MINUTES OF CONVOCATION

Thursday, 31st October, 2002
9:00 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Aaron, Arnup, Banack, Bindman, Braithwaite, Campion, Carey, Carpenter-Gunn, Cass, Chahbar (by telephone), Cherniak, Diamond, Ducharme, Elliott, Epstein, Feinstein, Finkelstein (by telephone), Go, Gottlieb, Harris, Hunter, Laskin, Lawrence, MacKenzie, Marrocco, Martin, Millar, Minor, Mulligan, Murphy, Murray, Pilkington, Potter, Puccini, Ross, Ruby, Simpson, Swaye, Topp, Wardlaw, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer thanked the Bar Admission and Communications Departments and all other staff involved in the planning and arrangements of the Call to the Bar ceremonies. An overview of the composition of Bar Admission students was provided as follows: women – 53%, visible minorities – 16.5%, francophones – 5.4% and aboriginal people – 1.7%.

MOTION – DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Bindman, seconded by Mr. MacKenzie that the Draft Minutes of Convocation of September 19th, 2002 be adopted.

Carried

MOTION – APPOINTMENT TO LAW SOCIETY HEARING PANEL

It was moved by Mr. Bindman, seconded by Mr. MacKenzie that in accordance with section 49.22 of the *Law Society Act*, Larry Banack be reappointed as Chair of the Law Society Hearing Panel.

Carried

MOTION – APPOINTMENT RE: BY-LAW 29 ORDERS

It was moved by Mr. Bindman, seconded by Mr. MacKenzie that John Campion be appointed to make orders under By-Law 29 [Payment of Costs] requiring members to pay the cost of an audit conducted under section 49.2 of the *Law Society Act.*

Carried

REPORT OF THE DIRECTION OF PROFESSIONAL DEVELOPMENT & COMPETENCE

Candidates for Call to the Bar

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Professional Development and Competence 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 Thursday, October 31st, 2002:

Julia Madelaine Apostle	Bar Admission Course
Kelly Christine Beale	Bar Admission Course
Stéphanie Bouchard	Bar Admission Course
Pierre-Daniel Jaques Gérard Pierre Bourgeau	Bar Admission Course
Michael Worth Carlson	Bar Admission Course
Joga Singh Chahal	Bar Admission Course
Edmund King-Leung Chan	Bar Admission Course
Gabriel Cormier	Bar Admission Course
John Anthony Cullis	Bar Admission Course
Juliana May Andrea Darling	Bar Admission Course
Andrea Lynn Denovan	Bar Admission Course
Brigitte Dioguardi	Bar Admission Course
Tyler Jonathen Hershberg	Bar Admission Course
Janet-Lynn Howard	Bar Admission Course
Amanda Helen Iwasiw	Bar Admission Course
Muhammad Ferhan Javed	Bar Admission Course
Richard Daniel Kargus	Bar Admission Course
Inna Kholodenko	Bar Admission Course
Monica Annemarie Karla Lipson	Bar Admission Course
Ru⟩a Ljumovi□	Bar Admission Course
Candee Jaye Mc Carthy	Bar Admission Course
Conan Daniel Thomas Mc Intyre	Bar Admission Course
Naresh Chandra Misir	Bar Admission Course
Shelley Anne Moore	Bar Admission Course

Brahm Michael Nathans	Bar Admission Course
Bolanle Olusina Ogunleye	Bar Admission Course
Paramjeet Pabla	Bar Admission Course
Martin Geoffrey Painter	Bar Admission Course
Trupti Panchal	Bar Admission Course
Genevieve Pellerin	Bar Admission Course
Shawn Miguel Philbert	Bar Admission Course
Vasiliki Plytas	Bar Admission Course
Cheryl Denise Power	Bar Admission Course
Farha Salim	Bar Admission Course
Yasmin Alexandra Shaker	Bar Admission Course
Ian MacGregor George Sinclair	Bar Admission Course
Samantha Nadira Singh	Bar Admission Course
Matthew William Stanley	Bar Admission Course
Lori Andrea Stein	Bar Admission Course
Vishna Nankumarie Sukdeo	Bar Admission Course
Joseph Paul Vienneau	Bar Admission Course
Tyler David Warren	Bar Admission Course
Ikram Farah Warsame	Bar Admission Course
Karen Avril Wigmore	Bar Admission Course
Ho Young Yoon	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 Thursday, October 31st, 2002:

Rosalie Anna Armstrong	Province of Nova Scotia
Rose-Gabrielle Birba	Province of Quebec
Teresa Pui-Ha Budd	Province of British Columbia
Grant Eugene Francis Brailsford	Province of British Columbia
Shane Freitag	Province of Alberta
Kristen Dawn Mix	Province of Alberta

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

B.2.1. The following applies to be certified as foreign legal consultant in Ontario:

Henry Juroviesky	State of Maryland Juroviesky & Ricci

B.2.2. His application is complete and he has filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 31st day of October, 2002

It was moved by Mr. Marrocco, seconded by Ms. Ross that the list of candidates for Call to the Bar be adopted.

Carried

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CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar. Mr. Carey then presented them to Mr. Justice Gerald P. Day to sign the Rolls and take the necessary oaths.

Julia Madelaine Apostle	Bar Admission Course
Kelly Christine Beale	Bar Admission Course
St9phanie Bouchard	Bar Admission Course
Pierre-Daniel Jaques G9rard Pierre Bourgeau	Bar Admission Course

Michael Worth Carlson	Bar Admission Course
Joga Singh Chahal	Bar Admission Course
Edmund King-Leung Chan	Bar Admission Course
Gabriel Cormier	Bar Admission Course
John Anthony Cullis	Bar Admission Course
Juliana May Andrea Darling	Bar Admission Course
Andrea Lynn Denovan	Bar Admission Course
Brigitte Dioguardi	Bar Admission Course
Tyler Jonathen Hershberg	Bar Admission Course
Janet-Lynn Howard	Bar Admission Course
Amanda Helen Iwasiw	Bar Admission Course
Muhammad Ferhan Javed	Bar Admission Course
Richard Daniel Kargus	Bar Admission Course
Inna Kholodenko	Bar Admission Course
Monica Annemarie Karla Lipson	Bar Admission Course
Ruza Ljumovic	Bar Admission Course
Candee Jaye McCarthy	Bar Admission Course
Conan Daniel Thomas McIntyre	Bar Admission Course
Naresh Chandra Misir	Bar Admission Course
Shelley Anne Moore	Bar Admission Course
Brahm Michael Nathans	Bar Admission Course
Bolanle Olusina Ogunleye	Bar Admission Course
Paramjeet Pabla	Bar Admission Course
Martin Geoffrey Painter	Bar Admission Course
Trupti Panchal	Bar Admission Course
Genevieve Pellerin	Bar Admission Course
Shawn Miguel Philbert	Bar Admission Course
Vasiliki Plytas	Bar Admission Course
Cheryl Denise Power	Bar Admission Course
Farha Salim	Bar Admission Course
Yasmin Alexandra Shaker	Bar Admission Course
Ian MacGregor George Sinclair	Bar Admission Course
Samantha Nadira Singh	Bar Admission Course
Matthew William Stanley	Bar Admission Course
Lori Andrea Stein	Bar Admission Course
Vishna Nankumarie Sukdeo	Bar Admission Course
Joseph Paul Vienneau	Bar Admission Course
Tyler David Warren	Bar Admission Course
Ikram Farah Warsame	Bar Admission Course
Karen Avril Wigmore	Bar Admission Course
Ho Young Yoon	Bar Admission Course
Rosalie Anna Armstrong	Transfer, Province of Nova Scotia
Rose-Gabrielle Birba	Transfer, Province of Quebec
Grant Eugene Francis Brailsford	Transfer, Province of British Columbia
Teresa Pui-Ha Budd	Transfer, Province of British Columbia
Shane Freitag	Transfer, Province of Alberta
Kristen Dawn Mix	Transfer, Province of Alberta

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CIVIL RULES COMMITTEE

The Treasurer and benchers expressed their appreciation to Mr. Ron Rolls who has been a long serving member of the Civil Rules Committee on behalf of the Law Society.

REPORT OF THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Mr. Topp presented the Report of the Lawyers Fund for Client Compensation Committee for Convocation's approval.

Lawyers Fund For Client Compensation Committee
October 31, 2002

Report to Convocation

Purpose of Report: Policy – Decision Making
Information

Prepared by the Lawyers Fund for Client Compensation Department

TABLE OF CONTENTS:

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Lawyers Fund for Client Compensation Committee ("the Committee") met on October 9, 2002. Committee members in attendance were Robert Topp (Chair), Abdul Chahbar (Vice-Chair), Larry Banack (Vice-Chair), Marshall Crowe, Gillian Diamond, Marilyn Pilkington, Gerald Swaye, Q.C., Richmond Wilson, Q.C. Also in attendance were Malcolm Heins (CEO), Zeynep Onen (Director of Professional Regulation), David McKillop (Manager), Maria Loukidelis, Paul McCormick, Heather Werry, Sara Hickling, Fred Grady - Finance Department, Michelle Strom (President & CEO, LawPRO) and Craig Allen (VP & Actuary, LawPRO).

2. The Committee is reporting on the following matters:

Policy – For Decision
- Insurance coverage for 2003

Information
- Budget and Levy for 2003
- Referee Appointments and Referee Remuneration
- Sub-Committee on Guidelines 1 & 2
- Review Sub-Committee for Approval of Grants
- Referee Reports and Staff Memoranda

SECTION A – POLICY – FOR DECISION

INSURANCE

Background

3. The Fund first obtained insurance coverage for extraordinary high claims in the 2001 financial year, to help provide a measure of stability to the Fund and to avoid catastrophic loss and consequent substantial levy increases which might result from a large scale defalcation. The insurance coverage for 2001 provided $14 million in coverage in excess of $6 million, meaning coverage would commence after $6 million in grant payments were made for claims received in 2001, up to a maximum of $20 million. Due to the surplus in the Fund as a result of reduced claims in 2001, insurance for 2002 was reduced to $10 million in coverage in excess of $10 million. The insurance premium for 2002 was $534,600.

Issue

4. The Committee considered the need to continue with a program of insurance for the Fund and if so, at what level of coverage.

5. Malcolm Heins and Michelle Strom spoke to the issue of insurance. Ms Strom provided some general information about the state of the insurance industry. With respect to the reinsurance industry, there has been considerable consolidation both within companies and within the industry as a whole, resulting in a decreased number of companies providing reinsurance. As a result, costs have increased as much as 35-45%. The expectation is that it would cost considerably more for the Fund to purchase the equivalent policy of insurance for 2003 as was in place for 2002, due to the increased cost of obtaining reinsurance.

6. Given overall budget and levy concerns, it was proposed that a higher attachment point be considered for insurance for the 2003 policy year. Ms Strom advised the Committee that she anticipates that a premium similar to that paid for 2002 (in the area of $500,000) would buy coverage of $10 million but with an attachment point of $15 million (i.e. $10 million in excess of $15 million for claims received in 2003).

7. As the need for insurance is tied to the financial state of the Fund, the Committee then heard from Craig Allen about the overall Fund claim situation. Mr. Allen reported that as at December 31, 2001, the Fund balance stood at $13.6 million. While the 2002 Member levy was set at a level to meet the costs of the Fund on a break-even basis, savings have been realized in 2002 on two major budget items. Claims incurred to the end of September 2002 are $1,562,000, compared to a claims budget for the first three quarters of $3.2 million. Payments on claims reported before 2002 have also been lower than anticipated, yielding additional savings. In addition, the costs associated with the Spot Audit program have been lower than budgeted.

8. As a result of the foregoing, the Fund Balance is estimated, as at September 30, 2002, at $15.6 million. Assuming expenses are incurred at the rate budgeted for the remainder of the year, the Fund balance would remain at $15.6 million for December 31, 2002.

9. In order to maintain the stability of the Fund and provide a cushion in the event of a catastrophic loss, Malcolm Heins recommended that insurance should again be obtained for the Fund. Given the anticipated Fund Balance at the end of 2002, it was felt that coverage for $10 million in excess of $15 million for 2003 would be appropriate.

Decision of the Committee

10. Having weighed the financial interests of the Fund with overall budget considerations, the Committee accepted the recommendation of Malcolm Heins that insurance be purchased for $10 million in excess of $15 million. The Committee then authorized Michelle Strom to negotiate the purchase of this insurance.

Decision for Convocation

11. Convocation must decide whether to approve the Committee's decision to purchase insurance for the Fund for 2003 at the higher attachment point.

SECTION B - INFORMATION

BUDGET FORECAST AND LEVY FOR 2003

Background

12. The Committee was presented with the draft budget for 2003 for both the Lawyers Fund and the Spot Audit Program. The budget provides for a reduction in the Fund levy from $290 to $281 per member.

Issue

13. Given the positive financial situation of the Fund and the expected surplus of $15.6 million at year end as reported by Craig Allen (see paragraphs 7 & 8 above), some members of the Committee expressed the view that a more substantial reduction in the levy should be considered for 2003.

14. Malcolm Heins cautioned that there is still a quarter remaining in 2002 and the assumption cannot be made that the last quarter will be as positive for the Fund as the first three quarters of 2002. Historically, claims to the Fund have been unpredictable and given the current economic climate, a cautious approach is advisable. He suggested the possibility that if the recommended levy is accepted and the Fund experiences another positive year in 2003, a larger reduction in the 2004 levy might be more appropriate.

15. Malcolm Heins' recommendation was to accept the $281 per member levy as presented in the draft budget.

16. In view of the fact that the Fund balance at year-end is estimated to be approximately $2 million higher than budgeted, Richmond Wilson proposed a reduction in the surplus of the Fund by $1 million, which he felt would not impair the Fund's financial situation. A $1 million reduction would translate into a reduction in the levy of approximately $35 per member in addition to the $9 reduction already presented in the draft budget.

Decision of the Committee

17. The Committee voted in favour of recommending a $35 levy reduction for 2003 to the Finance Committee, in addition to the $9 reduction provided for in the draft budget.

EXPANSION OF THE PANEL OF REFEREES

Background

18. When there is disagreement between a claimant and staff Counsel at the Compensation Fund concerning the amount of a grant or entitlement to a grant, a hearing before a Referee may be held. The Fund maintains a roster of Referees to conduct these hearings, usually consisting of lawyers in private practice.

Issue

19. The Fund last recruited Referees in 1994. There are essentially only four active Referees at the present time, two of whom conduct the majority of hearings for the Fund. As a result, there may be a need to expand the panel of Referees.

20. The expansion of the active pool of Referees and the use of more Referees in Compensation Fund hearings may perpetuate and enhance the integrity of the process in the eyes of the public and the membership.

Decision Of The Committee

21. The Committee deferred the matter to a future Committee meeting to facilitate preparation of a position paper by Compensation Fund staff.

INCREASED REMUNERATION OF REFEREES

Background

22. Pursuant to Guideline #6, the Fund currently pays Claimant's counsel appearing at Referee hearings an $800 per diem counsel fee in the discretion of the Referee.

23. In contrast, the current rate of remuneration for Referees is $600 per day for hearings and preparation of the report(s), with commitments of less than one day to be billed on a pro rata basis. This has been in effect for some time. There is also provision for secretarial services of up to $50.00.

Issue

24. The Committee considered whether an increase in the remuneration for Referees is appropriate, particularly in light of the disparity with the counsel fees allowed as well as the need to attract new and experienced candidates to the existing panel.

Decision Of The Committee

25. The Committee approved an increase in remuneration for Referees to $800 per day.

THE SCOPE OF GUIDELINE 2 (a) OF THE GENERAL GUIDELINES FOR THE DETERMINATION OF GRANTS FROM THE LAWYERS FUND FOR CLIENT COMPENSATION

Background

26. As a result of some issues that have arisen concerning the application of Guideline 2(a), it was decided at the May 22, 2002 Committee meeting that a sub-committee should be set up to review the scope of Guideline 2(a) and to provide Compensation Fund staff with guidance on these issues.

Report to the Committee

27. It was reported to the Committee that a Sub-Committee has been struck to review the scope and interpretation of Guideline 2(a). The sub-committee consists of Robert Topp, Richmond Wilson, Gerald Swaye, and Helene Puccini. The Chair asked David McKillop to arrange a conference call with the Sub-Committee to begin consideration of the issue.

REVIEW SUB-COMMITTEE

Background

28. The Review Sub-Committee currently approves all recommendations for grants in excess of $5000. The Review Sub-Committee currently consists of three members of the Committee. On any particular matter, the staff lawyer handling the claim prepares a recommendation as to what grant should be made based on the facts that are fully set out in the recommendation memorandum.

29. Referee reports are also approved by the Review Sub-Committee. In situations where staff are unable to make a recommendation, either because an agreement cannot be reached with the claimant as to the appropriate amount for a grant or because staff disputes the validity of the claim, a Referee Hearing may be held. The Referee conducts the hearing, following which a report and recommendation as to whether a grant should be paid (and how much) is submitted to the Review Sub-Committee.

30. The decision of the Review Sub-Committee is final, whether it involves a recommendation by staff or a report from a Referee.

Issue

31. At the May 22, 2002 Committee meeting there was concern expressed by some of the committee members that there was not more involvement by the full Committee on the grant approval process. There was some discussion about the possibility of having a revolving Review Sub-Committee.

32. Larry Banack outlined for the Committee the difficulty he has in staffing Discipline hearing panels and expressed concerns about involving the full Committee in the review of recommendations, as it would have

the effect of tainting the entire Committee vis a vis the discipline process for members where grants have been paid from the Fund. This would further shrink the pool of Benchers available for Discipline hearings.

33. A number of possibilities were suggested, including the appointment of sub-committee members on a rotating basis.

Decision of the Committee

34. The Committee decided to defer the discussion until after the next Bencher election, at which time the matter should be referred to the new Committee.

REFEREE REPORTS AND STAFF MEMORANDA

35. The Committee wishes to report that the Referee Reports and Staff Memoranda found in Appendix "A" have been approved and the amounts shown have been paid out or are in the process of being paid out.

APPENDIX "A"

GRANTS APPROVED BY THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE
MAY 1, 2002 TO OCTOBER 8, 2002

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
C. Anthony Keith, Q.C.	*Alan Stanley Franklin* (Disbarred May 28, 1998)	1	NIL
	John Rothel (Former member disbarred June 27, 1996)	1	NIL
	Frank Ingolf Liebeck (Former member deceased Nov. 6, 2000)	1	$ 10,970.22
Staff			
Heather A. Werry	*Paul D. Squires* (Disbarred September 22, 1994)	1	$ 49,126.25
	Solicitor #75 (Indefinite suspension effective Dec. 18/01 pending the production of proper books and records)	2	$ 5,060.00
	Solicitor #38 (Former member disbarred Dec. 15, 2000	2	$ 5,000.00
	Solicitor #92 (Suspended December 5, 2001)	1	$ 5,000.00
	Solicitor #94 (Suspended Annual Fees and Filings – September 25, 2001)	2	$ 6,200.00

	Richard Alan Dawe (Former member deceased August 7, 2002)	3	$ 3,800.00
Sara Hickling	*Brian W. Strutt* (Permission to Resign- July 31, 2001)	1	$ 6,683.50
	Mark O. Addo (Disbarred Dec.19, 2001)	6	$ 8,570.00
	Solicitor #95 (Suspended Sept 25, 2001)	1	$13,500.00
Jack Daiter	*Solicitor #75* (Indefinite suspension effective Dec. 18/01 pending production of proper books and records)	4	$ 320.00
	Solicitor #77 (Pending Discipline)	2	$ 4,000.00
	Solicitor #78 (Retired – Pending Discipline)	2	$100,617.53
	Solicitor #89 (Suspended Annual Fee, E&O Filings September 25, 2001)	1	$ 2,000.00
	Courtney A. Kazembe (not in Ontario)	1	$ 250.00
	Deborah J. Snead (Former member deceased May 8, 2001)	1	$ 1,450.00
Maria Loukidelis	*Solicitor #64* (Administrative Suspension – April 2000)	2	$ 14,500.00
	Solicitor #80 (Suspended September 25, 2001)	2	$2,780.00
	Joseph G. M. Barnes (Former member permitted to resign – May 23, 2996)	1	$ 500.00
	George O. Tokar (Permitted to Resign – May 16, 2001)	4	$112,910.03

R. Paul McCormick	*Solicitor #16* Suspended – E&O Levy Filings – September 25, 2001)	4	$ 18,500.00
	Solicitor #67 (Suspended – September 25, 2001)	2	$ 38,000.00
	Colm Joseph Brannigan (Permitted to Resign – February 26, 2002)	1	$ 61,576.12
	Rene St-Fort (Former member disbarred – March 2, 2000)	1	$ 7,600.00
TOTAL			$ 478,913.65

Re: Insurance for 2003

It was moved by Mr. Topp, seconded by Mr. Banack that the recommendation to purchase insurance coverage for the Fund for $10 million in excess of $15 million for 2003 be approved.

Carried

Re: Budget Forecast and Levy for 2003

It was moved by Mr. Topp, seconded by Mr. Wilson that the Compensation Fund levy be reduced by $35 per member in addition to the $9 reduction in the budget which would reduce the surplus in the Fund by $1 million.

Lost

ROLL-CALL VOTE

Arnup	Abstain
Banack	For
Bindman	Against
Braithwaite	For
Campion	For
Carpenter-Gunn	Against
Chahbar	For
Cherniak	Against
Diamond	Against
Ducharme	Against
Elliott	Against
Epstein	Against
Feinstein	Against
Finkelstein	For
Go	Against
Gottlieb	Against
Harris	For
Hunter	Against
Laskin	Against
MacKenzie	Against
Marrocco	Against
Martin	For
Millar	Against

Minor	Against
Mulligan	Against
Murray	For
Pilkington	Against
Potter	Against
Puccini	For
Ross	For
Ruby	Against
Simpson	Against
Swaye	For
Topp	Against
Wilson	For
Wright	Against

Vote: Against – 23; For – 12; 1 Abstention

Items for Information Only

Expansion of the Panel of Referees
Increased Remuneration of Referees
The Scope of Guideline 2 (a) of the General Guidelines for the Lawyers Fund for Client Compensation Review Sub-Committee
Referee Reports and Staff Memoranda

FINANCE & AUDIT COMMITTEE REPORT

RE: BUDGET FOR 2003

Mr. Ruby presented an overview of the 2003 Draft Budget for approval by Convocation.

LAW SOCIETY OF UPPER CANADA
2003 DRAFT BUDGET

TABLE OF CONTENTS

Page #

Working through the budget document…

The budget document is divided into two major sections. The first section under Tab A provides a financial summary overview of the Society's budget in its major functional categories with summarized staffing and revenue and expense information. The second section under Tab B provides the user a detailed breakdown of staffing, revenues and expenses.

In moving through the budget, page references are provided to assist the reader in viewing the information in greater detail if desired. For example turning to page 16, Funds Summary, the Society's budget is divided into its various components: Professional Regulation, Professional Development and Competence, etc. Across the top of each column is a page reference number of 18. On page 18 the Society's Professional Regulation division is divided into its various components: Investigations, Discipline, etc.

On page 18, 1 Total Employee/FTE shows two numbers at the top of each column. The first number is the number of employees in the department, the second number is the number of full time equivalents (FTE). If the FTE number is less than the number of actual employees, the department has staff that work part-time.

2003 Budget Overview

2002

In 2002, the membership levy was reduced by $164. This reduction was achieved through reorganization, anticipation of efficiencies in operations and increased membership.

2002 has been a transition year during which operations were further refined so that we could more effectively focus on the programs and services that assist us in fulfilling our mandate. New senior managers are in place and have been critically reviewing their operations.

In preparing the 2003 budget, it is recommended that further reductions in member fees be implemented while maintaining a budget that enables us to have flexibility to deliver the programs and services required to govern in the public interest. Also taken into consideration is a desire to have a sustainable budget that provides some predictability for future fees.

The 2003 proposed budget…

It is recommended that there be a reduction in the general membership fee to $939.

Combining the other elements of the fee, the overall annual membership levy will be down from $1,6l8 to $1,454, another reduction of $164. Together with the reduction in 2002, the overall levy has been reduced by $328 over two years.

The breakdown for 2003 is as follows:

o	General Membership	$ 939
o	Lawyers Fund for Client Compensation	245
o	LibraryCo	195
o	Capital	75
TOTAL		$ 1,454

For students, the Bar Admission Course fee remains at $4,400.

This budget will enable us to do more with less and do it better. Specifically, we will be able to continue to do what we have done before and at the same time begin to implement new initiatives and offer new programs and services that members require to maintain their professional development and competence.

Member competence is essential to our self-regulating status. By offering programs and products that enable members to maintain and enhance their competence, we offer preventive, proactive solutions to keep them out of our discipline stream. The investment made up front in competence means better service for the public, lower insurance rates for members, an improved public profile and less demand for our regulatory processes.

Some of the efficiencies we have achieved over the last 18 months can now be used to support our members in offering the best legal services they can and to allow us to make improvements in the way we regulate the profession. These new and improved initiatives are essential to the Law Society in fulfilling its core mandate to govern in the public interest. By doing so, we can enhance our role as a leading regulatory body.

For students, doing more, better, and with less means enhancements and options that include initiatives such as e-learning. For example, this year, we developed a highly successful e-learning site that provides students with greater flexibility and choice. Next year, we will expand these types of programs, including the launch of an interactive distance learning initiative.

How this budget supports our mandate…

This budget process began with detailed operational reviews by the Finance and Audit Committee that included the Client Service Centre, The Lawyers Fund for Client Compensation and the Great Library. We will continue to conduct similar reviews with all other operational areas of the Law Society over the next few years.

Focusing on the Law Society mandate, members of the Senior Management Team and their respective departments looked critically at their operations and the delivery and enhancement of programs, products and services offered to the profession and the public.

The proposed budget therefore focuses the resources of the Law Society on four strategic areas: professional regulation, professional development and competence, policy development and equity and diversity/access to justice.

In 2003, a particular emphasis will be placed on professional regulation followed by professional development and competence.

Professional regulation will address issues of timeliness, fairness, transparency and effectiveness of the complaints processing throughout the entire process, from the time a complaint comes into the Law Society to the final outcome of each matter including, divisional issues of enhanced support, training and expertise.

Priorities will include:

- Documenting all existing rules and policies
- Cataloguing all released decisions and analyzing them to create discipline benchmarks/thresholds
- Populating the member database with discipline history and orders
- Optimizing discipline processes and functions
- Optimizing access to the discipline processes and functions for all equity-seeking communities, Francophone communities and Aboriginal Peoples
- Creating process targets and quality standards to satisfy member and public expectations
- Developing a case management system
- Creating a communications plan.

Professional development and competence will continue to focus on the true needs of the profession, from acceptable practices through to excellence in practice, and to provide learning and information supports to assist members to meet competence goals.

Priorities will include:

- Providing supports to assist lawyers to achieve and maintain competence
- Continuing to determine program, product and service priorities through needs analysis
- Continuing to explore and implement alternate delivery models developed for our information and education products and services
- Adding communications resources to promote and market the new products and initiatives being offered
- Committing Information Systems resources to transfer the Admission and CLE databases to the AS400, which for the first time will provide us with an integrated membership and services database
- Integrating, wherever possible, equity-related information and resources into professional development and competence programs, products and services.

The Policy Secretariat will continue to provide support to Convocation in its policy development process. There will be increased input from all departments in this process to identify operational implications such as what is required financially, as well as policy options, to support Benchers in their decision-making role. Also, there will be greater prioritization of emerging issues to better allocate available resources.

Over the past few years, the Equity Initiatives Department has developed and implemented many valuable programs and services for lawyers, law firms, community groups and members of the public. Its dual focus has been on encouraging and helping to make the legal profession more attractive to equity seeking groups, Aboriginal persons and Francophones and assisting members and firms in making legal services more accessible.

For example, the Law Society has developed various model policies, created the Discrimination and Harassment Counsel Program, instituted mentorship programs and has provided the Bar Admission Course in both official languages among many other initiatives. In addition to direct programs we offer, we are actively involved and support other initiatives financially and through support services. This includes promoting greater access to justice through the creation of Pro Bono Law Ontario which now incorporates our successful Connecting Communities with Counsel Program, supporting the Public Legal Education Task Force and participating in the Coalition for Legal Aid Tariff Reform.

