28th April, 2000

MINUTES OF CONVOCATION

Friday, 28th April, 2000
8:30 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Arnup, Backhouse, Banack, Bindman, Bobesich, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cherniak, Coffey, Copeland, Cronk, Crowe, Diamond, DiGiuseppe, Divinsky, E. Ducharme, T. Ducharme, Epstein, Feinstein, Jarvis, Krishna, Lamont, Lawrence, MacKenzie, Martin, Millar, Mulligan, Murphy, Murray, O'Brien, Ortved, Pilkington, Porter, Puccini, Robins, Rock, Ross, Ruby, Simpson, Swaye, Topp, Wardlaw, White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer extended birthday greetings to Brendan O'Brien who turned 91 on April 16th.

The Treasurer and Benchers welcomed Ms. Pamela Divinsky, a new lay Bencher to Convocation.

The Treasurer announced that there will be a dinner held at the King Edward Hotel on June 14th to honour Archbishop Desmond Tutu and on the morning of June 15th Convocation will formally grant an honourary LL.D. to Archbishop Tutu.

CEO'S 1999 ANNUAL REPORT TO CONVOCATION

The Chief Executive Officer, John Saso presented his 1999 Annual Report. At the conclusion there were questions from the Bench.

Chief Executive Officer's 1999 Report to Convocation

and

Third and Fourth Quarter Review of Operations
Review of Administrative Operations

Convocation's Governance Policy requires that the CEO shall provide Convocation with an annual report.

The CEO's annual report provides an overview of important activities and departmental changes that have taken place over the past twelve months. The 3rd and 4th quarter review largely summarizes statistical information, activities and initiatives that took place during the final six months of 1999.

Nineteen ninety-nine was an important year for the Law Society of Upper Canada. Staff focussed their efforts on implementing the provisions of our new legislative package, Convocation's policies, and restructuring operations according to our Project 200 (P200) initiative. We also introduced an improved client service model, worked on eliminating duplication and put in place cost cutting measures.

Background

The Law Society has recently undergone significant administrative restructuring that resulted in an operating infrastructure that can more easily adapt to change, provide value-added services and operate in an environment of continuous improvement.

This restructuring is the culmination of several years of work that began in 1997, when the CEO and staff, working with consultants Price Waterhouse, developed a plan for modernization that became known as Project 200. On January 30, 1998, Convocation approved the P200 Business Plan.

The plan came about as the result of the external auditors' 1995 report which disclosed an alarming number of major operational weaknesses. Its goal was to eliminate operational duplications, modernize and reduce operating costs by 20 percent. In addition, the objectives of P200 included:

- the implementation of a more flexible, service-oriented operating structure that would enable staff to more quickly adapt to change and accomplish policy initiatives adopted by Convocation
- the introduction of new technologies that would enable members and the public to more easily communicate with the Law Society and to assist staff to perform their work more effectively
- future cost containment strategies

To date, restructuring has largely been accomplished, with final completion scheduled for June 2000. Further, the 1997 and 1998 auditors' reports disclosed no major operating weaknesses. As of December 31, 1999, the Law Society anticipates that it will have eliminated its accumulated unrestricted fund deficit that stood at $3.6 million in 1995, and, that operating results will have improved by more than $8 million over the past four years.

The following pages highlight how change is affecting departments and the services we provide our members and the public.

CEO's Annual Report for 1999

Finance and Administration

Background

During the implementation of P200 it was planned that the Society would require short-term borrowing of approximately $2 million to meet the financial obligations of the restructuring process. It was expected that the repayment of this short-term loan would be made over two years and that administrative savings from restructuring would be recovered in seven years.

We are pleased to report that as a result of in-year savings from salaries and benefits, increased revenues and other administrative savings, *the Society will be able to complete Project 200 without the need for short-term borrowing* and apply these budgetary savings and enhanced revenues to eliminate the planned deficit in the fund at the end of 1999.

With the elimination of the fund deficit in 1999, future savings generated from administrative efficiencies gained through restructuring will be available for the general use of the Society, reduced member fees, or applied to the planned Reserve Fund. The residual elements of P200 will be funded in 2000 from the operating surplus generated in the Unrestricted Fund in 1999.

In the year 2000, members fees would have been *reduced by an additional $164*, if Convocation had not taken on new activities and LPIC had not reduced the Errors and Omissions (E&O) investment surplus contribution by $1.8 million.

Investments

- This department actively manages both the short-term investment portfolio of the Society's General Fund and the short- and long-term investment portfolios of the Lawyers Fund for Client Compensation. The combined portfolios of the General Fund and Compensation Fund exceeded $50 million early in the year.

- An active cash management program has resulted in annual investment income of over $1 million in the General Fund in 1999 -- exceeding budget by more than $300,000 -- and $1.2 million in the Compensation Fund -- exceeding budget by $200,000.

- The General Fund portfolio had a total of 426 investment purchase transactions at an average value of $538,000 and a total dollar volume of $229,562,000.

- The Compensation Fund had a total of 127 short-term investment purchase transactions at an average value of $582,900 and a total dollar volume of $74,037,500.

- Four long-term bond purchases were made in the Compensation Fund with an average transaction value of $937,500 and an average maturity of approximately 3.5 years.

Facilities

- Nineteen ninety-nine was a year of significant accomplishments for the Facilities department. Extensive renovations were undertaken in the Benchers' Wing including Convocation Room, Benchers' Reception and the Benchers' Dining Room. The renovations included reinforcement of the floors in the Convocation Room and the Benchers' Reception Room, replacement of hardwood floors and carpet, repainting and the upgrading of the Convocation Room's electronic media capabilities.

- Studies were undertaken to determine the nature and extent of repairs that will be required on the perimeter fence surrounding Osgoode Hall, the maintenance and management of the trees on our Osgoode Hall property, the design of a new electronic security system, the development of a fire compliance program in cooperation with the provincial courts and a study to determine the environmental improvements required in the south wing of Osgoode Hall.

- The Capital Fund, established in 1998 with an annual levy of $50 per member, has provided the funding to maintain and upgrade the capital assets of the Society and make available a source of funds for emergency situations such as the repairs to the Benchers' Wing in the fall of 1999. In the recently adopted 2000 Budget, this levy has been increased to $75 to include the acquisition and upgrade of information technology applications. This stable source of funding will be critical to the maintenance of the physical plant and the information systems of the Society as we move forward into the 21st century.

Annual Fee Billing and Collection

- The annual billing of membership fees is a vital function of the operation. The entire billing process hinges on the approval of the annual budget by Convocation.

- Staff make preparations for billing, as far ahead as possible, but without final numbers, the billing process cannot be completed. The normal time for members to receive their bills after approval by Convocation is approximately two weeks. The billing process normally takes place during the first two weeks of December to ensure members receive their bills in advance of the holiday rush and the January 1 due date.

- This year the budget was approved on December 10. The staff of the Finance Department, working with the Information Systems Department and the Client Service Centre, ensured that the members received their annual billing by December 17, only two days later than the original plan, even though the budget process took two weeks longer to complete.

- To understand the magnitude of the process, Finance staff prepare 30,000 copies of Explanatory Notes to accompany the bill, an information bulletin which provides key information to the membership. Another 30,000 budget highlight documents are prepared for inclusion in the billing package, along with 30,000 return envelopes, 30,000 change of membership information forms and 30,000 mailing envelopes. In addition, this year 30,000 Lawyers Feed the Hungry Program letters and return envelopes were prepared manually.

- All of this information was translated into French and sorted accordingly, in order to be matched up with the billings produced in French. All 210,000 pieces were then collated, packaged and mailed.

- Prior to the mailing, staff also spent 350 hours examining exception reports in order to ensure outstanding balances were correct, that credits were properly applied and that all reconciliations were completed.

Purchasing, Accounts Payable & Payroll

- Paying the financial obligations of the Law Society is another demanding and exacting process. Obligations are processed through Accounts Payable and Payroll.

- The first control in the Accounts Payable Process is Central Purchasing. All goods and services with a value of more than $500 must be requisitioned through Purchasing. Purchase orders are issued to the successful supplier and require the particulars of each purchase. Purchase orders must adhere to predetermined internal control protocols and once issued, authorize both the purchase of the goods and services and payment for the same. Each year more than 3,300 purchase orders are processed and approximately 12,000 cheques are issued. Cheques are issued twice per week on a predetermined schedule. In addition, new systems are in place to take advantage of creditors' payment terms. Payments can now be made within one week from the time paperwork reaches Accounts Payable.

