict test for the partnering of lawyers and non-lawyers.
10. Section 14 of the by-law establishes an annual filing requirement for partnerships, and prescribes Form 25B for this purpose, a proposed draft of which appears at Appendix 1 after Form 25A (page 12). As the April 30 report indicated, the purpose of this form is to gather information on an annual basis about the multi-discipline partnership to enhance the Law Society database on this type of practice.
11. is proposed that these two forms be approved by Convocation.

Application Fee

12. noted above, subsection 6(2) of the by-law states that an application as described in Form 25A "shall be accompanied by an application fee in an amount determined by Convocation from time to time."³
13. considering the appropriate fee to be paid by members seeking approval as multi-discipline partnerships, a key factor is the number of non-lawyer partners proposed for the partnership. This is important because the time and resources dedicated to the review and approval process within the office of the Secretary will increase with the number of non-lawyers identified in the application form.
14. operational infrastructure required to respond to the application process and inquiries flowing from that process are intimately connected with the functions of the Member Advisory and Compliance Services department, currently being staffed. Multi-discipline practice issues will be among the many matters dealt with by this department, but it is proposed that the actual approval process be the subject of review by senior regulatory staff in the Secretariat.
15. re is no comparable Law Society fee payment scheme to that proposed for multi-discipline practices. Accordingly, the focus is on establishing a fair fee which will not be a barrier to firms wishing to apply as multi-discipline practices, but which will also contribute to in the infrastructure costs associated with the scheme.
16. proposed fee is a base of \$250.00 for a proposed partnership of a member or members and one non-lawyer, and an additional \$50.00 for each additional non-lawyer partner. It is emphasized that this is a new process, and the propriety of the fee amount may be revisited once some experience is gained in dealing with these applications.

³With respect to the fee described in subsection 6(2), subparagraph 62.(0.1)14.viii of the *Law Society Act* authorizes the making of by-laws respecting such fees.

Amount of Insurance Coverage for Non-lawyers

17. Section 19 of the by-law requires members to maintain liability insurance for non-members "in an amount determined by Convocation from time to time".
18. Recognizing that multi-discipline partnerships are new ventures for both lawyers and non-lawyers, without the benefit of experience upon which to draw in fixing an appropriate amount of liability insurance, the most prudent course of action would appear to be to fix the amount of insurance at that which members receive through the payment of the insurance levy in accordance with By-Law 16. Currently, the per member coverage is \$1,000,000.00.
19. At present, the most compelling argument for this level of coverage is that for reasons of public protection, it would be unseemly to provide a level of protection with respect to liability flowing from the provision of legal services by lawyers and not provide the same protection with respect to the services provided by those professionals or others who assist in or enhance in some significant way the provision of legal services provided by the partnership. Mirroring the member insurance would also have the added benefit of emphasizing the role of the non-member partner as a key component in the delivery of legal services in the partnership.
20. With respect to who will provide the insurance, an insurer such as the Lawyers Professional Indemnity Company ("LPIC") may be able to more readily facilitate coverage for non-members, although it is anticipated that a risk rating analysis of some type would be undertaken by LPIC in these circumstances. Section 19 of By-Law 25 as currently drafted does not effectively make LPIC the sole insurer of non-members in multi-discipline partnerships. Whether that in fact should occur is the subject of ongoing discussions between the Law Society and LPIC.

DECISION FOR CONVOCAATION

21. To complete the governance scheme for multi-discipline practices for lawyers, Convocation is requested to:
 - i. amend each of paragraphs 4(2)3, 4, 5 and 6 of By-Law 25 to add the words "in writing" after the words "The individual agrees with the member";
 - ii. approve Form 25A and Form 25B as prescribed by By-Law 25 in the forms of the drafts provided or as amended;
 - iii. determine the amount of the fee to be paid to the Law Society upon application by a member or members to become a multi-discipline partnership, either
 - (a) in the proposed amount of \$250 per application with one non-lawyer partner, and an additional \$50 for each additional non-lawyer partner; or
 - (b) in another amount to be determined by Convocation; and
 - iv. determine the amount of liability insurance coverage to be maintained for non-members in a multi-discipline partnership, either:
 - (a) in the proposed amount of \$1,000,000 per non-lawyer partner, or
 - (b) in another amount to be determined by Convocation.

The appropriate motions for amendments to the by-law appear in Appendix 1.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 25
[MULTI-DISCIPLINE PRACTICES]

made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 28, 1999

I MOVE that By-Law 25 [multi-discipline practices], made by Convocation on April 30, 1999, be amended as follows:

1. Paragraph 3 of subsection 4 (2) of the By-Law is amended by adding "in writing" after "The individual agrees with the member" in the first line.
2. Paragraph 4 of subsection 4 (2) of the By-Law is amended by adding "in writing" after "The individual agrees with the member" in the first line.
3. Paragraph 5 of subsection 4 (2) of the By-Law is amended by adding "in writing" after "The individual agrees with the member" in the first line.
4. Paragraph 6 of subsection 4 (2) of the By-Law is amended by adding "in writing" after "The individual agrees with the member" in the first line.
5. The By-Law is amended by adding the following forms:

Form 25A

Application to Enter into a Multi-Discipline Partnership

APPLICATION TO ENTER INTO A
MULTI-DISCIPLINE PARTNERSHIP

TO THE SOCIETY

The applicant named below applies (*or* The applicants named below apply) for approval to enter into a partnership with the individual (*or* individuals) named below.