Last year, our investment in equity and diversity programs alone exceeded $3 million. This accounts for funds for bilingual investigations, Call Centre and Bar Admission staff, translation of various public and member resources, the funding of the Student Success Centre, tutoring services for students and many other resources. In addition, we make substantial financial contributions to various access to justice programs.

Our proposed budget for 2003 focuses on better integration of equity and diversity/access to justice initiatives within operational departments of the Law Society and the programs, products and services they provide to members, students, the public and employees. Promotion, communication and greater accessibility to these valuable equity services will become part of the fabric of what Law Society employees do in the course of their daily business.

The highly popular Lawyer Referral Service is a direct Access to Justice Program that the Law Society offers. Last year, the Law Society logged 50,892 calls from people looking for a lawyer on the 1-900 line and 30,463 calls on the toll free crisis line, resulting in approximately 26,500 contacts. Lawyers who participate in this service offer up to 30 minutes of free consultation. That means that last year alone based on the contacts made and an average hourly rate of $125, lawyers provided up to $l.6 million in free consultations to the public.

Budget implications for other Law Society departments…

The budget requirements developed for each Law Society department are based on what they need to support the four strategic functions, and in particular regulation and professional development and competence.

Operational areas such as Finance and Administration, Human Resources, Information Systems, the Client Service Centre and Communications will continue to concentrate their efforts and resources in helping us achieve the goals we have set for professional development and competence and professional regulation for 2003.

The Communications Department budget, for example, continues to focus on using media relations, web technology and member and public publications to communicate and promote all programs, products and services offered by the

Law Society. Particular emphasis will be placed on marketing professional development and competence initiatives in 2003 and continued promotion of equity and access to justice initiatives.

Capital requirements…

At the time of the development of the Society's surplus management policy, we recommended that it made sense to develop a comprehensive strategy to deal with our long-range capital requirements over the next ten years.

At the same time, as a result of changes to the Bar Admission Course (BAC), which is offered in the north wing of Osgoode Hall, we recognized that this space is being under-utilized due to the relatively short duration of the BAC.

As a result we undertook a review of our physical space at Osgoode Hall so that we could take a rational approach to upgrading and restoring both the north (education) wing and the historic south wing. We enlisted the services of an architectural firm and consulting engineers to help us determine the feasibility of making optimum use of our space while preserving the historical integrity of the building.

For 2003, the short duration of the BAC, combined with demands for space at Osgoode Hall, have prompted us to move much of the instructional components of the course off-site. The move of BAC instruction from Osgoode Hall off-site means that much of the north wing will be available for the general use of the Society.

It makes business sense to rent short term space off-site for the delivery of BAC instruction and to take advantage of the one time ability to vacate the rented premises at 393 University, at the expiration window of the lease. In April 2005, there is a one time right without penalties to terminate the lease, which otherwise has a ten year term ending in April 2010. At the same it makes sense to renovate the second, third and fourth floors of the north wing converting the space from its original educational purpose to general office space. These renovations will convert approximately 20,000 sq. ft. of unsuitable student space to general office use. In addition, the renovation would include upgrade and replacement of inadequate mechanical and electrical systems.

The renovation plan will allow staff from other Toronto sites to be housed at Osgoode Hall resulting in savings of approximately $390,000 in annual rental costs at 393 University and 1 Dundas escalating to over $500,000 by the year 2010. The finance department has analyzed the renovation costs, applicable rental savings and increased revenues resulting from the renovation and determined the project will be cash flow positive within three years, with accumulated positive benefits within six years and savings sufficient to recover the initial investment of $4.0 million within 12 years.

In addition to actual cash savings, administrative efficiencies would accrue from the consolidation of all Toronto staff and operations in a single facility. The renovations would include additional multi-purpose space with audio/visual capabilities for continuing learning opportunities, special Convocation presentations, better meeting spaces, as well as temporary office space for Benchers when attending at Osgoode Hall.

The costs of the south wing upgrade and technology requirements can likely be provided for within the capital levy of $75 per member.

What this means for 2003…

2002 has been a successful financial year for the Society. The general fund will end the year with a surplus of approximately $4.0 million while maintaining the Working Capital Reserve approved by Convocation at $8.0 million up from the $7.2 million balance at the end of 2001, equating to two months operating expenses.

The anticipated surplus of approximately $4 million for 2002 enables us to direct these monies to the capital fund to renovate portions of the North Wing, providing additional useable office space and bringing all Law Society departments under one roof while achieving operational efficiencies. This use of the surplus is consistent with the operating reserve policy adopted by Convocation this year outlining how surplus funds should be directed.

Currently, 20,000 square feet of space in the North Wing is not being utilized effectively and will be recovered as office space once renovations are completed.

In the south wing of Osgoode Hall the architectural study found that mechanical and electrical systems are approaching the end of their useful lives. Over the next ten years these systems will require upgrade or replacement.

From a technology perspective, we have committed to the AS400 as its major platform for the development of major applications. This commitment will continue as the Society focuses resources on its core programs.

This budget does not analyze in detail the capital requirements for the north and south wings. This will be the subject of a separate report. However, the capital requirements are such that no use has been made of the surplus for operations in the 2003 budget.

The Lawyers Fund for Client Compensation…

The Lawyers Fund for Client Compensation will end 2002 with a Fund balance of approximately $15.6 million as claims experience remains very favourable for the Fund.

The Fund will insure for catastrophic claims with insurance coverage of $10 million excess of $15 million, consistent with the anticipated year end fund balance for 2002. The Fund has provided for the estimated insurance cost in the 2003 budget.

The per member fee for 2003 has declined to $245 from $290 in 2002 with the application of $l.0 million of the accumulated fund balance.

Library Services…

Ontario lawyers support three types of library-related services: County and District Law Libraries (through LibraryCo.), the Great Library and CanLII.

LibraryCo has begun the implementation of its business plan and its 2003 budget reflects a re-direction of resources towards electronic media and away from traditional paper based collections. Total expenses are budgeted at $7.1 million with Law Society funding of $5.8 million being requested. This budget request translates into a per member of $207. Utilizing the balance in the Society's Restricted Fund for County Libraries will reduce the actual per member levy to $195.

The Great Library and CanLII are two important services that also support member professional development and competence. In total, the Great Library budget requirement for 2003 is $2.6 million, with an additional $400,000 allocated for CanLII. Total spending on overall library services, including the Great Library, LibraryCo. and CanLII is $10.l million, with the membership fee funding $8.8 million of this amount.

Over and above this amount, CanLII is seeking $l.7 million for development and implementation purposes ringing its overall budget to $2.1 million for 2003. This additional $1.7 million request has not been included in the budget for 2003. An application is being made to the Law Foundation of Ontario to provide its financial support to the project.

Through their annual membership fee, Ontario lawyers will contribute approximately $315 for library services with other funding sources providing approximately $115 per member. This is a significant amount and needs to be examined in the context of member needs and value for money. While no changes are proposed for 2003, this is a subject that needs to be addressed for the 2004 budget.

What this means moving forward…

We have now developed and implemented two consecutive budgets that provide appropriate funding to enable us to fulfill our mandate while offering reduced member fees and additional programs and services.

We are on solid financial footing. Last year, we were able to redirect $7.2 million into the establishment of a working capital reserve and throughout 2002 we have been able to maintain this amount. We were able to

accomplish this through some program redesigns, efficiencies and additional revenues. A further $4 million surplus projected in 2002 enables us to fund, with Convocation's approval, much needed and in some cases, long overdue, capital expenditures.

All of this means we will be able to start 2003 in a healthy financial position with a reserve of approximately $8 million.

We will continue to reduce fees going into 2003. We have maintained our reserve. And we can continue to do more with less and to do it better. We can also create and deliver new initiatives to both members of the profession and the public.

THE LAW SOCIETY OF UPPER CANADA
Draft Budget
For the year ending December 31, 2003
2003 Budget Assumptions

- Membership fee based on 28,000 full fee paying equivalent members, increased by 2,000 members from last year.

- Funding from the Law Foundation of Ontario for the Bar Admission Course reduced to $l,092,000 from $l,300,000 in 2002, and funding for Archives maintained at $45,000.

- Investment income surplus from the Errors and Omissions fund increased to $2,600,000 from $2,000,000 consistent with the actual amount received in 2002.

- The tuition for the Bar Admission course is maintained at $4,400 unchanged from the fee level established in 2001.

- Provision for salary merit adjustments set at 3.5% of compensation costs.

- The budget contains a general contingency of $1.2 million, unchanged from 2002.

- LibraryCo per member levy of $195 is based on budget submission from LibraryCo. Total spending of $7,122,650 increased by $372,000 from $6,773,000 with Law Foundation of Ontario funding reduced by $440,000 to $850,000 from $l,290,000. The budget proposed to use the $333,000 balance in the Society's County Libraries fund to reduce the LibraryCo levy.

- The Capital levy remains at $75.

- The Lawyers Fund for Client Compensation will retain insurance of $10 million excess $15 million, up from last years excess of $10 million, for claims. This level of insurance is consistent with the projected Fund balance at the end of 2002. The Lawyers Fund for Client Compensation will utilize $1.0 million from its accumulated fund balance to reduce the 2003 levy, approximately $36 per member.

The budget does not provide for the utilization of funds surplus to the Society's approved Operating Reserve Policy. The operating reserve began the year at approximately $7.2 million. The anticipated maximum for 2003 under the policy would be approximately $8.0 reserve policy and is recommended it be transferred to the Capital Fund.

CANLII has proposed a per member levy of up to $76 per member. The draft budget provides for $14 per member. Additional funding is being sought from the Law Foundation of Ontario.

THE LAW SOCIETY OF UPPER CANADA

Draft Budget
For the year ending December 31, 2003
Comparative Membership Fee

	$/MEMBER			$ CHANGE
	2001 Approved Budget	2002 Approved Budget	2003 Draft Budget	2003 vs. 2002
1 General Membership Fee	$1,118	$1,045	$ 939	$ (106)
Restricted Funds				
2 County Libraries	210	208	195	(13)
3 Lawyers Fund for Client Compensation	379	290	245	(45)
4 Capital	75	75	75	-
5 Total Restricted Funds	664	573	515	(58)
6 Total	$1,782	$1,618	$1,454	$ (164)
7 Equivalent Full Fee Paying Members	25,000	26,000	$28,000	2,000
8 Bar Admission Course Tuition Fee	$4,400	$ 4,400	$ 4,400	$ -

(see budget details in Convocation file)

A debate followed.

Convocation took its morning recess and resumed with the debate on the budget.

It was moved by Mr. Wright, seconded by Ms. Puccini that the total of the working capital reserves and contingencies be reduced from $9.2 million to $6.2 million.

The Treasurer reframed the wording of the Wright/Puccini motion that the reserves be reduced by $3 million.

Lost

ROLL-CALL VOTE

Arnup	Against
Banack	For
Bindman	Against
Braithwaite	Against
Campion	For
Carey	For
Carpenter-Gunn	Against
Chahbar	Against
Cherniak	Against

Diamond	Against
Ducharme	Against
Elliott	Against
Epstein	Against
Feinstein	Against
Finkelstein	For
Go	Against
Gottlieb	For
Harris	For
Hunter	Against
Laskin	Against
MacKenzie	For
Marrocco	Against
Martin	For
Millar	Against
Minor	Against
Mulligan	Against
Murray	Against
Pilkington	Against
Potter	For
Puccini	For
Ross	For
Ruby	Against
Simpson	Against
Swaye	For
Topp	Against
Wilson	For
Wright	For

Vote: Against – 23; For – 14

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

The Treasurer and Benchers had as their guests for luncheon Chief Justice John Richard, Associate Chief Justice Heather Smith, Ms. Suzan Hebditch, LibraryCo Inc. and Ms. Dahlia Stein and daughter Tova Hanna.

CONVOCATION RECONVENED AT 2:45 P.M.

PRESENT:

The Treasurer, Arnup, Banack, Bindman, Campion, Carey, Chahbar (by telephone), Cherniak, Diamond, Ducharme, Epstein, Feinstein, Finkelstein (by telephone), Go, Gottlieb, Harris, Hunter, Laskin, MacKenzie, Marrocco, Millar, Minor, Mulligan, Murphy, Pilkington, Potter, Puccini, Ross, Ruby, Swaye, Wilson and Wright.

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IN PUBLIC

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RESUMPTION OF THE DEBATE ON THE BUDGET FOR 2003

It was moved by Mr. Ruby, seconded by Mr. Chahbar that the budget for 2003 and the membership fee of $l,489 be approved.

Carried

ROLL-CALL VOTE

Arnup	For
Banack	For
Bindman	For
Campion	For
Carey	For
Chahbar	For
Cherniak	For
Diamond	For
Ducharme	For
Epstein	For
Feinstein	For
Finkelstein	For
Go	For
Gottlieb	For
Harris	For
Hunter	For
MacKenzie	For
Marrocco	For
Millar	For
Minor	For
Pilkington	For
Potter	For
Puccini	For
Ross	For
Ruby	For
Swaye	Against
Wilson	Against
Wright	For

Vote: For – 26; Against – 2

The Treasurer expressed his gratitude to Mr. Ruby, Committee members and all staff involved in preparing the budget with special thanks to Wendy Tysall and Fred Grady.

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. Ducharme presented the Report of the Professional Regulation Committee for approval by Convocation.

Professional Regulation Committee
October 10, 2002

Report to Convocation

Purposes of Report: Decision and Information

Prepared by the Policy Secretariat

TERMS OF REFERENCE/COMMITTEE PROCESS

The Professional Regulation Committee ("the Committee") met on October 10, 2002. In attendance were:

Todd Ducharme (Chair)

Judith Potter (Vice-Chair)

Stephen Bindman
John Campion
Tom Carey
Gillian Diamond
Patrick Furlong
Gary Gottlieb
Holly Harris
Ross Murray

Gavin MacKenzie

Staff: Naomi Bussin, Katherine Corrick, Terry Knott, David McKillop, Zeynep Onen, Andrea Waltman, Jim Varro, Jim Yakimovich

This report contains

- policy reports on
  - a new rule of professional conduct on contingent fees
  - amendments to the Member's Annual Report (MAR)
  - an amendment to the policy on suspension of members who fail to file the Member's Annual Report*
  - amendments to By-Laws 18, 19 and 25*
- information reports on file and caseload management and staffing information in the complaints resolution, investigations and discipline departments.

* deferred from September 19, 2002 Convocation

I. POLICY
(FOR DECISION)

REGULATION OF CONTINGENT FEES

THE OVERVIEW

Request to Convocation

1. Convocation is asked to adopt a new rule of professional conduct on contingent fees, to replace existing rules 2.08(3) and (4) of the *Rules of Professional Conduct.* The existing rules are no longer appropriate in light of the decision of the Ontario Court of Appeal in *McIntyre v Attorney General of Ontario* (released September 10, 2002), in which the Court held that contingent fee agreements are not *per se* unlawful. As the existing rules suggest that such agreements are prohibited by law, the Committee's view is that the Law Society should act promptly to substitute rules that are in accordance with the current state of the law as expressed in the Court of Appeal's judgment.

2. The Committee's report on this issue begins at paragraph 9, page 5.

3. The proposed rule is as follows:

Contingent Fees and Contingent Fee Agreements

2.08 (3) Subject to subrules (1), (4) and (5), except in family law or criminal or quasi-criminal matters, a lawyer may enter into a written agreement signed by the lawyer and his or her client, or where the client is under a disability, by the client's litigation guardian or other duly appointed representative, that provides that the lawyer's fee is contingent, in whole or in part, on a specified disposition of the matter for which the lawyer's services are to be provided.

(4) An agreement under subrule (3) shall contain:

36. a statement of the method by which the fee is to be determined, including the percentage that may accrue to the lawyer in the event of settlement, trial or appeal, and

37. a statement that the client may apply to the Superior Court of Justice for a determination of whether the contingent fee is fair and reasonable.

(5) An agreement under subrule (3) shall not:

(a) require the lawyer's consent if the client decides to discontinue or settle his or her claims, or

(b) include a term that prevents the client from changing lawyers or ending the lawyer and client relationship at any time.

COMMENTARY

The Contingent Fee Agreement

A contingent fee agreement should:

a. be signed by a witness, and set out the name, address, and phone number of the witness;
b. briefly describe the nature of the client's claim;
c. contain a simple example of how the fee will be calculated;

d. contain a statement that the lawyer's fee may be lesser or greater than fees charged by other lawyers for similar claims and that before signing the agreement the client has the right to consult with and retain another lawyer;
e. contain a statement that the client has the right to decide whether to accept an offer to settle his or her claim;
f. contain a statement of who will be responsible for paying costs and disbursements, and
g. contain a statement setting out the circumstances in which the agreement may be terminated by the lawyer or by the client and the consequences of termination, including how the lawyer's fee is to be determined in such circumstances.

Immediately after the signing of a contingent fee agreement, the lawyer should deliver a copy to the client.

The Percentage of the Award and Treatment of Costs

In determining the appropriate percentage or other basis of the contingent fee, the lawyer and the client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it and who is to receive an award of costs. If the lawyer and client agree that the costs award is to be paid to the lawyer, a smaller percentage of the award than would otherwise be agreed upon for the contingent fee, after considering all relevant factors, will generally be appropriate. The test is whether the fee in all of the circumstances is fair and reasonable.

Summary of the Issue

4. A working group[1] of the Professional Regulation Committee was formed to review the Law Society's current policy on contingent fees, adopted by Convocation in June 2000. The review was necessary to ensure that the Law Society had adequately prepared for anticipated discussions with the Attorney General of Ontario, given recent developments in the courts that appeared likely to prompt legislative change to permit contingent fees. The thought was that the scheme for regulation of contingent fees would be embodied in provincial legislation, most likely through amendments to the *Solicitors Act*.

5. The working group proposed certain amendments to the regulatory scheme outlined in the June 2000 policy report, with which a majority of the Committee agreed. The Committee prepared a report to Convocation on this basis for consideration at September 19, 2002 Convocation.

6. On September 10, after the Committee's meeting, the Court of Appeal released its reasons in *McIntyre v. Attorney General of Ontario*, which held that contingent fees are not illegal in Ontario, either as offending the *Champerty Act* or the *Solicitors Act*. The Court also urged the government of Ontario to implement a scheme to regulate contingent fees.

7. At September 19, 2002 Convocation, following consultation between the Committee's chair and the Treasurer, the chair advised that rather than presenting the proposed scheme for discussion, the working group would be bringing to October 2002 Convocation a draft rule of conduct on contingent fees. This approach was based largely on the view that guidance to the profession should be provided as soon as possible.

8. The Committee is aware that a Private Member's Bill on contingent fee regulation received second reading in the Ontario legislature on October 10, 2002 and was referred to the Justice and Social Policy Committee. These developments will be monitored through the Society's Government Relations department.

[1] Gavin MacKenzie (chair), Ab Chahbar, George Hunter, Judith Potter, Bill Simpson and Gerald Swaye.

THE REPORT

A. INTRODUCTION AND BACKGROUND

9. In early 2002, the Treasurer requested the chair of the Professional Regulation Committee to form a working group to formulate an appropriate scheme for regulation of contingent fees in Ontario.

10. The Law Society had already approved such a scheme in June 2000, when Convocation adopted the recommendations of a Joint Committee on Contingent Fees ("Joint Committee"), consisting of representatives from the Advocates' Society, the Canadian Bar Association (Ontario), now the Ontario Bar Association, and the Law Society. The report was transmitted to the Attorney General following June 2000 Convocation, given his stated intention to introduce legislation dealing with contingent fees in fall of 2000. The report is attached as Appendix 1.

11. For a number of reasons, the Attorney General did not act on the report and to date, the government has not pursued the issue.

12. Given the developing case law and the position of the provincial government on the issue, the Society decided to move forward with its own initiative, in preparation for discussions with the Attorney General on a regulatory scheme when the opportunity arose.

13. The working group, borrowing much of what had been accomplished by the Joint Committee, presented a revised scheme for the Committee's review in September 2002.

14. After its review, the Committee affirmed the June 2000 proposals with the exception of two issues: the percentage of the cap and the issue of costs awarded in the cause. It proposed a revision to a 20 percent cap from the Joint Committee's 33.3%, and costs awarded to the client in the action to be paid to the lawyer instead of the client. The majority of the Committee thought this was a fairer approach to the costs, given the risk the lawyer assumes in agreeing to act on a contingent fee basis, and the fact that in some cases, a costs award can greatly exceed the recovery by the plaintiff in the action. The view was that even applying a larger cap (for example, 33.3 percent) but without providing that the lawyer is entitled to costs, an inequity may result should a generous costs award be made, where the lawyer assumes the risk but would not be entitled to share in the cost award.

15. The regulatory scheme proposed by the Committee appears at Appendix 2. As with the June 2000 recommendations, the thought was that the scheme for regulation of contingent fees would be embodied in provincial legislation, most likely through amendments to the *Solicitors Act*. The Committee prepared a report proposing that the above described scheme be approved by Convocation on September 19 as the basis for discussions with the Attorney General on a regulatory scheme.

16. The Ontario Court of Appeal decision in *McIntyre v. Attorney General of Ontario* was released on September 10, 2002[2], five days after the Committee meeting. The Court found that contingent fee agreements *per se* are not prohibited by the *Champerty Act* or the *Solicitors Act.* It urged the Attorney General to implement a regulatory scheme for contingent fees in Ontario.

17. Discussions between working group members, the Committee's chair and the Treasurer following September 10 resulted in a decision to forego present discussion on the Committee's proposal and return the issue to the working group for preparation of rules of conduct on contingent fees. This approach was prompted by the need to provide some guidance to the profession on contingent fee arrangements in light of the Court of Appeal's ruling.

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[2] The reasons appear at Appendix 3.

18. The Committee reviewed the working group's proposed rule, prepared with the assistance of Paul Perell, the principle drafter of the *Rules of Professional Conduct* adopted in 2000, and is presenting it in this report for Convocation's approval.

B. THE PROPOSED RULES AND COMMENTARY

19. The proposed rule is based generally on the Committee's proposal to September 2002 Convocation. The essence of the proposed rules is that contingent fees must be fair and reasonable. Contingency fees would not be permitted in family law or criminal or quasi-criminal matters. Contingent fee agreements would be required to contain statements of the method by which the fee is to be determined, and of the client's right to apply to the Superior Court for a determination of whether the contingent fee is fair and reasonable. Lawyers would be prohibited from preventing clients from changing lawyers or requiring clients to obtain their lawyers' consent before discontinuing or settling claims.

20. The Committee noted that almost every jurisdiction in Canada uses the fair and reasonable test for determining an appropriate contingent fee. Two jurisdictions, British Columbia and Quebec, specify a percentage cap, but both have legislation that permits these arrangements.

21. Commentary to the rules sets forth provisions that contingent fee agreements should contain. These would include, for example, how the fee is calculated, what occurs should the client decide to change lawyers or otherwise terminate the retainer and how costs are to be treated (i.e. paid to the lawyer or to the client).

22. The Committee is not recommending that the new rules specify a maximum percentage or require that costs be either included in or excluded from the lawyer's fee. In the Committee's view, the *Rules of Professional Conduct* should simply provide that contingency fees must be fair and reasonable and otherwise focus on the arrangement for the fee.

Consultation on the Proposed Rule

23. The Committee invited comments on the proposed rules and commentary from the Advocates' Society and the Ontario Bar Association, which were the other organizational participants in the 2000 Joint Committee, and from the Ontario Trial Lawyers' Association. Although these organizations were given a short time frame within which to respond, the Committee believed that it was important to obtain their views.

24. Because the proposed rules do not specify a maximum percentage or require that costs be either included or excluded from the lawyer's fee – issues that have proven controversial in prior consultations – the Committee thought that the time frame for responses was adequate, in light of the need to press forward with a report to Convocation.

25. The Committee will report to Convocation in a supplemental report responses that are received from these organizations.

The Private Member's Bill

26. MPP Michael Bryant, at the end of the last legislative session, introduced a Private Member's Bill on contingent fees. When the legislature reconvened in September 2002, he reintroduced a revised version of his Bill.

27. The following summarizes the key issues covered in the Bill:
- contingent fees are prohibited in criminal and family law matters
- contingent fee agreements must be in writing
- the maximum amount of the fee (the percentage) would be prescribed by regulation
- the maximum may be increased on application by the lawyer to the Superior Court
- a client may have the contingent fee assessed by application to the Superior Court

- treatment of awards of costs, the form and content of the written agreements for the contingent fee, duties of lawyers who enter these arrangements and any exemptions respecting those who may enter such arrangements are to be dealt with through regulation.

28. The Bill received second reading in the legislature on October 10, 2002, and has been referred to the Justice and Social Policy committee.

29. The Committee agreed that it would be appropriate for the Society, through the Government Relations Committee's chair in consultation with the chair of the Professional Regulation Committee, to monitor the progress of the Bill. The Committee's view was that consideration of a new Society rule on contingent fees need not be deferred because of this development.

Educational Information on Contingent Fees

30. The Committee also agreed that educational material should be prepared for the public about contingent fees. The Society's Communications Department is currently preparing this material in consultation with the Committee's chair, the chair of the working group and the Policy Secretariat.

AMENDMENTS TO THE MEMBER'S ANNUAL REPORT (MAR) FOR 2002

THE OVERVIEW

Request to Convocation

31. Convocation is asked to approve amendments to the current version of the Member's Annual Report (MAR) for the 2002 filing year and prescribe the amended form as Form 17A under By-Law 17 – Filing Requirements. To meet printing and distribution deadlines, changes to the MAR must be approved at the October 2002 Convocation.

32. The version of the MAR for Convocation's approval appears at page 12-A. It is preceded on page 12 by a motion to prescribe the amended form. An explanation of the changes made to the MAR begins at paragraph 39.

33. The MAR has been shortened from 12 pages to eight pages, largely through elimination of the sub-categories of the areas of practice (Section D).

THE REPORT

A. BACKGROUND AND NATURE OF THE AMENDMENTS

34. By-Law 17 governs the filing of the annual information report by members with respect to their practices and related activities, including trust account holdings.

35. Section 2 of the By-Law reads:

> 2. (1) Every member shall submit a report to the Society, by March 31 of each year, in respect of the member's practice of law and other related activities during the preceding year.
>
> (2) The report required under subsection (1) shall be in Form 17A [Member's Annual Report].

36. The MAR contains a series of questions that are relevant to the regulation of the profession from the perspective of both the Law Society and the Lawyers' Professional Indemnity Company (LawPRO). Only

those questions critical to the Society's regulation of the profession are included, as members face suspension if the MAR is not completed.

37. The information obtained from the MAR does not form part of the Society's member database. The MAR simply provides a "snapshot in time" of each member. The information supports the Society's regulation of members and assists in designing the Society's various regulatory practices and programs.

38. In an effort to make the MAR less complex and lengthy without sacrificing the purpose of the form or the integrity of the information, Society staff closely examined the current questions. They researched the historical reasons for including various sections in the MAR, and examined the validity of those reasons in light of actual use of the data. They found that, from a regulatory perspective, there did not appear to be clear reasons for asking some questions and that the information collected through certain questions was not used. A number of meetings were held with both external and internal stakeholders, including the Society's Senior Management and Counsel at the Society and at LawPRO, the primary external user of the collected data.

The Changes for 2002

39. As a result of the above review, changes are being proposed to the MAR. Apart from some clarifying language in some sections of the MAR and one structural change noted below, the most significant change for 2002 is the elimination of the sub-categories of law in the areas of practice section, Section D.

40. Staff determined that while good use is made of data collected regarding members' areas of law, there is very little demand for statistics regarding the sub-categories within the areas of law. This information was originally used by the Lawyer Referral Service (LRS) to help match lawyers and clients. With the advent of a separate LRS database, this section is no longer useful. Although requests are received periodically from internal departments (i.e. Continuing Legal Education) and external entities (i.e. other law-related organizations) for members' areas of practice information, these requests can be answered through data from the general area of practice questions.

41. Section B has also been revised to give clearer direction to members on the sections applying to their specific situations. Organizing this section in chart form makes it more user-friendly, and should contribute to a more consistent set of responses.

42. A comprehensive Guide accompanies the MAR, providing assistance on completing the form and details on the information requested.

