MINUTES OF CONVOCATION

Thursday, 24th May, 2001
9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Arnup, Banack, Bindman, Boyd, Braithwaite, Campion, Carpenter-Gunn, R. Cass, Chahbar, Cherniak, Coffey, Copeland, Crowe, Curtis, Diamond, Divinsky, E. Ducharme, T. Ducharme, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Gottlieb, Hunter, Jarvis Krishna, Lalonde, Laskin, Lawrence, Legge, MacKenzie, Marrocco, Martin, Millar, Mulligan, Murray, Ortved, Pilkington, Porter, Puccini, Robins, Rodgers, Ross, Ruby, Simpson, Swaye, Topp, White, Wilson and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

TREASURER'S REMARKS

The Treasurer reported on his visits to the following county and district law associations: Lambton County in Sarnia, Dufferin County in Orangeville and the District of Temiskaming in New Liskeard.

REPORT FOR INFORMATION
REPORT OF THE HERITAGE COMMITTEE

The Treasurer presented the Heritage Committee Report in the absence of Mr. Carey.

Heritage Committee Report

May 24, 2001

Report to Convocation
Purpose of Report: Information
Prepared by the Archives Department

Historical Exhibition

An exhibition on legal heritage is being developed for Osgoode Hall. The display, a sample of which is on display on the landing outside Convocation Room, will be in three parts:

- a digital slide show on the evolution of the legal profession in both French and English
- a traditional museum display of artifacts relating to the building including architectural fragments, furniture and photographs
- a collection of photographs illustrating the history of the neighbourhood around Osgoode Hall

The area selected for this exhibition is on the first floor and includes the landing across from the elevator at reception level, the open space across from the barristers' lounge and the hallway past the women barristers' robing room. These areas are currently empty and there are no other plans for their use. They represent a major travel route between the Law Society and the courts, from the reception to Convocation Hall and the Great Library. The displays will be easy to access by elevator or stairs and will be located close to the entrance and the security desk.

The exhibition is scheduled to open in late September 2001.

Doors Open Toronto
The Law Society is working with the Government of Ontario to open Osgoode Hall to the public during Doors Open Toronto on May 26 and 27, 2001. Last year the event drew 3,000 visitors to the building. Twenty eight staff members have volunteered to make this weekend event a success. The catering department will be providing a formal tea service and a take-out counter.

Donations
A number of donations were received from generous individuals. Albert Abramson QC donated six framed photos of the founders of the Toronto firm of Holden, Murdoch, Walton and Beatty, created in the 1930s. The Lawyers' Club added to the records already deposited in the Archives. John D. Honsberger QC, LSM donated a number of items including early records of his law firm. Mrs. Nathan Strauss donated a number of prints of historical law-related buildings, a number of photographs and records of the late Nathan Strauss QC, a former bencher. The Archives also received a gift of money from the friends of John D. Honsberger at Brian A. Schnurr and Associates in honour of Mr. Honsberger receiving the Award of Distinction from the Metropolitan Toronto Lawyers Association.

.....

Mr. Porter rose on a point of privilege to compliment the Treasurer on the arrangements of the memorial held on May 23rd to pay tribute to the late Honourable J. Arthur Martin.

The Treasurer congratulated Mr. Arnup on his 90th birthday and also extended birthday wishes to the Hon. Sydney Robins on his 78th birthday.

REPORT OF THE DIRECTOR OF EDUCATION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Education asks leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, May 24th, 2001:

Vipin Behari Aggarwal	Bar Admission Course
Mary Catherine Anderson	Bar Admission Course
Martin Colin Behagg	Bar Admission Course
Fiona Mary Cameron-Mackintosh	Bar Admission Course
Hoi Lan Cheng	Bar Admission Course
Mary Teresa Edwards	Bar Admission Course
Ali Ehasassi	Bar Admission Course
Joseph Marcel Simon Ferrand	Bar Admission Course
Sapard Vincent-de Paul Mozes Tshimankinda Ngandu Kalala	Bar Admission Course
Keith Damon Oliver Lewis	Bar Admission Course
Trina Karen Morissette	Bar Admission Course
Joseph Edward Schuchert	Bar Admission Course
Marko Sekulic	Bar Admission Course
Thampiah Siripathy	Bar Admission Course
Heather Hope Smith-McGurk	Bar Admission Course
Tan Hung Truong	Bar Admission Course
Michael Lyndon Anthony Watson	Bar Admission Course
John Whitehead	Bar Admission Course
Katherine Laura Willis	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, May 24th, 2001:

Françoise Guénette	Province of Quebec
Elinor Meredith Hart	Province of British Columbia
Marie-Claude Sabourin	Province of Quebec
David Eric Schwartz	Province of British Columbia

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

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

David Grant Vingoe	The State of New York - Dorsey & Whitney LLP

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

ALL OF WHICH is respectfully submitted

DATED this the 24th day of May, 2001

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

Carried

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Education were presented to the Treasurer and Convocation and called to the Bar and the degree of Barrister-at-law was conferred upon each of them. They were then presented by Ms. Pilkington to Madam Justice Tamarin Melda Dunnet to sign the Rolls and take the necessary oaths.

Vipin Behari Aggarwal	Bar Admission Course
Mary Catherine Anderson	Bar Admission Course
Martin Colin Behagg	Bar Admission Course
Fiona Mary Cameron-Mackintosh	Bar Admission Course
Hoi Lan Cheng	Bar Admission Course
Mary Teresa Edwards	Bar Admission Course
Ali Ehsassi	Bar Admission Course
Joseph Marcel Simon Ferrand	Bar Admission Course
Sapard Vincent-de Paul Mozes Tshimankinda Ngandu Kalala	Bar Admission Course
Keith Damon Oliver Lewis	Bar Admission Course
Trina Karen Morissette	Bar Admission Course
Joseph Edward Schuchert	Bar Admission Course
Thampiah Siripathy	Bar Admission Course
Heather Hope Smith-McGurk	Bar Admission Course
Tan Hung Truong	Bar Admission Course
Michael Lyndon Anthony Watson	Bar Admission Course
John Whitehead	Bar Admission Course
Katherine Laura Willis	Bar Admission Course
Francoise Guenette	Transfer, Province of Quebec
Elinor Meredith Hart	Transfer, Province of British Columbia
Marie-Claude Sabourin	Transfer, Province of Quebec
David Eric Schwartz	Transfer, Province of British Columbia

MOTION - DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Feinstein, seconded by Mr. Crowe that the Draft Minutes of Convocation for April 26, 2001 as amended and the Special Call to the Bar Ceremonies in February , 2001were approved.

Carried

(Copy of Draft Minutes in Convocation File)

MOTION - AMENDMENT TO BY-LAW 6 - ELECTION OF TREASURER

It was moved by Abraham Feinstein, seconded by Marshall Crowe that -

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 6
[TREASURER]

THAT By-Law 6 [Treasurer] made by Convocation on April 30, 1999 and amended by Convocation on June 25, 1999 and December 10, 1999 be further amended as follows:

1. Subsection 9 (1) of the English version of the By-Law is amended by deleting "beginning on the second Thursday in June and ending on the fourth Thursday in June" and substituting "beginning at 9 a.m. on the day in June on which standing committees meet and ending at 5 p.m. on the day preceding election day".

2. Subsection 9 (1) of the French version of the By-Law is amended by deleting "débutant le deuxième jeudi de juin et se terminant le quatrième jeudi du même mois" and substituting "débutant à 9 heures le jour des réunions des comités permanents en juin et se terminant à 17 heures la veille du jour de l'élection".

3. Clause 9.1 (2) (e) of the By-Law is amended by deleting "on the fourth Thursday in June/le quatrième jeudi de juin" and substituting "on the day preceding election day/la veille du jour de l'élection".

4. Clause 9.1 (4) (c) of the By-Law is amended by deleting "on the fourth Thursday in June/le quatrième jeudi de juin" at the end and substituting "on the day preceding election day/la veille du jour de l'élection".

Carried

MOTION - APPOINTMENT TO BOARD OF DIRECTORS OF THE FEDERATION OF LAW SOCIETIES OF CANADA

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

Carried

MOTION - APPOINTMENT TO TASK FORCE ON CONTINUUM OF LEGAL EDUCATION

The motion was stood down.

MOTION - FRENCH TRANSLATION OF BY-LAWS 21, 28 and 30

It was moved by Gavin MacKenzie, seconded by Heather Ross that -

THE LAW SOCIETY OF UPPER CANADA

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

THAT the by-laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force on May 24, 2001 be amended as follows:

BY-LAW 21
[PROCEEDINGS AUTHORIZATION COMMITTEE]

1. By-Law 21 is amended by adding the following French version:

RÈGLEMENT ADMINISTRATIF N^{O} 21

LE COMITÉ D'AUTORISATION DES INSTANCES

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

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

« Comité » Comité d'autorisation des instances.

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

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

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

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

Présidents et vice-présidents de certains comités permanents

(3) Sont membres du comité :

a) la personne assumant la présidence ou la vice-présidence du Comité de réglementation de la profession;

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

Restrictions applicables aux nominations

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

Mandat

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

Nomination à titre amovible

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

Président

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

Durée du mandat

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

Nomination à titre amovible

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

Fonctions du Comité

4. Le Comité a les fonctions suivantes :

a) examiner toutes les affaires qui lui sont renvoyées conformément au présent règlement administratif ou à tout autre et, à l'égard de chaque affaire, décider s'il convient de prendre une des mesures mentionnées au paragraphe 9 (1);

b) décider, dans un cas donné, s'il est opportun que le Barreau demande, par voie de requête, à la Cour supérieure de justice de rendre l'ordonnance prévue à l'article 49.13 de la Loi.

EXAMEN DES AFFAIRES RENVOYÉES AU COMITÉ

Quorum du Comité

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

Membres provisoires

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

Conseillers inadmissibles

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

Examen par téléconférence, etc.

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

Absence de droit de participation

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

Participation à la demande du Comité

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

1. une personne qui a renvoyé une affaire au Comité;

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

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

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

1. obtenir des directives relativement à la tenue d'une vérification, d'une enquête ou d'une inspection;

2. faire approuver le règlement informel de l'affaire ou obtenir des directives à son égard;

3. autoriser le Barreau à demander, dans une instance en cours ou envisagée, si le Comité d'audition n'a pas entamé l'audition sur le fond, une ordonnance interlocutoire suspendant les droits et privilèges d'un membre ou d'un membre étudiant ou restreignant la façon dont un membre peut pratiquer le droit;

4. autoriser le Barreau à demander au Comité d'audition d'établir si :

   i. un membre ou un membre étudiant a contrevenu à l'article 33 de la Loi;

   ii. un membre ou un membre étudiant est ou a été incapable;

   iii. un membre n'a pas respecté ou ne respecte pas les normes de compétence de la profession.

Restriction applicable aux renvois par le secrétaire ou un enquêteur externe

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

Renvoi par un conseiller élu

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

Restriction applicable au renvoi par un conseiller élu

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

a) rencontré le membre et le ou la secrétaire, comme l'exigent les articles 11 et 12 du Règlement administratif n^{o} 24, conformément aux articles 13 et 14 du Règlement administratif n^{o} 24;

b) refusé de rendre une ordonnance en vertu du paragraphe 42(7) de la Loi.

Recommandations

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

Examen d'une affaire

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

1. approuver le règlement informel de l'affaire ou donner des directives à cet égard;

2. autoriser le Barreau à demander au Comité d'audition d'établir si :
   i. un membre ou un membre étudiant a contrevenu à l'article 33 de la Loi;
   ii. un membre ou un membre étudiant est ou a été incapable;
   iii. un membre ne respecte pas ou n'a pas respecté les normes de compétence de la profession;

3. inviter un membre ou un membre étudiant à comparaître devant un comité de conseillers et conseillères pour recevoir des conseils sur sa conduite;

3.1 inviter un membre à comparaître devant un comité de conseillers et conseillères pour recevoir des conseils sur sa compétence professionnelle;

4. envoyer à un membre ou un membre étudiant une lettre lui donnant des conseils sur sa conduite;

4.1 envoyer à un membre une lettre lui donnant des conseils sur sa compétence professionnelle;

5. autoriser le Barreau à présenter, dans une instance en cours ou envisagée, si le Comité d'audition n'a pas entamé l'audition sur le fond, une ordonnance interlocutoire suspendant les droits et privilèges d'un membre ou d'un membre étudiant ou restreignant la façon dont un membre peut pratiquer le droit;

6. prendre toute autre mesure que le Comité juge indiquée.

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

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

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

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

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

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

Nomination d'un représentant

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

a) le membre ou le membre étudiant n'est pas en mesure de participer à l'instance ni de donner des instructions à une avocate ou à un avocat à cet égard;

b) le membre ou le membre étudiant n'est pas représenté par une avocate ou un avocat;

c) le membre ou le membre étudiant n'a pas de tuteur, de fondé de pouvoir ni d'autre personne autorisée à le représenter dans l'instance.

Frais

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

Décision rédigée par écrit

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

Avis

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

Motifs

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

Retrait de la demande au Comité d'audition

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

Procédure de retrait

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

REQUÊTE EN DIVULGATION

Demande du secrétaire
14.1 (1) À la demande du ou de la secrétaire, le Comité décide s'il est opportun que le Barreau demande, par voie de requête, à la Cour supérieure de justice de rendre l'ordonnance prévue à l'article 49.13 de la Loi.

Quorum du Comité
(2) Deux membres du Comité forment le quorum pour la prise d'une décision visée au paragraphe (1).

Éléments à considérer
(3) Lorsqu'il prend la décision visée au paragraphe (1), le Comité tient avant tout compte de la mesure dans laquelle la divulgation des renseignements est nécessaire pour protéger le public et pour favoriser l'administration de la justice.

Application de certains articles
(4) Les articles 6, 7, 11, 12 et 13 s'appliquent, avec les adaptations nécessaires, à la prise d'une décision visée au paragraphe (1).

Entrée en vigueur
15. Le présent règlement administratif entre en vigueur le 1er février 1999.

BY-LAW 28
[REQUALIFICATION]

2. By-Law 28 is amended by adding the following French version:

RÈGLEMENT ADMINISTRATIF Nº 28

REQUALIFICATION PROFESSIONNELLE

Définitions
1. Dans le présent règlement administratif, le terme «gouvernement» s'entend du gouvernement du Canada, des gouvernements provinciaux et territoriaux canadiens, et du gouvernement de toute ville, cité, municipalité ou village, ou de toute autre entité similaire de toute province ou de tout territoire du Canada.

Délégation des pouvoirs et fonctions du secrétaire au directeur du perfectionnement
2. (1) La personne qui occupe la charge de directeur du perfectionnement peut exercer les pouvoirs et les fonctions que l'article 45 de la Loi, dans la mesure où il vise une ordonnance prise pour inobservation d'une ordonnance rendue en application du paragraphe 49.1 (1) de la Loi, l'article 49.1 de la Loi et le présent règlement administratif attribuent au ou à la secrétaire.

Délégation des pouvoirs et fonctions du secrétaire au directeur général
(2) La personne qui occupe la charge de directeur général peut exercer les pouvoirs et les fonctions que l'article 45 de la Loi, dans la mesure où il vise une ordonnance prise pour inobservation d'une ordonnance rendue en application du paragraphe 49.1 (1) de la Loi, l'article 49.1 de la Loi et le présent règlement administratif attribuent au ou à la secrétaire, en son absence et en l'absence du directeur ou de la directrice de la compétence et du perfectionnement professionnels.

Durée de la période continue
3. La durée de la période continue visée à l'article 49.1 (1)de la Loi est de cinq années.

Exigence de rapport relatif à l'usage des habiletés juridiques

4. (1) À chaque année, les membres déposent auprès du Barreau un rapport indiquant qu'ils ont fait un usage considérable et régulier de leurs habiletés juridiques durant l'année en question et détaillant la façon dont ils ont fait usage de ces habiletés.

Rapport annuel des membres

(2) Le rapport exigé au paragraphe (1) est rédigé selon le Formulaire17A [Rapport annuel des membres].

Usage considérable et régulier des habiletés juridiques

5. (1) Sont considérés faire un usage considérable et régulier de leurs habiletés juridiques au cours d'une année donnée les membres qui s'adonnent, pour un total d'au moins 600 heures ou quatre mois complets d'exercice par année, à l'une ou plusieurs des activités suivantes :

1. L'exercise de la profession d'avocat à titre privé.

2. Être à l'emploi d'une entité, notamment d'un service de consultation juridique, d'un gouvernement ou d'un organisme gouvernemental, à titre d'avocat ou d'avocate.

3. Travailler pour le compte d'un cabinet offrant des services à caractère juridique dans une des fonctions énumérées à l'Annexe 1.

4. Être à l'emploi d'un gouvernement ou d'un organisme gouvernemental dans une des fonctions énumérées à l'Annexe 2.

5. Occuper un poste de député ou de députée siégeant au parlement du Canada ou à l'une des assemblées législatives des provinces ou territoires du Canada.

6. Occuper un des postes à caractère éducatif énumérés à l'Annexe 3.

7. Suivre des études juridiques supérieures.

8. Sous réserve du paragraphe (2), être à l'emploi d'une des entités énumérées à l'Annexe 4 et occuper une des fonctions visées à l'Annexe 4.

9. Sous réserve du paragraphe (2), exercer toute autre activité qui, de l'avis du ou de la secrétaire, exige du membre un usage considérable et régulier de ses habiletés juridiques.

Stagiaires, secrétaires et techniciens juridiques

(2) Ne sont pas considérés faire un usage considérable et régulier de leurs habiletés juridiques les membres qui occupent un poste de secrétaire juridique, de technicien ou de technicienne juridique, ou de stagiaire en droit.

Examen d'autres facteurs

(3) Dans le contexte de l'alinéa 9 du paragraphe (1), afin d'établir si un membre fait un usage considérable et régulier de ses habiletés juridiques, le ou la secrétaire tient compte des facteurs suivants :

1. la similitude entre l'activité en question et les activités énumérées aux alinéas 1 à 8 du paragraphe (1);

2. la mesure dans laquelle cette activité exige habituellement du membre qu'il

   i. s'adonne à la recherche et à l'analyse juridiques, et à la résolution de problèmes à caractère juridique,

   ii. communique verbalement ou par écrit,

   iii. assure l'organisation et la gestion du travail juridique,

   iv. reconnaisse et résoude des dilemmes d'ordre éthique, et

   v. se tienne à jour dans le (les) domaine(s) du droit relié(s) à l'activité en question;

3. la mesure dans laquelle cette activité exige du membre de posséder et de mettre en application les habiletés, attributs et valeurs que l'on trouve dans la définition du juriste compétent contenue dans le Code de déontologie du Barreau;

4. tout autre facteur permettant d'établir si l'activité en question fait appel de manière considérable et régulière aux habiletés juridiques de ce membre.

Période

(4) Au cours d'une année civile, nonobstant le paragraphe (1), sont considérés faire un usage considérable et régulier de leurs habiletés juridiques les membres qui, sur une période moindre que celle mentionnée au paragraphe (1) mais qui est suffisante de l'avis du ou de la secrétaire, exercent une ou plusieurs des activités mentionnées au paragraphe (1).

Examen des rapports par le secrétaire

6. (1) Conformément à l'article 4, le ou la secrétaire examine tout rapport déposé auprès du Barreau.

Avis au membre

(2) Si le ou la secrétaire doit étudier le rapport d'un membre déposé aux termes de l'article 4 afin d'établir si une activité exercée par un membre constitue un usage considérable et régulier de ses habiletés juridiques au sens de l'alinéa 9 du paragraphe 5 (1), ou d'établir si le membre a exercé une ou plusieurs des activités énumérées au paragraphe 5 (1) sur une période suffisante à la lumière des critères du paragraphe 5 (4), et si le ou la secrétaire est d'avis que le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année en question conformément aux paragraphes 5 (1) ou (4), le ou la secrétaire avise alors le membre par écrit.

Exercice des fonctions

(2.1) Le ou la secrétaire peut exercer les fonctions prévues aux paragraphes (1) et (2) en tout temps après qu'un membre a déposé un rapport auprès du Barreau aux termes de l'article 4.

Retard dans l'exercice des fonctions

(2.2) Si il ou elle n'exerce pas les fonctions prévues aux paragraphes (1) et (2) dans l'année qui suit le jour du dépôt d'un rapport, lorsqu'il ou elle établit si le membre a fait un usage considérable et régulier de ses habiletés juridiques pendant la période écoulée entre le dépôt du rapport et le moment où il ou elle exerce ces fonctions, le ou la secrétaire tient compte, afin d'établir si le membre s'est adonné à l'une ou à plusieurs des activités mentionnées au paragraphe 5 (1) pendant une période suffisante, de tout préjudice que le retard mis à exercer ces mêmes fonctions risque de causer au membre.

Transmission de l'avis

(3) Sont considérés comme étant suffisants les avis

(a) remis au membre en mains propres,

(b) transmis par courrier régulier à la dernière adresse connue du membre (apparaissant aux registres du Barreau),

(c) transmis par télécopieur au dernier des numéros de télécopieur connus du membre (apparaissant aux registres du Barreau).

Idem

(4) Sont réputés avoir été reçus par le membre les avis expédiés selon le paragraphe (2)

(a) le cinquième jour après avoir été mis à la poste, si transmis par courrier régulier,

(b) le jour suivant sa transmission, si transmis par télécopieur.

Requête à un comité de trois conseillers

(5) Sous réserve du paragraphe (12), si un membre reçoit un avis conformément au paragraphe (2), il peut déposer une requête d'examen auprès d'un comité, formé de trois conseillères ou conseillers nommés à cet effet par le Conseil, visant à établir si le membre a fait un usage considérable et régulier de ses habiletés juridiques au cours d'une année donnée.

Délai de la requête

(6) Sous réserve du paragraphe (13), une requête déposée aux termes du paragraphe (5) est introduite par la présentation par le membre d'un avis écrit au secrétaire ou à la secrétaire dans un délai de trente jours suivant la date de la réception par le membre de l'avis indiqué au paragraphe (2).

Parties

(7) Sont parties à la requête le ou la secrétaire et le membre visé par la requête introduite aux termes du paragraphe (5).

Procédure

(8) Avec les adaptations nécessaires, les règles de pratique et de procédure s'appliquent à l'examen de la requête déposée auprès du comité de trois conseillers et conseillères comme si l'examen constituait l'audition d'une requête effectuée conformément au paragraphe 49.1 (4) de la Loi.

Idem

(9) Advenant le silence des règles de pratique et de procédure quant à une question de procédure, la *Loi sur l'exercice des compétences légales* s'applique à l'examen par un comité formé de trois conseillers ou conseillères d'une requête déposée conformément au paragraphe (5).

Décision

(10) Après l'examen d'une requête déposée conformément au paragraphe (5), le comité formé de trois conseillers ou conseillères,

(a) conclut que le membre a fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année; ou

(b) conclut que le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année.

Décision définitive

(11) Toute décision rendue par le comité formé de trois conseillers ou conseillères relativement à une requête d'examen déposée conformément au paragraphe (5) est définitive.

Suspension, en raison d'une ordonnance, du droit de déposer une requête

• Si une ordonnance rendue aux termes de l'alinéa 47 (1) (a) de la Loi est en vigueur au moment où le membre reçoit l'avis mentionné au paragraphe (2), le droit du membre selon le paragraphe (5) de déposer une requête auprès d'un comité formé de trois conseillers ou conseillères aux fins d'établir s'il a fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année est suspendu jusqu'à ce que l'ordonnance cesse de s'appliquer.

Période d'introduction d'une requête en cas de suspension du droit de dépôt de requête

(13) Conformément au paragraphe (12), en cas de suspension du droit de déposer une requête en vertu du paragraphe (5), le membre doit présenter par écrit, auprès du ou de la secrétaire, toute requête d'examen en vertu du paragraphe (5) dans un délai de 30 jours à compter de la date où le membre se voit restaurer ses droits et privilèges.

Application de l'article 6

(14) Cet article s'applique au rapport d'un membre visé à l'article 4 à l'égard de l'année civile 1999 et de toute année subséquente.

Évaluation de l'usage d'habiletés juridiques de 1995 à 1998

7. (1) Le ou la secrétaire examine, relativement aux années civiles 1995, 1996, 1997 et 1998, tout renseignement relatif à l'usage d'habiletés juridiques fourni par les membres quant à chacune de ces années.

Idem

(1.1) Le ou la secrétaire peut exercer les fonctions prévues au paragraphe (1) en tout temps après qu'un membre a fourni les renseignements relatifs à l'usage d'habiletés juridiques quant à l'année 1995, 1996, 1997 ou 1998.

Application de l'article 5

(2) Avec les adaptations nécessaires, l'article 5 s'applique à l'examen par le ou la secrétaire de tout renseignement fourni conformément au paragraphe (1).

Avis au membre relativement à l'usage insuffisant des habiletés juridiques en 1995, 1996, 1997 et 1998

(3) À l'égard des renseignements fournis par un membre relativement aux années civiles 1995, 1996, 1997 et 1998, si le ou la secrétaire doit établir, aux fins de l'alinéa 9 du paragraphe 5 (1), si une activité exercée par un membre constitue un usage considérable et régulier de ses habiletés juridiques ou si aux fins du paragraphe 5 (4) un membre a exercé l'une ou plusieurs des activités visées au paragraphe 5 (1), et si le ou la secrétaire est d'avis qu'au cours des années 1995, 1996, 1997 et 1998 le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques aux termes des paragraphes 5 (1) ou (4), sous réserve des paragraphes (5), (5.1) et (6), le ou la secrétaire avise le membre par écrit avant le 1er janvier 2000.

Avis au membre : usage insuffisant de ses habiletés juridiques au cours des autres années

(4) À l'égard des renseignements fournis par un membre relativement aux années 1995, 1996, 1997 et 1998, si le ou la secrétaire doit établir, aux fins de l'alinéa 9 du paragraphe 5 (1), si une activité exercée par un membre constitue un usage considérable et régulier de ses habiletés juridiques ou si aux fins du paragraphe 5 (4) le membre a exercé sur une période suffisante l'une ou plusieurs des activités visées au paragraphe 5 (1), et si le ou la secrétaire est d'avis que le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques conformément aux paragraphes 5 (1) ou (4) uniquement au cours des années 1996, 1997 et 1998, uniquement au cours des années 1997 et 1998, ou uniquement au cours de l'année 1998, sous réserve des paragraphes (5), (5.1) et (6), le ou la secrétaire avise le membre par écrit avant le 31 janvier 2000.

Avis reporté

(5) Si en date du 22 décembre 1999 un membre n'a pas fourni au Barreau les renseignements relatifs à l'usage de ses habiletés juridiques au cours des années civiles 1995, 1996, 1997 ou 1998, le ou la secrétaire n'est pas tenu de donner un avis au membre conformément au paragraphe (3) ou (4) dans le délai prescrit mais, sous réserve du paragraphe (6), donne un avis au membre conformément au paragraphe (3) ou (4) dans un délai raisonnable après la date où le membre fournit les renseignements en question.

Avis non requis

(6) Si le membre a fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année civile 1999, la ou le secrétaire n'est pas tenu de remettre un avis au membre conformément au paragraphe (3) ou (4).

Application des paragraphes 6 (3) et (4)

(7) Avec les adaptations nécessaires, les paragraphes 6 (3) et (4) s'appliquent aux avis visés aux paragraphes (3) et (4).

Requête au comité de trois conseillers

(8) Tout membre qui reçoit un avis aux termes du paragraphe (3) ou (4) peut déposer une requête d'examen auprès d'un comité formé de trois conseillères ou conseillers nommés par le Conseil afin d'établir si le membre a fait un usage considérable et régulier de ses habiletés juridiques durant au moins une ou plusieurs années relativement aux années pour lesquelles le membre a reçu un avis visé au paragraphe (3) ou (4).

Délai du dépôt de la requête

(9) Le membre introduit par écrit, auprès du ou de la secrétaire, toute requête visée au paragraphe (8),

(a) si le membre reçoit un avis visé au paragraphe (3) ou (4) dans le délai prescrit à cet égard,

(i) trente jours à compter de la date où le membre a reçu un avis selon le paragraphe (3) ou (4);

(ii) trente jours à compter de la date où le membre a reçu un avis selon le paragraphe 6 (2) précisant que le membre n'a pas fait un usage considérable et régulier de ses habiletés juridiques au cours de l'année 1999.

(b) si le membre reçoit un avis selon le paragraphe (3) ou (4) dans les délais prescrits au paragraphe (5), dans un délai de trente jours à compter de la date où le membre a reçu l'avis.

Idem

(10) Si un membre désire déposer une requête en vertu du paragraphe (8) et si l'alinéa (9) (a) s'applique en l'espèce au membre, ce dernier avise par écrit le ou la secrétaire s'il désire se prévaloir des sous-paragraphes (i) ou (ii) dans un délai de trente jours à compter de la date à laquelle le membre reçoit un avis conformément au paragraphe (3) ou (4).

Application de certains paragraphes

(11) Avec les adaptations nécessaires, les paragraphes 6 (7), (8), (9), (10) et (11) s'appliquent aux requêtes déposées en vertu du paragraphe (8).

Requalification professionnelle

8. (1) Les critères de requalification professionnelle prévus à l'article 49.1 de la Loi sont :

(a) être employé à temps plein par une compagnie, du gouvernement ou d'un organisme gouvernemental en qualité d'avocat et procureur pour une période continue d'un an;

(b) (i) avoir complété un cours d'enseignement individuel offert par le Barreau et qui porte sur l'ensemble des domaines suivants :

(A) les questions réglementaires s'inscrivant dans l'exercice du droit,

(B) l'administration d'un cabinet juridique, y compris la gestion des dossiers,

(C) la comptabilité.

(ii) avoir réussi un examen de comptabilité ainsi qu'un ou plusieurs examens dans les domaines mentionnés aux sous-subdivisions (A) et (B) du sous-paragraphe (i),

(iii) avoir complété 10 heures de formation juridique continue, y compris au moins 5 heures de cours ou de cours retransmis sur vidéo, dans le(s) domaine(s) des règles juridiques de fond auxquelles le membre envisage de consacrer au moins 25 pour cent de sa pratique,

(iv) avoir complété la lecture du matériel préparé par le Barreau concernant deux domaines des règles juridiques de fond,

(v) lorsque le membre appartient à une catégorie énumérée au sous-paragraphe (2),

(A) suivre un atelier mis sur pied par le Barreau concernant l'ouverture d'un cabinet juridique, ou terminer la lecture du matériel préparé par le Barreau portant sur l'ouverture d'un cabinet juridique et réussir un examen portant sur ces lectures,

(B) avoir complété 10 heures de formation juridique continue, y compris au moins 5 heures de cours ou de cours retransmis sur vidéo dans le domaine de l'administration d'un cabinet juridique, y compris la gestion des dossiers.

Catégories de membres

(2) Aux fins du sous-paragraphe 8 (1) (b) (v), les membres se répartissent selon les catégories suivantes :

1. Un membre qui, immédiatement avant la période continue où il ou elle n'a pas fait un usage considérable et régulier de ses habiletés juridiques, a exercé le droit dans le cadre d'un cabinet privé pendant trois ans ou moins.

2. Un membre qui, immédiatement avant la période continue où il ou elle n'a pas fait un usage considérable et régulier de ses habiletés juridiques, a exercé le droit dans le cadre d'un cabinet privé durant plus de trois ans, mais moins de dix ans et qui, pendant les trois-quarts de ces années ou plus, exerçait le droit dans le cadre d'un cabinet privé à titre d'employé.

3. Un membre qui n'a pas fait un usage considérable et régulier de ses habiletés juridiques pour une période continue de dix ans ou plus.

4. Un membre qui, immédiatement avant la période continue pendant laquelle il ou elle n'a pas fait un usage considérable et régulier de ses habiletés juridiques, a été soumis à une révision par le Barreau conformément au Programme d'inspection professionnelle ou en vertu de l'article 42 de la Loi.

Période de requalification professionnelle

(3) Le membre doit satisfaire aux critères de requalification professionnelle définis au paragraphe (1) au cours de l'année précédant immédiatement le retour du membre à l'exercice privé du droit.

Interprétation

(4) Aux fins du paragraphe (1), on entend par «réussir»,

(a) dans le cas d'un examen de comptabilité, répondre correctement à 50 pour cent des questions de l'examen; et

(b) dans tous les autres cas, de l'avis du ou de la secrétaire, faire une démonstration suffisante des connaissances de la matière de l'examen.

Requête d'attestation relative aux exigences de requalification

9. (1) Un membre dépose par écrit auprès du ou de la secrétaire une requête d'attestation qu'il répond aux exigences de requalification professionnelle et, pour étayer la requête, dépose auprès du Barreau,

(a) dans le cas d'une requête d'attestation visée à l'alinéa 8 (1) (a), une preuve écrite démontrant que le membre a été à l'emploi d'une compagnie, d'un gouvernement ou d'un organisme gouvernemental à titre de procureur ou de procureure ou d'avocat ou d'avocate sur une période continue d'une année, tel qu'exigé à l'alinéa 8 (1) (a); et

(b) dans le cas d'une requête d'attestation visée à l'alinéa 8 (1) (b),

(i) une preuve écrite que le membre a suivi un cours de formation juridique continue de 10 heures, tel qu'exigé en vertu du sous-paragraphe 8 (1) (b) (iii),

(ii) un certificat prouvant que le membre a complété la lecture des documents exigés en vertu du sous-paragraphe 8 (1) (b) (iv),

(iii) une preuve écrite de la participation à un atelier sur l'ouverture d'un cabinet juridique, si le membre est tenu de répondre à cette exigence de requalification telle qu'établie à la sous-subdivision (A) du sous-paragraphe 8 (1) (b) (v) et choisit d'y participer, et

(iv) une preuve écrite que le membre a suivi un cours de formation juridique continue de 10 heures tel qu'exigé en vertu de la sous-subdivision (B) du sous-paragraphe 8 (1) (b) (v), si le membre est tenu de répondre à cette exigence de requalification telle qu'établie à la sous-subdivision (B) du sous-paragraphe 8 (1) (b) (v).

Exigences de requalification de l'alinéa 8 (1) (a)

(2) Sur réception par le ou la secrétaire d'une requête d'attestation soumise en vertu du paragraphe (1) que le membre répond aux exigences de requalification professionnelle telles qu'établies à l'alinéa 8 (1) (a), la ou le secrétaire atteste seul que le membre a été à l'emploi d'une corporation, d'un gouvernement ou d'un organisme gouvernemental à titre d'avocat ou d'avocate sur une période continue d'une année, tel qu'exigé en vertu de l'alinéa 8 (1) (a).

Exigences de requalification de l'alinéa 8 (1) (b)

(3) Sur réception par le ou la secrétaire d'une requête d'attestation soumise en vertu du paragraphe (1) que le membre répond aux exigences de requalification professionnelle telles qu'établies à l'alinéa 8 (1) (b), le ou la secrétaire étudie les copies des examens complétés par le membre aux termes du sous-paragraphe 8 (1) (b) (ii) et, le cas échéant, l'examen complété par le membre conformément à la sous-subdivision (A) du sous-paragraphe 8 (1) (b) (v) et peut attester seul que le membre a répondu aux exigences de formation juridique continue du sous-paragraphe 8 (1) (b) (iii) et le cas échéant, la réussite par le membre du cours de formation juridique continue visé à la sous-subdivision (B) du sous-paragraphe 8 (1) (b) (v).

Évaluation des exigences de requalification professionnelle

(4) Sur réception par le ou la secrétaire d'une requête d'attestation soumise en vertu du paragraphe (1) que le membre répond aux exigences de requalification professionnelle telles qu'établies à l'alinéa 8 (1) (a), après avoir satisfait aux exigences du paragraphe (2), le ou la secrétaire

(a) si elle ou il est d'avis que le membre a répondu aux exigences de requalification de l'alinéa 8 (1) (a) et qu'il s'est conformé aux délais relatifs aux exigences de requalification professionnelle du paragraphe 8 (3), atteste que le membre répond aux exigences de requalification; ou

(b) si elle ou il est d'avis que le membre n'a pas répondu aux exigences de requalification de l'alinéa 8 (1) (a) et qu'il ne s'est pas conformé aux délais relatifs aux exigences de requalification professionnelle du paragraphe 8 (3), refuse d'attester que le membre répond aux exigences de requalification.

Idem

(5) Sur réception par le ou la secrétaire d'une requête d'attestation soumise en vertu du paragraphe (1) que le membre répond aux exigences de requalification professionnelle de l'alinéa 8 (1) (b), après avoir satisfait aux exigences du paragraphe (3), le ou la secrétaire

(a) si elle ou il est d'avis que le membre a répondu aux exigences de requalification de l'alinéa 8 (1) (b) et qu'il s'est conformé aux délais relatifs aux exigences de requalification professionnelle du paragraphe 8 (3), atteste que le membre répond aux exigences de requalification; ou

(b) si elle ou il est avis que le membre n'a répondu aux exigences de requalification de l'alinéa 8 (1) (b) et qu'il ne s'est pas conformé aux délais relatifs aux exigences de requalification professionnelle du paragraphe 8 (3), refuse d'attester que le membre répond aux exigences de requalification.

Idem

(6) Nonobstant les paragraphes (4) (b) et (5) (b), le ou la secrétaire peut attester que le membre répond aux exigences de requalification professionnelle si il ou elle est d'avis que le membre répond aux exigences de requalification de l'alinéa 8 (1) (a) ou aux exigences de requalification de l'alinéa 8 (1) (b) sans que le membre ne se soit conformé aux délais prescrits au paragraphe 8 (3) relativement aux exigences de requalification.

Attestation par le Comité d'audition que le membre répond aux exigences

10. Lorsqu'une requête a été déposée auprès du Comité d'appel conformément au paragraphe 49.1 (4) de la Loi afin d'établir si le membre répond aux exigences de requalification professionnelle, le Comité, dans son processus décisionnel, examine les facteurs suivants :

1. Si le membre dépose une requête afin d'établir s'il répond aux exigences de requalification professionnelle de l'alinéa 8 (1) (a), l'ampleur et le type de travail effectué par le membre auprès d'une compagnie, d'un gouvernement ou d'un organisme gouvernemental et s'il répond à l'exigence de l'alinéa 8 (1) (a).

2. Si le membre dépose une requête afin d'établir s'il répond aux exigences de requalification professionnelle de l'alinéa 8 (1) (b),

   i. les connaissances du membre de chacun des domaines énumérés aux sous-subdivisions (A), (B) et (C) du sous-alinéa 8 (1) (b) (i), et

   ii. l'ampleur et le type de formation juridique continue que le membre a suivie et les exigences de requalification du sous-alinéa 8 (1) (b) (iii) et de la sous-subdivision (B) du sous-alinéa 8 (1) (b) (v), le cas échéant.

Dispositions

11. Les conditions suivantes peuvent être imposées par le ou la secrétaire conformément au paragraphe 49.1 (3) de la Loi ainsi que par le Comité d'audition en vertu de l'alinéa 49.1 (6) (a) de la Loi :

1. Une condition qui exige que le membre participe à des programmes précis de formation juridique ou professionnelle, dans une période précise, mais sans toutefois dépasser une période d'une année à compter de la date à laquelle la décision rendue aux termes du paragraphe 49.1 (1) cesse de s'appliquer.

2. Une condition qui exige que le membre restreigne ses activités à certains domaines de droit, sur une période précise, mais sans toutefois dépasser une période d'une année à compter de la date à laquelle la décision rendue aux termes du paragraphe 49.1 (1) cesse de s'appliquer.

3. Une condition qui exige, sur une période précise mais sans toutefois dépasser une période d'une année à compter de la date à laquelle la décision rendue aux termes du paragraphe 49.1 (1) cesse de s'appliquer, que le membre n'exerce sa profession qu'à titre

   i. d'employé ou d'employée d'un membre ou de toute autre personne approuvée par le ou la secrétaire,

   ii. de partenaire avec un membre approuvé par le ou la secrétaire, et sous sa supervision, ou

   iii. de professionnel sous la surveillance d'un membre approuvé par le ou la secrétaire.

ANNEXE I

TRAVAIL POUR LE COMPTE D'UNE CLINIQUE OFFRANT DES SERVICES À CARACTÈRE JURIDIQUE

[ALINÉA 3 DU PARAGRAPHE 5 (1)]

1. L'alinéa 3 du paragraphe 5 (1) comprend l'occupation de l'un des postes suivants :

   1. Directeur, directrice.

ANNEXE II

TRAVAIL POUR LE COMPTE D'UN GOUVERNEMENT
OU D'UN ORGANISME GOUVERNEMENTAL

[ALINÉA 4 DU PARAGRAPHE 5 (1)]

1. L'alinéa 4 du paragraphe 5 (1) comprend l'occupation de l'un des postes suivants :

   1. Juge de paix.

   2. Membre d'un tribunal judiciaire ou quasi-judiciaire.

   3. Adjoint ou adjointe judiciaire d'un ou d'une juge.

   4. Analyste de politiques ou conseiller ou conseillère.

   5. Rédacteur ou rédactrice de textes législatifs.

   6. Juge d'une cour fédérale, provinciale ou d'une cour territoriale.

ANNEXE III

OCCUPATION D'UN POSTE D'ENSEIGNEMENT

[ALINÉA 6 DU PARAGRAPHE 5 (1)]

1. L'alinéa 6 du paragraphe 5 (1) comprend l'occupation de l'un des postes suivants :

   1. Doyen ou doyenne d'une faculté de droit de l'Ontario reconnue par le Conseil.

   2. Membre du corps professoral d'une faculté de droit de l'Ontario reconnue par le Conseil.

   3. Chargé de cours enseignant

      i. dans une faculté de droit en Ontario reconnue par le Conseil, ou

      ii. au Barreau du Haut-Canada.

   4. Rédactrice ou rédacteur juridique.

   5. Réviseure ou réviseur juridique.

   6. Bibliothécaire de droit.

   7. Recherchiste juridique.

ANNEXE IV

OCCUPATION D'UN POSTE SPÉCIFIQUE POUR LE COMPTE D'UNE ENTITÉ

[ALINÉA 8 DU PARAGRAPHE 5 (1)]

1. L'occupation d'un poste autre qu'avocat ou avocate pour l'un des organismes suivants est visé par l'alinéa 8 du paragraphe 5 (1) :

1. Régime d'aide juridique de l'Ontario / Aide juridique Ontario

2. Assurance de la responsabilité civile professionnelle des avocats.

3. Le Barreau du Haut-Canada.

4. Société d'aide à l'enfance.

BY-LAW 30
[COUNTY LAW LIBRARIES]

3. By-Law 30 is amended by adding the following French version:

RÈGLEMENT ADMINISTRATIF N^{O} 30

BIBLIOTHÈQUES DE DROIT DE COMTÉ

INTERPRÉTATION

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

« administrateurs » Les administrateurs de l'association lorsque celle-ci est constituée en personne morale. (« trustees »)

« association » Association d'avocats de district ou de comté constituée en application du Règlement 708 des Règlements refondus de l'Ontario de 1990 ou d'un règlement qu'il remplace. (« association »)

« bibliothèque de droit de comté » Bibliothèque créée par une association.(« county law library »)

« Société » La Société constituée en application de l'article 3. (« Corporation »)

Interprétation : « bibliothèque de droit de comté financée par la Société »
2. Dans le présent règlement administratif, « bibliothèque de droit de comté financée par la Société » s'entend d'une bibliothèque de droit de comté créée en application du Règlement 708 des Règlements refondus de l'Ontario de 1990 ou d'un règlement qu'il remplace et fonctionnant toujours le jour de l'entrée en vigueur du présent règlement administratif, ou d'une bibliothèque de droit de comté créée avec l'approbation du Conseil après le jour de l'entrée en vigueur du présent règlement administratif.

SOCIÉTÉ DES BIBLIOTHÈQUES

Création d'une personne morale

3. (1) Le Barreau crée une personne morale conformément au présent article aux fins suivantes :

a) mettre sur pied et administrer un système de prestation de services et de programmes de bibliothèque de droit par les bibliothèques de droit de comté financées par la Société;

b) établir des politiques et des priorités en matière de prestation de services et de programmes de bibliothèque de droit par les bibliothèques de droit de comté financées par la Société en fonction des ressources financières de la Société;

c) fournir aux associations le financement nécessaire au fonctionnement des bibliothèques de droit de comté financées par la Société;

d) suivre et superviser la prestation de services et de programmes de bibliothèques de droit par les bibliothèques de droit de comté financées par la Société, notamment élaborer les lignes directrices et les normes relatives à la mise sur pied et au fonctionnement de ces bibliothèques et à la prestation de leurs services et programmes de bibliothèque de droit;

e) conseiller le Conseil sur tous les aspects de la prestation de services et de programmes de bibliothèque de droit par les bibliothèques de droit de comté financées par la Société, y compris tout ce qui a ou risque d'avoir une incidence sur la demande et la qualité de ces services et de ces programmes.

Catégories d'actions

(2) La Société a les deux catégories d'actions suivantes :

1. Une catégorie d'actions qui doivent être émises en faveur du Barreau.

2. Une catégorie d'actions qui doivent être émises en faveur de l'Association des bâtonniers de district et de comté lui donnant le droit exclusif d'élire un administrateur.

Administrateurs

(3) La Société est composée de 15 administrateurs.

BIBLIOTHÈQUES DE DROIT DE COMTÉ

Demande de création d'une bibliothèque de droit de comté

4. (1) L'association qui souhaite créer une bibliothèque de droit de comté qu'elle fera fonctionner et qui sera financée par la Société présente une demande en ce sens à cette dernière.

Idem

(2) La demande visée au paragraphe (1) contient les renseignements qu'exige la Société.

Fonctionnement de la bibliothèque de droit de comté

5. (1) Les associations font fonctionner leur bibliothèque de droit de comté financée par la Société conformément aux lignes directrices, normes, politiques et priorités de la Société.

Prestation de services et de programmes de bibliothèque

(2) Les bibliothèques de droit de comté offrent des services et des programmes de bibliothèque conformément aux lignes directrices, normes, politiques et priorités de la Société.

Ouvrages de bibliothèque

6. (1) Les administrateurs de l'association continuent de détenir en fiducie pour le Barreau tous les ouvrages de sa bibliothèque de droit de comté qu'ils détenaient ainsi avant l'entrée en vigueur du présent règlement administratif.

Idem

(2) Sous réserve du paragraphe (3), les administrateurs de l'association détiennent les ouvrages de bibliothèque de sa bibliothèque de droit de comté en fiducie pour le Barreau.

Idem

(3) Les administrateurs de l'association détiennent les ouvrages de bibliothèque dont l'association fait l'acquisition après la création de la Société en fiducie pour celle-ci.

Retour des ouvrages de bibliothèque au Barreau

(4) En cas de dissolution ou de liquidation de l'association ou de l'aliénation de ses biens, ou si le Barreau lui ordonne de lui retourner les ouvrages de sa bibliothèque de droit de comté qu'elle détenait en fiducie pour lui, ses administrateurs retournent, à ses frais, tous ces ouvrages au Barreau, sous réserve des autres ordres qu'il lui donne.

Retour des ouvrages de bibliothèque à la Société

(5) En cas de dissolution ou de liquidation de l'association ou de l'aliénation de ses biens, ou si la Société lui ordonne de lui retourner les ouvrages de sa bibliothèque de droit de comté qu'elle détenait en fiducie pour elle, ses administrateurs retournent, à ses frais, tous ces ouvrages à la Société, sous réserve des autres ordres qu'elle lui donne.

Défaut de retourner les ouvrages de bibliothèque

(6) Si les administrateurs de l'association ne lui retournent pas les ouvrages de sa bibliothèque de droit de comté comme l'exige le paragraphe (4), dans un cas, ou le paragraphe (5), dans l'autre cas, le Barreau ou la Société, selon le cas, peut prendre les mesures jugées souhaitables pour obtenir les ouvrages qui devaient lui être retournés et l'association lui rembourse les frais engagés à cette fin.

Accès aux services et programmes de bibliothèque

7. Les bibliothèques de droit de comté financées par la Société donnent accès à leurs services et programmes de bibliothèque de droit aux personnes suivantes :

a) tous les membres du Barreau, qu'ils soient ou non également membres d'une association;

b) les juges des tribunaux de l'Ontario;

c) les juges de paix de l'Ontario;

d) les membres des conseils, commissions et autres tribunaux administratifs créés sous le régime des lois du Parlement ou de la Législature de l'Ontario.

FINANCEMENT

Financement fourni par le Barreau

8. Les sommes versées à la Société à ses fins sont prélevées sur les sommes affectées à cette fin par le Conseil.

Suspension, réduction du financement

9. (1) Le Conseil peut, à son entière discrétion, suspendre ou réduire le financement accordé à la Société à l'égard d'un exercice donné.

Avis

(2) Avant de faire ce que prévoit le paragraphe (1), le Conseil donne au conseil d'administration de la Société un préavis de son intention et une occasion raisonnable de se conformer aux dispositions pertinentes du présent règlement ou de fournir les renseignements exigés.

Budget

10. (1) La Société présente ses prévisions budgétaires annuelles pour l'exercice qui suit au Comité des finances et de la vérification à la date que précise le président de ce comité.

Idem

(2) Les prévisions budgétaires annuelles de la Société se présentent sous la forme que précise le président du Comité des finances et de la vérification.

États financiers

11. (1) Pour l'application de l'alinéa 12 (2) a), la Société dresse des états financiers annuels pour chaque exercice conformément aux principes comptables généralement reconnus.

Vérification

(2) Pour l'application de l'alinéa 12 (2) a), les états financiers de la Société sont vérifiés par un comptable public.

Rapport annuel

12. (1) La Société présente un rapport annuel au Conseil dans les quatre mois de la fin de son exercice.

Contenu

(2) Le rapport annuel contient ce qui suit :

a) les états financiers vérifiés de la Société;

b) un rapport sur les affaires de la Société;

c) les autres renseignements que demande le Conseil.

Autres rapports

13. Le Conseil peut exiger que la Société lui fasse rapport sur tout aspect de ses affaires qu'il exige ou qu'elle lui fournisse tous les renseignements sur ses activités, son fonctionnement ou ses affaires financières qu'il exige.

Carried

REPORT OF THE MULTI-DISCIPLINARY PRACTICE TASK FORCE - IMPLEMENTATION PHASE

The Treasurer welcomed Mr. David Ward and thanked him for his contribution to the work of the Multi-Disciplinary Practice Task Force.

Mr. Cherniak presented the Implementation Phase Report of the Task Force for approval by Convocation.