1. INFORMATION ON APPLICANT(S)

Name: (*If the applicant is a partnership of members, specify the firm name and the name of each partner. If there are two or more applicants, specify the name of each applicant.*)

Address: (*Specify the address at which the applicant, or if there are two or more applicants, at which each applicant, practises law at the time of the application. If an applicant practises law at more than one place, specify the address of each place*)

Telephone number: (*If an applicant practises law at more than one place, specify the telephone number of each place.*)

Fax number(s): *(If an applicant practises law at more than one place, specify the fax number of each place.)*

Contact information: *(If the applicant is a partnership of members, or if there are two or more applicants, specify the name, address, telephone number and fax number of the partner, or applicant, with whom the Society should be speaking and corresponding in respect of the application.)*

Nature of practice of law: *(Specify the areas of law practised by the applicant or applicants and include the proportion of time devoted to each area of law.)*

2. INFORMATION ON INDIVIDUAL(S)

Name(s): *(If there are two or more individuals, specify the name of each individual.)*

Profession, trade or occupation to be practised by individual(s) in partnership with the applicant(s): *(Specify the profession, trade or occupation to be practised by each individual named.)*

Qualifications:

Academic background or learning experience which qualifies the individual to practise the profession, trade or occupation: *(Specify the academic background or learning experience separately for each individual named.)*

Number of years the individual has practised the profession, trade or occupation:

Membership of the individual in professional associations and details of membership:

(Provide the following information for each individual named.)

Current:

Name of each professional association to which the individual belongs at the time of the application:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which individual belongs at the time of the application:

Year in which the individual joined each professional association to which he or she belongs at the time of the application:

Is "good character" a requirement of membership in any professional association to which the individual belongs at the time of the application: *(Specify the professional associations to which the individual belongs at the time of the application where "good character" is a requirement of membership.)*

The individual's "standing" as a member of each professional association to which he or she belongs at the time of the application:

Disciplinary action taken against the individual by each association and the reasons for the disciplinary action:

Past:

Name of each professional association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which individual belonged in the past but to which the individual no longer belongs at the time of the application:

Period of time during which the individual was a member of each professional association to which he or she belonged in the past but to which he or she no longer belongs at the time of the application:

Reasons why the individual ceased to be a member of a professional association to which he or she belonged in the past but to which he or she no longer belongs at the time of the application:

Was "good character" a requirement of membership in any professional association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application: (*Specify the professional associations to which the individual belonged where "good character" is a requirement of membership.*)

Disciplinary action taken against the individual by each association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application, and the reasons for the disciplinary action:

Information on current practice of profession, trade or occupation:

Place of practice: (*For each individual, specify where the individual currently practises the profession, trade or occupation. Include the address, telephone number and fax number of the place.*)

Information on future practice of profession, trade or occupation:

Continuation of practice: (*For each individual, specify whether the individual will continue to practise the profession, trade or occupation outside of the proposed multi-discipline partnership.*)

Place of practice: (*For each individual, specify where the individual will practise the profession, trade or occupation outside the proposed multi-discipline partnership.*)

3. CERTIFICATE OF APPLICANT(S) AS TO GOOD CHARACTER OF INDIVIDUAL(S)

I (or WE) CERTIFY that, for the following reasons, (*name of individual(s)*) is (or are) of good character:

1. ...

2. ...

Date:

(*Signature of applicant(s)*)

4. INFORMATION ON PROPOSED MULTI-DISCIPLINE PARTNERSHIP

Name: *(Specify the firm name under which the proposed multi-discipline partnership will carry on business.)*

Address: *(Specify the address of the premises from which the proposed multi-discipline partnership will carry on business.)*

Telephone number: *(Specify the telephone number of the premises from which the proposed multi-discipline partnership will carry on business.)*

Fax number: *(Specify the fax number of the premises from which the proposed multi-discipline partnership will carry on business.)*

Type of services to be provided by individual(s): *(Provide a detailed description of the type of services to be provided by each individual in the proposed multi-discipline partnership.)*

Information on required agreements between applicant(s) and individual(s): *(Complete this section if the required agreements are not included in the partnership agreement(s).)*