Motion to Amend the MAR

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 17
[FILING REQUIREMENTS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 31, 2002

MOVED BY

SECONDED BY

THAT By-Law 17 [Filing Requirements] made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, May 28, 1999, October 29, 1999, January 27, 2000, June 22, 2000, October 19, 2000, April 26, 2001 and October 25, 2001 be further amended by revoking Form 17A and substituting the following:

AMENDMENT TO THE POLICY ON SUSPENSIONS FOR FAILURE TO FILE THE MEMBER'S ANNUAL REPORT

THE OVERVIEW

Request to Convocation

43. Convocation is requested to make a correcting amendment to its policy adopted on June 28, 2002 with respect to suspension of members who continue to fail to file the Member's Annual Report (MAR). The amendment is deletion of the requirement to file the MAR for the year the member is reinstated or readmitted. The amended policy would read:

a) That members who are already suspended for failure to file the Member's Annual Report and who fail to file in years subsequent to the year in which they are suspended for the failure to file should not be suspended again for each year they fail to file, and

b) That members, as a condition of reinstatement or readmission, be required to file the Member's Annual Report for the year they were suspended for failure to file.

Summary of the Issue

44. According to By-Law 17, members are required to file the MAR for a particular calendar year by March 31 of the year following that calendar year. The current requirement in the policy that a member file the MAR for the year of reinstatement or readmission is inconsistent with the By-Law as a condition of reinstatement or readmission and is also superfluous.

THE REPORT

A. NATURE OF THE ISSUE

45. On June 28, 2002, Convocation adopted the following policy with respect to suspension of members who are suspended for failure to file the MAR and continue to fail to file the MAR for years subsequent to the year in which they first failed to file.

a) members who are already suspended for failure to file the Member's Annual Report and who fail to file in years subsequent to the year in which they are suspended for the failure to file should not be suspended again for each year they fail to file, and

b) members, as a condition of reinstatement or readmission, be required to file the Member's Annual Report for the year they were suspended for failure to file and the year they are reinstated or readmitted as a member with full rights and privileges. (Emphasis added)

46. The requirement to file the MAR is found in By-Law 17, which states as follows:

> 2. (1) Every member shall submit a report to the Society, by March 31 of each year, in respect of the member's practice of law and other related activities during the preceding year.
>
> (2) The report required under subsection (1) shall be in Form 17A [Member's Annual Report].

47. As the MAR filing for any given calendar year is made at the beginning of the year following the calendar year in question, the requirement in the policy, shown in the highlighted portion in paragraph 1, is inconsistent with the By-Law as a condition of reinstatement of readmission. Further, as the member, if readmitted or reinstated in the calendar year, is required to file the MAR for that calendar year in the year following the calendar year in accordance with the By-Law, the requirement in the policy appears to be superfluous.

B. PROPOSAL FOR CONVOCATION

48. For the above reasons, the Committee is requesting that Convocation delete the highlighted portion of the policy.

AMENDMENTS TO BY-LAWS 18, 19 AND 25

THE OVERVIEW

Request to Convocation

49. Convocation is requested to amend By-Laws 18, 19 and 25, as set out the following motions:

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 31, 2002

MOVED BY

SECONDED BY

THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force on September 19, 2002 be amended as follows:

BY-LAW 18
[RECORD KEEPING REQUIREMENTS]

1. Subsection 1 (4) of By-Law 18 [Record Keeping Requirements] is amended by,

   (a) deleting “Land Information Services,”; and

   (b) deleting “Commercial Relations” / “de la Consommation et du Commerce” and substituting “Business Services” / “Services aux consommateurs et aux enterprises”.

BY-LAW 19
[HANDLING OF MONEY AND OTHER PROPERTY]

2. Subsection 8.1 (1) of By-Law 19 [Handling of Money and Other Property] is amended by,

   (a) deleting “Land Information Services,”; and

   (b) deleting “Commercial Relations” / “de la Consommation et du Commerce” and substituting “Business Services” / “Services aux consommateurs et aux enterprises”.

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 31, 2002

MOVED BY

SECONDED BY

THAT By-Law 25 [Multi-Discipline Practices] made by Convocation on April 30, 1999 and amended by Convocation on May 28, 1999, June 25, 1999, December 10, 1999, April 26, 2001 and May 24, 2001, be further amended as follows:

BY-LAW 25
[MULTI-DISCIPLINE PRACTICES]

1. Section 19 of By-Law 25 [Multi-Discipline Practices] is deleted and the following substituted:

Interpretation: "Society's insurance plan"
19. (1) In this section, "Society's insurance plan" means the Society's professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its members.

Définition : « Régime d'assurance du Barreau »
19. (1) Dans cet article, « Régime d'assurance du Barreau » désigne le régime d'assurance responsabilité professionnelle du Barreau et comprend toute politique d'assurance responsabilité professionnelle que le Barreau peut avoir établie pour ses membres.

Insurance requirements: members
(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 shall maintain professional liability insurance coverage for the individual,

(a) through the insurer of the Society's insurance plan, in an amount equivalent to that required of the member under the Society's insurance plan; and

(b) through any insurer, in an amount equivalent to the amount of coverage the member maintains in excess of that required of the member under the Society's insurance plan.

Exigences relatives à l'assurance : membres
(2) Les membres qui, en vertu du paragraphe 4 (1), se sont associés à un non-membre pour créer une société en nom collectif, si le non-membre exerce une profession ou un métier qui sert les intérêts de l'exercice du droit, doivent avoir

a) par l'entremise de l'assureur du régime d'assurance du Barreau une couverture d'assurance responsabilité civile professionnelle pour le non-membre équivalente à celle du membre;

b) par l'entremise de tout autre assureur, une couverture pour le non-membre équivalente à celle que le membre garde en surplus de ce qui est requis en vertu du régime d'assurance du Barreau.

Summary of the Issue

50. By-Law 18 and By-Law 19 on record keeping requirements and handling of trust money respectively require an amendment to reflect the correct corporate name of Teranet Inc. and to reflect the correct name of the provincial ministry connected with Teranet Inc.'s operations.

51. Amendments to By-Law 25 on multi-discipline practice are required to clarify that the Lawyers Professional Indemnity Company ("LAWPRO") is not the exclusive provider of excess liability insurance.

52. Copies of the current By-Laws are attached at Appendix 4.

THE REPORT

A. NATURE OF THE AMENDMENTS

By-Laws 18 and 19

53. The amendments to these By-Laws are required to properly reflect the corporate name of Teranet, the corporation established by the provincial government to administer the electronic registration of title documents, and reflect the change to the title of the relevant government ministry connected to Teranet's operations.

54. The amendments will replace "Teranet Land Information Services, Inc." with the current title of the corporation, "Teranet Inc." and replace "Ministry of Consumer and Commercial Relations" with "Ministry of Consumer and Business Services".

55. By-Law 18 references the corporate name and the ministry in subsection 1(4) (Interpretation) in connection with section 2 paragraph 12 and the trust records members are required to maintain. By-Law 19 references the corporate name and the ministry in section 8.1 in connection with the electronic withdrawal of funds required for the registration of title documents and payment of Land Transfer Tax.

By-Law 25

56. An amendment to section 19 of By-Law 25 is required to address an inconsistency between what the section requires for insurance coverage for non-lawyer partners through LAWPRO and the amount actually provided through LAWPRO.

57. By-Law 25 establishes the regulatory scheme for multi-discipline practices (including partnerships). Currently, section 19 of the By-Law addresses the lawyer's liability insurance obligations for non-lawyer partners in multi-discipline partnerships. Section 19 reads:

> 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 through the insurer of the Society's insurance plan professional liability insurance coverage for the individual in an amount determined by Convocation from time to time.

58. The phrase "the insurer of the Society's insurance plan" means LAWPRO.

59. On May 28, 1999, Convocation determined that the amount of insurance to be carried by non-lawyers should be that carried by lawyers in the partnership and any excess carried by the lawyers. The issue of LAWPRO acting as the sole provider of excess insurance for non-lawyers was subsequently addressed by

Convocation, through a report of the Professional Regulation Committee, in December 1999. Convocation at that time determined that LAWPRO should not be the sole provider of excess insurance.

60. The amount of insurance set by Convocation is the equivalent of the lawyer's primary coverage and any excess the lawyer carries. Without distinguishing between the primary and excess coverage, section 19 effectively states that coverage in that amount is to be maintained through LAWPRO. As Convocation's decision was that LAWPRO is not required to provide excess coverage (but will provide primary coverage), the section indicates that LAWPRO provides coverage that in reality it does not provide (i.e. both primary and excess coverage for the non-lawyer partner).

61. Accordingly, an amendment is proposed that will effectively limit LAWPRO's obligation to providing non-lawyer partner insurance in an amount equivalent to a lawyer's primary coverage, by reference to coverage under "the Society's insurance plan". This is currently in the amount of $1 million per year ($2 million in the aggregate).

II. INFORMATION

FILE AND CASELOAD MANAGEMENT AND STAFFING INFORMATION IN THE COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE DEPARTMENTS

62. Zeynep Onen, Director of Professional Regulation, reported to the Committee on caseload management in the Complaints Resolution, Investigations and Discipline Departments. The reports appear at Appendix 5. These reports are prepared monthly for review by the Committee as part of its monitoring function respecting file management. The Committee receives general information and statistics on file management and caseloads in the departments noted above.[3] The reports in this report cover the period to the end of September 2002.

APPENDIX 1

JUNE 2000 REPORT FROM THE SOCIETY'S REPRESENTATIVE ON THE JOINT COMMITTEE ON CONTINGENCY FEES

Report to Convocation
June 23, 2000

Report from Society's Representative on
Joint Committee on Contingency Fees

Purpose of report: Decision

A. BACKGROUND

Establishment of Joint Committee on Contingency Fees

1. In September 1999, the Attorney General of Ontario expressed an interest in contingency fees and directed that a Ministry discussion paper on the subject be prepared in consultation with the Advocates' Society, the Canadian Bar Association (Ontario) and the Society. Shortly thereafter, a Joint Committee on Contingency

[3]The chair, as a member of the Proceedings Authorization Committee, is not a member of the Hearing Panel and accordingly does not and cannot have adjudicative responsibilities. Information received by the Committee, as reflected in the reports appended to this report, does not itemize specific cases.

Fees (" Joint Committee") was struck, consisting of representatives from the aforesaid organizations and Ministry staff, to work on such a paper. In October 1999, the Treasurer appointed George Hunter to be the Society's representative on the Joint Committee. Donald Kidd and Michael Eizenga are the representatives of the Canadian Bar Association (Ontario) and the Advocates' Society respectively.

Joint Committee's Work

2. The Joint Committee began meeting in November 1999. Since that time, it has met six times.

3. With the assistance of staff from the Ministry of the Attorney General,[1] staff from the Canadian Bar Association (Ontario)[2] and Society staff,[3] and with the input of Professor Michael Trebilcock, the Joint Committee has reviewed the background use and regulation of contingency fees in other provinces, the United States, England and Australia and the proposals made in the past by, among others, the Canadian Bar Association (Ontario) and the Society concerning the use and regulation of contingency fees in Ontario. The Joint Committee has explored arguments for and against introducing contingency fees into Ontario and has considered how contingency fees might be regulated if they were to be introduced into Ontario.

4. To guide its work, in March 2000, the Joint Committee engaged Environics to conduct a public opinion survey regarding contingency fees. The results of the survey were as follows:

   a. 46 percent of the respondents said that a lawyer's fee has a major impact on their decision to hire a lawyer whereas 20 percent said it has little or no impact

   b. At the beginning of the survey, 70 percent of the respondents (after receiving an explanation of how contingency fees work) strongly or somewhat agreed that the Ontario government should allow people to hire lawyers on a contingency basis.

   c. 49 percent of the respondents said that they would be more supportive of contingency fees if they knew that, with contingency fees, more people might feel that they could afford the services of a lawyer for a court case.

   d. 48 percent of the respondents said that they would be more supportive of contingency fees if they knew that there was to be legislation that would limit the percentage of a settlement that a lawyer would be permitted to take.

   e. 45 percent of the respondents said that they would be more supportive of contingency fees if they knew that there was to be legislation that would give clients, in the event of a dispute, the right to ask a judge to review their contingency fee arrangements.

   f. At the end of the survey, the level of support amongst respondents for contingency fees increased to 75 percent.

Joint Committee's Proposed Regulatory Scheme

5. The Joint Committee has reached a consensus on a regulatory scheme for contingency fees. Under the Joint Committee's scheme:

   a. Contingency fees would be permitted in litigation matters other in than in criminal law and family law proceedings.

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[1] John Twohig, Judith Grant and Sunny Kwon.

[2] Kimberley Bates and Eva Lau.

[3] Jane Noonan and Sheena Weir.

b. The maximum contingency fee rate would be capped at 33 a percent.

c. Notwithstanding the cap, a lawyer would be permitted to apply to the court, at the time of entering into a contingency fee arrangement, for approval to charge a contingency fee rate in excess of the cap. The application would be heard by a judge in chambers; it would be mandatory for the client to appear at the hearing of the application; and, in determining whether to grant the application, the judge would be required to consider the nature and complexity of, and the expense and risk involved in, the case.

d. The contingency fee rate would apply to the amount recovered by the client exclusive of any costs awarded and exclusive of disbursements.

e. Costs would be dealt with outside the contingency fee scheme. If costs were awarded, they would go to the client.

f. Disbursements would be dealt with outside the contingency fee scheme. The client would be responsible for reimbursing the lawyer for all disbursements made. However, it would be open to the client to negotiate with the lawyer for the lawyer to assume responsibility for payment of disbursements.

g. A contingency fee arrangement, to be enforceable, would have to be embodied in a written contract signed by the lawyer and client (with signatures witnessed), and a copy of the signed contract would have to be given to the client. In the absence of a written contract, if the client won, the lawyer would not be able to recover a contingency fee; however, the lawyer would be able to apply to the court to be paid on a quantum meruit basis.

h. There would be no restrictions on who may enter into a contingency fee arrangement with a lawyer. Specifically, there would be no prohibition against minors or persons under legal disability entering into contingency fee arrangements.

i. Certain standard information and terms would have to be included in every contingency fee contract. A lawyer would be prohibited from including other terms in a contingency fee contract.

j. A client would be entitled to ask a judge to review a contingency fee contract, and any charges rendered to the client under the contract,

   i. absolutely within one month after delivery of the lawyer's bill, and

   ii. in the discretion of a judge, within twelve months after payment of the lawyer's bill.

k. The regulation of contingency fees would be the responsibility of the government implemented through amendments to the *Solicitors Act*.

Past Consideration by Convocation

6. Contingency fees were most recently considered by Convocation on May 27, 1988 and July 10, 1992.

7. Over the course of those considerations, Convocation approved in principle the introduction into Ontario of contingency fees and established a relatively detailed scheme as to how contingency fees could be put into operation in Ontario.

8. The scheme established by Convocation provided as follows:

a. Contingency fees would be permitted in litigation matters other in criminal law and family law proceedings.

b. The maximum contingency fee rate would be capped a 20 percent.

c. Notwithstanding the cap, a lawyer would be permitted to apply to the court, at the time of entering into a contingency fee arrangement, for approval to charge a contingency fee rate in excess of the cap.

d. The contingency fee rate would apply to the amount recovered by the client exclusive of any costs awarded and exclusive of disbursements.

e. Party and party costs awarded to the client would go to the lawyer.

f. The issue of whether or not disbursements should be subject to the contingency, or should be paid by the client in any event, would be a matter to be agreed upon between the lawyer and the client.

g. A contingency fee arrangement, to be enforceable, would have to be embodied in a written contract signed by the lawyer and client. In the absence of a written contract, if the client won, the lawyer would not be able to recover a contingency fee; however, the lawyer would be able to charge the client on a quantum meruit basis.

h. The contingency fee contract would embody the terms of the contingency fee arrangement and the agreement reached between the lawyer and the client with respect to payment of disbursement.

i. There would be no standard form of contract.

j. A client would be entitled to ask a judge for a review of a contingency fee contract. The review would be permitted after the client's case was finished. A client would be able to ask for consideration of whether the contingency fee arrangement was a reasonable one at the time the contract was entered into, as well as whether, in the final result, regardless of whether or not the contingency fee arrangement was a reasonable one at the time the contract was entered into, the ultimate fee was unconscionably high.

9. Convocation expected that the introduction into Ontario of contingency fees would be accomplished through amendments to the *Solicitors Act* and, therefore, that the government would be responsible, not only for implementing any scheme for their introduction into Ontario, but also for their subsequent regulation.

Next Steps

10. The Joint Committee's scheme differs in several respects from the scheme adopted by Convocation in 1988 and 1992. The Joint Committee's scheme also addresses many matters that were not considered by Convocation in 1988 and 1992.

11. The Joint Committee's scheme for introducing contingency fees into Ontario is endorsed by the Advocates' Society and the Canadian Bar Association (Ontario).

12. If Convocation were to endorse the scheme worked out by the Joint Committee, the Joint Committee would be able to present to the Attorney General an unanimous discussion paper. If Convocation were to reject any portion of the scheme worked out by the Joint Committee, the Committee would still present a discussion paper to the Attorney General, however, it would list separately the recommendations of the Advocates' Society and the Canadian Bar Association (Ontario) and the recommendations of the Society.

13. The Attorney General has made public his intention to introduce legislation dealing with contingency fees in Fall 2000. To assist the Attorney General, the Joint Committee is required to submit its report to the Attorney General by the end of June 2000.

B. DECISIONS FOR CONVOCATION

14. Convocation is asked to reconsider its scheme for introducing contingency fees into Ontario (adopted in May 1988 and July 1992), where it differs from the scheme worked out by the Joint Committee on Contingency Fees, and to approve the following:

a. That the maximum contingency fee rate should be capped at 33 a percent.

b. That, in respect of a lawyer's application to the court for approval to charge a contingency fee rate in excess of the cap,

i. the application should be heard by a judge in chambers (not in open court),

ii. it should be mandatory for the client to appear at the hearing of the application, and

iii. in determining whether to grant the application, the judge should be required to consider the nature and complexity of, and the expense and risk involved in, the case.

c. That the client alone should be entitled to receive an award of costs.

d. That there should be no prohibition against minors and persons under legal disability entering into contingency fee arrangements.

e. That the signatures of the lawyer and the client on a contingency fee contract should be witnessed and that a lawyer should be required to give to the client a copy of the signed contingency fee contract.

f. That the following information and terms should be included in every contingency fee contract:

i. The name, address and phone number of the lawyer and client.

ii. The nature of the client's claim.

iii. A statement that the lawyer will be compensated for services provided by way of a contingency fee which will amount to x percent of the total amount recovered exclusive of any costs awarded or disbursements. The statement should include an explanation of who will be responsible for paying costs and disbursements in the following circumstances: The client wins; the client loses; and the claim is settled.

iv. A simple example of how a contingency fee is calculated.

v. A statement disclosing that the contingency fee rate which has been agreed upon by the lawyer and client may be greater or lesser than contingency fee rates charged by other lawyers for similar cases and that the client has the right to contact other lawyers to obtain their rates.

vi. A term that sets out the maximum contingency fee rate chargeable and advises the client that a contract which includes a contingency fee rate in excess of the maximum is not enforceable by the lawyer unless it is approved by a judge at the outset.

vii. A statement indicating the client's agreement and direction that all monies awarded to the client by the court or as the result of a settlement are to be paid to the lawyer to be held by the lawyer in trust for the client subject to the terms of the contingency fee contract.

viii. Notice to the client of his or her right to have the contingency fee contract, and any charges rendered to the client under the contract, reviewed by a judge.

ix. A statement of the grounds for termination, and the consequences of the termination, of the contract by the client.

x. A statement of the grounds for termination, and the consequences of the termination, of the contract by the lawyer.

xi. Notice to the client of his or her right to make the final decision regarding settlement of the claim.

g. That the following terms should not be included in a contingency fee contract and, if they are included, should be considered void:

i. A term requiring the client to obtain the lawyer's consent before the client may abandon, discontinue or settle the claim.

ii. A term preventing the client from terminating the contract or changing lawyers.

iii. A term permitting the lawyer to split the contingency fee with any other person, other than as permitted by the Society's Rules of Professional Conduct.

h. That the client should be entitled to seek review of the contingency fee contract, and any charges rendered to the client under the contract,

i. as of right within one month after delivery of the lawyer's bill, and

ii. in the discretion of a judge, within twelve months after payment of the lawyer's bill.

i. That subsection 20 (2) of the *Solicitors Act* should be amended to ensure that,

i. calculation of costs by the court, for the purposes of making a costs award, is not adversely affected by the fact that the client's lawyer is being compensated on a contingency fee basis, and

ii. the client is able to recover the full amount of costs awarded, even when the amount of the award exceeds the amount of the contingency fee payable by the client to his or her lawyer.

C. DISCUSSION

Cap

15. In July 1992, Convocation decided that, if contingency fees were introduced into Ontario, the contingency fee rate should be capped at 20 percent (subject to the court approving an increased rate). The cap was established taking into account that a lawyer being compensated on the basis of a contingency fee would be receiving, not only the contingency fee (*i.e.*, a percentage of the amount recovered by the client exclusive of costs), but also the party and party costs awarded. It was the view of Convocation that because the lawyer would be receiving a contingency fee plus costs, a higher contingency fee rate (*e.g.*, 25 to 50 percent) would be unreasonable.

16. The Joint Committee has determined that the contingency fee rate should be capped at 33 1/3.

17. In determining the level at which contingency fee rates should be capped, the Joint Committee was mindful of,

a. the need to balance the lawyer's interest in being fairly compensated for work performed and risk assumed and the client's interest in receiving a substantial amount of the award or settlement;

b. the difficulty in establishing a fair fee, based on an arbitrary percentage of the amount recovered, given the complexity of factors that must be considered to calculate the value of the lawyer's services;

c. the need to have the contingency fee rate reflect the market rate for a lawyer's services (*i.e.*, an hourly rate plus a risk premium and interest on the loan of the lawyer's services) so as to encourage lawyers to take cases on a contingency fee basis

d. the fact that, under the Society's Rules of Professional Conduct (current and proposed, the lawyer is prohibited from charging or accepting a fee unless it is fair and reasonable;[4]

e. the fact that in other provinces, the contingency fee rates tend to be in the range of 25 to 40 percent; and

f. the fact that the client will have a right to have reviewed the contingency fee contract and any charges rendered under the contract;

18. In deciding whether to accept the Joint Committee's cap of 33 1/3 percent, it should be borne in mind that, under the Joint Committee's scheme for introducing contingency fees into Ontario, unlike under Convocation's scheme, the lawyer will not be entitled to receive the award of costs. Thus, the contingency fee (a percentage of the amount recovered by the client exclusive of costs) will be the lawyer's only compensation.

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[4] See current Rule 9 (a) and Commentary 1 to Rule 9 and proposed new Rule 2.08 (1) and the commentary thereto. Rule 9 (a) and Commentary 1 to Rule 9 read as follows:

The lawyer shall not ... undertake to act for, charge or accept any amount which is not fully disclosed, fair and reasonable, and when asked by the client to quote a fee shall explain the nature and approximate amount of any anticipated disbursements to be incurred.

A fair and reasonable fee will depend upon and reflect such factors as:
(a) the time and effort required and spent;
(b) the difficulty and importance of the matter;
(c) whether special skill or service has been required and provided;
(d) the amount involved or the value of the subject matter;
(e) the results obtained;
(f) fees authorized by statute or regulation or suggested fee schedule of a law association;
(g) such special circumstances as loss of other employment, uncertainty of reward or urgency.

A fee will not be fair and reasonable if it cannot be justified in the light of all pertinent circumstances, including the factors mentioned.

New rule 2.08 (1) and the commentary thereto read as follows:

A lawyer shall not charge or accept any amount for a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.

What is a fair and reasonable fee will depend upon such factors as:
(a) the time and effort required and spent;
(b) the difficulty and importance of the matter;
(c) whether special skill or service has been required and provided;
(d) the amount involved or the value of the subject matter;
(e) the results obtained;
(f) fees authorized by statute or regulation;
(g) special circumstances such as loss of other retainers, uncertainty of reward or urgency.

19. Accordingly, Convocation is asked to approve that the maximum contingency fee rate should be capped at 33 1/3 percent.

Application to Court to Charge Contingency Fee Rate Above Cap

20. In July 1992, Convocation decided that under its scheme for introducing contingency fees into Ontario, notwithstanding that there would be a cap on the maximum contingency fee rate chargeable, the lawyer would be permitted to apply to the court, at the time of his or her retainer, for approval to charge a contingency fee rate in excess of the cap. Convocation did not consider in any further detail the mechanics of such an application.

21. The Joint Committee is in agreement with Convocation that a lawyer should be permitted to apply to the court, at the time of entering into a contingency fee contract with a client, for approval to charge a contingency fee rate in excess of the cap. The Joint Committee has considered the mechanics of such an application in some detail and has determined that,

    a. the application should be heard by a judge in chambers (not in open court);

    b. it should be mandatory for the client to appear at the hearing of the application; and

    c. that, in determining whether to approve a contingency fee rate in excess of the cap, the judge should be required to consider the nature and complexity of, and the expense and risk involved in, the case.

22. The Joint Committee's decision to require the attendance of the client at the hearing of the application is based on two factors. First, in most cases, it is likely that the judge will want to hear from the client prior to reaching a decision. As a contingency fee rate will have a direct impact on the client, it is hard to imagine a situation in which a judge would not want to hear the client's position with respect to the request for a contingency fee rate in excess of the cap. Second, if the client is to be given the right to ask for a review of a contingency fee arrangement at the end of the case, as far as possible, there should be no doubt about the client's agreement at the outset of the case to pay a contingency fee rate in excess of the cap.

23. The factors which the Joint Committee believes should be considered by a judge when determining whether to approve a contingency fee rate in excess of the cap come, in part, from decisions made on reviews of contingency fee arrangements under the *Class Proceedings Act*. In those decisions, the nature and complexity of a case have been taken into account in determining the appropriateness of contingency fee arrangements.

24. Accordingly, Convocation is asked to approve that, in respect of a lawyer's application to the court for approval to charge a contingency fee rate in excess of the cap,

    a. the application should be heard by a judge in chambers (not in open court),

    b. it should be mandatory for the client to appear at the hearing of the application, and

    c. in determining whether to grant the application, the judge should be required to consider the nature and complexity of, and the expense and risk involved in, the case.

Costs

25. In a case, in addition to the amount recovered by a client as damages, typically there is an amount awarded by the court or incorporated into a settlement for "costs".

26. Courts usually award the winning side "party and party costs", which are intended to indemnify the client for expenses incurred to pursue the lawsuit. These expenses would include court filing fees, medical and other expert reports, the lawyer's fees and other disbursements. In a proceeding such as a lengthy personal injury case, these expenses can be substantial. The amount of costs awarded by the court is determined by a tariff contained in the civil procedure rules. Typically, party and party costs will cover about half the actual cost of carrying a case.

27. In July 1992, Convocation decided that under its scheme for introducing contingency fees into Ontario, a lawyer should be entitled to receive, not only a contingency fee (*i.e.*, a percentage of the amount recovered by the client exclusive of costs), but also the party and party costs awarded.

28. Convocation was of the view that this approach to compensating a lawyer ("costs plus approach") would be fairer (to both the lawyer and client) than the contingency fee arrangements then existing in other jurisdictions, under which the amount recovered and costs were added together and a contingency fee rate was applied to the sum to arrive at the lawyer's compensation. The costs plus approach would result in an ultimate recovery of fees that would be a fairer reflection of the work done by the lawyer to earn the fee.

29. In its report to Convocation in July 1992, the Special Committee on Contingency Fees made the following comments on the costs plus approach:

> It is apparent that in cases in which recovery is made with relatively small amounts of work by the solicitor, the party and party costs to be awarded will be relatively small.
>
> On the other hand, there are cases in which enormous amounts of work are required to be done by the solicitor which are subsequently reflected in very large amounts for party and party costs.
>
> We are aware of a case recently in our Courts in which the Judgment recovered by the Plaintiff, after a very lengthy trial, was in the neighbourhood of $600,000.00. The taxed party and party costs, it is our understanding, exceeded $300,000.00. If a "normal" contingency, on let's say 25%, was applied to the gross amount recovered, including party and party costs, the recovery of 25% of the total of $900,000.00, or $225,000.00, would be less than the amount of the assessed party and party costs.
>
> To the extent then that party and party costs have some reference to the amount of work done by the solicitor, it is fairer, both to the solicitor and the client, that the contingency fee arrangement should involve costs plus the percentage, rather than a flat percentage of the claim, including all of the costs.