Report to Convocation
April 26, 2001*

Multi-Disciplinary Practice Task Force
Implementation Phase

Purpose of Report: Decision

Prepared by the
Multi-Disciplinary Practice Task Force

* For debate at May 24, 2001 Convocation

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 1

III. PARTICULARS OF THE REGULATORY SCHEME 4
A. BY-LAW AND RULES 4
B. PARTICULARS OF THE BY-LAW 6
Section 1 6
Section 2 6
Sections 3 through 5 7
C. PARTICULARS OF THE RULE AMENDMENTS 11
Rule Amendments Flowing From Specific Recommendations 11
Rule 1.02 - Definition of "affiliation" and "affiliated entity" 11
Rule 2.04 - Avoidance of Conflicts of Interest 11
Rule 2.08(9) - Division of Fees 14
Rule Amendments Required for Harmonization with the Regulatory Scheme 16
Rule 3.03 - Letterhead 17
Rule 3.04/3.05 - Advertising 17
Rule 5.01 - Supervision/Delegation 18

IV. ISSUES RESPECTING BY-LAW 25 18

V. SUMMARY 19

VI. DECISION FOR CONVOCATION 20

APPENDIX A - AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT* 31

APPENDIX B - BY-LAW 25 - MULTI-DISCIPLINE PRACTICES 53

I. INTRODUCTION

1. In November 2000, Convocation adopted the report of the Multi-Disciplinary Practice Task Force ("the Task Force"), which includes recommendations for a regulatory scheme for affiliated law firms.[1] Convocation directed that Task Force design the regulatory scheme to implement the policy decision.

2. This report includes the Task Force's proposals for the regulatory scheme, comprised of a new by-law and amendments to the *Rules of Professional Conduct* ("the Rules"). The new by-law appears in its entirety in the motion to make the by-law at page 21, and Rule amendments appear in their entirety at Appendix A.

3. This report is being distributed to individuals who and organizations that responded to the Task Force's report prior to November Convocation, with an invitation to comment on the regulatory scheme. The Task Force will prepare for May 2001 Convocation supplementary material, as may be required, incorporating any comments received.

4. The Task Force requests that at its May 2001 meeting, Convocation approve the scheme by adopting the by-law and amending the Rules.

II. BACKGROUND

5. The Task Force's justification for a specific regulatory scheme for affiliated law firms was expressed in the following way in its policy report:

> The regulatory issues that arise from the nature of the affiliation between a law firm and a firm of non-lawyers, in the Task Force's view, require a response from the Law Society in keeping with its mandate to govern the profession in the public interest.
>
> Permitting this form of legal practice by lawyers unassisted by specific instruction or guidance from the Society, in the Task Force's view, is not a reasonable or responsible approach to the issue. There is a potential risk to the independence of legal advice free of conflicting interests. The client should be informed about these facts so that the client can choose appropriate counsel. That, in the Task Force's view, warrants a regulatory response that seeks to preserve the fundamental nature of legal advice to clients.
>
> To that end, the affiliated law firm's structure and arrangements with the non-lawyer firm must be transparent to the Society as regulator and, to the extent necessary, to clients, to ensure that clients receive legal services in keeping with the profession's core values. The Task Force believes that the surest way to promote that transparency and ensure its integrity is for the Society to adopt provisions that sufficiently address the issues and monitor compliance with those provisions.

6. The Task Force's report contained a series of recommendations upon which the proposals for the regulatory scheme are based. The recommendations are:

   [That]

   a. the affiliated law firm be defined in the following terms:

---

[1]The Task Force's mandate was to "deal with the issue of a captive law firm model, to study, amongst other things, the questions of control, trading style, management, conflicts of interest and related matters as recommended" (Law Society of Upper Canada Transcript of Convocation, September 25, 1998, page 218).

A law firm has an affiliation with a non-lawyer firm where the firms regularly join together for the joint promotion and delivery of respective services to the public.

b. affiliated law firms must be owned and controlled by lawyers,

c. as a matter of assuring control, lawyers in affiliated law firms, as a condition of practice, should be required to disclose fully and completely to the Law Society
   i. all financial arrangements that exist between the affiliated law firm and its partners and the non-lawyer firm with which they are affiliated, and
   ii. all agreements and other arrangements that exist between the law firm and the non-lawyer firm with which it is affiliated including those dealing with the management and control of the affiliated law firm,

d. lawyers in affiliated law firms should be required to make disclosure to clients who retain the affiliated law firm and the non-lawyer firm for the joint provision of services or who are the subject of referral for services between the firms of any arrangements, including those described above in c., that may affect the independence of the lawyer's representation, to permit an informed decision by the client about the retainer,

e. to facilitate the above, an appropriate application process should be designed whereby information necessary for the Society's review of the arrangements described may be obtained,

f. the non-lawyer firm should not be permitted to share in the law firm's profits or revenues, either directly or indirectly through excessive inter-firm charges, for example, by charging, inter-firm, expenses that do not reflect their fair market value,

g. an affiliated law firm should be required to establish a system to search for conflicts in both the affiliated law firm and the non-lawyer firm and should be required to deal with conflicts as if both firms were one, applying to conflicts situations the obligations applicable to law firms,

h. the conflicts search regime should, when appropriate, extend to searches for conflicts in firms affiliated with the law firm that practice outside Canada in circumstances where separate national firms or offices of the non-lawyer firm are treated economically as if they were one firm,

i. the affiliated law firm should be required to carry on its practice entirely within its own separate premises and maintain its documents, records and files, including all electronic data, entirely separate and apart from the files, documents, records and electronic data of the affiliated firm,

j. lawyers in affiliated law firms should be required to obtain the informed written consent of the client in any matter where joint services are offered by the affiliated firms after the client has been advised of the possible prejudice or loss of solicitor and client privilege to the working together of both firms on the same matters in respect of which legal advice will be sought and obtained by the client, or where non-lawyer staff of the non-lawyer firm also provide services, including support services, in the affiliated law firm,

k. in circumstances in which lawyers move between the affiliated law firm and the non-lawyer firm in providing legal advice to clients on one hand and professional consulting services on the other, these lawyers should be required to disclose to clients, before being retained, their role in the firms, provide an explanation of when solicitor and client privilege may or may not attach, and give the client an opportunity to make an informed choice with respect to counsel,

l. an affiliated law firm should be required to observe and comply with the current rule of professional conduct on firm names in order to ensure that the public is not misled into believing that non-lawyers are practising or are entitled to practise law,

m. a comprehensive review should be undertaken of and, if required, appropriate amendments or additions should be made to the Society's *Rules of Professional Conduct* and relevant by-laws, to address the obligations and responsibilities outlined above as a matter of implementing the regulatory scheme proposed by the Task Force for the affiliated law firm.

III. PARTICULARS OF THE REGULATORY SCHEME

A. BY-LAW AND RULES

7. The Task Force considered the form the regulatory provisions should take and consulted the Society's legislation and research counsel, Elliot Spears, in this respect. After those discussions, the Task Force concluded the following:

a. A separate by-law, as opposed to amending By-Law 25 on Multi-Discipline Practices, should be drafted. By-Law 25 deals with non-lawyers' services with lawyers in a law practice, whereas the scheme for affiliated law firms governs the joint services and promotion of services of lawyers and other service providers. The Task Force felt that it was simpler to prepare a new by-law to deal with this type of arrangement.

b. The following should be included in a by-law:
- the definition of an affiliated law firm
- the fact of the ownership and control of the affiliated law firm by lawyers
- the requirement for disclosure of specific information to the Law Society
- the requirement for separate premises for the affiliated law firm
- the requirement to observe certain rules, etc. governing affiliated law firms
- the triggering of a self-reporting requirement upon becoming an affiliated law firm

c. The following matters should be dealt with in the Rules:
- conflicts of interest
- fee and profit sharing
- advertising

The Task Force felt that if an existing rule relates to the subject matter of a recommendation, it should be used, keeping the primary regulatory provisions in the by-law.

8. Based on the above, the proposed new by-law incorporates recommendations a., b., c., e., and i., and the amendments to the Rules cover recommendations d., f., g., h., j., k., l., and m. The Rule amendments also include definitions relevant to an affiliation.

9. In connection with the proposed Rule amendments, the Task Force sought the drafting expertise of Paul Perell, a lawyer with Weir Foulds in Toronto, who assisted the Task Force on the Review of the Rules of Professional Conduct ("Rules Task Force"). The Task Force also received advice on the rule amendments from Gavin MacKenzie, who co-chaired the Rules Task Force. The Task Force thanks Mr. Perell and Mr. MacKenzie for their insight and helpful direction.

B. PARTICULARS OF THE BY-LAW

Section 1

Interpretation: "affiliated entity"
1. (1) In this By-Law, "affiliated entity" means any person or group of persons other than a person or group authorized to practise law in or outside Ontario.

Interpretation: "affiliation"
(2) For the purposes of this By-Law, a member or group of members affiliates with an affiliated entity when the member or group on a regular basis joins with the affiliated entity in the delivery or promotion and delivery of the legal services of the member or group and the non-legal services of the affiliated entity.

10. Subsection 1(1) includes a definition of "affiliated entity", which is the non-lawyer component of the affiliation, that is designed to exclude lawyers practising law outside Ontario. Otherwise, interprovincial and international law firms that include Ontario lawyers would unintentionally be caught by the by-law. Subsection1(2) incorporates the definition of "affiliated law firm" in recommendation a. of the policy report.

Section 2

Ownership of practice, *etc.*
2. A member who or a group of members that affiliates with an affiliated entity shall alone or together with other persons authorized to practise law in or outside Ontario

(a) own the practice through which the member or group delivers legal services to the public or comply with By-Law 25;

(b) maintain control over the practice through which the member or group delivers legal services to the public; and

(c) carry on the practice through which the member or group delivers legal services to the public, other than those that are delivered jointly with the non-legal services of the affiliated entity, from premises that are not used by the affiliated entity for the delivery of its non-legal services, other than those that are delivered by the affiliated entity jointly with the legal services of the member or group.

11. Paragraph 2(a) requires compliance with By-Law 25, as applicable. This is necessary as the affiliated law firm may be a partnership of lawyers and non-lawyers under By-Law 25 where ownership is shared among them. That by-law includes requirements for effective control by the lawyer of the non-lawyer's services in the firm and for supervision of non-lawyers.

12. Paragraph 2(c) permits the lawyer and non-lawyer to provide their joint services at the premises of the affiliated entity or the law firm to facilitate work on client matters. However, the practice of law of the affiliated law firm must be carried out at an office separate from that of the affiliated entity.

Sections 3 through 5

Report to Society

3. (1) A member who or a group of members that agrees to affiliate or affiliates with an affiliated entity shall immediately notify the Society of the affiliation.

Contents of notice

(2) Notice under subsection (1) shall be in Form 00A and shall include the following information:

1. The financial arrangements that exist between the member or group of members and the affiliated entity.

2. The arrangements that exist between the member or group of members and the affiliated entity with respect to,

i. the ownership, control and management of the practice through which the member or group delivers legal services to the public,

ii. the member's or group's compliance with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity, and

iii. the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity.

Agreements

(3) At the time that a member or group of members gives notice under subsection (1), the member or group shall file with the Society a copy of so much of any agreement between the member or group and the affiliated entity, or of any other document, that addresses the matters mentioned in subsection (2) as may be required by the Society.

Filing requirements

4. (1) A member who or a group of members that affiliates with an affiliated entity shall submit to the Society for every full or part year that the affiliation continues a report in respect of the affiliation.

Form 00B

(2) The report required under subsection (1) shall be in Form 00B.

Due date

(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 or group of members is submitting a report.

Joint and several responsibility

(4) Every member in a group of members is responsible jointly with the other members of the group and severally for submitting the report required under subsection (1).

Period of default

(5) 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 4 (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

(6) 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 4 (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 00B in force at the time the member is filing the report.

Change of Information

5. (1) A member who or a group of members that affiliates with an affiliated entity shall notify the Society in writing immediately after,

(a) any change in the information provided by the member or group under section 3 or section 4; and

(b) any change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2).

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2), shall include copies of the parts of the agreement or document that have changed.

13. In the Task Force's view, the best way to facilitate the Society's review and monitoring of affiliated law firms' regulatory compliance is through prescribed forms pursuant to the by-law that will capture

- information identifying the law firm and the affiliated entity (e.g., name, location, contact information)
- information on the types of services provided by the lawyers and the non-lawyers in the affiliation
- information about the financial arrangements between the law practice and the affiliated entity
- information on the arrangements in place to assure lawyers' ownership and control of the law practice, and compliance with obligations relating to conflicts and confidentiality

Through the forms, the Society will receive in a standardized format information required to assess lawyers' compliance with their obligations under the by-law.

14. Forms A and B under the by-law are the notice of affiliation and annual report respectively. The particular information required to be filed pursuant to the by-law is described in each form.

15. Form A is filed when a lawyer and an affiliated entity affiliate under the by-law. While the written notice must be filed with the Society, unlike the scheme in By-Law 25, the Society does not grant approval for the affiliation based on the notice. The Task Force did not believe that a licensing scheme was necessary for this type of relationship.

16. Form B requests much of the information a lawyer provides through Form A, but Form B need not be filed if no changes have occurred in the information previously provided in Form A. The filing deadline for the annual report is that applicable to other forms prescribed in the Society's by-laws.

17. To ensure that the Society has the most current information about an affiliation, Section 5 of the by-law requires that the lawyer provide to the Society information about any changes to the relationship between the lawyer and the affiliated entity as described in sections 3 and 4 as those changes occur. This information would include changes to any of the agreements relevant to the affiliation described in subsection 3(2). Although written notice is required under section 5, the Task Force decided that a prescribed form was not required for this purpose.

18. As with other information the Society requires its members to provide for a specific purpose, the information gathered through Forms A and B is confidential to the Society.

C. PARTICULARS OF THE RULE AMENDMENTS

Rule Amendments Flowing From Specific Recommendations

Rule 1.02 - Definition of "affiliation" and "affiliated entity"

19. As noted above, the by-law includes a definition of "affiliated entity" and a section interpreting "affiliation". It is proposed that similar definitions appear in the rules for clarity's sake. The following amendment is proposed:

> "affiliated entity" means any person or group of persons other than a person or group authorized to practise law in or outside Ontario
>
> "affiliation" means the joining on a regular basis of a lawyer or group of lawyers with an affiliated entity in the delivery or promotion and delivery of the legal services of the lawyer or group of lawyers and the non-legal services of the affiliated entity

Rule 2.04 - Avoidance of Conflicts of Interest

20. The rule on conflicts of interest requires amendment to address

- disclosure to the client about affiliated law firm services and how the joint delivery of services by the affiliated firms may affect solicitor and client privilege and confidentiality of client information
- the requirement for conflicts searches in the affiliated law firm and the non-law firm
- the "cross-over" lawyer situation[2]

21. With respect to the last item above, the Task Force acknowledges that a lawyer's independence is intimately connected with the realm of conflicts of interest. The Task Force confirms its view that the independence of the lawyer's legal advice may be affected as a result of his or her dual status as a partner or associate in an affiliated law firm and as a partner in a non-law firm in the affiliation. The Rules should include a requirement for disclosure to law firm clients on how the "outside interest" of the lawyer as partner in the non-law firm bears on the legal retainer. These issues were addressed in paragraphs 72 and 73 of the policy report in the following way:

> The *Rules of Professional Conduct* include a provision in rule 6.04 on Outside Interests and the Practice of Law. The rule requires lawyers to maintain independent judgment related to legal services notwithstanding involvement in other ventures or businesses. This rule only permits a financial or economic interest if it does not impair the lawyer's independence. The Task Force considered the law relating to fiduciary duties in this context which would require disclosure to the client of such influences. Rule 6.04 currently does not require disclosure to the client.
>
> The Task Force felt that such relationships should be disclosed at the time of retaining the affiliated law firm to clients whose work crosses over both firms, and that rule 6.04 should be amended accordingly. The disclosure document itself should disclose fully to clients the law firm's relationship with the non-lawyer firm, the "connections" between the two firms, the fact of the separation for regulatory purposes, and any other participation of the lawyers in the non-lawyer firm, as partners and as service providers, as the case may be.

22. After considering options with respect to rule amendments, the Task Force concluded that including the disclosure requirement in the rule on conflicts of interest, rather than amending rule 6.04, was the appropriate way to deal with the issue.

---

[2]This was described in the Task Force's policy report as follows:

> Another issue bearing on the question of privilege arises when lawyers move between the law firm and the non-lawyer firm, for example, a professional services entity, in providing legal advice to clients on one hand and professional consulting services on the other, for instance, in the tax area. ...Prohibiting this activity would require that clear lines be drawn between the practice of law by the law firm and the practice of the non-lawyer firm. ...The other way of resolving the issue is through disclosure, requiring the client to receive a caution about the activity. ...The Task Force was of the view that prohibiting the movement of lawyers between the affiliated law firm and the non-law firm was not practicable, and notwithstanding the risks described above, would be an unnecessarily strict regulatory requirement. The Task Force believes that the disclosure...should serve to provide clients with the information they need to decide the manner in which they wish to receive advice from lawyers who move between the firms.

23. Recommendations d., g., h., j. and k. from the Task Force's report are the basis for the following additions to rule 2.04:

Affiliations Between Lawyers and Affiliated Entities

2.04 (10.1) Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a lawyer shall disclose to the client

(a) any possible loss of solicitor and client privilege because of the involvement of the affiliated entity, including circumstances where a non-lawyer or non-lawyer staff of the affiliated entity provide services, including support services, in the lawyer's office,

(b) the lawyer's role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,

(c) any financial, economic or other arrangements between the lawyer and the affiliated entity that may affect the independence of the lawyer's representation of the client, including whether the lawyer shares in the revenues, profits or cash flows of the affiliated entity; and

(d) agreements between the lawyer and the affiliated entity, such as agreements with respect to referral of clients between the lawyer and the affiliated entity, that may affect the independence of the lawyer's representation of the client.

(10.2) Where there is an affiliation, after making the disclosure as required by subrule (10.1), a lawyer shall obtain the client's consent before accepting a retainer under subrule (10.1).

(10.3) Where there is an affiliation, a lawyer shall establish a system to search for conflicts of interest of the affiliation.

Commentary

Lawyers practicing in an affiliation are required to control the practice through which they deliver legal services to the public. They are also required to address conflicts of interest as if the lawyer's practice and the practice of the affiliated entity were one. The affiliation is subject to the same conflict of interest rules as apply to lawyers and law firms. This obligation may extend to inquiries of offices of affiliated entities outside of Ontario where those offices are treated economically as part of a single affiliated entity.

In reference to clause (a) of subrule (10.1), see also subrule 5.01(6) on supervision and delegation.

24. The Task Force acknowledges that the definition of affiliation captures more than law firms and non-law firms who by design operate under comprehensive arrangements for the joint delivery of legal and non-legal services. Convocation, however, agreed that the definition proposed by the Task Force was appropriate. While the conflicts search requirement may appear to be an onerous obligation for the less "formal" affiliations that fall within the definition, the Task Force determined that the focus should be on the underlying professional conduct issues and that the regulatory scheme must apply to all types of affiliations as defined to be consistent with the principles in the policy report.

25. The requirement in subsection (10.3) above essentially permits affiliated law firms to design their own systems for searching conflicts and to make the required disclosure to clients. In this way, the Society avoids prescribing the details of compliance and give firms flexibility in designing a facility that will meet the requirement for their particular structure.

Rule 2.08(9) - Division of Fees

26. The Task Force proposes that new commentary be added at the end of rule 2.08, which contains the general prohibition on fee and profit sharing between lawyers and non-lawyers, to address issues arising from financial arrangements between the affiliated firms. Recommendation f. is the basis for the amendment.

27. When the Task Force reviewed rule 2.08(9), it noticed that on a plain reading of the rule, profit sharing between lawyers in an interprovincial law firm or in an international law partnership would be prohibited. The rule reads:

(9) A lawyer shall not
- (a) directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer, or
- (b) give any financial or other reward to any person who is not a lawyer for the referral of clients or client matters.

The phrase "person who is not a lawyer" would include lawyers who are members of other Canadian law societies or authorized to practice law outside Canada. The Task Force doubts that this prohibition was intended, and it appears to be observed in the breach in both circumstances.

28. The issue of international partnerships of Ontario and non-Ontario (non-Canadian) lawyers has been examined by the Federation of Law Societies, but a protocol or suggested practice in respect of profit sharing or other issues has yet to be formulated.

29. The Task Force decided to refer this matter to the Professional Regulation Committee for consideration and understands that it will be bringing the matter to Convocation for the policy discussion on Ontario lawyers sharing profits with non-Canadian lawyers.[3]

30. In the event that Convocation agrees with the suggested amendments to rule 2.08(10), the new commentary discussed above would follow this subrule, and would read as follows:

> Commentary
> An affiliation is different from a multi-discipline practice established in accordance with the by-laws under the *Law Society Act*, an interprovincial law partnership or a partnership between Ontario lawyers and foreign lawyers. An affiliation is subject to subrule 2.08(9). In particular, an affiliated entity is not permitted to share in the lawyer's revenues, cash flows or profits, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses above their fair market value.

31. In the event that Convocation does not wish to amend rule 2.08(10) as proposed, the Task Force proposes that new commentary dealing with the affiliated law firm issue as it relates to rule 2.08(9) be added after that rule, as follows:

> Commentary
>
> Subrule (9) applies in circumstances where a lawyer is affiliated with an affiliated entity. In such circumstances, the affiliated entity is not permitted to share in the lawyer's revenues, profits or cash flows, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses that do not reflect their fair market value.

---

[3]If Convocation agrees that the exception should be included in the rule, the Task Force suggests the following amendments to rule 2.08(9):

> Exception for Multi-discipline Practices and Interprovincial and International Law Firms
> (10) Subrule (9) does not apply to
> (a) multi-discipline practices of lawyer and non-lawyer partners where the partnership agreement provides for the sharing of fees, cash flows or ~~and~~ profits among members of the firm, and
> (b) sharing of fees, cash flows or profits by lawyers who are
> (i) members of an interprovincial law firm, or
> (ii) members of a law partnership of Ontario and non-Canadian lawyers
> who otherwise comply with this rule.

Rule Amendments Required for Harmonization with the Regulatory Scheme

32. A review of the Rules, pursuant to recommendation m. of the policy report[4], was completed by the Task Force to ensure that the Rules adequately address affiliated law firm structure issues. As a result, the Task Force is proposing that the following amendments be made to the Rules.

Rule 3.03 - Letterhead

33. This rule should be amended by adding paragraph (l) below to permit law firms to include on letterhead notice of an affiliation with a non-law firm:

> 3.03 (1) Subject to subrules (2) and (3) and rule 3.05, a lawyer's letterhead and the signs identifying the office may only include
> ...
> (l) reference to an affiliation.

Rule 3.04/3.05 - Advertising

34. Amendments should be made to the rule prohibiting lawyers' names from appearing on advertising material offering services other than legal services to permit affiliated firms' joint marketing activities. The proposal is to amend rule 3.04(3)(a) and add new commentary following that rule, as follows:

> Restrictions on Advertising
>
> 3.04 (3) A lawyer shall not
> (a) permit the lawyer's name to appear as solicitor, counsel, or Queen's Counsel on any advertising material offering goods, other than securities or legal publications, or services, other than legal services, to the public, except advertising material offering the services of a lawyer and an affiliated entity in an affiliation,
>
> Commentary (New)
>
> Where a lawyer is in an affiliation, he or she should ensure that any advertisements do not mislead the public about who is providing the legal services.

Rule 5.01 - Supervision/Delegation

35. On the assumption that the professional services of the affiliated firms may be integrated to a degree, the Task Force determined that a new rule should address the lawyer's role in delegating work to non-lawyers in the non-law firm in connection with provision of legal services. The Task Force proposes that the following new subrule appear at the end of rule 5.01:

---

[4]Recommendation m. reads:

> m. a comprehensive review should be undertaken of and, if required, appropriate amendments or additions should be made to the Society's *Rules of Professional Conduct* and relevant by-laws, to address the obligations and responsibilities outlined above as a matter of implementing the regulatory scheme proposed by the Task Force for the affiliated law firm.

Affiliations Between Lawyers and Affiliated Entities

(6) A lawyer in an affiliation shall not delegate to the affiliated entity or the affiliated entity's staff any tasks in connection with the provision of legal services without obtaining the client's informed consent.

IV. ISSUES RESPECTING BY-LAW 25

36. In considering the regulatory scheme for affiliated law firms, the Task Force reviewed By-Law 25 on Multi-Discipline Practices. As a result of that review, the Task Force is proposing amendments to By-Law 25 to effect the following:

- Non-Ontario Canadian lawyers are to be excluded from the operation of certain provisions in the by-law that deal with the lawyer's responsibilities for the conduct and activities of non-lawyers. This is necessary as the term "individual" in the by-law describing the non-lawyer may be interpreted to include non-Ontario Canadian lawyers in interprovincial partnerships. There was no intention to require Ontario lawyers in those partnerships to meet these obligations.
- The authority for the Society to suspend and reinstate members' rights and privileges for default in filings should be added to the by-law, in a fashion similar to that found in the new by-law on affiliations with non-lawyers

37. A separate motion, appearing in the next section of the report includes the amendments that the Task Force is requesting Convocation make to By-Law 25. Current By-Law 25 appears at Appendix B.

V. SUMMARY

38. In preparing the regulatory scheme for affiliated law firms, the Task Force was mindful of Convocation's policy direction in this respect, based on the Task Force's policy report which states:

> The Task Force urges Convocation to consider this a first but important step in the regulation of the affiliated law firm. Experience with the structure may in time require reconsideration of the position adopted by the Society for regulation of such firms. For the time being, however, the nature of the affiliation, in the Task Force's view, warrants a careful and considered approach to regulation, in keeping with the obligation of the Society to place the public interest first.

39. The Task Force believes that the proposed scheme achieves an appropriate balance between protecting the values of the profession as a matter of public interest and avoiding onerous or overly intrusive regulatory requirements that would make affiliations impractical or unattractive for lawyers. While the Task Force acknowledges that a range of affiliations will be subject to the by-law and Rules, the intricacies of compliance with the scheme will vary from firm to firm, depending on the nature of the affiliation and the degree of integration between the law firm and the non-law firm. As noted above, experience with the scheme will be instructive for the Society.

40. The Society's administrative infrastructure includes processes for review and approval of multi-discipline partnership (MDP) applications under By-Law 25, and it is expected that the handling of affiliated law firm filings will be added to those processes. As with MDPs, it is not expected that a large number of notices of affiliation will be filed with the Society initially.

41. Information about the regulatory scheme for affiliated law firms will be available on the Society's website and through the *Ontario Lawyers Gazette*. Advisory Services will also be a point of access for such information.

42. The Task Force requests Convocation's approval of this scheme.

VI. DECISION FOR CONVOCATION

43. Convocation is asked to
   a. make By-Law 00[5] entitled "Affiliations with Non-Members" as proposed or amended as Convocation deems appropriate
   b. make the amendments to the *Rules of Professional Conduct* as proposed or amended as Convocation deems appropriate
   c. make the amendments to By-Law 25 as proposed or amended as Convocation deems appropriate

Motions to make the new by-law and to amend By-Law 25 appear below. The making of the Rule amendments should reference the amendments found in Appendix A of this report.

THE LAW SOCIETY OF UPPER CANADA

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

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 24, 2001

MOVED BY

SECONDED BY

THAT, pursuant to the authority contained in paragraphs 3, 9, 44 and 48 of subsection 62 (0.1) of the *Law Society Act*, By-Law 00 [Affiliations with Non-Members] be made as follows:

BY-LAW 00

AFFILIATIONS WITH NON-MEMBERS

Interpretation: "affiliated entity"
1. (1) 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.

Interpretation: "affiliation"
(2) For the purposes of this By-Law, a member or group of members affiliates with an affiliated entity when the member or group on a regular basis joins with the affiliated entity in the delivery or promotion and delivery of the legal services of the member or group and the non-legal services of the affiliated entity.

Ownership of practice, *etc.*
2. A member who or a group of members that affiliates with an affiliated entity shall alone or together with other persons authorized to practise law in or outside Ontario,

[5] A by-law number will be assigned to the by-law prior to Convocation making the by-law.

(a) own the practice through which the member or group delivers legal services to the public or comply with By-Law 25;

(b) maintain control over the practice through which the member or group delivers legal services to the public; and

(c) carry on the practice through which the member or group delivers legal services to the public, other than those that are delivered jointly with the non-legal services of the affiliated entity, from premises that are not used by the affiliated entity for the delivery of its non-legal services, other than those that are delivered by the affiliated entity jointly with the legal services of the member or group.

Report to Society

3. (1) A member who or a group of members that agrees to affiliate or affiliates with an affiliated entity shall immediately notify the Society of the affiliation.

Contents of notice

(2) Notice under subsection (1) shall be in Form 00A and shall include the following information:

1. The financial arrangements that exist between the member or group of members and the affiliated entity.

2. The arrangements that exist between the member or group of members and the affiliated entity with respect to,

i. the ownership, control and management of the practice through which the member or group delivers legal services to the public,

ii. the member's or group's compliance with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity, and

iii. the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity.

Agreements

(3) At the time that a member or group of members gives notice under subsection (1), the member or group shall file with the Society a copy of so much of any agreement between the member or group and the affiliated entity, or of any other document, that addresses the matters mentioned in subsection (2) as may be required by the Society.

Filing requirements

4. (1) A member who or a group of members that affiliates with an affiliated entity shall submit to the Society for every full or part year that the affiliation continues a report in respect of the affiliation.

Form 00B

(2) The report required under subsection (1) shall be in Form 00B.

Due date

(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 or group of members is submitting a report.

Joint and several responsibility

(4) Every member in a group of members is responsible jointly with the other members of the group and severally for submitting the report required under subsection (1).

Period of default

(5) 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 4 (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

(6) 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 4 (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 00B in force at the time the member is filing the report.

Change of Information

5. (1) A member who or a group of members that affiliates with an affiliated entity shall notify the Society in writing immediately after,

(a) any change in the information provided by the member or group under section 3 or section 4; and

(b) any change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2).

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2), shall include copies of the parts of the agreement or document that have changed.

Form 00A

Notice of Affiliation

NOTICE OF AFFILIATION

1. INFORMATION ON MEMBER OR GROUP:

Name: *(In the case of a group, specify the name of the group (e.g., firm name, name of corporation) and the names of all members of the group.)*

Address: *(Specify the address at which the member or group practises law. If the member or group practises law at more than one place, specify the address of each place.)*

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

Fax number: *(If the member or group practises law at more than one place, specify the fax number of each place.)*

Contact information: *(In the case of a group, specify the name, address, telephone number and fax number of the member of the group with whom the Society should be speaking and corresponding in respect of the notice.)*

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

2. INFORMATION ON AFFILIATED ENTITY

Name: *(If the affiliated entity is not an individual, specify the name of the affiliated entity (e.g., firm name, name of corporation) and the names of all the individuals who provide non-legal services through the affiliated entity.)*

Information on delivery of services by affiliated entity:

Types of services delivered by affiliated entity:

Places of delivery of services: *(Specify the places where the affiliated entity delivers its non-legal services. Include the address, telephone number and fax number of each place.)*

3. INFORMATION ON AFFILIATION

Types of legal services that the member or group will be delivering jointly with the non-legal services of the affiliated entity:

Types of non-legal services that the affiliated entity will be delivering jointly with the legal services of the member or group:

Places of delivery of legal services: *(Specify the places where the legal services of the member or group will be delivered jointly with the non-legal services of the affiliated entity. Include the address, telephone number and fax number of each place.)*

Information on financial arrangements between the member or group and the affiliated entity: *(Provide a detailed description of the financial arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the ownership, control and management of the practice through which the member or group delivers legal services to the public: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rule, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

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

Date: *(Signature of member or of each member of group)*

Form 00B

Annual Report on Affiliation

ANNUAL REPORT ON AFFILIATION

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

This is the annual report of: *(Name of member of group of members)*

There has been no change in the information provided by the member *(or* the group*)* in the Notice of Affiliation dated *(specify date of Notice) (or* in the Notice of Affiliation dated *(specify date of Notice)* as amended by the notice*(s)* of change of information dated *(specify date(s) of notice(s))* filed under section 5 of By-Law 00*) (or* in the last Annual Report on Affiliation submitted to the Society*) (or* in the last Annual Report on Affiliation submitted to the Society as amended by the notice*(s)* of change of information dated *(specify date(s) of notice(s))* filed under section 5 of By-Law 00*)*

(OR, if there has been a change in information, complete all the following sections:

1. INFORMATION ON MEMBER OR GROUP:

Name: *(In the case of a group, specify the name of the group (e.g., firm name, name of corporation) and the names of all members of the group.)*

Address: *(Specify the address at which the member or group practises law. If the member or group practises law at more than one place, specify the address of each place.)*

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

Fax number: *(If the member or group practises law at more than one place, specify the fax number of each place.)*

Contact information: *(In the case of a group, specify the name, address, telephone number and fax number of the member of the group with whom the Society should be speaking and corresponding in respect of the notice.)*

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

2. INFORMATION ON AFFILIATED ENTITY

Name: *(If the affiliated entity is not an individual, specify the name of the affiliated entity (e.g., firm name, name of corporation) and the names of all the individuals who provide non-legal services through the affiliated entity.)*

Information on delivery of services by affiliated entity:

Types of services delivered by affiliated entity:

Places of delivery of services: *(Specify the places where the affiliated entity delivers its non-legal services. Include the address, telephone number and fax number of each place.)*

3. INFORMATION ON AFFILIATION

Types of legal services that the member or group will be delivering jointly with the non-legal services of the affiliated entity:

Types of non-legal services that the affiliated entity will be delivering jointly with the legal services of the member or group:

Places of delivery of legal services: *(Specify the places where the legal services of the member or group will be delivered jointly with the non-legal services of the affiliated entity. Include the address, telephone number and fax number of each place.)*

Information on financial arrangements between the member or group and the affiliated entity: *(Provide a detailed description of the financial arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the ownership, control and management of the practice through which the member or group delivers legal services to the public: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rule, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.))*

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

Date: *(Signature of member or of each member of group)*

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 25
[MULTI-DISCIPLINE PRACTICES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 24, 2001

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 and December 10, 1999 be further amended as follows:

1. Section 1 of By-Law 25 [Multi-Discipline Practices] is amended by adding the following:

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.

2. Section 14 of the By-Law is amended by adding the following:

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.

APPENDIX A

AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT*

1.02 DEFINITIONS

1.02 In these rules, unless the context requires otherwise,

"affiliated entity" means any person or group of persons other than a person or group authorized to practise law in or outside Ontario;

"affiliation" means the joining on a regular basis of a lawyer or group of lawyers with an affiliated entity in the delivery or promotion and delivery of the legal services of the lawyer or group of lawyers and the non-legal services of the affiliated entity;

2.04 AVOIDANCE OF CONFLICTS OF INTEREST

Definition

2.04 (1) In this rule

a "conflict of interest" or a "conflicting interest" means an interest

(a) that would be likely to affect adversely a lawyer's judgment on behalf of, or loyalty to, a client or prospective client, or

(b) that a lawyer might be prompted to prefer to the interests of a client or prospective client.

Commentary

Conflicting interests include, but are not limited to, the financial interest of a lawyer or an associate of a lawyer, and the duties and loyalties of a lawyer to any other client, including the obligation to communicate information. For example, there would be a conflict of interest if a lawyer, or a family member, or a law partner had a personal financial interest in the client's affairs or in the matter in which the lawyer is requested to act for the client, such as a partnership interest in some joint business venture with the client.

Avoidance of Conflicts of Interest

(2) A lawyer shall not advise or represent more than one side of a dispute.

(3) A lawyer shall not act or continue to act in a matter when there is or is likely to be a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

Commentary

A client or the client's affairs may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflict of interest.

A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.

As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf should not be subject to other interests, duties, or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs. In some instances, each client's case may gather strength from joint representation. In the result, the client's interests may sometimes be better served by not engaging another lawyer, for example, when the client and another party to a commercial transaction are continuing clients of the same law firm but are regularly represented by different lawyers in that firm.

While this subrule does not require that a lawyer advise the client to obtain independent legal advice about the conflicting interest, in some cases, especially those in which the client is not sophisticated or is vulnerable, the lawyer should recommend such advice to ensure that the client's consent is informed, genuine, and uncoerced.

Acting Against Client

(4) A lawyer who has acted for a client in a matter shall not thereafter act against the client or against persons who were involved in or associated with the client in that matter

(a) in the same matter,

(b) in any related matter, or

(c) save as provided by subrule (5), in any new matter, if the lawyer has obtained from the other retainer relevant confidential information

unless the client and those involved in or associated with the client consent.

Commentary

It is not improper for the lawyer to act against a client in a fresh and independent matter wholly unrelated to any work the lawyer has previously done for that person and where previously obtained confidential information is irrelevant to that matter.

(5) Where a lawyer has acted for a former client and obtained confidential information relevant to a new matter, the lawyer's partner or associate may act in the new matter against the former client if

(a) the former client consents to the lawyer's partner or associate acting, or

(b) the law firm establishes that it is in the interests of justice that it act in the new matter, having regard to all relevant circumstances, including

(i) the adequacy and timing of the measures taken to ensure that no disclosure of the former client's confidential information to the partner or associate having carriage of the new matter will occur,

(ii) the extent of prejudice to any party,

(iii) the good faith of the parties,

(iv) the availability of suitable alternative counsel, and

(v) issues affecting the public interest.

Commentary

The term "client" is defined in rule 1.02 to include a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work. Therefore, if a member of a law firm has obtained from a former client confidential information that is relevant to a new matter, no member of the law firm may act against the former client in the new matter unless the requirements of subrule (5) have been satisfied. In its effect, subrule (5) extends with necessary modifications the rules and guidelines about conflicts arising from a lawyer transfer between law firms (rule 2.05) to the situation of a law firm acting against a former client.

Joint Retainer

(6) Before a lawyer accepts employment from more than one client in a matter or transaction, the lawyer shall advise the clients that

(a) the lawyer has been asked to act for both or all of them,

(b) no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned, and

(c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

Commentary

Although this subrule does not require that, before accepting a joint retainer, a lawyer advise the client to obtain independent legal advice about the joint retainer, in some cases, especially those in which one of the clients is less sophisticated or more vulnerable than the other, the lawyer should recommend such advice to ensure that the client's consent to the joint retainer is informed, genuine, and uncoerced.

(7) Where a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts joint employment for that client and another client in a matter or transaction, the lawyer shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

Commentary

Although all the parties concerned may consent, a lawyer should avoid acting for more than one client when it is likely that an issue contentious between them will arise or their interests, rights, or obligations will diverge as the matter progresses.

(8) Where a lawyer has advised the clients as provided under subrules (6) and (7) and the parties are content that the lawyer act, the lawyer shall obtain their consent.

(9) Save as provided by subrule (10), where clients have consented to a joint retainer and an issue contentious between them or some of them arises, the lawyer shall

(a) not advise them on the contentious issue, and

(b) refer the clients to other lawyers, unless

(i) no legal advice is required, and
(ii) the clients are sophisticated,

in which case, the clients may settle the contentious issue by direct negotiation in which the lawyer does not participate.

Commentary

The rule does not prevent a lawyer from arbitrating or settling or attempting to arbitrate or settle, a dispute between two or more clients or former clients who are not under any legal disability and who wish to submit the dispute to the lawyer.

Where, after the clients have consented to a joint retainer, an issue contentious between them or some of them arises, the lawyer is not necessarily precluded from advising them on non-contentious matters.

(10) Where clients consent to a joint retainer and also agree that if a contentious issue arises the lawyer may continue to advise one of them and a contentious issue does arise, the lawyer may advise the one client about the contentious matter and shall refer the other or others to another lawyer.

Affiliations Between Lawyers and Affiliated Entities

(10.1) Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a lawyer shall disclose to the client

(a) any possible loss of solicitor and client privilege because of the involvement of the affiliated entity, including circumstances where a non-lawyer or non-lawyer staff of the affiliated entity provide services, including support services, in the lawyer's office,

(b) the lawyer's role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,

(c) any financial, economic or other arrangements between the lawyer and the affiliated entity that may affect the independence of the lawyer's representation of the client, including whether the lawyer shares in the revenues, profits or cash flows of the affiliated entity; and

(d) agreements between the lawyer and the affiliated entity, such as agreements with respect to referral of clients between the lawyer and the affiliated entity, that may affect the independence of the lawyer's representation of the client.

(10.2) Where there is an affiliation, after making the disclosure as required by subrule (10.1), a lawyer shall obtain the client's consent before accepting a retainer under subrule (10.1).

(10.3) Where there is an affiliation, a lawyer shall establish a system to search for conflicts of interest of the affiliation.

Commentary

Lawyers practicing in an affiliation are required to control the practice through which they deliver legal services to the public. They are also required to address conflicts of interest as if the lawyer's practice and the practice of the affiliated entity were one. The affiliation is subject to the same conflict of interest rules as apply to lawyers and law firms. This obligation may extend to inquiries of offices of affiliated entities outside of Ontario where those offices are treated economically as part of a single affiliated entity.

In reference to clause (a) of subrule (10.1), see also subrule 5.01(6) on supervision and delegation.

Prohibition Against Acting for Borrower and Lender

(11) Subject to subrule (12), a lawyer or two or more lawyers practising in partnership or association shall not act for or otherwise represent both lender and borrower in a mortgage or loan transaction.

(12) Provided that there is no violation of this rule, a lawyer may act for or otherwise represent both lender and borrower in a mortgage or loan transaction if

(a) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction,

(b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price,

(c) the lender is an institution that lends money in the ordinary course of its business,

(d) the consideration for the mortgage or loan does not exceed $50,000, or

(e) the lender and borrower are not at "arm's length" as defined in the *Income Tax Act (Canada).*

Multi-discipline Practice

(13) A lawyer in a multi-discipline practice shall ensure that non-lawyer partners and associates observe this rule for the legal practice and for any other business or professional undertaking carried on by them outside the legal practice.

Unrepresented Persons

(14) When a lawyer is dealing on a client's behalf with an unrepresented person, the lawyer shall

(a) urge the unrepresented person to obtain independent legal representation,

(b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the lawyer, and

(c) make clear to the unrepresented person that the lawyer is acting exclusively in the interests of the client and accordingly his or her comments may be partisan.

Commentary

If an unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in this rule about joint retainers.

2.08 FEES AND DISBURSEMENTS

Reasonable Fees and Disbursements

2.08 (1) 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.

(2) A lawyer shall not charge a client interest on an overdue account save as permitted by the *Solicitors Act* or as otherwise permitted by law.

Commentary

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 the loss of other retainers, postponement of payment, uncertainty of reward, or urgency.

The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

Breach of this rule and misunderstandings about fees and financial matters bring the legal profession into disrepute and reflect adversely upon the general administration of justice. A lawyer should try to avoid controversy with a client about fees and should be ready to explain the basis for the charges (especially if the client is unsophisticated or uninformed about how a fair and reasonable fee is determined). A lawyer should inform a client about his or her rights to have an account assessed under the *Solicitors Act.*

Where possible to do so, a lawyer should give the client a fair estimate of fees and disbursements, pointing out any uncertainties involved, so that the client may be able to make an informed decision. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should forestall misunderstandings or disputes by giving the client an immediate explanation.

It is in keeping with the best traditions of the legal profession to provide services *pro bono* and to reduce or waive a fee where there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. A lawyer should provide public interest legal services and should support organizations that provide services to persons of limited means.

Contingent Fees

(3) A lawyer shall not, except as expressly permitted by law, acquire by purchase or otherwise, any interest in the subject-matter of litigation being conducted by the lawyer.

(4) A lawyer shall not enter into an arrangement with the client for a contingent fee except in accordance with the provisions of the *Solicitors Act* or in accordance with the *Class Proceedings Act, 1992*.

Statement of Account

(5) In a statement of an account delivered to a client, a lawyer shall clearly and separately detail the amounts charged as fees and as disbursements.

Joint Retainer

(6) Where a lawyer is acting for two or more clients, the lawyer shall divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

Division of Fees and Referral Fees

(7) Where the client consents, fees for a matter may be divided between lawyers who are not in the same law firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

(8) Where a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter and the referral was not made because of a conflict of interest, the referring lawyer may accept and the other lawyer may pay a referral fee provided that

(a) the fee is reasonable and does not increase the total amount of the fee charged to the client, and

(b) the client is informed and consents.

(9) A lawyer shall not

(a) directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer, or

(b) give any financial or other reward to any person who is not a lawyer for the referral of clients or client matters.

Commentary

Subrule (9) applies in circumstances where a lawyer is affiliated with an affiliated entity. In such circumstances, the affiliated entity is not permitted to share in the lawyer's revenues, profits or cash flows, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses that do not reflect their fair market value.

[the following amendment is pending Convocation's policy discussion]

Exception for Multi-discipline Practices and Interprovincial and International Law Firms

(10) Subrule (9) does not apply to

(a) multi-discipline practices of lawyer and non-lawyer partners where the partnership agreement provides for the sharing of fees, cash flows or ~~and~~ profits among members of the firm, and

(b) sharing of fees, cash flows or profits by lawyers who are

(i) members of an interprovincial law firm, or

(ii) members of a law partnership of Ontario and non-Canadian lawyers

who otherwise comply with this rule.

[if the above rule amendment is accepted, the following commentary should also be adopted in place of the new proposed commentary above following subrule (9) above]

Commentary

An affiliation is different from a multi-discipline practice established in accordance with the by-laws under the *Law Society Act*, an interprovincial law partnership or a partnership between Ontario lawyers and foreign lawyers. An affiliation is subject to subrule 2.08(9). In particular, an affiliated entity is not permitted to share in the lawyer's revenues, cash flows or profits, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses above their fair market value.

Appropriation of Funds

(11) The lawyer shall not appropriate any funds of the client held in trust or otherwise under the lawyer's control for or on account of fees except as permitted by the by-laws under the *Law Society Act*.

3.03 LETTERHEAD

Letterhead

3.03 (1) Subject to subrules (2) and (3) and rule 3.05, a lawyer's letterhead and the signs identifying the office may only include

(a) the name of the lawyer or law firm,

(b) a list of the members of any law firm, including counsel practising with the firm,

(c) the words "barrister," "barrister-at-law," "barrister and solicitor," "lawyer," "law office," "solicitor," "solicitor-at-law," or the plural, where applicable,

(d) the words "notary" or "commissioner for oaths" or both, where applicable,

(e) the words "patent and trade mark agent," where applicable,

(f) a statement that a member of the law firm is qualified to practise law in another jurisdiction,

(g) a statement that a member of the law firm is certified by the Law Society as a specialist in a specified field,

(h) the phrase "limited liability partnership" or the letters "LLP," where applicable,

(i) the phrase "multi-discipline practice" or "multi-discipline partnership" where applicable,

(j) the addresses, telephone numbers, office hours, and the languages in which the lawyer or law firm is competent and capable of conducting a practice, and

(k) a logo, and

(l) reference to an affiliation.

3.04 ADVERTISING

Advertising Services Permitted

3.04 (1) Subject to subrule (3), a lawyer or a law firm may advertise their services or fees in any medium including the use of brochures and similar documents provided that the advertising

(a) is not false or misleading,

(b) is in good taste and is not such as to bring the profession or the administration of justice into disrepute, and

- does not compare services or charges with other lawyers or law firms.

Advertising of Fees

(2) Subject to subrule (3), a lawyer or a law firm may advertise fees charged for their services subject to the following conditions:

(a) advertisement of fees for consultation or for specific services shall contain an accurate statement of the services provided for the fee and the circumstances, if any, in which higher fees may be charged,

(b) if fees are advertised, the fact that disbursements are an additional cost shall be made clear in the advertisement,

(c) advertisements shall not use words or expressions such as "from . . .," "minimum," or " . . . and up," or the like in referring to the fees to be charged,

(d) services covered by advertised fees shall be provided at the advertised rate to all clients who retain the advertising lawyer or law firm during the 30-day period following the last publication of the fee unless there are special circumstances which could not reasonably have been foreseen, the burden of proving which rests upon the lawyer.

Restrictions on Advertising

(3) A lawyer shall not

(a) permit the lawyer's name to appear as solicitor, counsel, or Queen's Counsel on any advertising material offering goods, other than securities or legal publications, or services, other than legal services, to the public, except advertising material offering the services of a lawyer and an affiliated entity in an affiliation, and

(b) while in private practice, permit the lawyer's name to appear on the letterhead of a company as being its solicitor or counsel of a business, firm or corporation, other than the designation of honorary counsel or honorary lawyer on the letterhead of a non-profit or philanthropic organization that has been approved for such purpose by the standing committee of Convocation responsible for professional conduct.

Commentary

The means by which it is sought to make legal services more readily available to the public must be consistent with the public interest and must not detract from the integrity, independence, dignity, or effectiveness of the legal profession.

Where a lawyer is in an affiliation, he or she must must ensure that any advertisements do not mislead the public about who is providing the legal services.

5.01 SUPERVISION

Application

5.01 (1) In this rule, a non-lawyer does not include a student-at-law.

Direct Supervision Required

(2) A lawyer shall assume complete professional responsibility for all business entrusted to him or her and shall directly supervise staff and assistants to whom particular tasks and functions are delegated.

Commentary

A lawyer who practises alone or operates a branch or part-time office should ensure that all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

Where a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

A lawyer may permit a non-lawyer to perform tasks delegated and supervised by a lawyer as long as the lawyer maintains a direct relationship with the client or, if the lawyer is in a community legal clinic funded by Legal Aid Ontario, as long as the lawyer maintains a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario and assumes full professional responsibility for the work. Generally, subject to the provisions of any statute, rule, or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which in the public interest, must be exercised by the lawyer whenever it is required.

A lawyer may permit a non-lawyer to act only under the supervision of a member of the Society. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer who uses a non-lawyer to educate the latter concerning the duties that may be assigned to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion.

Permissible Delegation - The following examples, which are not exhaustive, illustrate situations where it may be appropriate to delegate work to non-lawyers subject to proper supervision.

Real Estate - A lawyer may permit a non-lawyer to attend to all matters of routine administration and to assist in more complex transactions relating to the sale, purchase, option, lease, or mortgaging of land, to draft statements of account and routine documents and correspondence, and to attend to registrations, provided that the lawyer should not delegate to a non-lawyer ultimate responsibility for review of a title search report or of documents before signing, or for the review and signing of a letter of requisition, a title opinion, or reporting letter to the client.

Corporate and Commercial - A lawyer may permit a non-lawyer to attend to all matters of routine administration and to assist in more complex matters and to draft routine documents and correspondence relating to corporate, commercial, and securities matters such as drafting corporate minutes and documents pursuant to corporation statutes, security instruments, security registration documents and contracts of all kinds, closing documents and statements of account, and to attend on filings.

Wills, Trusts and Estates - A lawyer may permit a non-lawyer to attend to all matters of routine administration, to assist in more complex matters, to collect information, draft routine documents and correspondence, to prepare income tax returns, to calculate such taxes, to draft executors' accounts and statements of account, and to attend to filings.

Litigation - A lawyer may permit a non-lawyer to attend to all matters of routine administration, and to assist in more complex matters, to collect information, draft routine pleadings, correspondence and other routine documents, research legal questions, prepare memoranda, organize documents, prepare briefs, draft statements of account and attend to filings. Generally, a non-lawyer shall not attend on examinations or in court except in support of a lawyer also in attendance. Permissible exceptions include law clerks appearing on

(a) routine adjournments in provincial courts,

(b) appearances before tribunals where statutes or regulations permit non-lawyers to appear, e.g., Small Claims Court, Coroners' Inquests, as agent on summary conviction matters where so authorized by the *Criminal Code*, and the *Provincial Offences Act* and administrative tribunals governed by the *Statutory Powers Procedure Act*,

(c) routine examinations in uncontested matters such as for the purpose of obtaining routine admissions, attendance upon judgment debtor examinations and on watching briefs but not the conduct of an examination for discovery in a contested matter or a cross-examination of a witness in aid of a motion,

(d) simple without notice matters or motions for a consent order before a master, and

(e) assessments of costs.