Agreement that applicant(s) to have effective control over individual's practice of profession, trade or occupation: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that the applicant(s) will have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Agreement that individual will not practise profession, trade or occupation except to provide services to clients of proposed multi-discipline partnership: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, in partnership with the applicant(s), the individual will not practise his or her profession, trade or occupation except to provide services to clients of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Agreement that, outside proposed multi-discipline partnership, individual will practise profession, trade or occupation independently of proposed multi-discipline partnership: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, outside the proposed multi-discipline partnership, the individual will practise his or her profession, trade or occupation independently of the proposed multi-discipline partnership and from premises that are not used by the proposed multi-discipline partnership for its business purposes. Attach a copy of the written agreement.)*

Agreement to conform with Act, etc.: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, in respect of the practice of his or her profession, trade or occupation in partnership with the applicant(s), the individual will conform with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines. Attach a copy of the written agreement.)*

Agreement to be governed by Society's rules, policies and guidelines on conflicts of interest: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that the individual will be governed by the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the proposed multi-discipline partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Arrangements made by applicant(s) to comply with section 5: *(Specify the arrangements made by the applicant(s) to comply with section 5. If the applicant is a partnership of members, specify the names of the member partners who will be responsible for the partnership's compliance with section 5. If there are two or more applicants, specify the names of the applicants who will be responsible for the applicants' compliance with section 5.)*

Arrangements made by applicant(s) to comply with section 14: *(Specify the arrangements made by the applicant(s) to comply with section 14.)*

Arrangements made by applicant(s) to comply with section 15: *(Specify the arrangements made by the applicant(s) to comply with section 15.)*

Arrangements made by applicant(s) to comply with section 16: *(Specify the arrangements made by the applicant(s) to comply with section 16.)*

Arrangements made by applicant(s) to comply with section 19: *(Specify the arrangements made by the applicant(s) to comply with section 19.)*

I (or WE) CERTIFY that the information contained in this application is correct to the best of my (or our) knowledge.

Date:

(Signature of applicant(s))

Form 25B

Report on Multi-Discipline Partnership

REPORT ON MULTI-DISCIPLINE PARTNERSHIP

REPORT FOR THE YEAR *(SPECIFY CALENDAR YEAR)*
*(OR REPORT FOR THE PERIOD (SPECIFY THE PERIOD TO BE COVERED
BY THE REPORT IF LESS THAN A FULL CALENDAR YEAR))*

1. INFORMATION ON FIRM

Name: *(Specify the firm name under which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Address: *(Specify the address of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Telephone number: *(Specify the telephone number of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Fax number: *(Specify the fax number of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

In any written or verbal communications to persons outside the partnership, does the multi-discipline partnership refer to itself as:

A multi-discipline practice? *(Specify yes or no.)*

A multi-discipline partnership? *(Specify yes or no.)*

List of communications in which the multi-discipline partnership refers to itself as a multi-discipline practice:

List of communications in which the multi-discipline partnership refers to itself as a multi-discipline partnership:

2. INFORMATION ON PARTNERS WHO ARE MEMBERS

Number of partners who are members:

Names of partners who are members:

3. INFORMATION ON PARTNERS WHO ARE NOT MEMBERS

Number of partners who are not members:

Names of partners who are not members:

Profession, trade or occupation practised by partners who are not members:

Types of services provided by partners who are not members:

Qualifications of partners who are not members:

Participation in educational programs, professional training or other programs to improve professional competence: *(For each partner who is not a member, specify any educational programs, professional training or other programs to improve professional competence in which the partner participated during the year (or other period) in respect of which this report is being submitted.)*

Membership in professional associations and details of membership:

(Provide the following information for each partner who is not a member.)

Name of each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted:

Year in which the partner joined each professional association to which he or she belonged during the year (or other period) in respect of which this report is being submitted:

Is "good character" a requirement of membership in any professional association to which the individual belonged during the year (or other period) in respect of which this report is being submitted: *(Specify the professional associations to which the partner belonged during the year (or other period) in respect of which this report is being submitted where "good character" is a requirement of membership.)*

The partner's "standing" as a member of each professional association to which he or she belonged during the year (or other period) in respect of which this report is being submitted as at the end of the year (or other period):

Disciplinary action taken against the individual by each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted during the year (or other period), and the reasons for the disciplinary action:

Information on practice of profession, trade or occupation outside the multi-discipline partnership:

Names of partners who are not members who practise their profession, trade or occupation outside the multi-discipline partnership: *(Identify the partners who are not members who, during the year (or other period) in respect of which this report is being submitted, practised their profession, trade or occupation outside the multi-discipline partnership.)*

Types of services provided outside the multi-discipline partnership by partners who are not members: *(Specify separately for each partner who is not a member who practises his or her profession, trade or occupation outside the multi-discipline partnership the types of services the partner provides outside the multi-discipline partnership during the year (or other period) in respect of which this report is being submitted.)*

Place of practice: *(Specify separately for each partner who is not a member who practises his or her profession, trade or occupation outside the multi-discipline partnership, the place where the partner practised his or her profession, trade or occupation outside the multi-discipline partnership during the year (or other period) in respect of which this report is being submitted. Include the address, telephone number and fax number of the place.)*

4. INFORMATION ON COMPLIANCE WITH BY-LAW 25

Arrangements made to permit partners who are members to comply with section 5: *(Specify the arrangements in place during the year (or other period) in respect of which this report is being submitted. Specify the names of the member partners who were responsible for the member partners' compliance with section 5 during the year (or other period) in respect of which this report is being submitted.)*

Professional liability insurance coverage for partners who are not members:

(If the partners who are not members are not insured as one group, provide the following information separately for each partner who is not a member.)