30. The Joint Committee is of the view that the lawyer should not be entitled to receive the party and party costs awarded by court. Only the client should be entitled to receive an award of costs.

31. The Joint Committee would like to see contingency fees introduced into Ontario with as little interruption as possible to the status quo regarding entitlement to costs. Currently, only the client is entitled to receive payment of costs. The introduction of contingency fees should not alter this.

32. In adopting its view, the Joint Committee has noted that, in British Columbia and New Brunswick, a lawyer is prohibited from collecting both costs and a percentage of the recovery as a contingency fee, and in the Yukon, costs obtained through a settlement are excluded from being included as part of the recovery for the purpose of determining the contingency fee.

33. Accordingly, Convocation is asked to approve that the client alone should be entitled to receive an award of costs.

Prohibited persons

34. An issued addressed by the Joint Committee was whether any restrictions should be placed on the type of client who may enter into a contingency fee arrangement. Convocation, in its consideration of contingency fees, did not specifically address this issue.

35. The Yukon prohibits contingency fee arrangements with minors or persons under legal disability and New Brunswick requires the court to approve contingency fee arrangements with such persons. Most other provinces, however, do not restrict the type of client who may enter into a contingency fee arrangement.

36. The Joint Committee has determined that there should be no restriction on the type of client who may enter into a contingency fee arrangement; specifically, minors and persons under legal disability should not be prohibited from entering into a contingency fee arrangement.

37. There are sufficient safeguards in the existing Rules of Civil Procedure (*e.g.*, the requirement that such persons have a litigation guardian; the requirement that any settlement made by a litigation guardian be reviewed by the court), which would remain intact notwithstanding the introduction of contingency fees, to ensure that minors and persons under legal disability will be adequately protected when they enter into a contingency fee arrangement.

38. As well, if minors and persons under legal disability are prohibited from entering into a contingency fee arrangements, this may reduce access to legal representation for these persons without adequate justification.

39. Accordingly, Convocation is asked to approve that there should be no prohibition against minors and persons under legal disability entering into contingency fee arrangements.

Form and Content of Contract

40. Where contingency fees are permitted, a common minimum requirement in many jurisdictions is that there be a written contingency fee contract signed by the client. Another common requirement is that the client be provided with a copy of the signed contract so as to ensure adequate disclosure of the terms of the agreement.

41. In addition to these requirements, consumer protection would mandate that all contingency fee contracts include some basic contractual provisions, including a description of the claim, the basis of the lawyer's compensation, the client's right to have the contract reviewed, the grounds for terminating the contract and the treatment of costs and disbursements. This would ensure that clients are aware of key aspects of a contingency fee contract and know how to extricate to themselves from the contract. As well, if all contingency fee contracts included a standard set terms, this would provide for certainty, uniformity and simplicity.

42. Standard forms of a contingency fee contracts are not common, largely because it is almost impossible to develop a standard form contract that could apply to all cases. None of the other provinces in Canada have a standard form contingency fee contract.

43. However, most provinces prescribe minimum terms for contingency fee contracts, and contracts which do not contain the prescribed terms are void.

44. In addition to the prescription of standard terms for contingency fee contracts, it is common to see prohibitions against certain terms being included in contingency fee contracts, for example, terms requiring a client to obtain the permission of his or her lawyer before discontinuing or settling an action or terms preventing a client from changing lawyers.

45. In July 1992, Convocation determined that, in order for a contingency fee arrangement to be enforceable, there would have to be a written contract signed by the client and the lawyer. Convocation also determined that the contract should embody the terms of the contingency fee agreement and whatever is agreed upon between the lawyer and client with respect to payment of disbursements. Convocation chose not to recommend a specific form of contingency fee contract. Convocation did not consider in any further detail the contents of a contingency fee contract.

46. The Joint Committee has determined that, in order for a contingency fee arrangement to be enforceable, there should be a written contract signed by the client and the lawyer (with signatures witnessed). As well, there should be a requirement that the client be provided with a copy of the signed contract.

47. The Joint Committee has further determined that all contingency fee contracts should include certain standard information and terms (as set out in paragraph 49) and should omit certain prohibited terms (as set

out in paragraph 50). This approach would be consistent with the approaches in most other provinces. This approach would also provide assistance to the client in negotiating contingency fee arrangements with the lawyer by ensuring that all contingency fee contracts meet certain minimum standards. At the same time, the approach would not inordinately restrain the parties' freedom to contract, leaving flexibility to negotiate terms that are specific to individual circumstances.

48. Accordingly, Convocation is asked to approve that the signatures of the lawyer and the client on a contingency fee contract should be witnessed and that the lawyer should be required to give to the client a copy of the signed contingency fee contract.

49. Further, Convocation is asked to approve that the following information and terms should be included in every contingency fee contract:

    a. The name, address and phone number of the lawyer and client.

    b. The nature of the client's claim.

    c. A statement that the lawyer will be compensated for services provided by way of a contingency fee which will amount to x percent of the total amount recovered exclusive of any costs awarded or disbursements. The statement should include an explanation of who will be responsible for paying costs and disbursements in the following circumstances: The client wins; the client loses; and the claim is settled.

    d. A simple example of how a contingency fee is calculated.

    e. A statement disclosing that the contingency fee rate which has been agreed upon by the lawyer and client may be greater or lesser than contingency fee rates charged by other lawyers for similar cases and that the client has the right to contact other lawyers to obtain their rates.

    f. A term that sets out the maximum contingency fee rate chargeable and advises the client that a contract which includes a contingency fee rate in excess of the maximum is not enforceable by the lawyer unless it is approved by a judge at the outset.

    g. A statement indicating the client's agreement and direction that all monies awarded to the client by the court or as the result of a settlement are to be paid to the lawyer to be held by the lawyer in trust for the client subject to the terms of the contingency fee contract.

    h. Notice to the client of his or her right to have the contingency fee contract, and any charges rendered to the client under the contract, reviewed by a judge.

    i. A statement of the grounds for termination, and the consequences of the termination, of the contract by the client.

    j. A statement of the grounds for termination, and the consequences of the termination, of the contract by the lawyer.

    k. Notice to the client of his or her right to make the final decision regarding settlement of the claim.

50. That the following terms should not be included in a contingency fee contract and, if they are included, should be considered void:

    a. A term requiring the client to obtain the lawyer's consent before the client may abandon, discontinue or settle the claim.

    b. A term preventing the client from terminating the contract or changing lawyers.

c. A term permitting the lawyer to split the contingency fee with any other person, other than as permitted by the Society's Rules of Professional Conduct.

Review of Contingency Fee Contracts

51. In July 1992, Convocation determined that a client should be entitled to ask for a review by a judge of a contingency fee contract. The review would be permitted after the client's case was finished. The exact timing of the review was not considered.

52. At present, a client may seek an assessment of a lawyer's bill within one month after its delivery and, in the discretion of the court, within twelve months after payment of the lawyer's bill.[5]

53. The Joint Committee has determined that the time limitations that currently apply to reviews of lawyers= bills should apply to reviews of contingency fee arrangements that will be permitted once contingency fees are introduced into Ontario.

54. Accordingly, Convocation is asked to approve that the client should be entitled to seek review of the contingency fee contract, and any charges rendered to the client under the contract,

a. as of right within one month after delivery of the lawyer's bill;

b. in the discretion of a judge, within twelve months after payment of the lawyer's bill.

Solicitors Act: Subsection 20 (2)

55. Currently, costs may be used as a sanction to prevent parties from prolonging court proceedings, to encourage settlements or to discourage improper behaviour. This should not change if contingency fees are introduced into Ontario. Changes to the *Solicitors Act* will be required to achieve this result.

56. Subsection 20 (2) of the *Solicitors Act* provides that costs awarded to a client may not be greater than the amount paid by the client to the lawyer.[6] It is very possible that costs may exceed the amount of the contingency fee. To disallow such costs would remove any sanction against a party who is acting improperly. For example, if a defendant refuses a reasonable settlement offer, the court may impose a cost sanction. If the amount of costs is limited to the contingency fee, the defendant would have no incentive to settle.

57. Convocation is asked to approve that subsection 20 (2) of the *Solicitors Act* should be amended to ensure that,

a. calculation of costs by the court, for the purposes of making a costs award, is not adversely affected by the fact that the client's lawyer is being compensated on a contingency fee basis; and

b. the client is able to recover the full amount of costs awarded, even when the amount of the award exceeds the amount of the contingency fee payable by the client to his or her lawyer.

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5 *Solicitors Act*, R.S.O. 1990, c. S-15, ss 3, 11.

6 Subsection 20 (2) of the *Solicitors Act*, R.S.O. 1990, c. S-15 reads as follows:

> However, the client who has entered into the agreement [*i.e.*, an agreement as to his or her lawyer=s compensation] is not entitled to recover from any other person under any order for the payment of any costs that are the subject of the agreement more than the amount payable by the client to the client=s own solicitor under the agreement.

APPENDIX 2

PROFESSIONAL REGULATION COMMITTEE PROPOSAL TO SEPTEMBER 19, 2002 CONVOCATION ON CONTINGENT FEE REGULATION

Summary of the Professional Regulation Committee's Proposals to

September 19, 2002 Convocation for Contingent Fee Regulation

a. That the maximum contingent fee rate should be capped at 20 percent.

b. That, in respect of a lawyer's application to the court for approval to charge a contingent fee rate in excess of the cap,

   i. the application should be heard by a judge in chambers (not in open court),

   ii. it should be mandatory for the client to appear at the hearing of the application, and

   iii. in determining whether to grant the application, the judge should be required to consider the nature and complexity of, and the expense and risk involved in, the case.

c. That the lawyer should be entitled to receive the award of costs.

d. That there should be no prohibition against minors and persons under legal disability entering into contingent fee arrangements.

e. That the signatures of the lawyer and the client on a contingent fee contract should be witnessed and that a lawyer should be required to give to the client a copy of the signed contingent fee contract.

f. That the following information and terms should be included in every contingent fee contract:

   i. The name, address and phone number of the lawyer and client.

   ii. The nature of the client's claim.

   iii. A statement that the lawyer will be compensated for services provided by way of a contingent fee, which will amount to x percent of the total amount recovered, together with costs awarded, but exclusive of disbursements. The statement should include an explanation of who will be responsible for paying costs and disbursements in the following circumstances: The client wins; the client loses; and the claim is settled.

   iv. A simple example of how a contingent fee is calculated.

   v. A statement disclosing that the contingent fee rate which has been agreed upon by the lawyer and client may be greater or lesser than contingent fee rates charged by other lawyers for similar cases and that the client has the right to contact other lawyers to obtain their rates.

   vi. A term that sets out the maximum contingent fee rate chargeable and advises the client that a contract which includes a contingent fee rate in excess of the maximum is not enforceable by the lawyer unless it is approved by a judge at the outset.

   vii. A statement indicating the client's agreement and direction that all monies awarded to the client by the court or as the result of a settlement (including costs) are to be paid to the lawyer to be held by the lawyer in trust for the client subject to the terms of the contingent fee contract.

   viii. Notice to the client of his or her right to have the contingent fee contract, and any charges rendered to the client under the contract, reviewed by a judge.

ix. A statement of the grounds for termination, and the consequences of the termination, of the contract by the client.

x. A statement of the grounds for termination, and the consequences of the termination, of the contract by the lawyer.

xi. Notice to the client of his or her right to make the final decision regarding settlement of the claim.

g. That the following terms should not be included in a contingent fee contract and, if they are included, should be considered void:

i. A term requiring the client to obtain the lawyer's consent before the client may abandon, discontinue or settle the claim.

ii. A term preventing the client from terminating the contract or changing lawyers.

iii. A term permitting the lawyer to split the contingent fee with any other person, other than as permitted by the Society's *Rules of Professional Conduct*.

h. That the client should be entitled to seek review of the contingent fee contract, and any charges rendered to the client under the contract,

i. as of right within one month after delivery of the lawyer's bill, and

ii. in the discretion of a judge, within twelve months after payment of the lawyer's bill.

i. That subsection 20 (2) of the *Solicitors Act* should be amended to ensure that,

i. calculation of costs by the court, for the purposes of making a costs award, is not adversely affected by the fact that the client's lawyer is being compensated on a contingent fee basis, and

ii. the client is able to recover the full amount of costs awarded, for payment to the lawyer, even when the amount of the award exceeds the amount of the contingent fee payable by the client to his or her lawyer.

APPENDIX 3

DECISION OF THE COURT OF APPEAL FOR ONTARIO IN *MCINTYRE V. ATTORNEY GENERAL OF ONTARIO*

APPENDIX 4
BY-LAWS 18, 19 AND 25

BY-LAW 18

Made: January 28, 1999
Amended:
February 19, 1999
May 28, 1999

RECORD KEEPING REQUIREMENTS

GENERAL

Interpretation
1. (1) In this By-Law,

"client" includes a person or group of persons from whom or on whose behalf a member receives money or other property;

"firm of members" means a partnership of members and all members employed by the partnership;

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

"member" includes a firm of members;

"money" includes current coin, government or bank notes, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.

"arm's length" and "related"

(2) For the purposes of this By-Law, "arm's length" and "related" have the same meanings given them in the *Income Tax Act* (Canada).

"Charge"

(3) For the purposes of this By-Law, "charge" has the same meaning given it in the *Land Registration Reform Act*.

"Teranet"

(4) In paragraph 12 of section 2, "Teranet" means Teranet Land Information Services, Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Commercial Relations.

Requirement to maintain financial records

2. Every member shall maintain financial records to record all money and other property received and disbursed in connection with the member's practice, and, as a minimum requirement, every member shall maintain, in accordance with sections 4, 5 and 6, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the person from whom money is received, the amount of money received and the client for whom money is received in trust.

2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed and the client on whose behalf money is disbursed.

3. A clients' trust ledger showing separately for each client for whom money is received in trust all money received and disbursed and any unexpended balance.

4. A record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.

5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the person from whom money is received and the amount of money received.

6. A book of original entry showing all disbursements of money, other than money held in trust for a client, and identifying each date on which money is disbursed, the method by which money is

disbursed, including the number or a similar identifier of any document used to disburse money, the amount of money which is disbursed and the person to whom money is disbursed.

7. A fees book or a chronological file of copies of billings, showing all fees charged and other billings made to clients and the dates on which fees are charged and other billings are made to clients and identifying the clients charged and billed.

8. A record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparisons:

   i. A detailed listing made monthly showing the amount of money held in trust for each client and identifying each client for whom money is held in trust.

   ii. A detailed reconciliation made monthly of each trust bank account.

9. A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the member took possession of each property, the person who had possession of each property immediately before the member took possession of the property, the value of each property, the client for whom each property is held in trust, the date on which possession of each property is given away and the person to whom possession of each property is given.

10. Bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.

11. Signed electronic trust transfer requisitions and signed printed confirmations of electronic transfers of trust funds.

12. Signed authorizations of withdrawals by Teranet and signed paper copies of confirmations of withdrawals by Teranet.

Record keeping requirements if mortgages and other charges held in trust for clients

3. Every member who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain financial records in addition to those required under section 2 and, as a minimum additional requirement, shall maintain, in accordance with sections 4, 5 and 6, the following records:

1. A mortgage asset ledger showing separately for each mortgage or charge,

   i. all funds received and disbursed on account of the mortgage or charge,

   ii. the balance of the principal amount outstanding for each mortgage or charge,

   iii. an abbreviated legal description or the municipal address of the real property, and

   iv. the particulars of registration of the mortgage or charge.

2. A mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,

   i. all funds received and disbursed on account of each mortgage or charge held in trust for the person,

   ii. the balance of the principal amount invested in each mortgage or charge,

iii. an abbreviated legal description or the municipal address for each mortgaged or charged real property, and

iv. the particulars of registration of each mortgage or charge.

3. A record showing a comparison made monthly of the total of the principal balances outstanding on the mortgages or charges held in trust and the total of all principal balances held on behalf of the investors as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparison:

i. A detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding.

ii. A detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.

Financial records to be permanent

4. (1) The financial records required to be maintained under sections 2 and 3 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

Paper copies of financial records

(2) If a financial record is entered and posted by mechanical or electronic means, a member shall ensure that a paper copy of the record may be produced promptly on the Society's request.

Financial records to be current

5. (1) Subject to subsection (2), the financial records required to be maintained under sections 2 and 3 shall be entered and posted so as to be current at all times.

Exceptions

(2) The record required under paragraph 8 of section 2 and the record required under paragraph 3 of section 3 shall be created within fifteen days after the last day of the month in respect of which the record is being created.

Preservation of financial records required under s. 2

6. (1) Subject to subsection (2), a member shall keep the financial records required to be maintained under section 2 for at least the six year period immediately preceding the member's most recent fiscal year end.

Same

(2) A member shall keep the financial records required to be maintained under paragraphs 1, 2, 3, 8, 9, 10 and 11 of section 2 for at least the ten year period immediately preceding the member's most recent fiscal year end.

Preservation of financial records required under s. 3

(3) A member shall keep the financial records required to be maintained under section 3 for at least the ten year period immediately preceding the member's most recent fiscal year end.

Record keeping requirements when acting for lender

7. (1) Every member who acts for or receives money from a lender shall, in addition to maintaining the financial records required under sections 2 and 3, maintain a file for each charge, containing,

(a) a completed investment authority, signed by each lender before the first advance of money to or on behalf of the borrower;

(b) a copy of a completed report on the investment;

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

(d) a copy of the registered charge; and

(e) any supporting documents supplied by the lender.

Exceptions

(2) Clauses (1) (a) and (b) do not apply with respect to a lender if,

(a) the lender,

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

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

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

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

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

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

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

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

Requirement to provide documents to lender

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

(a) if clause (1) (b) applies, an original of the report referred to therein; and

(b) if clause (1) (c) applies, a copy of the declaration of trust.

Requirement to add to file maintained under subs. (1)

(4) Each time the member or any member of the same firm of members does an act described in subsection (5), the member shall add to the file maintained for the charge the investment authority referred to in clause (1) (a), completed anew and signed by each lender before the act is done, and a copy of the report on the investment referred to in clause (1) (b), also completed anew.

Application of subs. (4)

(5) Subsection (4) applies in respect of the following acts:

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

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

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

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

New requirement to provide documents to lender

(6) Forthwith after completing anew the report on the investment under subsection (4), the member shall deliver an original of it to each lender.

Requirement to add to file maintained under subs. (1): substitution

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

Exceptions

(8) The member need not comply with subsection (4) or (7) with respect to a lender if clause (2) (a), (b), (c), (e) or (f) applied to the lender in the original loan transaction.

Investment authority: Form 18A

(9) The investment authority required under clause (1) (a) shall be in Form 18A.

Report on investment: Form 18B

(10) Subject to subsection (11), the report on the investment required under clause (1) (b) shall be in Form 18B.

Report on investment: alternative to Form 18B

(11) The report on the investment required under clause (1) (b) may be contained in a reporting letter addressed to the lender or lenders which answers every question on Form 18B.

Commencement

8. This By-Law comes into force on February 1, 1999.

BY-LAW 19

Made: January 28, 1999
Amended:
February 19, 1999
May 28, 1999
April 26, 2001
January 24, 2002

HANDLING OF MONEY AND OTHER PROPERTY

Interpretation

1. (1) In this By-Law,

"client" means a person or group of persons from whom or on whose behalf a member receives money or other property;

"firm of members" means a partnership of members and all members employed by the partnership;

"member" includes a firm of members;

"money" includes current coin, government or bank notes, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.

(2) For the purposes of subsections 4 (1), (2) and (3) and section 8, cash, cheques negotiable by the member, cheques drawn by the member on the member's trust account and credit card sales slips in the possession and control of the member shall be deemed from the time the member receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day.

Money received in trust for client

2. (1) Subject to section 3, every member who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation, to be kept in the name of the member, or in the name of the firm of members of which the member is a partner or by which the member is employed, and designated as a trust account.

Interpretation

(2) For the purposes of subsection (1), a member receives money in trust for a client if the member receives from a person,

(a) money that belongs in whole or in part to a client;

(b) money that is to be held on behalf of a client;

(c) money that is to be held on a client's direction or order;

(d) money that is advanced to the member on account of fees for services not yet rendered; or

(e) money that is advanced to the member on account of disbursements not yet made.

Money to be paid into trust account

(3) In addition to the money required under subsection (1) to be paid into a trust account, a member shall pay the following money into a trust account:

1. Money that may by inadvertence have been drawn from a trust account in contravention of section 4.

2. Money paid to a member that belongs in part to a client and in part to the member where it is not practical to split the payment of the money.

Withdrawal of money from trust account

(4) A member who pays into a trust account money described in paragraph 2 of subsection (3) shall as soon as practical withdraw from the trust account the amount of the money that belongs to him or her.

One or more trust accounts

(5) A member may keep one or more trust accounts.

Money not to be paid into trust account

3. (1) A member is not required to pay into a trust account money which he or she receives in trust for a client if,

(a) the client requests the member in writing not to pay the money into a trust account;

(b) the member pays the money into an account to be kept in the name of the client, a person named by the client or an agent of the client; or

(c) the member pays the money immediately upon receiving it to the client or to a person on behalf of the client in accordance with ordinary business practices.

Same

(2) A member shall not pay into a trust account the following money:

1. Money that belongs entirely to the member or to another member of the firm of members of which the member is a partner or by which the member is employed, including an amount received as a general retainer for which the member is not required either to account or to provide services;
2. Money that is received by the member as payment of fees for services for which a billing has been delivered, as payment of fees for services already performed for which a billing will be delivered immediately after the money is received or as reimbursement for disbursements made or expenses incurred by the member on behalf of a client.

Record keeping requirements

(3) A member who, in accordance with subsection (1), does not pay into a trust account money which he or she receives in trust for a client shall include all handling of such money in the records required to be maintained under By-Law 18.

Withdrawal of money from trust account

4. (1) A member may withdraw from a trust account only the following money:

1. Money properly required for payment to a client or to a person on behalf of a client

2. Money required to reimburse the member for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client;

3. Money properly required for or toward payment of fees for services performed by the member for which a billing has been delivered.

4. Money that is directly transferred into another trust account and held on behalf of a client.

5. Money that under this By-Law should not have been paid into a trust account but was through inadvertence paid into a trust account.

Permission to withdraw other money

(2) A member may withdraw from a trust account money other than the money mentioned in subsection (1) if he or she has been authorized to do so by the Secretary or, in the absence of the Secretary and all persons authorized to exercise the powers and perform the duties of the Secretary under this By-Law, the Chief Executive Officer.

Limit on amount withdrawn from trust account

(3) A member shall not at any time with respect to a client withdraw from a trust account under this section, more money than is held on behalf of that client in that trust account at that time.

Manner in which certain money may be withdrawn from trust account

5. A member shall withdraw money from a trust account under paragraph 2 or 3 of subsection 4 (1) only,

(a) by a cheque drawn in favour of the member;

(b) by a transfer to a bank account that is kept in the name of the member and is not a trust account; or

(c) by electronic transfer.

Withdrawal by cheque

6. A cheque drawn on a trust account shall not be,

(a) made payable either to cash or to bearer; or

(b) signed by a person who is not a member except in exceptional circumstances and except when the person has signing authority on the trust account on which a cheque will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all the trust accounts on which signing authority has been delegated to the person.

Withdrawal by electronic transfer

7. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.

When money may be withdrawn

(2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the member must be one that does not permit an electronic transfer of funds unless,

i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and

ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.

2. The electronic transfer system used by the member must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.

3. The confirmation required by paragraph 2 must contain,

i. the number of the trust account from which money is drawn,

ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,

iii. the name of the person or entity in whose name the account to which money is transferred is kept,

iv. the number of the account to which money is transferred,

v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and

vi. the time and date that the confirmation from the financial institution is sent to the member.

4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic trust transfer system, an electronic trust transfer requisition must be signed by,

   i. a member, or

   ii. in exceptional circumstances, a person who is not a member if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

Application of para. 1 of subs. (2) to sole practitioner

(3) Paragraph 1 of subsection (2) does not apply to a member who practises law without another member as a partner and without another member or person as an employee, if the member himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

Same

(4) In exceptional circumstances, the data referred to in subsection (3) may be entered by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

Additional requirements relating to confirmation

(5) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (2) is sent to a member, the member shall,

(a) produce a printed copy of the confirmation;

(b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;

(c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and

(d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(6) In exceptional circumstances, the tasks required by subsection (5) may be performed by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 19A.

Definitions

7.1 (1) In this section,

"closing funds" means the money necessary to complete or close a transaction in real estate;

"transaction in real estate" means,

(a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the *Land Titles Act* and a mortgage, but excluding a rent charge, or

(b) a conveyance of freehold or leasehold land, including a deed and a transfer under the *Land Titles Act*, but excluding a lease.

Withdrawal by electronic transfer: closing funds

(2) Despite section 7, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.

When closing funds may be withdrawn

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the member must be one to which access is restricted by the use of at least one password or access code.

2. The electronic transfer system used by the member must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.

3. The confirmation required by paragraph 2 must contain,

   i. the name of the person or entity in whose name the account from which money is drawn is kept,

   ii. the number of the trust account from which money is drawn,

   iii. the name of the person or entity in whose name the account to which money is transferred is kept,

   iv. the number of the account to which money is transferred, and

   v. the date the transfer is carried out.

4. Before the electronic transfer system used by the member is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,

   i. the member, or

   ii. in exceptional circumstances, a person who is not the member if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

Additional requirements relating to confirmation

(4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the member shall,

(a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);

(b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;

(c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and

(d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(5) In exceptional circumstances, the tasks required by subsection (4) may be performed by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition: closing funds

(6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 19C [Electronic Trust Transfer Requisition: Closing Funds].

Application of subss 8.1 (2) and (4) to (7)

(7) Subsections 8.1 (2), (4), (5), (6) and (7) apply, with necessary modifications, with respect to the doing of any act under this section.

Requirement to maintain sufficient balance in trust account

8. Despite any other provision in this By-Law, a member shall at all times maintain sufficient balances on deposit in his or her trust accounts to meet all his or her obligations with respect to money held in trust for clients.

AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS

Interpretation: "Teranet"

8.1. (1) In sections 8.2 and 8.3, "Teranet" means Teranet Land Information Services, Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Commercial Relations.

Interpretation: time for doing an act expires on a holiday

(2) Except where a contrary intention appears, if the time for doing an act under sections 8.2 and 8.3 expires on a holiday, the act may be done on the next day that is not a holiday.

Interpretation: counting days

(3) In subsection 8.3 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 8.3 (1) for more than five days.

Interpretation: "holiday"

(4) In this section, "holiday" means,

(a) any Saturday or Sunday;

(b) New Year's Day;

(c) Good Friday;

(d) Easter Monday;

(e) Victoria Day;

(f) Canada Day;

(g) Civic Holiday;

(h) Labour Day;

(i) Thanksgiving Day;

(j) Remembrance Day;

(k) Christmas Day;

(l) Boxing Day; and

(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

Same

(5) Where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday.

Same

(6) Where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays.

Same

(7) Where Christmas Day falls on a Friday, the following Monday is a holiday.

Authorizing Teranet to withdraw money from trust account

8.2 (1) Subject to subsection (2), a member may authorize Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Conditions

(2) A member shall not authorize Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction unless Teranet agrees to provide to the member in accordance with subsection (3) a confirmation of the withdrawal that contains the information mentioned in subsection (4).

Time of receipt of confirmation

(3) The confirmation required under subsection (2) must be received by the member not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the member.

Contents of confirmation

(4) The confirmation required under subsection (2) must contain,

(a) the amount of money withdrawn from the trust account;

(b) the time and date that the authorization to withdraw money is received by Teranet; and

(c) the time and date that the confirmation from Teranet is sent to the member.

Written record of authorization

(5) A member who authorizes Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, in any, related to a client's real estate transaction shall record the authorization in writing.