- Data input is a constant requirement of the Accounts Payable function. Four years ago, 20,000 cheques were written to satisfy less annual expenditures. We have since implemented systems that eliminate multiple cheques to the same vendor and now approximately 24,000 invoices are processed in any given year and paid by issuing less than 12,000 cheques.

- Payroll is produced every two weeks under strict deadlines. Each year 9,100 direct deposits are made to satisfy payroll obligations. At the end of each pay cycle, 175 employee records are accessed by one staff member working on a two-day deadline to ensure pay accuracy. This means more than 5,000 employee records are accessed each year to ensure pays are accurate. Severances and terminations are done on a completely manual basis and require exacting accuracy.

- At least once every year, each employee's benefit coverage is reviewed and updated. Each payday, employees' contributions to their pension plan are correctly allocated and the information and payments transferred to the carrier. Employer Health Tax, Canada Pension Plan, Employment Insurance and Income Tax are all remitted to the respective government agencies and correctly allocated to each employee.

- Government auditors, as well as our own, inspect Law Society records on a periodic basis to ensure compliance and accuracy. This year, government auditors audited our Employer Health Tax remittances and calculations. This audit turned up zero discrepancies.

General Accounting

- The Society maintains eight separate bank accounts with the Bank of Montreal and reconciles each on a *daily* basis. In the 1995 auditor's management letter, the Law Society was criticized because the reconciliation of our bank accounts were continually *many months* in arrears. The general accounting function now adheres to exacting standards and monthly deadlines. The planning process for the financial year end, statement preparation and external audit is the responsibility of general accounting. The entire process takes most of the first quarter to complete, culminating in the Law Society's annual report adopted by Convocation in April and presented to the membership at the Annual General Meeting in May.

- Most of the internal controls in place are monitored by the general accounting staff. Criticized in the 1995 auditor's report for being incomplete, a comprehensive manual of Financial Policies, Procedures and Practices was put in place in 1997. Adherence to the policies is continually monitored. As warranted, operating procedures are amended to reflect the realities of the policies adopted by Convocation and the demands of an ever-changing organization without compromising internal controls.

- This year Finance hired consultants skilled in the rules of sales tax to review our payments. As a result, $160,000 in sales taxes paid by the Law Society during the period 1995 to 1999 was recovered from the provincial government. Measures have now been put in place to ensure that the needless remittance of tax no longer occurs.

- The general administration of the Law Society Foundation is also a function of the general accounting area. This is where The Foundation's anticipated donations of up to $90,000 for the Lawyers Feed the Hungry Program are processed.

Regulatory Operations

Under the P200 initiatives Regulatory Operations has been reorganized into three distinct departments: i) Advisory and Compliance Services, ii) Investigations and iii) Discipline.

i) Advisory and Compliance Services

Background

Advisory and Compliance Services (ACS), whose restructuring was completed in the third quarter, deals with complaints that do not usually lead to disciplinary action. ACS now plays a mediation role and uses such techniques as alternative dispute resolution and direct proactive communication between the member and the client.

Restructuring and Streamlining

Advisory and Compliance Services is responsible for:

- providing guidance and advice to members in response to inquiries on a wide range of practice-related concerns
- resolving complaints that would not usually lead to further discipline action
- ensuring compliance with orders and undertakings
- ensuring administrative compliance with a number of statutory requirements such as requalification
- initiating spot and focussed audits to ensure that practices are run properly

- These functions were formerly handled by eight distinct departments that operated in isolation from one another (Complaints, Staff Trustee, Professional Standards, Practice Advisory, Professional Conduct, Audit and Investigations, Spot and Focussed Audits and Forms Services). The primary focus was on detection, monitoring and discipline of members of the legal profession.

- Positions were very specialized and did not require staff to have a broad knowledge of the organization, our goals or other services we offered. Members of the legal profession and public could access the Law Society from more than 30 intake points and were often bounced around before reaching the appropriate department.

- There is now one point of access. The new Client Service Centre (CSC) screens more serious complaints from those just requiring information or advice. Advisory and Compliance Services works closely with the CSC and has allocated a staff lawyer to the Centre to help properly route more complicated complaints to either Investigations or Advisory and Compliance Services.

- The Law Society is now a regulatory body that has the capability to become more service-oriented and offer preventive solutions.

Value-added

- Complaints is just one area where Advisory Services provides value-added service. Historically, it focussed on investigating complaints and determining if the complaint would require discipline. If the complaint did not, the file would be closed and the complainant would often feel frustrated and let down. The member being investigated might also feel he/she was being maltreated. Yet, only *3 - 4% of all complaints* result in some form of discipline. That's because the majority of complaints involved *service* issues such as:
  - dissatisfaction with the level of service
  - matters that seem to take too long to resolve
  - the opinion that legal services are too expensive
  - unexpected results
  - telephone calls that were not returned

New Initiatives

In July 1999, under P200, major restructuring of regulatory operations was implemented. The Resolution & Compliance (R&C) Department assumed most of the functions previously performed by the Complaints Department. R&C focuses on the timely disposition of complaints through the use of dispute resolution techniques. It deals primarily with service-related complaints which do not raise concerns that would warrant disciplinary action. Complaints of a more serious nature are forwarded to the Investigations Department for disposition.

Some disruption in the evaluation and disposition of complaints was experienced during the summer months while restructuring was being completed. Performance levels have since stabilized and improved.

Trends

The downward trend in the number of new complaints received continued in 1999 (see page 28). This positive trend can largely be attributed to improved screening procedures at the initial point of contact that takes place in the Client Service Centre.

ii) Investigations

Background

Under the previous model, both Complaints and Audit and Investigations investigated complaints that might lead to disciplinary action. Under this dual stream, both areas would make recommendations to the former Discipline Authorization Committee for disciplinary action. As a result, one member could be under investigation by more than one investigator, work was duplicated, and no co-ordinated approach was taken to the member's file.

Restructuring and Streamlining

- Under P200, Investigations now conducts inquiries as a result of information and serious complaints received from members of the legal profession, the public and other organizations usually screened first by the Customer Service Centre. Serious complaints, however, may also be forwarded through other sources such as judges, the police, lawyers and other departments within the Law Society.

- The nature of the complaints can involve:
  - possible misuse of client funds
  - serious breaches of the rules of professional conduct
  - potential conflict of interest
  - allegations of sexual misconduct

- Investigations also respond to situations that require different actions. For example, it deals with cases where lawyers have abandoned their practice, or, with a sole practitioner who has suffered serious health problems. Through the use of the Law Society's trusteeship powers, Investigations – working with Resolution and Compliance – will carry out the Law Society's mandate to protect the public interest by taking over management of the practice through direct intervention or assigning files to another lawyer.

The new system consolidates all investigations that may lead to disciplinary action into one area – Investigations where a multi-disciplinary team approach has been implemented. The team, consisting of team leaders, investigative counsels, auditors and investigation officers, has been created to deal with all cases in a more complete, quicker and more comprehensive manner. This multi-disciplinary approach ensures that each team takes ownership of the entire management of files assigned to the group and eliminates duplication of efforts by other departments and the possibility of a file being misplaced or not being concluded in a timely manner.

- Six Investigations teams will be in place by March 2000. By the end of the fourth quarter of 1999, two teams were in place in Toronto.

- A fully bilingual multi-disciplinary team, based in Ottawa, will serve the Francophone community.

- By applying a team approach, we are completing cases more effectively, putting our more experienced resources where they are most required and ensuring that our recommendations are supported by quality investigative work.

Resolutions

In the past, more serious cases could take as long as one year to resolve from receipt of the complaint to referral for disciplinary action. Our objective is to cut, *at least by half,* the time it takes to resolve a case.

Objectives

- Completing the staffing of the remaining teams.
- Ensuring that the teams are constantly well trained and up to date.
- Continuously improving investigative processes and evaluation methods.
- Continuing to work with the Information Systems Department on a management information and case tracking system that supports our operations.

Performance

Investigations inherited over 1,000 files from the former Complaints Department – some of which dated back to 1992 -- and close to 150 cases from the former Audit and Investigations Departments.

- Since July 1999, our current operation has reduced this backlog of former Complaints Department's files by approximately 350 files. All six teams are expected to be trained and fully operational by June 2000. Investigations has set a target of completely eliminating the original backlog of non-current cases from the Complaints Department by August 2000 and, at the same time, making substantial progress toward cutting the time it takes to resolve a case by 50 per cent.

iii) Discipline

Background

Discipline is responsible for prosecuting lawyers referred to the department by the Proceedings Authorization Committee.