Name of insurance company providing professional liability insurance coverage for partners who are not members:

Policy number:

(The following certification is to be completed by the partners who are members.)

I (or WE) CERTIFY that the information contained in this report is correct to the best of my (or our) knowledge.

Date:

(Signature of partner(s))

THE LAW SOCIETY OF UPPER CANADA

APPENDIX TO MOTION

BY-LAW 25

[MULTI-DISCIPLINE PRACTICES]

NOTE: THIS VERSION OF BY-LAW 25 INCLUDES THE AMENDMENTS PROPOSED IN THE MOTION.

Interpretation: "member"

1. (1) In this By-Law, "member" includes a partnership of members.

Interpretation: practice of law

- (2) For the purposes of this By-Law, the practice of law means the giving of any legal advice respecting the laws of Canada or of any province or territory of Canada or the provision of any legal services.

Prohibition against providing services of non-member

2. A member shall not, in connection with the member's practice of law, provide to a client the services of a person who is not a member except in accordance with this By-Law.

Permitted provision of services of non-member

3. A member may, in connection with the member's practice of law, provide to a client only the services of an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law.

Partnership, etc. with non-member

4. (1) Subject to subsection (2) and subsection 6 (1), a member may enter into a partnership or association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice law for the purpose of permitting the member to provide to clients the services of the individual.

Same

- (2) A member shall not enter into a partnership or an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law unless the following conditions are satisfied:

1. The individual is qualified to practise a profession, trade or occupation that supports or supplements the practice of law.
2. In the case of entering into a partnership with the individual, the individual is of good character.
3. The individual agrees with the member in writing that the member shall have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the partnership or association.

4. The individual agrees with the member in writing that, in partnership or association with the member, the individual will not practise his or her profession, trade or occupation except to provide services to clients of the partnership or association.
5. The individual agrees with the member in writing that, outside of his or her partnership or association with the member, the individual will practise his or her profession, trade or occupation independently of the partnership or association and from premises that are not used by the partnership or association for its business purposes.
6. The individual agrees with the member in writing that, in respect of the practice of his or her profession, trade or occupation in partnership or association with the member, the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.
7. In the case of entering into a partnership with the individual, the individual agrees with the member in writing to comply with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the partnership.

Interpretation: "effective control"

(3) For the purposes of subsection (2), the member has "effective control" over the individual's practise of his or her profession, trade or occupation if the member may, without the agreement of the individual, take any action necessary to ensure that the member complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Interpretation: "good character"

(4) For the purposes of subsection (2), the individual is of "good character" if there is a reasonable expectation, based on the individual's record of integrity and professionalism in the practice of his or her profession, trade or occupation and on the individual's reputation in the community, that the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Responsibility for actions of non-member

5. Despite any agreement between a member and an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall be responsible for ensuring that, in respect of the individual's practice of his or her profession, trade or occupation in partnership or association with the member,

- (a) the individual practises his or her profession, trade or occupation with the appropriate level of skill, judgement and competence; and
- (b) the individual complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Application by member forming partnership with non-member

6. (1) Before a member enters into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall apply to the Society for approval to enter into the partnership.

Application fee

(2) An application under subsection (1) shall be in Form 25A and shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Partnership agreement

7. At the time that a member makes an application under section 6, the member shall file with the Society a copy of so much of the agreement or agreements that will govern the member's partnership with the individual as may be required by the Society.

Consideration of application by Secretary

8. (1) The Secretary shall consider every application made under section 6, and the Secretary shall approve the member's entering into a partnership with the individual if the Secretary is satisfied that,

- (a) the conditions set out in subsection 4 (2) have been satisfied; and
- (b) the member has made arrangements that will enable the member to comply with sections 5, 14, 15, 16 and 19.

Requirements not met

(2) If the Secretary is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the Secretary shall notify the member who may meet the requirement or appeal to the committee of benchers appointed under section 10 if the member believes that the requirement has been met.

Time for appeal

9. An appeal under subsection 8 (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that a requirement has not been met.

Committee of benchers

10. (1) Convocation shall appoint a committee of at least three benchers to consider appeals made under subsections 8 (2) and 17 (2).

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of appeal: quorum

11. Three benchers who are members of the committee appointed under section 10 constitute a quorum for the purposes of considering an appeal made under subsection 8 (2) or subsection 17 (2).