Delegation

(3) A lawyer shall not permit a non-lawyer to

(a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer is advised before any work commences,

(b) give legal opinions,

(c) give or accept undertakings, except with the express authorization of the supervising lawyer,

(d) act finally without reference to the lawyer in matters involving professional legal judgment,

(e) be held out as a lawyer,

Commentary

A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers, public officials, or with the public generally whether within or outside the offices of the law firm of employment.

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a support role to the lawyer appearing in such proceedings,

(g) be named in association with the lawyer in any pleading, written argument, or other like document submitted to a court,

(h) be remunerated on a sliding scale related to the earnings of the lawyer, except where the non-lawyer is an employee of the lawyer,

(i) conduct negotiations with third parties, other than routine negotiations where the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken,

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose,

(k) sign correspondence containing a legal opinion, but the non-lawyer who has been specifically directed to do so by a supervising lawyer may sign correspondence of a routine administrative nature, provided that the fact the person is a non-lawyer is disclosed, and the capacity in which the person signs the correspondence is indicated,

(l) forward to a client any documents, other than routine documents, unless they have previously been reviewed by the lawyer, or

(m) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do.

Commentary

A lawyer may, in appropriate circumstances, render service with the assistance of non-lawyers of whose competence the lawyer is satisfied. Though legal tasks may be delegated to such persons, the lawyer remains responsible for all services rendered and for all written materials prepared by non-lawyers.

(4) A lawyer shall not permit a non-lawyer to

(a) provide advice to the client concerning any insurance, including title insurance, without supervision,

(b) present insurance options or information regarding premiums to the client without supervision,

(c) recommend one insurance product over another without supervision, and

(d) give legal opinions regarding the insurance coverage obtained.

Collection Letters

(5) No collection letter shall be sent out over the signature of a lawyer, unless the letter is on the lawyer's letterhead, prepared under the lawyer's supervision, and sent from the lawyer's office.

Affiliations Between Lawyers and Affiliated Entities

(6) A lawyer in an affiliation shall not delegate to the affiliated entity or the affiliated entity's staff any tasks in connection with the provision of legal services without obtaining the client's informed consent.

APPENDIX B

BY-LAW 25

Made: April 30, 1999
Amended: May 28, 1999, June 25, 1999 and December 10, 1999

MULTI-DISCIPLINE PRACTICES

Interpretation: "member"
1. (1) In this By-Law, "member" includes a partnership of members.

Interpretation: practice of law
(2) For the purposes of this By-Law, the practice of law means the giving of any legal advice respecting the laws of Canada or of any province or territory of Canada or the provision of any legal services.

Prohibition against providing services of non-member

2. A member shall not, in connection with the member's practice of law, provide to a client the services of a person who is not a member except in accordance with this By-Law.

Permitted provision of services of non-member

3. A member may, in connection with the member's practice of law, provide to a client only the services of an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law.

Partnership, etc. with non-member

4. (1) Subject to subsection (2) and subsection 6 (1), a member may enter into a partnership or association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice law for the purpose of permitting the member to provide to clients the services of the individual.

Same

(2) A member shall not enter into a partnership or an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law unless the following conditions are satisfied:

1. The individual is qualified to practise a profession, trade or occupation that supports or supplements the practice of law.

2. In the case of entering into a partnership with the individual, the individual is of good character.

3. The individual agrees with the member in writing that the member shall have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the partnership or association.

4. The individual agrees with the member in writing that, in partnership or association with the member, the individual will not practise his or her profession, trade or occupation except to provide services to clients of the partnership or association.

5. The individual agrees with the member in writing that, outside of his or her partnership or association with the member, the individual will practise his or her profession, trade or occupation independently of the partnership or association and from premises that are not used by the partnership or association for its business purposes.

6. The individual agrees with the member in writing that, in respect of the practice of his or her profession, trade or occupation in partnership or association with the member, the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

7. In the case of entering into a partnership with the individual, the individual agrees with the member in writing to comply with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the partnership.

Interpretation: "effective control"

(3) For the purposes of subsection (2), the member has "effective control" over the individual's practise of his or her profession, trade or occupation if the member may, without the agreement of the individual, take any action necessary to ensure that the member complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Interpretation: "good character"

(4) For the purposes of subsection (2), the individual is of "good character" if there is a reasonable expectation, based on the individual's record of integrity and professionalism in the practice of his or her profession, trade or occupation and on the individual's reputation in the community, that the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Responsibility for actions of non-member

5. Despite any agreement between a member and an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall be responsible for ensuring that, in respect of the individual's practice of his or her profession, trade or occupation in partnership or association with the member,

(a) the individual practises his or her profession, trade or occupation with the appropriate level of skill, judgement and competence; and

(b) the individual complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Application by member forming partnership with non-member

6. (1) Before a member enters into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall apply to the Society for approval to enter into the partnership.

Application fee

(2) An application under subsection (1) shall be in Form 25A and shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Partnership agreement

7. At the time that a member makes an application under section 6, the member shall file with the Society a copy of so much of the agreement or agreements that will govern the member's partnership with the individual as may be required by the Society.

Consideration of application by Secretary

8. (1) The Secretary shall consider every application made under section 6, and the Secretary shall approve the member's entering into a partnership with the individual if the Secretary is satisfied that,

(a) the conditions set out in subsection 4 (2) have been satisfied; and

(b) the member has made arrangements that will enable the member to comply with sections 5, 14 , 15, 16 and 19.

Requirements not met

(2) If the Secretary is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the Secretary shall notify the member who may meet the requirement or appeal to the committee of benchers appointed under section 10 if the member believes that the requirement has been met.

Time for appeal

9. An appeal under subsection 8 (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that a requirement has not been met.

Committee of benchers

10. (1) Convocation shall appoint a committee of at least three benchers to consider appeals made under subsections 8 (2) and 17 (2).

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of appeal: quorum

11. Three benchers who are members of the committee appointed under section 10 constitute a quorum for the purposes of considering an appeal made under subsection 8 (2) or subsection 17 (2).

Procedure: application of rules of practice and procedure

12. (1) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2) as if the consideration of the appeal were the hearing of an application under section 27 of the Act.

Procedure: *SPPA*

(2) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2).

Decision of committee of benchers

13. (1) After considering an appeal made under subsection 8 (2), the committee appointed under section 10 shall,

(a) if it determines that the requirement has been met, approve the member's entering into a partnership with the individual; or

(b) if it determines that the requirement has not been met, notify the member that the requirement has not been met and that the member may not enter into a partnership with the individual.

Decisions final

(2) The decision of the committee appointed under section 10 on an appeal made under subsection 8 (2) is final.

Filing requirements: partnerships

14. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall submit to the Society for every full or part year that the partnership continues a report in respect of the partnership.

Form 25B

(2) The report required under subsection (1) shall be in Form 25B.

Due dates

(3) The report required under subsection (1) shall be submitted to the Society by January 31 of the year immediately following the full or part year in respect of which the member is submitting a report.

Changes in partnership

15. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall immediately notify the Secretary when,

(a) the individual is expelled from the partnership;

(b) the individual ceases or for any reason is unable to practise his or her profession, trade or occupation;

(c) the term of the partnership has expired, if the partnership was entered into for a fixed term;

(d) the partnership is dissolved under the *Partnerships Act*; or

(e) any agreement that governs the partnership has been amended.

Dissolution of partnership

(2) If an event mentioned in clause (1) (b), (c) or (e) occurs, the Secretary may require the member to dissolve the partnership.

Amendment of partnership agreement

(3) At the time that the member notifies the Secretary under subsection (1) that an agreement that governs the partnership has been amended, the member shall file with the Secretary a copy of the amended agreement.

Dissolution of partnership: breach of By-Law

16. If a member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law breaches section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, the Secretary may require the member to dissolve the partnership.

Notice to member of requirement to dissolve partnership

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

Appeal

(2) If the Secretary requires a member to dissolve a partnership under section 16, the member may appeal the requirement to dissolve the partnership to the committee of benchers appointed under section 10 if the member believes that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19.

Time for appeal

(3) An appeal under subsection (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that the partnership is to be dissolved.

Procedure

(4) The rules of practice and procedure apply, with necessary modifications to the consideration by the committee appointed under section 10 of an appeal made under subsection (2) as if the consideration of the appeal were the hearing of an application under subsection 34 (1) of the Act.

Decision of committee of benchers

(5) After considering an appeal made under subsection (2), the committee appointed under section 10 shall,

(a) if it determines that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, cancel the requirement to dissolve the partnership; or

(b) if it determines that there has been a breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, take any of the following actions:

(i) Confirm the requirement to dissolve the partnership.

(ii) Permit the partnership to continue, subject to such terms and conditions as the committee may impose.

(iii) Any other action that the committee considers appropriate.

Decisions final

(6) The decision of the committee appointed under section 10 on an appeal under made subsection (2) is final.

Stay

(7) The receipt by the Secretary of the notice of appeal from the requirement to dissolve the partnership stays the requirement until the disposition of the appeal.

Association with non-member: multi-discipline practice.

18. (1) A member who, under subsection 4 (1), has entered into an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the association as a multi-discipline practice.

Partnership with non-member: multi-discipline practice or partnership

(2) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the partnership as a multi-discipline practice or multi-discipline partnership.

Insurance requirements: members

19. A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall maintain 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.

Form 25A

Application to Enter into a Multi-Discipline Partnership

APPLICATION TO ENTER INTO A
MULTI-DISCIPLINE PARTNERSHIP

TO THE SOCIETY

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

1. INFORMATION ON APPLICANT*(*S*)*

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

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

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

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

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

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

2. INFORMATION ON INDIVIDUAL*(*S*)*

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

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

Qualifications:

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

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

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

(Provide the following information for each individual named.)

Current:

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

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

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

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

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

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

Past:

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

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

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

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

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

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

Information on current practice of profession, trade or occupation:

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

Information on future practice of profession, trade or occupation:

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

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

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

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

1. ... .

2. ... .

Date: *(Signature of applicant(s))*

4. INFORMATION ON PROPOSED MULTI-DISCIPLINE PARTNERSHIP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date: *(Signature of applicant(s))*

Form 25B

Report on Multi-Discipline Partnership

REPORT ON MULTI-DISCIPLINE PARTNERSHIP

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

1. INFORMATION ON FIRM

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

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

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

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

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

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

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

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

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

2. INFORMATION ON PARTNERS WHO ARE MEMBERS

Number of partners who are members:

Names of partners who are members:

3. INFORMATION ON PARTNERS WHO ARE NOT MEMBERS

Number of partners who are not members:

Names of partners who are not members:

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

Types of services provided by partners who are not members:

Qualifications of partners who are not members:

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

Membership in professional associations and details of membership:

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

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

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

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

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

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

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

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

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

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

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

4. INFORMATION ON COMPLIANCE WITH BY-LAW 25

Arrangements made to permit partners who are members to comply with section 5: *(Specify the arrangements in place during the year (or other period) in respect of which this report is being submitted. Specify the names of the member partners who were responsible for the member partners' compliance with section 5 during the year (or other period) in respect of which this report is being submitted.)*

Professional liability insurance coverage for partners who are not members:

(If the partners who are not members are not insured as one group, provide the following information separately for each partner who is not a member.)

Name of insurance company providing professional liability insurance coverage for partners who are not members:

Policy number:

(The following certification is to be completed by the partners who are members.)

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

Date: *(Signature of partner(s))*

May 24, 2001

INTRODUCTION

1. The April 26, 2001 implementation phase report of the Multi-Disciplinary Practice Task Force ("the report" and "the Task Force" respectively), in addition to distribution to benchers, staff and the press, was provided to interested members and other parties.[1]

2. The Task Force received correspondence from Mr. Jolliffe of Gowlings with comments on the proposed regulatory scheme described in the report. The letter is attached as Appendix 1. The Advocates' Society also responded, to say that it does not think "our Society brings any special expertise to the difficult task of drafting the scheme of regulation and reporting described in the report. We will therefore not be adding any submission or comment as the Task force proceeds to complete its work".[2]

3. The Task Force considered Mr. Jolliffe's comments and determined that a response was required for the purpose of Convocation's consideration of the implementation report.

4. The Task Force also received correspondence on May 15, 2001 from Peter Griffin on behalf of Donahue & Partners (which uses the name "Donahue Ernst & Young") in response to the report. The letter is attached at Appendix 2 with other material relevant to the letter (including portions of the Supplementary Material the Task Force prepared for Convocation on November 29, 2000). The first part of the letter discusses issues that Convocation considered and dealt with on November 29, 2000. The Task Force responds below to the balance of the letter.

RESPONSE TO MR. JOLLIFFE'S ISSUES

Definition of "Affiliation"

5. Mr. Jolliffe expresses concern about the definition of "affiliation" in the proposed by-law as being unnecessarily broad and vague. He calls for a clear definition of what is meant by "regular basis" when the affiliated firms join together to deliver services.

6. The Task Force relies on paragraph 24 of the April 26 report, which, in keeping with Convocation's approval of the definition of "affiliated law firm", states:

> The Task Force acknowledges that the definition of affiliation captures more than law firms and non-law firms who by design operate under comprehensive arrangements for the joint delivery of legal and non-legal services. Convocation, however, agreed that the definition proposed by the Task Force was appropriate. While the conflicts search requirement may appear to be an onerous obligation for the less "formal" affiliations that fall within the definition, the Task Force determined that the focus should be on the underlying professional conduct issues and that the regulatory scheme must apply to all types of affiliations as defined to be consistent with the principles in the policy report.

7. The ultimate question is whether the Society must regulate the type of activity, such as a regular arrangement for the marketing and provision of legal and non-legal services, that falls short of a more formal integration of such services to be consistent with the principles in the policy report. The Task Force believes the answer must be yes, because the risk to solicitor and client privilege exists in both types of affiliations described in the paragraph above, and conflicts may or may not be an issue, depending on the venture.

---

[1]The Advocates' Society, Ian Tod of Deloitte & Touche, Peter Griffin on behalf on Donahue & Partners, R. Scott Jolliffe of Gowlings and Paul Paton of PricewaterhouseCoopers.

[2]April 26, 2001 letter of Douglas C. McTavish, Chair, MDP Committee to the Task Force.

8. The Task Force also relies on paragraph 39 of the April 26 report, where it is noted that "the intricacies of compliance with the [regulatory] scheme will vary from firm to firm, depending on the nature of the affiliation and the degree of integration between the law firm and the non-law firm". The expectation is that for the more informal arrangements that still fall within the definition, compliance will be a less intrusive matter than for more integrated structures.

Conflicts Searches

9. Mr. Jolliffe raised two questions about searches for conflicts of interest across the firms in an affiliation. The Task Force answers these questions as follows:
   - The search of databases for conflicts of the non-law firm would not be required where the firms are affiliated but there is no joint retainer or joint work on the part of both firms for a client.
   - A conflicts search may extend to offices of the affiliated entity outside of Canada if, in the words of new proposed commentary following subrule 2.04(10.3), "those offices are treated economically as part of a single affiliated entity."

10. Mr. Jolliffe suggests that the Task Force consider the need to amend the commentary following subrule 2.04(10.3) to clearly indicate that the conflicts rules only apply where the affiliated entities are acting jointly on the same matter. While the Task Force believes that the initial paragraph of subrule 2.04(10.1) makes it clear that the conflicts rules only apply where there exists a retainer to provide legal services and non-legal services jointly to a client through an affiliated entity, it offers the following revision to the commentary as an option for Convocation:

> Commentary
>
> Lawyers practicing in an affiliation are required to control the practice through which they deliver legal services to the public. They are also required to address conflicts of interest as if the lawyer's practice and the practice of the affiliated entity were one <u>where the lawyers accept a retainer to provide legal services to a client jointly with non-legal services of the affiliated entity</u>. The affiliation is subject to the same conflict of interest rules as apply to lawyers and law firms. This obligation may extend to inquiries of offices of affiliated entities outside of Ontario where those offices are treated economically as part of a single affiliated entity.
>
> In reference to clause (a) of subrule (10.1), see also subrule 5.01(6) on supervision and delegation.

11. It may also be appropriate to amend the commentary following clause 2.04(1)(b) as follows:

> Commentary
>
> Conflicting interests include, but are not limited to, the financial interest of a lawyer or an associate of a lawyer, including that which may exist where lawyers have a financial interest in a firm of non-lawyers in an affiliation, and the duties and loyalties of a lawyer to any other client, including the obligation to communicate information. For example, there would be a conflict of interest if a lawyer, or a family member, or a law partner had a personal financial interest in the client's affairs or in the matter in which the lawyer is requested to act for the client, such as a partnership interest in some joint business venture with the client.

RESPONSE TO MR. GRIFFIN'S ISSUES

Premises

12. The Task Force addressed this issue in paragraphs 44 through 47 of the Supplementary Material (please see Appendix 2). Convocation agreed that requiring separate premises for the law practice in an affiliation would provide the best assurance that client confidentiality is protected. The need for lawyers to take all necessary steps to ensure maintenance of confidentiality as a general rule is ensconced in the *Rules of Professional Conduct* and obviously applies to lawyers in an affiliation.

Report to Society

13. If a law firm is affiliated with a non-law firm - the example given by Mr. Griffin is a law firm and a financial institution - the financial arrangements, including loans from the financial institution to the law firm, must be disclosed, as a matter related to control and ultimately the independence of the lawyers in the affiliation.

Joint and Several Liability

14. Affiliations are the only structure to date where a group of members is dealt with as a matter of regulation by the Society, through the new by-law. The Task Force believes it is necessary to structure subsection 4(4) of the by-law on a joint and several liability basis to ensure the integrity of this compliance requirement, given that the Society's authority to enforce its regulations is with respect to individual members (including members in a group, as described).

APPENDIX 1

LETTER OF R. SCOTT JOLLIFFE OF GOWLINGS TO THE TASK FORCE MAY 10, 2001

APPENDIX 2

LETTER OF PETER H. GRIFFIN TO THE TASK FORCE MAY 15, 2001 (AND ADDITIONAL RELATED MATERIAL)

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

(1) A copy of the Report to Convocation dated November 29, 2000 re: Supplementary Material to the Multi-Disciplinary Practice Task Force Report (September 21, 2000).
(Appendix 2, pages 22 - 34)

(2) Correspondence and other Information respecting the comments of Donahue & Partners.
(Appendix B, pages 35 - 53)

Mr. Hunter withdrew from Convocation and took no part in the debate.

Mr. Cherniak moved the approval of the new By-Law, amendments to the Rules of Professional Conduct and By-Law 25.

Convocation took its morning break at 11:30 a.m.

Before continuing with the debate on the Task Force's Report, Mr. Arnup rose on a matter of privilege and acknowledged the Treasurer's great contribution to the duties of his office. Mr. Arnup commended the Treasurer on completing his program of visiting every County and District Law Association in Ontario which resulted in creating greater goodwill toward the Benchers and the Bar, that his conduct as Treasurer was exemplary, courteous and good humoured and that during his term as Treasurer he faced problems with diligence and common sense and resolved them.

The Treasurer received a standing ovation.

RESUMPTION OF THE IMPLEMENTATION PHASE REPORT

The following amendments were accepted by Mr. Cherniak:

(page 18 of the Report - paragraph 35)

- That Rule 5.01 - Supervision/Delegation, be amended by adding the following words at the beginning of the new subrule: "In addition to the requirements of this rule and the commentaries thereunder".

- That the commentary set out on page 3 of the "Supplementary Material" be amended by adding the words "in respect of a proposed retainer by a client" after the word "interest" and that the word "a" be changed to "that". The sentence would then read:

> "They are also required to address conflicts of interest in respect of a proposed retainer by a client as if the lawyer's practice and the practice of the affiliated entity were one where the lawyers accept a retainer to provide legal services to that client jointly with non-legal services of the affiliated entity."

- That the commentary set out on page 4 of the "Supplementary Material" be amended by adding the words "including that which may exist where lawyers have a financial interest in a firm of non-lawyers in an affiliation". The sentence would then read:

"Conflicting interests include, but are not limited to, the financial interest of a lawyer or an associate of a lawyer, including that which may exist where lawyers have a financial interest in a firm of non-lawyers in an affiliation, and the duties and loyalties of a lawyer to any other client, including the obligation to communicate information."

Convocation voted on and adopted By-Law 32, the amendments to the Rules of Professional Conduct as amended and the amendments to By-Law 25.

THE LAW SOCIETY OF UPPER CANADA

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

THAT, pursuant to the authority contained in paragraphs 3, 9, 44 and 48 of subsection 62 (0.1) of the *Law Society Act*, By-Law 32 [Affiliations with Non-Members] be made as follows:

BY-LAW 32

AFFILIATIONS WITH NON-MEMBERS

Interpretation: "affiliated entity"
1. (1) 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.

Interpretation: "affiliation"
(2) For the purposes of this By-Law, a member or group of members affiliates with an affiliated entity when the member or group on a regular basis joins with the affiliated entity in the delivery or promotion and delivery of the legal services of the member or group and the non-legal services of the affiliated entity.

Ownership of practice, *etc.*
2. A member who or a group of members that affiliates with an affiliated entity shall alone or together with other persons authorized to practise law in or outside Ontario,

(a) own the practice through which the member or group delivers legal services to the public or comply with By-Law 25;

(b) maintain control over the practice through which the member or group delivers legal services to the public; and

(c) carry on the practice through which the member or group delivers legal services to the public, other than those that are delivered jointly with the non-legal services of the affiliated entity, from premises that are not used by the affiliated entity for the delivery of its non-legal services, other than those that are delivered by the affiliated entity jointly with the legal services of the member or group.

Report to Society
3. (1) A member who or a group of members that agrees to affiliate or affiliates with an affiliated entity shall immediately notify the Society of the affiliation.

Contents of notice

(2) Notice under subsection (1) shall be in Form 00A and shall include the following information:

1. The financial arrangements that exist between the member or group of members and the affiliated entity.

2. The arrangements that exist between the member or group of members and the affiliated entity with respect to,

i. the ownership, control and management of the practice through which the member or group delivers legal services to the public,

ii. the member's or group's compliance with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity, and

iii. the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity.

Agreements

(3) At the time that a member or group of members gives notice under subsection (1), the member or group shall file with the Society a copy of so much of any agreement between the member or group and the affiliated entity, or of any other document, that addresses the matters mentioned in subsection (2) as may be required by the Society.

Filing requirements

4. (1) A member who or a group of members that affiliates with an affiliated entity shall submit to the Society for every full or part year that the affiliation continues a report in respect of the affiliation.

Form 00B

(2) The report required under subsection (1) shall be in Form 00B.

Due date

(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 or group of members is submitting a report.

Joint and several responsibility

(4) Every member in a group of members is responsible jointly with the other members of the group and severally for submitting the report required under subsection (1).

Period of default

(5) 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 4 (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

(6) 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 4 (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 00B in force at the time the member is filing the report.

Change of Information

5. (1) A member who or a group of members that affiliates with an affiliated entity shall notify the Society in writing immediately after,

(a) any change in the information provided by the member or group under section 3 or section 4; and

(b) any change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2).

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2), shall include copies of the parts of the agreement or document that have changed.

Form 00A

Notice of Affiliation

NOTICE OF AFFILIATION

1. INFORMATION ON MEMBER OR GROUP:

Name: *(In the case of a group, specify the name of the group (e.g., firm name, name of corporation) and the names of all members of the group.)*

Address: *(Specify the address at which the member or group practises law. If the member or group practises law at more than one place, specify the address of each place.)*

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

Fax number: *(If the member or group practises law at more than one place, specify the fax number of each place.)*

Contact information: *(In the case of a group, specify the name, address, telephone number and fax number of the member of the group with whom the Society should be speaking and corresponding in respect of the notice.)*

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

2. INFORMATION ON AFFILIATED ENTITY

Name: *(If the affiliated entity is not an individual, specify the name of the affiliated entity (e.g., firm name, name of corporation) and the names of all the individuals who provide non-legal services through the affiliated entity.)*

Information on delivery of services by affiliated entity:

Types of services delivered by affiliated entity:

Places of delivery of services: *(Specify the places where the affiliated entity delivers its non-legal services. Include the address, telephone number and fax number of each place.)*

3. INFORMATION ON AFFILIATION

Types of legal services that the member or group will be delivering jointly with the non-legal services of the affiliated entity:

Types of non-legal services that the affiliated entity will be delivering jointly with the legal services of the member or group:

Places of delivery of legal services: *(Specify the places where the legal services of the member or group will be delivered jointly with the non-legal services of the affiliated entity. Include the address, telephone number and fax number of each place.)*

Information on financial arrangements between the member or group and the affiliated entity: *(Provide a detailed description of the financial arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the ownership, control and management of the practice through which the member or group delivers legal services to the public: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rule, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

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

Date: *(Signature of member or of each member of group)*

Form 00B

Annual Report on Affiliation

ANNUAL REPORT ON AFFILIATION

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

This is the annual report of: *(Name of member of group of members)*

There has been no change in the information provided by the member *(or* the group*)* in the Notice of Affiliation dated *(specify date of Notice) (or* in the Notice of Affiliation dated *(specify date of Notice)* as amended by the notice*(s)* of change of information dated *(specify date(s) of notice(s))* filed under section 5 of By-Law 00*) (or* in the last Annual Report on Affiliation submitted to the Society*) (or* in the last Annual Report on Affiliation submitted to the Society as amended by the notice*(s)* of change of information dated *(specify date(s) of notice(s))* filed under section 5 of By-Law 00*)*

(OR, if there has been a change in information, complete all the following sections:

1. INFORMATION ON MEMBER OR GROUP:

   Name: *(In the case of a group, specify the name of the group (e.g., firm name, name of corporation) and the names of all members of the group.)*

   Address: *(Specify the address at which the member or group practises law. If the member or group practises law at more than one place, specify the address of each place.)*

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

   Fax number: *(If the member or group practises law at more than one place, specify the fax number of each place.)*

   Contact information: *(In the case of a group, specify the name, address, telephone number and fax number of the member of the group with whom the Society should be speaking and corresponding in respect of the notice.)*

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

2. INFORMATION ON AFFILIATED ENTITY

   Name: *(If the affiliated entity is not an individual, specify the name of the affiliated entity (e.g., firm name, name of corporation) and the names of all the individuals who provide non-legal services through the affiliated entity.)*

Information on delivery of services by affiliated entity:

Types of services delivered by affiliated entity:

Places of delivery of services: *(Specify the places where the affiliated entity delivers its non-legal services. Include the address, telephone number and fax number of each place.)*

3. INFORMATION ON AFFILIATION

Types of legal services that the member or group will be delivering jointly with the non-legal services of the affiliated entity:

Types of non-legal services that the affiliated entity will be delivering jointly with the legal services of the member or group:

Places of delivery of legal services: *(Specify the places where the legal services of the member or group will be delivered jointly with the non-legal services of the affiliated entity. Include the address, telephone number and fax number of each place.)*

Information on financial arrangements between the member or group and the affiliated entity: *(Provide a detailed description of the financial arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the ownership, control and management of the practice through which the member or group delivers legal services to the public: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rule, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.))*

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

Date: *(Signature of member or of each member of group)*

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 25
[MULTI-DISCIPLINE PRACTICES]

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 and December 10, 1999 be further amended as follows:

1. Section 1 of By-Law 25 [Multi-Discipline Practices] is amended by adding the following:

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.

2. Section 14 of the By-Law is amended by adding the following:

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.

.....

Mr. Cherniak thanked Jim Varro, Elliot Spears, David Ward and all the members of the Task Force for their work on the Report.

REPORT OF THE ADMISSIONS COMMITTEE

Mr. Millar presented the Admissions Committee Reports for approval by Convocation.

Report of April 26th, 2001

Admissions Committee
April 26, 2001

Report to Convocation

Purpose of Report: Decision Making

Prepared by the Policy Secretariat

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 2

INTER-PROVINCIAL PRACTICE OF LAW
IMPLEMENTATION OF THE PROTOCOL OF FEBRUARY 1994 2
Background 2
Contents of the Draft By-law: Provisions in Conformity with the Protocol 4
Provisions not in Conformity with the Protocol: Jurisdiction-Specific Law 5
Discussion 6
Committee's Deliberations 7
Request to Convocation 7

BAC STUDENTS LACKING AN LL.B. 7
Issue 7
Current Practice 8
Background 8
Options 8
Option A 9
Option B 9
Option C 10
Option D 10
Committee's Deliberations 11
Request to Convocation 11

PAYMENT OF BAC TUITION FEES 11
Issue 11
Discussion 12
Recommendation 12
Request to Convocation 13

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions Committee ("the Committee") met on April 12, 2001. Committee members in attendance were Derry Millar (Chair), Edward Ducharme (Vice-Chair), Marion Boyd, John Campion, Gillian Diamond, Pamela Divinsky, Dean Alison Harvison Young, George Hunter, Sanda Rodgers and Stephanie Willson. Staff in attendance were Julia Bass, Bob Bernhardt, Katherine Corrick, Ian Lebane, Susan Lieberman, Zelia Pereira, Charles Smith, Elliot Spears, Richard Tinsley (for some items), Roman Woloszczuk.

2. The Committee is reporting on the following matters:
Policy - For Decision
1) Inter-Provincial Practice of Law; Implementation of the Protocol of 1994
2) BAC Students Lacking an LL.B
3) Payment of BAC Tuition Fees

POLICY - FOR DECISION

INTER-PROVINCIAL PRACTICE OF LAW

IMPLEMENTATION OF THE PROTOCOL OF FEBRUARY 1994

Background

3. In February 1994, the Law Society signed a Protocol on the Interjurisdictional Practice of Law negotiated under the *aegis* of the Federation of Law Societies of Canada (Appendix 1). This protocol has now been signed by all the member Canadian law societies except those of the Yukon and Northwest Territories. (Nunavut is not yet a member of the Federation).

4. At the time of signing, most of the contracting parties including the Law Society of Upper Canada lacked the statutory jurisdiction to implement all of the provisions of the protocol.

5. The objective of the protocol was to make it easier for lawyers to practise in other Canadian jurisdictions while maintaining the ability of each law society to regulate lawyers practising within the jurisdiction, and to expand temporary mobility rights to solicitor's work. The protocol also includes provisions dealing with a number of related matters such as insurance, compensation, foreign legal consultants and interjurisdictional law firms.

6. The most significant innovation of the protocol is that where lawyers can satisfy a rigorous set of conditions, including having no record of conduct or competence orders in their home jurisdiction, they are to be allowed to engage in the occasional practice law in another province without notifying the law society in that province. Where any of the conditions are not met, permission must be sought.

7. The protocol includes model by-laws for adoption by each province to implement the protocol's provisions.

8. British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia have implemented the temporary mobility provisions of the protocol.

9. The *Law Society Amendment Act, 1998* gave the Law Society of Upper Canada the necessary authority to implement the protocol, including the authority to make by-laws governing such matters as the occasional practice of law by lawyers from another province and the practice of law by interprovincial law firms.

10. The attached draft by-law (Appendix 2) concerning the occasional practice of law is the first proposed by-law implementing the inter-provincial mobility part of the protocol. It is based on the model by-law in the protocol, with certain variations set out below. (It does not cover all of the issues set out in the protocol, some of which will require further implementing by-laws, e.g. inter-jurisdictional law firms and foreign legal consultants).

11. The Law Society's current provision for out of province lawyers is by-law 22 which provides a limited mechanism whereby lawyers from elsewhere in Canada may apply to appear as counsel in a specific proceeding in Ontario. This constitutes preferential treatment for barristers over solicitors.

Contents of the Draft By-law: Provisions in Conformity with the Protocol

12. The draft by-law adopts the protocol's '10-20-12' definition of 'occasional practice', meaning a lawyer acts on no more than 10 matters for no more than 20 days in a 12 month period.

13. The by-law provides special treatment for lawyers practising in federal courts and tribunals (section 3) and for lawyers employed by the federal Crown (section 4). They may practice occasionally in Ontario provided they are members in good standing of their home law society.

14. Where a lawyer meets the conditions set out in section 5 of the by-law, there is no requirement to seek permission from or to notify the Law Society of Upper Canada that the lawyer will be practising in Ontario occasionally. These conditions are:
    a. Entitled to practice in another province or territory
    b. Member in good standing of home law society (or societies)
    c. Not the subject of criminal proceeding in any jurisdiction
    d. Not the subject of competence or conduct proceeding
    e. No criminal record
    f. No record of conduct or competence orders in any jurisdiction.

15. Where not all of the conditions in section 5 are met, the lawyer may apply to the Law Society for permission to practise occasionally in Ontario.

16. Section 9 of the by-law subjects lawyers engaging in occasional practice in Ontario to the regulatory and disciplinary regime of the Law Society of Upper Canada, including, *inter alia*, the right to reprimand or fine and the right to prohibit the lawyer from further practice in Ontario. (The home province will retain the right to take further disciplinary action).

17. Section 10 provides that out of province lawyers may not open Ontario trust accounts for their clients' funds. (Funds as an advance on legal fees may be paid into a trust account in the lawyer's home province.) Trust funds in Ontario must be handled by an Ontario lawyer.

18. The protocol provides for the establishment of a 'National Excess Plan' to compensate claimants who suffer a financial loss arising from the dishonesty of a lawyer engaged in the inter-provincial practice of law. This plan is designed to supplement the amount recoverable from a lawyer's home provincial plan, where this is less than what the claimant would have received if the lawyer had been from the host jurisdiction.

19. The National Excess Plan requires a contribution of $2 per lawyer by each law society, until the plan balance reaches $1million. The Law Society has been collecting the funds for the Ontario share of this fund since 1998, but will not be able to pay this money over until approval of this by-law. By the end of 2000, the Law Society held $200,000 for this purpose.

Provisions not in Conformity with the Protocol: Jurisdiction-Specific Law

20. The model by-law in the protocol restricts the capacity of an out-of-province lawyer to practise 'jurisdiction-specific' law, and provides that the lawyer must do so 'in consultation with a member of the Society'.

21. 'Jurisdiction-Specific Law' is defined in the protocol to include "topics of substantive and procedural law which, whether statutory or common law, are specific to this province". On a literal reading this would include all provincial statute and common law, including provincial rules of court both civil and criminal. This could have the unintended consequence of making temporary mobility more cumbersome than it was before the protocol, in that the out of province lawyer would always be required to retain a local lawyer to advise on local law.

22. This restriction has not been followed in BC, Alberta and Saskatchewan in their implementation of the protocol. Rather, they have adopted a scheme which relies on the ethical duty of a lawyer to act competently. The proposed by-law follows the approach used in the western provinces.

Discussion

23. Ontario is a leading member of the Federation of Law Societies of Canada and was an active participant in the lengthy negotiations leading up to the signing of the protocol in 1994. One of the principal objectives of the protocol was to facilitate inter-provincial mobility by eliminating the 'check-in' requirement with the host jurisdiction.

24. The 'no check-in' system means that the host law society is not notified that an out of province lawyer is now in practice in the province. This means that the Law Society will no longer have a record of all lawyers legally entitled to practise in Ontario. The Committee considered the fact that this could raise an issue in the handling of complaints if the Law Society is unable to determine whether the complaint concerns a local paralegal, an out of province lawyer or some other person. However, the Committee felt that this consideration was outweighed by the objectives which Ontario subscribed to in the negotiation of the protocol.

25. The other jurisdictions which have already adopted the temporary mobility provisions of the protocol have not reported any difficulties, although Ontario may be a more attractive jurisdiction for out of province lawyers as a result of the greater concentration of legal work in this province.

26. The provisions of the by-law are in keeping with Ontario's obligations under the Agreement on Internal Trade (AIT) under the Social Union Framework Agreement. The AIT was signed by all provinces except Quebec, although Quebec is expected to be in voluntary compliance. Chapter 7 of the AIT (Labour Mobility) commits provinces to eliminate residency requirements, align licensing, certification and registration measures with the terms of the Chapter, recognize occupational qualifications and, where necessary, reconcile occupational standards.

Committee's Deliberations

27. The Committee's view was that since Ontario played a major role in the negotiation of the protocol, it would be inconsistent not to implement its provisions. Accordingly, the Committee recommends approval of the by-law.

Request to Convocation

28. Convocation is requested to review the motion (shown in Appendix 2) to enact the proposed By-law 32 and, if appropriate, approve it.

BAC STUDENTS LACKING AN LL.B.

Issue

29. In the new model of the BAC, students can enter the course and write exams before receiving their third-year law school results. This raises the question of what happens to a student who turns out to have failed third year and therefore lacks an LL.B.
    a. should students have to withdraw from the BAC until they successfully complete their LL.B.?
    b. should students be able to retain credit for any BAC courses passed so far, and if so for how long?
    c. should such students be permitted to continue taking BAC exams?

30. A similar issue arises in the case of NCA students who turn out to have failed some or all of the NCA exams. (In this discussion, LL.B. is used to include any necessary qualification, whether LL.B., J.D., or NCA).

Current Practice

31. Cases where such students not only commenced the BAC but also completed exams have been rare under the previous model of the BAC, and generally concerned NCA students. (The former Phase One did not involve any examinations). The practice has been that such students were not permitted to proceed any further in the BAC once their status was known, but were allowed to retain credit for any courses already passed, even when they were not immediately forthcoming about the problem. (This approach was paradoxical as it rewarded concealment of the situation).

Background

32. This issue will become much more important under the new model of the Bar Admission Course, as almost all students will proceed directly from law school to the writing of BAC exams.

Options

33. There are several possible options:

a. Make the LL.B. an absolute requirement for taking the BAC. This would mean that students who turn out to have failed third year would have to leave the BAC and start all over again when they obtain their degree.

b. Allow students who turn out to have failed third year to retain credit for any exams they have passed prior to notification, but require that they interrupt their BAC studies until they have their degree (i.e. they would not be able to complete the rest of the Skills Phase once they find out that they have failed).

c. Allow students who turn out to have failed third year to complete the Skills Phase and to retain credit for exams or assessments successfully completed, but not to go beyond the Skills Phase. This means they would be unable to start articling until their degree is completed.

d. Allow students to complete the BAC without interruption provided they can show they have graduated by the time they receive their Certificate of Successful Completion, (or before their call to the bar).

Option A

34. Require students to withdraw and start again (participation in course is void *ab initio*). This option may be seen as unduly harsh. Many courses at law school can be taken in either second or third year, and students failing the course at the end of second year would have had the option of re-sitting.

35. This option would hold students back and prevent them from being called to the bar with their class.

36. On the other hand, allowing students to proceed in these circumstances would mean that they might start articling before completing their LLB. This may raise questions about their right of appearance as students-at-law.

37. This option has the advantage of simplicity as a student either does or does not have the necessary prerequisites for the BAC.

Option B

38. Requiring students to interrupt their BAC studies if it is found they lack an LL.B. would mean that all students in the BAC would be required to have the same qualifications. It would also prevent a student from commencing articles without possessing an LL.B.

39. However, it would hold students back and might prevent them from being called to the bar with their class.

40. Under this option, it would also be necessary to determine the date on which students cease to acquire credits (e.g. when they are informed they have failed, when they ought reasonably to have known, etc.)

Option C

41. Allow students to retain credits earned in the Skills Phase but not beyond.

42. Most students will not find out they have failed until they are in the Skills Phase. In keeping with the practice in the past, they should be allowed to retain credit for examinations and assessments in this phase and to complete this phase of the BAC, but not proceed to article or to start the other teaching phase of the BAC. If the student nevertheless proceeds further, no credit would be available for any articling or Substantive Phase examinations commenced in the absence of the necessary degree.

43. This approach would make it clear that the approved degree is a requirement for the BAC. Retention of credits obtained during the Skills Phase would mean that students would not be unduly disadvantaged for shortcomings of which they were unaware.

Option D

44. The most permissive option is to allow students to continue in the BAC on the basis that they will have to obtain their LL.B. before being called to the bar. This would prevent holding students back when they may lack only one small prerequisite for their LL.B.

45. This may raise issues about whether students can commence articles without an LL.B., including whether the courts would grant such students rights of appearance.

46. Under this option students could theoretically complete articles and obtain all other requirements for their call to the bar but still lack an LL.B.

47. This option could be limited by requiring that students have successfully completed some reasonable proportion of the required exams.

48. The rationale for this approach is that there is no strong policy reason for holding students back when there is a reasonable expectation they can make up the necessary prerequisites before their call to the bar.

Committee's Deliberations

49. The Committee recommends Option C. This will enable students to keep the credits earned before they find out that they failed an examination, but at the same time will avoid a situation where students proceed to article without an LL.B.

Request to Convocation

50. Convocation is requested to approve a policy that would permit students who have failed some of their LL.B. examinations to retain credits earned during the Skills Phase of the BAC but not to proceed beyond that Phase until all the required examinations for an LL.B. have been passed.

PAYMENT OF BAC TUITION FEES

Issue

51. Since most students now enter the BAC directly from law school, they do not have the advantage of having earned an income from articling to assist them in paying their BAC fees. Many students have also incurred substantial debts as a result of the increase in law school tuition fees.

52. The current section 5(1) of by-law 12 requires students to pay the tuition fee before commencing the course. Section 6 provides that a student who has not paid the fee in full may be removed from the course by the Admissions Committee.

53. The committee has approved a staff proposal to assist students unable to pay the BAC tuition fee immediately following law school by offering alternative payment plans, spreading the payment of the tuition fee out over a longer period. These monthly payment plans will permit students to use their income while articling to pay their fees.

54. Since this will mean that students may complete the course without having paid their fees, the Committee is recommending that the Department of Education be given the authority to withhold a certificate of successful completion of the Bar Admission Course from a student who has outstanding tuition fees. This would prevent the student from being called to the bar until the fees are paid.

Discussion

55. The deferred payment plans will make it easier for students to arrange the payment of their fees.

56. The current methods for collection of unpaid BAC fees are time-consuming and have proved ineffective. The removal of a student by the Admissions Committee is a rather draconian remedy which has not been resorted to.

57. Universities typically withhold graduation formalities from students with outstanding debts for such items as parking fees and library fines. Students will thus be familiar with this concept.

58. If this policy is approved by Convocation, by-law amendments will be required to implement it .

Request to Convocation

59. Convocation is requested to approve the policy that the education department be granted authority to withhold a certificate of successful completion of the BAC from any student who has outstanding BAC tuition fees.

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

(1) Copy of the Protocol on the Interjurisdictional Practice of Law.

(Appendix 1)

(2) Copy of By-Law 33 - Inter-Provincial Practice of Law.

(Appendix 2)

Re: Inter-Provincial Practice of Law: Implementation of the Protocol of February 1994

It was moved by Mr. Banack, seconded by Ms. Ross that the By-Law be amended to provide for notice to the Law Society of a visiting lawyer's intention to practice in Ontario pursuant to the provisions of the By-Law.

Lost

It was moved by Mr. Wright, seconded by Ms. Puccini that the By-Law be passed to be brought back in one year's time for reconsideration if the Society's concerns about notice have not been met.

Withdrawn

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that By-Law 33 be approved.

THE LAW SOCIETY OF UPPER CANADA

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

THAT, pursuant to the authority contained in paragraphs 14, 30 and 47 of subsection 62 (0.1) of the *Law Society Act*, By-Law 33 [Inter-Provincial Practice of Law] be made as follows:

BY-LAW 33

INTER-PROVINCIAL PRACTICE OF LAW

PART I
OCCASIONAL PRACTICE OF LAW

Interpretation: occasional practice of law

1. (1) In this Part,

(a) a person practises law if he or she performs professional services for others in the capacity of a barrister or solicitor or if he or she gives legal advice to others; and

(b) a person practises law on an occasional basis if, during any period of 12 consecutive months, the person,

(i) practises law in respect of not more than ten matters, and

(ii) practises law for not more that twenty days in total.

Interpretation: "Society's insurance plan"

(2) In this Part, "Society's insurance plan" has the same meaning given it in By-Law 17.

Interpretation: "law specific to Ontario"

(3) In this Part, "law specific to Ontario" means any substantive or procedural law that applies specifically to Ontario.

Interpretation: "Society official"

(4) In this Part, "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 Part.

Prohibition against engaging in occasional practice of law

2. A person who is not a member shall not practise law in Ontario on an occasional basis except in accordance with this Part.

Prior permission not required: appearance in certain courts and tribunals

3. A person who is not a member but who is entitled to practise law in a province or territory of Canada outside Ontario and is in good standing of the governing body of the legal profession in all provinces and territories in which the person is entitled to practise law may, without the prior permission of the Society, practise law in Ontario on an occasional basis where that practice of law is restricted to appearing as counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a tribunal established under an Act of Parliament or a tribunal established under an Act of the Legislature in Ontario which permits the appearance of parties by agent.

Prior permission not required: employees

4. A person who is not a member but who is entitled to practise law in a province or territory of Canada outside Ontario and is in good standing of the governing body of the legal profession in all provinces and territories in which the person is entitled to practise law may, without the prior permission of the Society, practise law in Ontario on an occasional basis where that practice of law is exclusively as an employee of the Crown in right of Canada or of a department within the meaning of the *Financial Administration Act* (Canada).

Prior permission not required: general

5. (1) Subject to subsections (2) and (3), a person who is not a member may, without the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

(a) is entitled to practise law in a province or territory of Canada outside Ontario;

(b) is in good standing of the governing body of the legal profession in all provinces and territories in which the person is entitled to practise law;

(c) is not the subject of a criminal proceeding in any jurisdiction;

(d) is not the subject of a conduct, capacity or competence proceeding in any jurisdiction;

(e) has no criminal record in any jurisdiction; and

(f) has no record of conduct, capacity or competence orders made against him or her in any jurisdiction.

Insurance and defalcation coverage

(2) No person shall practise law in Ontario on an occasional basis unless the person,

(a) has professional liability insurance coverage for the person's practice of law in Ontario which is at least equivalent to that required of a member under the Society's insurance plan; and

(b) has coverage for defalcations, other than under the National Excess Plan, which specifically extends to the person's practice of law in Ontario and is at least equivalent to the coverage available to a member.

Competence

(3) No person shall practise law in Ontario on an occasional basis where such practice of law includes the practice of law specific to Ontario unless the person is competent to practise law specific to Ontario.

Proof of compliance

6. A person who is entitled to practise law in Ontario under section 3, 4 or 5 shall, upon the request of a Society official, provide proof to the satisfaction of the official that he or she is in compliance with the section under which he or she is entitled to practise law in Ontario.

Permission to practise law on an occasional basis

7. (1) A person who is not a member but is entitled to practise law in a province or territory of Canada outside Ontario, other than a person who is entitled to practise law in Ontario under section 3, 4 or 5, may, with the prior permission of the Society, practise law in Ontario on an occasional basis if the person meets the following conditions:

1. The person is in good standing of the governing body of the legal profession in all provinces and territories in which the person is entitled to practise law.

2. The person has professional liability insurance coverage for the person's practice of law in Ontario which is at least equivalent to that required of a member under the Society's insurance plan.

3. The person has coverage for defalcations, other than under the National Excess Plan, which specifically extends to the person's practice of law in Ontario and is at least equivalent to the coverage available to a member.

4. If the person's practice of law in Ontario will include the practice of law specific to Ontario, the person is competent to practise law specific to Ontario.

5. The person pays a permit fee in an amount determined by Convocation from time to time.

Application to Society

(2) A person who wishes to practise law in Ontario on an occasional basis under this section shall apply in writing to the Society for permission to do so.

Same

(3) An application under subsection (2) shall be contained in an application form provided by the Society.

Application to be considered by Society official

(4) Every application made under subsection (2) shall be considered by a Society official and,

(a) if the official is satisfied that the conditions set out in paragraphs 1 to 4 of subsection (1) are met, the official shall notify the applicant in writing that, upon payment of the permit fee, he or she may practise law in Ontario on an occasional basis;

(b) if the official is not satisfied that the conditions set out in paragraphs 1 to 4 of subsection (1) are met but is satisfied that, in the circumstances, it would not be contrary to the public interest to permit the applicant to practise law in Ontario on an occasional basis, the official shall notify the applicant in writing that, upon payment of the permit fee, he or she may practise law in Ontario on an occasional basis subject to such terms and conditions as the official may impose; or

(c) if the official is not satisfied that the conditions set out in paragraphs 1 to 4 of subsection (1) are met and is not satisfied that, in the circumstances, it would not be contrary to the public interest to permit the applicant to practise law in Ontario on an occasional basis, the official shall notify the applicant in writing that he or she may not practise law in Ontario on an occasional basis.

Documents, explanations, releases, etc.

(5) For the purposes of assisting a Society official to consider an application under subsection (2), the applicant shall,

(a) provide to the official such documents and explanations as the official may require; and

(b) provide to a person named by the official such releases, directions and consent as may be required to permit the person to make available to the official such information as the official may require.

Application to committee of benchers

(6) If under subsection (4) a Society official refuses to permit a person to practise law in Ontario on an occasional basis or imposes terms and conditions, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether he or she may practise law in Ontario on an occasional basis or of whether the terms and conditions are appropriate.

Time for application

(7) An application under subsection (6) shall be commenced by the person notifying the Society official in writing of the application within thirty days after the day the person receives notice of the official's decision under subsection (4).

Parties

(8) The parties to an application under subsection (6) are the applicant and the Society.

Quorum

(9) An application under subsection (6) shall be considered and determined by at least three members of the committee of benchers.

Procedure

(10) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (6) as if the consideration of the application were the hearing of an application for admission under section 27 of the Act.

Same

(11) 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 of benchers of an application under subsection (6).

Decision on application

(12) After considering an application under subsection (6), the committee of benchers shall,

(a) determine that, upon payment of the permit fee, the applicant may practise law in Ontario on an occasional basis, subject to such terms and conditions as may be imposed by the committee; or

(b) determine that the applicant may not practise law in Ontario on an occasional basis.

Decision final

(13) The decision of the committee of benchers on an application under subsection (6) is final.

Duration of permission

(14) Unless withdrawn, permission to practise law in Ontario on an occasional basis granted to a person under this section remains in effect for one year after the day on which it comes into effect.

Permission withdrawn

(15) Permission to practise law in Ontario on an occasional basis granted to a person under this section is automatically withdrawn immediately the person fails to comply with any of the conditions set out in subsection (1) or fails to comply with any terms or conditions imposed by a Society official or the committee of benchers.

Renewal of permission

(16) Before expiry of permission to practise law in Ontario on an occasional basis granted to a person under this section, the person may apply for its renewal and subsections (1) to (13) apply, with necessary modifications, to an application for renewal.

Compliance

(17) A person who is granted permission under this section to practise law in Ontario on an occasional basis shall, upon the request of a Society official, provide proof to the satisfaction of the official that he or she is in compliance with the section.

Practising on more than an occasional basis

8. (1) On written application by a person who is entitled to practise law in Ontario on an occasional basis under section 3, 4 or 5 or who is permitted to practise law in Ontario under section 7, a Society official may permit the person to practise law in Ontario on more than an occasional basis but less than a regular basis if, in the opinion of the official, such permission is not contrary to the public interest.