Restructuring and Streamlining

While there have not been any significant changes as a result of P200 in the way Discipline operates, it is important to note that hearings of discipline matters authorized after the Legislative Reform Act came into force on February 1, 1999, no longer go to Convocation for decisions. Hearing panels may now make final orders.

Disciplinary action may relate to:

- professional misconduct (which arises out of acts performed in lawyers' professional capacities or in connection with their professional status)
- "conduct unbecoming" (which arises out of acts performed in lawyers' personal or private capacities). Lawyers may be disciplined for private conduct that calls into question their ability or willingness to practise law honestly and competently, or that tends to bring discredit upon the legal profession or the administration of justice.

Current disciplinary sanctions may include:

- a reprimand
- suspension
- permission to resign
- disbarment

Policy Secretariat

Background

The Policy Secretariat was established in September 1996 to provide Convocation, its committees, task forces and working groups with dedicated staff resources to assist in policy development.

Initiatives

- The department presently consists of a director, three policy advisors and an administrator.

- The policy advisors act as secretaries to the Admissions Committee, Professional Regulation Committee and Professional Development and Competence Committee. In addition to preparing monthly committee agendas and corresponding reports to Convocation, over the past year, members of the Policy Secretariat have supported the work of the Task Force on the Rules of Professional Conduct, Multi-Disciplinary Practice Task Force, Competence Task Force, Task Force on the 1999 Bencher Election and Referendum, and Limited Liability Partnership Implementation Task Force. Although originally established to relieve operational staff of the responsibility of supporting committees and developing policy, the Policy Secretariat is no longer able to fulfill that function exclusively, due to the proliferation of committees, task forces and working groups. Policy Secretariat staff advise and assist other staff members who support committees, draft terms of reference for new committees and task forces, and brief operational staff on Convocation's decisions.

- In addition to policy development and research, members of the Policy Secretariat coordinated and supervised ballot counting for the 1999 bencher election, organized and developed the strategic planning session held at Hockley Valley in October 1999, and assisted in implementing the requalification program for January 1, 2000.

- Policy Secretariat staff are on the editorial board of the Ontario Lawyers Gazette, the Ontario Bar Assistance Program Board of Directors, the Equity Advisor's Steering Committee and the Federation of Law Societies MDP Committee.

- New projects for the Policy Secretariat include research and policy development for the Strategic Planning Committee, the Task Force on Courthouse Facilities, the Specialist Certification/Lawyer Referral Working Group, the Competence Working Group developing an implementation model for the Law Society's competence mandate, the MDP Task Force studying captive law firms, and the development and coordination of the Future of the Legal Profession Symposium.

Client Service Centre

Background

The Client Service Centre (CSC) was launched in July 1999 as part of the Law Society's P200 efficiency initiatives.

It is the Law Society's *front-line face* to the public and our members. The aim of the Centre, which includes a call centre, is to offer a *one-stop entry point* approach to provide information and services for members, the public, students and staff. The Centre:

- receives all non-direct dialled telephone calls and complaints by mail
- serves as the preliminary source of information for many program areas
- screens complaints to determine whether they can be handled immediately by the Centre's staff or need to be forwarded to Advisory and Compliance Services or Investigations
- accepts members' annual fees and student tuition payments
- begins the important task of collecting member data
- maintains and updates member files
- responds to membership inquiries
- administers the Society's Lawyer Referral Service (LRS)
- offers membership services such as photo ID, status adjustments and financial information
- provides information about suspensions and reinstatements
- sends out replacement administrative forms
- conducts basic "satisfaction" or "information gathering" surveys
- performs a first-line public relations function

Restructuring and Streamlining

- While most of these services were offered before, they were scattered throughout the Law Society and not easily accessible. Clients would not know that the Law Society offers such programs or would have to be able to identify which department administered a certain program before they could obtain appropriate services or information.

- In total, members and the public could access more than *30 intake points* and go from department to department or, in some cases, not reach a live voice, before reaching the appropriate department.

- The Client Service Centre reduces confusion for those not familiar with the Law Society's operation, mandate, programs or structure. Streamlined services for members can now provide an immediate response to basic questions and make referrals directly to a department when more complex answers are required.

- Clients can access information or services by phone, fax, mail and e-mail. The CSC also offers a walk-in inquiry and fee payment window located at Osgoode Hall.

- The Centre's benefits include:
  - well-trained staff doing the right job
  - consistency of information provided
  - convenience - one entry point makes it easier to access information and provide answers more quickly than in the past.
  - the ability to provide options for those we cannot assist at the LSUC
  - a central point of intake allows us to capture important data that will allow us to develop strategies to better serve our clients
  - the integration of numerous databases into one system will prevent member information from being fragmented and avoid wasting the time of staff and the client by eliminating tedious searches through multi-files for information

Links to other parts of the organization

- The Call Centre team is supported by the Membership Services area of the CSC. Client Service Representatives (CSRs) in this area maintain our database records, perform adjusted billings for fee payments, answer questions relating to reinstatements, and perform a number of other services to meet client needs. Members of this team serve as our front-line representatives to both members and the public by maintaining responsibility for our inquiry window. Although the Membership Services team is equipped to handle issues similar to those handled by the Call Centre, these individuals work directly with internal departments to gather relevant information.

- CSRs need to know a great deal about the responsibilities of each department. The nature of the calls they receive is complex. Contrary to many client service environments where only basic knowledge is required, inquiries to the Law Society can relate to a very wide array of legal and operating matters. As a result, it is important to have excellent two-way communication, accuracy and timely information sharing with all departments.

- All CSRs go through a rigorous three-stage recruitment and training process that includes role playing to ensure they are able to deal with difficult or stressful situations and can respond to clients in a courteous, helpful manner. Continuous training enables our CSRs to meet most challenges they may encounter.

- The CSC has created a Helpline specifically for CSRs and other departments at the Law Society. Helpline staff lend a hand in digging out hard-to-find information.

Performance

- Since its official launch in July, the CSC has, for the first time, been able to assist the Law Society to identify the volume and classification of the types of calls it receives and the number of calls abandoned by type so that service improvements can be made. Over the summer and fall, the Centre began a program to focus on quality. In addition to its usual list of duties, the CSC participated in Make A Will Month; surveyed members and non-members regarding service; developed and administered an employee satisfaction questionnaire; and launched team building and employee recognition programs. Training is ongoing and includes regularly scheduled experts from outside and inside the Law Society. The CSC is currently conducting an operational review of the Lawyer Referral Service.

- On the technical side, changes were made to the phone queueing system to increase the capacity for incoming calls. Data capturing began in August, making it possible to accurately log and track calls. Performance is monitored continually and the criteria will be reevaluated regularly in order to continuously raise the quality of our service.

- Call centres typically experience high rates of staff turnover. Our future challenge is to achieve a higher than usual rate of retention and maintain a high level of quality staff and morale.

Information Systems (IS)

Background

P200 has enabled the Information Systems (IS) Department to implement many improvements in 1999.

IS manages all of the Law Society's technological requirements including:

- streamlining all databases and member records
- acquiring computer hardware and software
- servicing computer work stations and printers
- updating all telephone and voice mail services

IS plans, procures and assists with the development of programs and technical applications best suited to our needs.

Restructuring and Streamlining

- IS, along with staff from various departments, has been creating an information technology infrastructure. This will allow the Law Society to track and manage the complete history of a member. The system will ensure that a member's file is always correct and complete and contains:
  - education information
  - billing/accounting information
  - complaint information through to resolution
  - any important contact of a professional nature that this individual has had with the Law Society
  - status changes

Oracle

- To help achieve this goal, much preparatory work began in the latter part of 1999 to install the *Oracle enterprise technology system* which will consolidate 31 different databases into one all-inclusive member information database system. In preparation for the May 2000 launch date for the new single database, Law Society Information System, IS has identified and is loading over *one million* pieces of information onto this system.

- Once fully operational, Oracle will provide a single place of data retention, an integrated IS system that is easy to use, accessible to all staff who are cleared to view this information, and allows us to track and share accurate information. This will alleviate problems that have included:
  - different collection techniques and systems
  - staff not always knowing what information was collected or where it was stored
  - duplication of information storing
  - limited accessibility to information
  - misplacement of information
  - storage of incorrect information
  - a mixture of paper files and incompatible electronic files
  - a nonexistent network strategy
  - unreliable cabling infrastructure

Intranet

- Another new initiative that is developing at an increasing pace is the *internal web site* that was launched earlier this year. Called ELF *(Electronic Forum)*, it will help staff replace paper as the primary medium for administrative information.