Same

(6) The written record of the authorization required under subsection (5) shall be in Form 19B and shall be completed by the member before he or she authorizes Teranet to withdraw from a trust account described in subsection 8.3 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Additional requirements relating to confirmation

(7) Not later than 5 p.m. on the day immediately after the day on which the confirmation required under subsection (2) is sent to a member, the member shall,

(a) produce a paper copy of the confirmation, if the confirmation is sent to the member by electronic means;

(b) compare the paper copy of the confirmation and the written record of the authorization relating to the withdrawal to verify whether money was withdrawn from the trust account by Teranet as authorized by the member;

(c) indicate on the paper copy of the confirmation the name of the client and any file number in respect of which money was withdrawn from the trust account, if the confirmation does not already contain such information; and

(d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.

Special trust account

8.3 (1) The trust account from which Teranet may be authorized by a member to withdraw money shall be,

(a) an account at a chartered bank, provincial savings office, credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a registered trust corporation kept in the name of the member or in the name of the firm of members of which the member is a partner or by which the member is employed, and designated as a trust account; and

(b) an account into which a member shall pay only,

(i) money received in trust for a client for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction; and

(ii) money properly withdrawn from another trust account for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction.

One or more special trust accounts

(2) A member may keep one or more trust accounts of the kind described in subsection (1).

Payment of money into special trust account

(3) A member shall not pay into a trust account described in subsection (1) more money than is required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction, and if more money is, through inadvertence, paid into the trust account, the member shall transfer from the trust account described in subsection (1) into another trust account that is not a trust account described in subsection (1) the excess money.

Time limit on holding money in special trust account

(4) A member who pays money into a trust account described in subsection (1) shall not keep the money in that account for more than five days, and if the money is not properly withdrawn from that account by Teranet within five days after the day on which it is paid into that account, the member shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

Application of ss. 4, 6, 7 and 8

8.4 Sections 4, 6, 7 and 8 apply, with necessary modifications, to a trust account described in subsection 8.3 (1).

Commencement

9. This By-Law comes into force on February 1, 1999.

BY-LAW 25

Made: April 30, 1999
Amended:
May 28, 1999
June 25, 1999
December 10, 1999
April 26, 2001
May 24, 2001

MULTI-DISCIPLINE PRACTICES

Interpretation: "Society official"

0.1 In this By-Law, a "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

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.

Application of certain sections

(3) Subsection 4 (2) and sections 5, 6, 14, 15, 18 and 19 do not apply in respect of a partnership or an association that is not a corporation entered into by a member with an individual who is authorized to practise law in any province or territory of Canada outside Ontario.

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 Society official

8. (1) A Society official shall consider every application made under section 6, and the official shall approve the member's entering into a partnership with the individual if the official 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 Society official is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the official 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 a Society official in writing of the appeal within thirty days after the day the official 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.

Period of default

(4) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 14 (1) of this By-Law is 120 days after the day on which the report is required to be submitted.

Reinstatement of rights and privileges

(5) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file the report required under subsection 14 (1) of this By-Law, for the purpose of subsection 47 (2) of the Act, the member shall complete and file the report in Form 25B in force at the time the member is filing the 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 Society 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, a Society official may require the member to dissolve the partnership.

Amendment of partnership agreement

(3) At the time that the member notifies the Society under subsection (1) that an agreement that governs the partnership has been amended, the member shall file with the Society 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, a Society official may require the member to dissolve the partnership.

Notice to member of requirement to dissolve partnership

17. (1) If a Society official requires a member to dissolve a partnership under subsection 15 (2) or section 16, the official shall so notify the member and, subject to subsection (2), the member shall dissolve the partnership.

Appeal

(2) If a Society official 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 a Society official in writing of the appeal within thirty days after the day the official 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 a Society official 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 through the insurer of the Society's insurance plan professional liability insurance coverage for the individual in an amount determined by Convocation from time to time.

APPENDIX 5

FILE AND CASELOAD MANAGEMENT AND STAFFING INFORMATION IN THE COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE DEPARTMENTS

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

(1) Proposed Member's Annual Report for 2002.

(pages 12-A – 12-H)

(2) Copy of the Decision of the Court of Appeal for Ontario in McIntyre v. Attorney General of Ontario.

(Appendix 3, pages 42 – 71)

(3) Copy of the File and Caseload Management and Staffing information in the Complaints Resolution, Investigations and Discipline Departments.

(Appendix 5, pages 101 – 111)

<u>Re: Amendments to the Member's Annual Report (MAR) for 2002</u>

Mr. Ducharme accepted the following amendments to the Member's Annual Report:

Page 12-C of the Report - the words " Public Law" be added after number 13

Page 12-C of the Report - the words in brackets "Workers Compensation" be deleted in number 18

Page 12-D of the Report – the word "total" in the paragraphs and charts under the headings Self-Study and CLE be changed to the word "approximately"

Page 12-D of the Report – the words in brackets "Insight, Canadian Institute, etc." be deleted under 2 b)

It was moved by Ms. Pilkington, seconded by Ms. Ross that the form be amended by deleting the words "as adjunct faculty or visiting lecturer" under the heading CLE on page 12-D.

Lost

It was moved by Mr. Ducharme, seconded by Mr. Campion that the Member's Annual Report Form 17A be approved as amended.

Carried

Re: Contingent Fees

Mr. MacKenzie presented the proposed new rule of professional conduct on contingent fees for approval by Convocation.

An amendment was accepted that the words "the amount of the expected recovery" be added after the words "risk of pursuing it," in the last paragraph on page 3.

It was moved by Mr. MacKenzie, seconded by Mr. Ducharme that the new Rule 2.08 (3) – (5) and commentary be adopted as amended to replace the existing Rule 2.08 (3) and (4).

Carried

Ms. Minor abstained from the discussion and vote.

New Rule 2.08

Contingent Fees and Contingent Fee Agreements

2.08 (3) Subject to subrules (1), (4) and (5), except in family law or criminal or quasi-criminal matters, a lawyer may enter into a written agreement signed by the lawyer and his or her client, or where the client is under a disability, by the client's litigation guardian or other duly appointed representative, that provides that the lawyer's fee is contingent, in whole or in part, on a specified disposition of the matter for which the lawyer's services are to be provided.

(4) An agreement under subrule (3) shall contain:

34. a statement of the method by which the fee is to be determined, including the percentage that may accrue to the lawyer in the event of settlement, trial or appeal, and

35. a statement that the client may apply to the Superior Court of Justice for a determination of whether the contingent fee is fair and reasonable.

(5) An agreement under subrule (3) shall not:

(c) require the lawyer's consent if the client decides to discontinue or settle his or her claims, or

(d) include a term that prevents the client from changing lawyers or ending the lawyer and client relationship at any time.

COMMENTARY

The Contingent Fee Agreement

A contingent fee agreement should:

a. be signed by a witness, and set out the name, address, and phone number of the witness;
b. briefly describe the nature of the client's claim;
c. contain a simple example of how the fee will be calculated;
d. contain a statement that the lawyer's fee may be lesser or greater than fees charged by other lawyers for similar claims and that before signing the agreement the client has the right to consult with and retain another lawyer;
e. contain a statement that the client has the right to decide whether to accept an offer to settle his or her claim;
f. contain a statement of who will be responsible for paying costs and disbursements, and
g. contain a statement setting out the circumstances in which the agreement may be terminated by the lawyer or by the client and the consequences of termination, including how the lawyer's fee is to be determined in such circumstances.

Immediately after the signing of a contingent fee agreement, the lawyer should deliver a copy to the client.

The Percentage of the Award and Treatment of Costs

In determining the appropriate percentage or other basis of the contingent fee, the lawyer and the client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. If the lawyer and client agree that the costs award is to be paid to the lawyer, a smaller percentage of the award than would otherwise be agreed upon for the contingent fee, after considering all relevant factors, will generally be appropriate. The test is whether the fee in all of the circumstances is fair and reasonable.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

Re: Foreign Legal Consultant Application

It was moved by Mr. Hunter, seconded by Ms. Ross that the application in the Report for certification as a foreign legal consultant in Ontario be adopted.

Carried

The Treasurer advised Convocation that Mr. Arnup's committee will examine the issue of the granting of honorary degrees.

REPORT OF THE SPECIAL COMMITTEE ON THE LAW SOCIETY MEDAL PROGRAM

Mr. Arnup presented the Report of the Special Committee on the Law Society Medal Program for approval by Convocation. He expressed his gratitude to Deidre Rowe Brown for her assistance.

Special Committee on the Law Society Medal Program
October 31, 2002

Report to Convocation

Purpose of Report: Decision

Prepared by The Honourable John Arnup, Q.C.

REPORT OF THE SPECIAL COMMITTEE ON THE LAW SOCIETY MEDAL PROGRAM

On March 21, 2002, the Treasurer presented to Convocation the report of the committee established to recommend to Convocation the names of members of the Law Society for award of the Law Society Medal (hereafter "the Awards Committee"). The report recommended the appointment of seven persons, all male. In the subsequent discussion, it was mentioned that there were no women in the list.

The Treasurer, who is the Chair of the Awards Committee, stated that there had been twenty-eight nominations before the Committee, of whom only three were women. One bencher observed that nominees would normally be members of long standing in the profession and that the increase in the proportion of women in the profession was of relatively recent origin. The report was adopted.

Subsequently, the Treasurer appointed this Committee to review and report on the Law Society Medal Program, particularly the criteria for the granting of the award of the Medal. Its members are: John Arnup (Chair), Laura Legge, Sydney Robins, Susan Elliott and Marion Boyd (four ex-Treasurers and a former Attorney-General of Ontario). The Committee met on June 27, 2002 (Marion Boyd was not able to be present).

CONCLUSION:

The Committee is unanimously of the view that the present criteria for the award of the Medal are appropriate and should not be changed. We are also of the view that the process leading up to the award is appropriate and should not be changed. We made some comments below.

BACKGROUND:

In September 1983, Convocation approved, in principle, the establishment of an honour or honours to those members of the Law Society who had made a significant contribution to the profession, and continued the Special Committee under the chairmanship of George Finlayson. That Committee made its report to Convocation on June 22, 1984. That report was adopted and its contents can fairly be described as the Constitution of the Law Society Medal Program. We reproduce it here:

> Your Committee reported last in September 1983. At that time Convocation gave its approval in principle to the establishment of an honour or honours to be awarded by the Society as the governing body of the legal profession to members who have made a significant contribution to the profession: that it should be granted in sufficient number that members who make such a contribution may have some reasonable expectation that their work will receive recognition but not awarded to so many that its coinage becomes debased; that the award should be visible but not ostentatious and that the awarding of it should not be confined to any particular segment of professional activity and that the selection should be made for unimpeachable reasons having to do purely with contributions made as a lawyer to the profession.
>
> Following this direction from Convocation your Committee met at 4:30 p.m. on the 22 of February 1984 the following members being present: Mr. Finlayson (Chairman) with Messrs. Ground and Rock.
>
> In considering the basis of the award and the kinds of services for which it should be awarded your Committee was mindful of the honour granted by the Association of Professional Engineers to certain of its

members for services to the Engineering Profession which might otherwise go unrecognized. That honour is known as the Sons of Martha Award and, as the name suggests, is given to those who perform the ordinary tasks of a professional engineer but with such diligence or effectiveness, or so much to the benefit of the profession as a whole that they are deserving of recognition. Similarly the Law Society's award should, in your Committee's opinion, be made for outstanding service within the profession whether in the area of practice or in the academic sphere or in some other professional capacity where the service is in accordance with the highest ideals of the professional and whether by devotion to professional duties over a long term or for a single outstanding act of service.

The honour should be granted only to members of the Law Society of Upper Canada in recognition of service given while a member of the Society.

Your Committee recommends that the honour be granted not more often than annually but not necessarily in each year and that the list of those to be honoured be highly selective so that no more than a few would be granted at any one time. It is recommended that the occasion of the bestowing of the honour be a special dinner to be held annually at Osgoode Hall and that if in any year no award is to be made the dinner be held nonetheless and an outstanding speaker invited to address those present.

Those who have received the honour should be entitled to use the letters LSM after their names immediately after the initials of any Queen's honour and ahead of the initials of any academic or other honour.

Your Committee recommends that the selection process be begun by nomination in which the nominator would set forth reasons and give the names of references and that the nominations be considered by a special committee composed of the Chief Justice of Ontario, the President of the Canadian Bar Association (Ontario), the President of the Advocate's Society, the Chairman of the Committee of Ontario Law Deans, the Treasurer of the Law Society who would be the Chairman of the committee, plus four Benchers elected by Convocation to serve for a period of three years.

COMMENTARY:

The medal was designed by Kenneth Jarvis F.R.C.A.

We point out that on the Committee thus created are represented the judiciary, the Ontario Bar Association, the Advocate's Society, and the academic community. The benchers retain voting control of the Awards Committee (five out of nine members).

The criteria quite properly do not create any groups based on gender, age or any other restrictive qualification. It can be safely assumed that all of its members are familiar with the policies of the Law Society concerning equality and equity.

The "Constitution" does not make any stipulation as to the term of membership on the Awards Committee of the four benchers. There is usually some benefit in continuity of membership in committees of this nature, but with a benchers' election held every four years, it is probably best that the bencher members be appointed annually.

We feel we should emphasize two aspects of the awards process. First, the proposed recipients must have made a significant contribution to the legal profession. Contributions to the public benefit but not made in or for the benefit of the profession do not justify an award. There are other awards available to recognize this kind of public service.

Second, it was contemplated in 1984 and expressly stated, that the number of recipients in any year should be very small. Laura Legge was a senior bencher in 1984 and Treasurer when the first awards were being considered, and her recollection is very clear that this point was emphasized in 1984 and subsequently. The award loses some of its prestige if it is too widely handed out.

The suggestion was made at the March 2002 Convocation that the invitation to the profession to submit nominations should be more widely circulated. To date it has been confined to the Ontario Reports, which until recently was the

only official publication of the Law Society. Since we now have the Ontario Lawyers Gazette, we think it would be appropriate to place a notice there as well as in the Ontario Reports, but we would oppose any advertisements in other publications, legal or otherwise. Such efforts would cheapen the award whose unique significance must be maintained.

Letters of recommendation, supporting a particular nominee, and sent in by the nominator(s) would be acceptable, but of course, attempts to influence a member of the Awards Committee (or of Convocation) would not. Fortunately, there has been no evidence of such unseemly activity.

We have been provided with statistics of the total membership of the Society, including a breakdown into the various categories of occupation for the years 1997 to date and a similar breakdown of female members but have not found this helpful for our purposes, except to note, somewhat to our surprise, that while there has been a continuous rise in the number of members, including female members, the numbers of female members as a proportion of the total membership has risen only from 28% to 32.5%.

ALL OF WHICH is respectfully submitted

Dated this the 31st day of October 2002

The Honourable John Arnup, Q.C.
Chair

It was moved by Mr. Arnup, seconded by Mr. MacKenzie that the Report be adopted.

Carried

REPORT OF THE EQUITY & ABORIGINAL ISSUES COMMITTEE/Comit9 sur L'9quit9 et les affaire autochtones

Mr. Millar presented the Report of the Equity & Aboriginal Issues Committee for approval by Convocation.

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones
October 31, 2002

Report to Convocation

Purpose of Report: Policy - For Decision
Information

Prepared by the Equity Initiatives Department

TABLE OF CONTENTS

POLICY - FOR DECISION

INFORMATION

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee /Comité sur l'équité et les affaires autochtones (EAIC) met on October 9, 2002. In attendance were:

Derry Millar	(Vice Chair)
Helene Puccini	(Vice Chair)
Stephen Bindman	
Nathalie Boutet	(AJEFO representative)
Thomas Carey	
Phyllis Gordon	(Interim Chair, Equity Advisory Group/Groupe consultatif en matière d'équité)
Gary Gottlieb	
Jeffrey Hewitt	(Rotiio> taties representative)
Janet Minor	
Judith Potter	
Bradley Wright	

Staff: Josée Bouchard, Katherine Corrick, Margaret Froh, Terry Knott, Giang Nguyen, Prathima Prashad

2. The Committee is reporting on the following matters:

Policy - For Decision

- Amendments to the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG) Terms of Reference to include an appointment process –page 4.

Information

- Promoting Dialogue, Creating Change; Equity and Diversity in the Legal Profession conference – page 6.

POLICY - FOR DECISION

AMENDMENTS TO THE TERMS OF REFERENCE OF THE EQUITY ADVISORY GROUP/GROUPE CONSULTATIF EN MATIÈRE D'ÉQUITÉ (EAG) TO INCLUDE AN APPOINTMENT PROCESS

Request of Convocation

3. Convocation is requested to approve the following amendments to the Terms of Reference of the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG) which reflect the concerns addressed below:

- Sections 2 through 7 of EAG's Terms of Reference will be renumbered 3 through 8, respectively.
- Section 2 of EAG's Terms of Reference will read as follows:

2. Appointment Process of Member of the EAG

2.1 The EAG will appoint, at the beginning of a selection process, a selection committee of no less than two members of EAG and one member of the legal profession who is not a member of the EAG. A staff member of the Equity Initiatives Department of the Law Society of Upper Canada will provide secretarial support to the selection committee.

2.2 The selection committee will adopt selection criteria, approved by the EAG, consistent with the Terms of Reference.

2.3 The EAG will invite applications for appointment to the EAG by announcing vacancies using various forms, including announcing in the Ontario Reports, emailing and/or targeted mailings to particular communities. The announcement will invite members of the profession to forward a curriculum vitae and letter of interest to the Equity Advisor of the Law Society of Upper Canada. The Equity Advisor will forward copies of the curriculum vitae and letter of interest to the Chair of the selection committee of the EAG.

2.4 The selection committee, guided by the selection criteria, will review each application and recommend candidates for appointment to EAG. The selection committee will support each recommendation by a rationale indicating how the candidate meets the criteria and the nature of the community involvement.

2.5 The applications that do not comply with the application process will not be reviewed.

2.6 EAG will consider the selection committee's recommendations and approve the recommendation of candidates by consensus. In the event that EAG cannot arrive at a consensus, EAG will approve the recommendation based on a two-third majority vote of EAG's membership.

2.7 EAG will recommend the candidates to EAIC for approval.

2.8 EAIC will forward approved names of new EAG members to Convocation along with brief biographical information.

The terms of reference, with amendments, are attached as Appendix A.

Summary of Issue

4. In February 2000, Convocation approved Terms of Reference for the EAG. The Terms of Reference did not include an appointment process for new EAG members. However, the practice followed by EAG to appoint new members is described in the Committee's report to Convocation dated February 11, 2000, and is as follows:

- Announcements appear in the Ontario Reports inviting members of the profession interested in joining EAG to forward a curriculum vitae and a letter of interest to the Equity Advisor.
- EAG adopts selection criteria.
- A selection committee, including a member of the legal profession who is not a member of EAG, is established by EAG to review and rank applicants.
- The selection committee makes recommendations to EAG. The recommendations are approved by the Committee.
- The Committee forwards the approved names of new EAG members to Convocation for information purposes.

5. At its meeting of June 26, 2002, the EAG approved amendments to its Terms of Reference to include an appointment process for members of EAG. The proposed amendments are consistent with the practice in place for appointing new members of EAG.

6. At its meeting of September 5, 2002, the Committee approved amendments to the Terms of Reference of EAG (presented at Appendix A) and requests Convocation to approve the amendments.

INFORMATION

PROMOTING DIALOGUE, CREATING CHANGE CONFERENCE

7. On November 21-23, 2002, the Law Society of Upper Canada, with financial support from the Department of Canadian Heritage, will be hosting a national gathering of stakeholders in the legal profession to discuss various policy and program initiatives undertaken in legal institutions and associations across the country that promote equity and diversity in the legal profession.

8. Attendance at and participation in the national gathering is by invitation only. The three main objectives of the *Promoting Dialogue, Creating Change: Equity and Diversity in the Legal Profession* are:

- to provide a forum for informed dialogue on equity and diversity issues facing the legal profession;
- to bring together key stakeholders in the legal profession to share information on past and current policy and program initiatives to address equity and diversity issues; and
- to encourage the development of collaborative strategies amongst various stakeholders for future policy and program development.

9. The draft agenda for the conference is presented at Appendix B.

APPENDIX A

TERMS OF REFERENCE OF EQUITY ADVISORY GROUP/GROUPE CONSULTATIF EN MATIÈRE D'ÉQUITÉ *WITH* AMENDMENTS

The changes are highlighted

Terms of Reference:

1. Mandate

To assist the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones, in the development of policy options for the promotion of equity and diversity in the legal profession by:

- identifying and advising the Committee on issues affecting equity seeking communities, both within the legal profession and relevant to those seeking access to the profession;
- providing input to the Committee on the planning and development of policies and practices related to equity, both within the Law Society and the profession;
- commenting to the Committee on Law Society reports and studies relating to equity issues within the profession; and

Organization and Structure

2. Appointment Process of Member of the EAG

2.1 The EAG will appoint, at the beginning of a selection process, a selection committee of no less than two members of EAG and one member of the legal profession who is not a member of the EAG. A staff member of the Equity Initiatives Department of the Law Society of Upper Canada will provide secretarial support to the selection committee.

2.2 The selection committee will adopt selection criteria, approved by the EAG, consistent with the Terms of Reference.

2.3 The EAG will invite applications for appointment to the EAG by announcing vacancies using various forms, including announcing in the Ontario Reports, emailing and/or targeted mailings to particular communities. The announcement will invite members of the profession to forward a curriculum vitae and letter of interest to the Equity Advisor of the Law Society of Upper Canada. The Equity Advisor will forward copies of the curriculum vitae and letter of interest to the Chair of the selection committee of the EAG.

2.4 The selection committee, guided by the selection criteria, will review each application and recommend candidates for appointment to EAG. The selection committee will support each recommendation by a rationale indicating how the candidate meets the criteria and the nature of the community involvement.

2.5 The applications that do not comply with the application process will not be reviewed.

2.6 EAG will consider the selection committee's recommendations and approve the recommendation of candidates by consensus. In the event that EAG cannot arrive at a consensus, EAG will approve the recommendation based on a two-third majority vote of EAG's membership.

2.7 EAG will recommend the candidates to EAIC for approval.

2.8 EAIC will forward approved names of new EAG members to Convocation along with brief biographical information.

3. Membership

3.1 The Advisory Group has no fewer than 15 members and no more than 19 members, with at least one member who may be a member of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones.

3.2 Members have direct experience or commitment to access and equity for equity seeking communities, including but not limited to communities of ethno-racial people, people of colour, immigrants and refugees, people with disabilities, gays, lesbians, bisexuals, transgenders, and women. Such experience is in areas of employment equity, access to the legal system, human rights; anti-racism, anti-oppression training; managing access and equity plans, or social justice issues

3.3 The membership reflects gender parity and balance among the various equity seeking communities.

4. The Advisory Group has a chair and a vice-chair, who are named by the Advisory Group members.

5. Meetings

5.1 The Advisory Group meets once a month, [except in the months of July and August], with schedules and agendas being established by the co-chairs in consultation with staff and the members of the Advisory Group.

5.2 Special meetings may be convened by the chair.

5.3 Members must attend meetings regularly either in person or by electronic means such as teleconference.

5.4 Failure to attend more than three consecutive meetings without explanation constitutes resignation from the Advisory Group.

6. Quorum

6.1 Four members of the Advisory Group constitute a quorum for the purposes of the transaction of business.

7. Term of Membership

7.1 The term of membership is three years, for a maximum of two consecutive terms.

7.2 To maintain continuity, not more than half the membership is changed in any year.

8. Staff

8.1 Research and administrative support is provided by the Law Society's Equity

TERMS OF REFERENCE OF EQUITY ADVISORY GROUP/GROUPE CONSULTATIF EN MATIÈRE D'ÉQUITÉ *BEFORE* AMENDMENTS

Terms of Reference:

1. Mandate

To assist the Equity and Aboriginal Issues Committee/comité sur l'équité et les affaires autochtones, in the development of policy options for the promotion of equity and diversity in the legal profession by:

- identifying and advising the Committee on issues affecting equity seeking communities, both within the legal profession and relevant to those seeking access to the profession;
- providing input to the Committee on the planning and development of policies and practices related to equity, both within the Law Society and the profession;
- commenting to the Committee on Law Society reports and studies relating to equity issues within the profession; and

Organization and Structure

2. Membership

2.1 The Advisory Group has no fewer than 15 members and no more than 19 members, with at least one member who may be a member of the Equity and Aboriginal Issues Committee/comité sur l'équité et les affaires autochtones.

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APPENDIX B

Promoting Dialogue, Creating Change;

Equity and Diversity in the Legal Profession

Draft Agenda

The *Promoting Dialogue, Creating Change: Equity and Diversity in the Legal Profession* project is a vehicle for promoting equity and diversity within the legal profession in Canada by bringing together judges, lawyers, legal educators, law students, and national and provincial legal associations and regulatory bodies to share strategies for affecting change.

The three main objectives of this symposium are:

1. to provide a forum for informed dialogue on equity and diversity issues facing the legal profession in Canada;

2. to bring together key stakeholders in the legal profession to share information on past and current polices and programs developed to address equity and diversity issues; and

3. to encourage the development of collaborative strategies amongst the various stakeholders for future policy and program development.

Day 1: Thursday, November 21, 2002

3:00 pm – 4:00 pm	Registration
4:00 pm - 6:30 pm	Round table discussion: Where Are We Now?
6:30 pm - 8:00 pm Reception	*Creating Change in the Legal Profession* Sakej Henderson, Director, Native Law Centre *Reflections on Equity Initiatives in the Legal Profession* Andrew Pinto, Past-Chair of the Equity Advisory Group/Groupe consultatif en matière d'équité of the Law Society of Upper Canada

Day 2: Friday, November 22, 2002

9:00 am – 12:00 pm: Accessing the Profession and Attaining Success

Two simultaneous sessions for information sharing and critical dialogue for institutional stakeholders (Session 1) and community stakeholders (Session 2)

9:00 am – 10:30 am

Session 1: Institutional Stakeholders

Round Table Discussion: Principles Of Equity In Legal Education And Professional Development

Remarks by Brettel Dawson , Senior Advisor, Social Context, National Judicial Institute
Stand-alone and Integrated Approaches

Issues for discussion include:

a. Critical perspective courses and equity-focused professional development programs: effectiveness, advantages and disadvantages
b. The case for integration of critical perspectives and equality principles within "mainstream" law
c. New trends: the value of distance and electronic learning for lawyers and students of equity-seeking communities, Aboriginal students and lawyers and Francophone students

Session 2: Community Stakeholders

Round Table Discussion: Increasing Access Of Students From Equity-Seeking Communities, Aboriginal and Francophone Students: Successful Initiatives And Strategies To Increase Access

Remarks by Yves LeBouthillier, Vice-Dean, French Common Law Program, University of Ottawa

Remarks by Ms Patricia Doyle-Bedwell, Law Programme for Indigenous Blacks and Mi'kmaq
Successes Of Independent Programs

Issues for discussion include:

a. Entering and succeeding in law school
b. The articling experience
c. Entering the legal profession
d. Role of institutional and community stakeholders in providing support
e. The value of distance and electronic learning for lawyers and students of equity-seeking communities, Aboriginal students and lawyers and Francophone students and lawyers

10:45 am – 12:00 pm

Session 1: Institutional Stakeholders

Round Table Discussion: Attaining Success For The Marginalized Lawyer - Changing The Cultural of the Legal Profession

Remarks by Professor Fiona Kay, Department of Sociology, Queen's University
Organizational Culture In The Legal Profession

Issues for discussion include:

a. Initiatives for change in the legal profession
b. The role of the regulator in initiating change
c. Successful initiatives to promote change

Session 2: Community Stakeholders

Round Table Discussion: Attaining Success For The Marginalized Lawyer - Changing The Culture of the Legal Profession from the Perspective of Community Stakeholders

Remarks by Phyllis Gordon, Executive Director, Advocacy Resource Centre for Persons with Disabilities
Access To The Profession For Lawyers With A Disability

Issues for discussion include:

a. Initiatives for change in the legal profession – what has been done and what is required
b. The role of the regulator and of community stakeholders in initiating change
c. Successful initiatives of regulators and community stakeholders to promote change

12:00 p.m. – 2:00 p.m. *Joint lunch "Working Together"*
Andrée Côté, National Association of Women and the Law

2:00 pm – 5:00 pm
Round Table Discussion: Complaints Mechanisms And Access To The Regulator

Two simultaneous sessions where institutional and community stakeholders meet together to discuss the same topics.