Law specific to Ontario

(2) Despite subsection (1), a Society official shall not permit a person to practise law specific to Ontario on more than an occasional basis.

Application of Act

9. (1) The following provisions of the Act apply, with necessary modifications, to a person who is entitled or granted permission under this Part to practise law in Ontario:

1. Subsection 33 (1).

2. Subsections 34 (1) and (2).

3. Paragraphs 1, 4, 19, 20 and 21 of subsection 35 (1).

4. Subsections 49.3 (1) and (1.1).

5. Sections 49.8 to 49.13.

6. Sections 49.20 to 49.41.

Application of By-Laws

(2) By-Law 21 applies, with necessary modifications, to a person who is entitled or granted permission under this Part to practise law in Ontario.

Rules of Professional Conduct

(3) The Society's Rules of Professional Conduct apply, with necessary modifications, to a person who is entitled or granted permission under this Part to practise law in Ontario.

Handling of money and other property

10. (1) Subject to subsection (2), a person who is entitled or granted permission under this Part to practise law in Ontario shall not in relation to his or her practice of law in Ontario receive money or other property in trust for a client.

Fees for services

(2) A person who is entitled or granted permission under this Part to practise law in Ontario may receive from a client or other person money on account of fees for services not yet rendered for the client.

Transfer of funds

(3) A person who receives money in accordance with subsection (2) shall immediately pay the money into a trust account at a financial institution located in the province or territory of Canada outside Ontario in which the person is entitled to practise law.

Practice of law requires handling or money and other property

(4) If a person who is entitled or granted permission under this Part to practise law in Ontario must in connection with his or her practice of law in Ontario handle money or other property other than as permitted under subsection (2), the person shall ensure that the money and other property is handled by a member in accordance with By-Law 19.

Proof of compliance

(5) A person who is entitled or granted permission under this Part to practise law in Ontario shall, upon the request of a Society official, provide proof to the satisfaction of the official that he or she is in compliance with this section.

Prohibition

11. (1) A person who is entitled or granted permission under this Part to practise law in Ontario shall not hold himself or herself out as or represent himself or herself to be willing or qualified to practise law in Ontario other than as provided for in this Part.

Proof of compliance

(2) A person who is entitled or granted permission under this Part to practise law in Ontario shall, upon the request of a Society official, provide proof to the satisfaction of the official that he or she is in compliance with this section.

PART II
GENERAL

Interpretation

12. (1) In this section and in sections 5 and 7,

"Inter-Jurisdictional Practice Protocol" means the agreement, as amended from time to time, entered into by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, the Barreau du Québec, The Law Society of New Brunswick, the Law Society of Prince Edward Island, the Nova Scotia Barristers' Society and the Law Society of Newfoundland in respect of the inter-provincial practice of law.

"National Excess Plan" means the plan established under the Inter-Jurisdictional Practice Protocol for the purpose of compensating any person who sustains a financial loss arising from the misappropriation of money or other property by a person qualified to practise law in any province or territory of Canada while the person is engaged in the inter-provincial practice of law.

Society's contribution

(2) Not later than December 31 in each year, the Society shall pay to the Federation of Law Societies of Canada for the National Excess Plan an amount agreed to by the Society and the Federation.

Same

(3) Despite subsection (2), the Society is not required to pay any amount to the Federation of Law Societies of Canada for the National Excess Plan if the amount in the National Excess Plan is $1 million or more.

Disclosure of information

13. If a member is the subject of an investigation or a proceeding at the instance of the governing body of the legal profession in a province or territory of Canada outside Ontario arising from the member's inter-provincial practice of law in the province or territory, the Society shall, at the request of the governing body, provide to it such information in respect of the member as is reasonable for the Society to provide in the circumstances.

Carried

It was moved by Mr. Wright, seconded by Ms. Puccini that Convocation communicate to the Federation, the Law Society's request that a National Register of lawyers be created.

Carried

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:15 P.M.

The Treasurer and Benchers had as their guests for luncheon Sir Sydney and Lady Kentridge and David Ward.

CONVOCATION RECONVENED AT 2:45 P.M.

PRESENT:

The Treasurer, Banack, Bindman, Boyd, Braithwaite, Cass, Chahbar, Cherniak, Copeland, Crowe, Curtis, Diamond, Divinsky, E. Ducharme, T. Ducharme, Epstein, Feinstein, Gottlieb, Hunter, Krishna, Lalonde, Laskin, Lawrence, MacKenzie, Marrocco, Millar, Mulligan, Pilkington, Porter, Puccini, Rodgers, Ross, Ruby, Simpson, Swaye, Topp, White and Wright.

.....

.....

IN PUBLIC

.....

REPORT OF THE ADMISSIONS COMMITTEE

Report of April 26th, 2001

Re: BAC Students Lacking an LL.B.

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the policy be approved to allow students to retain credits earned in the Skills Phase but not beyond that Phase until all the required examinations for an LL.B. have been passed.

Carried

Re: Payment of BAC Fees

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the policy be approved that the education department be granted authority to withhold a certificate of successful completion of the BAC from any student who has outstanding BAC tuition fees.

Carried

Report of May 24th, 2001

Admissions Committee
May 24, 2001

Report to Convocation

Purpose of Report: Decision Making

Prepared by the Policy Secretariat

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 2

POLICY - FOR DECISION

SUMMER STUDENT RECRUITMENT POLICY FOR SUMMER 2002 2

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions Committee ("the Committee") met by conference call on May 10, 2001. Committee members in attendance or taking part by teleconference were Derry Millar (Chair), Edward Ducharme (Vice-Chair), Tom Carey, Todd Ducharme, Dean Alison Harvison Young, Dean Peter Hogg, Donald Lamont, Sanda Rodgers and Stephanie Willson. Staff in attendance were Julia Bass, Bob Bernhardt, Katherine Corrick, Charles Smith and Roman Woloszczuk.

2. The Committee is reporting on the following matter:
Policy - For Decision
Summer Student Recruitment Policy for Summer 2002

POLICY - FOR DECISION

SUMMER STUDENT RECRUITMENT POLICY FOR SUMMER 2002

Issue

3. The Law Society has for several years regulated the operation of summer student recruitment in Toronto to ensure an orderly and fair recruitment process. The proposed Procedures for Summer 2002 (Tab 1) are submitted for Convocation's approval.

Background

4. The proposed Procedures are based on the Procedures for Recruitment for Summer 2001, which were adopted in June 2000 (Tab 2.)

5. The proposed Procedures have been circulated among and approved by the Career Development Officers (CDO's) of the Ontario Law Schools and the Articling Co-ordinators of the major Toronto law firms affected by them.

6. There are some other strategic issues involving student recruitment which the Committee will be considering at its meeting next month, including enforcement of the Procedures.

The Committee's Deliberations

7. The Committee's view was that since these procedures do not differ in principle from those of previous years and have been agreed to by the affected parties, Convocation may wish to consider whether formal approval should be required every year if there are no substantial changes.

Request to Convocation

8. Convocation is requested to review the attached Procedures and if appropriate, approve them. In addition, Convocation is requested to decide that these procedures can be approved without the necessity of their being returned every year for approval, unless a substantial change to the content is recommended.

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

(1) Copy of the Proposed Procedures for Summer 2002 Positions in Toronto. (Tab 1)

(2) Copy of the Proposed Procedures for Summer 2001 Positions in Toronto. (Tab 2)

Re: Summer Student Recruitment Policy for Summer 2002

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the Procedures Governing the Recruitment of Students for Summer 2002 set out at Tab 1 of the Report be approved and further that these Procedures be approved without being brought to Convocation every year unless a substantial change to the content is recommended.

Carried

REPORT ON THE FEDERATION OF LAW SOCIETIES' MID-WINTER MEETING

Mr. Feinstein reported on the highlights of the Federation of Law Societies' mid-winter meeting including a progress report on CanLII, the adoption of the WTO Paper and the intervention by the Federation in the Lavallee case presently before the Supreme Court of Canada.

HIGHLIGHTS
2001 Mid-Winter Meeting

CanLII Progress Report 2
Law Societies adopt WTO Paper 2
Federation files Motion to Intervene in Lavallee case before Supreme Court of Canada 3
Mobility of Lawyers 4
Juricert 5
Agreement on Internal Trade 6
Real Estate Project 6
2001 Annual Meeting - Mark your calendars! 7

THE PRESIDENT WELCOMES THE DELEGATES The Federation hosted its 2001 Mid-Winter Meeting in Montreal over the week-end of February 23-24. Abraham Feinstein, Q.C., President, Federation welcomed over 60 Law Society Representatives, consisting mainly of Presidents, Vice-Presidents, CEOs and staff, from all Law Societies in Canada, except Nunavut.

Friday The week-end saw a line-up of meetings take place. First the Board of Directors met on Friday to examine the agenda. At the same time on Friday afternoon the Law Societies of Western Canada met to take the pulse of mobility issues while the Atlantic Provinces Law Societies met to check their own. Saturday On Saturday the CEOs met in the morning, spending, most of their time discussing Juricert while the Presidents and Vice-presidents met with the Board discussing the main agenda topics for the general meeting on Saturday afternoon.

GENERAL MEETING Finally the 60 Law Society Representatives or so gathered in the Salon Bleu of the Ritz-Carlton in general meeting on the Saturday afternoon. On Saturday night the delegates and guests strolled through the art exhibits of the Montreal Contemporary Art Museum and then gathered for dinner in its main hall.

FEDERATION'S BOARD
Abraham Feinstein, Q.C., President, ON
V. Randell J. Earle, Q.C., Past-President, NF & NS
Maurice O. Laprairie, Q.C., Vice-President, SK & MB
Trudi L. Brown, Q.C., Director BC
Sherron J. L. Dickson, Q.C.., Director, NB & PEI
Batonnier Jacques Fournier, Director, Barreau
Kenneth A. Oyler, Yukon
Peter J. Royal, Q.C., Director, AB & NT
P. Colleen Suche, Q.C., Observer, M.B.
Me Maurice Piette, Observe, Chambre

LAW SOCIETIES PRESIDENTS
Richard S. Margetts, Law Society of British Columbia
Eric F. Macklin, Q.C., Law Society of Alberta
Martel D. Popescul, Q.C., Law Society of Saskatchewan
Herbert J. Peters, Lindsay MacDonald
Robert P. Armstrong, Q.C., Law Society of Upper Canada
Me Ronald Montcalm, c.r., Barreau du Quebec
Me Denis Marsolais, Chambre des notaires du Quebec
Charles A. LeBlond, Q.C, Law Society of New Brunswick
Craig M. Garson, Q.C., Nova Scotia Barristers' Society
Benjamin B. Taylor, Q.C., Law Society of PEI
Robert M. Sinclair, Q.C., Law Society of Newfoundland
Alan C. Denroche, Law Society of the Northwest Territories
Leigh F. Gower, Law Society of Yukon

CANLII PROGRESS REPORT

CANLII INTERMEDIATE PHASE The CanLII.org website already provides access to more than 27,000 online court decisions. In December 2000, the site numbered over 500,000 clicks. The intermediate phase of CanLII runs until December 2001 and is funded by 13 Canadian Law Societies. Its goal is to create a national virtual law library which will provide a one-stop online access to all federal and provincial court decisions and legislation. CANLII PERMANENT PHASE When the project enters its permanent phase in January 2002, it is expected that CANLII will offer an online access to all federal and provincial court decisions and legislation at an approximate operational cost of $10 per FTE member per year calculated on a five year budget plan.

Janine Miller gave a progress report on technical and editorial aspects of canlii.org which has been online since August 2000. She reported on the positive feedback received from various providers of court decisions and legislation. As at January 2001, Janine had visited Queen's Printers, Justice and Law Societies Representatives in 6 provinces. She then presented a draft 2002 - 2007 budget for CanLII which showed an operational cost of approximately $10 per FTE (full-time equivalency) member per year.

The Law Societies have named their members on the CanLII Board. In Montreal, 9 of the 13 CanLII Board members were Federation's Delegates at the Mid-Winter Meeting and had a chance to meet over lunch which allowed them to discuss the upcoming CanLII Business Plan, the next steps and permanent phase of CanLII.

Sherron Dickson raised the issue of the incorporation of CanLII, its governance structure and the issue of weighted voting for the shareholders of CanLII. She clarified that CanLII would become a separate entity from the Federation; that all Law Societies would have membership on the Board and that CanLII would have a Managing Committee. Next summer in Saskatoon, the Law Societies will vote on the permanent phase of CanLII. A Business Plan will be drafted for circulation in a timely fashion to the law societies with a view that the delegates be ready to make a decision at the 2001 August annual meeting.

CanLII People	
Sherron J. L. Dickson, Q.C.	Vice-Chair, National Virtual Law Library Group (Athey, Gregory & Dickson, Federation)
Janine Miller	CanLII Project Manager (Chief Librarian, Law Society of Upper Canada)

CanLII Links	
CANLII	http://www.canlii.org
FLSC	http://www.flsc.ca/english/whatsnew/whatsnew.htm

LAW SOCIETIES ADOPTED WTO PAPER

At the 2001 Mid-Winter Meeting, the 13 Law Societies adopted the Federation's WTO Paper - Meeting Canada's Current Obligations for the Legal Profession under the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO)

The WTO Paper examines 3 key issues:

1. how self-regulation of the Canadian legal profession will coexist with the GATS.

2. how the WTO Accountancy Disciplines generally apply to regulation of the legal profession in Canada, and

3. the extent to which current regulation of Foreign Legal Consultants by Canadian Law Societies is compliant with the kind of regulation described by the Accountancy Disciplines.

The WTO Paper is intended to assist the Canadian government in the consultations with the legal profession, and to inform the Canadian legal profession and its regulatory bodies of both the current and future impact of the GATS.

Abe Feinstein has now filed the WTO Paper with Brian Tobin, Minister of Industry. A copy has also been sent to Anne McLellan, Minister of Justice, John Manley, Minister of Foreign Affairs and Sergio Marchi, Ambassador and Permanent Representative of Canada to the Office of the United Nations and the WTO. The Federation has also sent copies to the presidents of the Canadian Bar Association, the American Bar Association and the International Bar Association.

WTO People	
Trudi L. Brown, Q.C.	Chair, National WTO Committee (Brown Henderson, Victoria)
Don Thompson	Deputy Executive Director, Law Society of Alberta, WTO Paper Staff Writer

WTO Links	
Federation's website	http://www.flsc.ca/english/committees/wto/wto.htm
Industry Canada	http://services2000.ic.gc.ca

FEDERATION FILES MOTION TO INTERVENE IN LAVALLEE CASE BEFORE SUPREME COURT OF CANADA

During the General Assembly in Montreal, the Law Societies voted unanimously in favor of intervening in the Alberta Lavallee case presently before the Supreme Court of Canada. The case deals with section 488.1 of the Criminal Code which sets the procedures which Police and Crown must follow when privilege is claimed over documents seized from a law office. Peter Royal is the Federation's Director responsible for the intervention.

Joel Pink of Pink Murray Graham in Halifax, has accepted the Federation's invitation to act as pro bono counsel on behalf of the Federation. Anne Derrick assisted him in filing the Notice of Motion to intervene by the court's deadline of March 6, 2001. The Law Society of Alberta has also filed its Motion for Leave to intervene on March 6, 2001.

In November 2000, the Law Societies also agreed that the Federation should intervene in the Law Society of Alberta v. Krieger matter before the Supreme Court of Canada. The Federation's attempts to intervene on the Leave to Appeal were dismissed on February 5, 2001by the Court. The Court nevertheless stated that the Federation's application was denied, without prejudice to its right to bring the same application, if leave to appeal is granted to the law Society of Alberta.

The Federation's Office will post updates on both interventions on the Federation's website.

SCC People	
Peter J. Royal, Q.C.	Director responsible for interventions (Royal McCrum Duckett & Glancy, Edmonton)
Joel E. Pink, Q.C.	Pink Murray, Halifax
Anne Derrick	Beaton Derrick Ring, Halifax

SCC Links	
SCC	http://www.scc-csc.gc.ca/home/index_e.html
Federation's website	http://www.flsc.ca/english/whatsnew/interventions.htm

MOBILITY OF LAWYERS

What legal services can an Ontario lawyer offer to an Ontario client in Quebec? What legal services can a British Columbia lawyer offer to an international client in Saskatchewan? What services can a Quebec lawyer offer to a client in Alberta?

Mobility of lawyers - or the right of a Canadian lawyer to offer legal services in another Canadian jurisdiction - has been considered by Law Societies since at least 1989. At that time, the Supreme Court of Canada had just rendered the Black v. Law Society of Alberta decision which essentially said that the Law Society of Alberta could not enact rules that would prohibit its members from entering into partnership with non-resident lawyers and from being members of dual or multiple firms. The Law Societies then established the Interjurisdictional Protocol Committee in 1989 which saw the signing of the Protocol by 10 Law Societies in 1994.

The Protocol provides a 10-20-12 Rule, which means that a lawyer can go to any province and do a maximum of 10 matters, or work a maximum of 20 days in any 12 month period. Recently, the Law Societies of Western Canada (BC, AB, SK, MB) examined the 10-20-12 Rule and adopted in principle a 6-12 Rule which would allow their members to go to any province which has adopted the 6-12 Rule and offer legal services in that province for a maximum of 6 months in any 12 month period. The four Western jurisdictions are now attempting to draft a common set of rules which could be in place by April of this year.

In light of these national developments and other international developments which pertain to the right of a lawyer to serve a client who requires multi-jurisdictional legal services, the Federation will soon host a one-day Mobility Workshop.

Participants at the August 2001 Mobility Workshop will then have a chance to hear from the:

- Australians and how their lawyers can offer legal services across Australia;
- Americans and how the ABA Commission on Multijurisdictional Practice of Law is dealing with the right of a US lawyer to offer legal services in another state; and
- Consumers of legal services across Canada.

Colleen Suche is the person responsible for organising the Mobility Workshop. She has gathered a national planning team to put together a program for August in Saskatoon.

Mobility People	
P. Colleen Suche, Q.C.	Director responsible for August 2001 Workshop (Suche Gange, Winnipeg)
Mobility Links	
Federation's Protocol	http://www.flsc.ca/english/committees/protocol/reports/protocol1994.htm

JURICERT

In Montreal, the Federation's Delegates had the chance to first hear from Darrel Pink who indicated that he had been leading a group of Law Society representatives on the Juricert initiative. He explained that the goal is to have a closing at the end of April 2001 for those law societies who will choose to participate in Juricert.

Ron Usher was then invited to brief the delegates on the Juricert project. He indicated that the proposed Juricert mandate is to act as the national vehicle for Canadian law societies to issue and protect the digital identities of their members, and thereby create an opportunity to make the legal system more cost effective and accessible through the use of the Internet. Both the profession and the public will benefit tremendously from this initiative. The mandate and vision of Juricert is to preserve the natural role of the law societies as certifying authorities and professional standards organizations. Using a power point presentation, he briefed the delegates on the following issues:

- e-Commerce environment for lawyers
- the work of Juricert
- registration for electronic identification
- how Juricert will operate
- local and national initiatives
- budget, revenues and expenses
- proposed governance structure and shareholder agreement
- schedule for moving forward

Dale Spackman made a presentation on Juricert governance. In essence, the Juricert corporation is a for profit corporation incorporated under Canada's Business Corporation Act. It has one class of common shares. The shareholders agreement provides that each law society and the Chambre shall be entitled to subscribe for one hundred shares for a nominal consideration. No further shares can be issued without the unanimous consent of all the shareholders,. The voting structure provides for each law society to have an equal vote. However, there is flexibility to introduce weighted voting at this stage of the agreement. The agreement provides for profits to be distributed based on participation. The current draft of the agreement is on the Juricert web site.

Juricert People	
Ron Usher	Vice-President and CEO of Juricert
Darrel I. Pink	Executive Director, Nova Scotia Barristers' Society
Dale R. Spackman, Q.C.	Chair, Electronic Commerce Committee, Law Society of AB (Parlee McLaws, Calgary)
Juricert Links	
Juricert	http://www.juricert.ca

AGREEMENT ON INTERNAL TRADE

Maurice Laprairie emphasized that those who had the foresight of developing a Protocol for Law Societies in the early 1990's ought to be commended and acknowledged for their work. He advised that the legal profession is seen to be at the forefront of the mobility issue with its Protocol, other professional bodies are presently struggling to develop a similar agreement. The Protocol provides a regulatory regime for temporary and permanent mobility of lawyers within Canada and a regulatory regime for Foreign Legal Consultants as well. The Protocol has been signed by all provincial jurisdictions but not by the territorial law societies.

Mr. Laprairie reported that the Forum of Labour Market Ministers is asking for the Federation's assistance to assure that the Protocol be fully implemented by July 1st. The current situation is that Ontario and Quebec have not fully implemented the Protocol. As well, the 3 territories (Yukon, Northwest Territories, and Nunavut) have not signed the Protocol. Over the next months, Mr. Laprairie will deploy efforts to ensure that all Law Societies are compliant with the Protocol and with Chapter 7 of the Agreement of Internal Trade.

Internal Trade People	
Maurice O. Laprairie, Q.C.	Director responsible for the Protocol
Forum of Labour Market Ministers	Body responsible for coordinating implementation of Chapter 7 (Labour Mobility) of the Agreement on Internal Trade
Internal Trade Links	
Internal Trade Secretariat	http://www.intrasec.mb.ca/eng/main.htm
Forum on Labour Market Ministers	http://www.hrdc-drhc.gc.ca/stratpol/mobility/index.html

REAL ESTATE PROJECT

Sherron Dickson reported that Joint CBA/Federation National Real Estate Project is at the half way mark of a 3 year calendar. The Committee met in August 2000 to set several priorities to produce:

- national title confirmation for lenders backed by insurable practices adopted to each jurisdiction;
- standardized closing requirements which involve lenders; and
- a framework to allow expansion of real estate practices to trade in real estate

Ms. Dickson presented the 2001-2002 Budget of the National Real Estate Project commencing August 2001. The Federation's share for that 3rd year of operation is around $60,000. She indicated that Law Societies will be asked to determine the means for funding this commitment at the 2001 August annual general meeting in Saskatoon.

Real Estate People	
Sherron J. L. Dickson, Q.C.	Member, National Real Estate Project
Ann M. Tremblay	Real Estate Project Manager, National Real Estate Project
Real Estate Links	
Federation's website	http://www.flsc.ca/english/committees/realestate/realestate.htm
CBA's website	http://cba.org/RealEstateProject/

2001 ANNUAL MEETING - MARK YOUR CALENDARS!

The Federation has a block of rooms at the Hotel Delta Bessborough in Saskatoon. All meetings will take place at the Delta. For information on the 2001 Annual Meeting of the Federation, communicate with Patricia-Ann Foley at the Federation's Office: pafoley@flsc.ca (514) 875-6350 telephone.

August 16 - 19, 2001 Saskatoon, Saskatchewan
CBA meets in Saskatoon from August 12 - 15, 2001 (http://cba.org)

Thursday	August 16	AM		Board
Thursday	August 16		PM	CEOs
Thursday	August 16		PM	Board & Presidents
Friday	August 17	AM		Annual General Meeting
Saturday	August 18	AM	PM	Mobility Workshop
Sunday	August 19	AM		Informal
Sunday	August 19	AM		Board

****

Highlights of the 2001 Mid-Winter Meeting was prepared by the Federation's Office, for distribution to members of the Federation's Board and Benchers of the Law Societies. The document is also posted on the Federation's website at http://www.flsc.ca/english/calendar/midwintermeetings/2001highlights.htm

Copies of the Resolution adopted by the Federation of Law Societies of Canada on May 23rd, 2001 were distributed to Convocation.

RESOLUTION
Proceeds of Crime (Money-Laundering) Act

as adopted by the Federation of Law Societies of Canada
at a Special Meeting held on May 23, 2001

WHEREAS the federal government has enacted, in part, the Proceeds of Crime (Money Laundering) Act, S.C. 2000, c. 17, as amended by Bill S-16, An Act to amend the Proceeds of Crime (Money Laundering) Act to facilitate combating the laundering of the proceeds of crime and intends to proclaim the balance of the Act with proposed regulations taking effect;

AND WHEREAS the Barreau du Quebec, the Chambre des Notaires du Quebec, the Canadian Bar Association, the Ontario and Nova Scotia Criminal Lawyers Association and other legal associations have made representations to the federal government to express their concern with respect to the legislation;

AND WHEREAS the provincial and territorial law societies regulate the conduct of lawyers through codes of conducts and ethical rules that prohibit provincial and territorial lawyers and Quebec notaries from being involved in any money laundering schemes;

AND WHEREAS the Federation of Law Societies of Canada and the provincial and territorial law societies are fundamentally opposed to the involvement of lawyers in money laundering schemes and in favour of the basic purpose underlying the Act;

AND WHEREAS the Act and the proposed regulations will require legal counsel in Canada to report to a federal agency, information acquired by legal counsel within a solicitor-client relationship respecting a suspicious transaction and a prescribed financial transaction as defined by the Act and proposed regulations;

AND WHEREAS the Act and the proposed regulations purport to contain exemptions for privileged information, the framers of the statute have failed to address the distinction between the rule of privilege and the principle of solicitor-client confidentiality;

AND WHEREAS, solicitor-client confidentiality and the professional independence of legal counsel are essential to the operation of the Canadian legal system and should be sedulously fostered and it is in the paramount interests of all Canadians that the Canadian legal system function effectively;

AND WHEREAS the statutory requirement for disclosure of information will substantially and unreasonably infringe upon the confidentiality of the solicitor-client relationship and the independence of legal counsel, and will put the interests of legal counsel in conflict with those of the client, and will place legal counsel in breach of long-established legal, professional and ethical duties owed to the client;

AND WHEREAS the potential benefit of disclosure of confidential information is substantially outweighed by the benefits of fully protecting the confidential relationship between solicitor and client within the Canadian legal system;

THEREFORE BE IT RESOLVED THAT the Federation of Law Societies of Canada request that the federal government extend the period of consultation on the Act and proposed regulations and defer proclamation of those parts of the Act and proposed regulations that would infringe upon solicitor-client confidentiality and the professional independence of legal counsel pending a full consultation with the provincial and territorial law societies;

BE IT FURTHER RESOLVED THAT the Federation of Law Societies of Canada request all provincial and territorial law societies and the Canadian Bar Association (at both the national and provincial levels) take steps as they deem appropriate to communicate immediately to the federal government the serious concerns of legal counsel with respect to the Act and proposed regulations;

BE IT FURTHER RESOLVED THAT in the event no decision is made to defer proclamation of those parts of the Act and proposed regulations that would infringe upon solicitor-client confidentiality and the professional independence of legal counsel and no decision is made to extend the period for consultation, or in the event that the impugned sections of the Act and regulations are brought into effect, the presidents of law societies report to the Federation of Law Societies of Canada at its annual meeting in Saskatoon in August 2001 for the purpose of considering the initiation or participation in appropriate constitutional and legal challenges of the Act and proposed regulations as soon as practicable.

ADOPTED ON MAY 23, 2001, BY THE FOLLOWING LAW SOCIETIES

Law Society of British Columbia
Law Society of Alberta
Law Society of Saskatchewan
Law Society of Manitoba
Law Society of Upper Canada
Barreau du Quebec
Chambre des notaires du Quebec
Law Society of New Brunswick
Nova Scotia Barristers' Society
Law Society of Prince Edward Island
Law Society of Newfoundland
Law Society of Yukon
Law Society of the Northwest Territories

It was moved by Mr. Feinstein, seconded by Mr. Swaye that the Resolution adopted by the Federation on Money-Laundering be adopted and supported by the Law Society of Upper Canada.

Carried

Mr. Bindman abstained from voting.

The Treasurer thanked Mr. Feinstein for his service as a Director and President of the Federation of Law Societies of Canada.

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. MacKenzie presented the Report of the Professional Regulation Committee for Convocation's approval.

Professional Regulation Committee
May 10, 2001[1]

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

[1]Includes one matter from the March 8, 2001 meeting, deferred at March 22 and April 26, 2001 Convocations.

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 1

I. POLICY

AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT 2
A. INTRODUCTION AND BACKGROUND 2
B. PROPOSALS FOR RULE AMENDMENTS 3
Rule 2.04(12) - Avoidance of Conflicts of Interest - Prohibition Against Acting for Borrower and Lender 3
Rule 2.05 - Conflicts from Transfers Between Law Firms 4
Rule 2.06 - Doing Business with a Client 4
Rule 2.08(9) - Fees and Disbursements - Division of Fees 4
Rule 3.01 - Making Legal Services Available 7
Rule 3.02 - Law Firm Name 8
Rule 3.03 - Letterhead 8
Rule 4.03(3) - Advocacy - Interviewing Witnesses 9
Rule 5.01 - Supervision 10
C. RULE 2.08(4) - CONTINGENT FEES 10
D. DISCUSSION OF OTHER RULE ISSUES 15
E. SUMMARY 17
E. DECISION FOR CONVOCATION 18

NEW BY-LAW ON PROFESSIONAL CORPORATIONS 19
A. INTRODUCTION AND BACKGROUND 19
Law Practice Through a Professional Corporation 19
Balanced Budgets for Brighter Futures Act, 2000 (Bill 152) 19
B. OVERVIEW OF THE BY-LAW 21
Corporate Name 21
Certificate of Authorization 21
Change of Information 23
Committee of Benchers: Reviews and Appeals 23
General 23
C. THE COMMITTEE'S VIEW AND RECOMMENDATION 24
D. DECISION FOR CONVOCATION 24

NEW BY-LAW ON BANKRUPTCY OF MEMBERS 39
A. NATURE OF THE BY-LAW 39
B. DECISION FOR CONVOCATION 40

AMENDMENTS TO BY-LAW 31 ON UNCLAIMED TRUST FUNDS 42
A. INTRODUCTION AND BACKGROUND 42
B. NATURE OF THE AMENDMENT, OPTIONS, AND THE COMMITTEE'S VIEWS 43
Nature of the Amendment 43
The Options 43
The Committee's Views 45

C. DECISION FOR CONVOCATION 48

II. INFORMATION

FRENCH TRANSLATION ISSUES 50

REPORT ON RESOLUTION AND COMPLIANCE, INVESTIGATIONS AND DISCIPLINE FILE MANAGEMENT, CASELOADS AND OPERATIONS 52

APPENDIX 1 - PROPOSED AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT* 53

APPENDIX 2 - REPORTS OF THE SPECIAL COMMITTEE ON CONTINGENT FEES 1988 AND 1992 67

APPENDIX 3 - INFORMATION ON PROFESSIONAL CORPORATIONS 79

APPENDIX 4 - FORMER REGULATION 708, SECTION 7 ON BANKRUPTCY OF MEMBER 109

APPENDIX 5 - BY-LAW 31 - UNCLAIMED TRUST FUNDS 111

APPENDIX 6 - FILE MANAGEMENT AND CASELOAD STATISTICS FOR RESOLUTION AND COMPLIANCE, INVESTIGATIONS AND DISCIPLINE TO APRIL 2001 117

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on May 10, 2001. In attendance were:

Gavin MacKenzie (Chair)
Larry Banack (Vice-Chairs)
Niels Ortved
Heather Ross

Gary Gottlieb
Ross Murray

Staff: Janet Brooks, Audrey Cado, Lesley Cameron, Margot Devlin, Terry Knott, Zelia Pereira, Elliot Spears, Richard Tinsley, Jim Varro and Jim Yakimovich.

2. This report contains policy reports on
- amendments to the *Rules of Professional Conduct*,
- a new by-law on professional corporations
- a new by-law on bankruptcy of members
- amendments to By-Law 31 on Unclaimed Trust Funds

and information reports on

- French translation of by-laws and Rules
- file, caseload management and staffing issues in the resolution and compliance, investigations and discipline departments.

I. POLICY

AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

A. INTRODUCTION AND BACKGROUND

3. The rules working group of the Committee[2] completed a review of issues arising from adoption of the new *Rules of Professional Conduct* ("the Rules") on November 1, 2000. This section of the Committee's report contains proposed amendments to the Rules based on the working group's report to the Committee.

4. A separate rule issue was referred to the Committee from the Multi-Disciplinary Practice Task Force, relating to the rule prohibiting fee sharing between lawyers and non-lawyers, and is also discussed below.

5. The Committee is requesting that Convocation approve the proposed amendments to the following Rules and commentary (the amended Rules and commentary appear at Appendix 1):

Rule 2.04(12)	Avoidance of Conflicts of Interest - Prohibition Against Acting for Borrower and Lender
Rule 2.05	Conflicts from Transfers Between Law Firms
Rule 2.06	Doing Business with a Client
Rule 2.08(9)	Division of Fees
Rule 3.01	Making Legal Services Available
Rule 3.02	Law Firm Name
Rule 3.03	Letterhead
Rule 4.03(3)	Interviewing Witnesses
Rule 5.01	Supervision

6. Also discussed are

- the Committee's consideration of the working group's proposal to amend rule 2.08(4) on contingent fees, although the Committee is not proposing any amendments to that rule at this time, and
- rule issues that the Committee, based on the working group's report, has concluded do not warrant amendments to the Rules.

B. PROPOSALS FOR RULE AMENDMENTS

Rule 2.04(12) - Avoidance of Conflicts of Interest - Prohibition Against Acting for Borrower and Lender

7. Rule 2.04(11) prohibits a lawyer or law firm acting for both a borrower and lender except in limited defined circumstances set out in subrule (12). A concern was expressed about the lack of a definition of "an institution that lends money" in clause (c). Without a definition, an entity could be established, for example, that purports to lend money in the normal course of business, even though it may be controlled by the lawyer (as sole shareholder) who handles the lending transaction.

---

[2]Gavin MacKenzie (chair), Derry Millar, Heather Ross, Mr. Justice John Laskin and Paul Perell; Felecia Smith and Jim Varro (staff).

8. The Committee considered the description of lending institutions in By-Law 18[3] and agreed that "an institution that lends money" in clause (c) should be defined as follows:

> (c) the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business,

Rule 2.05 - Conflicts from Transfers Between Law Firms

9. Staff in Advisory Services and Policy Secretariat suggested some "housekeeping" changes to the rule and commentary to make them more understandable. The Committee agreed with the changes.

Rule 2.06 - Doing Business with a Client

10. The issue of the rule's application to situations in which lawyers accept shares in a corporate client in lieu of fees was referred to the working group by the Committee. The existing Rules, although sufficient in their general guidance (on fees and conflicts of interest), do not specifically deal with this issue. Staff in Advisory Services drafted guidelines for lawyers on the professional conduct aspects of taking shares for fees, which were reviewed for technical accuracy by securities lawyer Ed Waitzer.

11. The primary question was whether the requirement for independent legal advice in the rule should apply to lawyers' arrangements to accept shares as fees. This led to discussion of whether these arrangements fall within the ambit of doing business with a client.

12. The working group concluded that rule 2.06(2) as currently worded may be interpreted to apply to these situations, and that accordingly a lawyer may be required to recommend independent legal representation in every such case. The Committee, based on the working group's views, determined that a modified requirement should be created. A new subrule within rule 2.06 has been drafted for this purpose, with a revision to rule 2.06(2) to make it subject to the new subrule (2.1). It reads:

> 2.06 (2.1) Where a client intends to pay for legal services by transferring corporate shares or securities to his or her lawyer, the lawyer need not require that the client receive independent legal advice before accepting a retainer.

Rule 2.08(9) - Fees and Disbursements - Division of Fees

13. When the division of fees and fee-splitting rules were amended and clarified, the following paragraph in old Rule 12, Commentary 7 was not carried forward to the new Rules:

> This does not prohibit an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold.

The thinking was that if something is permissible, it need not appear in the commentary, at least in regard to this particular rule. However, inquiries have been received from members since the new rules came into effect on whether the above activity is in fact still permissible.

---

[3]Clause 7(2)(i) of By-Law 18 (Record Keeping Requirements) includes the following description of institutional lender: "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"

14. The Committee agreed that in the interests of clarity the paragraph should be added as commentary following rule 2.08(9).

15. In connection with the same rule, the Committee received information from the Multi-Disciplinary Practice Task Force ("the Task Force") that led the Committee to propose a second amendment.[4]

16. In drafting a regulatory scheme for affiliated law firms, the Task Force reviewed rule 2.08(9) and noticed that on a plain reading of the rule, profit sharing between Ontario and other Canadian lawyers in an interprovincial law firm would be prohibited. Profit sharing between lawyers in partnerships of Ontario and foreign lawyers (i.e. international law partnerships) would also be prohibited. The rule reads:

> (9) A lawyer shall not
> (a) directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer, or
> (b) give any financial or other reward to any person who is not a lawyer for the referral of clients or client matters.

17. The phrase "person who is not a lawyer" could be interpreted to include lawyers who are members of other Canadian law societies and non-Canadian lawyers.

18. With respect to international partnerships of Ontario and non-Canadian lawyers, the issue, according to Richard Tinsley, has been examined by the Federation of Law Societies, but there is nothing in place by way of a protocol or suggested practice in respect of profit sharing or other issues.

19. Two other jurisdictions have dealt with this issue in the following ways:

- The Law Society of Alberta's Code of Professional Conduct includes a rule permitting fee sharing between lawyers, similar to Ontario's rule. The Commentary to the Alberta rule, however, makes it clear that fee sharing may occur between Alberta and non-Alberta lawyers. The relevant portion reads:

> A fee may also be divided with a lawyer outside the firm (including a lawyer not authorized to practise law in Alberta), but only in accordance with paragraph (b) or Rule #7 [consent of the client, division of fee in proportion to work done, etc].

- Le Barreau du Québec, in its governing statute, includes a section on illegal practice of an advocate that excludes fee sharing with a non-advocate who is a member of a bar established outside of Québec:

> The fact that a member of a bar established outside Québec associates himself for the practice of the profession with an advocate or shares with him in any way or by any means the benefit of professional fees or earnings does not constitute illegal practice of the profession of advocate within the meaning of section 133.

---

[4]This issue is referenced in the report of the Multi-Disciplinary Practice Task Force, Implementation Phase, scheduled for debate at May 24, 2001 Convocation.

20. The Task Force suggested a rule amendment that would except interprovincial and international law firms from the prohibition in 2.08(9). The Committee agreed with the proposal, which would involve the following changes to the rule and commentary:

> Exception for Multi-discipline Practices and Interprovincial and International Law Firms
>
> (10) Subrule (9) does not apply to
>
> (a) multi-discipline practices of lawyer and non-lawyer partners where the partnership agreement provides for the sharing of fees, cash flows or ~~and~~ profits among members of the firm, and
>
> (b) sharing of fees, cash flows or profits by lawyers who are
> (i) members of an interprovincial law firm, or
> (ii) members of a law partnership of Ontario and non-Canadian lawyers
> who otherwise comply with this rule.
>
> Commentary
>
> An affiliation is different from a multi-discipline practice established in accordance with the by-laws under the *Law Society Act*, an interprovincial law partnership or a partnership between Ontario lawyers and foreign lawyers. An affiliation is subject to subrule 2.08 (9). In particular, an affiliated entity is not permitted to share in the lawyer's revenues, cash flows or profits, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses above their fair market value.

Rule 3.01 - Making Legal Services Available

21. The last paragraph of the commentary to rule 3.01 reads:

> When a lawyer offers assistance to a client or prospective client in finding another lawyer, the assistance should be given willingly and, except in very special circumstances, without charge.

A concern was raised about a possible inconsistency between this rule and the new rule on referral fees between lawyers (rule 2.08(8)).

22. The Committee agreed that the inconsistency should be remedied by amending the commentary as follows:

> When a lawyer offers assistance to a client or prospective client in finding another lawyer, the assistance should be given willingly and, except ~~in very special circumstances~~ where a referral fee is permitted by rule 2.08(8), without charge.

Rule 3.02 - Law Firm Name

9. An issue was raised about an ambiguity in the phrase "deceased or retired members of the firm", in that it is unclear whether the member whose name may be used in the firm name is retired from the firm or from the practice of law. The suggestion was that the Rule be recast to clarify the intent.

10. The Committee agreed with this suggestion. Proposed amended rule 3.02(2) reads:

> A law firm name may consist of or include the names of lawyers who were members of the firm but who are deceased or retired from the practice of law.

Rule 3.03 - Letterhead

11. Rule 3.03 contains an exclusive list of permitted inclusions on law firm letterhead. However, there are a number of things that lawyers routinely place on their letterhead that are not mentioned in the rule. Examples are the phrase "practice restricted to...", or a list of areas of law practiced by the firm. These are permitted, however, as a form of advertising under rule 3.05.

12. Although noting that rule 3.03 is subject to rule 3.05, the Committee thought it appropriate to clearly set out the permitted inclusions on letterhead in rule 3.03. The proposal is to amend the rule as follows:

> 3.03(1) Subject to subrules (2) and (3) ~~and rule 3.05~~, a lawyer's letterhead and the signs identifying the office may only include
>
> ...
>
> (l) advertising permitted under rule 3.05.

Rule 4.03(3) - Advocacy - Interviewing Witnesses

27. New rules and commentary were added in the 2000 Rule revisions to deal with the circumstances in which a lawyer may interview employees of a corporate party that is represented by a lawyer.

28. Lawyers who prosecute provincial offences and who appear before tribunals such as the Ontario Securities Commission raised a concern that a literal interpretation of the rule may prevent them from adopting certain investigative measures specifically authorized by their governing statutes, and may also prevent them from interviewing and preparing for trial certain witnesses who are employees of corporate defendants. An unrelated concern that was raised was that the new rule may prevent a plaintiff's counsel from speaking with a "whistleblower" who approaches the plaintiff's counsel to disclose corporate wrongdoing.

29. The Committee concluded that the most effective way of addressing these legitimate concerns would be to revise the rule as follows:

a. By adding language making it clear that communications with employees of corporate parties that would otherwise be proscribed are permissible if they are otherwise authorized or required by law;
b. By deleting the prohibition against communications with corporate employees whose acts or omissions are "in issue", while maintaining the prohibition against communicating with employees whose acts or omissions may expose the corporation to civil or criminal liability; and
c. By deleting the prohibition against "dealing with" employees whose acts or omissions may expose the corporation to liability, while maintaining the prohibition against "approaching" such employees.

30. The Committee proposes the following new subrule 4.03(3):

> (3) A lawyer retained to act on a matter involving a corporation or organization that is represented by another lawyer shall not approach
>
> (a) directors, officers, or persons likely involved in the decision-making process for the corporation or organization, or
>
> (b) employees and agents of the corporation or organization whose acts or omissions in connection with the matter may expose the corporation or organization to civil or criminal liability,

unless the lawyer representing the corporation or organization consents or unless otherwise authorized or required by law.

Rule 5.01 - Supervision

31. In the commentary following rule 5.01(2), in the paragraph on "Litigation", the last sentence before subparagraph (a) reads "Permissible exceptions include law clerks appearing on...". This is the only place in the rule where the term "law clerks" appears - elsewhere, the term "non-lawyer" is used. There does not appear to be any rationale for using "law clerks" in this context alone.

32. The Committee agreed that for consistency, "law clerks" should be replaced with "non-lawyers" in the commentary following rule 5.01(2), in the paragraph on "Litigation". The amended commentary reads:

> Permissible exceptions include ~~law clerks~~ non-lawyers appearing on...

C. RULE 2.08(4) - CONTINGENT FEES

33. Rule 2.08(4) provides that

> A lawyer shall not enter into an arrangement with the client for a contingent fee except in accordance with the provisions of the *Solicitors Act* or in accordance with the *Class Proceedings Act, 1992*.

34. The Committee reviewed two recent Superior Court of Justice decisions that permitted contingent fees.

35. The first was that of Justice Spiegel in *Bergel & Edson v. Wolf*, who determined that contingent fee agreements are not prohibited, illegal, or unenforceable as being contrary to section 28 of the *Solicitors Act*. Justice Spiegel also referred to the predecessor to rule 2.03(4), Rule 9 in the old rules, and said that the arrangement in the case before him was not made illegal by the rule. Moreover, he concluded that for a contingent fee agreement to be champertous, there must be "officious intermeddling", that is, the encouragement of litigation that would not otherwise be brought. Thus, an agreement involving a percentage fee is not champertous for that reason alone.

36. The second decision was that of Justice Wilson in *McIntyre v. Attorney General of Ontario*, which referred to Justice Spiegel's decision in *Bergel*. On the facts of the case, Justice Wilson permitted the contingent fee arrangement and set out guidelines "until regulatory legislation is passed". She was of the view that legislative changes should be introduced to establish regulation respecting the form, content and manner of proceeding for contingent fee agreements. A notice of appeal was filed in this case on March 30, 2001.

37. In light of the fact that these decisions support the argument that contingent fee arrangements are not disallowed by the *Solicitors Act*, the Committee discussed whether changes should be made to the Rules. The Committee noted the recent initiative of a joint committee of the Society, The Advocates' Society, the CBAO and the Ministry of the Attorney General to create a regulatory framework for contingent fee arrangements.[5] The Committee understands that the government has not moved forward with a scheme to date. This effectively leaves the matter in the hands of the Law Society (insofar as the Rules are concerned) and the courts.

---

[5] A report on the joint committee's proposals was adopted by Convocation on June 22, 2000. It confirms the Society's earlier policy decision to permit contingent fees, discussed *infra*.

38. For many years, Convocation has favoured a policy of allowing contingent fees in certain types of proceedings. In 1988, Convocation adopted a report of a special committee on contingent fees that recommended that Convocation approve in principle the introduction into Ontario of contingent fees in litigation matters other than criminal and (with one exception referred to below) matrimonial proceedings. The special committee's recommendation was informed by research that led the committee to the following conclusions:

a. Contingent fees are permitted in every province other than Ontario;
b. No instances of abuse have been reported to law societies in those provinces;
c. The experience in other provinces has not supported the supposition that the availability of contingent fees increases the incidence of unmeritorious lawsuits. In practice, lawyers are unlikely to undertake unmeritorious litigation on the basis of a contingent fee for the simple reason they will not be paid for their services if the unmeritorious claim is dismissed or abandoned;
d. On the contrary, the availability of contingent fees enhances the ability of low-income and middle class individuals to litigate meritorious claims, because many such individuals currently believe (rightly or wrongly) that they are unable to finance meritorious litigation.

39. In addition to approving in principle the introduction into Ontario of contingent fees in litigation other than criminal and (most) matrimonial proceedings, Convocation also adopted the special committee's recommendations that the special committee work out a detailed scheme as to how contingent fees should be put into operation, and that the Attorney General be urged to amend the *Solicitors Act* to permit contingent fees. The special committee's 1988 report is attached as Appendix 2.

40. In 1992, the special committee (differently constituted) reported back to Convocation and recommended that the terms of a contingent fee agreement must be reduced to writing and that the written agreement must be signed by the parties to be enforceable, but that the form and content of the contract should be left to the lawyer and client to work out.

41. As mentioned above, in its 1988 report the special committee recommended that contingent fees not be allowed in criminal or matrimonial proceedings, with one exception. That exception was proceedings for the recovery of arrears of support. In 1992, however, a motion (brought by Ms. Curtis and seconded by Mr. McKinnon) that the report be amended to exempt all matrimonial proceedings from contingent agreements, carried in Convocation. The special committee's 1992 report is attached as the second document in Appendix 2.

42. Thus, since 1988, and as recently as June 2000, Convocation has been in the incongruous position of approving in principle of contingent fees in certain cases while at the same time prohibiting them in rules of professional conduct. This anomaly is explained by the fact that until the recent decisions of Justices Spiegel and Wilson were released Convocation understood that contingent fees were prohibited in litigious matters except in class proceedings.

43. The Committee, while agreeing in principle with the direction of the working group on this issue, felt that Convocation should defer consideration of amendments to the rule on contingent fees for the following reasons:

- The Court of Appeal's views on the issue, through the appeal of the *McIntyre* case, should be considered before presenting any proposals to Convocation for debate.
- Allowing certain types of claims within family law to proceed on a contingent fee basis - for example, property claims or spousal support claims - should be examined. One view is that but for the availability of contingent fees, some people could not afford to pursue these claims, and such fees should be permitted for these issues. Other views are that because such claims can impinge, for example, on the welfare of children, they should not be pursued on a contingent fee basis. The Committee thought it would be appropriate to obtain the views of the family law bar on this issue.
- Related to the above, in keeping with the consultative approach taken by the Task Force on Review of the Rules of Professional Conduct, a proposed rule prepared by the working group and endorsed by the Committee should be made available to the profession for comment.

44. The new proposed rule is as follows:

Contingent Fees

2.08 (3) Subject to subrules (1) and (4) and the *Class Proceedings Act, 1992*, if applicable, and except in matrimonial or criminal matters, a lawyer may enter into a written agreement signed by the lawyer and his or her client that provides that the lawyer's fee is contingent, in whole or in part, on the successful disposition of the matter for which the lawyer's services are to be provided.

(4) A contingent fee agreement shall not

(a) require the lawyer's consent if the client decides to abandon, discontinue, or settle the matter

(b) interfere with the client's right to change lawyers at any time.

45. In its 1992 report the special committee recommended that contingent fees be capped at 20 per cent together with party-and-party costs, unless a higher percentage is allowed by the court at the time of the retainer. In the Committee's view such a specific restriction need not be included in rule 2.08(3) or (4) because of the requirement of rule 2.08(1) that a lawyer shall not charge or accept any amount for a fee or disbursement that is not fair and reasonable and disclosed in a timely fashion.

46. In all other respects, the proposed new rule is consistent with Convocation's policy on contingent fees as reflected in its adoption of the 1988 and 1992 reports of the special committee on contingent fees as amended.

47. The Committee proposes that the consultative process outlined above be followed with respect to the draft rule on contingent fee arrangements.

D. DISCUSSION OF OTHER RULE ISSUES

Rule 2.02(6) - Quality of Service - Client Under a Disability

48. Rule 2.02(6) is a new rule on lawyers' obligations to clients with disabilities. An expanded commentary provides guidance to a lawyer in circumstances in which the lawyer believes a client's ability to properly instruct the lawyer is affected. Two concerns were raised about the rule. The first was that the rule joins together very different incapacities, in particular, those related to children and those related to persons with mental disabilities. The concern is that the Rules unintentionally perpetuate the notion of the latter individuals as "childlike". The second concern relates to use of the word "normal" in describing the lawyer and client relationship. The suggestion was that a different term or phrase - perhaps "usual" or "usual course of business"- be used.

49. The Committee concluded that no elaboration on the rule was necessary. As the focus of the rule is capacity to give instructions, the Committee did not think there was any disrespect shown to anyone and felt that it was unnecessary to differentiate between different types of legal incapacity.

50. The Committee also agreed that the word "normal" should not be replaced with a similar descriptive word or phrase. Such a change would not appear to alleviate the concern, as opinion could vary on the interpretation of any such word or phrase.

Rule 2.04(12) - Avoidance of Conflicts of Interest - Prohibition Against Acting for Borrower and Lender

51. Rule 2.04(11) prohibits a lawyer or law firm acting for both a borrower and lender except in limited defined circumstances set out in subrule (12). Concern was expressed that the rule (clause 2.04(12)(e)) does not require those who are not at arm's length to obtain separate lawyers for the loan transaction. An example is where a family member is lending money to another, without security, for the purchase of real property heavily encumbered with mortgage debt.