- Over the past 18 months, IS has had to replace more than half (approximately 200) of the Society's obsolete computers.

Performance

- IS is creating an environment where information is shared by and accessible to staff, while maintaining security and confidentiality of files and information.

- Our success will be measured on the basis of the accuracy of information and completeness and ease of access to information from our single database.

Human Resources

Background

The Law Society must be able to compete for excellent staff in today's very competitive marketplace and attract and retain the best persons for the job, who are both client-service and results oriented.

The recently restructured Human Resources Department has for the first time implemented comprehensive annual performance reviews and goal-setting requirements for all staff. Salary increments are now tied directly to levels of performance.

Restructuring and Streamlining

- Human Resources' services are now provided by a team of seasoned HR managers, all of whom are assigned one or more client groups (i.e., Regulatory Division, Education, Finance, Information Systems, Public Affairs, etc.). They provide comprehensive support and leadership on everything from staffing to the training and orientation of new employees.

- Human Resources continues to provide ongoing services and support to departments through:
  - recruitment and selection services
  - performance management and evaluation programs
  - compensation management programs
  - employee relations initiatives
  - training and development programs
- As a strategic business partner, it provides leadership and training in change management and restructuring implementation.

Performance

- Standardized hiring criteria have been developed and the recruitment process consists of three-person interview panels to ensure that both departmental and organizational goals are achieved when hiring. This process also ensures fairness and consistency.

- HR also surveys the marketplace to benchmark our salaries and benefits against comparable jobs in like organizations and makes appropriate salary scale recommendations.

- The job evaluation team has completed 99 per cent of the position evaluations, with the remainder to be completed early in 2000.

- For the first time in the history of the organization, HR has conducted leadership training for all managers to assist them in:
  - setting objectives
  - evaluating employee performance
  - driving change
  - communicating clearly
  - coaching and mentoring
  - achieving results

Education

Background

In 1999, Education began formulating changes to ensure that both the Bar Admissions Course and Continuing Legal Education were more accessible to students and members and is currently preparing to implement Bar Ad Reform.

Education manages:

- Bar Admission Course (BAC)
- Continuing Legal Education (CLE)
- Specialist Certification

New Delivery Systems

- In 1999, a grant of more than $1 million was approved by the Law Foundation of Ontario to use technology to make educational programs more accessible to students and members. As a result, beyond 2000 the Society will be able to offer:
  - video conferencing in Toronto, Ottawa and London and the ability to offer more programs across the province through linkages through college and university facilities
  - BAC reference materials on CD-ROM and courses over the Internet
  - key Practice Advisory programs gleaned from BAC learning packages (i.e., trust accounting, professional conduct, practice management)

A greater emphasis is being placed on additional lawyering skills such as:

- how to deal with clients
- how to run a successful practice
- understanding the many rules and regulations that lawyers are bound by and compliance requirements

Continuing Legal Education

- CLE has exceeded its budgetary targets and contributed financially to the overall administration of the Law Society. Under the *full allocation of overhead costs formula* adopted in the 1999 budget model, CLE was expected to cover all but $100,000 of its allocated cost. We are pleased to report that CLE's revenue was over 16% higher than in the previous year and covered the full allocated cost and, in addition, contributed a surplus of over $100,000 to the General Fund.

- The new CLE issues working group of the Professional Development and Competence Committee began to meet in the fall of 1999 and has begun considering how CLE can be enhanced. Examples include better use of technology and fostering live local CLE throughout the province. At the same time, representatives of the Society's Education Department have begun exploring with counterparts at the Canadian Bar Association-Ontario how the existing joint-venture relationship between the two providers might be expanded.

New Initiatives

- Distance Education continued to be a major growth area for the Bar Admission Course in 1999 with 45 students involved in various locations. In Windsor, a group of 26 students took Phase 3 in a regular lecture/seminar format, similar to that in the three BAC locations of Toronto, London and Ottawa. The University of Windsor Law School provided the classroom facility while the local Bar provided the course instruction. In Thunder Bay, nine students took Phase 3 through the self-directed distance learning option as did 10 other students in cities including New York (3), Johnstown (Pennsylvania), Cambridge (England), Montreal, Sudbury, Timmins, North Bay, and Peterborough.

Student Success Centre

- Throughout 1999, the Student Success Centres provided students in the Bar Admission Course with accommodations, as well as, support and services required to create an equitable opportunity for success in the licensing courses. Many of them had required similar accommodation in their academic programs at the undergraduate and law school levels.

- During the 41st BAC, more than 100 students were identified with problems that posed a barrier to completing the Bar Admission Course. The issues and barriers were raised by students from the following backgrounds: aboriginal, blind or visually impaired, chronic medical problems, deaf or hard of hearing, equity concerns, family concerns, financial difficulties, mature students, physical or mobility impairments, visible minorities and others. Distance Education students were included in this group as they have selected the self-study options for a variety of reasons including family responsibilities and financial issues.

- Access to special funds of $38,000 from the province's Trillium Foundation enabled the Student Success Centres to purchase a range of mainstream and adaptive computer hardware and software, and equipment for the benefit of all students at the three BAC locations.

- Students' financial difficulties were addressed through the new Equity Bursary Assistance Program. The Centres continued to provide students with the two new programs which support student success, the Peer Support program and the Lawyer Mentoring program. The Tutoring program provided further options for assistance.

Financial Assistance

- Financial assistance was distributed to Bar Admission Course students in 1999 from the following programs and resources: the Ontario Student Assistance Program (OSAP) assisted 176 students with $193,600 in Phase 1, and 225 students with $561,898 in Phase 3; the Law Society Foundation Bursaries assisted 66 Phase 3 students in the amount of $43,200, while the new Equity Bursary program provided $60,000, funded by the Student Success Centre, to 38 students; the Law Society Student Loan program assisted 29 students in 1999 in the amount of $47,082. As of December 31, 1999, the program had 140 loans outstanding for a total of $283,581.10. Last year's outstanding loans amounted to $190,573 at year-end.

- The total amount of financial assistance distributed to students in 1999 totaled approximately $915,780.00 compared to $1,008,564 in 1998. A decline in the number of students seeking assistance through OSAP accounts for the difference between 1999 and 1998. It becomes clear that students are becoming more concerned about their total debt load from OSAP acquired while completing their undergraduate and law degrees, and, as a result they hesitate to undertake further indebtedness. A similar trend occurred with the Bank of Montreal's line of credit agreement with the Law Society, where only 26 students in Phase 3 and 19 students in Phase 1 expressed an interest in this program, compared to 46 Phase 3 students and 36 Phase 1 students in 1998.

Articling and Placement

- The preparation for practice provided by the articling experience continues to be highly valued by junior lawyers. The results of the November 1998 survey conducted by the Institute for Social Research at York University indicated that 88% of recent calls (within the past five years) valued the learning experience that articling had provided. Over half indicated that articling had prepared them "very well" for their entry into the profession.

Graduate Placement

- The graduate placement service lists positions suitable for recent graduates of the Bar Admission Course. These positions are posted on bulletin boards on a weekly basis in Toronto, London and Ottawa. Two hundred and eleven positions were listed with the service in 1999 of which 171 were offers of salaried employment and 40 were offers to share space or otherwise associate. In 1998 there were 254 positions.

- Placement staff conduct surveys of recent Bar Admission Course graduates to determine the rate of placement among the graduating class. Statistics have been gathered for more than ten years. Sixty-six percent (66%) of graduates of the 1999 Bar Admission Course (who will be called to the bar in 2000) had a permanent position upon completion of the Bar Admission Course. This continues to compare favourably with prior years where the average has been slightly less than 65%. A further survey will be taken at the signing of the rolls.

Professional Placement

- The professional placement service consists of the monthly publication of a bulletin containing notices of positions suitable for those with experiences at the bar. The service listed 204 opportunities in 1999, some of which were also listed with the graduate service and are reported in the graduate numbers noted above.

Issues and Challenges

- Data collected by the Articling and Placement Office continues to identify visible minority, Aboriginal and mature students among those who have a particularly difficult time securing articles. Our ongoing challenge is to successfully promote equity in student recruitment and hiring.

Equity

Background

The Equity Department was established in the fall of 1998. This department was not included as part of P200 restructuring.