Discussions based on the following ideas:

a. Codes of ethics: integration of equity principles
b. Dealing with harassment and discrimination within the legal profession: value of policies and processes adopted by law firms
c. The disciplinary process of law societies: measures to increase access for equity-seeking clients and lawyers and Aboriginal Peoples and Francophones.
d. The value of ombudsperson programs
e. Increasing diversity within the regulatory bodies

Session 1: remarks by Mary Teresa Devlin – Discrimination & Harassment Counsel, Law Society of Upper Canada, *The success of the ombudsperson*

Session 2: remarks by Kimberley Murray, Executive Director, Aboriginal Legal Services of Toronto
Do Aboriginal Peoples access the complaints process of law societies?

Day 3: Saturday, November 23, 2002

9:00 a.m. - 12:00 p.m. Opening address: Fiona Sampson
Equity and Diversity within the legal profession: Identifying Progress

Report back from previous day
Development of collaborative strategies

Closing address: Judge Alexander, Provincial Court of British Columbia
Equity and Diversity in the Legal Profession: Moving Forward

Ébauche d'ordre du jour

Le projet *Encourager le dialogue, provoquer le changement : L'équité et la diversité dans la profession juridique* vise à promouvoir l'équité et la diversité dans la profession juridique au Canada en rassemblant des juges, des juristes, des éducateurs juridiques, des étudiants et étudiantes en droit et des associations juridiques nationales, internationales et provinciales et des corps de réglementation pour partager des stratégies entraînant le changement.

Les trois objectifs principaux de ce symposium sont :

1. de fournir un forum pour un dialogue éclairé sur les questions d'équité et de diversité auxquelles fait face la profession juridique au Canada;

2. de rassembler les intervenants clés de la profession juridique pour partager des renseignements sur les politiques et programmes passés et présents élaborés pour régler des questions d'équité et de diversité;

3. d'encourager l'élaboration de stratégies par les divers intervenants pour des programmes et des politiques futurs.

Jour 1 : Le jeudi 21 novembre 2002

15 h – 16 h	Inscription
16 h - 18 h 30	Discussion : Où en sommes-nous ?
18 h 30 – 20 h Réception	*Creating Change in the Legal Profession* Sakej Henderson, Directeur, Native Law Centre *Reflections on Equity Initiatives in the Legal Profession* Andrew Pinto, Président sortant du Equity Advisory Group/Groupe consultatif en matière d'équité du Barreau du Haut-Canada

Jour 2 : Le vendredi 22 novembre 2002

9 h – 12 h : Accéder à la profession et réussir

Deux sessions simultanées pour partager des renseignements et dialoguer sérieusement entre intervenants institutionnels (session 1) et communautaires (session 2)

9 h – 10 h 30

Session 1 : Intervenants institutionnels

Discussion : Les principes de l'équité dans la formation juridique et le perfectionnement professionnel

Remarques par Brettel Dawson , conseiller principal, contexte social, Institut national de la magistrature
Stand-alone and Integrated Approaches

Matière à discussion :

a. Les cours de perspective critique et les programmes de perfectionnement professionnel centrés sur l'équité : efficacité, avantages et inconvénients
b. La cause de l'intégration des perspectives critiques et des principes d'égalité dans le droit « officiel »
c. Nouvelles tendances : la valeur de l'éducation à distance et électronique pour les juristes et les étudiants et étudiantes des communautés visant l'équité, les étudiants et juristes autochtones et les étudiants francophones

Session 2 : Intervenants communautaires

Discussion : Meilleure accessibilité des étudiants et étudiantes des communautés visant l'équité, autochtones et francophones : Initiatives réussies et stratégies pour améliorer l'accessibilité

Remarques par Yves LeBouthillier, vice-doyen, programme français de common law, Université d'Ottawa
Succès de l'adoption d'un programme indépendant

Mme Patricia Doyle-Bedwell, Law Programme for Indigenous Blacks and Mi'kmaq
Successes Of Independent Programs

Matière à discussion :

a. Entrer et réussir à l'école de droit
b. L'expérience des stages
c. Entrer dans la profession juridique
d. Rôle d'appui des intervenants institutionnels et communautaires
e. La valeur de l'éducation à distance et électronique pour les juristes et les étudiants de communautés visant l'équité, les juristes et étudiants autochtones et francophones

10 h 45 – 12 h

Session 1 : Intervenants institutionnels

Discussion : Réussite du juriste marginalisé – Changer la culture de la profession juridique

Remarques par le professeur Fiona Kay, Département de sociologie, Queen's University
Organizational Culture In The Legal Profession

Matière à discussion :

a. Initiatives pour le changement dans la profession juridique
b. Le rôle des organes de réglementation pour amorcer le changement
c. Initiatives réussies pour promouvoir le changement

Session 2 : Intervenants communautaires

Discussion : Réussite du juriste marginalisé – Changer la culture de la profession juridique du point de vue des intervenants communautaires

Remarques par Phyllis Gordon, directrice générale, Centre de la défense des personnes handicapées
Access To The Profession For Lawyers With A Disability

Matière à discussion :

a. Initiatives pour le changement dans la profession juridique– ce qui a été fait et ce qui est requis
b. Le rôle de l'organe de réglementation et des intervenants communautaires pour amorcer le changement
c. Initiatives réussies des organes de réglementation et des intervenants communautaires pour promouvoir le changement

12 h – 14 h *Déjeuner conjoint « Working Together – travailler ensemble »*
Andrée Côté, Association nationale de la femme et du droit

14 h – 17 h
Discussion : Mécanismes de plaintes et accès à l'organe de réglementation

Deux sessions simultanées où les intervenants institutionnels et communautaires se rencontrent pour discuter des mêmes sujets.

Discussions basées sur les idées suivantes :

a. Codes de déontologie : Intégration des principes d'équité
b. Traiter du harcèlement et de la discrimination dans la profession juridique : Valeur des politiques et des processus adoptés par les cabinets
c. Le processus disciplinaire des barreaux : Mesures pour augmenter l'accessibilité aux clients et avocats de groupes visant l'équité, autochtones et francophones.
d. La valeur des programmes d'ombudsman
e. Augmenter la diversité dans les corps de réglementation

Session 1 : Remarques par Mary Teresa Devlin – conseillère en matière de discrimination et de harcèlement, Barreau du Haut-Canada, *The success of the ombudsperson*

Session 2 : Remarques par Kimberley Murray, directrice générale, Services juridiques autochtones de Toronto, *Do Aboriginal Peoples access the complaints process of law societies?*

Jour 3 : Le samedi 23 novembre 2002

9 h – 12 h

Notes d'ouverture : Fiona Sampson
L'équité et la diversité dans la profession juridique : reconnaître le progrès

Compte rendu de la journée précédente
Élaboration de stratégies conjointes

Notes de clôture : Juge Alexander, Cour provinciale de la Colombie-Britannique
L'équité et la diversité dans la profession juridique: Vers l'avenir

Re: Equity Advisory Group – Terms of Reference

It was moved by Mr. Millar, seconded by Ms. Puccini that the following amendments to the Terms of Reference of the Equity Advisory Group/Groupe consultative en matiПre d'Эquitэ (EAG) be approved.

- Sections 2 through 7 of EAG's Terms of Reference will be renumbered 3 through 8, respectively.
- Section 2 of EAG's Terms of Reference will read as follows:

2. Appointment Process of Member of the EAG

2.1 The EAG will appoint, at the beginning of a selection process, a selection committee of no less than two members of EAG and one member of the legal profession who is not a member of the EAG. A staff member of the Equity Initiatives Department of the Law Society of Upper Canada will provide secretarial support to the selection committee.

2.2 The selection committee will adopt selection criteria, approved by the EAG, consistent with the Terms of Reference.

2.3 The EAG will invite applications for appointment to the EAG by announcing vacancies using various forms, including announcing in the Ontario Reports, emailing and/or targeted mailings to particular communities. The announcement will invite members of the profession to forward a curriculum vitae and letter of interest to the Equity Advisor of the Law Society of Upper Canada. The Equity Advisor will forward copies of the curriculum vitae and letter of interest to the Chair of the selection committee of the EAG.

2.4 The selection committee, guided by the selection criteria, will review each application and recommend candidates for appointment to EAG. The selection committee will support each recommendation by a rationale indicating how the candidate meets the criteria and the nature of the community involvement.

2.5 The applications that do not comply with the application process will not be reviewed.

2.6 EAG will consider the selection committee=s recommendations and approve the recommendation of candidates by consensus. In the event that EAG cannot arrive at a consensus, EAG will approve the recommendation based on a two-third majority vote of EAG=s membership.

2.7 EAG will recommend the candidates to EAIC for approval.

2.8 EAIC will forward approved names of new EAG members to Convocation along with brief biographical information.

Carried

Items for Information Only

Promoting Dialogue, Creating Change Conference

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Amendment to Policy on Suspensions for Failure to File MAR

It was moved by Mr. Ducharme, seconded by Mr. MacKenzie that the policy on Suspensions for Failure to File MAR be amended by deleting the requirement to file the MAR for the year the member is reinstated or readmitted.

Carried

Set out below is the amended policy:

"a) That members who are already suspended for failure to file the Member's Annual Report and who fail to file in years subsequent to the year in which they are suspended for the failure to file should not be suspended again for each year they fail to file, and

b) That members, as a condition of reinstatement or readmission, be required to file the Member's Annual Report for the year they were suspended for failure to file".

Re: Amendments to By-Laws 18, 19 and 25

It was moved by Mr. Ducharme, seconded by Mr. MacKenzie that amendments to By-Laws 18, 19 and 25 set out on pages 15 to 17 of the Report be approved.

Carried

Amendments to By-Laws 18, 19 and 25 are set out below:

BY-LAW 18

[RECORD KEEPING REQUIREMENTS]

1. Subsection 1 (4) of By-Law 18 [Record Keeping Requirements] is amended by,

(a) deleting “Land Information Services,”; and

(b) deleting “Commercial Relations” / “de la Consommation et du Commerce” and substituting “Business Services” / “Services aux consommateurs et aux enterprises”.

BY-LAW 19

[HANDLING OF MONEY AND OTHER PROPERTY]

2. Subsection 8.1 (1) of By-Law 19 [Handling of Money and Other Property] is amended by,

(a) deleting “Land Information Services,”; and

(b) deleting “Commercial Relations” / “de la Consommation et du Commerce” and substituting “Business Services” / “Services aux consommateurs et aux enterprises”.

BY-LAW 25

[MULTI-DISCIPLINE PRACTICES]

1. Section 19 of By-Law 25 [Multi-Discipline Practices] is deleted and the following substituted:

Interpretation: “Society’s insurance plan”
19. (1) In this section, “Society’s insurance plan” means the Society’s professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its members.

Définition : « Régime d’assurance du Barreau »
19. (1) Dans cet article, « Régime d’assurance du Barreau » désigne le régime d’assurance responsabilité professionnelle du Barreau et comprend toute politique d’assurance responsabilité professionnelle que le Barreau peut avoir établie pour ses membres.

Insurance requirements: members
(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 shall maintain professional liability insurance coverage for the individual,

(a) through the insurer of the Society’s insurance plan, in an amount equivalent to that required of the member under the Society’s insurance plan; and

(b) through any insurer, in an amount equivalent to the amount of coverage the member maintains in excess of that required of the member under the Society’s insurance plan.

Exigences relatives à l’assurance : membres
(2) Les membres qui, en vertu du paragraphe 4 (1), se sont associés à un non-membre pour créer une société en nom collectif, si le non-membre exerce une profession ou un métier qui sert les intérêts de l’exercice du droit, doivent avoir

a) par l'entremise de l'assureur du régime d'assurance du Barreau une couverture d'assurance responsabilité civile professionnelle pour le non-membre équivalente à celle du membre;

b) par l'entremise de tout autre assureur, une couverture pour le non-membre équivalente à celle que le membre garde en surplus de ce qui est requis en vertu du régime d'assurance du Barreau.

REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE

Professional Development, Competence & Admissions Committee
October 31, 2002

Report to Convocation

Purpose of Report: Policy – For Decision

Prepared by the Policy Secretariat
(Julia Bass 416-947-5228
Sophia Sperdakos 416-947-5209)

OVERVIEW

Request to Convocation

1. THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force as at October 31, 2002 be amended in accordance with Appendix 1.

Summary of the Issue

2. In June 2002 Convocation merged the Admissions Committee and the Professional Development and Competence Committee into one committee to be called the Professional Development, Competence and Admissions Committee (PDC&A).

3. As a result of the merger a number of by-laws must be amended to reflect the change in name, the new approach to referring to committees by the subject matter of their mandate, and to accurately describe the mandate of the new committee.

4. These "housekeeping" amendments are being proposed to By-laws 6, 9, 10, 12, 13, 21, and 24.

POLICY – FOR DECISION

THE REPORT

Background

5. In June 2002, Convocation merged the Admissions Committee and the Professional Development and Competence Committee into one Committee to be called the Professional Development, Competence and Admissions Committee.

6. This merger has necessitated amendments to a number of by-laws that refer to the individual committees. It has also necessitated amendments to By-law 9, which sets out the mandates of committees to combine the mandates of the two previous committees under one committee.

7. To avoid the future necessity of amending by-laws each time a committee name is changed, the by-law amendments before Convocation also propose to refer to committees by the subject matter of their mandates, rather than by the specific committee name, wherever appropriate.

8. The by-law amendments also refer to "Society official" to replace the name of specific positions such as Director, Registrar, etc… This also avoids the necessity of amending by-laws if a position title is changed.

Specific By-law Amendments

By-law 6 [Treasurer]

9. The only change proposed to By-law 6 is to refer to committees by the subject matter of their mandate, rather than by their specific name.

By-law 9 [Committees]

10. The proposed changes are as follows,

a. section 2 sets out the new name of the merged Committee – Professional Development, Competence and Admissions Committee;

b. section 11, which described the former Admissions Committee, is deleted;

c. section 14 is amended to reflect the name of the merged committee and to set out its mandate. The new section 14 combines former section 11,which dealt with Admissions and former section 14, which dealt with the Professional Development & Competence Committee. It combines the two previous sections except for the deletion of former section 14 (3), which read:

> *The Professional Development and Competence Committee shall perform the functions assigned to the Libraries and Reporting Committee under Regulation 708 of the Revised Regulations of Ontario, 1990.*

This subsection is no longer relevant because LibraryCo has taken over the responsibility for libraries.

By-law 10 [Meetings of Members]

11. The only change proposed to By-law 10 is the change in the references to committees to describe them by the subject matter of their mandate.

By-Law 12 [Bar Admission Course]

12. The proposed changes are as follows:

a. "Society official" is used as a generic term for an officer or employee of the Society assigned by the CEO to undertake administrative responsibilities.

b. Subsection 1(3) is amended only to the extent that it refers to the committee by the subject matter of its mandate. The substance of the subsection remains the same.

c. Subsection 1(4) has been deleted because pursuant to the re-configuration of the Professional Development department under the Director, Diana Miles, the titles referred to in the by-law no longer exists. Roles and tasks within the department have been combined. The subsection read:

> *The Bar Admission Course shall have staff consisting of the faculty and such demonstrators, administrative officers and clerical assistants as are appointed from time to time.*

d. Subsection 2(2) is amended to replace the term "Director" with the term "Society official" and to refer to the committee by the subject matter of its mandate.

e. The balance of the amendments relate to the use of the term "Society Official" to replace specific titles and to refer to a committee by either the term "committee" or by the subject matter of its mandate.

By-law 13 [Members]

13. The only change proposed to By-law 13 is the change in the references to the former Admissions Committee to describe it either as "the committee" or by the subject matter of its mandate, rather than its name. The substance of the provisions remain the same.

By-law 21[Proceedings Authorization Committee]

14. The only change proposed to By-law 21 is the change in the references to committees to describe them by the subject matter of their mandate, rather than their name.

By-law 24 [Professional Competence]

15. The only change proposed to By-law 24 is the change in the references to committees to describe them by the subject of their mandate, rather than their name. The substance of the provisions remain the same.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 31, 2002

MOVED BY

SECONDED BY

THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force as at October 31, 2002 be amended as follows:

BY-LAW 6
[TREASURER]

1. Section 17 of By-Law 6 [Treasurer] is amended by,

(a) deleting "Finance and Audit Committee" and substituting "standing committee of Convocation responsible for financial matters"; and

(b) deleting "Admissions Committee" and substituting "standing committee of Convocation responsible for admissions matters".

BY-LAW 9
[COMMITTEES]

2. Section 2 of By-Law 9 [Committees] is deleted and the following substituted:

Establishment of standing committees
2. The following standing committees are hereby established:

1. Finance and Audit Committee.

2. Government and Public Affairs Committee.

3. Lawyers Fund for Client Compensation Committee.

4. Access to Justice Committee.

5. Litigation Committee.

6. *Professional Development, Competence and Admissions Commi*ttee.

7. Professional Regulation Committee.

8. Equity and Aboriginal Issues Committee.

9. Emerging Issues Committee.

10. Inter-Jurisdictional Mobility Committee.

3. The heading immediately preceding section 11 and section 11 of the By-Law are deleted.

4. The heading immediately preceding section 14 and section 14 of the By-Law are deleted and the following substituted:

PROFESSIONAL DEVELOPMENT, COMPETENCE AND ADMISSIONS COMMITTEE

Mandate
14. (1) The mandate of the Professional Development, Competence and Admissions Committee is to develop for Convocation's approval,

(a) policy options on all matters relating to the professional competence of members;

(b) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;

(c) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;

(d) policies to govern the transfer to the Society of persons qualified to practise law in any province or territory of Canada; and

(e) policies respecting the Bar Admission Course.

Guidelines for professional competence

(2) Subject to the approval of Convocation, the Professional Development, Competence and Admissions Committee may prepare guidelines for professional competence.

BY-LAW 10
[MEETINGS OF MEMBERS]

5. Paragraphs 1 and 2 of section 6 of By-Law 10 [Meetings of Members] are deleted and the following substituted:

1. The chair of the standing committee of Convocation responsible for financial matters.

2. The chair of the standing committee of Convocation responsible for admissions matters.

BY-LAW 12
[BAR ADMISSION COURSE]

6. By-Law 12 [Bar Admission Course] is amended by adding:

Interpretation: "Society official"

0.1 In this By-Law, "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

7. Subsection 1 (3) of the By-Law is deleted and the following substituted:

Exercise of powers by committee

(3) The performance of any duty, or the exercise of any power, given to the *standing committee of Convocation responsible for admissions matters* under this By-Law is not subject to approval of Convocation.

8. Subsection 1 (4) of the By-Law is deleted.

9. Subsection 2 (2) of the By-Law is deleted and the following substituting:

2. (2) A *Society official,* in accordance with policies established by *the standing committee of Convocation responsible for admissions matters,* or the committee in circumstances not covered by a policy established by the committee, may, for an individual student-at-law, modify the contents of the Course,

(a) if the student-at-law has graduated from a law course that was conducted under a co-operative education system and that is approved by Convocation; or

(b) if the student-at-law establishes, to the satisfaction of the Society official or the committee, exceptional circumstances.

10. Subsection 2 (3) of the By-Law is amended by,

(a) deleting "director" and substituting "Society official"; and

(b) deleting "Admissions Committee" and substituting "committee".

11. Subsections 2 (5), 3 (2), 3 (3), 4 (4), 4 (5) and 5 (3) and subclause 3 (1) (b) (ii) of the By-Law are amended by deleting "director" and substituting "Society official".

12. Subsection 5 (1) of the By-Law is amended by deleting "registrar" and substituting "Society official".

13. Section 6 of the By-Law is amended by,

(a) deleting “Admissions Committee” and substituting “standing committee of Convocation responsible for admissions matters” in subsection (1);

(b) deleting “Admissions Committee” and substituting “committee” in subsection (2); and

(c) deleting “registrar” and substituting “Society official” in subsections (4) and (5).

BY-LAW 13
[MEMBERS]

14. Section 2 of By-Law 13 [Members] is amended by,

(a) deleting “Admissions Committee” and substituting “standing committee of Convocation responsible for admissions matters” in paragraph 4 of subsection (2);

(b) deleting “Admissions Committee” and substituting “committee” in subsection (4); and
(c) deleting subsection (5) and substituting the following:

Exercise of powers by committee
(5) The performance of any duty, or the exercise of any power, given to *the standing committee of Convocation responsible for admissions matters* under this section is not subject to the approval of Convocation.

BY-LAW 21
[PROCEEDINGS AUTHORIZATION COMMITTEE]

15. Clauses 2 (3) (a) and (b) of By-Law 21 [Proceedings Authorization Committee] are deleted and the following substituted:

(a) the chair or a vice-chair of the standing committee of Convocation responsible for discipline matters; and

(b) the chair or a vice-chair of the standing committee of Convocation responsible for professional competence matters.

BY-LAW 24
[PROFESSIONAL COMPETENCE]

16. Section 1 of By-Law 24 [Professional Competence] is deleted and the following substituted:

Exercise of powers by committee
1. The performance of any duty, or the exercise of any power, given to *the standing committee of Convocation responsible for professional competence matters* under this By-Law is not subject to the approval of Convocation.

17. Section 4 of the By-Law is deleted and the following substituted:

4. The *standing committee of Convocation responsible for professional competence matters* or Convocation on the recommendation of *the committee* shall appoint one or more persons to conduct reviews of members’ practices under section 42 of the Act.

18. Section 5 of the By-Law is amended by,

(a) deleting "Professional Development and Competence Committee" and substituting "standing committee of Convocation responsible for professional competence matters" in subsection (1); and

(b) deleting "Professional Development and Competence Committee" and substituting "committee" in subsection (2).

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 31, 2002

MOVED BY

SECONDED BY

THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force as at October 31, 2002 be amended as follows:

BY-LAW 6
[TREASURER]

1. Section 17 of By-Law 6 [Treasurer] is amended by,

(a) deleting "Finance and Audit Committee" / "Comité des finances et de la vérification" and substituting "standing committee of Convocation responsible for financial matters" / "Comité permanent du Conseil chargé des questions financières"; and

(b) deleting "Admissions Committee" / "Comité d'admission" and substituting "standing committee of Convocation responsible for admissions matters" / "Comité permanent du Conseil chargé des questions d'admission".

BY-LAW 9
[COMMITTEES]

2. Section 2 of By-Law 9 [Committees] is deleted and the following substituted:

Establishment of standing committees
2. The following standing committees are hereby established:

1. Finance and Audit Committee.

2. Government and Public Affairs Committee.

3. Lawyers Fund for Client Compensation Committee.

4. Access to Justice Committee.

5. Litigation Committee.

6. Professional Development, Competence and Admissions Committee.

7. Professional Regulation Committee.

8. Equity and Aboriginal Issues Committee.

9. Emerging Issues Committee.

10. Inter-Jurisdictional Mobility Committee.

Constitution des comités permanents

2. Sont constitués les comités permanents suivants :

1. le Comité des finances et de la vérification

2. le Comité chargé des relations avec le gouvernement et des affaires publiques

3. le Comité du Fonds d'indemnisation de la clientèle

4. le Comité sur l'accès à la justice

5. le Comité du contentieux

6. le Comité du perfectionnement professionnel et des admissions
7. le Comité de réglementation de la profession

8. le Comité sur l'équité et les affaires autochtones

9. le Comité sur les nouveaux enjeux

10. le Comité sur la mobilité interjuridictionnelle.

3. The heading immediately preceding section 11 and section 11 of the By-Law are deleted.

4. The heading immediately preceding section 14 and section 14 of the By-Law are deleted and the following substituted:

PROFESSIONAL DEVELOPMENT, COMPETENCE AND ADMISSIONS COMMITTEE

Mandate

14. (1) The mandate of the Professional Development, Competence and Admissions Committee is to develop for Convocation's approval,

(a) policy options on all matters relating to the professional competence of members;

(b) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;

(c) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;

(d) policies to govern the transfer to the Society of persons qualified to practise law in any province or territory of Canada; and

(e) policies respecting the Bar Admission Course.

Guidelines for professional competence

(2) Subject to the approval of Convocation, the Professional Development, Competence and Admissions Committee may prepare guidelines for professional competence.

COMITÉ DU PERFECTIONNEMENT PROFESSIONNEL ET DES ADMISSIONS

Mandat

14. (1) Le Comité du perfectionnement professionnel et des admissions élabore et soumet à l'approbation du Conseil,

a) des options stratégiques sur les questions relevant de la compétence professionnelle des membres;

b) les conditions d'admission au Cours de formation professionnelle applicables aux personnes qui n'ont pas été reçues au barreau ni admises comme procureurs ailleurs;

c) les listes de cours et d'universités reconnus par le Barreau et satisfaisant aux conditions d'admission au Cours de formation professionnelle;

d) Les politiques régissant l'admission au Barreau, par voie de transfert, des personnes habiles à pratiquer le droit dans une province ou un territoire canadiens;

e) les politiques concernant le Cours de formation professionnelle.

Lignes de conduite sur la compétence professionnelle

(2) Sous réserve de l'approbation du Conseil, le Comité du perfectionnement professionnel et des admissions peut rédiger des lignes de conduite traitant de la compétence professionnelle.

BY-LAW 10
[MEETINGS OF MEMBERS]

5. Paragraphs 1 and 2 of section 6 of By-Law 10 [Meetings of Members] are deleted and the following substituted:

1. The chair of the standing committee of Convocation responsible for financial matters.

1. la personne assurant la présidence du Comité permanent du Conseil chargé des questions financières.

2. The chair of the standing committee of Convocation responsible for admissions matters.

2. la personne assurant la présidence du Comité permanent du Conseil chargé des questions d'admission.

BY-LAW 12
[BAR ADMISSION COURSE]

6. By-Law 12 [Bar Admission Course] is amended by adding:

Interpretation: "Society official"

0.1 In this By-Law, "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Interprétation : « responsable du Barreau »

0.1 La définition qui suit s'applique au présent article.

« responsable du Barreau» Personne, qu'il s'agisse d'un dirigeant, d'une dirigeante, d'un employé ou d'une employée du Barreau, que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent article.

7. Subsection 1 (3) of the By-Law is deleted and the following substituted:

Exercise of powers by committee

(3) The performance of any duty, or the exercise of any power, given to the standing committee of Convocation responsible for admissions matters under this By-Law is not subject to approval of Convocation.

Exercice des pouvoirs d'un comité

(3) L'exercice des fonctions ou pouvoirs conférés au Comité permanent du Conseil chargé des questions d'admission conformément au présent règlement administratif n'est pas assujetti à l'approbation du Conseil.

8. Subsection 1 (4) of the By-Law is deleted.

9. Subsection 2 (2) of the By-Law is deleted and the following substituting:

2. (2) A Society official, in accordance with policies established by the standing committee of Convocation responsible for admissions matters, or the committee in circumstances not covered by a policy established by the committee, may, for an individual student-at-law, modify the contents of the Course,

(c) if the student-at-law has graduated from a law course that was conducted under a co-operative education system and that is approved by Convocation; or

(d) if the student-at-law establishes, to the satisfaction of the Society official or the committee, exceptional circumstances.

2. (2) Conformément aux politiques établies par le Comité permanent du Conseil chargé des questions d'admission, un ou une responsable du Barreau ou, dans des circonstances imprévues par une politique établie par le comité, le comité peut, pour répondre aux besoins spécifiques d'une étudiante ou d'un étudiant au barreau, modifier le contenu du Cours dans l'un des cas suivants :

a) l'étudiante ou l'étudiant au barreau a terminé un cours de droit offert dans le cadre d'un programme d'éducation coopérative approuvé par le Conseil;

b) selon l'avis du ou de la responsable du Barreau ou du comité, des conditions exceptionnelles le justifient.

10. Subsection 2 (3) of the By-Law is amended by,

(a) deleting "director" / "le directeur ou la directrice" and substituting "Society official" / "le ou la responsable du Barreau"; and

(b) deleting "Admissions Committee" / "Comité d'admission" and substituting "committee" / "comité".

11. Subsections 2 (5), 3 (2), 3 (3) and 5 (3) and subclause 3 (1) (b) (ii) of the By-Law are amended by deleting "director" / "le directeur ou la directrice" and substituting "Society official"/ "le ou la responsable du Barreau".