52. The Committee considered whether there should continue to be an exception for non-arm's length parties, or if there were some circumstances where separate counsel should be required, or if not required, recommended. The Committee also considered whether the test for whether the parties are at arm's length should continue to be the definition of the term in the *Income Tax Act*. The Committee decided against any changes to the rule for the following reasons:

- The Society's rule is consistent with that of other jurisdictions in which a rule is in place.
- The lawyer acting for the parties would still have obligations under rule 2.04(6) on joint retainers. This would include recommending independent legal advice to one of the parties in the circumstances outlined in the commentary following that rule (e.g. where one of the clients is more sophisticated or more vulnerable than the other). The introductory words of rule 2.04(12) - "Provided that there is no violation of this rule..." - infuse subrule (12) with the obligations in rule 2.04(6).
- Deleting clause (e) would mean that all loan transactions involving family members or closely-held corporations would require two lawyers. The Committee concluded that, in light of the other protections available, this was unnecessary.
- If the "arm's length" nature of the relationship is in issue, reference may be made to the *Income Tax Act* and the jurisprudence that has developed in that context. The Committee considered this to be preferable to either leaving the term undefined or trying to devise a definition that will anticipate all possible circumstances in which issues will arise.

Rule 2.04(14) - Avoidance of Conflicts of Interest - Unrepresented Persons

53. A concern was expressed that the rule may be interpreted to apply to, and would oblige the lawyer to advise an unrepresented person according to the rule in, *any* situation in which a lawyer deals with an unrepresented person, including, for example, where the lawyer interviews a witness who is not represented by a lawyer. The suggestion is that the rule should be limited to circumstances involving litigation, where a party or parties are unrepresented.

54. While acknowledging the concern about the breadth of the rule, the Committee decided that an amendment to confine the rule's application to parties to litigation was not appropriate, for the following reasons:
- transactional matters would be excluded, and the rule was intended to apply to all matters where there is "another side";
- the rule addresses situations in which a lawyer "deals with" an unrepresented person; interviewing a witness does not amount to "dealing" with someone as that word is used in the rule (a separate rule, rule 4.03, governs interviews with witnesses).

Rule 4.01 - Advocacy - New Rule on Evidence

55. A suggestion was made during the deliberations of the Special Committee on Lawyer's Duties with Respect to Physical Evidence Relevant to a Crime that apart from a rule on that topic, a second rule of general application about the lawyer's handling of evidence, largely in the civil context, be drafted. Because the committee's mandate was narrowly drawn, the view was that this issue should be referred to the working group for consideration.

56. The Committee, based on the working group's views, decided that this matter should be deferred until the Special Committee completes its mandate.

E. SUMMARY

57. The above proposals, beyond those of a "housekeeping" nature, include changes that will clarify lawyers' duties in a number of circumstances.

58. That a number of members have responded to the new Rules by raising issues and suggestions for changes is an indication that members are increasing their awareness of their ethical and professional obligations. It also confirms the need for the Society to treat the Rules as a "living" document and provide a timely response to the issues raised.

59. The Committee, having carefully considered these issues, seeks Convocation's approval of these amendments.

E. DECISION FOR CONVOCATION

60. Convocation is requested to make the amendments to the *Rules of Professional Conduct*, as set out in Appendix 1 to this report.

61. The Committee proposes that the amendments be effective on the day they are made by Convocation, with the exception of amendments to rule 3.02(2), which the Committee proposes be effective September 1, 2001 to allow law firms to effect any required changes to their names.

NEW BY-LAW ON PROFESSIONAL CORPORATIONS

A. INTRODUCTION AND BACKGROUND

Law Practice Through a Professional Corporation

62. A new by-law on Professional Corporations has been drafted for Convocation's approval. The by-law is in response to new provincial legislation that allows lawyers to practice law through a professional corporation. The legislation amends to the *Law Society Act* and those amendments require that certain regulatory provisions be adopted through the Society's by-law-making authority.

Balanced Budgets for Brighter Futures Act, 2000 (Bill 152)

63. The *Balanced Budgets for Brighter Futures Act, 2000* (Bill 152) received Royal Assent on December 21, 2000. The Schedule to Bill 152, among other things, amends the *Law Society Act* ("the Act") to permit lawyers to carry on the practice of law through a corporation. The following excerpt from the explanatory notes that accompanied the first reading version of the Bill explains the details of the scheme.

> Provision is made in the *Business Corporations Act* to name by way of regulation other professions that may be allowed to practise through a corporation. The regulation of the practice of the individual professions by corporations is left to the by-laws and regulations under each Act but every professional corporation is required to meet the requirements set out in the amendments that the Bill makes to the *Business Corporations Act.* These requirements include the following:
>
> 1. All of the issued and outstanding shares of the corporation shall be legally and beneficially owned, directly or indirectly, by one or more members of the same profession.
> 2. All officers and directors of the corporation shall be shareholders of the corporation.
> 3. The name of the corporation shall include the words "Professional Corporation" and no professional corporation shall have a number name.
> 4. The articles of incorporation of a professional corporation shall provide that the corporation may not carry on a business other than the practice of the profession.
>
> A professional corporation may have more than one shareholder but multi-disciplinary professional corporations are not permitted.

63. Copies of the Explanatory Notes, relevant parts of the Bill 152 (including the amendments to the Act), relevant parts of Bill 45 (a new bill that makes other related amendments to the Act) and material from a slide presentation on the Bill given to the Government Relations and Public Affairs Committee in January 2001 are attached at Appendix 3. The presentation highlights certain aspects of the legislation, including the following:

- it permits incorporation without limited liability
- it will not limit the professional liability of the shareholders of the professional corporation
- it leaves regulation of the professional corporation to the Law Society
- it gives professional corporations the benefit of the small business deduction for income tax purposes with a tax deferral of substantial value.

64. The new by-law, which appears later in this report, covers, among other things, the name, structure and registration requirements for a professional corporation under the Act. Several forms have also been drafted, some of which are prescribed by the by-law.

65. Although the Schedule noted above has yet to be proclaimed in force, Convocation can make the by-law, and have the by-law ready for the profession, on the basis that it does not come into operation until Bill 152, including the Schedule, comes into force.[6]

B. OVERVIEW OF THE BY-LAW

Corporate Name

66. Sections 1 and 2 deal with the requirements for the name of the professional corporation, and mirror the provisions in the *Rules of Professional Conduct* on firm names. Section 2 provides that a member may apply in writing to the Society for a certificate that the Society does not object to a proposed name.

Certificate of Authorization

67. A professional corporation must apply for and receive from the Society a certificate of authorization before it can practice law. The corporation must also fulfill certain requirements under the by-law to continue as a corporation for the practice of law from year to year.

68. The Committee considered two options for the requirements for a professional corporation to continue as a corporation from year to year. The first option would require a professional corporation to renew annually its certificate of authorization. The second option would require the professional corporation to pay annual fees and submit annually a certificate of compliance. The Committee discussed the advantages and disadvantages of both options.

69. The renewal requirement would involve
- a combined process for an application for renewal and a fee to be made and paid within 90 days of December 31 of the relevant year
- one Society operational department dealing with renewals (Forms Services)
- an onus on the corporation, not the Society, to ensure that it renews it certificate

70. The annual filing option would require
- the Society to send notices for the fees and forms
- two separate processes for receipt of the annual fee and the forms required to be filed, involving two operational departments (Forms Services and Finance)
- processes and procedures for dealing with administrative suspensions (for default in filing) that would occur 120 days after default, and follow-up processes for notifications of suspensions and suspension orders

---

[6]Section 5 of the *Interpretation Act* states

> Where an act is not to come into operation immediately on the passing thereof and confers power to make an appointment, to make, grant or issue an order, warrant, scheme, letters patent, rule, regulations or by-laws, to give notices, to prescribe forms, or to do any thing for the purposes of the Act, that power may be exercised at any time after the passing of the Act, but an instrument made under the power, unless the contrary is necessary for bringing the Act into operation, does not come into operation until the Act comes into operation.

The budget bill introduced in the legislature on May 10, 2001 led to further amendments to the *Business Corporations Act* and legislation relating to the professions, including the *Law Society Act*, in connection with professional corporations. Once those amendments are approved, it is likely that the legislature will move quickly to adopt the budget bill, and will likely proclaim Bill 152 in force.

71. The Committee preferred and is recommending the renewal scheme. It is less costly to the Society as it involves only one operational department and one deadline, and is more efficient as no action (in the form of an order) needs to be taken by the Society to disentitle the corporation from practising law. The Committee noted that the renewal scheme (instead of an annual fees/certificate of compliance scheme) is in place in Manitoba, British Columbia and Alberta.

72. Sections 3 through 9, *inter alia*, establish the following:
- the requirement for the corporation to apply to the Society for a certificate of authorization for the practice of law (section 3)
- particulars of what the corporation must do before the Society is satisfied that it can issue a certificate (subsection 4(2)), including meeting the statutory requirements under the *Business Corporations Act*, the name requirement, and ensuring that individuals practising law through the corporation are members of the Society entitled to engage in the private practice of law
- the process for appealing the Society's refusal to issue a certificate (subsections 4(5) and (6))
- the process for renewing a certificate and the effect of expiry of a certificate that is not renewed (section 5)
- the certificate of authorization as a prescribed form under the by-law (section 8)
- the procedure by which a corporation applies to surrender a certificate of authorization (section 9), including a prescribed form for notice of intention to surrender the certificate (subsection 9(6))

Change of Information

73. Section 10 requires the corporation to notify the Society in writing of any change in the information provided to the Society in applying for a certificate of authorization or its renewal, or in the corporation's articles of incorporation.

Committee of Benchers: Reviews and Appeals

74. Sections 11 through14 describe
- the composition of and quorum for the committee of benchers that consider reviews and appeals under the by-law (section 11)
- the time for applying for reviews and appeals (section 12)
- the procedure on reviews and appeals (section 13)
- the committee's powers on review and appeals (section 14)

75. Subsection 14(5) provides that the decision of the committee is final.

General

76. Sections 15 through 19 deal with the following matters:
- the information to be contained in the register of professional corporations maintained by the Society (section 15)
- the application of certain other by-laws to professional corporations (section 16)
- the shareholders' voluntary wind-up or dissolution of the corporation (section 17)
- an interpretation of "Society official" (section 18)
- delegation of the powers and duties of the Secretary, given the requirements of subsection 61.0.2(1) and section 61.0.3 of the Act (section 19)

77. As indicated above, there are two prescribed forms under the by-law: Form A - Certificate of Authorization and Form B - Notice of Intention to Surrender a Certificate of Authorization. There are two other forms described in the by-law which are not prescribed:

- the application form for a certificate of authorization (subsection 3(2))
- the application form for a renewal of a certificate of authorization (subsection 5(2))

C. THE COMMITTEE'S VIEW AND RECOMMENDATION

78. The Committee is satisfied that the by-law properly reflects the regulatory scheme that is required pursuant to the legislation. It also believes that it balances the public interest protections required in a regulatory scheme with a workable scheme for members of the profession who may choose this vehicle for the practice of law.

79. The Committee proposes that Convocation adopt the by-law.

D. DECISION FOR CONVOCATION

80. The Committee request that Convocation adopt By-Law 00 - Professional Corporations[7] as presented in the motion below or amended as Convocation deems appropriate.

THE LAW SOCIETY OF UPPER CANADA

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

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 24, 2001

MOVED BY

SECONDED BY

THAT, pursuant to the authority contained in paragraphs 13, 14 and 28.1 of subsection 62 (0.1) of the Law Society Act, By-Law 00 [Professional Corporations] be made as follows:

BY-LAW 00

PROFESSIONAL CORPORATIONS

CORPORATE NAME

Names of shareholders

1. (1) Subject to subsection (6), the name of a professional corporation may include the name of any shareholder, but it shall include the name of at least one shareholder who will be practising law through the corporation.

Deceased shareholder

(2) A professional corporation may retain in its name the name of a deceased shareholder.

Use of certain phrases

(3) Provided that three or more individuals practise law through the professional corporation, a professional corporation may include in its name phrases such as "and associates" and "and company".

[7] A by-law number will be assigned prior to adoption of the by-law.

Use of honorific "Q.C."

(4) A professional corporation having one shareholder may include in its name the honorific "Q.C." properly attributable to the one shareholder of the corporation.

Prohibition: trade name, *etc.*

(5) The name of a professional corporation shall not include a trade name, commercial name or figure of speech.

Prohibition: shareholder

(6) The name of a professional corporation shall not include the name of a shareholder who holds office as a member of a tribunal or who holds any other office the duties of which are incompatible with the practice of law.

Prohibition: general

(7) The name of a professional corporation shall not include any language that is not expressly permitted under this By-Law or under the provisions of the *Business Corporations Act*, or any regulations made thereunder, that apply to professional corporations.

Prohibition: identical or similar name

(8) A professional corporation shall not use a name,

(a) that is used by another professional corporation; or

(b) that so nearly resembles the name used by another professional corporation that it is likely to confuse or mislead the public.

Use of past firm name

(9) Despite any other provision in this section, a professional corporation that is established by two or more members who, before the day the corporation is established, practised law as a partnership may use as its name the name of the partnership.

Interpretation: name of shareholder

(10) For the purposes of this section, the name of a shareholder means the shareholder's surname and, at the shareholder's option, his or her given names or initials.

Corporate name certificate

2. (1) A member may apply in writing to the Society for a certificate that the Society does not object to the establishment of a professional corporation under a proposed name.

Decision of Society official

(2) A Society official shall consider every application made under subsection (1) and shall,

(a) if the official is satisfied that the proposed name complies with section 1, issue a certificate to the member; or

(b) if the official is not satisfied that the proposed name complies with section 1, reject the application.

Notice to member and application for review

(3) If a Society official rejects an application made under subsection (1), the official shall so notify the member and the member may apply to the committee of benchers appointed under section 11 for a review

CERTIFICATE OF AUTHORIZATION

Application for certificate

3. (1) A corporation that wishes to practise law shall apply to the Society for a certificate of authorization.

Same

(2) An application under subsection (1) shall include,

(a) a completed application form provided by the Society;

(b) a copy of,

(i) the corporation's articles of incorporation and the certificate of incorporation, the corporation's articles of amalgamation and the certificate of amalgamation or the corporation's articles of continuance and the certificate of continuance, as the case may be, and

(ii) the corporation's articles of amendment, if any, and the certificate of amendment; and

(c) an application fee in an amount determined by Convocation from time to time.

Consideration by Society official

4. (1) A Society official shall consider every application under subsection 3 (1) made in accordance with subsection 3 (2).

Issuance of certificate

(2) A Society official shall issue a certificate of authorization to a corporation if the official is satisfied that,

(a) the corporation is a subsisting corporation under the *Business Corporations Act* and meets the conditions for professional corporations specified in that Act and in any regulations made under that Act;

(b) the name of the corporation complies with section 1 of this By-Law;

(c) the directors of the corporation are members whose rights and privileges are not suspended; and

(d) the individuals who will practise law through the corporation are members who are entitled to engage in the private practice of law in Ontario, student members who are not the subject of an order made under section 35 or section 40 or other persons who are authorized to practise law under the *Law Society Act* and the by-laws made thereunder.

Refusal to issue certificate

(3) If a Society official is not satisfied that a requirement set out in subsection (2) has been met, the official shall notify the corporation and the corporation may meet the requirement or appeal to the committee of benchers appointed under section 11 if it believes that the requirement has been met.

Same

(4) Despite subsection (2), a Society official may refuse to issue a certificate of authorization to a corporation where,

(a) the corporation has had a certificate of authorization revoked; or

(b) a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose certificate of authorization has been revoked.

Notice and appeal

(5) If a Society official refuses to issue a certificate of authorization to a corporation under clause (4) (a), the official shall so notify the corporation and the corporation may appeal the refusal to the committee of benchers appointed under section 11.

Same

(6) If a Society official refuses to issue a certificate of authorization to a corporation under clause (4) (b), the official shall so notify the corporation and the corporation may appropriately re-appoint its directors and officers and alter its shareholders or appeal the refusal to the committee of benchers appointed under section 11.

Duration of certificate

(7) Subject to its being revoked, a certificate of authorization issued under this section is valid from the date of issue, as indicated on the certificate, until December 31 of the year in which it is issued.

Renewal

5. (1) A professional corporation may apply to the Society for a renewal of the corporation's certificate of authorization.

Application

(2) An application under subsection (1) shall include,

(a) a completed application form provided by the Society; and

(b) a renewal fee in an amount determined by Convocation from time to time.

Consideration by Society official

(3) A Society official shall consider every application under subsection (1) made in accordance with subsection (2) and shall,

(a) if the official is satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), renew the corporation's certificate of authorization; or

(b) if the official is not satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), refuse to renew the corporation's certificate of authorization.

Refusal to renew

(5) Despite clause (3) (a), a Society official may refuse to renew the certificate of authorization of a professional corporation where a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose certificate of authorization has been revoked.

Notice and appeal

(6) If a Society official refuses to renew a certificate of authorization, the official shall so notify the professional corporation and the corporation may appeal the refusal to the committee of benchers appointed under section 11.

Duration of renewal

(7) Subject to its being revoked, a certificate of authorization that has been renewed under this section is valid until December 31 of the year for which it is renewed.

Expiry of certificate

(8) A professional corporation shall not practise law if its certificate of authorization has expired.

Time for applying for renewal

(9) A professional corporation that wishes to renew its certificate of authorization without any disruption in its entitlement to practise law pending the renewal shall apply for the renewal not later than 90 days before the day on which its certificate expires.

Revocation of certificate

(10) If for any reason the certificate of authorization of a professional corporation is not renewed within 12 months after its expiry, the certificate of authorization is automatically revoked.

Renewal of revoked permit

(11) A professional corporation may not apply for a renewal of a certificate of authorization that has been revoked, but the corporation may apply for a new certificate of authorization.

Erroneous or incomplete certificate of authorization

6. (1) If a Society official receives information that a certificate of authorization held by a professional corporation contains an error or is incomplete, the official may, by so notifying the corporation in writing, require the corporation by the date specified in the notice to return its certificate of authorization to the Society for correction, completion or replacement.

Replacement certificate

(2) If the Society replaces an erroneous or incomplete certificate of authorization with a new certificate of authorization, the new certificate of authorization shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

No interruption in holding of certificate

(3) The return of a certificate of authorization under this section shall not constitute an interruption in the holding of the certificate by the professional corporation.

Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

Correction, *etc.* following report of change

(5) If the replacement of a certificate of authorization under this section is necessitated as a result of a change reported by the professional corporation under section 10, the professional corporation shall pay to the Society a fee for the replacement certificate in an amount determined by Convocation from time to time.

Loss or destruction of certificate

7. (1) If the certificate of authorization of a professional corporation is lost or destroyed, the corporation may apply to the Society in writing for a replacement certificate.

Society official may issue replacement certificate

(2) Upon payment of a fee in an amount determined by Convocation from time to time, a Society official may issue a replacement certificate of authorization to the professional corporation.

Replacement certificate

(3) A replacement certificate of authorization issued under this section shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

Form 00A

8. A certificate of authorization issued under this By-Law shall be in Form 00A.

Surrender of certificate

9. (1) A professional corporation shall apply to the Society for permission to surrender its certificate of authorization,

(a) when the corporation does not wish to renew the certificate or when the corporation no longer wishes to practise law; and

(b) prior to a voluntary winding up or voluntary dissolution of the corporation.

Same

(2) An application under subsection (1) shall be in writing and shall be accompanied by a statutory declaration signed by the directors of the professional corporation setting forth,

(a) the name of the professional corporation, the corporation's Ontario Corporation Number, the address of the corporation's registered office, the address of the corporation's business office, the number of the corporation's certificate of authorization and the date of issue of the corporation's certificate of authorization;

(b) the reasons for the application;

(c) a declaration that all money or property held in trust for which the professional corporation was responsible has been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the corporation has not been responsible for any money or property held in trust;

(d) a declaration that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister or solicitor, or, alternatively, that the professional corporation has not engaged in the practice of law;

(e) a declaration that the directors of the professional corporation are not aware of any claim against the corporation in its professional capacity or in respect of its practice; and

(f) such additional information or explanation as may be relevant by way of amplification of the foregoing.

Same

(3) An accountant's certificate to the effect that all money and property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled thereto shall be attached, and marked as an exhibit, to the statutory declaration required under subsection (2).

Publication of notice of intention to surrender certificate

(4) Subject to subsection (5), a professional corporation that wishes to surrender its certificate of authorization shall, at least thirty days before the day on which it applies to the Society under subsection (1), publish in the Ontario Reports a notice of intention to surrender a certificate of authorization.

Exemption from requirement to publish notice

(5) Upon the written application of the professional corporation, a Society official may exempt the corporation from the requirement to publish a notice of intention to surrender a certificate of authorization.

Notice of intention to surrender certificate

(6) The notice of intention to surrender a certificate of authorization which a professional corporation is required to publish under subsection (4) shall be in Form 00B [Notice of Intention to Surrender Certificate of Authorization].

Proof of publication of notice of intention to surrender certificate

(7) Unless a professional corporation is exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, an application under subsection (1) shall be accompanied by proof of publication in accordance with subsection (4) of a notice of intention to surrender a certificate of authorization.

Society official to consider application

(8) Subject to subsection (9), a Society official shall consider every application made under subsection (1) in respect of which the requirements set out in subsections (2), (3) and (7) have been complied with, and a Society official may consider an application made under subsection (1) in respect of which the requirements set out in subsection (2), (3) and (7) have not been complied with, and,

(a) the official shall accept an application if he or she is satisfied,

(i) that all money or property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the corporation has not been responsible for any money or property held in trust,

(ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister or solicitor, or, alternatively, that the professional corporation has not engaged in the practice of law,

(iii) that there are no claims against the professional corporation in its professional capacity or in respect of its practice,

(iv) that the professional corporation is no longer the subject of or has fully complied with all terms and conditions of an order made under Part II of the Act, and

(v) that the professional corporation, if not exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, has complied with subsection (4); or

(b) subject to subsection (9), the official shall reject an application if he or she is not satisfied of a matter mentioned in clause (a).

Acceptance of application

(9) A Society official may accept an application if he or she is not satisfied of the matter mentioned in subclause (8) (a) (iv) but is satisfied of the matters mentioned in subclauses (8) (a) (i), (ii), (iii) and (v).

Society official not to consider application

(10) A Society official shall not consider an application made under subsection (1) if the professional corporation or any individual practising law through the corporation is,

(a) the subject of an audit, investigation, search or seizure by the Society; or

(b) a party to a proceeding under Part II of the Act.

Documents, explanations

(11) For the purposes of assisting a Society official to consider its application, the professional corporation shall provide to the official such documents and explanations as the official may require.

Rejection of application

(12) If a Society official rejects its application, the official may specify terms and conditions to be complied with by the professional corporation as a condition of its application being accepted, and if the corporation complies with the terms and conditions to the satisfaction of the official, the official shall accept the application.

CHANGE OF INFORMATION

Change of information

10. (1) A professional corporation shall notify the Society in writing immediately after,

(a) any change in the information provided as part of the corporation's application for a certificate of authorization or for a renewal of a certificate of authorization; and

(b) any change in the corporation's articles of incorporation.

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in the professional corporation's articles of incorporation, shall include the corporation's articles of amendment and the certificate of amendment.

COMMITTEE OF BENCHERS: REVIEWS AND APPEALS

Committee of benchers

11. (1) Convocation shall appoint a committee of at least three benchers to consider applications for review and appeals made under this By-Law.

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of review or appeal: quorum

(3) Three benchers who are members of the committee appointed under subsection (1) constitute a quorum for the purposes of considering an application for a review or an appeal made under this By-Law.

Time for making application for review

12. (1) An application for a review under subsection 2 (3) shall be commenced by the member notifying a Society official in writing of the application within thirty days after the day the official notifies the member that his or her application for a certificate has been rejected.

Time for appeal: appeals under subss 4 (3), (5) and (6)

(2) Subject to subsection (4), an appeal under subsection 4 (3), (5) or (6) shall be commenced by the professional corporation notifying a Society official in writing of the appeal within thirty days after,

(a) the day the official notifies the corporation under subsection 4 (3) that a requirement has not been met; or

(b) the day the official notifies the corporation under subsection 4 (5) or (6) that he or she is refusing to issue a certificate of authorization.

Time for appeal: appeal under subs. 5 (6)

(3) Subject to subsection (4), an appeal under subsection 5 (6) shall be commenced by the professional corporation notifying a Society official in writing of the appeal within thirty days after the day the official notifies the corporation that he or she is refusing to renew the corporation's certificate of authorization.

Extension of time for commencing appeal

(4) Upon the written request of the professional corporation, made no later than the last day for commencing an appeal as specified in subsection (2) or (3), a Society official may extend the time for commencing the appeal.

When notice given

(5) For the purposes of this section, a Society official will be deemed to have notified a person of a rejection or refusal,

(a) in the case of oral notification, on the day that the official notified the person; and

(b) in the case of written notification,

(i) if it was sent by regular lettermail, on the fifth day after it was mailed, and

(ii) if it was faxed, on the first day after it was faxed.

Procedure: review and appeal

13. (1) Subject to subsection (2), the procedure applicable to the consideration by the committee of benchers appointed under section 11 of an application for a review under subsection 2 (3) or of an appeal under subsection 4 (3), 4 (5), 4 (6) or 5 (6) shall be determined by the committee and, without limiting the generality of the foregoing, the committee may decide who may make submissions to it, when and in what manner.

Same

(2) Unless the committee of benchers appointed under section 11 permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

Powers on review

14. (1) After considering an application for a review under subsection 2 (3), the committee of benchers appointed under section 11 shall,

(a) if it is satisfied that the proposed name complies with section 1, direct a Society official to issue a certificate to the member; or

(b) if it is not satisfied that the proposed name complies with section 1, reject the application.

Powers on appeal: appeal under subs. 4 (3)

(2) After considering an appeal made under subsection 4 (3), the committee of benchers appointed under section 11 shall,

(a) if it determines that the requirement has been met, direct a Society official to issue a certificate of authorization to the corporation; or

(b) if it determines that the requirement has not been met, notify the corporation that the requirement has not been met and that the Society shall not issue a certificate of authorization to the corporation.

Powers on appeal: appeal under subss 4 (5), (6)

(3) After considering an appeal made under subsection 4 (5) or (6), the committee of benchers appointed under section 11 shall make such decision as it considers proper in the circumstances.

Powers on appeal: appeal under subs. 5 (6)

(4) After considering an appeal made under subsection 5 (6), the committee of benchers appointed under section 11 shall,

(a) direct a Society official to renew the professional corporation's certificate of authorization if it is satisfied that,

(i) the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), and

(ii) despite the fact that the situation mentioned in subsection (5) is present, it is appropriate to renew the corporation's certificate of authorization; or

(d) refuse to renew the professional corporation's certificate of authorization if,

(i) it is not satisfied that the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2); or

(ii) it determines that it is inappropriate to renew the corporation's certificate of authorization because the situation mentioned in subsection (5) is present.

Decisions final

(5) The decisions of the committee of benchers appointed under section 11 are final.

GENERAL

Register

15. The following information shall be contained in the register of professional corporations required under section 61.0.2 of the Act:

1. The name of the professional corporation.

2. The address of the professional corporation's registered office.

3. The business address of the professional corporation, if different from the address of its registered office.

4. The number of the certificate of authorization issued to the professional corporation.

5. The date on which the certificate of authorization was issued to the professional corporation.

6. The terms, conditions, limitations or restrictions that apply to the professional corporation's certificate of authorization.

7. The date on which the professional corporation's certificate of authorization was suspended, made subject to a term, condition, limitation or restriction, revoked or surrendered.

Application of by-laws

16. (1) The following by-laws, with necessary modifications, apply to a professional corporation:

1. By-Law 17 [Filing Requirements].

2. By-Law 18 [Record Keeping Requirements].

3. By-Law 19 [Handling of Money and Other Property].

4. By-Law 25 [Multi-Discipline Practices].

5. By-Law 29 [Payment of Costs].

6. By-Law 00 [Bankruptcy of Member].

No voluntary winding up or dissolution

17. The shareholders of a professional corporation shall not require the corporation to be wound up voluntarily and shall not authorize the voluntary dissolution of the corporation until the corporation has received permission under section 9 to surrender its certificate of authorization.

Interpretation: "Society official"

18. 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.

Delegation of powers and duties of Secretary: Director, Client Service Centre

19. An officer or employee of the Society who holds the office of Director, Client Service Centre may exercise the powers and perform the duties of the Secretary under subsection 61.0.2 (1) and section 61.0.3 of the Act.

Form 00A

Certificate of Authorization

Certificate Number: (*Fill in number*)

THE LAW SOCIETY OF UPPER CANADA

(*Society's Coat of Arms*)

CERTIFICATE OF AUTHORIZATION

Issued under By-Law 00 made under paragraph 28.1 of subsection 62 (0.1) of the *Law Society Act*

(*Name of corporation*), Ontario Corporation Number (*Fill in number*), is hereby authorized to practise law as a barrister and solicitor in accordance with the *Law Society Act*, the by-laws made thereunder and the Rules of Professional Conduct of The Law Society of Upper Canada.

(*Date*) (*Signature of Society Official*)

Form 00B

Notice of Intention to Surrender a Certificate of Authorization

NOTICE OF INTENTION TO SURRENDER A CERTIFICATE OF AUTHORIZATION

(*Name of professional corporation applying for permission to surrender a certificate of authorization, in capital letters*)

Pursuant to section 9 of By-Law 00 made under paragraph 28.1 of subsection 62 (0.1) of the *Law Society Act*, the above named hereby gives notice of its intention to surrender its certificate of authorization.

The above named has carried on the practice of law at (*identify where the above named has carried on the practice of law*) (*or* has not carried on the practice of law since (*date*)) (*or* has never carried on the practice of law in Ontario).

Dated at (*place*) (*Date*)

(*Name of professional corporation*)

(*Signatures of all directors*)

NEW BY-LAW ON BANKRUPTCY OF MEMBERS

A. NATURE OF THE BY-LAW

81. The Committee is proposing that Convocation adopt a new by-law that addresses duties of bankrupt members.[8]

82. Bankruptcy provisions formerly appeared in s. 7 of Regulation 708 (please see Appendix 4) but were repealed when the amendments to the *Law Society Act* ("the Act") were adopted in February 1999. A review of issues concerning the bankruptcy of members is continuing, but as an interim measure, a by-law that reflects the provisions in former Regulation 708 has been drafted for approval.

83. The new by-law includes the following:
- authorization for the delegation of the Secretary's duties under the by-law to Senior Counsel, Discipline or (in the event of Senior Counsel's inability to act) Discipline Counsel;
- a requirement that members immediately notify the Society of their bankruptcy;
- restrictions on members' receipt or handling of trust funds.

84. With respect to the handling of trust funds, the Committee was informed by staff that a major failing of the bankruptcy provisions contained in former Regulation 708 was that they did not expressly prohibit bankrupt members from handling existing trust funds. As a result, bankrupt members would argue that the provisions did not prohibit them from handling existing trust funds but merely prohibited them from receiving new trust funds. The Society argued that a prohibition against receiving trust funds included a prohibition against handling existing trust funds. The new by-law addresses this issue by expressly including a restriction on handling of trust funds.

85. The new by-law appears below in the motion to make the by-law.

B. DECISION FOR CONVOCATION

86. Convocation is asked to make By-Law 00 - Bankruptcy of Member[9] in the form appearing below, or amended as Convocation deems appropriate.

THE LAW SOCIETY OF UPPER CANADA

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

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 24, 2001

MOVED BY

SECONDED BY

---

[8]The new by-law is made pursuant to the by-law making authority in ss. 62(0.1) of the Act, through
- paragraph 4: "governing members or student members or any class of either of them, and prescribing their rights and privileges" and
- paragraph 5: "governing the handling of money and other property by members and student members".

[9]A by-law number will be assigned at Convocation before the by-law is made.

THAT, pursuant to the authority contained in paragraphs 4, 5 and 13 of subsection 62 (0.1) of the *Law Society Act*, By-Law 00 [Bankruptcy of Member] be made as follows:

BY-LAW 00

BANKRUPTCY OF MEMBER

Delegation of powers and duties of Secretary: Senior Counsel, Discipline

1. (1) An officer or employee of the Society who holds the office of Senior Counsel, Discipline may, in the absence of the Secretary, and subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under this By-Law.

Delegation of powers and duties of Secretary: Discipline Counsel

(2) An officer or employee of the Society who holds the office of Discipline Counsel may, in the absence of the Secretary and the Senior Counsel, Discipline, and subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under this By-Law.

Requirement to notify Society

2. A member shall immediately notify the Society whenever any of the following events occurs:

1. The member receives notice of or is served with a petition for a receiving order against him or her filed in court under subsection 43 (1) of the *Bankruptcy and Insolvency Act* (Canada).

2. The member makes an assignment of all his or her property for the general benefit of his or her creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada).

Handling of money by bankrupt member

3. (1) Subject to subsections (2) and (3), a member who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) shall not receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

Exception

(2) A member who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may receive from or on behalf of a person or group of persons money,

(a) in payment of fees for services performed by the member for the person or group; or

(b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Same

(3) A member who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may apply in writing to 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, to the Chief Executive Officer, for permission to receive from or on behalf of a person or group of persons any money or other property, other than as permitted under subsection (2), or for permission to handle money or other property that is held in trust for a person or group of persons, and, after considering the member's application, the Secretary or the Chief Executive Officer may permit the member to do so, subject to such terms and conditions as the Secretary or the Chief Executive Officer may impose.

AMENDMENTS TO BY-LAW 31 ON UNCLAIMED TRUST FUNDS [10]

A. INTRODUCTION AND BACKGROUND

87. The Committee has prepared amendments to By-Law 31[11] to incorporate a process for reconsideration of claims for payment of unclaimed trust funds that are denied. The amendments are required to implement the subject matter of a successful motion to amend the by-law immediately prior to its adoption by Convocation on January 25, 2001 to provide a right of appeal within the Law Society to a claimant whose claim is denied. As the by-law presented to Convocation did not include language to give effect to the amendment, the drafting issue was referred to the Committee.

88. By-Law 31 provides the mechanics for the scheme in sections 59.6 through 59.14 of the *Law Society Act* for the Society's receipt, administration and payment to claimants of unclaimed trust funds. Unclaimed trust funds paid to the Society pursuant to the by-law are held in trust by the Society in perpetuity for the purpose of satisfying the claims of those entitled to the money. A person may apply to the Society in accordance with the by-law for payment of the money held in the Society's trust.

89. The by-law requires claimants to complete an application to the Society for payment of the funds and to provide certain information in support of the application. In its current form, the by-law authorizes the Secretary to consider a claim and either grant or deny the claim, or refer it to a committee of benchers appointed under the by-law. The committee of benchers either grants or denies the claim and its decision is final. The claimant has a right of appeal from that decision to the Superior Court of Justice (s. 59.11 of the *Law Society Act*).

B. NATURE OF THE AMENDMENT, OPTIONS, AND THE COMMITTEE'S VIEWS

Nature of the Amendment

90. The motion moved at Convocation on January 25 that amended the by-law was that a person claiming entitlement to unclaimed trust funds should have the right of appeal to a committee of benchers from the Secretary's refusal to grant the claim.

The Options

91. Elliot Spears, Legislation and Research Counsel, initially provided the Committee with three options for amending the by-law to give effect to the motion. A fourth option was also explored at the Committee's suggestion, and was based on the process for review of claims to the Lawyers' Fund for Client Compensation. All four options include the claimant's right of appeal to the Superior Court of Justice from the final decision of the bencher committee, as enshrined in the *Law Society Act.*

92. The options are described below. The relevant portion of By-Law 31 for the purpose of the amendments is sections 5 through 8, which read as follows:

---

[10]Originally reported to March 22, 2001 Convocation, and also reported to April 26, 2001 Convocation.

[11]The current version of the by-law appears at Appendix 5 .

Consideration of claim

5. (1) The Secretary shall consider every claim under subsection 59.10 (1) of the Act made in accordance with section 4 of this By-Law and, on the basis of the information provided under subsection 4 (2) of this By-Law and any documents provided under subsection 4 (3) of this By-Law, shall,

(a) grant the claim;

(b) deny the claim; or

(c) refer the claim to the committee of benchers appointed under section 6 of this By-Law.

Secretary grants or denies claim

(2) If the Secretary grants the claim under clause (1) (a) or denies the claim under clause (1) (b), subject to section 59.11 of the Act, the Secretary's disposition of the claim is final.

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider claims under subsection 59.10 (1) of the Act that are referred by the Secretary under clause 5 (1) (c) of this By-Law.

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of claim by committee of benchers: quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law.

Procedure

(2) The procedure applicable to the consideration by the committee appointed under section 6 of a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law shall be determined by the committee.

Consideration of claim by committee of benchers

8. (1) The committee appointed under section 6 shall consider every claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law and shall,

(a) grant the claim; or

(b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee's disposition of a claim is final.

Option #1

93. The first option would retain the current scheme set out in sections 5 to 8 and add to it a right of appeal to the committee of benchers described in section 6 for those whose claims were refused by the Secretary. The primary amendments to the by-law would involve deleting subsection 5(2) and adding new subsections under section 5 to provide for claimant's written application to the committee of benchers appointed under section 6 for a reconsideration of the claim.

Option #2

94. The second option would involve amending the scheme currently in sections 5 to 8 by requiring the Secretary to either grant or deny a claim (the option of referring a claim to the committee of benchers would be eliminated) and giving all claimants whose claim is denied by the Secretary a right of appeal. This option would require amendments to delete paragraph 5(1)(c) and subsection 5(2) in the by-law, and, as in option #1, to add new subsections under section 5 to provide for a written application for reconsideration of the Secretary's decision to deny the claim.

Option #3

95. The third option would amend the scheme currently in sections 5 to 8 by requiring the Secretary to grant a claim or to refer it to the committee of benchers (the option of denying a claim would be eliminated). Amendments for this option would require deletion of paragraph 5(1)(c) and subsection 5(2), which refer to the Secretary's denial of the claim.

Option #4

96. This option would provide that all decisions to grant or deny claims for unclaimed trust funds are to be made by a committee of benchers and would require a restructuring of much of sections 5 through 8. The amendments would provide for a new committee of benchers, composed of all benchers eligible for membership on the hearing panel, that would consider every claim and determine whether to grant or deny the claim. The Secretary would initially review the claim and refer it to the committee with a recommendation.

The Committee's Views

97. After considering all four options and accompanying language for amendments to sections 5 through 8, the Committee felt that option #2 was the most appropriate, for the following reasons:

(a) The appeal would be available to all claimants whose claims are denied;
(b) The involvement of the bencher committee would arise from a decision of the Secretary, unlike the scheme, for example, in option 3 or 4, where a committee of benchers could receive a matter for reconsideration or review on referral from the Secretary (without a decision). The Committee's view was that it is preferable to have a decision on which the benchers' reconsideration is based;
(c) The committee of benchers would only become involved after a decision denying a claim, unlike the scheme, for example, in option 4, where a committee of benchers reviews all matters based on the Secretary's recommendation. The Committee was mindful of benchers' considerable time commitment for hearings and other Law Society responsibilities, and felt that bencher time would be best utilized if required only for reconsideration of the decision denying the claim.

98. Procedurally, reconsideration of the claim is based on written submissions to the committee of benchers, subject to the committee's discretion to permit oral submissions.

99. The Committee proposes that the following amendments be made to sections 5 through 8 of the by-law to implement option #2:

Consideration of claim
5. (1) The Secretary shall consider every claim under subsection 59.10 (1) of the Act made in accordance with section 4 of this By-Law and, on the basis of the information provided under subsection 4 (2) of this By-Law and any documents provided under subsection 4 (3) of this By-Law, shall,

(a) grant the claim; or

(b) deny the claim. ~~; or~~

~~(c) refer the claim to the committee of benchers appointed under section 6 of this By-Law.~~

~~Secretary grants or denies claim~~

~~(2) If the Secretary grants the claim under clause (1) (a) or denies the claim under clause (1) (b), subject to section 59.11 of the Act, the Secretary's disposition of the claim is final.~~

Secretary denies claim

(2) If the Secretary denies the claim under clause (1) (b), the Secretary shall so notify the claimant and the claimant may apply to the committee of benchers appointed under section 6 for a reconsideration of the claim.

Time for making application

(3) An application for a reconsideration under subsection (2) shall be commenced by the claimant notifying the Secretary in writing of the application within thirty days after the day specified in the Secretary's notice to the claimant that his or her claim has been denied.

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider ~~claims under subsection 59.10 (1) of the Act that are referred by the Secretary under clause 5 (1) (c) of this By-Law.~~ applications for reconsideration made under subsection 5 (2).

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

~~Consideration of claim by committee of benchers: quorum~~

Quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering ~~a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law~~ an application for a reconsideration made under subsection 5 (2).

Procedure

(2) Subject to subsection (3), the procedure applicable to the consideration by the committee appointed under section 6 of ~~a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law~~ an application for a reconsideration made under subsection 5 (2) shall be determined by the committee.

Written submission

(3) Unless the committee permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

~~Consideration of claim by committee of benchers~~

Powers

8. (1) The committee appointed under section 6 shall consider every ~~claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law~~ application for a reconsideration made under subsection 5 (2) and shall,

(a) grant the claim; or

(b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee's disposition of a claim is final.

100. A motion appearing in the next section of the report includes the above proposed amendments.

C. DECISION FOR CONVOCATION

101. Convocation is requested to amend By-Law 31 as set out in the motion below to implement the amendment to the by-law made upon its adoption on January 25, 2001 to provide a right of appeal within the Society for claimants whose claims are denied.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 31
[UNCLAIMED TRUST FUNDS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 24, 2001

MOVED BY

SECONDED BY

THAT By-Law 31 [Unclaimed Trust Funds] made by Convocation on January 25, 2001 be amended as follows:

1. Subsection 5 (1) of the By-Law is amended by,

(a) adding "or" at the end of clause (a);

(b) deleting "or" at the end of clause (b); and

(c) deleting clause (c).

2. Subsection 5 (2) of the By-Law is deleted and the following substituted:

Secretary denies claim

(2) If the Secretary denies the claim under clause (1) (b), the Secretary shall so notify the claimant and the claimant may apply to the committee of benchers appointed under section 6 for a reconsideration of the claim.

Time for making application

(3) An application for a reconsideration under subsection (2) shall be commenced by the claimant notifying the Secretary in writing of the application within thirty days after the day specified in the Secretary's notice to the claimant that his or her claim has been denied.

3. Sections 6 to 8 of the By-Law are deleted and the following substituted:

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider applications for reconsideration made under subsection 5 (2).

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering an application for a reconsideration made under subsection 5 (2).

Procedure

(2) Subject to subsection (3), the procedure applicable to the consideration by the committee appointed under section 6 of an application for a reconsideration made under subsection 5 (2) shall be determined by the committee.

Written submission

(3) Unless the committee permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

Powers

8. (1) The committee appointed under section 6 shall consider every application for a reconsideration made under subsection 5 (2) and shall,

(a) grant the claim; or

(b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee's disposition of a claim is final.

II. INFORMATION

FRENCH TRANSLATION ISSUES

102. The Committee discussed the need to formulate a policy for Convocation's consideration on the status of French versions of by-laws and *Rules of Professional Conduct* in the context of Convocation's by-law and rule making functions. The question is whether Convocation should make by-laws and Rules only when both the final English and French versions are presented, or make the English by-law or rule as the official version, acknowledging that the French version will be adopted as soon as possible (and if possible, simultaneously with the English version).

103. The issue was discussed in the context of the June 1989 French Language Services Policy adopted by Convocation. The Policy commits the Society to provide services in the French language to members and the public, instruction and materials in the French language to students pursuing the Bar Admission Course in Ottawa, and continuing legal education programmes in the French language.

104. Translation Guidelines made pursuant to the Policy state that they are intended to "assist in continuing to produce high-quality French materials in a timely and cost-effective manner in keeping with the customer service focus and the regulatory function of the Law Society". By-laws and Rules are included in the material that the Guidelines indicate are to be "systematically translated in full" and fall within the category of time-sensitive material that the Guidelines direct "shall be published/released in both languages simultaneously".

105. Currently, English versions of new by-laws or amendments to existing by-laws are referred through the appropriate Committee or brought directly to Convocation for approval. Whenever possible, the French version will accompany the English version. But in the absence of the French version, Convocation will adopt the English version and adopt the French version at a later date. This is because the time between a Committee's approval of the proposed text and Convocation may not permit French translation for Convocation, especially if the by-law or amendments are long. A similar process is followed with respect to Rule amendments. The effect of the practice may be thought to give the English version predominance. If the French language amendment is not available for Convocation, the amending motion includes a paragraph revoking the French version of the by-law.

106. Presenting Convocation with English and French versions of a by-law or an amendment may not solve the problem entirely. If changes are made to the English version during Convocation and language is approved, it is not possible to make the same changes to the French version unless a translator is present at Convocation for that purpose. Accordingly, adoption of the French version may inevitably be delayed at least one month.

107. The Committee discussed two options (a number of questions related to each option) to address the issue:

- By-laws or amendments to by-laws could be made by Convocation only when final English and French versions are presented to Convocation. This would effectively give the English and French versions equal status. It would, however, delay the approval process in some cases.
- Convocation could determine that the English version of the by-laws and rules is the official version, which would allow Convocation to approve a by-law or rule or amendments in English, and at a later date approve the French version. It may, however, call into question how Convocation may be seen to be interpreting and applying the French Language Services Policy.

The Committee recognized that the issue also impinges on the substantive work of other committees relating to by-laws and has financial implications.

108. The Chair would welcome the comments of other benchers on this issue as the Committee prepares to continue with the discussion at its June 2001 meeting.

REPORT ON RESOLUTION AND COMPLIANCE, INVESTIGATIONS AND DISCIPLINE FILE MANAGEMENT, CASELOADS AND OPERATIONS

109. The Secretary, Richard Tinsley, Lesley Cameron (Senior Counsel - Discipline) and James Yakimovich (Manager, Investigations) reported to the Committee on caseload management in the Resolution and Compliance, Investigations, and Discipline Departments. The reports appear at Appendix 6. 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.[12]

---

[12]The Chair of the Committee, 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.

APPENDIX 1

PROPOSED AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT*

2.04 AVOIDANCE OF CONFLICTS OF INTEREST

Prohibition Against Acting for Borrower and Lender

(11) Subject to subrule (12), a lawyer or two or more lawyers practising in partnership or association shall not act for or otherwise represent both lender and borrower in a mortgage or loan transaction.

(12) Provided that there is no violation of this rule, a lawyer may act for or otherwise represent both lender and borrower in a mortgage or loan transaction if

(a) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction,

(b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price,

(c) the lender is ~~an institution~~ a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business,

(d) the consideration for the mortgage or loan does not exceed $50,000, or

(e) the lender and borrower are not at "arm's length" as defined in the *Income Tax Act (Canada).*

2.05 CONFLICTS FROM TRANSFER BETWEEN LAW FIRMS

...

Law Firm Disqualification

(4) Where the transferring member actually possesses relevant information respecting the former client that is confidential and that, if disclosed to a member of the new law firm, may prejudice the former client, the new law firm shall cease its representation of its client in that matter unless

(a) the former client consents to the new law firm's continued representation of its client, or

(b) the new law firm establishes that it is in the interests of justice that it act in the matter, having regard to all relevant circumstances, including,

(i) the adequacy and timing of the measures taken to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur,
(ii) the extent of prejudice to any party,
(iii) the good faith of the parties,
(iv) the availability of suitable alternative counsel, and
(v) issues affecting the public interest.

Commentary

The circumstances enumerated in subrule (4)(b) are drafted in broad terms to ensure that all relevant facts will be taken into account. While clauses (ii) to (iv) are self-explanatory, clause (v) addresses governmental concerns respecting issues of national security, cabinet confidences, and obligations incumbent on Attorneys General and their agents in the administration of justice.

(5) For greater certainty, subrule (4) is not intended to interfere with the discharge by an Attorney General or his or her counsel or agent (including those occupying the offices of Crown Attorney, Assistant Crown Attorney, or part-time Assistant Crown Attorney) of their constitutional and statutory duties and responsibilities.

~~Transferring Lawyer Disqualification~~

(6) Where the transferring member actually possesses relevant information respecting the former client but that information is not confidential information which, if disclosed to a member of the new law firm, may prejudice the former client,

(a) the member shall execute an affidavit or solemn declaration to that effect, and

(b) the new law firm shall

(i) notify its client and the former client, or if the former client is represented in that matter by a member, notify that member of the relevant circumstances and its intended action under this rule, and

(ii) deliver to the persons referred to in (i) a copy of any affidavit or solemn declaration executed under (a).

Transferring Lawyer Disqualification

(7) A transferring member described in the opening clause of subrule (4) or (6) shall not, unless the former client consents,

(a) participate in any manner in the new law firm's representation of its client in that matter, or

(b) disclose any confidential information respecting the former client.

(8) No member of the new law firm shall, unless the former client consents, discuss with a transferring member described in the opening clause of subrule (4) or (6) the new law firm's representation of its client or the former law firm's representation of the former client in that matter.

...

Commentary

MATTERS TO CONSIDER

When a law firm considers hiring a lawyer or articled law student ("transferring member") from another law firm, the transferring member and the new law firm need to determine, before the transfer, whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the law firm that the transferring member is leaving and with respect to clients of a firm in which the transferring member worked at some earlier time. The transferring member and the new law firm need to identify, first, all cases in which

(a) the new law firm represents a client in a matter that is the same as or related to a matter in respect of which the former law firm represents its client,

(b) the interests of these clients in that matter conflict, and

(c) the transferring member actually possesses relevant information respecting that matter.

~~When these three elements exist, the transferring member is personally disqualified from representing the new client, unless the former client consents.~~

~~Second,~~ The law firm ~~they~~ must then determine whether, in each such case, the transferring member actually possesses relevant information respecting the former client that is confidential and that, if disclosed to a member of the new law firm, may prejudice the former client. If this element exists, ~~the transferring member is disqualified unless the former client consents, and~~ the new law firm is disqualified unless the former client consents or the new law firm establishes that its continued representation is in the ~~public~~ interests of justice, based on relevant circumstances.

...

2.06 DOING BUSINESS WITH A CLIENT

Definitions

2.06 (1) In this rule

"related persons" means related persons as defined in the *Income Tax Act (Canada)* and "related person" has a corresponding meaning, and

"syndicated mortgage" means a mortgage having more than one investor.

Investment by Client where Lawyer has an Interest

(2) Subject to subrule (2.1), where a client intends to enter into a transaction with his or her lawyer or with a corporation or other entity in which the lawyer has an interest other than a corporation or other entity whose securities are publicly traded, the lawyer, before accepting any retainer

(a) shall disclose and explain the nature of the conflicting interest to the client or, in the case of a potential conflict, how and why it might develop later,

(b) shall recommend independent legal representation and shall require that the client receive independent legal advice, and

(c) where the client requests the lawyer to act, the lawyer shall obtain the client's written consent.