Its goal is to assist the Law Society in implementing the Bicentennial Report on Equity Issues in the Legal Profession, as unanimously adopted by Convocation in May of 1997, and to support the newly established Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones.

In so doing, it will continue to develop programs for equity-seeking groups and design strategies to implement the policy initiatives outlined in the Bicentennial Report. In addition, the department will continue to sponsor advancement programs for lawyers who are members of equity-seeking groups.

The report recognizes the importance of integrating equity and diversity values and principles into the policies, programs and procedures of the Law Society so that the Law Society becomes an appropriate role model for the profession.

Responsibilities

Equity:

- is promoting equity and diversity within the legal profession by improving awareness of the issues, needs and concerns of equity-seeking groups
- is enabling internal departments to develop coordinated, integrated equity and diversity plans

Its objectives include:

- preparing reports and convening education and awareness activities that will assist Convocation with equity and diversity initiatives through involvement with such groups as Roti Io Ta-Kier, the Treasurer's Equity Advisory Group (TEAG), standing committees, and other equity-seeking legal associations
- ensuring equity and diversity initiatives are integrated into the operations of LSUC departments
- enabling the Law Society to reflect the diversity of equity-seeking groups within its own operations

Great Library

Background

While the use of Library resources and the demand for the expertise of Library staff has remained at the high levels of previous years, there is a trend toward lawyers printing case and statute law electronically in their own offices.

The steady demand for Library products and services, despite the availability of desktop electronic services, is influenced by several factors:

- each new CD-ROM or online product has its own learning curve. Search software for these products changes frequently. The economics of law practice do not allow the average practitioner time to become an expert in legal research.
- the majority of this year's 10,000 patron sign-ons to the Library's CD products required staff assistance.
- the number of CD-ROM products available is extensive. Lawyers cannot afford to maintain all of these products in their offices. The Library's licenses with publishers allow the products to be used only in the Library itself

In 1999, Library staff continued to carefully monitor legal and government resources available on the Web. Librarians routinely and proactively made a practice of providing members with addresses of free Web pages when the specific information required could be accessed in the lawyer's own office.

Instructional Initiatives

- The Library's program of instructional outreach was at its most active to date.
- Approximately 1,000 members or their support staff benefited from these activities which included orientation tours, as well as, formal legal research seminars and instruction for lawyers, articling students, law clerks, and librarians.
- As well as the formal instructional assistance, Library staff provided daily, brief one-on-one learning sessions on the use of CD-ROMs, the web and electronic databases.

Electronic Initiatives

- During 1999, additional features were added to the Library's Web site which facilitate around-the-clock research capabilities for members regardless of geographic location.
- Members are now able to use the site's guided electronic links to find free case and statute law, to check the status of an Ontario bill, find a CLE program, search the catalogue of a particular county or use any of the other research features.
- AdvoCAT, the Web version of the Library's catalogue became available in 1999, and was well received. Lawyers who have access to the Internet can now consult the Great Library catalogue at their desks.

Library Reorganization and Physical Plant Renovations

- A joint renovation project with the Ontario Realty Corporation, which included major plaster repairs to the Reference office, has been completed. Staff now work from redesigned workstations.
- In response to members' suggestions, a Reserve Collection consisting of leading textbooks has been created and housed on the second floor in the Reference office.
- The 8,500 volumes of journals formerly shelved in the Reference office have been temporarily moved to the basement.

Technical Services

- In order for the Reference department to be able to provide members with the information they need, Technical Services, Cataloguing and Acquisitions continue to ensure the efficient ordering, receipt and cataloguing of all library materials.

Copyright Lawsuit

- In a decision dated November 9, 1999, the Federal Court rejected the request of three law book publishers for an injunction restraining the Law Society from operating its custom photocopy service. Notices of appeal by the publishers and cross-appeal to the Federal Court of Appeal have been filed.

County Libraries

- Phase II of the *Report of the Working Group on the Long-Term Funding of County Libraries* was completed and debated in Convocation in May. The "Blended Model", as well as, a new system of County Library management was approved. The Working Group was asked to continue its development work for Convocation's review in 2000.

Technology

- The County Libraries' contract with QuickLaw was renewed. The cost of the group contract, which provides every county lawyer with free access to QL in the libraries, was funded by the Law Foundation of Ontario. The number of members using this service continues to grow at a rate that it is doubling monthly. This is a clear reflection of the value that members put on having this service available to them without charge in their County Library.

- Contracts with Carswell and CCH Canadian to supply CD-ROM products to the County Libraries were also renewed. Trial subscriptions to eCarswell, Lexis/Nexis and Westlaw were made available to lawyers using the County Libraries. Negotiations are underway to achieve an affordable group contract to allow some of the larger libraries to have access to Lexis/Nexis.

Training Sessions

- Members of County Law Associations continued to receive local training on both QuickLaw and CD-ROM products.

Public Affairs

Background

In 1998, external consultants undertook an operational review of the Public Affairs Department. The audit found *poor functional performance despite the professionalism of the departmental staff* which was largely attributed to:

- a largely reactive department, driven by publication schedules and ad hoc demands

- a department that operated in silos, with little teamwork and effort to coordinate public affairs activities in an efficient and effective manner

- inadequate management integration of the communication function at both the corporate and departmental levels

- the fact that there are no defined and enforceable communication policies, protocols and guidelines despite the development of corporate graphic standards

Although the reorganization of the Public Affairs Department was not originally included as part of the P200 restructuring plan, the 1998 operational review clearly indicated that this refocusing needed to be undertaken immediately.

Restructuring and Streamlining

- Restructuring of the Public Affairs Department began in the third quarter. The department now consists of Communications Services and Government Relations.

- The goal is to establish a Public Affairs Department that is effective, proactive and can deliver on its mission. This mission is to build public/member confidence and trust in the legal profession and its governance by strengthening the reputation and image of the Society and the profession.

- At the same time, the department continues to be responsible for:
  - media relations
  - government relations
  - strategic communications planning
  - employee communications
  - production of and contribution to publications (ie. newsletters, Ontario Lawyers Gazette, Ontario Reports and annual reports)
  - management of our internal and external Web sites
  - French-language services

Lawyers Fund For Client Compensation

This program is responsible for compensating a client when a lawyer has misused client funds.

The following chart shows the gross amount claimed from the Fund and claims "at limits." The latter represent the Fund's maximum potential exposure because grants are limited to $100,000 per claimant.

CLAIMS	1998	1999	DECREASE FOR TWELVE MONTH PERIOD
Gross Amount of Outstanding Claims	$30,510,781	$16,901,806	$13,608,975
"At Limits" Amount of Outstanding Claims	$14,324,638	$8,912,318	$5,412,320

The following chart shows the number and value of new claims received in 1998 and 1999.

CLAIMS	NO. OF CLAIMS	GROSS TOTAL AMOUNT OF CLAIMS	TOTAL AMOUNT OF CLAIMS WITH LIMITS APPLIED
New Claims Received January 1, 1998 to December 31, 1998	230	$23,572,112	$10,651,027
New Claims Received January 1, 1999 to December 31, 1999	202	$10,061,707	$7,355,300

Trends

- As of December 31, 1999, the Fund had 180 claims outstanding, with a gross value of approximately $16.9 million. Once the $100,000 per claimant limit is applied to this inventory of claims, the maximum potential financial exposure falls to $8.9 million, which represents a decrease of $5.4 million from December 31, 1998.

- While the inventory of claims is decreasing, this positive result is occurring at the expense of increased grant payments and the depletion of the Fund's resources. *Grants paid in 1999 amounted to $7.1 million on 197 claims, an average of $36,000 per claim. The comparable results for 1998 were $4.5 million in grants on 189 claims, an average of $24,000 per claim.* The balance in the Fund at the end of 1999 is $2.6 million less than in 1998.

- An encouraging trend is the reduction in the value of new claims being received by the Fund. While the number of claims received by the Fund in 1999 is similar to the number received in 1998, the amounts claimed were considerably less. The gross total amount of new claims received was $13.5 million less than in 1998. However, once limits are applied, the difference is reduced to $3.3 million.

CEO's 3rd and 4th Quarter Report – 1999

General Overview

The information contained in this report summarizes activities, initiatives and results for the Law Society's operations during the final two quarters of 1999 -- July 1 to December 31.

Finance and Administration

- The third and fourth quarters of 1999 saw the successful completion of more than four year's effort by the Finance Department to eliminate all 33 operating weaknesses identified in the external auditor's 1995 management report.