12. Subsections 4 (4) and 4 (5) of the By-Law are amended by deleting "director" / "du directeur ou de la directrice" and substituting "Society official" / "du ou de la responsable du Barreau".

13. Subsection 5 (1) of the By-Law is amended by deleting "registrar" / "le ou la registraire" and substituting "Society official" / "le ou la responsable du Barreau".

14. Section 6 of the By-Law is amended by,

(a) deleting “Admissions Committee” / “Comité d’admission” and substituting “standing committee of Convocation responsible for admissions matters” / “Comité permanent du Conseil chargé des questions d’admission” in subsection (1);

(b) deleting “Admissions Committee” / “Comité d’admission” and substituting “committee” / “comité” in subsection (2);

(c) deleting “registrar” / “au ou à la registraire” and substituting “Society official” / “au ou à la responsable du Barreau” in subsection (4); and

(d) deleting “registrar” / “le ou la registraire” and substituting “Society official” / “le ou la responsable du Barreau” in subsection (5).

BY-LAW 13
[MEMBERS]

15. Section 2 of By-Law 13 [Members] is amended by,

(a) deleting “Admissions Committee” / “Comité d’admission” and substituting “standing committee of Convocation responsible for admissions matters” / “Comité permanent du Conseil chargé des questions d’admission” in paragraph 4 of subsection (2);

(b) deleting “Admissions Committee” / “Comité d’admission” and substituting “committee” / “comité” in subsection (4); and

(c) deleting subsection (5) and substituting the following:

Exercise of powers by committee

(5) The performance of any duty, or the exercise of any power, given to the standing committee of Convocation responsible for admissions matters under this section is not subject to the approval of Convocation.

Exercice des pouvoirs d’un comité

(5) L’exercice des pouvoirs et des fonctions que le présent article confère au Comité permanent du Conseil chargé des questions d’admission n’est pas assujetti à l’approbation du Conseil.

BY-LAW 21
[PROCEEDINGS AUTHORIZATION COMMITTEE]

16. Clauses 2 (3) (a) and (b) of By-Law 21 [Proceedings Authorization Committee] are deleted and the following substituted:

(a) the chair or a vice-chair of the standing committee of Convocation responsible for discipline matters; and

a) la personne assumant la présidence ou la vice-présidence du Comité permanent du Conseil chargé des questions de discipline;

(b) the chair or a vice-chair of the standing committee of Convocation responsible for professional competence matters.

b) la personne assumant la présidence ou la vice-présidence du Comité permanent du Conseil chargé des questions de compétence professionnelle.

BY-LAW 24
[PROFESSIONAL COMPETENCE]

17. Section 1 of By-Law 24 [Professional Competence] is deleted and the following substituted:

Exercise of powers by committee

1. The performance of any duty, or the exercise of any power, given to the standing committee of Convocation responsible for professional competence matters under this By-Law is not subject to the approval of Convocation.

Exercice des pouvoirs d'un comité

1. L'exercice des pouvoirs et des fonctions que le présent article confère au Comité permanent du Conseil chargé des questions de compétence professionnelle n'est pas assujetti à l'approbation du Conseil.

18. Section 4 of the By-Law is deleted and the following substituted:

4. The standing committee of Convocation responsible for professional competence matters or Convocation on the recommendation of the committee shall appoint one or more persons to conduct reviews of members' practices under section 42 of the Act.

4. Le Comité permanent du Conseil chargé des questions de compétence professionnelle ou le Conseil, sur la recommandation de ce comité, charge une ou plusieurs personnes de procéder à l'inspection des activités professionnelles des membres aux termes de l'article 42 de la Loi.

19. Section 5 of the By-Law is amended by,

(a) deleting "Professional Development and Competence Committee" / "Comité du perfectionnement professionnel et de la compétence" and substituting "standing committee of Convocation responsible for professional competence matters" / "Comité permanent du Conseil chargé des questions de compétence professionnelle" in subsection (1); and

(b) deleting "Professional Development and Competence Committee" / "Comité du perfectionnement professionnel et de la compétence" and substituting "committee" / "comité" in subsection (2).

Re: By-Law Amendments to Reflect New Committee Name

It was moved by Mr. Ducharme, seconded by Ms. Harris that the amendments to By-Laws 6, 9, 10, 12, 13, 21 and 24 set out in Appendix 1 be approved to reflect the change in name as a result of the merging of the Admissions Committee and the Professional Development and Competence Committee into one committee now called the Professional Development, Competence & Admissions Committee.

Carried

Set out below are the amendments to By-Laws 6, 9, 10, 12, 13, 21 and 24

BY-LAW 6
[TREASURER]

1. Section 17 of By-Law 6 [Treasurer] is amended by,

(a) deleting “Finance and Audit Committee” / “Comité des finances et de la vérification” and substituting “standing committee of Convocation responsible for financial matters” / “Comité permanent du Conseil chargé des questions financières”; and

(b) deleting “Admissions Committee” / “Comité d’admission” and substituting “standing committee of Convocation responsible for admissions matters” / “Comité permanent du Conseil chargé des questions d’admission”.

BY-LAW 9
[COMMITTEES]

2. Section 2 of By-Law 9 [Committees] is deleted and the following substituted:

Establishment of standing committees
2. The following standing committees are hereby established:

11. Finance and Audit Committee.
12. Government and Public Affairs Committee.
13. Lawyers Fund for Client Compensation Committee.
14. Access to Justice Committee.
15. Litigation Committee.
16. Professional Development, Competence and Admissions Committee.
17. Professional Regulation Committee.
18. Equity and Aboriginal Issues Committee.
19. Emerging Issues Committee.
20. Inter-Jurisdictional Mobility Committee.

Constitution des comités permanents
2. Sont constitués les comités permanents suivants :

10. le Comité des finances et de la vérification
11. le Comité chargé des relations avec le gouvernement et des affaires publiques
12. le Comité du Fonds d’indemnisation de la clientèle
13. le Comité sur l’accès à la justice
14. le Comité du contentieux
15. le Comité du perfectionnement professionnel et des admissions
16. le Comité de réglementation de la profession
17. le Comité sur l’équité et les affaires autochtones
18. le Comité sur les nouveaux enjeux

10. le Comité sur la mobilité interjuridictionnelle.

3. The heading immediately preceding section 11 and section 11 of the By-Law are deleted.

4. The heading immediately preceding section 14 and section 14 of the By-Law are deleted and the following substituted:

PROFESSIONAL DEVELOPMENT, COMPETENCE AND ADMISSIONS COMMITTEE

Mandate

14. (1) The mandate of the Professional Development, Competence and Admissions Committee is to develop for Convocation's approval,

(a) policy options on all matters relating to the professional competence of members;

(b) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;

(c) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;

(d) policies to govern the transfer to the Society of persons qualified to practise law in any province or territory of Canada; and

(e) policies respecting the Bar Admission Course.

Guidelines for professional competence

(2) Subject to the approval of Convocation, the Professional Development, Competence and Admissions Committee may prepare guidelines for professional competence.

COMITÉ DU PERFECTIONNEMENT PROFESSIONNEL ET DES ADMISSIONS

Mandat

14. (1) Le Comité du perfectionnement professionnel et des admissions élabore et soumet à l'approbation du Conseil,

a) des options stratégiques sur les questions relevant de la compétence professionnelle des membres;

b) les conditions d'admission au Cours de formation professionnelle applicables aux personnes qui n'ont pas été reçues au barreau ni admises comme procureurs ailleurs;

c) les listes de cours et d'universités reconnus par le Barreau et satisfaisant aux conditions d'admission au Cours de formation professionnelle;

d) Les politiques régissant l'admission au Barreau, par voie de transfert, des personnes habiles à pratiquer le droit dans une province ou un territoire canadiens;

e) les politiques concernant le Cours de formation professionnelle.

Lignes de conduite sur la compétence professionnelle

(2) Sous réserve de l'approbation du Conseil, le Comité du perfectionnement professionnel et des admissions peut rédiger des lignes de conduite traitant de la compétence professionnelle.

BY-LAW 10
[MEETINGS OF MEMBERS]

5. Paragraphs 1 and 2 of section 6 of By-Law 10 [Meetings of Members] are deleted and the following substituted:

1. The chair of the standing committee of Convocation responsible for financial matters.

1. la personne assurant la présidence du Comité permanent du Conseil chargé des questions financières.

2. The chair of the standing committee of Convocation responsible for admissions matters.

2. la personne assurant la présidence du Comité permanent du Conseil chargé des questions d'admission.

BY-LAW 12
[BAR ADMISSION COURSE]

6. By-Law 12 [Bar Admission Course] is amended by adding:

Interpretation: "Society official"

0.1 In this By-Law, "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Interprétation : « responsable du Barreau »

0.2 La définition qui suit s'applique au présent article.

« responsable du Barreau» Personne, qu'il s'agisse d'un dirigeant, d'une dirigeante, d'un employé ou d'une employée du Barreau, que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent article.

7. Subsection 1 (3) of the By-Law is deleted and the following substituted:

Exercise of powers by committee

(3) The performance of any duty, or the exercise of any power, given to the standing committee of Convocation responsible for admissions matters under this By-Law is not subject to approval of Convocation.

Exercice des pouvoirs d'un comité

(3) L'exercice des fonctions ou pouvoirs conférés au Comité permanent du Conseil chargé des questions d'admission conformément au présent règlement administratif n'est pas assujetti à l'approbation du Conseil.

8. Subsection 1 (4) of the By-Law is deleted.

9. Subsection 2 (2) of the By-Law is deleted and the following substituting:

2. (2) A Society official, in accordance with policies established by the standing committee of Convocation responsible for admissions matters, or the committee in circumstances not covered by a policy established by the committee, may, for an individual student-at-law, modify the contents of the Course,

(e) if the student-at-law has graduated from a law course that was conducted under a co-operative education system and that is approved by Convocation; or

(f) if the student-at-law establishes, to the satisfaction of the Society official or the committee, exceptional circumstances.

2. (2) Conformément aux politiques établies par le Comité permanent du Conseil chargé des questions d'admission, un ou une responsable du Barreau ou, dans des circonstances imprévues par une politique établie par le comité, le comité peut, pour répondre aux besoins spécifiques d'une étudiante ou d'un étudiant au barreau, modifier le contenu du Cours dans l'un des cas suivants :

c) l'étudiante ou l'étudiant au barreau a terminé un cours de droit offert dans le cadre d'un programme d'éducation coopérative approuvé par le Conseil;

d) selon l'avis du ou de la responsable du Barreau ou du comité, des conditions exceptionnelles le justifient.

10. Subsection 2 (3) of the By-Law is amended by,

(e) deleting "director" / "le directeur ou la directrice" and substituting "Society official" / "le ou la responsable du Barreau"; and

(f) deleting "Admissions Committee" / "Comité d'admission" and substituting "committee" / "comité".

11. Subsections 2 (5), 3 (2), 3 (3) and 5 (3) and subclause 3 (1) (b) (ii) of the By-Law are amended by deleting "director" / "le directeur ou la directrice" and substituting "Society official"/ "le ou la responsable du Barreau".

12. Subsections 4 (4) and 4 (5) of the By-Law are amended by deleting "director" / "du directeur ou de la directrice" and substituting "Society official" / "du ou de la responsable du Barreau".

13. Subsection 5 (1) of the By-Law is amended by deleting "registrar" / "le ou la registraire" and substituting "Society official" / "le ou la responsable du Barreau".

14. Section 6 of the By-Law is amended by,

(a) deleting "Admissions Committee" / "Comité d'admission" and substituting "standing committee of Convocation responsible for admissions matters" / "Comité permanent du Conseil chargé des questions d'admission" in subsection (1);

(b) deleting "Admissions Committee" / "Comité d'admission" and substituting "committee" / "comité" in subsection (2);

(g) deleting "registrar" / "au ou à la registraire" and substituting "Society official" / "au ou à la responsable du Barreau" in subsection (4); and

(h) deleting "registrar" / "le ou la registraire" and substituting "Society official" / "le ou la responsable du Barreau" in subsection (5).

BY-LAW 13
[MEMBERS]

15. Section 2 of By-Law 13 [Members] is amended by,

(a) deleting "Admissions Committee" / "Comité d'admission" and substituting "standing committee of Convocation responsible for admissions matters" / "Comité permanent du Conseil chargé des questions d'admission" in paragraph 4 of subsection (2);

(b) deleting "Admissions Committee" / "Comité d'admission" and substituting "committee" / "comité" in subsection (4); and

(c) deleting subsection (5) and substituting the following:

Exercise of powers by committee

(5) The performance of any duty, or the exercise of any power, given to the standing committee of Convocation responsible for admissions matters under this section is not subject to the approval of Convocation.

Exercice des pouvoirs d'un comité

(5) L'exercice des pouvoirs et des fonctions que le présent article confère au Comité permanent du Conseil chargé des questions d'admission n'est pas assujetti à l'approbation du Conseil.

BY-LAW 21
[PROCEEDINGS AUTHORIZATION COMMITTEE]

16. Clauses 2 (3) (a) and (b) of By-Law 21 [Proceedings Authorization Committee] are deleted and the following substituted:

(b) the chair or a vice-chair of the standing committee of Convocation responsible for discipline matters; and

a) la personne assumant la présidence ou la vice-présidence du Comité permanent du Conseil chargé des questions de discipline;

(b) the chair or a vice-chair of the standing committee of Convocation responsible for professional competence matters.

b) la personne assumant la présidence ou la vice-présidence du Comité permanent du Conseil chargé des questions de compétence professionnelle.

BY-LAW 24
[PROFESSIONAL COMPETENCE]

17. Section 1 of By-Law 24 [Professional Competence] is deleted and the following substituted:

Exercise of powers by committee

1. The performance of any duty, or the exercise of any power, given to the standing committee of Convocation responsible for professional competence matters under this By-Law is not subject to the approval of Convocation.

Exercice des pouvoirs d'un comité

1. L'exercice des pouvoirs et des fonctions que le présent article confère au Comité permanent du Conseil chargé des questions de compétence professionnelle n'est pas assujetti à l'approbation du Conseil.

18. Section 4 of the By-Law is deleted and the following substituted:

4. The standing committee of Convocation responsible for professional competence matters or Convocation on the recommendation of the committee shall appoint one or more persons to conduct reviews of members' practices under section 42 of the Act.

4. Le Comité permanent du Conseil chargé des questions de compétence professionnelle ou le Conseil, sur la recommandation de ce comité, charge une ou plusieurs personnes de procéder à l'inspection des activités professionnelles des membres aux termes de l'article 42 de la Loi.

19. Section 5 of the By-Law is amended by,

(a) deleting “Professional Development and Competence Committee” / “Comité du perfectionnement professionnel et de la compétence” and substituting “standing committee of Convocation responsible for professional competence matters” / “Comité permanent du Conseil chargé des questions de compétence professionnelle” in subsection (1); and

(b) deleting “Professional Development and Competence Committee” / “Comité du perfectionnement professionnel et de la compétence” and substituting “committee” / “comité” in subsection (2).

REPORTS FOR INFORMATION ONLY

Heritage Committee Report

Heritage Committee
October 31, 2002

Report to Convocation

Purpose of Report: Information
Prepared by the Heritage Committee

TABLE OF CONTENTS

I Planning Report

INTRODUCTION

1. The Heritage Committee was reconstituted in July 2001 and reported to Convocation on January 24, 2002 at which time it presented its Mandate for approval. (Appendix I: Heritage Committee Mandate). The Heritage Committee would like to report on its progress through to July 2002, and inform Convocation that it is proceeding with the development of a Strategic cum Business Plan.

2. The purpose of this report to Convocation is to outline the roles and responsibilities of the departments involved with heritage issues and the ways in which the Heritage Committee can be involved. The Heritage Committee believes it is important for Convocation to understand the scope of the heritage responsibilities, and to appreciate the issues and challenges confronting the Law Society of Upper Canada.

3. While the Heritage Committee exists to " advise, formulate and recommend policies to Convocation on heritage matters within the Law Society and the legal profession", the work of the Heritage Committee is closely linked to the work and responsibilities of the Archives and Facilities departments. The Heritage Committee believes that in order to appropriately and effectively represent the heritage-related issues and concerns of the Law Society, it must take on the following responsibilities:
   - Make recommendations on behalf of the Archives and Facilities Departments;
   - Formulate policy regarding heritage-related matters within the Law Society; and
   - Promote Ontario legal heritage both within the legal profession and the general public.

4. As heritage-related responsibilities are shared by the Archives Department and the Facilities Department (Finance), it was agreed that in order to establish a cooperative and effective working dynamic on heritage-related matters staff from both Departments should be invited to attend the meetings of the Heritage Committee when appropriate. Members of the Heritage Committee now include:
   - Tom Carey, Chair
   - Pamela Divinsky, Vice-Chair
   - Patrick Furlong
   - Allan Lawrence
   - Greg Mulligan
   - Helen Puccini

   The Secretary of the Committee is Curator Elise Brunet.

5. The Heritage Committee conducted an initial strategic planning session (June 12th, 2002) and concluded that the two strategic directions for the Committee will be:
   - Conservation and preservation of heritage assets of the Law Society of Upper Canada; and
   - Outreach to all current and potential stakeholders regarding heritage-related matters.

6. The Heritage Committee will develop a strategic cum business plan during first term 2002 designed to achieve short and long-term objectives; this will be presented to Convocation no later than February 2003.

HERITAGE COMMITTEE: BACKGROUND

7. The Heritage Committee in 1982 (known then as the Muniments and Memorabilia Committee) established the Archives Department as a means to implement the Committee's mandate. Over the years the responsibilities of the Archives Department expanded to include a number of core functions. The primary objective of the Archives Department is to maintain, preserve and make accessible the corporate memory of the Law Society of Upper Canada and the history of the legal profession of Ontario.

8. Until September 2002 the functions of the Archives Department included:
   - Archival Services/Collections Management
   - Research Services
   - Curatorial Services/Outreach

   In September 2002, because of their relevance to the preservation of historical assets including Osgoode Hall, the Curatorial/Outreach functions were transferred to the Facilities Department.

9. Archival Services/Collections Management. The Archives and the curatorial services of the Facilities Departments are responsible for the appraisal, description, organization and preservation of archival and historical collections of the Law Society of Upper Canada. The objective is to acquire, organize and catalogue the collections and historical assets in the care of those departments in order to facilitate effective access to the collections. Collections management also involves the maintenance and storage of records and many historical assets. Proper physical storage is an important element of the preservation of historical assets. A "disaster/recovery plan" has been developed to minimize the loss or damage of valuable materials in the case of emergencies.

10. The archival and historical collections of the Law Society currently consist of the following:
    - 410 meters of textual records;
    - 5000 photographs and 2700 photographic negatives;
    - 700 video recordings;
    - 1230 special collection items, over 350 artifacts, 350 fine art items and 390 sets of architectural plans and drawings.

    There are continually additions to this collection.

11. Asset and Collections Management is a primary responsibility of the Archives Department and of the curatorial services of the Facilities Department. As custodians of many of the historical assets of the Law Society of Upper Canada those departments advise the Law Society of Upper Canada on the management and handling of historical assets; this includes advice on policy, procedures and planning, identification and protection of historical resources, and providing information to assist with repairs to the infrastructure of Osgoode Hall and its contents.

12. Research Services. The Archives Department and the curatorial services of the Facilities Department provide access to the Law Society's archival holdings and historical assets by providing research services to the Law Society of Upper Canada Benchers and staff; members of the legal profession; members of the judiciary; legal historians and to member of the public. Research inquires continue to increase: there were 583 research requests in 1999, increasing to 679 requests in 2001. The Archives Department is creating an on-line biographical database and other research tools to assist users with research, providing direct access to resources.

13. The Archives Department reports to The Great Library. Together, they launched a website that promotes the services and holdings of the Archives Department; the site also supports many of the outreach activities that were originally the responsibility of the Archives Department and that have been since transferred to the Facilities Department.

14. Curatorial Services/Outreach. In order to inform the public on the legal profession and the Law Society of Upper Canada, improve access to justice, cultivate pride in the heritage and history of the legal profession, and to promote and improve access to historical materials of the legal profession, various outreach potential and possibilities are being developed. Outreach programs include tours, exhibitions and a "Virtual Museum," created in 2001 on the Department's web site.

15. The curatorial services of the Facilities Department are involved with tours of the Law Society of Upper Canada. This has included participation in the Doors Open Toronto program, Law Day, Bring Your Kids to Work. To date in 2002 over 9600 people toured Osgoode Hall.

16. Exhibitions in both traditional and non-traditional media have been developed: "Neighbours/Le Quartier" on the history of the neighbourhood around Osgoode Hall, an online version of "Crossing the Bar" on women in the legal profession, and "Dieu et mon Droit" on Franco-Ontarians and the law are examples of recent exhibitions. New exhibitions and online programmes are planned for the Virtual Museum. In addition, a permanent display space at Osgoode Hall is currently under construction.

HERITAGE COMMITTEE: ISSUES AND CHALLENGES

17. The Finance Department is the official custodian of the Law Society of Upper Canada's assets. The Finance Department is responsible for purchasing, maintenance, use, renovation and disposal of all the Law Society of Upper Canada's assets. There are numerous occasions when the interests and concerns of the Finance, Archives and Facilities Departments intersect. The recommendation is to review the current historical asset disposal policy, ensure that it is agreed upon by all three areas, and broaden the policy to cover all aspects of the management of historical assets belonging to the Law Society of Upper Canada.

18. The Archives Department and curatorial services have developed a process for cataloguing the historical assets and records of the Law Society of Upper Canada. These efforts, however, are constrained by limited resources; with the continual growth of records, and limited staff and time, the Archives Department and curatorial services are not as current with collections management as they could be.

19. The Great Library has an important historical collection that is exclusively its responsibility. The Great Library and the Archives Department do work jointly; they are linked administratively, and together created the web site to improve access to historical sources.

20. A number of the Law Society of Upper Canada departments, including the regulation division, PD&C and the policy and legal affairs department regularly make use of and indeed rely upon the services and resources of the Archives Department. Others, such as the Access to Justice Committee and the Chief Justice's Public Legal Education Task Force could benefit from the services of the curatorial services of the Facilities Department.

21. There is only limited awareness within the Law Society of Upper Canada, the legal profession of Ontario, and the general public of the historical richness of the Law Society of Upper Canada and the legal profession in Ontario. The challenge is to raise the profile and importance of the value of the history of the Law Society of Upper Canada and the legal profession of Ontario through the promotion of the historical collection and culture of the Law Society of Upper Canada.

HERITAGE COMMITTEE: STRATEGIC DIRECTIONS AND POTENTIAL INITIATIVES

22. The Heritage Committee agreed on two strategic directions:
    - Conservation and Preservation; and
    - Outreach

23. Conservation and Preservation. An important component of Conservation and Preservation is the development of an agreed-upon Historical Asset Management Policy. This policy should outline the criteria for the acquisition, handling, definition, maintenance, preservation, storage and disposal of all historical assets of the Law Society of Upper Canada. This policy, if developed together with the Archives, Facilities and Finance Departments, would provide an important policy from which these departments could in unison, manage the historical assets of the Law Society of Upper Canada. Other examples of ways to achieve conservation and preservation objectives may include:

    - Complete and appropriate documentation of historical assets.
    - Increase appropriate storage space for historical assets.
    - Conservation and long-term maintenance of the collections of the Law Society of Upper Canada.

24. Outreach. The objective of the Heritage Committee will be to improve the profile, the communications and awareness of the historical richness of the Law Society of Upper Canada and the legal profession in Ontario. Other examples of ways to improve and developing outreach programs may include:

    - Develop web resources.
    - Develop a marketing plan to elevate and broaden the profile and awareness of the historical components of the Law Society of Upper Canada and the legal profession in Ontario.
    - Develop potential funding sources for the historical component of the Law Society of Upper Canada.
    - Develop partnerships with other agencies, organizations and community groups that have an interest in the use and display of legal historical assets of the Law Society of Upper Canada. This could involve community outreach programs.
    - Develop outreach programs: these might include sponsorship of selected Osgoode Society publications; sponsorship of prize for legal-historical essay competition; sponsorship of legal-historical lecture series.
    - Develop display and exhibition possibilities, including continued development of the Virtual Museum.

REQUEST TO CONVOCATION

25. The Heritage Committee submits this Report to Convocation for information and discussion. The Heritage Committee welcomes input from all members of the Law Society of Upper Canada and the legal profession.

26. The intention of the Heritage Committee is to develop a strategic cum business plan, to be submitted to Convocation no later than February 2003. Any initiatives will be prioritized and accompanied by resource implications and budgetary requirements within a proposed timeline. The Heritage Committee will submit

this plan for approval by Convocation.

27. Please forward all comments and ideas to Tom Carey, Chair of the Heritage Committee (tomcarey@interlog.com), or Elise Brunet, Curator, Facilities Department (ebrunet@The Law Society of Upper Canada.on.ca).

II Activity Update

The following activity update was received at the Heritage Committee Meeting on October 9, 2002.

28. Doors Open Toronto. Nine thousand visitors went through Osgoode Hall on May 25 and 26, 2002. Osgoode Hall was the most popular of all the venues. Doors Open Toronto 2003 will take place on May 24 and 25, 2003.

29. Gift of Artifacts to Heritage Toronto. A number of redundant artifacts were donated to Heritage Toronto, specifically Spadina House. Parts of the items will be used in their displays while the rest will be used for their educational programs.

30. Convocation Hall Windows Plaque. It was requested that a plaque honouring the creator of the windows and Mrs. Tait, Chair of the Muniments and Memorabilia Committee at the time of the commission, be produced.

> It was decided that the text would be added to the existing framed description of the windows. After review, it appears that the text of the original description contains errors and that the images used were preliminary drawings that are not representative of the current windows. Research is underway to correct the descriptions. Photos of the windows will be used to replace the outdated images.

31. Supreme Court of Canada Tour. There has been a shift in the type of visitors that take the Law Society tours. We are seeing fewer school tours but more special interest groups and more members of the international legal community. In the past year we have had the judges of the Supreme Court of Canada, judges from Eastern Europe on a study trip and a number of Chinese delegations.

32. Furniture Restoration. Several furniture items are undergoing restoration at this time. A budget request was made to conduct an historical furniture inventory in the upcoming year.

33. New Pamphlet. The Osgoode Hall pamphlet had to be reprinted this year. The pamphlet was updated and the focus was changed slightly: in the past the pamphlet concentrated on the Law Society portion of Osgoode Hall; the new version looks at Osgoode Hall as a whole.

34. New Networking Initiatives. Efforts have been made to publicize and make our public programs available to a wider audience. Initiatives include the listing of the Law Society of Upper Canada virtual museum exhibitions in the “Bring Museums into your Classroom” section of the Virtual Museum of Canada and discussions with representatives of the Ontario Justice Education Network.

35. Curator Position. The position of Curator has moved from the Archives Department to the Facilities Department. The position is to remain the same although it is expected that the Curator will be closely involved with upcoming restoration projects.

36. Virtual Museum. The Neighbours exhibition has been online since the summer. It is available in English and French versions. Christopher Moore of the *Law Times* is planning on writing a column on it and will be speaking to the Treasurer on the matter.

Crossing the Bar, on women in the legal profession, is currently being translated. The next project is a virtual tour of Osgoode Hall. The Court of Appeal has expressed interest in the project and will give us access to their premises.

37. Treasurer's Exhibition. Renovations in the new display space are progressing. Production and installation of the Treasurer's exhibition will start shortly.

APPENDICES

Appendix I: Heritage Committee Mandate

The Heritage Committee exists to advise, formulate and recommend policies to Convocation on heritage matters within the Law Society and the legal profession in Ontario with a view to:

- Encouraging awareness, appreciation and support of legal-historical activities among the legal profession and the public through activities such as research and exhibitions;
- Encouraging and supporting heritage initiatives within the legal profession;
- The identification, designation and conservation of heritage resources at the Law Society of Upper Canada and within the legal profession, including living heritage, movable property, and real property, print, film and intellectual property with special attention to the conservation of Osgoode Hall, its contents and grounds;
- Encouraging communication, cooperation and coordination among organizations involved in legal history; and
- Working with the Law Society Foundation to identify and encourage sources of funding for the development and support of heritage activities.