Procedure: application of rules of practice and procedure

12. (1) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2) as if the consideration of the appeal were the hearing of an application under section 27 of the Act.

Procedure: *SPPA*

(2) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2).

Decision of committee of benchers

13. (1) After considering an appeal made under subsection 8 (2), the committee appointed under section 10 shall,

- (a) if it determines that the requirement has been met, approve the member's entering into a partnership with the individual; or

- (b) if it determines that the requirement has not been met, notify the member that the requirement has not been met and that the member may not enter into a partnership with the individual.

Decisions final

- (2) The decision of the committee appointed under section 10 on an appeal made under subsection 8 (2) is final.

Filing requirements: partnerships

- 14. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall submit to the Society for every full or part year that the partnership continues a report in respect of the partnership.

Form 25B

- (2) The report required under subsection (1) shall be in Form 25B.

Due dates

- (3) The report required under subsection (1) shall be submitted to the Society by January 31 of the year immediately following the full or part year in respect of which the member is submitting a report.

Changes in partnership

- 15. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall immediately notify the Secretary when,

- (a) the individual is expelled from the partnership;
- (b) the individual ceases or for any reason is unable to practise his or her profession, trade or occupation;
- (c) the term of the partnership has expired, if the partnership was entered into for a fixed term;
- (d) the partnership is dissolved under the *Partnerships Act*; or
- (e) any agreement that governs the partnership has been amended.

Dissolution of partnership

- (2) If an event mentioned in clause (1) (b), (c) or (e) occurs, the Secretary may require the member to dissolve the partnership.

Amendment of partnership agreement

- (3) At the time that the member notifies the Secretary under subsection (1) that an agreement that governs the partnership has been amended, the member shall file with the Secretary a copy of the amended agreement.

Dissolution of partnership: breach of By-Law

- 16. If a member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law breaches section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, the Secretary may require the member to dissolve the partnership.

Notice to member of requirement to dissolve partnership

- 17. (1) If the Secretary requires a member to dissolve a partnership under subsection 15 (2) or section 16, the Secretary shall so notify the member and, subject to subsection (2), the member shall dissolve the partnership.

Appeal

(2) If the Secretary requires a member to dissolve a partnership under section 16, the member may appeal the requirement to dissolve the partnership to the committee of benchers appointed under section 10 if the member believes that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19.

Time for appeal

(3) An appeal under subsection (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that the partnership is to be dissolved.

Procedure

(4) The rules of practice and procedure apply, with necessary modifications to the consideration by the committee appointed under section 10 of an appeal made under subsection (2) as if the consideration of the appeal were the hearing of an application under subsection 34 (1) of the Act.

Decision of committee of benchers

(5) After considering an appeal made under subsection (2), the committee appointed under section 10 shall,

- (a) if it determines that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, cancel the requirement to dissolve the partnership; or
- (b) if it determines that there has been a breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, take any of the following actions:
 - (i) Confirm the requirement to dissolve the partnership.
 - (ii) Permit the partnership to continue, subject to such terms and conditions as the committee may impose.
 - (iii) Any other action that the committee considers appropriate.

Decisions final

(6) The decision of the committee appointed under section 10 on an appeal under made subsection (2) is final.

Stay

(7) The receipt by the Secretary of the notice of appeal from the requirement to dissolve the partnership stays the requirement until the disposition of the appeal.

Association with non-member: multi-discipline practice.

18. (1) A member who, under subsection 4 (1), has entered into an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the association as a multi-discipline practice.

Partnership with non-member: multi-discipline practice or partnership

(2) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the partnership as a multi-discipline practice or multi-discipline partnership.

Insurance requirements: members

19. A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall maintain professional liability insurance coverage for the individual in an amount determined by Convocation from time to time.



Form 25A

Application to Enter into a Multi-Discipline Partnership

APPLICATION TO ENTER INTO A
MULTI-DISCIPLINE PARTNERSHIP

TO THE SOCIETY

The applicant named below applies (or The applicants named below apply) for approval to enter into a partnership with the individual (or individuals) named below.

1. INFORMATION ON APPLICANT(S)

Name: *(If the applicant is a partnership of members, specify the firm name and the name of each partner. If there are two or more applicants, specify the name of each applicant.)*

Address: *(Specify the address at which the applicant, or if there are two or more applicants, at which each applicant, practises law at the time of the application. If an applicant practises law at more than one place, specify the address of each place)*

Telephone number: *(If an applicant practises law at more than one place, specify the telephone number of each place.)*

Fax number(s): *(If an applicant practises law at more than one place, specify the fax number of each place.)*

Contact information: *(If the applicant is a partnership of members, or if there are two or more applicants, specify the name, address, telephone number and fax number of the partner, or applicant, with whom the Society should be speaking and corresponding in respect of the application.)*

Nature of practice of law: *(Specify the areas of law practised by the applicant or applicants and include the proportion of time devoted to each area of law.)*

2. INFORMATION ON INDIVIDUAL(S)

Name(s): *(If there are two or more individuals, specify the name of each individual.)*

Profession, trade or occupation to be practised by individual(s) in partnership with the applicant(s): *(Specify the profession, trade or occupation to be practised by each individual named.)*

Qualifications:

Academic background or learning experience which qualifies the individual to practise the profession, trade or occupation: *(Specify the academic background or learning experience separately for each individual named.)*

Number of years the individual has practised the profession, trade or occupation:

Membership of the individual in professional associations and details of membership:

(Provide the following information for each individual named.)