- In order to accomplish this, the department has been reorganized into two distinct units, *Financial Operations* and *Planning and Policy*.

- Financial Operations includes: general accounting, payroll, annual fee billing and collection, accounts payable and general billing and receivables. Planning and Policy includes: preparation and monitoring of the annual budget, support to the Finance & Audit Committee and investment of surplus funds.

Budget

- The 2000 budget process was completed during the fourth quarter of 1999. The budget resulted in an increase of $68 in the annual membership fee. The Society was faced with a $1.8 million loss in surplus investment income from the Errors & Omissions Fund and this factor contributed significantly to the increase in the annual membership fee.

- Convocation recognized that in the future the Society's budget process must be guided by the strategic directions of Convocation. This means involving Convocation earlier in the process and providing adequate time at Convocation for a full debate of the draft budget. This new approach will be implemented during the development of the 2001 budget.

Advisory and Compliance Services

Advisory and Compliance Services completed its restructuring in the 3rd quarter. The new department is responsible for a variety of functions, such as providing guidance and advice to a wide variety of more complex member inquiries, providing alternative dispute resolution, ensuring compliance and initiating spot and focussed audits. These functions were previously handled by *eight distinct departments*.

While the department clearly receives a large number of inquiries, *its focus is shifting to prevention* – working with members to prevent complaints from developing.

Resolution and Compliance Area
Complaints

New Files Opened

July 1 - September 30, 1999	1159
October 1 - December 31, 1999	682

Files Closed

July 1 - September 30, 1999	1103
October 1 - December 31, 1999	956

Open Files

July 1 - September 30, 1999	1997
October 1 - December 31, 1999	1756

Yearly Comparisons

DATE	NO. OF FILES OPENED IN YEAR	% INC (DEC) FROM PREVIOUS YEAR
Dec. 31, 1999	3592	-14.3
Dec. 31, 1998	4190	0.3
Dec. 31, 1997	4164	-7.7
Dec. 31, 1996	4510	-7.1

Advisory Services Area
Inquiries

The following charts illustrate the source of inquiries handled by Advisory Services during the 3rd and 4th quarters and a breakdown by geographical region (the number of inquiries from Toronto and from the rest of the province are almost even).

Concerns generating inquiries included: conflict of interest, privilege and confidentiality, the Law Society Act and bylaws, and ethics related to real estate, civil litigation and family matters. Note: not all inquiries automatically result in the opening of a file.

INQUIRIES DURING 3RD AND 4TH QUARTER BY SOURCE		INQUIRIES DURING 3RD AND 4TH QUARTER BY LOCATION	
Source	Number	Source	Number
Sole practitioner	1,531	Metro Toronto	1948
Other members	1,285	Other	1643
Non-members	775		0
Total	3591	Total	3591

Investigations

The Investigations Department is an amalgamation of the investigation functions of the former Complaints and Audit & Investigations Departments. The amalgamation took place in July 1999, pursuant to the initiatives of Project 200.

The mandate of the department is to conduct investigations into matters which are likely to lead to a referral to the Proceedings Authorization Committee.

As a result of the amalgamation, a large volume of files were inherited from the Complaints Department (an inventory list of more than 1000 files). These required review to identify those which were properly assigned to the Investigations Department. By December 31, this task was substantially complete. Because of the review, statistics pertaining to file levels and opened and closed files during that period are not indicative of the ongoing workload of investigations files.

Investigations continues to aggressively reduce the backlog of former Complaints Department files. It has set a target to completely eliminate these files by August 2000.

The number of active Investigations files as of December 1999 is 352. These files fall within the core mandate of the department. The file aging of the active investigations is as follows:

FILE AGING	
Under 6 months:	154
6 to 12 Months	53
13 to 24 Months	114
Over 24 Months	31

The department is focussed on significantly reducing the files older than 12 months by August 2000.

Discipline

The following chart summarizes the number of matters disposed of by Discipline Committees, Hearing Panels and Discipline Convocations in the third and fourth quarters of 1999 and compares it with the third and fourth quarters of 1998.

In 1999, the decrease in the number of matters going to Convocation and the corresponding decrease in the total number of matters disposed of, is a function of the amendments to the *Law Society Act* and its accompanying regulations, bylaws and rules. As a consequence of the amendments, hearing panel orders are now final in all hearings which began after February 1, 1999. Please note that Discipline Convocation did not sit in July, August and December 1999.

Statistics Of The Discipline Department

	JULY 1, 1999 TO DECEMBER 31, 1999	JULY 1, 1998 TO DECEMBER 31, 1998	TOTAL FOR 1998	TOTAL FOR 1999
Number of Matters/Solicitors or Applicants Disposed of by Discipline Committees and Hearing Panels	62/52	35/34	99/99	139/114
Number of Matters/Solicitors or Applicants Disposed of by Discipline Convocations	5/4	35/25	124/95	46/36
Total Number of Matters/Solicitors or Applicants Disposed of by Discipline Committees, Hearing Panels and Discipline Convocations	67/56	70/59	223/194	185/150

Client Service Centre

The Client Service Centre was launched at the beginning of the 3rd quarter to handle complaints mail and all non-direct dialled calls coming into the Law Society. This single body replaces more than 30 different initial intake points. Apart from improved service to members, the public, students and staff, the Centre allows for easier profiling and tracking of all non-direct dialled calls.

VOLUME AND CATEGORIES OF CALLS RECEIVED AUGUST - DECEMBER 1999	
Lawyer Referral Service	96,188
General Membership Inquiries	28,149
Complaint Services	13,638
General Reception	22,891
Total Calls	160,866

Category Breakdown

GENERAL MEMBERSHIP INQUIRIES	
Lawyers' Addresses	28.6%
Financial Institutions	17.0%
Fee-related	10.5%
Address Change	5.7%
Locating Files	3.6%
Other (web addresses, legal aid, receipt of letters, etc . . .)	34.6%

COMPLAINT INQUIRIES BY SUBJECT	
How To File Complaint	29.9%
Status of Complaint	21.9%
Lawyer Malpractice	13.0%
Lawyer Fee Too High	6.3%
Other (General LSUC info, info on functions performed by other departments)	28.9%

Education

Education manages the Bar Admissions Course, Continuing Education (CLE) and Specialist Certification. The following information provides an overview of CLE demand, bar admissions, enrolment and examination results, as well as articling and placement performance.

CLE Performance Data

	Q3/98	Q4/98	Q3/99	Q4/99
No. live programs	2	21	7	21
No. video replays	14	13	–	24
No. registrants	458	2,482	718	3,651
Program revenue (gross)	$178,944	$315,537	$210,593	$432,891
Publications revenue	$98,501	$119,609	$46,117	$115,642
Bursaries awarded	32	25	36	47

Total revenue year to date (over corresponding period in 1998) +13% (Q3: -7.5%; Q4: +26%)

CLE Demand

Demands for Law Society CLE programs is high. The Earnscliffe Report identifies CLE as one of the best-regarded LSUC functions. More than 50 per cent of programs offered attract more than 100 registrants per program.

Bar Admission Course

CALL TO THE BAR	
Number called to Bar 1999	1181
Number called to Bar 1998	1230
Number called to Bar 1997	1150

PHASE I ENROLLMENT	
Number enrolled 1999	1195
Number enrolled 1998	1,182
Number enrolled 1997	1,107

PHASE III ENROLLMENT	
Number registered 1999	1,185 (25 Part-time)
Number registered 1998	1,148
Number registered 1997	1,143

Attendance is no longer mandatory in Phase III. The recorded attendance varied from a high of 75% in Civil Litigation to a low of approximately 52% in Business Law.

Examination Results - 41st Bar Admission Course

COURSE (IN ORDER OF OFFERING)	PASS MARK (ENGLISH AND FRENCH)	% PASSING (PRIOR TO SUPPLEMENTALS)
Civil Litigation	65% (E & F)	94.7
Family Law	60%(E), 57%(F)	90.2
Public Law	60%(E), 58%(F)	92.7
Professional Responsibility	64%(E), 60%(F)	91.0
Real Estate Law	60%(E), 57%(F)	88.8
Estate Planning	58.4% (E & F)	91.2
Criminal Procedure	64.7% (E & F)	95.0
Business Law	56.7% (E & F)	93.2

Overall 357 of 1,185 Phase III students failed at least one examination. Of these, 180 were eligible to pass as a result of the application of the aegrotat criterion (this criterion allows students who have passed all but two exams to pass, if they have failed those two exams by a total of less than 10 per cent).