(2.1) Where a client intends to pay for legal services by transferring corporate shares or securities to his or her lawyer, the lawyer need not require that the client receive independent legal advice before accepting a retainer.

2.08 FEES AND DISBURSEMENTS

Reasonable Fees and Disbursements

2.08 (1) 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.

(2) A lawyer shall not charge a client interest on an overdue account save as permitted by the *Solicitors Act* or as otherwise permitted by law.

Commentary

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 the loss of other retainers, postponement of payment, uncertainty of reward, or urgency.

The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

Breach of this rule and misunderstandings about fees and financial matters bring the legal profession into disrepute and reflect adversely upon the general administration of justice. A lawyer should try to avoid controversy with a client about fees and should be ready to explain the basis for the charges (especially if the client is unsophisticated or uninformed about how a fair and reasonable fee is determined). A lawyer should inform a client about his or her rights to have an account assessed under the *Solicitors Act.*

Where possible to do so, a lawyer should give the client a fair estimate of fees and disbursements, pointing out any uncertainties involved, so that the client may be able to make an informed decision. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should forestall misunderstandings or disputes by giving the client an immediate explanation.

It is in keeping with the best traditions of the legal profession to provide services *pro bono* and to reduce or waive a fee where there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. A lawyer should provide public interest legal services and should support organizations that provide services to persons of limited means.

Contingent Fees

(3) A lawyer shall not, except as expressly permitted by law, acquire by purchase or otherwise, any interest in the subject-matter of litigation being conducted by the lawyer.

(4) A lawyer shall not enter into an arrangement with the client for a contingent fee except in accordance with the provisions of the *Solicitors Act* or in accordance with the *Class Proceedings Act, 1992.*

...

(9) A lawyer shall not

(a) directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer, or

(b) give any financial or other reward to any person who is not a lawyer for the referral of clients or client matters.

Commentary

This rule does not prohibit an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold.

Exception for Multi-discipline Practices and Interprovincial and International Law Firms

(10) Subrule (9) does not apply to

(a) multi-discipline practices of lawyer and non-lawyer partners where the partnership agreement provides for the sharing of fees, cash flows or ~~and~~ profits among members of the firm, and

(b) sharing of fees, cash flows or profits by lawyers who are
(i) members of an interprovincial law firm, or
(ii) members of a law partnership of Ontario and non-Canadian lawyers
who otherwise comply with this rule.

Commentary

An affiliation is different from a multi-discipline practice established in accordance with the by-laws under the *Law Society Act*, an interprovincial law partnership or a partnership between Ontario lawyers and foreign lawyers. An affiliation is subject to subrule 2.08 (9). In particular, an affiliated entity is not permitted to share in the lawyer's revenues, cash flows or profits, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses above their fair market value.

3.01 MAKING LEGAL SERVICES AVAILABLE

Making Services Available

3.01 Lawyers shall make legal services available to the public in an efficient and convenient way that commands respect and confidence and is compatible with the integrity and independence of the profession.

Commentary

...

When a lawyer offers assistance to a client or prospective client in finding another lawyer, the assistance should be given willingly and, except ~~in very special circumstances~~ where a referral fee is permitted by rule 2.08(8), without charge.

3.02 LAW FIRM NAME

Permissible Names

3.02 (1) A law firm name may include only the names of persons who are qualified to practise law in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or who, if retired or deceased, were qualified to practise law in Ontario or in any other province or territory of Canada where the firm carries on its practice.

(2) A law firm name may consist of or include the names of lawyers who were members of the firm but who are deceased or retired from the practice of law ~~members of the firm.~~

3.03 LETTERHEAD

Letterhead

3.03 (1) Subject to subrules (2) and (3) ~~and rule 3.05~~, a lawyer's letterhead and the signs identifying the office may only include

(a) the name of the lawyer or law firm,

(b) a list of the members of any law firm, including counsel practising with the firm,

(c) the words "barrister," "barrister-at-law," "barrister and solicitor," "lawyer," "law office," "solicitor," "solicitor-at-law," or the plural, where applicable,

(d) the words "notary" or "commissioner for oaths" or both, where applicable,

(e) the words "patent and trade mark agent," where applicable,

(f) a statement that a member of the law firm is qualified to practise law in another jurisdiction,

(g) a statement that a member of the law firm is certified by the Law Society as a specialist in a specified field,

(h) the phrase "limited liability partnership" or the letters "LLP," where applicable,

(i) the phrase "multi-discipline practice" or "multi-discipline partnership" where applicable,

(j) the addresses, telephone numbers, office hours, and the languages in which the lawyer or law firm is competent and capable of conducting a practice, ~~and~~

(k) a logo, and

(l) advertising permitted under rule 3.05.

4.03 INTERVIEWING WITNESSES

Interviewing Witnesses

4.03 (1) Subject to subrules (2) and (3), a lawyer may seek information from any potential witness (whether under subpoena or not) but shall disclose the lawyer's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

(2) A lawyer shall not approach or deal with a person who is represented by another lawyer, save through or with the consent of that party's lawyer.

(3) ~~Where a corporation or other organization has retained a lawyer on a matter, another lawyer seeking information about that matter shall not, without the consent of the lawyer representing the corporation or organization, approach or deal with~~ A lawyer retained to act on a matter involving a corporation or organization that is represented by another lawyer shall not approach

(a) directors, officers, or persons likely involved in the decision-making process ~~concerning that matter~~ for the corporation or organization, or

(b) employees and agents of the corporation or organization whose acts or omissions in connection with the matter ~~are in issue or whose acts or omissions~~ may expose the corporation or organization to civil or criminal liability

unless the lawyer representing the corporation or organization consents or unless otherwise authorized or required by law.

5.01 SUPERVISION

Commentary

...

Litigation - A lawyer may permit a non-lawyer to attend to all matters of routine administration, and to assist in more complex matters, to collect information, draft routine pleadings, correspondence and other routine documents, research legal questions, prepare memoranda, organize documents, prepare briefs, draft statements of account and attend to filings. Generally, a non-lawyer shall not attend on examinations or in court except in support of a lawyer also in attendance. Permissible exceptions include ~~law clerks~~ non-lawyers appearing on...

APPENDIX 2

REPORTS OF THE SPECIAL COMMITTEE ON CONTINGENT FEES
1988 AND 1992

APPENDIX 3

INFORMATION ON PROFESSIONAL CORPORATIONS

APPENDIX 4

FORMER REGULATION 708, SECTION 7 ON
BANKRUPTCY OF MEMBER

APPENDIX 5

BY-LAW 31

Made: January 25, 2001

UNCLAIMED TRUST FUNDS

APPLICATION TO PAY MONEY TO SOCIETY

Application form

1. (1) A member who makes an application under subsection 59.6 (1) of the Act shall complete an application form provided by the Society.

Information: application based on clause 59.6 (1) (a)

(2) A member who makes an application under subsection 59.6 (1) of the Act based on circumstances described in clause 59.6 (1) (a) of the Act shall provide to the Society the following information:

1. The member's member number, address, telephone number, fax number and, if any, e-mail address.

2. If the member holds the money in trust together with one or more other persons, the name, member number, if applicable, and contact information of each of those persons.

3. The amount of the money.

4. The conditions, if any, subject to which the money is held is trust.

5. The name and last known address and telephone number, according to the member and each person who together with the member holds the money in trust, of each person who is entitled to the money or a part of the money.

6. The social insurance number, if known, of each individual who is, and the corporation number, if known, of each corporation that is, entitled to the money or a part of the money.

7. The date of birth, if known, of each individual who is entitled to the money or a part of the money.

8. If two or more persons are entitled to the money, the amount of the money to which each person is entitled, according to the financial records of the member and each person who together with the member holds the money in trust.

9. If a person who is entitled to the money is a corporation, information as to whether the corporation exists at the time of the application, according to the official records of the government of the jurisdiction in which the corporation was incorporated or continued.

10. If a person who is entitled to the money is a corporation that exists at the time of the application, the name and address of each director, officer and shareholder of the corporation, according to the official records of the government of the jurisdiction in which the corporation was incorporated or continued.

11. The name and last known address, according to the member and each person who together with the member holds the money in trust, of the person from whom the money was received.

12. The date on which the money was received.

13. The reasons for which the money was received.

14. The efforts made by the member and each person who together with the member holds the money in trust to locate each person entitled to the money.

15. Any other information that the Secretary may require.

Information: application based on clause 59.6 (1) (b)

(3) A member who makes an application under subsection 59.6 (1) of the Act based on circumstances described in clause 59.6 (1) (b) of the Act shall provide to the Society the information described in paragraphs 1 to 4 of subsection (2) and the following information:

1. The period of time for which the money has been held in trust.

2. The reasons why the member is unable to determine who is entitled to the money.

3. Any other information that the Secretary may require.

Supporting documents

(4) A member who makes an application under subsection 59.6 (1) of the Act shall provide to the Society copies of documents that are in the member's possession and control that may be required by the Secretary to support the information provided under subsection (2) or (3).

Certification

(5) A member who makes an application under subsection 59.6 (1) of the Act shall certify that all information provided under subsection (2) or (3) is correct to the best knowledge of the member.

Secretary's consideration of application

2. (1) The Secretary shall consider every application under subsection 59.6 (1) of the Act made in accordance with section 1 of this By-Law and, on the basis of the information provided under subsection 1 (2) or subsection 1 (3) of this By-Law and any documents provided under subsection 1 (4) of this By-Law, shall,

(a) if he or she is satisfied that the condition for making the application set out in clause 59.6 (1) (a) or (b) of the Act is met, approve the application; or

(b) if he or she is not satisfied that the condition for making the application set out in clause 59.6 (1) (a) or (b) of the Act is met, refuse to approve the application.

Application based on clause 59.6 (1) (a)

(2) If an application under subsection 59.6 (1) of the Act is based on circumstances described in clause 59.6 (1) (a) of the Act, in considering the application, the Secretary shall have regard to,

(a) what efforts the member has made to locate the person entitled to the money; and

(b) whether or not there is any reasonable prospect the person entitled to the money can be located.

Application based on clause 59.6 (1) (b)

(3) If an application under subsection 59.6 (1) of the Act is based on circumstances described in clause 59.6 (1) (b) of the Act, in considering the application, the Secretary shall have regard to the nature of trust in which the money was held and the circumstances in which the trust arose.

CLAIMS FOR PAYMENT OF MONEY

Interpretation: "claimant"

3. In section 4, "claimant" means a person who makes a claim under subsection 59.10 (1) of the Act.

Making claim

4. (1) A claimant shall complete a claim form provided by the Society.

Information

(2) A claimant shall provide to the Society the following information:

1. The claimant's name, address and telephone number.

2. If the claimant is a corporation, the claimant's corporation number.

3. The amount of the money that the claimant is claiming payment of.

4. The name of the member to whom the money was paid in trust and, if the money was paid to the member and one or more other persons for them together to hold the money in trust, the name of each of those other persons.

5. The last known address, according to the claimant, of the member to whom the money was paid in trust and, if the money was paid to the member and one or more other persons for them together to hold the money in trust, the last known address, according to the claimant, of each of those other persons.

6. The date on which the money was paid in trust to the member, or to the member and one or more other persons, or, if the money was paid in trust to the member, or to the member and one or more other persons, in two or more separate payments, the date of each separate payment.

7. The reason or reasons why the money was paid in trust to the member, or to the member and one or more other persons.

8. The reason or reasons why the claimant did not claim payment of the money from the member or the member and the person or persons who held the money in trust.

9. Any other information that the Secretary may require.

Supporting documents

(3) A claimant shall provide to the Society copies of documents that are in the claimant's possession and control that may be required by the Secretary to support the information provided under subsection (2).

Certification

(4) A claimant shall certify that all information provided under subsection (2) is correct to the best knowledge of the claimant.

Consideration of claim

5. (1) The Secretary shall consider every claim under subsection 59.10 (1) of the Act made in accordance with section 4 of this By-Law and, on the basis of the information provided under subsection 4 (2) of this By-Law and any documents provided under subsection 4 (3) of this By-Law, shall,

(a) grant the claim;

(b) deny the claim; or

(c) refer the claim to the committee of benchers appointed under section 6 of this By-Law.

Secretary grants or denies claim

(2) If the Secretary grants the claim under clause (1) (a) or denies the claim under clause (1) (b), subject to section 59.11 of the Act, the Secretary's disposition of the claim is final.

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider claims under subsection 59.10 (1) of the Act that are referred by the Secretary under clause 5 (1) (c) of this By-Law.

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of claim by committee of benchers: quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law.

Procedure

(2) The procedure applicable to the consideration by the committee appointed under section 6 of a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law shall be determined by the committee.

Consideration of claim by committee of benchers

8. (1) The committee appointed under section 6 shall consider every claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law and shall,

(a) grant the claim; or

(b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee's disposition of a claim is final.

FORMER MEMBERS

9. This By-Law also applies, with necessary modifications, in respect of former members.

APPENDIX 6

FILE MANAGEMENT AND CASELOAD STATISTICS FOR RESOLUTION AND COMPLIANCE, INVESTIGATIONS AND DISCIPLINE TO APRIL 2001

Re: Amendments to Rules of Professional Conduct

It was moved by Mr. MacKenzie, seconded by Ms. Ross that amendments to Rule 2.04(12) at Appendix 1Re: Avoidance of Conflicts of Interest, be approved.

Carried

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the balance of the proposed Rule amendments set out at Appendix 1be approved and that the amendments to Rule 3.02(2) be effective September 1, 2001 to allow law firms to effect any required changes to their names.

Carried

Re: New By-Law on Professional Corporations

It was moved by Mr. MacKenzie, seconded by Ms. Ross that By-Law 34 - Professional Corporations be adopted to come into force once the legislature proclaims Bill 152 in force.

THE LAW SOCIETY OF UPPER CANADA

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

THAT, pursuant to the authority contained in paragraphs 13, 14 and 28.1 of subsection 62 (0.1) of the Law Society Act, By-Law 34 [Professional Corporations] be made as follows:

BY-LAW 34

PROFESSIONAL CORPORATIONS

CORPORATE NAME

Names of shareholders

1. (1) Subject to subsection (6), the name of a professional corporation may include the name of any shareholder, but it shall include the name of at least one shareholder who will be practising law through the corporation.

Deceased shareholder

(2) A professional corporation may retain in its name the name of a deceased shareholder.

Use of certain phrases

(3) Provided that three or more individuals practise law through the professional corporation, a professional corporation may include in its name phrases such as "and associates" and "and company".

Use of honorific "Q.C."

(4) A professional corporation having one shareholder may include in its name the honorific "Q.C." properly attributable to the one shareholder of the corporation.

Prohibition: trade name, *etc.*

(5) The name of a professional corporation shall not include a trade name, commercial name or figure of speech.

Prohibition: shareholder

(6) The name of a professional corporation shall not include the name of a shareholder who holds office as a member of a tribunal or who holds any other office the duties of which are incompatible with the practice of law.

Prohibition: general

(7) The name of a professional corporation shall not include any language that is not expressly permitted under this By-Law or under the provisions of the *Business Corporations Act*, or any regulations made thereunder, that apply to professional corporations.

Prohibition: identical or similar name

(8) A professional corporation shall not use a name,

(a) that is used by another professional corporation; or

(b) that so nearly resembles the name used by another professional corporation that it is likely to confuse or mislead the public.

Use of past firm name

(9) Despite any other provision in this section, a professional corporation that is established by two or more members who, before the day the corporation is established, practised law as a partnership may use as its name the name of the partnership.

Interpretation: name of shareholder

(10) For the purposes of this section, the name of a shareholder means the shareholder's surname and, at the shareholder's option, his or her given names or initials.

Corporate name certificate

2. (1) A member may apply in writing to the Society for a certificate that the Society does not object to the establishment of a professional corporation under a proposed name.

Decision of Society official

(2) A Society official shall consider every application made under subsection (1) and shall,

(a) if the official is satisfied that the proposed name complies with section 1, issue a certificate to the member; or

(b) if the official is not satisfied that the proposed name complies with section 1, reject the application.

Notice to member and application for review

(3) If a Society official rejects an application made under subsection (1), the official shall so notify the member and the member may apply to the committee of benchers appointed under section 11 for a review

CERTIFICATE OF AUTHORIZATION

Application for certificate

3. (1) A corporation that wishes to practise law shall apply to the Society for a certificate of authorization.

Same

(2) An application under subsection (1) shall include,

(a) a completed application form provided by the Society;

(b) a copy of,

(i) the corporation's articles of incorporation and the certificate of incorporation, the corporation's articles of amalgamation and the certificate of amalgamation or the corporation's articles of continuance and the certificate of continuance, as the case may be, and

(ii) the corporation's articles of amendment, if any, and the certificate of amendment; and

(c) an application fee in an amount determined by Convocation from time to time.

Consideration by Society official

4. (1) A Society official shall consider every application under subsection 3 (1) made in accordance with subsection 3 (2).

Issuance of certificate

(2) A Society official shall issue a certificate of authorization to a corporation if the official is satisfied that,

(a) the corporation is a subsisting corporation under the *Business Corporations Act* and meets the conditions for professional corporations specified in that Act and in any regulations made under that Act;

(b) the name of the corporation complies with section 1 of this By-Law;

(c) the directors of the corporation are members whose rights and privileges are not suspended; and

(d) the individuals who will practise law through the corporation are members who are entitled to engage in the private practice of law in Ontario, student members who are not the subject of an order made under section 35 or section 40 or other persons who are authorized to practise law under the *Law Society Act* and the by-laws made thereunder.

Refusal to issue certificate

(3) If a Society official is not satisfied that a requirement set out in subsection (2) has been met, the official shall notify the corporation and the corporation may meet the requirement or appeal to the committee of benchers appointed under section 11 if it believes that the requirement has been met.

Same

(4) Despite subsection (2), a Society official may refuse to issue a certificate of authorization to a corporation where,

(a) the corporation has had a certificate of authorization revoked; or

(b) a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose certificate of authorization has been revoked.

Notice and appeal

(5) If a Society official refuses to issue a certificate of authorization to a corporation under clause (4) (a), the official shall so notify the corporation and the corporation may appeal the refusal to the committee of benchers appointed under section 11.

Same

(6) If a Society official refuses to issue a certificate of authorization to a corporation under clause (4) (b), the official shall so notify the corporation and the corporation may appropriately re-appoint its directors and officers and alter its shareholders or appeal the refusal to the committee of benchers appointed under section 11.

Duration of certificate

(7) Subject to its being revoked, a certificate of authorization issued under this section is valid from the date of issue, as indicated on the certificate, until December 31 of the year in which it is issued.

Renewal

5. (1) A professional corporation may apply to the Society for a renewal of the corporation's certificate of authorization.

Application

(2) An application under subsection (1) shall include,

(a) a completed application form provided by the Society; and

(b) a renewal fee in an amount determined by Convocation from time to time.

Consideration by Society official

(3) A Society official shall consider every application under subsection (1) made in accordance with subsection (2) and shall,

(a) if the official is satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), renew the corporation's certificate of authorization; or

(b) if the official is not satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), refuse to renew the corporation's certificate of authorization.

Refusal to renew

(5) Despite clause (3) (a), a Society official may refuse to renew the certificate of authorization of a professional corporation where a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose certificate of authorization has been revoked.

Notice and appeal

(6) If a Society official refuses to renew a certificate of authorization, the official shall so notify the professional corporation and the corporation may appeal the refusal to the committee of benchers appointed under section 11.

Duration of renewal

(7) Subject to its being revoked, a certificate of authorization that has been renewed under this section is valid until December 31 of the year for which it is renewed.

Expiry of certificate

(8) A professional corporation shall not practise law if its certificate of authorization has expired.

Time for applying for renewal

(9) A professional corporation that wishes to renew its certificate of authorization without any disruption in its entitlement to practise law pending the renewal shall apply for the renewal not later than 90 days before the day on which its certificate expires.

Revocation of certificate

(10) If for any reason the certificate of authorization of a professional corporation is not renewed within 12 months after its expiry, the certificate of authorization is automatically revoked.

Renewal of revoked permit

(11) A professional corporation may not apply for a renewal of a certificate of authorization that has been revoked, but the corporation may apply for a new certificate of authorization.

Erroneous or incomplete certificate of authorization

6. (1) If a Society official receives information that a certificate of authorization held by a professional corporation contains an error or is incomplete, the official may, by so notifying the corporation in writing, require the corporation by the date specified in the notice to return its certificate of authorization to the Society for correction, completion or replacement.

Replacement certificate

(2) If the Society replaces an erroneous or incomplete certificate of authorization with a new certificate of authorization, the new certificate of authorization shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

No interruption in holding of certificate

(3) The return of a certificate of authorization under this section shall not constitute an interruption in the holding of the certificate by the professional corporation.

Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

Correction, *etc.* following report of change

(5) If the replacement of a certificate of authorization under this section is necessitated as a result of a change reported by the professional corporation under section 10, the professional corporation shall pay to the Society a fee for the replacement certificate in an amount determined by Convocation from time to time.

Loss or destruction of certificate

7. (1) If the certificate of authorization of a professional corporation is lost or destroyed, the corporation may apply to the Society in writing for a replacement certificate.

Society official may issue replacement certificate

(2) Upon payment of a fee in an amount determined by Convocation from time to time, a Society official may issue a replacement certificate of authorization to the professional corporation.

Replacement certificate

(3) A replacement certificate of authorization issued under this section shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

Form 00A

8. A certificate of authorization issued under this By-Law shall be in Form 00A.

Surrender of certificate

9. (1) A professional corporation shall apply to the Society for permission to surrender its certificate of authorization,

(a) when the corporation does not wish to renew the certificate or when the corporation no longer wishes to practise law; and

(b) prior to a voluntary winding up or voluntary dissolution of the corporation.

Same

(2) An application under subsection (1) shall be in writing and shall be accompanied by a statutory declaration signed by the directors of the professional corporation setting forth,

(a) the name of the professional corporation, the corporation's Ontario Corporation Number, the address of the corporation's registered office, the address of the corporation's business office, the number of the corporation's certificate of authorization and the date of issue of the corporation's certificate of authorization;

(b) the reasons for the application;

(c) a declaration that all money or property held in trust for which the professional corporation was responsible has been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the corporation has not been responsible for any money or property held in trust;

(d) a declaration that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister or solicitor, or, alternatively, that the professional corporation has not engaged in the practice of law;

(e) a declaration that the directors of the professional corporation are not aware of any claim against the corporation in its professional capacity or in respect of its practice; and

(f) such additional information or explanation as may be relevant by way of amplification of the foregoing.

Same

(3) An accountant's certificate to the effect that all money and property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled thereto shall be attached, and marked as an exhibit, to the statutory declaration required under subsection (2).

Publication of notice of intention to surrender certificate

(4) Subject to subsection (5), a professional corporation that wishes to surrender its certificate of authorization shall, at least thirty days before the day on which it applies to the Society under subsection (1), publish in the Ontario Reports a notice of intention to surrender a certificate of authorization.

Exemption from requirement to publish notice

(5) Upon the written application of the professional corporation, a Society official may exempt the corporation from the requirement to publish a notice of intention to surrender a certificate of authorization.

Notice of intention to surrender certificate

(6) The notice of intention to surrender a certificate of authorization which a professional corporation is required to publish under subsection (4) shall be in Form 00B [Notice of Intention to Surrender Certificate of Authorization].

Proof of publication of notice of intention to surrender certificate

(7) Unless a professional corporation is exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, an application under subsection (1) shall be accompanied by proof of publication in accordance with subsection (4) of a notice of intention to surrender a certificate of authorization.

Society official to consider application

(8) Subject to subsection (9), a Society official shall consider every application made under subsection (1) in respect of which the requirements set out in subsections (2), (3) and (7) have been complied with, and a Society official may consider an application made under subsection (1) in respect of which the requirements set out in subsection (2), (3) and (7) have not been complied with, and,

(a) the official shall accept an application if he or she is satisfied,

(i) that all money or property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the corporation has not been responsible for any money or property held in trust,

(ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister or solicitor, or, alternatively, that the professional corporation has not engaged in the practice of law,

(iii) that there are no claims against the professional corporation in its professional capacity or in respect of its practice,

(iv) that the professional corporation is no longer the subject of or has fully complied with all terms and conditions of an order made under Part II of the Act, and

(v) that the professional corporation, if not exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, has complied with subsection (4); or

(b) subject to subsection (9), the official shall reject an application if he or she is not satisfied of a matter mentioned in clause (a).

Acceptance of application

(9) A Society official may accept an application if he or she is not satisfied of the matter mentioned in subclause (8) (a) (iv) but is satisfied of the matters mentioned in subclauses (8) (a) (i), (ii), (iii) and (v).

Society official not to consider application

(10) A Society official shall not consider an application made under subsection (1) if the professional corporation or any individual practising law through the corporation is,

(a) the subject of an audit, investigation, search or seizure by the Society; or

(b) a party to a proceeding under Part II of the Act.

Documents, explanations

(11) For the purposes of assisting a Society official to consider its application, the professional corporation shall provide to the official such documents and explanations as the official may require.

Rejection of application

(12) If a Society official rejects its application, the official may specify terms and conditions to be complied with by the professional corporation as a condition of its application being accepted, and if the corporation complies with the terms and conditions to the satisfaction of the official, the official shall accept the application.

CHANGE OF INFORMATION

Change of information

10. (1) A professional corporation shall notify the Society in writing immediately after,

(a) any change in the information provided as part of the corporation's application for a certificate of authorization or for a renewal of a certificate of authorization; and

(b) any change in the corporation's articles of incorporation.

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in the professional corporation's articles of incorporation, shall include the corporation's articles of amendment and the certificate of amendment.

COMMITTEE OF BENCHERS: REVIEWS AND APPEALS

Committee of benchers

11. (1) Convocation shall appoint a committee of at least three benchers to consider applications for review and appeals made under this By-Law.

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of review or appeal: quorum

(3) Three benchers who are members of the committee appointed under subsection (1) constitute a quorum for the purposes of considering an application for a review or an appeal made under this By-Law.

Time for making application for review

12. (1) An application for a review under subsection 2 (3) shall be commenced by the member notifying a Society official in writing of the application within thirty days after the day the official notifies the member that his or her application for a certificate has been rejected.

Time for appeal: appeals under subss 4 (3), (5) and (6)

(2) Subject to subsection (4), an appeal under subsection 4 (3), (5) or (6) shall be commenced by the professional corporation notifying a Society official in writing of the appeal within thirty days after,

(a) the day the official notifies the corporation under subsection 4 (3) that a requirement has not been met; or

(b) the day the official notifies the corporation under subsection 4 (5) or (6) that he or she is refusing to issue a certificate of authorization.

Time for appeal: appeal under subs. 5 (6)

(3) Subject to subsection (4), an appeal under subsection 5 (6) shall be commenced by the professional corporation notifying a Society official in writing of the appeal within thirty days after the day the official notifies the corporation that he or she is refusing to renew the corporation's certificate of authorization.

Extension of time for commencing appeal

(4) Upon the written request of the professional corporation, made no later than the last day for commencing an appeal as specified in subsection (2) or (3), a Society official may extend the time for commencing the appeal.

When notice given

(5) For the purposes of this section, a Society official will be deemed to have notified a person of a rejection or refusal,

(a) in the case of oral notification, on the day that the official notified the person; and

(b) in the case of written notification,

(i) if it was sent by regular lettermail, on the fifth day after it was mailed, and

(ii) if it was faxed, on the first day after it was faxed.

Procedure: review and appeal

13. (1) Subject to subsection (2), the procedure applicable to the consideration by the committee of benchers appointed under section 11 of an application for a review under subsection 2 (3) or of an appeal under subsection 4 (3), 4 (5), 4 (6) or 5 (6) shall be determined by the committee and, without limiting the generality of the foregoing, the committee may decide who may make submissions to it, when and in what manner.

Same

(2) Unless the committee of benchers appointed under section 11 permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

Powers on review

14. (1) After considering an application for a review under subsection 2 (3), the committee of benchers appointed under section 11 shall,

(a) if it is satisfied that the proposed name complies with section 1, direct a Society official to issue a certificate to the member; or

(b) if it is not satisfied that the proposed name complies with section 1, reject the application.

Powers on appeal: appeal under subs. 4 (3)

(2) After considering an appeal made under subsection 4 (3), the committee of benchers appointed under section 11 shall,

(a) if it determines that the requirement has been met, direct a Society official to issue a certificate of authorization to the corporation; or

(b) if it determines that the requirement has not been met, notify the corporation that the requirement has not been met and that the Society shall not issue a certificate of authorization to the corporation.

Powers on appeal: appeal under subss 4 (5), (6)

(3) After considering an appeal made under subsection 4 (5) or (6), the committee of benchers appointed under section 11 shall make such decision as it considers proper in the circumstances.

Powers on appeal: appeal under subs. 5 (6)

(4) After considering an appeal made under subsection 5 (6), the committee of benchers appointed under section 11 shall,

(a) direct a Society official to renew the professional corporation's certificate of authorization if it is satisfied that,

(i) the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), and

(ii) despite the fact that the situation mentioned in subsection (5) is present, it is appropriate to renew the corporation's certificate of authorization; or

(d) refuse to renew the professional corporation's certificate of authorization if,

(i) it is not satisfied that the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2); or

(ii) it determines that it is inappropriate to renew the corporation's certificate of authorization because the situation mentioned in subsection (5) is present.

Decisions final

(5) The decisions of the committee of benchers appointed under section 11 are final.

GENERAL

Register

15. The following information shall be contained in the register of professional corporations required under section 61.0.2 of the Act:

1. The name of the professional corporation.

2. The address of the professional corporation's registered office.

3. The business address of the professional corporation, if different from the address of its registered office.

4. The number of the certificate of authorization issued to the professional corporation.

5. The date on which the certificate of authorization was issued to the professional corporation.

6. The terms, conditions, limitations or restrictions that apply to the professional corporation's certificate of authorization.

7. The date on which the professional corporation's certificate of authorization was suspended, made subject to a term, condition, limitation or restriction, revoked or surrendered.

Application of by-laws

16. (1) The following by-laws, with necessary modifications, apply to a professional corporation:

1. By-Law 17 [Filing Requirements].

2. By-Law 18 [Record Keeping Requirements].

3. By-Law 19 [Handling of Money and Other Property].

4. By-Law 25 [Multi-Discipline Practices].

5. By-Law 29 [Payment of Costs].

6. By-Law 00 [Bankruptcy of Member].

No voluntary winding up or dissolution

17. The shareholders of a professional corporation shall not require the corporation to be wound up voluntarily and shall not authorize the voluntary dissolution of the corporation until the corporation has received permission under section 9 to surrender its certificate of authorization.

Interpretation: "Society official"

18. 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.

Delegation of powers and duties of Secretary: Director, Client Service Centre

19. An officer or employee of the Society who holds the office of Director, Client Service Centre may exercise the powers and perform the duties of the Secretary under subsection 61.0.2 (1) and section 61.0.3 of the Act.

Form 00A

Certificate of Authorization

Certificate Number: (*Fill in number*)

THE LAW SOCIETY OF UPPER CANADA

(*Society's Coat of Arms*)

CERTIFICATE OF AUTHORIZATION

Issued under By-Law 00 made under paragraph 28.1 of subsection 62 (0.1) of the *Law Society Act*

(*Name of corporation*), Ontario Corporation Number (*Fill in number*), is hereby authorized to practise law as a barrister and solicitor in accordance with the *Law Society Act*, the by-laws made thereunder and the Rules of Professional Conduct of The Law Society of Upper Canada.

(*Date*) (*Signature of Society Official*)

Form 00B

Notice of Intention to Surrender a Certificate of Authorization

NOTICE OF INTENTION TO SURRENDER A CERTIFICATE OF AUTHORIZATION

(*Name of professional corporation applying for permission to surrender a certificate of authorization, in capital letters*)

Pursuant to section 9 of By-Law 00 made under paragraph 28.1 of subsection 62 (0.1) of the *Law Society Act*, the above named hereby gives notice of its intention to surrender its certificate of authorization.

The above named has carried on the practice of law at (*identify where the above named has carried on the practice of law*) (*or* has not carried on the practice of law since (*date*)) (*or* has never carried on the practice of law in Ontario).

Dated at (*place*) (*Date*)

(*Name of professional corporation*)

(*Signatures of all directors*)

Carried

Re: New By-Law on Bankruptcy of Members

It was moved by Mr. MacKenzie, seconded by Ms. Ross that By-Law 35 - Bankruptcy of Member be adopted.

THE LAW SOCIETY OF UPPER CANADA

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

THAT, pursuant to the authority contained in paragraphs 4, 5 and 13 of subsection 62 (0.1) of the *Law Society Act*, By-Law 35 [Bankruptcy of Member] be made as follows:

BY-LAW 35

BANKRUPTCY OF MEMBER

Delegation of powers and duties of Secretary: Senior Counsel, Discipline
1. (1) An officer or employee of the Society who holds the office of Senior Counsel, Discipline may, in the absence of the Secretary, and subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under this By-Law.

Delegation of powers and duties of Secretary: Discipline Counsel
(2) An officer or employee of the Society who holds the office of Discipline Counsel may, in the absence of the Secretary and the Senior Counsel, Discipline, and subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under this By-Law.

Requirement to notify Society
2. A member shall immediately notify the Society whenever any of the following events occurs:

1. The member receives notice of or is served with a petition for a receiving order against him or her filed in court under subsection 43 (1) of the *Bankruptcy and Insolvency Act* (Canada).

2. The member makes an assignment of all his or her property for the general benefit of his or her creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada).

Handling of money by bankrupt member
3. (1) Subject to subsections (2) and (3), a member who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) shall not receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

Exception
(2) A member who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may receive from or on behalf of a person or group of persons money,

(a) in payment of fees for services performed by the member for the person or group; or

(b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Same

(3) A member who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may apply in writing to 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, to the Chief Executive Officer, for permission to receive from or on behalf of a person or group of persons any money or other property, other than as permitted under subsection (2), or for permission to handle money or other property that is held in trust for a person or group of persons, and, after considering the member's application, the Secretary or the Chief Executive Officer may permit the member to do so, subject to such terms and conditions as the Secretary or the Chief Executive Officer may impose.

Carried

Re: Amendments to By-Law 31 on Unclaimed Trust Funds

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the amendment to By-Law 31 be adopted.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 31
[UNCLAIMED TRUST FUNDS]

THAT By-Law 31 [Unclaimed Trust Funds] made by Convocation on January 25, 2001 be amended as follows:

1. Subsection 5 (1) of the By-Law is amended by,

(a) adding "or" at the end of clause (a);

(b) deleting "or" at the end of clause (b); and

(c) deleting clause (c).

2. Subsection 5 (2) of the By-Law is deleted and the following substituted:

Secretary denies claim

(2) If the Secretary denies the claim under clause (1) (b), the Secretary shall so notify the claimant and the claimant may apply to the committee of benchers appointed under section 6 for a reconsideration of the claim.

Time for making application

(3) An application for a reconsideration under subsection (2) shall be commenced by the claimant notifying the Secretary in writing of the application within thirty days after the day specified in the Secretary's notice to the claimant that his or her claim has been denied.

3. Sections 6 to 8 of the By-Law are deleted and the following substituted:

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider applications for reconsideration made under subsection 5 (2).

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering an application for a reconsideration made under subsection 5 (2).

Procedure

(2) Subject to subsection (3), the procedure applicable to the consideration by the committee appointed under section 6 of an application for a reconsideration made under subsection 5 (2) shall be determined by the committee.

Written submission

(3) Unless the committee permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

Powers

8. (1) The committee appointed under section 6 shall consider every application for a reconsideration made under subsection 5 (2) and shall,

(a) grant the claim; or

(b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee's disposition of a claim is final.

Carried

REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Mr. Cherniak presented the Report of the Professional Development and Competence Committee for approval by Convocation.

Professional Development & Competence Committee
May 10, 2001

Report to Convocation

Purpose of Report: Policy - Decision Making
Information

Prepared by the Policy Secretariat
(Sophia Sperdakos 947-5209)

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 2

POLICY - FOR DECISION

AMENDMENTS TO THE *EMPLOYMENT STANDARDS ACT* 2
The Issue 2
Background 2
Discussion 3
Request to Convocation 5

INFORMATION

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE CERTIFICATION WORKING GROUP ON MAY 10, 2001 AND APPROVED IN COMMITTEE ON MAY 10, 2001 6

APPENDICES

APPENDIX 1 Letter from Deputy Minister of Labour, Jill Hutcheon, to Robert Armstrong, Treasurer

APPENDIX 2 Letter from CBAO to Lynn Binette, Employment Standards Review Project

APPENDIX 3 Submission from Institute of Chartered Accountants of Ontario to Lynn Binette

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on May 10, 2001. Committee members in attendance were Earl Cherniak (Vice-Chair), Stephen Bindman, Kim Carpenter-Gunn, Ron Cass, Seymour Epstein, Greg Mulligan, Marilyn Pilkington, and Bill Simpson. Staff in attendance were Malcolm Heins (CEO), Janine Miller, Sophia Sperdakos, and Paul Truster.

2. The Committee is reporting on the following matters:

   Policy - For Decision
   - Amendments to the *Employment Standards Act*

   Information
   - Report on Specialist Certification Matters Finalized by the Certification Working Group on May 10, 2001 and Approved in Committee on May 10, 2001.

POLICY - FOR DECISION

AMENDMENTS TO THE *EMPLOYMENT STANDARDS ACT*

The Issue

1. On December 21, 2000 the Ontario legislature passed Bill 147, which significantly amends the *Employment Standards Act* (the "ESA"). It is anticipated that the amended ESA will likely come into force in the summer of 2001. There has been some suggestion that professional groups, such as lawyers, which traditionally have been exempted from application of many sections of the ESA will no longer be exempt. The Ministry of Labour has been seeking input from professional organizations, including the legal profession, on the exemption issue.

Background

2. Since 1945 regulations proclaimed pursuant to legislation dealing with employment standards (O. Reg. 803/75, s.3 and O. Reg 366/68, s.3 under the *Employment Standards Act; O. Reg. 92/45* under the *Hours of Work and Vacation with Pay Act*) have exempted a number of professionals, including lawyers and students-at-law, from application of a number of provisions under the legislation, including,

   a) hours of work;
   b) minimum wage;
   c) overtime pay;
   d) public holidays; and
   e) vacation pay.

3. There were amendments to the legislation in 1968 and 1975, both of which continued exemptions for lawyers.

4. It does not appear that Convocation has previously considered the issue of exemptions.

Discussion

5. Attached at Appendix 1 is a copy of a letter from Jill Hutcheon, Deputy Minister, Labour, outlining the policy rationale behind the new ESA and the government's general view regarding exemptions under the Act. In the letter the Deputy Minister requests comments by the end of March, 2001. The CEO corresponded with the Minister to indicate the Law Society's interest in providing input on the issue, but requested until the end of June, to accommodate the Society's need to study the issue and seek Convocation's direction. The Ministry has indicated in discussions that this time frame for comments is acceptable.

6. The Canadian Bar Association - Ontario (CBAO) and a number of large law firms have indicated support for continued exemption. Attached at Appendix 2 is a copy of a letter from the CBAO.

7. Other professions are providing input to the Ministry as well. Attached at Appendix 3 is a copy of submissions to the Ministry of Labour from the Institute of Chartered Accountants, supporting continued exemption. The Ontario Association of Architects, however, has already voluntarily removed itself from the exemptions.

8. The Committee has discussed the issue of exemptions and has noted the following considerations:

   a) it is important that the Law Society, which regulates the legal profession and the practice of law, provide input to the Ministry of Labour on this issue;

b) the long-standing exemption of professionals from the operation of employment standards legislation has reflected a common understanding that such legislation is primarily directed at protecting employees in relatively vulnerable economic positions. The Deputy Minister's letter dated February 28, 2001 reflects this continued understanding when it states:

> *Exemptions or special treatment may still be necessary to ensure that Bill 147 reflects current and future workplace characteristics... the government is proposing to consider the following when determining exemptions or special treatment:*
> ...
> - *Employment relationships where a reasonable balance of power exists and the individual is not likely to be in a vulnerable position (e.g. lawyers, doctors and dentists whose negotiated work arrangements usually exceed basic employment standards).*

c) the employment and partnership relations that govern lawyers and students-at-law have been developed over many years, based at least in large part on the understanding that hours of work and remuneration were not subject to the *Employment Standards Act.* These relationships have become the norm and are part of the structure of the profession affecting hiring, training, monitoring and evaluation, and compensation;

d) the nature of legal work and the representation of client interests and demands render the application of the hours of work and overtime provisions of the Act, in particular, impractical. If the profession were to become subject to the provisions of the Act, there would be a negative impact on clients, both in terms of costs of legal services and continuity of service;

e) if the legal profession does not continue to be exempted from the Act, law firms could be obliged to conform to it as early as July 2001, with virtually no opportunity to consider the impact of the changes and make provisions for them. The negative impact of such rapid change would be significant.

9. In contrast with these considerations the Committee did discuss the concerns within the profession about the increasing pressures on lawyers to work longer hours and the potential long term implications of these and other economic pressures. While these are important issues for the Law Society to consider, the Committee is of the view that the *Employment Standards Act* is not the best vehicle for addressing them. This is because it is directed at a uniform *minimum* standard that cannot be designed to meet the particular needs of the various groups that may be governed by it. The work arrangements within the legal profession are complex and diverse and any changes to them should be fashioned by the profession itself.

10. Keeping in mind the considerations set out in paragraphs 8 and 9 above, the Committee is of the view that the Law Society should support the continued exemption of the legal profession from the operation of those provisions of the Act that govern,

- hours of work;
- minimum wage;
- overtime pay;
- public holidays; and
- vacation pay.

Request to Convocation

11. Convocation is requested to consider the issues discussed above and, if appropriate, to direct the Chief Executive Officer,

a) to provide a written submission to the Ministry of Labour, by the beginning of June 2001, supporting continued exemptions for the legal profession; and

b) to include in that submission the considerations contained in paragraph 8 above.

INFORMATION

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE CERTIFICATION WORKING GROUP ON MAY 10, 2001 AND APPROVED IN COMMITTEE ON MAY 10, 2001

1. The Committee is pleased to report final approval of the following lawyers' applications for certification, on the basis of the review and recommendation of the Certification Working Group.

Construction Law	Derek A. Schmuck (of Hamilton) Gregory D. Hersen (of Toronto)

2. The Committee is pleased to report final approval of the following lawyers' applications for recertification, on the basis of the review and recommendation of the Certification Working Group.

Family Law	Jacqueline M. Mills (of Toronto)
Workplace Safety & Insurance Law	S. David Gorelle (of Toronto)

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

(1) Copy of a Letter from Deputy Minister of Labour, Jill Hutcheon to Mr. Robert Armstrong, Treasurer dated February 28, 2001. (Appendix 1)

(2) Copy of a Letter from CBAO to Lynn Binette, Employment Standards Review Project dated April 4, 2001. (Appendix 2)

(3) A submission from Institute of Chartered Accountants of Ontario to Lynn Binette dated April 5, 2001. (Appendix 3)

Re: Proposed Amendments to the Regulations of Employment Standards Act

It was moved by Mr. Cherniak, seconded by Ms. Pilkington that the Chief Executive Officer be directed to provide a written submission to the Ministry of Labour by the beginning of June 2001 supporting continued exemptions for the legal profession and to include in that submission the considerations contained in paragraph 8 on page 4 of the Report.

Carried

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Finance and Audit Committee
May 10, 2001

Report to Convocation

Purpose of Report: Decision
Information

Prepared by the Finance Department
Andrew Cawse (947-3982)

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on May 10, 2001. Committee members in attendance were: Krishna V. (c), Crowe M. (vc), Swaye G. (vc), Chahbar A., Epstein S., Feinstein A., Lamont D., Murphy D., Puccini H., Ruby C., White D., Wilson R., Wright B.. Also in attendance was Mulligan G.. Staff in attendance were Tysall W., Corrick K., Grady F., White R., Cawse A..

2. The Committee is reporting on the following matters:

Decision
- County Library Fund transfer to Libraryco Inc.
- Transfers of county & district library annual levies to Libraryco Inc.

Information
- Law Society General Fund Financial Statements for the quarter ended March 31, 2001
- Law Society Compensation Fund Statement of Revenue and Expenses for the quarter ended March 31, 2001
- 2001 budget process
- Bencher remuneration

FOR DECISION

COUNTY LIBRARY FUND TRANSFER TO LIBRARYCO INC.

3. Historically the County Library Fund has accounted for funds raised on behalf of the 48 County and District Law Libraries, for use by the libraries to carry out their annual operations and any special projects approved by Convocation. Libraryco Inc. has been established to administer the distribution of these funds, and to develop policy, priorities, guidelines and standards for the delivery of county library services across Ontario. The report of the Working Group on the Future Delivery of County and District Library Services recommended that some of the County Library Fund be used for various start up costs of LibraryCo. Inc..

4. The Finance and Audit Committee recommends that Convocation approve the transfer of the current balance in the County Library Fund ($1.797 million at December 31, 2000 which will be adjusted by any revenues and expenses in the interim period prior to transfer) to Libraryco Inc..

TRANSFER OF COUNTY AND DISTRICT LIBRARY ANNUAL LEVIES TO LIBRARYCO INC.

5. The funding of ongoing operations of Libraryco Inc. is regulated by the Law Society's By-Law 30 of the By-Laws of the Law Society. In particular Sections 8 and 9(1) of By-Law 30 states that
   S8- "the money paid to the Corporation for its purposes shall be paid out of such money as is appropriated therefor by Convocation"
   S9(1)- "Convocation may, in its absolute discretion, in respect of a fiscal year, suspend or reduce funding of the Corporation"

6. Libraryco Inc.'s corporate status as a not - for - profit means that no funds can be returned to the Law Society.

7. In 2001 the Law Society is collecting $210 per member for the County and District Library Annual Levy, a total budgeted amount of $5,250,000. Historically this would be distributed to county libraries on a quarterly basis, with any difference between actual county library requirements and the budgeted amounts being adjusted in the County Library Fund. Convocation is requested to approve the basis for transfers of the county library levies to Libraryco Inc.

8. A memorandum on the subject is attached at page 5, which sets out two options:

   a) Payments based on Libraryco Inc.'s approved budget requirements. Library levies received in excess of budget requirements because of actual membership exceeding budget, would not be transferred to Libraryco Inc, but would be retained by the Law Society to reduce library levy requirements in future years. The funds retained would not be available for the general use of the Society.
   b) Payments based on amount collected. Under this option the Law Society would act as a conduit, and would transfer all library levies collected in the year to Libraryco Inc..

9. The Finance and Audit Committee recommends that Convocation approve the mechanism for the transfer of the annual county library levy to Libraryco Inc., specifically that this mechanism should be based on the approved budgeted annual levy being transferred on a monthly basis.

FOR INFORMATION

GENERAL FUND QUARTERLY FINANCIAL STATEMENTS MARCH 31, 2001

10. The Committee reviewed the unaudited financial statements for the General Fund for the quarter ended March 31, 2001 attached from page 8.

LAWYERS FUND FOR CLIENT COMPENSATION QUARTERLY STATEMENT OF REVENUE AND EXPENSES, MARCH 31, 2001

11. The Committee reviewed the unaudited Statement of Revenues and Expenses and Fund Balances for the Compensation Fund for the quarter ended March 31, 2001 attached at page 12.

2001 BUDGET PROCESS

12. A proposed budget timetable and a listing of budget issues was provided to the Committee.

BENCHER REMUNERATION

13. The Committee reviewed a memorandum estimating the possible costs of bencher remuneration if remuneration was based on attendance at Convocation, committees, discipline hearings and call to the bar.

Finance Department
Memorandum

TO: Chair and Members of the Finance and Audit Committee

FROM: Wendy Tysall

DATE: May 10, 2001

RE: Transfer of Law Society Funds to LibraryCo Inc.

OVERVIEW

The administration of County and District Law Libraries was the subject of an extensive review by the Working Group on Long-Term Delivery of County and District Library Services. The Working Group's report *Beyond 2000: The Future Delivery of County and District Library Services to Ontario Lawyers,* recommended the creation of a corporation to manage the proposed library system. Convocation adopted this recommendation in June 2000 and LibraryCo Inc. was incorporated
April 12, 2001.

The Society will transfer funds raised from members for the purpose of County Law Libraries to LibraryCo Inc. The method and timing of this funds transfer has not been determined and should be approved by Convocation.

CURRENT COLLECTION AND PAYMENT OF COUNTY LIBRARY LEVY

In 2001, the Law Society billed and is collecting $210 per member based on requirements that totaled $5,250,000, for the operations of county and district law libraries. The Society currently makes quarterly installment payments to each county and district law library association. The Society holds, in a restricted fund, the accumulated net proceeds of this annual levy less annual payments. The balance in this fund was approximately $1,797,000 at the end of 2000. The report of the Working Group, recommended that some of these funds be used for various start-up costs of LibraryCo.

FUTURE OPTIONS

There are several options for transferring these funds from the Society to LibraryCo. A decision is required on the basis for the transfer, and the timing of the transfer.

There are basically two options with regard to the timing of transfers, monthly or quarterly instalments either in advance or arrears. Monthly instalments would accommodate cash flow requirements for the Society and likely LibraryCo and would be relatively easy to administer. Quarterly instalments would be consistent with the current practice of distributing funds to county libraries but could adversely impact the cash flow requirements of LibraryCo. Quarterly instalments would marginally reduce the administration of transfers to LibraryCo over monthly instalments.

Options for determining the basis for the transfers are as follows:

Option 1 Payments Based on Approved Net LibraryCo Budget

This option would require the Society to transfer funds to LibraryCo based on its net budgetary requirement. Such requirement would be determined by subtracting any LibraryCo revenues from approved LibraryCo budgeted expenses. The annual member levy for LibraryCo would be based on the requirement. In 2001 for example, this levy requirement was $5,250,000 or $210 per member. It is estimated that the $210 per member annual levy will generate approximately $5,400,000 as a result of actual membership exceeding budget. Under this option, the $150,000 excess funding raised by the 2001 levy would be retained by the Society and used to reduce the 2002 levy requirement.

In the unlikely event that payments to LibraryCo exceeded levy collections, the underlevy or deficit would be recovered from members in the following year. Funding of a deficit by the Law Society would be available from other funds e.g. the capital fund, or if necessary from external financing.

All funds raised for the purpose of county libraries would be restricted for that purpose and LibraryCo would receive, on an annual basis, the actual funding approved by Convocation in the budget process. Levies received for LibraryCo in excess of annual budgetary requirements would not be available for the general use of the Society. These funds would be used to reduce levy requirements for LibraryCo in future years.

Under this option, Convocation is approving an absolute total annual payment based on LibraryCo budgeted requirements and is developing the per member annual fee based on this requirement.

Option 2 Payment Based on Amount Collected

Payments would be based on the actual LibraryCo levy collected. In the 2001 example, LibraryCo would receive instalments totaling $5,400,000. The utilization of the surplus funds generated by actual membership exceeding budgeted membership numbers would fall to the discretion of LibraryCo. LibraryCo's entitlement under this option would be to retain all funds collected from members in the actual year of collection.