Current:

Name of each professional association to which the individual belongs at the time of the application:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which individual belongs at the time of the application:

Year in which the individual joined each professional association to which he or she belongs at the time of the application:

Is "good character" a requirement of membership in any professional association to which the individual belongs at the time of the application: *(Specify the professional associations to which the individual belongs at the time of the application where "good character" is a requirement of membership.)*

The individual's "standing" as a member of each professional association to which he or she belongs at the time of the application:

Disciplinary action taken against the individual by each association and the reasons for the disciplinary action:

Past:

Name of each professional association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which individual belonged in the past but to which the individual no longer belongs at the time of the application:

Period of time during which the individual was a member of each professional association to which he or she belonged in the past but to which he or she no longer belongs at the time of the application:

Reasons why the individual ceased to be a member of a professional association to which he or she belonged in the past but to which he or she no longer belongs at the time of the application:

Was "good character" a requirement of membership in any professional association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application: *(Specify the professional associations to which the individual belonged where "good character" is a requirement of membership.)*

Disciplinary action taken against the individual by each association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application, and the reasons for the disciplinary action:

Information on current practice of profession, trade or occupation:

Place of practice: *(For each individual, specify where the individual currently practises the profession, trade or occupation. Include the address, telephone number and fax number of the place.)*

Information on future practice of profession, trade or occupation:

Continuation of practice: *(For each individual, specify whether the individual will continue to practise the profession, trade or occupation outside of the proposed multi-discipline partnership.)*

Place of practice: *(For each individual, specify where the individual will practise the profession, trade or occupation outside the proposed multi-discipline partnership.)*

3. CERTIFICATE OF APPLICANT(S) AS TO GOOD CHARACTER OF INDIVIDUAL(S)

I (or WE) CERTIFY that, for the following reasons, *(name of individual(s))* is (or are) of good character:

1. ...

2. ...

Date:

(Signature of applicant(s))

4. INFORMATION ON PROPOSED MULTI-DISCIPLINE PARTNERSHIP

Name: *(Specify the firm name under which the proposed multi-discipline partnership will carry on business.)*

Address: *(Specify the address of the premises from which the proposed multi-discipline partnership will carry on business.)*

Telephone number: *(Specify the telephone number of the premises from which the proposed multi-discipline partnership will carry on business.)*

Fax number: *(Specify the fax number of the premises from which the proposed multi-discipline partnership will carry on business.)*

Type of services to be provided by individual(s): *(Provide a detailed description of the type of services to be provided by each individual in the proposed multi-discipline partnership.)*

Information on required agreements between applicant(s) and individual(s): *(Complete this section if the required agreements are not included in the partnership agreement(s).)*

Agreement that applicant(s) to have effective control over individual's practice of profession, trade or occupation: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that the applicant(s) will have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Agreement that individual will not practise profession, trade or occupation except to provide services to clients of proposed multi-discipline partnership: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, in partnership with the applicant(s), the individual will not practise his or her profession, trade or occupation except to provide services to clients of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Agreement that, outside proposed multi-discipline partnership, individual will practise profession, trade or occupation independently of proposed multi-discipline partnership: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, outside the proposed multi-discipline partnership, the individual will practise his or her profession, trade or occupation independently of the proposed multi-discipline partnership and from premises that are not used by the proposed multi-discipline partnership for its business purposes. Attach a copy of the written agreement.)*

Agreement to conform with Act, etc.: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, in respect of the practice of his or her profession, trade or occupation in partnership with the applicant(s), the individual will conform with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines. Attach a copy of the written agreement.)*

Agreement to be governed by Society's rules, policies and guidelines on conflicts of interest: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that the individual will be governed by the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the proposed multi-discipline partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Arrangements made by applicant(s) to comply with section 5: *(Specify the arrangements made by the applicant(s) to comply with section 5. If the applicant is a partnership of members, specify the names of the member partners who will be responsible for the partnership's compliance with section 5. If there are two or more applicants, specify the names of the applicants who will be responsible for the applicants' compliance with section 5.)*

Arrangements made by applicant(s) to comply with section 14: *(Specify the arrangements made by the applicant(s) to comply with section 14.)*

Arrangements made by applicant(s) to comply with section 15: *(Specify the arrangements made by the applicant(s) to comply with section 15.)*

Arrangements made by applicant(s) to comply with section 16: *(Specify the arrangements made by the applicant(s) to comply with section 16.)*

Arrangements made by applicant(s) to comply with section 19: *(Specify the arrangements made by the applicant(s) to comply with section 19.)*

I (or WE) CERTIFY that the information contained in this application is correct to the best of my (or our) knowledge.