Inter-Jurisdictional Mobility Committee Report

- Policy on Foreign Legal Consultants

Report to Convocation
October 31, 2002

Inter-Jurisdictional Mobility Committee

Purpose of the Report: For Information (October)

Prepared by the Policy Secretariat and Legal Affairs
(Sophia Sperdakos 416-947-5209)

OVERVIEW

Request to Convocation

1. That the Committee's report be tabled for information this month to allow benchers the opportunity to review it.

2. That in November 2002, Convocation approve the proposal for revisions to the current policy on Foreign Legal Consultants as set out on pages 2 and 3 of this report.

3. That following Convocations' approval of the proposal, the provisions of the proposal be incorporated into a by-law to be approved by Convocation.

Summary of the Issue

4. The current Law Society policy on Foreign Legal Consultants (FLCs) dates from 1988.

5. Aspects of it have been interpreted in such a manner as to raise issues about whether such interpretation is appropriate and in the public interest, particularly as certain aspects of legal practice become increasingly global in nature.

6. In addition, the current process by which FLCs are licensed and monitored is inadequate.

7. The *Law Society Act* authorizes the Law Society to approve by-laws with respect to Foreign Legal Consultants. The policy has not yet been incorporated into a by-law.

8. A number of issues are not addressed in the policy including:
   a. Reciprocity
   b. Application fee
   c. Renewal of licence
   d. Regulatory features and requirements
   e. Insurance and defalcation requirements

9. In developing its proposal the Inter-Jurisdictional Mobility Committee has considered these issues in the context of the changes to the Law Society's regulatory approach since the policy was first approved in 1988 and the growth in the last few years of policies facilitating inter-jurisdictional mobility.

THE REPORT

DRAFT PROPOSAL REGARDING FOREIGN LEGAL CONSULTANTS

(indicates provisions in current policy)*

The Committee's proposal is based on the underlying principle of reciprocity, namely that lawyers from foreign jurisdictions who wish to become registered as FLCs in Ontario may only do so if Ontario lawyers are entitled to FLC privileges in that foreign jurisdiction on a similar basis to that available to FLCs in Ontario.

The proposal is as follows:

Ontario lawyers in good standing who are also members of a foreign jurisdiction will be entitled to practise Ontario law and be licensed as foreign legal consultants (FLCs). This has not been permitted under the current policy.

Ontario lawyers will be entitled to employ, partner, associate, or affiliate with FLCs in Ontario, provided this is done in accordance with Law Society By-laws. This has not been permitted under the current policy.

To become an FLC a lawyer, whether or not he or she is also a member of the Ontario bar, will,

a. Apply in writing to be licensed;
b. Pay an application fee;
c. Provide information and consent to the disclosure of information from third parties in support of the application;
d. Renew the licence each year prior to expiration by completing the appropriate form;
e. Pay a renewal fee.

To be eligible for a licence as an FLC a lawyer must,

- have been actively engaged in the practice of law in the foreign jurisdiction for three of the last five years or, if fewer years than that, be supervised by an approved FLC;*
- be of good character; *
- be in good standing in the jurisdiction or jurisdictions in which he or she is a member;
- maintain professional liability insurance for giving legal advice in Ontario respecting the law of the FLC's foreign jurisdiction, at least equivalent to that required of a member under the Society's insurance plan;*
- maintain defalcation coverage that specifically extends to money or other property that may be received by the person in respect of the giving of legal advice in Ontario respecting the law of the FLC's foreign jurisdiction and have coverage at least equivalent to the coverage available to a member;
- be resident in Ontario; *
- agree not to accept, hold, transfer or in any other manner deal with funds that would, if accepted, held, transferred or dealt with by a member, constitute trust funds;
- submit to the Law Society's jurisdiction and comply with all Acts, rules, by-laws, and regulations, and rules professional conduct; *
- not in any way hold him/herself out as a member of the Ontario bar or qualified to act as a member of the Ontario bar * (unless her or she is such a member);
- state on all letterhead, advertising, and signs that he or she is an FLC and the name of the jurisdiction in which he or she is qualified to practise law; *
- not represent clients in any court or public administrative body and not participate in the preparation of documents or instruments governed by the laws of Ontario unless the client retains an Ontario lawyer to act as well; *
- notify the Law Society promptly if he or she fails to complete, satisfactorily, any CLE requirements of home jurisdiction;
- pay a licence fee in an amount determined by Convocation.

FLCs should be subject to the conduct, competence and capacity provisions of the *Law Society Act* and relevant accompanying provisions.

FLC licences should be subject to a regular mechanism for determining whether a licence should be renewed; renewed with terms; refused; or revoked during its term where an FLC is suspended or restricted under the conduct, capacity or competence provisions of the Act or where an FLC ceases to comply with the specified requirements for FLCs.

The Background

10. In October 1988, Convocation adopted the report of the Special Committee on Foreign Lawyers. Based on the recommendations in that report Convocation agreed to license Foreign Legal Consultants (FLCs) to provide advice on the law of their jurisdiction while residing in Ontario. The report and the current policy that emerged from that report are set out at Appendix 1.

11. Pursuant to the 1988 policy the Law Society may license foreign lawyers to practise the law of their jurisdiction in Ontario as FLCs. The applicant must,

a. be a member in good standing in the home jurisdiction;

b. be actively engaged in the practice of law of that jurisdiction for at least three of five preceding years; [1]

c. reside in Ontario; [2]

d. be of good character;

e. be insured under a professional liability insurance plan in an amount and form satisfactory to the Law Society;

f. undertake to observe the rules of conduct of the Law Society; and

g. undertake to submit to the Law Society's jurisdiction with respect to his or her practice in Ontario.

12. An FLC may not,

a. hold him/herself out as qualified to act as a member of the Law Society;

b. represent clients in any Court or before any public administrative body;

c. provide advice on matters of Ontario law (includes Canadian law applicable in Ontario);

d. prepare or participate in preparing any document or instrument that is or may be governed by the laws of Ontario unless the client has also retained a member of the Law Society who participates in the preparation.

13. FLCs must identify themselves as such and identify the jurisdiction from which they originate on their letterhead, signs and any other advertising.

14. Rule 3.02 (1) of the Rules of Professional Conduct precludes FLCs using the name of their law firm in Ontario, since this would run afoul of the permissible firm name rule.

15. Since the establishment of the policy the number of lawyers interested in being licensed as FLCs has gradually increased. This has coincided with an increase in the global nature of certain aspects of legal practice.

16. In addition, interest in developing a national strategy on FLCs resulted in the inclusion of a section on Foreign Legal Consultants in the 1994 Inter-Jurisdictional Practice Protocol (IJPP). Appendix 2 contains Appendix 3 of the IJPP addressing FLCs.

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[1] If the lawyer has practised for fewer than three of the five preceding years he or she must be under the supervision of a foreign legal consultant already licensed and the supervisory arrangement must have been approved by the Law Society.

[2] If the applicant is not already a resident he or she must undertake to become one as soon after the granting of the licence as is practicable.

17. Beginning in 1993, Canada, the United States and Mexico sent representatives from their professional bodies/representative legal organizations to negotiate an international agreement on FLCs. In June 1998, the parties signed a joint recommendation, including a model rule ("model rule agreement"), but their respective governments have not yet ratified the recommendations and there are no indications when, if at all, this might occur. Appendix 3 contains the resolution and proposed model rule.

18. In February 1999, amendments to the *Law Society Act* included specific provisions and by-law making authority for licensing and regulating FLCs. The legislative and by-law making authority with respect to FLCs is set out at Appendix 4. A by-law based on the current policy has not been brought to Convocation for consideration in part because concerns have been raised about the current policy.

The Current Policy – Approach and Proposed Changes

19. A number of issues have arisen with respect to the current policy that the Committee has considered in developing its proposal.

Lack of Reciprocity Requirement

20. The current policy does not include any provision for reciprocity. In other words there is no requirement that the foreign jurisdiction in which an FLC is licensed as a lawyer accept lawyers from Ontario as FLCs in that jurisdiction. The Committee is of the view that reciprocity is an important feature that should be part of Ontario's regulatory approach to FLCs. Reciprocity invites jurisdictions to establish links on regulatory approaches in an environment of increasing globalization. This is important for the public interest and for the bars in each jurisdiction.

Application of the Current Policy

21. The current policy has been interpreted to mean that,

    a. an Ontario lawyer, who is also qualified in a foreign jurisdiction and who is an FLC in Ontario, cannot also practise Ontario law; and

    b. certain arrangements among Ontario lawyers and FLCs are not permitted, specifically,

        i. an FLC cannot be an employee, partner or affiliate in an Ontario law firm;

        ii. an FLC cannot employ an Ontario lawyer or associate with an Ontario lawyer in ways that may be permitted by the foreign lawyer's home jurisdiction.

22. In fact the policy does not appear to prohibit any of these activities, or to address them one-way or the other.

Ontario lawyer practising both Ontario and foreign law

23. It is difficult to justify prohibiting an Ontario lawyer from practising Ontario law if he or she is also an FLC. If an Ontario lawyer otherwise complies with all the Law Society's requirements for its members it is arguably unjustifiable to interfere with the lawyer's ability to practise Ontario law.

24. Moreover, the effect of this interpretation of the policy is to force clients to retain multiple lawyers, when one qualified lawyer could easily address their matters in a seamless fashion. It is difficult to imagine how the interpretation protects the public, since the lawyer is qualified, as a member of the foreign jurisdiction's bar and Ontario's. Regulatory rules and requirements that apply to members and those that relate to FLCs protect the public.

25. A factor that should be taken into account on this issue relates to trust money. Currently, FLCs are not permitted to open and hold funds in trust. If that continues to be the case, it will be important to ensure that the Ontario lawyer who is also an FLC does not blur the lines between the trust accounting rules for Ontario lawyers and those for FLCs. This can be accomplished through establishing a regulatory scheme

that identifies Ontario lawyers who are FLCs, (as proposed below), as well as through the Law Society's spot and focused audit program.

26. The current Law Society application of the policy on the issue of dual or multiple qualification goes against both the IJPP approach and the model rule agreement. It differs as well from the approach taken in British Columbia and Alberta.

27. The BC provision states:

> Dual Qualification
> A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction, may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer holds liability insurance that
>
> (a) specifically extends to the lawyer's activities as a practitioner of foreign law in British Columbia, and
>
> (b) is in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1).

28. The Alberta provision states:

> A reference to "a member with foreign legal qualifications" in relation to a foreign country or a political subdivision of a foreign country means a member of the Society who is authorized to practise law in that foreign country or political subdivision by reason of a membership in an extraprovincial law society in that country or political subdivisions or otherwise.

29. In British Columbia members of the Law Society who are also licensed in foreign jurisdictions are not required to apply for a permit. In Alberta they are required to follow the same procedure as any other applicant for licensing as an FLC. The IJPP mirrors the BC approach.

30. The Committee recommends following the Alberta approach. Requiring everyone to apply for the FLC licence ensures that the Law Society is able to monitor FLC behaviour generally and, in the case of members, is in a position to monitor that they have not blurred the lines between the FLC activities and their practice as members.

Affiliation/Association/Employment Between Members and FLCs

31. There are two issues with respect to arrangements between members and FLCs that require review. The first issue is the ability of an Ontario lawyer to employ, partner or affiliate with an FLC. The second issue is the ability of an FLC to employ an Ontario lawyer or associate with an Ontario lawyer in ways that may be permitted by the foreign lawyer's home jurisdiction.

32. By-Laws 25 and 32 permit multi-discipline partnerships/associations and affiliations between lawyers and non-lawyers. The By-Laws generally do not restrict the type of non-lawyer individual who, or entity that, may partner/associate or affiliate with a lawyer.[3] The by-laws alone would not restrict an Ontario lawyer or law firm from,

a. partnering with an FLC or employing an FLC as contemplated in the multi-discipline practice scheme in By-Law 25; or

[3] By-Law 25, s. 3 provides that the individual (non-lawyer) must be one "who practises a profession, trade or occupation that supports or supplements the practice of law."

b. affiliating with an FLC as contemplated in By-Law 32 for the joint marketing and delivery of legal and FLC services.[4]

33. Although the Society's policy on FLCs does not prohibit these forms of association, it has been interpreted to disallow them. It is important to remember that when the policy was first enacted the Law Society did not permit MDPs.

34. The Society's policy does not appear to restrict arrangements that an FLC may enter into with an Ontario lawyer by way of employment or association, even though it has been interpreted to disallow them. For example, the policy does not prohibit an Ontario lawyer from being employed by an FLC to provide the services of an Ontario lawyer. The policy also does not address arrangements that may be permitted in the FLC's home jurisdiction with Ontario lawyers (for example, an American jurisdiction's scheme for multi-discipline partnerships). However, although the Law Society policy does not prohibit a member from being an employee of an FLC or a partner in an FLC, certain restrictions in other aspects of the Law Society's regulatory structure make such arrangements unworkable. For example:

a. the name of an Ontario lawyer's law practice must comply with rule 3.02(1) of the *Rules of Professional Conduct*, which essentially restricts the name to that of the lawyer, or deceased or retired members of the firm and indicates that the firm name may only include the names of persons who are qualified to practise law in Ontario or in any other provinces or territory of Canada where the law firm carries on its practice;[5]

b. while an American jurisdiction may permit a form of multi-discipline partnership, the Society's MDP regime requires that an Ontario lawyer who partners with non-lawyers (which, in the Committee's view, includes FLCs) must control the law practice;

c. Ontario lawyers must maintain trust accounting books and records for their practices in accordance with the by-laws and observe the regulations concerning the handling of trust money.

35. The 1998 model rule agreement, referred to earlier and in Appendix 3 of this report, includes a section on forms of association that would permit, for example,

a. a Toronto lawyer being employed by a New York law firm;

b. a Los Angeles law firm entering into a partnership with a Vancouver law firm; or

c. a Toronto law firm entering into an economic relationship (other than a partnership) with a Chicago lawyer.

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[4] By-Law 32 on affiliations specifically excludes interprovincial and international law firms from its scope, which for the purposes of this discussion should be considered as entities separate from FLCs. However, the language in ss. 1(1) of By-Law 32 could be interpreted to exclude FLCs ("In this By-Law, "affiliated entity" means any person or group of persons other than a person or group of persons authorized to practise law in or outside Ontario".)

[5] This rule will be reviewed by the Professional Regulation Committee, which will consider whether a more flexible approach to firm names is warranted.

36. That section also indicates that the rules around forms of association do not prohibit, for example, a lawyer who is a partner in a law firm formed with foreign lawyers in the foreign jurisdiction from being a partner in his or her home jurisdiction's law firm at the same time.

37. Based on the considerations set out above the Committee recommends that,

a. Ontario lawyers in good standing who are members of the bar of a foreign jurisdiction should be entitled to practise both Ontario law and the law of the foreign jurisdiction as licensed FLCs.

b. Despite being members of the Ontario bar, they should be required to apply for a licence as an FLC;

c. Ontario lawyers should be permitted to employ, partner, associate or affiliate with FLCs in Ontario, in accordance with the requirements of By-laws 25 and 32;

d. Ontario lawyers should not be permitted to be employed by FLCs or enter into arrangements in Ontario with FLCs as may be permitted within the FLC's home jurisdiction. For valid reasons, the Law Society's current regulatory provisions may make such arrangements unworkable and it will be important to carefully consider the impact on the public interest that any expansion of the provisions may have before permitting such arrangements.

38. These recommendations are reflected in the Committee's full proposal as set out at pages 2 and 3 of this report.

Application Fee/Annual Fee/Renewal Process

39. Currently, applicants for licensing as FLCs are not required to,

a. pay a fee;

b. renew their licence at regular intervals; or

c. file information with the Law Society at regular intervals, including notifying the Law Society when they cease to work as FLCs.

40. This is a different approach than is taken to members of the Law Society, who are required to pay both annual fees and administrative charges for processing other types of applications, and be monitored by the Law Society. So, for example, applicants for Specialist Certification pay application and renewal fees in addition to their annual fee for membership in the Law Society. Similarly, a professional corporation that wishes to practise law must apply for a certificate of authorization pursuant to By-law 34, pay an initial application fee, comply with certain rules, renew annually and pay an annual renewal fee. [6]

41. The benefit of a renewal process is that the Law Society has an effective way to monitor the presence of FLCs in the jurisdiction and ensure that the FLC requirements are being met. Currently, the Law Society has no process in place for monitoring FLCs. The consequence is that the Society may not know if a licensed FLC continues to work as such or continues to meet the residence requirements or comply with other rules.[7]

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[6] The application fee and re-application fee for renewal for specialist certification is $321. The annual fee is $214 for each year of the five-year term. The application fee for a certificate of authorization (for professional corporations) is $250 and the renewal fee is $75.

[7] Recently the Law Society learned of three foreign lawyers who have been practising in the province without being licensed, in two of the cases for a substantial period of time. The Law Society's authority over the FLCs has been limited to refusing to license an applicant or charging non-licensed practitioners under the unauthorized practice rules.

42. The Committee recommends that a process be put in place with respect to FLCs that mirrors the approach taken to professional corporation applications for certificates of authorization. It would entail,
    a. an initial written application (currently done);

    b. an application fee for processing (new);

    c. an annual renewal application that would ask FLCs to respond to certain questions (new); and

    d. a renewal fee (new).

43. The Committee further recommends that applicants continue to be required to provide certain specified information about their regulatory record elsewhere, provide information in support of the application, and consent to the disclosure of information from third parties in support of the application. This mirrors the approach followed with respect to inter-jurisdictional mobility among Canadian jurisdictions.

44. This approach would also protect the public, by providing a regular mechanism for determining whether a licence should be renewed. A licence to act as an FLC could be,
    a. renewed;

    b. renewed with terms attached to address concerns raised during the previous term of the licence or in the renewal application;

    c. refused;

    d. revoked during its term for specified reasons.

45. Another advantage of this approach is that the Law Society will be in a position to provide information to other bodies, should an FLC request that the Law Society do so. So, for example, although the Law Society would not provide certificates of good standing, it would be in a position to indicate if an FLC is in compliance with all the applicable rules and indicate whether there are complaints against the FLC.

46. Such an approach would conform to the IJPP provisions, the model rule agreement, and the BC and Alberta approaches, all of which provide for licensing applications, renewals and fees.

47. In October 1993, the Law Society did, in fact, approve a recommendation of the Finance Committee that FLCs be charged a non-refundable application fee of $1000 (plus GST) and an annual fee of $500 (plus GST). This was to be done through an amendment to then Rule 50. The amendment was not implemented because of concerns expressed by the then Legislation and Rules Committee about whether there was, at the time, legislative authority to license FLCs.

Regulatory Provisions

48. Currently, although FLCs undertake to observe the standards of professional conduct in Ontario, the Law Society does nothing to monitor this and does not have clear rules, beyond the policy, to which the FLCs may be held.

49. Although the policy requires FLCs to be insured, the Law Society does not monitor this requirement.

50. The Law Society does not track complaints against FLCs.

51. The Law Society's by-law making authority respecting FLCs provides the opportunity to specify the regulatory requirements to which FLCs must adhere and the enforcement mechanism.

52. The Committee proposes that a by-law provide that an applicant for licensing as an FLC must,

a. have been actively engaged in the practise of law in the home jurisdiction for three of last five years or if less than that will be supervised by an approved FLC; (current requirement under policy; similar to IJPP)

b. be a member in good standing in the jurisdiction or jurisdictions of which he or she is a member; (the IJPP requires only the home jurisdiction; the Mobility Agreement requires all jurisdictions)

c. be of good character; (current requirement; same in IJPP)

d. maintain professional liability insurance for giving legal advice in Ontario respecting the law of the FLC's foreign jurisdiction at least equivalent to that required of a member under the Society's insurance plan; (current requirement under the policy; similar to IJPP)

e. maintain defalcation coverage that specifically extends to money or other property that may be received by the person in respect of the giving of legal advice in Ontario respecting the law of the FLC's foreign jurisdiction and is at least equivalent to the coverage available to a member; (not required in current policy, but in the IJPP and would be in keeping with approach to mobility developed by the Federation of Law Societies Task Force and approved by Convocation)

f. be resident in Ontario; (current requirement under the policy; not required in IJPP or the model rule agreement; not required in BC or Alberta)

g. agree not to accept, hold, transfer or in any other manner deal with funds that would, if accepted, held, transferred or dealt with by a member, constitute trust funds; (current policy silent; provided in IJPP and model rule agreement;)[8]

h. submit to the host jurisdiction and comply with all Acts, rules, by-laws, and regulations, and rules of professional conduct; (current requirement under policy; in IJPP and model rule agreement)

i. not in any way hold him/herself out as a member of the Ontario bar or qualified to act as a member of the Ontario bar (unless he or she is a member); (current requirement under the policy; similar in IJPP)

j. state on all letterhead, advertising, and signs that he or she is an FLC and the jurisdiction in which he or she is qualified to practise law; (current requirement under the policy; similar in IJPP)

k. not represent clients in any court or public administrative body and not participate in the preparation of documents or instruments governed by the laws of Ontario unless the client retains an Ontario lawyer to act as well; (current requirement under the policy; not in IJPP)

l. notify the Law Society promptly if he or she fails to complete, satisfactorily, any CLE requirements of the foreign jurisdiction; (current policy silent; in IJPP)

m. pay a licence fee and renewal fee, where applicable, in an amount determined by Convocation. (current policy silent; IJPP provides)

53. Moreover, the Committee recommends that the By-law specify other provisions of the *Law Society Act* that would apply to FLCs. The IJPP states:

> The provisions of [the Act and Rules] respecting competence, discipline and financial responsibility of members apply with necessary changes and so far as they are applicable to a person given permission

[8] If FLCs cannot hold trust funds, it will be necessary to ensure that if members of the Ontario bar can also be FLCs, they follow strict rules for complying with FLCs provisions. British Columbia does not permit a practitioner of foreign law to deal with funds that would constitute trust funds, "except money received on deposit for fees to be earned in the future by the practitioner of foreign law".

> … to act as a foreign legal consultant in the province, but the benchers have no power to disbar the person.

54. It is important that, at a minimum, FLCs be subject to the provisions of the *Law Society Act* that relate to allegations of professional misconduct or conduct unbecoming a barrister and solicitor:

    a. provisions dealing with capacity, competence and conduct investigations, applications and orders, and

    b. provisions that support this regulation (Hearing Panels, appeals, confidentiality, inspection of documents, etc.).

55. The Committee recommends that with the addition of the regulatory provisions discussed here, an FLC licence could then be revoked or suspended, or not renewed if the FLC,
    a. is suspended or restricted under the conduct, capacity, or competence provisions; or

    b. ceases to comply with the provisions of the FLC regime.

56. These recommendations are reflected in the Committee's full proposal as set out at pages 2 and 3 of this report.

APPENDIX 4

Excerpt from *Law Society Act* and By-laws

Prohibition as to practice, etc.

50. (1) Except where otherwise provided by law,

(a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themself out as or represent themself to be a barrister or solicitor or practise as a barrister or solicitor; and

(b) no temporary member shall act as a barrister or solicitor or practise as a barrister or solicitor except to the extent permitted by subsection 28.1 (3). 1991, c. 41, s. 4; 1993, c. 27, s. 5.

50.1 (1) Every person who contravenes section 50 is guilty of an offence and on conviction is liable to a fine of not more than $10,000.

Offence: foreign legal advice

(2) Every person who gives legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws is guilty of an offence and on conviction is liable to a fine of not more than $10,000.

62. (0.1) Convocation may make by-laws,

14. prescribing fees and levies relating to the functions of the Society, including fees for late compliance with any obligation, that must be paid to the Society by,

…

iv. persons who give legal advice respecting the law of a jurisdiction outside Canada, and applicants for licences to give such advice,

v. persons authorized to practise law outside Ontario who are permitted to appear as counsel in a specific proceeding in an Ontario court, and applicants for such permission,

vi. persons authorized to practise law in other provinces and territories of Canada who are permitted to engage in the occasional practice of law in Ontario, and applicants for such permission.

33. regulating the giving of legal advice respecting the law of a jurisdiction outside Canada, including requiring a licence issued by the Society, governing the issuance, renewal, suspension and revocation of licences and governing the terms and conditions that may be imposed on licences;

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

(1) Copy of the Report to Convocation of the Special Committee on Foreign Lawyers of October 1988 and current policy.

(Appendix 1, pages 16 – 22)

(2) Copy of the section on Foreign Legal Consultants in the 1994 Inter-Jurisdictional Practice Protocol.

(Appendix 2, pages 23 – 26)

(3) Copy of the resolution and proposed model rule re: Foreign Legal Consultants.

(Appendix 3, pages 27 – 39)

The Treasurer reported that the following Notices of Motion have been served.

Notice of Motion

MOVED BY: Richmond Wilson

SECONDED BY: Allan Lawrence

Whereas the Issue of unregulated paralegals remains an unsolved matter, notwithstanding the regular request from the Judges of our Courts.

And whereas it appears unlikely that a resolution will happen without some direction and resolve from the Law Society, who for the past two years has preferred to ‘work behind the scenes’,

And whereas the public for whom we have a mandate to protect daily are in risk, in that legal services are more and more being provided by uneducated, unregulated, and uninsured ‘amateurs’,

Be it resolved that the Paralegal Task Force of the Law Society be immediately repopulated and requested to update its report to Convocation, including a review of events since the last report, an analysis and reconsideration if appropriate of the conclusions reached, and recommendations to Convocation as to what its next steps might be to effect the conclusion of this outstanding matter.

And further that it be assured that adequate funding may be requested, and that the provision of adequate staff assistance be immediately provided to permit the provision of a report within three months of the Committee being repopulated.

Notice of Motion

MOVED BY: Richmond Wilson

SECONDED BY: George Hunter

Whereas the Law Society of Upper Canada is a corporation which collects and administers an annual budget in excess of $50,000,000,

And Whereas it has been brought to the attention of the Benchers that 'for profit' corporations of this size are at least encouraged to provide outside oversight on their Board of Directors in the area of financial management,

Be it resolved that an independent audit committee consisting of non bencher experts be established to advise Convocation as required and to report to Convocation annually.

Notice of Motion

MOVED BY: Richmond Wilson

SECONDED BY: Gerald Swaye

Whereas the Law Society of Upper Canada is dedicated to the provision of legal services to all citizens of Ontario

And Whereas during the recent past lawyers have either in concert or for private reasons preferred to refrain from the provision of services to those citizens who are of limited means and qualify for a Certificate under the Ontario Legal Aid Plan

And Whereas in the recent past the Law Society of Upper Canada terminated its direct responsibility for the operation of the Ontario Legal Aid Plan

And Whereas it is deemed proper for the Law Society to review its position relating to the responsibility that it may have to assuring that lawyers are available to fulfill their role as the providers of such services either as private practitioners or in the employ of the Government.

Be it resolved that Convocation forthwith appoint a task force to examine and report to Convocation on all matters relating to the responsibility for the provision of service to those without sufficient means, remaining with The Law Society of Upper Canada, and without limiting the scope to report on

a) Whether it is the view of the Task Force that there is any lingering responsibility in the Law Society for the insurance that people of limited means are provided with prompt and competent legal services
b) Whether, with the passage of the last few years, there are sufficient lawyers entering the areas of particular need e.g. Criminal Law, Family Law, Landlord and Tenant Law, where the lawyer holds themselves generally available to accept Legal Aid certificates
c) Whether in the opinion of the Task Force it is appropriate that lawyers employed by organizations controlled by others than members of the Society (Legal Aid Ontario) provide legal services to the public.
d) Whether the allegations of backlog within the Court system is directly or indirectly related to the public being unable for fiscal considerations to obtain legal services.

And Further Be It Resolved that funding not to exceed $25,000 be provided to the Task Force to engage the services of experts to assist them with their work, and in addition that appropriate support staff be provided from the Law Society in order that a Report be available for consideration by the Law Society before the end of February 2003.

Notice of Motion

MOVED BY: Bob Aaron

SECONDED BY:

RESOLVED that the cost that would have been incurred by holding the Bencher seasonal party instead be donated to the Law Society Foundation for the Out of the Cold program.

The Treasurer advised that he will rule Mr. Aaron's Notice of Motion out of order.

CONVOCATION ROSE AT 4:25 P.M.

Confirmed in Convocation this 6th day of December, 2002

Treasurer