Under this option, Convocation is approving a per member fee that, depending on collection of levies in a year, results in payments to LibraryCo that are more or less(e.g. $150,000 more in 2001) than LibraryCo's approved budgetary requirement.

Recommendation

It is the opinion of finance department staff that Option 1 is the preferred option for determining the basis of transfers to LibraryCo and that timing of payments should be monthly. This option captures the spirit of by-law 30 section 8, that states, "the money paid to the Corporation shall be paid out of such money as is appropriated therefore by the Corporation" and section 9 that states, "Convocation may, in its absolute discretion, in respect of a fiscal year, suspend or reduce funding of the Corporation." LibraryCo would receive payment from funds appropriated for the purpose of county libraries but only the total amount approved in the annual budget process.

Therefore, it is recommended that:

- LibraryCo receive equal monthly instalments, on the first business day after the 15th day of each month, based on the approved annual budgetary requirement.

- Funds raised for the purpose of LibraryCo, in excess of the approved annual budgetary requirement, are to be maintained in a levy reserve fund to meet future levy requirements of LibraryCo.

In addition, direction from the Committee is sought on the disposition of the existing county library fund balance. This fund balance, estimated at $2,076,000 at March 31, 2001, will be adjusted by the recognition of additional membership fees, payments to county libraries and other expenses of the fund to the date of disposition.

Wendy Tysall
Chief Financial Officer

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

(1) Unaudited Financial Statements for the General Fund for the quarter ended March 31, 2001. (page 8 - 11)

(2) Unaudited Statement of Revenues and Expenses and Fund Balances for the Compensation Fund for the quarter ended March 31, 2001. (page 12)

Re: County Library Fund transfer to Libraryco Inc.

It was moved by Mr. Krishna, seconded by Mr. Crowe that the transfer of the current balance in the County Library Fund of $1.797 million to Libraryco Inc. be approved

Carried

Re: Transfers of County & District Library Annual Levies to Libraryco. Inc.

It was moved by Mr. Krishna, seconded by Mr. Crowe that the mechanism be approved for the transfer of the annual county library levy to Libraryco Inc. on a periodic basis.

Carried

It was moved by Mr. Feinstein, seconded by Ms. Curtis that a special convocation be scheduled in July to discuss budget issues and direction.

Withdrawn

REPORT OF THE EQUITY AND ABORIGINAL ISSUES COMMITTEE

Mr. Hunter presented the Report of the Equity and Aboriginal Issues Committee for approval by Convocation.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES

Report to Convocation
May 16, 2001

Purpose: Decision-making
Information

Prepared by the Equity Initiatives Department

TABLE OF CONTENTS

FOR CONVOCATION DECISION-MAKING

1. *TERMS OF REFERENCE/COMMITTEE PROCESS* 2

2. *BENCHER STAFF RELATIONS PROCEDURES* 3

3. *MODEL POLICY ON ACCOMMODATIONS* 4

FOR INFORMATION

4. *UPDATE ON HIGH SCHOOL MENTORING PROGRAM* 5

APPENDICES

5. *BENCHER/LSUC STAFF RELATIONS PROCEDURES* 6

6. *GUIDE TO DEVELOPING A LAW FIRM POLICY ON ACCOMMODATIONS* 13

7. *EQUITY AND DIVERSITY MENTORSHIP PROGRAM* 50

TERMS OF REFERENCE/COMMITTEE PROCESS

The Committee met on Wednesday, May 9, 2001 from 6 - 9:30 p.m. In attendance were Paul Copeland (Chair), George Hunter (Vice-Chair), Marshall Crowe, Don White, Sanda Rodgers, Todd Ducharme, Jeff Hewitt (non-bencher), Natalie Boutet (non-bencher), Andrew Pinto (non-bencher), Stephen Bindman, Barbara Laskin.

Staff in attendance were: Charles Smith, Rachel Osborne, Geneva Yee, Josée Bouchard and Julia Bass.

Guests: Hellene Puccini.

The Committee reports on the following matters for Convocation decision-making and information:

Decision-Making

1) Bencher-Staff Relations Procedures

2) Model Policy on Accommodations for Law Firms

Information

3) Mentoring Program for High School Students

APPENDICES

A) Bencher-Staff Relations Procedures

B) Model Policy on Accommodation for Law Firms

C) Equity and Diversity Mentorship Program

FOR CONVOCATION DECISION-MAKING

BENCHER LSUC STAFF RELATIONS PROCEDURES

1. Responding to the recommendations of the Committee, Convocation discussed this matter at its meeting on April 26th and approved a number of amendments to the proposed procedures. These address the *Informal Procedures* to be followed in the event the Treasurer decides to pursue the matter through an informal resolution process. The revised procedures require that:

A) re., paragraph 5 be deleted;

B) re., paragraph 15, the Treasurer and the CEO will work with an elected bencher nominated by the Treasurer to facilitate an informal resolution. (This replaces the previous alignment that included the CEO, the EAIC Chair and the Equity Advisor);

C) re., paragraph 19, someone other than the CEO, the Treasurer and the elected bencher will assist a complainant in drafting a complaint;

D) re., paragraph 20,

- the second point is amended so that it now reads: "*provide a copy of the complaint to the respondent*"
- the third point is amended so that it now reads: *"when deemed appropriate, seek a meeting with the respondent with a view to obtain his/her response"*
- the third point then becomes the fourth point and is amended to now read: *"when deemed appropriate, seek an apology or such other resolution as will satisfy the complainant or dismiss the complaint"*

In light of the above amendments, the Committee requests Convocation to:

i) re., paragraph 19: name the Equity Advisor as the resource to support any complainant in the drafting of a complaint;

ii) adopt the procedures as amended.

MODEL POLICY ON ACCOMMODATIONS

2. The Equity Initiatives Department has prepared for release a *Model Policy on Accommodations for Law Firms*. This policy is based on the educational document *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities* submitted by the Department to the Committee in the fall of 2000 and several groups have been consulted in the development of both the educational document and the *Model Policy*, including the Equity Advisory Group, the Advocacy Research Centre for the Handicapped, the Ontario Bar Assistance Program and Law Society senior management.

3. The Law Society has, over the years, produced several model policies for law firms to assist them in developing policies and programs aimed at promoting equity and diversity in all aspects of the legal profession, eg., employment and services. Some of these model policies include: *Guide to Developing Flexible Work Arrangements*, *Developing Equity Policies*, *Personnel Policy on Sexual Harassment* and so on.

4. The *Bicentennial Report on Equity Issues in the Legal Profession* has noted the importance of developing model policies for the profession. The current policy is proposed to address issues related to accommodations within legal workplaces, particularly as it affects matters related to employment and services. The Equity Initiatives Department is also working on model policies to address harassment and discrimination as well as same-sex benefits. These will be submitted to the Committee for consideration later on this year.

5. Consistent with the Law Society's Accommodations Policy for students in the Bar Admission Course adopted by Convocation in June, 1999, the *Model Policy on Accommodations* covers a number of issues, including:

i) Why Law Firms Need Written Policies
ii) Legal Requirements and Professional Responsibilities
iii) The Legal Duty to Accommodate
iv) Accommodation and Undue Hardship
v) Accommodation of Creed, Religious Beliefs, Gender or Family Status, Disability
vi) Benefits of Adopting a Policy
vii) Effective Policy Implementation

6. The proposed policy then provides a template for law firms to consider in developing their own policies and procedures.

Convocation is requested to adopt the proposed Model Policy on Accommodations for Law Firms.

7. Upon approval of the model policy by Convocation, the Equity Initiatives Department, in consultation with the Communications Department, will communicate the availability of same to the legal profession through notices in the Ontario Reports, via Internet, through promotion at public education activities and through mailings to legal associations across Ontario.

FOR INFORMATION

UPDATE ON HIGH SCHOOL MENTORING PROGRAM

8. In September, 2000, Convocation adopted the program noted above. This program was established to encourage high school students from communities currently under-represented in the legal profession to consider law as a career. The program was formally launched in December, 2000 and, since that time, has worked in partnership with the Toronto District School Board, the YMCA's Black Achievement Program, the Peel District School Board, the York District School Board, Tropicana Community Services, the Dufferin-Peel Catholic School Board and the Toronto Catholic District School Board. The program aims to provide high school students form communities under-represented in the legal profession with insights into the legal profession and to the day-to-day work of lawyers in various endeavours.

9. Enabling this program to work, lawyers from large law firms, sole practitioners and government departments have volunteered to mentor these students. These include: the Department of Justice, Tory's, the Ministry of Labour, Bank of Montreal, Canadian Securities Institute, Ministry of the Attorney General, Blake Cassels & Graydon as well as small firms and sole practitioners.

10. Currently, there are 25 high school students placed with lawyers. In addition, the Equity Initiatives Department has held events at the Law Society for high school students. Held in celebration of Black History Month, International Women's Day and Francophone Week, in total, these events have attracted close to two hundred students and a number of law students, lawyers and judges have addressed these students about various aspects of legal education and the practice of law.

11. Effort is underway to promote the program throughout high schools in the Greater Toronto Area for the upcoming school year, 2001 - 2002. Further, an event will be held in early June to congratulate the students currently in the program, to thank the lawyers who have volunteered and to promote the program for next year.

APPENDICES

APPENDIX "A"

BENCHER / LSUC STAFF RELATIONS POLICY AND PROCEDURES:
REVISED AS PER CONVOCATION MEETING
APRIL 26, 2001[1]

1. Convocation is asked to adopt the procedures as amended and set out below regarding Bencher-staff interactions on issues of discrimination and harassment. These procedures, consistent with current human rights law, the Law Society Act, and standard institutional practice, are not addressed within the "Bencher Code of Conduct". The procedures are to be followed when an employee feels that s/he has been subjected to harassment or discrimination covered by the LSUC Workplace Harassment and Discrimination Prevention Policy (the "policy") and where such a complaint involves a Bencher.

I. RESPONSIBILITY OF THE LAW SOCIETY

General Principle

2. The Law Society of Upper Canada has an obligation to ensure that the working environment is free from comments or conduct that constitute harassment or discrimination. The Law Society may be found liable:

> where the Law Society's personal action, either directly, or indirectly infringes a protected right, or authorizes or condones, the inappropriate behaviour; or
>
> where an employee responsible for the harassment or inappropriate behaviour, or who knew of the harassment or inappropriate behaviour, or that a poisoned environment existed, but did not attempt to remedy the situation, is part of the "directing mind" of the Law Society.

---

[1] Following paragraph 1: italics indicate amendments adopted at Convocation; bolding indicates wording to be deleted per Convocation's amendments.

3. On being made aware of inappropriate comments or conduct, a person who is part of the "directing mind" of the Law Society is required to take 'immediate action' to remedy the situation.

Definition of "Directing Mind"

4. An employee or its agents may be the directing mind of a corporation. Employees with supervisory authority may be viewed as part of the Law Society's "directing mind" if they function, or are seen to function, as representatives of the Law Society. Generally speaking, an employee who performs management duties is part of the "directing mind" of the Law Society, eg., CEO and senior management.

II. CONFIDENTIALITY

(Deleted formerly paragraph 5: The Law Society of Upper Canada understands that it is difficult to come forward with a complainant of harassment and recognizes a complainant's interest in keeping the matter confidential.)

5. To protect the interests of the complainant, the person complained against, and any other person who may report incidents of harassment, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.

6. All records of complaints, including contents of meetings, interviews, results of investigations and other relevant material will be kept confidential by the Law Society of Upper Canada, except where disclosure is required by a disciplinary or other remedial process or under criminal law.

III INITIAL RESPONSE OF COMPLAINANT

Approaching the Respondent

7. An employee or employees who feel that they, or someone else, have been subjected to harassment or discrimination by a Bencher or Benchers is encouraged to bring the matter to the attention of the Bencher(s) responsible for the conduct.

Option

8. Where the complainant does not wish to bring the matter directly to the attention of the Bencher(s) responsible, or where such an approach is attempted and does not produce a satisfactory result, the complainant can address her/his concerns within the Law Society by contacting the Equity Advisor or the Chief Executive Officer. Upon receipt of a complaint, the Equity Advisor and the Chief Executive Officer must inform the Treasurer.

9. Harassment Advisors appointed under the Law Society's "Workplace Harassment and Discrimination Prevention Policy", or any individuals acting as the "directing mind" of the Law Society, will refer any complainant who has concerns with interactions involving Benchers directly to the Equity Advisor or the Chief Executive Officer. Upon receipt of a complaint, the Equity Advisor and the Chief Executive Officer must inform the Treasurer.

IV. PROCEDURES

10. There are two procedures which can be followed in cases of discrimination or harassment involving Benchers:

a/ formal procedures in compliance with the Law Society Act; or
b/ informal procedures.

11. Once the Equity Advisor or the Chief Executive Officer becomes aware of a complaint against a Bencher of the Law Society of Upper Canada, he or she will immediately refer the matter to the Chair of the Equity and Aboriginal Issues Committee and to the Treasurer of the Law Society.

12. The Treasurer may:

(b) choose to pursue formal procedures and, pursuant to section 49.3 of the Law Society Act[2], call for an investigation into a Bencher's conduct if he or she receives information suggesting that the member may have engaged in professional misconduct or conduct unbecoming a barrister or solicitor, or

(c) choose to pursue informal procedures and proceed under the Law Society's "Workplace Harassment Complaints Procedures Covering Bencher/LSUC Staff Relations".

V. FORMAL PROCEDURES: AUTHORIZATION OF INVESTIGATION UNDER *THE LAW SOCIETY ACT*

13. The Treasurer may exercise his or her authority under section 49.3 of the Law Society Act to require an investigation to be conducted into the bencher's conduct.

VI. INFORMAL PROCEDURES

14. The Treasurer may choose to pursue the complaint through an informal process.

i) Discussion of Complaint with the *Treasurer, CEO and elected bencher nominated by the Treasurer (*Deleted: Equity Advisor and Chief Executive Officer)

15. *The Treasurer, the CEO and an elected bencher nominated for this purpose will meet with the complainant to explain the policy and advise the complainant of:*

(Deleted: The Treasurer can direct the complaint of harassment or discrimination involving Benchers for discussion with the Chair of the Equity and Aboriginal Issues Committee, the Equity Advisor and the Chief Executive Officer. The Chair of the Equity and Aboriginal Issues Committee, the Equity Advisor and the CEO will meet with the complainant to explain the policy and advise the complainant of:)

the availability of counselling and other support services provided by the Law Society

the right to be accompanied by a person of choice at any stage of the process when the complainant is required or entitled to be present

the right to withdraw from any further action in connection with the complaint at any stage

the fact that even if she or he withdraws the complaint, *the Treasurer, the CEO and the elected bencher (Deleted: the Equity Advisor and the CEO)* may have a responsibility to continue to investigate the complaint

other avenues of recourse available to the complainant such as the right to file a complaint with the Ontario Human Rights Commission

---

[2] *Law Society Act*, R.S.O. 1990, c. L.8.

ii. Outcome of the Meeting with the *Treasurer, the elected bencher and the CEO* (Now Deleted: the Equity Advisor)

No Further Action

16. Where, after discussing the matter, the complainant and *the Treasurer, the elected bencher and the CEO* (*Deleted: the Chair of the Equity and Aboriginal Issues Committee, the CEO and the Equity Advisor)* agree that the conduct in question does not constitute harassment or discrimination as defined in the "policy", no further action will be taken.

Discussion with Respondent

17. Where the complainant brings information alleging harassment or discrimination to *the Treasurer, the elected bencher and the CEO*, (Deleted: *the Chair of the Equity and Aboriginal Issues Committee, the CEO and the Equity Advisor)*, they may, at the request of the complainant, speak to the Bencher(s) whose conduct has caused offence, in which case *the Treasurer, the elected bencher and the CEO (Deleted: the Chair of the Equity and Aboriginal Issues Committee, the CEO and the Equity Advisor)* will keep a written record of what was said to the respondent.

Allegations of Harassment or Discrimination but Complainant Does Not Want to Proceed

18. Where the complainant brings allegations of harassment and discrimination to the attention of *the Treasurer, the CEO and the elected bencher (Deleted: the CEO, Equity Advisor and the Chair of the Equity and Aboriginal Issues Committee)*, but, after discussion, the complainant decides not to proceed with a written complaint, *the Treasurer, the CEO and the elected bencher (Deleted: Chair of the Equity and Aboriginal Issues Committee, the CEO and the Equity Advisor)* discuss the complaint and options available to address the complaint, including informal measures or the laying of a written complaint.

Complainant Files a Written Complaint

19. Where, after meeting with *the Treasurer, the CEO and the elected bencher (Deleted: the Chair of the Equity and Aboriginal Issues Committee, the CEO and the Equity Advisor)* the complainant decides to lay a written complaint, whether or not *the Treasurer, the CEO and the elected bencher (Deleted: the Chair of the Equity and Aboriginal Issues Committee, the CEO and the Equity Advisor)* are of the opinion that the conduct in question constitutes harassment as defined in the "policy", *the Equity Advisor (the Equity Advisor and the CEO)* will assist the complainant to draft a written complaint which must be signed by the complainant.

c) WRITTEN COMPLAINT

i. When a Written Complaint has been Issued

20. Once a written complaint has been laid, *the Treasurer, the CEO and the elected bencher (Deleted: the CEO, Equity Advisor and the Chair of the Equity and Aboriginal Issues Committee)* will undertake to:

provide a copy of the complaint to the complainant and to the Treasurer

provide a copy of the policy to the respondent and advise the person(s) that he or she has the right to be accompanied by a person of their choice at any stage of the process

when deemed appropriate, seek a meeting with the respondent with a view to obtaining her/his response

when deemed appropriate, seek a meeting with the respondent with a view to obtaining an apology or such other resolution as will satisfy the complainant *or dismiss the complaint.*

ii. Decision Not to Proceed with the Complaint

21. Where it appears to *the Treasurer, the CEO and the elected bencher (Deleted: the CEO, Equity Advisor and the Chair of the Equity and Aboriginal Issues Committee)* that the facts upon which the complaint are based occurred more than six months before the complaint was filed, unless they are satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay, *the Treasurer, the CEO and the elected bencher (Deleted: the CEO, Equity Advisor and the Chair of the Equity and Aboriginal Issues Committee)* may, in their discretion, decide not to proceed with the complaint.

VII. MEDIATION

22. If agreeable to both the complainant and the respondent, *the Treasurer, the CEO and the elected bencher (Deleted: the CEO, Equity Advisor and the Chair of the Equity and Aboriginal Issues Committee)* will arrange for the matter to be handle through an external mediation.

23. If the complainant and respondent do not agree to enter into mediation, and, if a mutually agreeable resolution has not been reached, the matter will be referred back to the Treasurer for her or his review pursuant to the Law Society Act. Or, in the case of a bencher who is not a member, the Treasurer may initiate a formal investigation in accordance with the Law Society's Workplace Harassment and Discrimination Prevention Policy.

24. If mediation is undertaken and a mutually agreeable resolution is not achieved, the matter will be referred back to the Treasurer for her or his review pursuant to the *Law Society Act.* Or, in the case of a bencher who is not a member, the Treasurer may initiate a formal investigation in accordance with the Law Society's Workplace Harassment and Discrimination Prevention Policy.

General Principles of Informal Resolution Process

25. The formal resolution, which will be undertaken by an external body, will follow the rule of natural justice and be undertaken within a reasonable time frame.

(Deleted as no longer necessary:

(COMPLAINTS AGAINST THE CHAIR OF THE EQUITY AND ABORIGINAL ISSUES COMMITTEE

(If the complaint involves the Chair of the Equity and Aboriginal Issues Committee, and the Treasurer chooses to pursue the matter through the informal complaints process, the Vice Chair will assume the role of the Chair in the complaints procedures.)

VII. COMPLAINTS AGAINST THE TREASURER

26. Where a complaint involves the Treasurer, *the CEO and the elected bencher (Delete: the Chair of the Equity and Aboriginal Issues Committee, the Chief Executive Officer and the Equity Advisor)* will refer the matter to the Chair of Finance and Audit Committee who, pursuant to By-Law 6 of the Law Society Act, will assume the role of the Treasurer.

(Deleted as redundant, re. Paragraph 26: The Chair of the Finance and Audit Committee may choose to pursue the complaint pursuant to the Law Society Act or may choose to pursue the complaint through the informal process set out in this policy.)

APPENDIX "B"

THE LAW SOCIETY OF UPPER CANADA

GUIDE TO DEVELOPING A LAW FIRM POLICY REGARDING ACCOMMODATION REQUIREMENTS

March 2001

TABLE OF CONTENTS

Introduction 1

Why Law Firms Need Written Policies 1

Barriers to Equality in the Legal Profession 2

Model Policies Developed by the Law Society 4

Legal Requirements and Professional Responsibilities 5

The Legal Duty to Accommodate 7

The Duty to Accommodate Applies to the Point of Undue Hardship 10

Accommodation of Creed and Religious Beliefs 13

Accommodation Based on Gender or Family Status 15

Accommodation of Disability 17

Benefits of Adopting an Accommodation Policy 23

Effective Implementation and Review of the Policy 25

Accommodation Policy 28

Appendix A: Rule 5.04 of the *Rules of Professional Conduct*

INTRODUCTION

The purpose of this Guide is to assist law firms in accommodating differences that arise from the personal characteristics enumerated in the Ontario *Human Rights Code*[3] (the *Code*) and under Rule 5.04 of the *Rules of Professional Conduct*[4]. The following introductory material summarizes relevant background studies, discusses law firms' legal and professional responsibility to accommodate in employment and services, and lists some of the benefits to law firms of having a written policy on accommodation.

WHY LAW FIRMS NEED WRITTEN POLICIES

The Ontario Human Rights Commission has stated that "[t]he best defence against human rights complaints is to be fully informed and aware of the responsibilities and protections included in the *Code*.[5]" Law firms can achieve this by developing written policies on equity issues, including an accommodation policy and procedures which provide for accessibility audits and a process whereby individual needs can be identified and accommodated. It is advantageous to a firm to adopt written policies for a number of reasons.

g) Written policies encourage respect for the dignity of all members and staff of the law firm.

g) Written policies show that the firm's management takes seriously its legal and professional obligations.

h) Written policies remove much of the discretion and bias that can otherwise play a part in decision-making about individuals.

i) Written policies clearly set out behaviour which will not be tolerated in the workplace or in the provision of services.

j) Written policies provide procedures for preventing discrimination and for accommodating members and staff of the firm.

k) Written policies on equity issues encourage respect for and acceptance of members and staff of the law firm from Aboriginal, Francophone and equity-seeking groups.

l) The existence of written policies allows the firm to communicate its commitment to equity principles to people outside the firm, such as prospective recruits and clients.

m) The adoption of written policies on equity issues may protect the law firm against liability.

BARRIERS TO EQUALITY IN THE LEGAL PROFESSION

In most professions, there is evidence that Aboriginal, Francophone and equity-seeking groups face serious barriers to equality. The legal profession is no exception. Since 1989, the Law Society of Upper Canada has reviewed studies that are indicative of inequality within the profession:

---

[3] R.S.O. 1990, c. H.19.

[4] Adopted by Convocation of the Law Society of Upper Canada on June 22, 2000, effective November 1, 2000.

[5] *Policy and Guidelines on Disability and the Duty to Accommodate* (Toronto: Ontario Human Rights Commission, November 23, 2000) at 41.

- Statistics analysed by the Law Society's Special Committee on Equity in Legal Education and Practice in 1990 indicated that visible minorities were seriously under-represented in the legal profession in relation to their populations in Ontario[6].

- In 1991, the Law Society published a survey of lawyers called to the Bar between 1975 and 1990[7]. Seventy percent of women respondents said they experienced sex discrimination in the course of their work as lawyers. Ten percent of the respondents reported having personally experienced racial or ethnic discrimination in the course of their work as lawyers and seventeen percent reported occurrences of racial or ethnic discrimination against others.

- A 1992 survey of Black law students, articling students and recently-called lawyers sponsored by the Law Society found that fifty percent of respondents thought they were channelled into particular areas of practice or types of law. Fifty-nine percent of respondents to the 1992 survey believed that certain areas of practice were effectively closed to Black lawyers. The areas of law cited most often as not being open to Black lawyers were corporate/commercial law and related areas of business law such as securities and taxation.

- In response to complaints from students in 1992, the Law Society conducted a survey of students in 1993 and 1994 concerning inappropriate comments made and questions asked at articling interviews. Students reported that they were asked questions and subjected to offensive remarks concerning age, sex, family status, parenting obligations, sexual orientation, heritage and country of origin, among others.

- The 1993 report of the Canadian Bar Association's Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability*[8] describes the barriers to equality faced by women in the legal profession. It also demonstrates that these barriers are multiplied for women who face additional forms of discrimination on the basis of race, ethnic origin, sexual orientation or disability. The report urges the profession to remove the barriers and, as one way of doing so, recommends the adoption of model employment policies.

- In 1996, the Law Society published *Barriers and Opportunities Within Law*, a longitudinal study which compared the success of male and female lawyers called to the Ontario Bar between 1975 and 1990. The report once again confirmed the existence of inequality within the legal profession[9].

- The Law Society Placement Office surveys for the years 1994-1995 through to 1998-1999, and for 2000-2001 of incoming bar admission course students revealed that Aboriginal students, visible minority students and students with disabilities were over-represented among students who were without articling placements as of September of the year in which they would be expected to commence articles.

---

[6] Report of the Special Committee on Equity in Legal Education and Practice adopted by Convocation in February 1991.

[7] *Transitions in the Ontario Legal Profession, A Survey of Lawyers Called to the Bar Between 1975 and 1990* (Toronto: Law Society of Upper Canada, 1991).

[8] Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993).

[9] F.M. Day, N. Dautovich and C. Marlor, *Barriers and Opportunities Within Law: Women in a Changing Legal Profession. A Longitudinal Survey of Ontario Lawyers 1990-1996* (Toronto: Law Society of Upper Canada, November 1996).

- In 2001, the Law Society commissioned Michael Ornstein, Director of the Institute of Social Research of York University, to prepare a demographic survey of the legal profession in Ontario[10]. Using the 1996 Canadian Census, the report shows that 7.3 percent of lawyers in Ontario are non-white, compared to 17.5 percent of the population. Although in 1996 30.1 percent of lawyers in Ontario were women, only 7.8 percent of lawyers between 55 and 64 and 18 percent of lawyers between 45 and 55 were women. The report also notes that the mean annual earnings of non-white lawyers and of women is generally much lower than the mean annual earnings of white male lawyers.

In light of the above-noted studies, the Law Society has undertaken initiatives to promote equality within the legal profession, in accordance with its mandate. The position of the Law Society has been summarized in its *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*[11].

MODEL POLICIES DEVELOPED BY THE LAW SOCIETY

In the last decade, the Law Society has adopted a number of model policies to promote equality within the legal profession. In 1996, the Law Society of Upper Canada adopted model policies dealing with workplace equity and flexible work arrangements, the *Guide to Developing a Policy Regarding Flexible Work Arrangements* and the *Guide to Developing a Policy Regarding Workplace Equity in Law Firms*[12]. The policies are adaptations of the model policies created by the Canadian Bar Association Task Force on Gender Equality in the Legal Profession, and are updated and tailored to reflect Ontario human rights legislation and the *Rules of Professional Conduct*[13].

---

[10] Michael Ornstein, Director of the Institute for Social Research of York University, *Lawyers in Ontario: Evidence from the 1996 Census, A Report for the Law Society of Upper Canada* (Toronto: Law Society of Upper Canada, January 2001).

[11] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, 1997).

[12] *Guide to Developing a Policy Regarding Flexible Work Arrangements* (Toronto: Law Society of Upper Canada, 1996) and *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, 1996).

[13] The Canadian Bar Association Task Force prepared model policies on alternative (flexible) work arrangements, parental leave, sexual harassment, and workplace equity which were published (August 1993) as Appendix 2 of the *Touchstones Report*, *supra* note 6. The model policy on workplace equity, in particular those parts dealing with recruitment, interviewing and hiring, drew upon the recruitment guidelines prepared by the University of Victoria Faculty of Law (reproduced in *Gender Equality in the Legal Profession* (Vancouver: Law Society of British Columbia, 1992).

The CBA's model policy on alternative work arrangements draws upon two other sample policies: the policy prepared by the American Bar Association's Commission on Women in the Profession, which was published in *Lawyers and Balanced Lives: A Guide to Drafting and Implementing Workplace Policies for Lawyers* (Chicago: American Bar Association, 1990), and the policy prepared by the Women's Bar Association of the District of Columbia entitled *Guidelines on Alternative Work Schedules*.

In 2001, the Equity Initiatives Department of the Law Society published a document entitled *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities; Legal Developments and Best Practices*[14] which provides best practices and a legal analysis of the duty to accommodate. The Law Society has also adopted this *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* based in part on the Human Rights Commission's *Policy on Creed and the Accommodation of Religious Observances*[15] and *Policy and Guidelines on Disability and the Duty to Accommodate*[16].

The *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* is one of a number of model policies to be developed by the Law Society of Upper Canada. The Law Society is in the process of reviewing and updating its *Guide to Developing a Policy Regarding Harassment in Law Firms* and of drafting a model policy on benefits for same-sex couples.

LEGAL REQUIREMENTS AND PROFESSIONAL RESPONSIBILITIES

Studies such as those cited above suggest the existence of pervasive discrimination within the legal profession. In human rights law, the fact that there is no intent to discriminate is of no relevance: what counts is the impact that practices, policies and behaviours have on individuals.

Subsection 5(1) of the *Code* prohibits discrimination in employment:

> Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences[17], marital status, same-sex partnership status, family status or handicap[18].

---

[14] *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities; Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001).

[15] *Policy on Creed and the Accommodation of Religious Observances* (Toronto: Ontario Human Rights Commission, October 20, 1996).

[16] Approved by the Ontario Human Rights Commission on November 23, 2000 and released on March 22, 2001. In 1989, the Ontario Human Rights Commission published its *Guidelines on Assessing Accommodation Requirements for Persons with Disabilities*. In 1999, the Commission invited stakeholders to provide input on the revisions to the guidelines. Over 150 stakeholders were approached representing a broad spectrum of interests, including consumers and organizations from the disability community, employer associations, educational institutions, law firms, labour, provincial and municipal government agencies, business and trade associations and service providers. The overwhelming response to the Commission's consultations showed that stakeholders rely upon the guidelines for directions in fulfilling the obligation to accommodate in a variety of situations. As a result of the consultations, the Commission released the *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 3.

[17] "Record of offences" is defined in the *Code, supra* note 1, as a conviction for a criminal offence for which a pardon has been granted or a conviction under any provincial enactment.

[18] Although the *Code* prohibits discrimination based on "handicap" and provides an extensive definition of the term "because of handicap" (see section 10 of the *Code, supra* note 1), the terms "disability" and "person with a disability" will be used throughout this document instead of "handicap" or "handicapped person". Many persons with disabilities prefer the term "disability". In English, the term handicap is considered obsolete.

In 2000, the Law Society of Upper Canada adopted Rule 5.04 of the *Rules of Professional Conduct* which provides that law firms have a legal and professional duty not to discriminate (on any of the prohibited grounds enumerated in the *Code* and in Rule 5.04):

> A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the *Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other members of the profession or any other person[19].

Rule 5.04 provides that discrimination in employment or in professional dealings fails to meet professional standards. The terms "employer" and "employment" are defined broadly; pursuant to both human rights legislation and Rule 5.04 of the *Rules of Professional Conduct*, law firms have a duty to accommodate that extends to professional employment of other lawyers, articled students, or any other person, from administrative staff to partners. Although the *Code* does not refer specifically to volunteers, the Human Rights Commission is of the view that "equal treatment with respect to employment" in section 5 of the *Code* can be interpreted to protect anyone in a work context[20]. This would include volunteers and co-op students. The term "employment" covers recruitment, interviewing, hiring, promotion, evaluation, compensation, professional development and admission to partnership.

The *Code* also provides the right to equal treatment, without discrimination, with respect to services, goods and facilities[21]. Rule 5.04 states that a lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in Rule 5.04.

The commentary to Rule 5.04 imposes a duty to accommodate:

> The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the application of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in rule 5.04[22].

The nature of accommodation as well as the extent to which the duty to accommodate might apply in any individual case are developing areas of human rights law. The following sections provide an overview of the duty to accommodate and the concept of undue hardship.

---

[19] The personal characteristics noted in the *Code, supra* note 1, are: "race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, same-sex partnership status, family status, or [disability]". Rule 5.04 does not include same-sex partnership status but specifies that a lawyer has a special responsibility to respect the requirements of human rights law.

[20] *Human Rights at Work* (Toronto: Ontario Human Rights Commission, 1999) at 35.

[21] Section 1 of the *Code, supra* note 1.

[22] See Appendix A of this *Guide* for Rule 5.04 of the *Rules of Professional Conduct*.

THE LEGAL DUTY TO ACCOMMODATE

For years, courts and tribunals have defined discrimination in terms of "direct", "adverse effect"[23] or "systemic"[24].

"Direct discrimination" exists where an employer adopts a practice or rule which on its face discriminates on a prohibited ground.

"Adverse effect discrimination" means that an employer, for genuine business reasons, adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties or restrictive conditions not imposed on other members of the work force.

"Systemic discrimination" means practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics.

In the past, the distinction between direct and adverse effect discrimination was important in human rights jurisprudence because the test to justify a *prima facie* discriminatory rule and the appropriate remedy were different depending on whether the rule was discriminatory on its face (direct discrimination) or facially neutral but discriminatory in its effect (adverse effect discrimination). In cases where it was found that direct discrimination existed, the rule was struck down in its entirety. In cases of adverse effect discrimination, the employer had the opportunity to demonstrate that the rule was a *bona fide* occupational requirement and reasonably necessary for the operation of the workplace. Since the discrimination was not direct, the rule could stand, provided reasonable accommodation could be provided so that the employee would not suffer the effect of the discrimination.

The Ontario *Human Rights Code* prohibits adverse effect discrimination. However, under section 11 of the *Code*, an employer may justify a workplace rule that has the effect of discriminating against a person or group of persons on a prohibited ground, including disability, by showing that the rule is a *bona fide* occupational requirement and that the needs of the person or group cannot be accommodated without undue hardship[25].

---

[23] Adverse effect discrimination has also been termed "indirect" or "constructive" discrimination.

[24] The terms have usually been defined in the context of employment. It is recognized that the definitions also apply to the service-provision context.

[25] Section 11 of the *Code, supra* note 1, imposes a duty to accommodate:

> (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
>
> > (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
> >
> > (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.
>
> (2) The Commission, the board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of

Section 17 of the *Code* also creates an obligation to accommodate persons with disabilities. Section 17 states that there is no violation of the right of a person with a disability if that person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right. However, this defence is not available unless it can be shown that the needs of the person cannot be accommodated without undue hardship[26].

Section 17 recognizes that discrimination based on disability can be based on society's failure to accommodate actual differences and emphasizes the need for individual accommodation.

Recent Supreme Court of Canada case law, though accepting that the development of human rights jurisprudence was well-served in distinguishing between direct and adverse effect discrimination and in recognizing adverse effect discrimination as a form of discrimination, is less inclined to distinguish between the two types of discrimination[27].

The Supreme Court suggests the following three-step analysis:

> Once a plaintiff establishes that the standard is *prima facie* discriminatory, the onus shifts to the defendant to prove on a balance of probabilities that the discriminatory standard is a *bona fide* occupational requirement or has a *bona fide* and reasonable justification. In order to establish this justification, the defendant must prove that:
>
> - it adopted the standard for a purpose or goal rationally connected to the function being performed;
> - it adopted the standard in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal ; and

---

> which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

[26] Section 17 of the *Code* imposes a duty to accommodate persons with disabilities:

> (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap.
>
> (2) The Commission, the board of inquiry or a court shall not find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Section 17 applies to cases involving services as well as employment. See *Youth Bowling Council of Ontario* v. *McLoed* (1991), 14 C.H.R.R. D/120 (Ont. Div. Ct.).

[27] *British Columbia (Public Service Employee Relations Commission)* v. *B.C.G.S.E.U.*, [1999] 3 S.C.R. 3 (the Meiorin case). The test in Meiorin was developed in the employment context. In *British Columbia (Superintendent of Motor Vehicles)* v. *British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 (the Grismer case), the Supreme Court of Canada confirmed that the unified approach to adjudicating discrimination claims adopted in Meiorin applied to all claims of discrimination, including claims related to the provision of services.

- the standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate persons with the characteristics of the claimant without incurring undue hardship[28].

In Ontario, the Court of Appeal has adopted the three-step analysis set out by the Supreme Court of Canada which means that, in cases of *prima facie* discrimination based on disability, an individual may rely on section 11 or 17 of the *Code*. In cases of *prima facie* discrimination based on other grounds, an individual may rely on section 11 of the *Code*. Under either section, to justify the workplace or service related rules, the three steps of the analysis must be satisfied[29].

The Ontario Court of Appeal has maintained the distinction between direct and adverse effect discrimination but it has much less practical significance. It applies mostly in cases that can be neatly characterized as cases of direct discrimination. In those cases, the *bona fide* occupational requirement defence will not apply and a discriminatory rule will be struck down. If the discrimination cannot easily and clearly be characterized as direct, the three-step test applies.

THE DUTY TO ACCOMMODATE APPLIES TO THE POINT OF UNDUE HARDSHIP

An employer or service provider has a duty to accommodate to the extent of undue hardship. The *Code* states that undue hardship on the employer or on the service provider will be assessed by considering the cost, outside sources of funding, if any, and health and safety requirements[30].

---

[28] See Grismer, *ibid.* at par. 20 (the test is applied in the context of the provision of services) and Meiorin, *ibid.* at par. 54 (the test is applied in the employment context).

[29] *Entrop* v. *Imperial Oil Ltd.* (2000), 50 O.R. (3d) 18 (Ont. C.A.).

[30] Sections 11 (constructive discrimination) and 17 (accommodation for persons with disabilities) of the *Code, supra* note 1, both use the same factors in assessing undue hardship: cost, outside sources of funding and health and safety requirements.

The *Code* specifically sets out three considerations. Several factors are therefore excluded from considerations that are frequently raised by respondents. These are business inconvenience[31], employee morale[32], customer preference[33], and collective agreements or contracts[34].

Although "cost", "outside sources of funding" and "health and safety requirements" are not defined in the *Code*, the Human Rights Commission has interpreted those terms.

"Costs" will amount to undue hardship if they are:

- quantifiable;
- shown to be related to the accommodation; and
- so substantial that they would alter the essential nature of [the law firm], or so significant that they would substantially affect its viability [35].

---

[31] The Ontario Human Rights Commission is of the view that:

> "Business inconvenience" is not a defence to the duty to accommodate. If there are demonstrable costs attributable to decreased productivity, efficiency or effectiveness, they can be taken into account in assessing undue hardship under the cost standard, providing they are quantifiable and demonstrably related to the proposed accommodation.

See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 3 at 28.

[32] The Ontario Human Rights Commission is of the view that:

> In some cases, accommodating an employee may generate negative reactions from co-workers who are either unaware of the reason for the accommodation or who believe that the employee is receiving an undue benefit [...] However, it is not acceptable to allow discriminatory attitudes to fester into workplace hostilities that poison the environment.

See *Policy and Guidelines on Disability and the Duty to Accommodate, supra* note 3 at 28.

[33] Third-party preference does not constitute a justification for discriminatory acts. *(* See *Policy and Guidelines on Disability and the Duty to Accommodate, supra* note 3 at 28).

[34] Collective agreements or contractual arrangements cannot act as a bar to providing accommodation. (See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 3 at 28).

[35] Taken from *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 3 at 30.

Guidelines were initially produced by the Human Rights Commission in 1989 after the ground of disability was included in the *Human Rights Code* in 1982. In April 1999, the Commission undertook consultations with stakeholders to review the *Guidelines for Assessing Accommodation Requirements for Persons with Disabilities.* In November 2000, the Commission adopted its new policy document (released on March 22, 2001) which reiterates and explains the Commission's interpretation of the concept of "undue hardship".

The 1989 guidelines and the *Policy and Guidelines on Disability and the Duty to Accommodate* are influential on adjudicators and have been adopted by the Ontario Workers' Compensation Board and by the Ontario Workers'

Law firms should make use of outside resources, such as funds available to an individual requesting an accommodation, funds that would assist employers and service providers defray the cost of accommodation or funding programs to improve accessibility, in order to meet the duty to accommodate. Law firms must demonstrate that they have made use of outside resources before claiming undue hardship.

Undue hardship may also exist where an accommodation creates a potential conflict with a "health or safety" requirement. The health or safety requirement may be contained in a law or regulation, or it may be a rule, practice or procedure. The Human Rights Commission suggests that:

> Where a health and safety requirement creates a barrier for a person with a disability, the accommodation provider should assess whether the requirement can be waived or modified [...] The employer is required to show an objective assessment of the risk as well as demonstrate how the alternative measure provides equal opportunity to the person with a disability [...] Health and safety risks will amount to undue hardship if the degree of risk that remains after the accommodation has been made outweighs the benefits of enhancing equality for persons with disabilities[36].

Although the duty to accommodate arises in respect of every personal characteristic noted in Rule 5.04 and the *Code*, the most common requests for accommodation are based on the following grounds: creed and religious beliefs, gender, family status and disability.

ACCOMMODATION OF CREED AND RELIGIOUS BELIEFS

The Ontario Human Rights Commission has adopted the following definition of creed:

> The term creed is interpreted to mean "religious creed" or "religion". It is defined as a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single supreme being or deity is not a requisite [...] Religion [includes] non-deistic bodies of faith, such as the spiritual faiths/practices of Aboriginal cultures, as well as *bona fide* newer religions [...] religions that incite hatred or violence against other individuals or groups or practices and observances that purport to have a religious basis but which contravene [...] criminal law [are not protected][37] .

Compensation Appeals Tribunal.

[36] *Policy and Guidelines on Disability and the Duty to Accommodate, supra* note 3 at 34.

[37] Taken from *Policy on Creed and the Accommodation of Religious Observances, supra* note 13 at 2.

The definition of creed encompasses the faith of a community but also that of an individual. Personal religious beliefs, and practices or observances, even if they are not essential elements of the creed, provided they are sincerely held.

Typically, in the context of creed, issues of accommodation arise with regard to break policies[38], flexible scheduling[39], rescheduling, religious leave[40] and dress codes[41].

---

[38]For example, some religions require that their members observe periods of prayer at particular times during a day. This practice may conflict with an employer's regular work hours or daily routines in the workplace. The employer has a duty to accommodate the employee's needs, short of undue hardship, by providing accommodations such as modified break policies, flexible hours and/or providing a private area for devotions.

[39]The purpose of this measure is to allow a flexible work schedule for employees, or to allow for substitution or rescheduling of days when an employee's religious beliefs do not permit him or her to work certain hours. For example, Seventh Day Adventists and members of the Jewish faith observe the Sabbath from sundown Friday to sundown Saturday. Observant members of these religions cannot work at these times.

Flexible scheduling may include: alternative arrival and departure times on the days when the person cannot work for the entire period, or use of lunch times in exchange for early departure or staggered work hours. Where the person has already used up paid holy days to which he or she is entitled, the employer should also consider permitting the employee to make up lost time or to use floating days off.

[40]When an employee requests time off to observe a holy day, the employer has an obligation to accommodate the employee. The extent of the accommodation required is an issue that comes up frequently. The Supreme Court of Canada has suggested that equality of treatment requires *at a minimum* that employees receive paid religious days off, to the extent of the number of religious Christian days that are also statutory holidays, namely two days (Christmas and Good Friday) and three days when the employer makes Easter Monday a holiday (*Chambly* v. *Bergevin*, [1994] 2 S.C.R. 525) .

[41] Dress codes include cases where an employer insists that its employees be clean-shaven and wear a cap. That condition may discriminate on the basis of creed if an employee is a Sikh and his religion requires him to wear a turban and has a rule against cutting body hair.

Law firms are encouraged to allow employees holy days off for religious observance without suffering any financial loss, unless this would result in undue hardship on the firm. This approach is consistent with the understanding that accommodation is a means of removing the barriers which prevent persons from enjoying equality of opportunity in a way which is sensitive to their individual circumstances[42]. An employee who is required to use vacation days, unpaid leave or who has to change his or her work schedule in order to observe his or her holy days is suffering a burden for observing his or her religion, something members of the majority religion are not required to do.

Law firms are also encouraged to adopt policies that allow for flexibility in the number of days off for religious observance. Case law has suggested that employers should, *at a minimum*, provide employees with paid religious days off to the extent of the number of religious Christian days that are also statutory holidays[43]. However, it is not necessary to limit the number of days off for religious observance to the same number of religious Christian days already allowed by the firm. The fact that the dominant Christian religion has only two or three mandatory holy days does not mean that equal treatment without discrimination will follow if every other religion is given two or three days off with pay to observe only some of their holy days.

In order to accommodate an individual, the needs of the individual and of the religious group to which an individual belongs to should be determined. Law firms should look to the accepted religious practices and observances that are part of a given religion or creed and individual beliefs that are sincerely held.

ACCOMMODATION BASED ON GENDER OR FAMILY STATUS

Family responsibilities arise mainly out of the parent-child relationship. The responsibilities that most affect the workplace arise from the birth or adoption of children, and the need to care for children and elderly parents and other relatives.

---

[42] However, tribunals have accepted that employers can fulfill their duty to accommodate the religious needs of employees by providing appropriate scheduling changes in lieu of leave with pay, without first demonstrating that a leave of absence with pay would result in undue hardship. See *Ontario* v. *Grievance Settlement Board* (2000), 50 O.R. (3d) 560 (Ont. C.A.).

Although the Court of Appeal reversed the Divisional Court and the Grievance Settlement Board in *Ontario* v. *Grievance Settlement Board*, the decision of the Board is more in line with the right to equality entrenched in the *Human Rights Code*. The Board was of the view that the employee had a right to have recognized holy days off for religious observance without suffering any financial loss:

> To the extent that the Grievor has been subjected to adverse effect discrimination so as to be entitled to accommodation by the Employer, in the absence of a demonstration that granting the days requested for religious observance with pay would have imposed undue hardship on the Employer, the Grievor would not be required to use vacation days, unpaid leave etc. in order to be able to observe his holy days [...] Requiring the Grievor to use his vacation benefits would have had the effect of imposing a financial burden on him to observe his holy days, something members of the majority religion were not required to do. (Quoted by the Court of Appeal in *Ontario* v. *Grievance Settlement Board* (2000), 50 O.R. (3d) 560 at para. 24.)

[43] *Chambly* v. *Bergevin*, [1994] 2 S.C.R. 525.

Historically, lack of accommodation of family responsibilities in the legal profession has had a great adverse impact on women. The "culture" of lawyers' workplaces was shaped for and by a profession exclusive of women. The components of the culture include: long and irregular hours of work; assumptions about the availability of domestic labour to support a lawyer's activities at work; and promotional policies based on an extremely long working day and the maintenance of large numbers of billable hours as well as increased responsibility. The culture of the workplace assumed that a lawyer would not have family responsibilities requiring significant time commitments. In turn, that workplace culture reflected a surrounding culture in which women were expected to take responsibility for all of the domestic labour arising out of family responsibilities. The hidden corollary to these assumptions was that women would not be lawyers.

Although most case law has included family responsibilities under the category of family status[44], if the purpose of accommodating employees or clients is to redress inequalities, family responsibilities usually contribute to inequality based on gender. Even with the entrance of women into the workforce, it is recognized that women still disproportionately bear the burden of child care in society[45]. While for most men the responsibility of children does not impact on the number of hours they work or affect their ability to work, a woman's ability even to participate in the work force may be completely contingent on her ability to acquire child care. Much of the burden remains on the shoulders of women. While this may not be as accurate when family responsibilities include taking care of other members of the family, such as parents, it nevertheless seems appropriate to discuss the issue of family responsibilities under the title of accommodation of gender.

The following are some of the negative consequences experienced by women in the legal profession who have children[46]:

- loss of income;
- limitations on advancement;
- delay in promotion/admission to partnership;
- segregation into less remunerative and "low profile" areas of practice;
- difficulty in obtaining access to higher profile files;
- unwillingness on the part of employers and colleagues to accommodate the demands of family responsibilities;
- questioning and testing of commitment to work.

There has been some societal change, to the extent that more men are taking on work that arises from family responsibilities. However, this change is slow to create real difference, and the burden of family responsibilities continues to fall predominately on women. Lack of accommodation therefore remains a sex discrimination issue, in addition to having a discriminatory impact on the ground of family status[47].

There are many methods by which law firms can accommodate the needs of members who have family responsibilities. The methods may vary with the size and resources of a law firm. The adoption of a flexible work arrangement policy is one method. Other methods which law firms may wish to consider include:

---

[44] *Broere v. W.P. London and Associates Ltd* (1987), 8 C.H.R.R. D/4189 (Ont. Bd. of Inq.)

[45] *Symes v. Canada*, [1993] 4 S.C.R. 695.

[46] For reports and surveys on women in the legal profession see: *Lawyers in Ontario: Evidence from the 1996 Census, A Report for the Law Society of Upper Canada, supra* note 8; *Barriers and Opportunities Within Law: Women in a Changing Legal Profession, A Longitudinal Survey of Ontario Lawyers 1990-1996, supra* note 7; *Transitions in the Ontario Legal Profession, A Survey of Lawyers Called to the bar Between 1975 and 1990, supra* note 5; *Touchstones for Change: Equality, Diversity and Accountability, supra* note 6.

[47] "Family status" is defined in the *Code, supra* note 1, at s. 10 as "the status of being in a parent and child relationship".

- Family leave policies, which acknowledge and respect the need for leave of absence for reasons of childbirth or adoption, as well as other incidents of intensive family needs such as disability or serious illness within the family. Such policies provide appropriate time frames and compensation and permit members of the firm to return to work without reduction in compensation, seniority or quality of work assignments.

- Assistance with child care, which may include provision of daycare at the workplace, child care referral services, assistance with child care fees and provision for emergency child care needs.

- Assistance with elder care, which may include elder care referral services, assistance with elder care fees and provision for emergency elder care needs.

ACCOMMODATION OF DISABILITY

Disability is defined in the *Code* as follows:

> "Because of [disability] means for the reason that the person has or has had, or is believed to have or have had,
>
> (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial appliance or device;
>
> (b) a condition of mental retardation or impairment;
>
> (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
>
> (d) a mental disorder; or
>
> (e) an injury or disability for which benefits were claimed or received under the *Workplace Safety and Insurance Act, 1997*[48].

Case law has found that the term disability includes alcoholism, cancer, AIDS, hypertension, back pains, diabetes, injuries, allergies and asthma, depression and anxiety, cerebral palsy, malformation of fingers and developmental disability. The term "disability" is interpreted:

- to recognize that discriminatory acts may be based as much on perceptions, myths and stereotypes as on the existence of actual functional limitations;

- to protect persons who have a disability, persons who had a disability but no longer suffer from it, persons believed to have a disability whether they do or not, and persons believed to have had a disability, whether they did or not may require accommodation;

---

[48] Section 10 of the *Code, supra* note 1. Rule 5.04 of the *Rules of Professional Conduct* adopts the *Code*'s definition of disability.