Date:

(Signature of applicant(s))

Form 25B

Report on Multi-Discipline Partnership

REPORT ON MULTI-DISCIPLINE PARTNERSHIP

REPORT FOR THE YEAR *(SPECIFY CALENDAR YEAR)*
(OR REPORT FOR THE PERIOD (SPECIFY THE PERIOD TO BE COVERED BY THE REPORT IF LESS THAN A FULL CALENDAR YEAR))

1. INFORMATION ON FIRM

Name: *(Specify the firm name under which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Address: *(Specify the address of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Telephone number: *(Specify the telephone number of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Fax number: *(Specify the fax number of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

In any written or verbal communications to persons outside the partnership, does the multi-discipline partnership refer to itself as:

A multi-discipline practice? *(Specify yes or no.)*

A multi-discipline partnership? *(Specify yes or no.)*

List of communications in which the multi-discipline partnership refers to itself as a multi-discipline practice:

List of communications in which the multi-discipline partnership refers to itself as a multi-discipline partnership:

2. INFORMATION ON PARTNERS WHO ARE MEMBERS

Number of partners who are members:

Names of partners who are members:

3. INFORMATION ON PARTNERS WHO ARE NOT MEMBERS

Number of partners who are not members:

Names of partners who are not members:

Profession, trade or occupation practised by partners who are not members:

Types of services provided by partners who are not members:

Qualifications of partners who are not members:

Participation in educational programs, professional training or other programs to improve professional competence: *(For each partner who is not a member, specify any educational programs, professional training or other programs to improve professional competence in which the partner participated during the year (or other period) in respect of which this report is being submitted.)*

Membership in professional associations and details of membership:

(Provide the following information for each partner who is not a member.)

Name of each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted:

Year in which the partner joined each professional association to which he or she belonged during the year (or other period) in respect of which this report is being submitted:

Is "good character" a requirement of membership in any professional association to which the individual belonged during the year (or other period) in respect of which this report is being submitted: *(Specify the professional associations to which the partner belonged during the year (or other period) in respect of which this report is being submitted where "good character" is a requirement of membership.)*

The partner's "standing" as a member of each professional association to which he or she belonged during the year (or other period) in respect of which this report is being submitted as at the end of the year (or other period):

Disciplinary action taken against the individual by each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted during the year (or other period), and the reasons for the disciplinary action:

Information on practice of profession, trade or occupation outside the multi-discipline partnership:

Names of partners who are not members who practise their profession, trade or occupation outside the multi-discipline partnership: *(Identify the partners who are not members who, during the year (or other period) in respect of which this report is being submitted, practised their profession, trade or occupation outside the multi-discipline partnership.)*

Types of services provided outside the multi-discipline partnership by partners who are not members: *(Specify separately for each partner who is not a member who practises his or her profession, trade or occupation outside the multi-discipline partnership the types of services the partner provides outside the multi-discipline partnership during the year (or other period) in respect of which this report is being submitted.)*

Place of practice: *(Specify separately for each partner who is not a member who practises his or her profession, trade or occupation outside the multi-discipline partnership, the place where the partner practised his or her profession, trade or occupation outside the multi-discipline partnership during the year (or other period) in respect of which this report is being submitted. Include the address, telephone number and fax number of the place.)*

4. INFORMATION ON COMPLIANCE WITH BY-LAW 25

Arrangements made to permit partners who are members to comply with section 5: *(Specify the arrangements in place during the year (or other period) in respect of which this report is being submitted. Specify the names of the member partners who were responsible for the member partners' compliance with section 5 during the year (or other period) in respect of which this report is being submitted.)*

Professional liability insurance coverage for partners who are not members:

(If the partners who are not members are not insured as one group, provide the following information separately for each partner who is not a member.)

Name of insurance company providing professional liability insurance coverage for partners who are not members:

Policy number:

(The following certification is to be completed by the partners who are members.)

I (or WE) CERTIFY that the information contained in this report is correct to the best of my (or our) knowledge.

Date:

(Signature of partner(s))



It was moved by Mr. Armstrong, seconded by Mr. Millar that:

- paragraphs 4(2)3, 4, 5 and 6 of By-Law 25 be amended to add the words "in writing" after the words "The individual agrees with the member";

- that Forms 25A and 25B be approved in the forms of the drafts provided in the Report;
- that an application fee of \$250 be paid with one non-lawyer partner and an additional \$50 be paid for each additional non-lawyer partner; and
- that the same amount of insurance coverage per non-lawyer partners be maintained as is provided by LPIC to lawyer partners.