- to include mental illness, developmental disabilities and learning disabilities;
- to include minor illnesses or infirmities if a person can show that she was treated unfairly because of the perception of a disability;
- to mean a physical disability, infirmity, malformation or disfigurement under the *Code* that is brought on by one of the named causes enumerated in the *Code:* bodily injury, illness or birth defect;
- to include a person who starts his or her employment career with a disability, or who becomes disabled at any time during that career. The need for accommodation of disability can arise at any time, for anyone in the firm;
- as an equality-based term that takes into account evolving biomedical, social and technological developments. The focus is on the effects of the distinction experienced by the person.

The definition of disability in the *Code* includes non-evident disabilities and mental disability. The Human Rights Commission talks about the particular issues raised by such disabilities:

> Regardless of whether a disability is evident or non-evident, a great deal of discrimination faced by persons with disabilities force obstacles to integration rather than encourage ways to ensure full participation. Because these disabilities are not "seen", many of them are not well understood in society. This can lead to stereotypes, stigma and prejudice [...]
>
> Persons with mental disabilities face a high degree of stigmatization and significant barriers to employment opportunities. Stigmatization can foster a climate that exacerbates stress, and may trigger or worsen the person's condition. It may also mean that someone who has a problem and needs help may not seek it, for fear of being labelled[49].

In the context of the legal profession, the Law Society of British Columbia has conducted a survey of lawyers and law students with disabilities regarding barriers related to entering and practising in the legal profession. The survey results indicate that lawyers with disabilities experience ongoing discrimination, prejudice, negative attitudes and physical access barriers in a profession that is largely driven by the economic bottom line. Respondents reported the following:

- they had great difficulty in finding employment;
- they had to work in settings where accommodations were not provided and the atmosphere was not supportive;
- employers are usually reluctant to have a lawyer who has a disability on staff because of the economic bottom line that drives the legal profession;
- disclosure of disability leads to discrimination;
- there are still various structural barriers throughout the judicial system that make it difficult to move in and around buildings, understand what is being communicated or read small-print documents;
- there are barriers that make it difficult for lawyers with disabilities to participate socially and network during events.

---

[49] *Policy and Guidelines on Disability and the Duty to Accommodate, supra* note 3 at 10.

Respondents also noted that there are a number of barriers to legal services for members of the public, such as financial barriers, systemic access barriers and barriers in legal aid. Systems to help people needing legal services are usually designed for the able-bodied, and if any accommodations are made, it is as an afterthought. Respondents expressed concern about how prejudice against people with disabilities impacts on access to and fair treatment in the judicial system[50]. For example, ignorance of mental disability is still reflected in the legal system. Some respondents expressed concerns about access to and operation of legal aid and access to the right lawyers.

Discrimination based on disability results in part on the construction of a society based solely on "mainstream attributes"[51]. Consequently, a fundamental rethinking of the able-bodied norm and design is necessary to truly attain substantive equality[52].

Accommodations of persons with disability should focus on equal participation, maintaining the dignity of the person and inclusiveness:

---

[50] *Lawyers with Disabilities: Identifying Barriers to Equality* (Vancouver: The Law Society of British Columbia, 2001).

[51] *Eaton* v. *Brant County Board of Education*, [1997] 1 S.C.R. 241.

[52] The Supreme Court of Canada has recognized that discrimination based on disability is mostly socially constructed:

> The concept of disability must therefore accommodate a multiplicity of impairments, both physical and mental, overlaid on a range of functional limitations, real or perceived, interwoven with recognition that in many important aspects of life the so-called "disabled" individual may not be impaired or limited in any way at all [...]
>
> The bedrock of the appellant's argument is that many of the difficulties confronting persons with disabilities in everyday life do not flow ineluctably from the individual's condition at all but are located in the problematic response of society to that condition. A proper analysis necessitates unbundling the impairment from the reaction of society to the impairment, and a recognition that much discrimination is socially constructed [...] Exclusion and marginalization are generally not created by the individual with disabilities but are created by the economic and social environment and, unfortunately, by the state itself. Problematic responses include, in the case of government action, legislation which discriminates in its effect against persons with disabilities, and thoughtless administrative oversight.
>
> *Granovsky* v. *Canada (Minister of Employment and Immigration)*, [2000] 1 S.C.R. 703 at para. 29 and para. 30.

> Accommodation with dignity is part of a broader principle, namely, that our society should be structured and designed for inclusiveness. This principle, which is sometimes referred to as integration, emphasizes barrier-free design and equal participation of persons with varying levels of ability. Integration is also much more cost effective than building parallel service systems, although it is inevitable that there will be times when parallel services are the only option. Inclusive design and integration are also preferable to "modification of rules" or "barrier removal", terms that, although popular, assume that the *status quo* (usually designed by able-bodied persons), simply needs an adjustment to render it acceptable. In fact, inclusive design may involve an entirely different approach. It is based on positive steps needed to ensure equal participation for those who have experienced historical disadvantage and exclusion from society's benefits[53].

Law firm accommodation policies should provide for systemic accessibility audits as well as a process whereby individual needs can be identified and accommodated.

Systemic accessibility audits and action plans

In order to be inclusive of persons with disabilities, it is important that law firms adopt proactive measures, such as:

- undertaking systemic accessibility audits on a regular basis;
- developing accessibility plans; and
- implementing changes to make facilities, procedures and services accessible to persons with disabilities.

The systemic accessibility audits must be organizational wide and include a review of, at the very least:

- the law firm's policies and procedures, (such as performance appraisal process, criteria for partnership, recruitment practices and solicitor and client retainer forms and policies);
- the building design, structural elements, physical access, architectural and environmental elements, transportation and equipment; and
- the technological and communication equipment.

The systemic accessibility audits should be wide in scope and consider accessibility in employment and services. This means that law firms should be accessible even if there are no members or staff of the firm who are persons with disabilities. The audits should provide the basis for the development of long-term strategic action and implementation plans.

Accommodation in the context of disability often takes the form of physical modifications such as building design changes and equipment modifications, modified work duties or relocation of work duties to another part of a building[54]. The following are examples of the types of accommodations provided by employers or service providers in this context:

---

[53] *Policy and Guidelines on Disability and the Duty to Accommodate, supra* note 3 at 6.

[54] *Re Babcock and Wilcox Industries Ltd. and United Steelworkers of America, Local 2853a* (1994), 42 L.A.C. (4th) 209.

- removal of physical barriers that make it more difficult for persons with disabilities to gain access to the law firm or function within it;
- physical modifications[55];
- modified work duties[56];
- relocating work duties;
- making all in-house communications (eg: policies, memos, manuals produced by the firm) accessible to all members of the firm[57];
- providing staff to assist members, staff and clients of the firm with disabilities[58];
- providing assistive devices[59].

Individual accommodations

Accommodating persons with disabilities also requires an individualized approach[60]. Each person's needs must be considered individually in order to determine what changes can be made to a situation. The law firm should consult with the person with disabilities to determine what he or she needs and how it can best be provided. The needs of persons with disabilities must be accommodated in a manner which most respects their dignity, if to do so does not create undue hardship.

---

[55] Such accommodation must be done in a manner which respects the dignity of the person with a disability. Physical modifications can include the installation of an elevator to make a building wheelchair accessible, adding wheelchair ramps, changing lighting for those with sight impairments, changing ventilation for those with allergies etc. For an overview of best practices see *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities; Legal Developments and Best Practices*, *supra* note 12.

[56] Such as rearranging an employee's work assignments and schedule rotations in such a manner as to permit the employee to perform a suitable combination of jobs or modifying an employee's duties.

[57] This may include making documents available in electronic form which can be read by a computer to a person with a disability that affects his or her ability to read print.

[58] For example the services of a staff person to read documents, unpublished decisions etc., that might not otherwise be accessible to a lawyer, staff or client with a disability, assistance with off-site work related activities, such as attendance at a hearing.

[59]These may make it easier for persons with various disabilities to perform the tasks essential to a legal practice, at the workplace or at a home office.

[60] Emphasis will be placed here on individualized accommodation in the employment context although the law also applies to the provision of services.

Section 17 of the *Code*[61] provides that an employer has not infringed an employee's right under the *Code* if the individual is incapable of performing or fulfilling the essential duties or requirements of a position. However, if the employee can perform or fulfill the major functions of the position, the employer has an obligation to remove the marginal duties of the position. An individual will only be considered "incapable of performing the essential duties or requirements of a position" if the law firm cannot accommodate him/her without undue hardship[62].

A law firm should determine what is essential to the performance of the job. The law firm should establish on an objective basis, by testing the employee or by giving the employee an opportunity to try to perform the job, whether the employee's disability renders her or him incapable of fulfilling the essential duties of the job. If a member or staff of the firm has a disability but is capable of performing the essential duties of the position, the law firm should re-assign the marginal duties or use an alternate method for having the duties fulfilled. If the member or staff of the firm cannot perform the essential duties, accommodation is to be explored. The person will not be incapable if she or he can be accommodated without undue hardship.

The following standards for accommodation should be considered:

- recognition that the needs of persons with disabilities must be accommodated in the manner that most respects their dignity, to the point of undue hardship;
- there is no set formula for accommodation - each person has unique needs and it is important to consult with the person involved;
- taking responsibility and showing willingness to explore solutions is a key part of treating people respectfully and with dignity;
- voluntary compliance may avoid complaints under the *Code*, as well as save the time and expense needed to defend against them[63].

BENEFITS OF ADOPTING AN ACCOMMODATION POLICY

Many barriers to the equal participation of persons with disabilities, persons with family responsibilities, Francophones, Aboriginals and equity-seeking groups in the legal profession exist because of inadvertence or lack of awareness of special needs, and not because people have deliberately sought to discriminate. The removal of barriers and the adoption of proactive measures to attain equality and inclusiveness have now become a responsibility of law firms and the legal profession. The *Code* requires these changes in order to give meaning to the rights to equality and freedom from discrimination.

Historically, persons with disabilities have borne virtually all the costs, both financial and personal, of their special needs. Accommodation means that law firms should adopt a proactive approach in undertaking systemic accessibility audits, developing action plans and implementing the necessary changes to make facilities, procedures and services accessible to members, staff and clients with disabilities. Accommodation can also be understood as a means of removing the barriers which prevent persons with disabilities from enjoying equality of opportunity in a way which is sensitive to their individual circumstances so that we all may benefit from their active participation in the community.

---

[61] *Supra*, note 24.

[62] Section 17 applies to cases involving services as well as employment. See *Youth Bowling Council of Ontario* v. *McLoed*, *supra* note 24.

[63] *Policy and Guidelines on Disability and the Duty to Accommodate, supra* note 3 at 7.

For persons with family responsibilities, male as well as female working parents increasingly expect to play an active role in child-rearing. With the aging of the population, most employees face the likelihood that their parents will require some care. Advances in medicine and in technology allow for the practice of law by many who previously would have found this impossible. A firm which recognizes and responds to these new realities will enhance its ability to recruit and retain lawyers of its choice. The costs of recruitment and training can as a result be reduced, and lower turnover among lawyers means better realization of the firm's investment in its intellectual capital. The firm develops a reputation as progressive.

Benefits of adopting an accommodation policy include the following:

- Systemic accessibility audits and implementation of action plans assist in promoting public relations with the community.
- The firm states its commitment to address key barriers that affect equity in employment and in the provision of services.
- The policy is an indication that the firm strives to provide a workplace and services free of discrimination.
- The policy is a proactive way of providing the means for members, staff and clients who require accommodation, thereby enlisting the resources of a diverse workforce and providing services to a diverse community.
- Firms gain from the improved morale and loyalty encouraged by the arrangements.
- All members and staff of a firm can work to their full potential.
- Absenteeism is reduced.
- Members and staff of the firm can schedule their lives to facilitate family responsibilities or religious beliefs and practices.

EFFECTIVE IMPLEMENTATION AND REVIEW OF THE POLICY

ESTABLISHING A DRAFTING COMMITTEE

The starting point is to establish a committee to draft the policy. The membership of the committee should be diverse. To the extent possible, the committee should be composed of partners, associates, and staff of both sexes and of differing age, race, ethnic origin, family status, sexual orientation, and religion, as well as individuals with disabilities. If there are lawyers or individuals in the firm with expertise in the relevant employment and discrimination law, one or more should be included.

It is most important that the committee include respected members and staff of the firm who appreciate the importance of the issues to be addressed and who will be able to communicate these matters to others within the firm.

The composition of the committee is critical to the credibility of the process and the policies which are produced.

DEVELOPING THE POLICY

Committee members should educate themselves about the applicable law and become familiar with existing firm practices and policies that may be relevant.

A consultative process, which includes diverse members and staff of the firm and others with experience and expertise, should be followed. Accommodation policies apply to the hiring process and to articling students. Law firms should involve articling students in the consultative process.

The committee should circulate a draft policy throughout the firm for comments. This step is important because it generates support and allows for useful comment. It is important to explain the rationale for introducing such a policy, as well as the effect of the proposed policy on existing arrangements.

IMPLEMENTING THE POLICY

The initial presentation of the policy and a clear statement of management committee support are critical to its success.

Once the policy is adopted, it should be distributed to all members and staff of the firm with a covering memorandum emphasizing the strong support of the management committee.

Individuals charged with implementing and applying the policy, such as managers or individuals responsible for making decisions on accommodations and undue hardship, should receive special training to ensure that they are well informed of the specifics of the firm's policy, the law, interviewing techniques and information gathering.

It is strongly recommended that workshops be organized to inform all members and staff of the firm about the provisions of the policy and the objectives that it is intended to meet. A firm will be in the best position to know whether it is appropriate to make attendance at such workshops mandatory.

The workshops should emphasize the changing demographics of the legal profession and the benefits that can come to the firm from putting an accommodation policy in place. The workshops should also stress that the right to be free from discrimination in the workplace is protected by human rights legislation, and is an important value within Canadian society. It is important that members and staff of the firm understand the negative impact that discrimination has on the dignity of individuals within the workplace, as well as on workplace productivity.

Factors that may cause opposition within the workplace should be identified, and discussed frankly. One example may be the belief that all accommodations are costly for the law firm. This myth may be discarded by emphasising the benefits of accommodations of members, staff and clients of law firms and by noting that, in fact, costs of accommodations are often nominal. Concerns should be recognized and addressed at the outset through discussion of the purposes and goals of accommodation policies.

COMMUNICATING THE POLICY

If the firm has a handbook of policies or if policies are available on the internet, the accommodation policy should be included. If the firm does not have a handbook of policies, or if it does not make its policies available on the internet, the firm may wish to distribute copies of the policy directly to each member or staff, and/or post copies of the policy in a common area.

The policy should be made available to all prospective members of the firm at the initial interview stage. Such a practice will make a strong statement about the firm's support for the policy and its objectives. Further, the *Human Rights Code* applies to the provision of services and to the workplace, including terms and conditions of employment, recruiting, application forms, interviews and promotions. Firms may also wish to publicize the existence of the policy in their recruitment materials and in communicating with clients.

REVIEWING, EVALUATING AND REVISING THE POLICY

A committee should be established with the responsibility to review and revise the policy on a periodic basis. The committee will also attempt to identify barriers that might affect members and staff identified by personal characteristics listed in the *Human Rights Code*. The first review should take place after there has been sufficient time to evaluate its operation. The committee should maintain a confidential accommodation-related information-collection process.

The mandate of the committee should include an evaluation of whether the policy has been fairly implemented.

The goal of the review process is to ensure that the policy meets the needs of the firm and of its members, staff and clients.

Individual members and staff of the firm should be encouraged to communicate their comments on the policy to the committee, either on an ongoing basis, or during the course of the review.

****

The coloured pages which follow are a precedent for a policy which firms may adapt for their own use. In some cases, a firm may wish to add details or examples from the endnotes to the actual text of its own policy.

The precedent addresses the most common situation: a firm composed of partners, associates, and other staff who are not subject to a collective agreement. Where a workplace is governed by a collective agreement, modifications may need to be made to the policy, and possibly to the collective agreement.

The Accommodation Policy is simply that: a precedent. It is intended to provide guidance, rather than to represent the ultimate or ideal policy. A firm will need to design its own policy, tailoring the recommended model to its own circumstances.

****

ACCOMMODATION POLICY

STATEMENT OF PRINCIPLES

1. [Name of firm] is committed to providing services and a working environment in which all individuals are treated with respect and dignity. Each individual has the right to receive services and to work in a professional atmosphere which promotes equal opportunities and prohibits discriminatory practices.

2. Discrimination in employment or in the delivery of services on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, same-sex partnership status or disability is illegal. Discrimination is prohibited by the *Human Rights Code*, R.S.O. 1990, c. H.19, and by Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the Law Society of Upper Canada *Rules of Professional Conduct.*

3. [Name of firm] acknowledges that treating people identically is not synonymous with treating them equally. Substantive equality requires the accommodation with dignity of differences that arise from the personal characteristics cited in the *Code*. If a requirement, qualification or practice creates difficulty for an individual because of factors related to the personal characteristics listed in the *Code*, the duty to accommodate arises.

4. In the past, most requests for accommodating members, staff and clients of the firm have been considered on an ad hoc basis[64]. Assessing whether accommodation is needed and what accommodation may be appropriate is an ongoing commitment of [Name of firm]. [Name of firm] recognizes the importance of adopting both a proactive system-wide approach to accommodations and individualized, short-term or long-term accommodation.
5. The proactive approach to accommodations emphasizes undertaking systemic accessibility audits and developing action and implementation plans to make facilities, procedures and services accessible to members, staff and clients of the firm.

6. Individualized accommodations of varying degree and types make it important to identify specific roles and responsibilities of [Name of firm] as an organization, its [practice groups and administrative departments and managing staff].

7. Although some responsibilities for accommodating the needs of members, staff and clients of the firm rest with the appropriate [member of a practice group and/or an administrative department], the *Code* views [Name of firm] as a single employer, and "undue hardship" will be assessed in a manner consistent with the resources of the entire [Name of firm]. Therefore the [practice groups and administrative departments] and the [Executive Committee] of [Name of firm] have a role in providing accommodation.

PURPOSES

The purposes of this policy are to:

1. identify the issues that arise in developing accommodation strategies;

2. set the principles and the practice guidelines in respect of accommodation;

3. set out in written form the procedures and strategies for accommodation for [Name of firm] as an employer and as a service provider;

4. ensure conformity with other [Name of firm] policies and procedures.

APPLICATION OF THE POLICY

This policy applies to all members and staff of the firm, persons seeking services and persons applying for employment.

For the purpose of this policy, "members of the firm" includes associates, partners, articling students and law clerks.

For the purpose of this policy, "persons seeking services" will be referred to as "clients of the firm".

This policy applies to all [Name of firm] locations, presently located [Name of locations]. The nature of the specific accommodations may vary from site to site.

---

[64] [Name of firm] already offers benefits and services to accommodate members, staff and clients of the firm, such as [list the benefits and policies already available, such as flexible scheduling to accommodate family responsibilities or time off for religious observance].

The policy applies to the workplace (including recruiting, application forms, interviews, promotions and leaves of absence) and to services offered by [Name of firm].

RESPONSIBILITIES OF THE FIRM

[Name of firm] will undertake systemic accessibility audits, develop action plans and implement accessibility plans to make facilities, procedures and services accessible to members, staff and clients of the firm.

[Name of firm] will attempt to accommodate all individual requests under this policy, recognizing that the interest of the firm and of its individual members, staff and clients will need to be considered in each instance, as well as the interests of the individual seeking the accommodation.

[Name of firm] will make reasonable efforts to encourage all members and staff of the firm to recognize that accommodations are beneficial for the firm and its members, staff and clients.

RESPONSIBILITIES OF THE INDIVIDUAL

An individual who requires accommodation is encourage to communicate his or her needs promptly to the person responsible for considering the request.

An individual who is being accommodated is expected to communicate promptly with the person providing the accommodation, the Accommodation Committee or the Managing Partner about any concerns or problems with the arrangement.

SCOPE OF THE DUTY TO ACCOMMODATE

The duty to accommodate applies to all grounds of discrimination under the *Code*: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, same-sex partnership status or disability.

Certain grounds and issues arise more frequently in employment and services, notably:

1. disability
2. creed
3. pregnancy
4. family responsibilities and/or responsibilities based on gender

IMPLEMENTATION GUIDELINES AND STRATEGIES

The following guidelines are provided to assist [Name of firm] in meeting the legislative requirements regarding accommodation of members, staff and clients of the firm.

[Name of firm] will inform all members, staff and clients of the firm of its accommodation policy and of the nature of available accommodations. [Name of firm] will encourage members, staff and clients of the firm to identify personal characteristics that might involve a need for accommodation and to bring to the attention of [Name of firm], as soon as possible, barriers that might affect members, staff or clients of the firm because of the personal characteristics listed in the policy.

[Name of firm] will ensure that all members and staff of the firm are educated on the content and the scope of the policy.

SYSTEMIC ACCESSIBILITY AUDITS AND ORGANIZATIONAL STRATEGIES

The Accommodation Committee of [Name of firm] will undertake systemic accessibility audits of [Name of firm] including its policies, procedures and practices, its structural, architectural and environmental elements and its equipment (including technological and communication equipment). The systemic accessibility audits will be done on a regular basis to identify barriers that might affect members, staff and clients of the firm identified by personal characteristics listed in this policy.

[Name of firm] will implement the necessary changes to make facilities, procedures and services accessible to members, staff and clients of the firm by developing and implementing accessibility plans.

The Accommodation Committee of [Name of firm] will conduct barrier analysis and budget planning on an ongoing basis. The Accommodation Committee of [Name of firm] will maintain detailed written records concerning both its annual short, medium and long-term planning sessions and its experiments in various accommodation strategies, their success or failure, and points to be learned therefrom.

INDIVIDUALIZED ACCOMMODATIONS

A need for individualized accommodation can come up at any time, is often unforeseen and may be unforeseeable even by the person requiring the accommodation, and may involve ad hoc, temporary or experimental strategies. Arriving at an appropriate strategy requires a thorough grounding in the relevant legal obligations, the ability and willingness to collaborate with the affected individual and a readiness to act quickly.

Some types of accommodations have no resource implications. Others can be expensive. Costs can be contained and unforseen contingencies minimized as [Name of firm] becomes more adept at the identification of barriers and more knowledgeable concerning accommodation strategies.

Accommodation will not be provided if it imposes undue hardship on [Name of firm]. This determination will be made on a case-by-case basis, by following the procedures established below.

A one-time expenditure for some forms of accommodation may be too onerous on [Name of firm]. Therefore, in certain situations, accommodation may be provided on an interim basis or may be phased-in, providing the time frame is reasonable. The appropriateness of an interim or phased-in accommodation depends on an undue hardship analysis of the particular case.

PROCEDURES TO REQUEST INDIVIDUALIZED ACCOMMODATION

Accommodations must be reasonable and must respect the dignity of the person seeking accommodation. The basic principles to be considered are as follows:

5. Accommodation includes and integrates individuals into employment activities in a manner which respects their dignity and worth. Accommodation also allows the provision of services in a manner which respects the client's dignity and worth. Under no circumstances should members, staff or clients of the firm suffer any penalty because they have sought or require accommodation.

6. Successful accommodation requires a partnership between the individual seeking accommodation and the person responsible for considering the request.

Accommodation may take one of two forms:

7. it may involve meeting the needs of someone based on the needs of the group to which he or she belongs, or

8. it may involve meeting the needs of a person assessed on an individual basis.

Confidentiality

To protect the interests of the person seeking accommodation, the person responsible for considering the request, the Accommodation Committee and/or the Managing Partner as the case may be, will hold in strict confidence all information concerning the request for accommodation, including records of the request, contents of meetings, interviews and other relevant material and shall not divulge any information relating to the request unless expressly authorized by the person seeking the accommodation or required by law to do so.

The Accommodation Committee

An Accommodation Committee will be appointed by [the Executive Committee of the law firm]. The members of the Accommodation Committee will be appointed for a term of [3] years, renewable by the [Executive Committee of the law firm]. The Accommodation Committee has [no less than three members of the firm. To the extent possible, the committee should be composed of partners, associates, and other staff of both sexes and of differing age, race, ethnic origin, family status, sexual orientation, and religion, as well as individuals with disabilities.]

The Accommodation Committee will, when necessary, consult with the [name of health and safety committee of the law firm], or other concerned third party, in its implementation of the policy. The Accommodation Committee will uphold its duty of confidentiality.

The person responsible for considering the request

The person responsible for considering the request is the person who:

- in the context of employment, is the manager or supervisor of the person seeking accommodation.
- in the context of the provision of services, is the service provider[65].

Procedures to be applied when a person requests an accommodation

If a member, staff or client of the firm believes that a requirement or practice excludes, restricts or impacts on him or her differently because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, same-sex partnership status or disability the person seeking the accommodation, the person responsible for considering the request, the Accommodation Committee and the Managing Partner will follow the following procedures.

It is understood that the person seeking accommodation and [Name of firm] have rights and responsibilities during accommodation.

---

[65] [Name of firm] will provide guidelines to all members and staff of the firm regarding their roles and responsibilities of accommodating clients of the firm.

Rights and responsibilities

16. The person seeking accommodation, the person responsible for considering the request, the Accommodation Committee and the Managing Partner will deal in good faith.

17. The person responsible for considering the request, the Accommodation Committee or the Managing Partner will respect the dignity of the person seeking accommodation. This means to act in a manner which recognizes the privacy, confidentiality, comfort, autonomy, and self-esteem of the person seeking accommodation, which maximizes his or her integration and promotes his or her full participation in the law firm.

18. The person seeking accommodation should, when applicable:

1. inform the [Name of firm] of his or her needs;
2. cooperate in obtaining necessary information; and
3. participate in discussions about solutions.

19. The person responsible for considering the request, the Accommodation Committee or the Managing Partner should, when applicable:

4. maintain the confidentiality of persons seeking accommodation;
5. request only information that is required to make the accommodation;
6. take an active role in ensuring that possible solutions are examined;
7. deal with accommodation requests in a timely way; and
8. consider alternatives if the request cannot be fully accommodated.

Requesting the accommodation

20. The person seeking accommodation should communicate with the person responsible for considering the request that he or she requires an accommodation (even if he or she doesn't know how her/his needs can be accommodated). In the context of a person with a disability, if she or he believes that he or she is capable of doing the essential requirements of the function being performed, he or she should indicate this to the person responsible for considering the request.

21. The person seeking accommodation will provide notice of the request and allow a reasonable time for reply. The person responsible for considering the request will reply to the request within a reasonable time.

22. The person seeking accommodation should, when necessary, provide suitable verifiable information concerning the personal characteristic at issue[66], explain why the accommodation is required and provide enough information to confirm the existence of a need for accommodation and the measures of accommodation required.

A person with a disability who believes she or he is capable of doing the essential requirements of the function being performed

23. When the person seeking accommodation is a person with a disability and he or she believes that he or she is capable of doing the essential requirements of the function being performed, the person responsible for considering the request will determine what is "essential" to the function, with the input of the person seeking accommodation[67]. The person seeking accommodation should be given an opportunity to provide input as to the essential requirements of the function and be allowed to identify possible alternatives to perform the function in a satisfactory way. If necessary, the person responsible for considering the request may re-assign non-essential requirements to someone else, or use some alternate method.

24. The person responsible for considering the request will establish on an objective basis, for example by testing the person seeking accommodation or by giving the person seeking accommodation an opportunity to try to perform the function, whether the person's disability renders her or him incapable of fulfilling the essential requirements of the function. The person responsible for considering the request will make those decisions based upon a fair and accurate assessment of the ability of the person seeking accommodation and not based upon a stereotype or misconception.

25. If the person seeking accommodation cannot perform the essential requirements, the person responsible for considering the request will explore how to accommodate the person seeking accommodation to enable performance of the essential requirements of the function.

When a requirement or practice results in exclusion or restriction

26. If the person seeking accommodation alleges that a requirement or practice results in his or her exclusion or restriction, the person responsible for considering the request will establish whether:

---

[66] The Ontario Human Rights Commission suggests that the person seeking accommodation should:

- advise the accommodation provider of the disability (although the accommodation provider does not have the right to know what the disability is);
1. make her or his needs known to the best of his or her ability;
2. answer questions or provide information regarding relevant restrictions or limitations, including information from health care professionals, where appropriate, and as needed;
3. participate in discussions regarding possible accommodation solution; and
4. work with the accommodation provider on an ongoing basis to manage the accommodation process.

See *Policy and Guidelines on Disability and the Duty to Accommodate, supra* note 3 at 23.

[67] The Human Rights Commission has interpreted the term "essential" to mean that which is needed to make a thing what it is; very important; necessary. Synonyms are indispensable, requisite, vital. Thus, peripheral or incidental, non-core or non-essential aspects of a function are not essential. *Policy and Guidelines on Disability and the Duty to Accommodate, supra* note 3 at 19.

9. the requirement or practice was adopted for a purpose rationally connected to the function being performed;

1. the requirement or practice was adopted in an honest and good faith belief that it was necessary to the fulfilment of the purpose; and

- the requirement or practice is reasonably necessary to the accomplishment of the legitimate purpose[68].

27. There should be objectively verifiable evidence linking the requirement or practice to the performance of the function. If the requirement or practice is not imposed honestly or in good faith or is not necessary to [Name of firm]'s purpose, the person responsible for considering the request will see that it be altered or dispensed with.

The duty to accommodate

28. If the requirement or practice was adopted for a purpose rationally connected to the function being performed, was adopted honestly and in good faith and is reasonably necessary to [Name or firm]'s purpose, or if a person with a disability cannot perform the essential requirement of the function, the next step is to consider whether the individual who experiences disadvantage because of the requirement or practice can be accommodated without imposing undue hardship on [Name of firm].

29. The person responsible for considering the request has the duty to assess the need for accommodation based on the needs of the individual or of the group of which the person is a member, keeping in mind that not all members of a group have the same needs[69].

---

[68] Each person should be assessed according to his or her own personal abilities instead of being judged against presumed group characteristics. The following non-exhaustive factors should be considered in the course of the analysis:

- whether the person responsible for accommodation investigated alternative approaches that do not have discriminatory effect;
- reasons why viable alternatives were not implemented;
- ability to have differing standards that reflect group or individual differences and capabilities;
- whether persons responsible for accommodation can meet their legitimate objectives in a less discriminatory manner;
- whether the standard is properly designed to ensure the desired qualification is met without placing undue burden on those to whom it applies; and
- whether other parties who are obliged to assist in the search for accommodation have fulfilled their roles.

See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 3 at 18.

[69] Individuals may seek accommodation for reasons such as religious practices or observances that do not conform to established dogma, or they may seek to observe practice which is not shared by all members of the creed. Dress codes, dietary laws, etc. are examples of religious practices that are sincerely observed but may not be followed by all practitioners of a creed. [Name of firm] has a duty to reasonably accommodate such requests.

30. The person responsible for considering the request will consult with the requesting individual and consider any suggestions offered by the requesting individual, in arriving at a timely individual-based strategy[70]. The person responsible for considering the request may consult more widely in attempting to devise the most suitable strategy for any accommodation that may be offered more generally

31. A number of accommodation strategies may be used to fulfil [Name of firm]'s obligation. In the interest of both prompt attention to the needs of an individual, and the need to explore the utility of various accommodation strategies, an interim or experimental strategy may be implemented.

32. The person responsible for considering the request may grant a request or propose an alternative to the request. The person responsible for considering the request will refer the accommodation request, with the consent of the person seeking accommodation, to the Accommodation Committee in the following circumstances:

- when the person responsible for considering the request is of the opinion that the accommodation request should be rejected;
- when the person responsible for considering the request is uncertain as to whether the accommodation should be granted; or
- when the person responsible for considering the request requires advice on how to accommodate the requesting individual.

- The person seeking accommodation may refer, at any stage of the process, his or her request for accommodation to the Accommodation Committee.
- All requests presented to the Accommodation Committee will be made in writing. All documentation and information collected by the person responsible for considering the request will be transferred, with the express consent of the person seeking accommodation, to the Accommodation Committee.
- The Accommodation Committee may grant a request, deny a request or propose an alternative to the request.
- All decisions regarding whether the accommodation creates undue hardship for [Name of firm] will be made by the Managing Partner. In such cases, all documentation and information collected by the person responsible for considering the request and/or the Accommodation Committee will be transferred, with the express consent of the person seeking accommodation, to the Managing Partner.

---

[70]The Human Rights Commission states that the person responsible for considering the request should:

- take an active role in ensuring that alternative approaches and possible accommodation solutions are investigated, and canvass various forms of possible accommodation and alternative solutions, as part of the duty to accommodate;
- keep a record of the accommodation request and action taken;
- maintain confidentiality;
- grant accommodation requests in a timely manner.

See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 3 at 24.

Undue hardship

- Accommodation will be offered to the point of undue hardship[71]. If the Managing Partner believes there is undue hardship, it must present evidence showing that the financial cost[72] of the accommodation (even with

---

[71] In determining undue hardship, [Name of firm] can only consider the following factors:

- cost;
- outside sources of funding, if any; and
- health and safety requirements, if any.

The following factors are excluded and should not be considered when determining whether there is undue hardship: business inconvenience, employee morale, customer preference and contracts.

Costs will amount to undue hardship if they are:

- quantifiable;
- shown to be related to the accommodation; and
- so substantial that they would alter the essential nature of the enterprise, or so significant that they would substantially affect its viability.

Health and safety risks will amount to undue hardship if the degree of risk that remains after the accommodation has been made outweighs the benefits of enhancing equality for the persons seeking accommodation.

It is possible that a method of accommodation which does not cause undue hardship to [Name of firm] now may cause undue hardship in the future. This may happen if circumstances change; for example, the number of employees seeking accommodation may increase significantly. It is important to take into consideration all the relevant factors when attempting to determine when the standard of undue hardship is met.

[72] The Ontario Human Rights Commission suggests that financial costs of the accommodation to be considered in deciding whether there is undue hardship are:

- capital and operating costs;
- the cost of additional staff time, beyond what can be accomplished through restructuring existing resources and job descriptions, in order to provide appropriate assistance to the person with a disability; and
- any other quantifiable and demonstrably related costs.

For the purposes of determining whether a financial cost would alter the essential nature or substantially affect the viability of the law firm, consideration will be given to:

- the ability of [Name of firm] to recover the costs of accommodation in the normal course of business;
- the availability of any grants, subsidies or loans from the federal, provincial or municipal government or from non-government sources which could offset the costs of accommodation;
- the ability of [Name of firm] to distribute the costs of accommodation throughout the whole operation;
- the ability of [Name of firm] to amortize or depreciate capital costs associated with the accommodation according to generally accepted accounting principles; and
- the ability of [Name of firm] to deduct from the costs of accommodation any savings that may be available as a result of the accommodation, including tax deductions and other government

- outside sources of funding) or health and safety risks[73] would create undue hardship. In that case it

---

benefits, an improvement in productivity, efficiency or effectiveness, any increase in the resale value of property, where it is reasonably foreseeable that the property might be sold and any increase in clientele, potential labour pool.

See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 3 at 31.

[73] The Ontario Human Rights Commission states that:

Organizations have a responsibility to undertake health and safety precautions that would ensure that the health and safety risks in their facilities or services are no greater for persons with disabilities than others. Where a health and safety requirement creates barriers for a person with a disability, the accommodation provider should assess whether the requirement can be waived or modified. If waiving the health and safety requirements is likely to result in a violation of the *Occupational Health and Safety Act*, the employer should generate alternative measures. The employer might be able to claim undue hardship after these measures were undertaken and a significant risk still remains.
In determining whether an obligation to modify or waive a health or safety requirement, whether established by law or not, creates a significant risk to any person, consideration will be given to:

II the significance, probability and seriousness of the risk;

II the other types of risks that the person responsible for accommodation is assuming within the organization; and

II the types of risks tolerated within society as a whole, reflected in legislated standards such as licensing standards, or in similar types of organizations.

The risk that remains after all precautions including accommodations have first been made to reduce the risk will determine undue hardship.

In determining the seriousness of the risk, the following four factors will be considered:

II the nature of the risk: what could happen that would be harmful?

II the severity of the risk: how serious would the harm be if it occurred?

II the probability of the risk: how likely is it that the potential harm will actually occur? Is it a real risk, or merely hypothetical or speculative? Could it occur frequently?

II the scope of the risk: who will be affected by the event if it occurs?

See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 3 at 34-37.

- will provide details, in writing, of the cost of accommodation or the health and safety reasons that have lead her or him to conclude that there is undue hardship. The evidence required to prove undue hardship must be objective, real, direct, and, in the case of cost, quantifiable[74].

- If accommodation is not possible because of undue hardship, the Managing Partner will explain this clearly to the person seeking accommodation and be prepared to demonstrate why this is so.

- If the Accommodation Committee or the Managing Partner denies a request, the person seeking accommodation may file a complaint under [Name of firm]'s discrimination and harassment policy.

Types of accommodation

- Accommodation is a matter of degree, rather than an all-or-nothing proposition. Different ways of accommodating the needs of persons seeking accommodation can be drawn along a continuum from those means which are most respectful of privacy, autonomy, integration and other human values, to those which are least respectful of those values.[75]

---

[74] The Managing Partner must present facts, figures, and scientific data or opinion to support a claim that the proposed accommodation in fact causes undue hardship. Objective evidence includes, but is not limited to:

1. financial statements and budgets;
2. scientific data, information and data resulting from empirical studies;
3. expert opinion;
4. detailed information about the activity and the requested accommodation;
5. information about the conditions surrounding the activity and their effects on the person or group with a disability.

See *Policy and Guidelines on Disability and the Duty to Accommodate, supra* note 3 at 30.

[75] Perhaps the most common example of an accommodation which demonstrates little respect for the dignity of a person with a disability, is a wheelchair entrance over the loading dock or through the garbage room.

- There is also a continuum with respect to how the accommodation may be accomplished. At one end of this continuum would be full accommodation (i.e., that which would most respect the person's dignity) that could be done immediately. Next would be phased-in full accommodation[76], followed by full accommodation accomplished through a reserve fund[77]. Alternative accommodation (i.e., that which would be less respectful of the person's dignity) that could be accomplished immediately would be next on the continuum, followed by phased-in and reserve fund alternative accommodations, respectively. Interim accommodation, which is most respectful of dignity, could be placed anywhere on the continuum in addition to alternatives to immediate, full accommodation.

- In determining reasonable accommodation, the person considering the request, the Accommodation Committee and the Managing Partner will consider the full range of options and balance the respective interests.

EXAMPLES OF ACCOMMODATION THAT MAY BE DEVELOPED UNDER THIS POLICY[78]

The following are examples of accommodation that may be requested under this policy:

[Name of firm] may accommodate for sincerely held religious practices or observances by:

- allowing members, staff and clients of [Name of firm] to wear the turban at work
- allowing members and staff of [Name of firm] to take time off to observe a holy day
- allowing members and staff of [Name of firm] to modify their break policy
- allowing members and staff of [Name of firm] to work flexible hours
- providing a private area for devotion
- allowing members and staff of [Name of firm] to take time off with pay to observe holy days.

---

[76] An accommodation may be phased in over an extended time period. It may still be possible to make interim accommodation for an individual. If the short-term and long-term accommodation can be accomplished without undue hardship, both accommodations may be required. (See *Policy and Guidelines on Disability and the Duty to Accommodate*, *supra* note 3 at 39-40)

[77] A law firm could establish a reserve fund into which payments are to be made under specified conditions. One of the conditions should be that the reserve fund is to be used only to pay for accommodation costs in future. Other conditions related to timing, amounts of expenditures, natures of the accommodation, etc., could be included in the settlement agreement. This is similar to phasing in an accommodation over a period of time, as it is anticipated that the accommodation would gradually be accomplished by expenditures out of the reserve fund or would eventually be accomplished once enough funds had been set aside.

A reserve fund should be used in circumstances where it would create undue hardship for the law firm to accomplish the accommodation immediately.

[78] For a more detailed review of types of accommodation and best practices, see *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities; Legal Developments and Best Practices*, *supra* note 12.

[Name of firm] may accommodate persons with family responsibilities by:

- allowing for flexible work arrangements[79]
- providing assistance with child care, which may include provision of daycare at the workplace, child care referral services, assistance with child care fees and provision for emergency child care needs
- providing assistance with elder care, which may include elder care referral services, assistance with elder care fees and provision for emergency elder care needs

[Name of firm] may accommodate persons with disabilities by:

- making physical modifications to the [Name of firm] which may include the installation of an elevator to make a building wheelchair accessible, adding wheelchair ramps, changing lighting for those with sight impairments, changing ventilation for those with allergies etc
- rearranging work assignments in such a manner as to permit members and staff of the firm to perform a suitable combination of jobs or modifying job descriptions by assigning the work that cannot be done to another employee.

DEFINITIONS

For the purposes of this policy:

"Age" means an age that is eighteen years or more.

"Creed or religion" mean a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single supreme being or deity is not a requisite. The existence of religious beliefs and practices are both necessary and sufficient to the meaning of creed, if the beliefs and practices are sincerely held and/or observed.

"Cultural belief" means the totality of ideas, beliefs, values, knowledge, habits and way of life of a group of individuals who share certain historical experiences.

"Discrimination" means a distinction, whether intentional or not, but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society[80].

---

[79] For examples on how to establish flexible work arrangements, a law firm may refer to the *Guide to Developing a Policy Regarding Flexible Work Arrangements*, *supra* note 10.

[80]Discrimination includes "direct discrimination" (where an employer adopts a practice or rule which on its face discriminates on a prohibited ground); "adverse effect discrimination" (where an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties or restrictive conditions not imposed on other members of the work force) and "systemic discrimination" (practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics).

Although these definitions were developed in the context of employment, they also apply to the provision of services.

"Family status" means the status of being in a parent and child relationship.

"Marital status" means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage.

"On the basis of a disability" means for the reason that the person has or has had, or is believed to have or have had:

i- any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial appliance or device,

ii- a condition of mental retardation or impairment,

iii- a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

iv- a mental disorder, or

v- an injury or disability for which benefits were claimed or received under the *Workplace Safety and Insurance Act.*

Disability may be the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all these factors. The focus is on the effects of the distinction, preference or exclusion experienced by the person and not on proof of physical limitations or the presence of an ailment.

"Personal characteristic" means any of the following personal characteristic: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, same-sex partnership status or disability.

"Race, ancestry, place of origin, colour, ethnic origin, and citizenship" collectively describe personal characteristics of an individual associated with his or her nationality, race, cultural or ethnic origin.

"Record of offences" means a conviction for,

i- an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked; or

ii- an offence in respect of any provincial enactment.

"Same-sex partnership status" means the status of living with a person of the same sex in a conjugal relationship outside marriage.

APPENDIX A

RULE 5.04 OF THE *RULES OF PROFESSIONAL CONDUCT*

5.04 DISCRIMINATION

Special Responsibility

5.04 (1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario *Human Rights Code*), marital status, family status, or disability with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other members of the profession or any other person.

Commentary

The Society acknowledges the diversity of the community of Ontario in which its members serve and expects members to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

Rule 5.04 will be interpreted according to the provisions of the Ontario *Human Rights Code* and related case law.

The Ontario *Human Rights Code* defines a number of grounds of discrimination listed in rule 5.04. For example,

> Age is defined as an age that is eighteen years or more, except in subsection 5(i) where age means an age that is eighteen years or more and less than sixty-five years.
>
> The term disability is not used in the Code, but discrimination on the ground of handicap is prohibited. Handicap is broadly defined in s. 10 of the Code to include both physical and mental disabilities.
>
> Family status is defined as the status of being in a parent-and-child relationship.
>
> Marital status is defined as the status of being married, single, widowed, divorced, or separated and includes the status of living with a person of the opposite sex in a conjugal relationship outside marriage.
>
> Record of offences is defined such that a prospective employer may not discriminate on the basis of a pardoned criminal offence (a pardon must have been granted under the *Criminal Records Act (Canada)* and not revoked) or

The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

There is no statutory definition of discrimination. Supreme Court of Canada jurisprudence defines discrimination as including:

(a) Differentiation on prohibited grounds. Lawyers who refuse to hire employees of a particular race, sex, creed, sexual orientation, etc. would be differentiating on the basis of prohibited grounds.

(b) Adverse effect discrimination. An action or policy that is not intended to be discriminatory can result in an adverse effect that is discriminatory. If the application of a seemingly "neutral" rule or policy creates an adverse effect on a group protected by rule 5.04, there is a duty to accommodate. For example, while a requirement that all articling students have a driver's licence to permit them to travel wherever their job requires may seem reasonable, that requirement effectively excludes from employment pe4rsons with disabilities that prevent them from obtaining a licence. In such a case, the law firm would be required to alter or eliminate the requirement in order to accommodate the student unless the necessary accommodation would cause undue hardship.

Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Ontario *Human Rights Code* requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

A lawyer should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the lawyer's direction or control.

Ontario human rights law excepts from discrimination special programs designed to relieve disadvantage for individuals or groups identified on the basis of the grounds noted in the Code.

In addition to prohibiting discrimination, rule 5.04 prohibits harassment on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or handicap. Harassment by superiors, colleagues, and co-workers is also prohibited.

Harassment is defined as "engaging in a course of vexatious comment or conduct that is known or ought reasonable to be known to be unwelcome" on the basis of any ground set out in rule 5.04. This could include, for example, repeatedly subjecting a client or colleague to jokes based on race or creed.

Services

(2) A lawyer shall ensure that no one is denied services or receives inferior services on the basis of the grounds set out in this rule.

Employment Practices

(3) A lawyer shall ensure that his or her employment practices do not offend this rule.

Commentary

Discrimination in employment or in the provision of services not only fails to meet professional standards, it also violates the Ontario *Human Rights Code* and related equity legislation.

In advertising a job vacancy, an employer may not indicate qualifications by a prohibited ground of discrimination. However, where discrimination on a particular ground is permitted because of an exception under the Ontario *Human Rights Code*, such questions may be raised at an interview. For example, an employer may ask whether an applicant has been convicted of a criminal offence for which a pardon has not been granted. An employer may ask applicants not yet called in Ontario about Canadian citizenship or permanent residence. If an employer has an anti-nepotism policy, the employer may inquire about the applicant's possible relationship to another employee as that employee's spouse, child or parent. This is in contrast to questions about applicant's marital status by itself. Since marital status has no relevance to employment within a law firm, questions about marital status should not be asked.

An employer should consider the effect of seemingly "neutral" rules. Some rules, while applied to everyone, can bar entry to the firm or pose additional hardships on employees of one sex or of a particular creed, ethnic origin, marital or family status, or on those who have (or develop) disabilities. For example, a law office may have a written or unwritten dress code. It would be necessary to revise the dress code if it does not already accept that a head covering worn for religious reasons must be considered part of acceptable business attire. The maintenance of a rule with a discriminatory effect breaches rule 5.04 unless changing or eliminating the rule would cause undue hardship.

If an applicant cannot perform all or part of an essential job requirement because of a personal characteristic listed in the Ontario *Human Rights Code*, the employer has a duty to accommodate. Only if the applicant cannot do the essential task with reasonable accommodation may the employer refuse to hire on this basis. A range of appropriate accommodation measures may be considered. An accommodation is considered reasonable unless it would cause undue hardship.

The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the application of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in rule 5.04.

APPENDIX "C"

RE: Equity and Diversity Mentorship Program

1. The Equity Initiatives Department launched the Equity and Diversity Mentorship Program in Toronto in December 2000, and in Ottawa in February 2001. Both the Toronto and Ottawa launch of the Equity and Diversity Mentorship Program were officially supported by the Canadian Association of Black Lawyers (CABL), the Women's Law Association of Ontario (WLAO), the CBAO's Feminist Legal Analysis Committee (FLAC), the Association des juristes d'expression francaise de l'Ontario (AJEFO), and Rotiio' taties.

2. In its four months of operation, the Equity and Diversity Program has been successful in attracting approximately 50 lawyers in the Toronto area and approximately 20 lawyers from Ottawa. The Program has made 25 matches between lawyers and high school, law school, and Bar Admission Course students. Mentors have also undertaken speaking engagements at high schools in the Toronto area, and in June will be participating in a student-organized conference at the York Region District School Board on racism and the law.

3. Mentors will also be speaking to students from across Canada, the United States, and South Africa during a day-long seminar at the Law Society in July on the topic of youth, violence, racism, and law. This seminar has been organized as part of the *Black Youth International In Communication Conference* sponsored by Tropicana Youth Services.

4. Mentors participating in the Program include lawyers from the Department of Justice, the Ministry of Labour, Bank of Montreal, Canadian Securities Institute, Ministry of the Attorney General, City of Toronto, Legal Aid Ontario, as well sole practitioners and lawyers from small and large firms, including Torys, and Blake, Cassels & Graydon.
5. The Toronto firm of Torkin Manes has also offered their support of the Equity and Diversity Mentorship Program, and in September that firm will "adopt" a high school and invite students to the firm to hear from a number of lawyers about the practice of law. Efforts will be made to secure similar commitments from other firms in Toronto and Ottawa.

6. Several meetings have been held with representatives from a number of Toronto-area school boards (Peel District School Board; Dufferin-Peel Catholic District School Board; York Region District School Board; York Region Catholic District School Board; the Toronto District School Board; and the Toronto Catholic District School Board) who have committed to working with the Law Society to promote the program within their school boards and build the appropriate infrastructure to launch the program in the schools for September 2001. Similar outreach initiatives will be undertaken with school boards in Ottawa in order to have the Equity and Diversity Mentorship Program operating in Ottawa schools in September 2001.

7. The Equity Initiatives Department is continuing its outreach to community agencies in Toronto and Ottawa to promote the Program, and a number of Toronto-based community agencies, including the YMCA Black Achievers Program, the John Brooks Community Foundation & Scholarship Fund; Horizons for Youth; Tropicana Community Services; Chinese Family Life Services; and Central Toronto Youth Services are promoting the Mentorship Program. The Program has also received support from Child and Youth Friendly Ottawa, and the Equity Initiatives Department is working with this Ottawa-based youth group to promote the Equity and Diversity Mentorship Program.

8. The Treasurer has expressed an interest in hosting an evening celebration for the mentors and the youth participating in the Equity and Diversity Mentorship Program. The Equity Initiatives Department will be organizing this event to take place in early June, and EAIC will be updated when details have been confirmed.

Re: Bencher-Staff Relations Procedures

It was moved by Mr. Wright, seconded by Mr. Crowe that paragraph 19 on page 11 be amended by having a person nominated by the Equity Advisor assist in the drafting of a written complaint.

Lost

It was moved by Mr. Hunter, seconded by Mr. Bindman that in paragraph 19 the Equity Advisor be named as the resource to support any complainant in the drafting of a complaint.

Carried

It was moved by Mr. Hunter, seconded by Mr. Bindman that the procedures as amended be adopted.

Carried

Re: Model Policy on Accommodations for Law Firms

It was moved by Mr. Hunter, seconded by Mr. Bindman that the proposed Model Policy on Accommodations for Law Firms set out in Appendix B of the Report be adopted.

Carried

CONVOCATION ROSE AT 6:00 P.M.

Confirmed in Convocation this 22nd day of June, 2001

Robert P. Lamont

Treasurer