Mr. Swaye moved an amendment that non-lawyer partners maintain the same amount of insurance coverage as is provided by LPIC to lawyer partners and any excess carried by the lawyer partners.

It was moved by Ms. Ross, seconded by Ms. Cronk that the non-lawyer partners should be required to carry any insurance if available from their own governing body insurance.

The Chair accepted the amendment by Mr. Swaye and the Armstrong/Millar motion as amended was voted on and adopted.

The Ross/Cronk motion was deferred until the June Convocation.

It was moved by Ms. Curtis, seconded by Mr. Gottlieb that the program be self-funding.

Carried

The following Orders were filed:

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Bruce Allan Clark, of the City of Granville, NY, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 17th day of December, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance, but assisted by Duty Counsel, wherein the Solicitor was found guilty of conduct unbecoming a barrister and solicitor and having heard counsel aforesaid;

28th May, 1999

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

DATED this 25th day of March, 1999

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF William Brown, of the City of Bowmanville, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of September, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Earl Levy, Q.C., wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that William Brown be suspended for a period of six weeks commencing July 9, 1999.

DATED this 25th day of March, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

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

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of January, 1999, in the presence of Counsel for the Society, the Solicitor not being in attendance, and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Richard Stanwick be suspended for a period of one month commencing at the conclusion of any administrative suspension and continuing from month to month thereafter until the Solicitor (a) produces his books and records, and (b) returns his file to Mr. Webb and accounts for his retainer.

CONVOCATION FURTHER ORDERS that the Solicitor pay Law Society costs in the amount of \$1,000.

DATED this 25th day of March, 1999

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Richard Alan Dawe, of the Town of Stratford, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

28th May, 1999

CONVOCATION of the Law Society of Upper Canada, having heard submissions from Counsel for the Society and Duty Counsel, representing the Solicitor, the Solicitor being in attendance, hereby orders that Complaint D153/98 be dismissed.

DATED this 25th day of March, 1999

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Philip Deblois Quintin, of the City of Kingston, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 27th day of November, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance, and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Philip Deblois Quintin be suspended for a period of six months commencing at the conclusion of any administrative suspension; that he pay the Law Society fees and LPIC premiums for the period he practised law in an incorrect membership category, that is from April 1, 1995 to January 31, 1997; and, that he pay costs of the Law Society in the amount of \$3,500.

DATED this 25th day of March, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Thom Warren Arthur, of the Town of Ridgeway, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 2nd day of September, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Neil J. Campbell, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Thom Warren Arthur be suspended for a period of one month to run concurrently with his present administrative suspension and to continue indefinitely thereafter until his books and records are completed, and he has filed a psychiatric report that he is fit to practise law.

DATED this 25th day of March, 1999

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Martin Edward Vamos, of the City of Hamilton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 18th day of December, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance, and represented by James Turnbull, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

28th May, 1999

CONVOCATION HEREBY ORDERS that Martin Edward Vamos be reprimanded, that he pay Law Society costs in the amount of \$1,000 and, that he produce a monthly trust reconciliation to the Society for a period of twelve months.

DATED this 25th day of March, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Chaim Peter Bredin, of the City of North York, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

O R D E R

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 27th day of November, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Marlys Edwardh, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

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

DATED this 25th day of March, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

28th May, 1999

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Paul Donald Vincent Cannon, of the City of Hamilton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 5th day of February, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Paul Donald Vincent Cannon be suspended for a period of thirty days and from month to month thereafter until he has satisfied the outstanding compliance request of the Law Society.

DATED this 25th day of March, 1999

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF John Douglas Wright, of the Town of Stratford, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of January, 1999, in the presence of Counsel for the Society, the Solicitor not being in attendance, and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

28th May, 1999

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

DATED this 25th day of March, 1999

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Bernard Hampton Hawkins, of the City of St. Catharines, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 3rd day of February, 1999, in the presence of Counsel for the Society, the Solicitor being in attendance, but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Bernard Hampton Hawkins be suspended for a period of one month commencing May 1, 1999 and subject to his undertaking dated January 12, 1999

DATED this 25th day of March, 1999

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Joan Diane Teskey Finley, of the Town of Woodbridge, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 31st day of August, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance, and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Joan Diane Teskey Finley be suspended for a period of one month commencing as of the date of the Order and continuing from month to month thereafter until she has made her filings and produced her books and records.

DATED this 25th day of March, 1999

"V. Krishna"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Michael Gerrard DeCosimo, of the City of Mississauga, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 18th day of December, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance, but represented by William Trudell, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

28th May, 1999

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

DATED this 25th day of March, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

The Treasurer thanked the Law Society staff for all their work and asked Mr. Saso to convey thanks to the staff.

CONVOCATION ROSE AT 3:40 P.M.

Confirmed in Convocation this 25 day of June, 1999

Harvey T. Strosberg

Treasurer