Approximately 180 students will have to pass at least one supplemental examination in order to pass the Bar Admission Course. Therefore, the overall passing rate for the Bar Admission Course was approximately 85% prior to the writing and marking of supplemental examinations.

As of the end of December, with the new examination appeals process, 189 appeals were submitted. Of these, 43 were not heard as the application of the aegrotat criterion made the determination of the appeal unnecessary. Of the remaining 146 appeals, 22 were from students writing the exams in French. The number of appeals per course varied from a low of 2 in Business (where the examination was multiple choice), to a high of 48 in Professional Responsibility. Of the 146 appeals which were decided, 19 resulted in no change to the grade, 19 resulted in a change of 6 marks or more, and 108 resulted in a change from 1 to 5 marks. None of the appeals on the multiple choice exams resulted in a failed paper moving to a pass. Overall, 38% of the appeals resulted in a failing paper moving to a pass.

Articling

There are currently 1,072 students articling. The greatest number are articling in the following regions: 66.7% in the City of Toronto, 15.67% in the East Region (containing Ottawa-Carleton Reg. Mun.), and 6.16% in the Southwest (containing Essex and Middlesex Counties). See the appendix for complete breakdown according to area.

The articling experience is evaluated by both principals and students at the midterm point and by students at the end of term. These evaluations serve as a barometer of the experience received by articling students who rate their experience on a rating of very good to excellent, good, fair or poor. For the 1998-1999 year, 90 % of the students in their final evaluations rated their articling experience as good or very good to excellent. In all, 99 % rated it satisfactory or better. Only 1 per cent rated it as unsatisfactory.

Placement

A total of 1,095 students (enrolled in the 1999 Phase 1) sought articles in 1999. At December 31, 1999, 97.9% of these students were placed (excluding 56 students who did not respond to follow-up inquiries, indicating that these students have quite possibly deferred taking Phase III of the Bar Admission Course to pursue other opportunities).

Of the 1,144 students who filed a Year 2000 Bar Admission Course Application in November 1999, 889 students (77.7%) reported having secured an articling position and 255 students (22.3%) reported that they continue to look for articles. In 1998, 21% were looking for articles at this time.

Articling and Placement staff undertake various activities to assist unplaced students including: a job notice service, targeted marketing of unplaced students to the profession; resume writing and interview skills training and counselling for unplaced students; and, a mentor program that pairs unplaced students with members practising in the student's area of interest.

In addition, the program encourages articling placements in various settings and has introduced flexible criteria for articling positions that permit part-time articles, joint articling arrangements and extra-jurisdictional components. The department maintains an articling vacancy list of new positions which is sent by fax and e-mail to approved law schools. This list is also posted at each of the Bar Admission Course sites. A voice mail box with 24 hour direct dial access is updated weekly to provide information about new articling vacancies.

Specialist Certification Performance Data

The following figures apply to the third and fourth quarters of 1999:

▸ specialists certified	20
▸ specialists recertified	65
▸ applicants rejected	2
▸ applicants currently seeking certification/recertification	120
▸ requests for application packages	134
▸ requests for information on specialists	162

As at December 31, 1999 there were 604 certified specialists in Ontario, classified by area of specialty as follows:

▸ Bankruptcy & Insolvency Law	11
▸ Civil Litigation	341
▸ Criminal Law	101
▸ Environmental Law	18
▸ Family Law	59
▸ Immigration Law	17
▸ Intellectual Property Law	201
▸ Labour Law	31
▸ Workplace Safety & Insurance Law	6

In the fourth quarter, the Certification Working Group and the Professional Development and Competence Committee approved the proposed standards for certification in Construction Law. Consultation with the profession was undertaken in November with the understanding that the results would be reviewed by the Working Group and the Committee in January 2000, and, a final recommendation made to Convocation later that month.

Great Library

County Libraries' Initiatives:

- The Director of Libraries visited three County Law Associations in the last quarter.
- Two groups now make up The Working Group on Long-Term Funding of County Libraries: The Business Plan Group and The Administrative Group. These groups began meeting in the Fall. The Administrative Group is working with outside counsel on the structure of the new organization. The Business Plan Group is dealing with the implementation process.
- In October, a two-day training session was held for all County Librarians on Internet based services.
- In 1996, 22 County librarians attended the annual County librarians meeting. In 1998, the number had increased to 48, and in 1999, it was 51; some larger associations sent two staff.

Reference Department
(Numbers for all of 1999)

▸ No. of requests for research & assistance	80,600
▸ No. of patron visits	83,500
▸ No. of copies made through custom copying service	76,697
▸ No. of copies made on self-serve copiers	663,230

Acquisitions Department

1996	1999
29,838 pieces of mail received	32,425 pieces of mail received
3,188 invoices processed	4,547 invoices processed

Cataloguing Department

1997	1999
4001 books processed	5023 books processed
8,513 item records created	10,247 item records created

Automation of the technical services functions has enabled us to process more materials than in previous years.

Public Affairs

For the six months ending December 31, 1999, Public Affairs handled an average of 36 media inquiries per month. Prior to the launch of the Client Service Centre, the department also fielded a range of public inquiries for general legal information and complaints about lawyers.

Since July, media calls have included requests from reporters for information on discipline, disbarments, issues regarding paralegals, criminal charges and mergers, and human-interest angles for features.

Performance data

NO. OF MEDIA INQUIRIES	
July	39
August	35
September	47
October	40
November	36
December	20
Total	217

Web Sites

The Law Society's Web site provides information to visitors in English and French. Visits to the LSUC Web site are consistently high, with an average of 87,108 hits per month during the latter half of 1999. There are roughly twice as many hits on the public information pages as there are on pages of specific interest to members.

NO. OF WEB SITE HITS	
July	79,167
August	77,252
September	82,409
October	93,571
November	102,44
December	87,803
Total	522,646

Lawyers Fund For Client Compensation

David McKillop, Manager of the Fund, is presently on a secondment with the Law Society of New South Wales. In his absence, Heather Werry will be assuming his responsibilities.

Maryanne Cousins, an employee of the Law Society of New South Wales, is on a secondment here for one year as part of the exchange involving David McKillop. Miss Cousins is a lawyer with a research background and will be working in Policy Secretariat.

For further details regarding the Lawyers Fund for Client Compensation, please see the CEO's Annual Report.

Executive Limitations

The Chief Executive Officer (CEO) is in compliance with the Executive Limitations, as required by Section 4 of the Governing Policy set out by Convocation. Given the continuous improvement environment in which the Law Society now operates, particular emphasis is being placed on improving:

- the budgeting process
- the financial condition of the organization
- adhering to and promoting human resource principles
- ongoing communication and support to Convocation.

Appendix

The following table depicts the number of students articling by Area/Region as at January 20, 2000.

REGION	AREA	NUMBER	% OF TOTAL (1072)
Central East	Durham Reg. Mun.	8	
	Muskoka District	2	
	Peterborough County	1	
	Simcoe County	3	
	Victoria County	1	
	York Reg. Mun.	12	
	Total for Central East	27	2.52%
Central South	Brant County	1	
	Haldimand-Norfolk Reg.	1	
	Hamilton-Wentworth Reg.	27	
	Niagara Reg. Mun.	4	
	Waterloo Reg. Mun.	15	
	Total for Central South	48	4.48%
Central West	Dufferin County	1	
	Grey County	1	
	Halton Reg. Mun.	4	
	Peel Reg. Mun.	15	
	Wellington County	2	
	Total for Central West	23	2.14%
East	Frontenac County	2	
	Hastings County	2	
	Lanark County	1	
	Ottawa-Carleton Reg. Mn.	161	
	Prescott & Russell Co.	1	
	Stormont, Dundas & Glengarry	1	
	Total for Central East	168	15.67%
Northeast	Cochrane District	3	
	Manitoulin District	1	
	Nipissing District	1	
	Sudbury District	9	
	Total for Northeast	14	1.30%

REGION	AREA	NUMBER	% OF TOTAL (1072)
Rest of Canada	New Brunswick	2	
	PEI	1	
	Province of Quebec	2	
	Total for Rest of Canada	5	0.47%
Southwest	Elgin County	2	
	Essex County	24	
	Kent County	1	
	Lambton County	2	
	Middlesex County	37	
	Total for Southwest	66	6.16%
Toronto	City of Toronto	715	
	Total for Toronto	715	66.70%
Overall Total		1072	100.00%

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 Friday, April 28th, 2000:

Katherine Mary Brown	Bar Admission Course
Sang-Ho Cho	Bar Admission Course
Wayne Curtis	Bar Admission Course
Casimir Onwumere Eziefule	Bar Admission Course
Natascha Bianca Maria Feenstra	Bar Admission Course
Mary Mainguy Hope	Bar Admission Course
Gregg Owen Horne	Bar Admission Course
Sara Kristin Hughes	Bar Admission Course
Anita Ann John	Bar Admission Course
Fatma Abdallah Khalid	Bar Admission Course
Nalini Khan	Bar Admission Course
Lisa Maria Laborde	Bar Admission Course
Miranda Elizabeth Michener Lawrence	Bar Admission Course
Klaudio Leshnjani	Bar Admission Course
Douglas Harris Levitt	Bar Admission Course
Bhupendra Singh Malhorta	Bar Admission Course
Paul Joseph Matthews	Bar Admission Course
Michael Andrew Moon	Bar Admission Course
Mei-Ling Adrienne Murti	Bar Admission Course
Vanessa Eugenie Alvina Ross	Bar Admission Course
Samia Rose Shaheen	Bar Admission Course
Ashley Dennis Warren Shannon	Bar Admission Course
Janet Elizabeth Slaughter	Bar Admission Course
Mary-Ellen Elizabeth Venhola	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, April 28th, 2000:

Tejinder Singh Dhillon	British Columbia
Anne Kyle Gallop	Nova Scotia
Kevin Franklin Helfand	Alberta
Jeffrey Hoyt	Nova Scotia
Grant Edward McGlaughlin	Alberta
Heather Lee Mullen	Nova Scotia
Anne Margaret Parkinson	British Columbia
Laura Mary Porter	British Columbia
Amy Beth Pressman	British Columbia

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

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

Weiguo Min	Guangdong Province, the People's Republic of China - D&S Law Firm

Orlando Nelson Ortega	State of California, - Rosenblatt Associates

B.2.2. Their applications are complete and they have filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 28th day of April, 2000

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It was moved by Ms. Ross, seconded by Mr. Ruby 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 called to the Bar and the degree of Barrister-at-law was conferred upon each of them. They were then presented by Mr. Carey to Justice John Cyril Wilkins to sign the Rolls and take the necessary oaths.

Katherine Mary Brown	Bar Admission Course
Sang-Ho Cho	Bar Admission Course
Wayne Curtis	Bar Admission Course
Casimir Onwumere Eziefule	Bar Admission Course
Natascha Bianca Maria Feenstra	Bar Admission Course
Mary Mainguy Hope	Bar Admission Course
Gregg Owen Horne	Bar Admission Course
Sara Kristin Hughes	Bar Admission Course
Anita Ann John	Bar Admission Course
Fatma Abdallah Khalid	Bar Admission Course
Nalini Khan	Bar Admission Course
Lisa Maria Laborde	Bar Admission Course
Miranda Elizabeth Michener Lawrence	Bar Admission Course
Klaudio Leshnjani	Bar Admission Course
Douglas Harris Levitt	Bar Admission Course
Bhupendra Singh Malhotra	Bar Admission Course
Paul Joseph Matthews	Bar Admission Course
Michael Andrew Moon	Bar Admission Course
Mei-Ling Adrienne Murti	Bar Admission Course
Vanessa Eugenie Alvina Ross	Bar Admission Course
Samia Rose Shaheen	Bar Admission Course
Ashley Dennis Warren Shannon	Bar Admission Course
Janet Elizabeth Slaughter	Bar Admission Course
Mary-Ellen Elizabeth Venhola	Bar Admission Course
Tejinder Singh Dhillon	Transfer, Province of British Columbia
Anne Kyle Gallop	Transfer, Province of Nova Scotia
Kevin Franklin Helfand	Transfer, Province of Alberta
Jeffrey Hoyt	Transfer, Province of Nova Scotia

Grant Edward McGlaughlin	Transfer, Province of Alberta
Heather Lee Mullen	Transfer, Province of Nova Scotia
Anne Margaret Parkinson	Transfer, Province of British Columbia
Laura Mary Porter	Transfer, Province of British Columbia
Amy Beth Pressman	Transfer, Province of British Columbia

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REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Krishna presented the Report of the Finance & Audit Committee for approval by Convocation.

Finance and Audit Committee
March 9, 2000
April 13, 2000

Report to Convocation

Purpose of Report: Decision Making
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 March 9, 2000. Committee members in attendance were: Krishna V. (c), Crowe M (v-c), Swaye G. (v-c), Cass R., Furlong P., Murphy D., Puccini H., Ruby C., White D., Wilson R. Wright B, . Staff in attendance were: Saso J, Tysall W., Strom M., Lalonde G., Crossley K., Grady F., Miller J., Cawse A.

2. The Committee also met on April 13, 2000. Committee members in attendance were: Krishna V. (c), Crowe M (v-c), Swaye G. (v-c), Cass R., Chabar A., Epstein S., Feinstein A., Murphy D., Puccini H., Wardlaw J., Wilson R. Staff in attendance were: Tysall W., Cohen L., Husain A., Corrick K., Grady F., White D., Cawse A.. Mr. Herb Willer and Ms. Karen Scheff from Arthur Andersen LLP were also in attendance.

3. The Committee is reporting on the following matters:

For Decision

- Draft General Fund Financial Statements for the year ended December 31, 1999.
- Draft Lawyers Fund for Client Compensation Financial Statements for the year ended December 31, 1999.
- Draft Errors and Omissions Insurance Fund Financial Statements for the year ended December 31, 1999.

- Appointment of Auditors for year ended December 31, 2000.
- Information Systems and Facilities Capital Program in 2000.
- J. Shirley Denison Fund - Confidential.

Information

- 1999 Auditor's Management Letter - Confidential.
- Audit Committee Terms of Reference.
- Investment Compliance Report

FOR DECISION

DRAFT GENERAL FUND FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 1999

4. The draft audited financial statements for the General Fund for the year ended December 31, 1999 are attached as Tab 1 of this report, along with the management commentary.

5. The Finance and Audit Committee recommends that the General Fund draft audited financial statements for the year ended December 31, 1999 as set out on Tab 1, be approved by Convocation.

DRAFT LAWYERS FUND FOR CLIENT COMPENSATION FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 1999

6. The draft audited financial statements for the Lawyers Fund for Client Compensation for the year ended December 31, 1999 are attached as Tab 2 of this report, along with the management commentary.

7. The Finance and Audit Committee recommends that the Lawyers Fund for Client Compensation draft audited financial statements for the year ended December 31, 1999 as set out on Tab 2, be approved by Convocation.

DRAFT ERRORS AND OMISSIONS INSURANCE FUND FINANCIAL STATEMENTS
FOR THE YEAR ENDED DECEMBER 31, 1999

8. The draft audited financial statements for the Errors and Omissions Insurance Fund for the year ended December 31, 1999 are attached as Tab 3 of this report, along with the management commentary.

9. The Finance and Audit Committee recommends that the Errors and Omissions Insurance Fund draft audited financial statements for the year ended December 31, 1999 as set out on Tab 3, be approved by Convocation.

APPOINTMENT OF AUDITOR

10. The existing auditor, Arthur Andersen LLP, has audited the financial statements for the last three years. The audit fee has not changed significantly over this time, and no significant fee increase for the 2000 year is envisaged.

11. The Finance and Audit Committee recommends that Convocation reappoint Arthur Andersen LLP as auditor for the year ended December 31, 2000.

INFORMATION SYSTEMS AND FACILITIES CAPITAL PROGRAM IN 2000

12. The Committee reviewed the schedules attached as Tab 4 and Tab 5, with supplementary information provided by Mr. Lalonde and Mr. Crossley. The objective of this review was to approve capital expenditures in 2000 as set out in Tabs 4 and 5, and to obtain an understanding of the direction of the capital program in future years.

13. The Finance and Audit Committee recommends that Convocation approve the capital expenditures and sources of funds for 2000 as set out on Tab 4.

J. SHIRLEY DENISON FUND - CONFIDENTIAL

14. A memorandum addressing three applications for grants from the J. Shirley Denison Fund, is attached as Tab 6 (confidential). Guidelines used in assessing applications to the Fund are attached as the last page to Tab 6.

15. The Finance and Audit Committee recommends that Convocation approve staff recommendations concerning the three applications to the J. Shirley Denison Fund as detailed on the memorandum attached as Tab 6.

FOR INFORMATION

1999 AUDITOR'S MANAGEMENT LETTER - CONFIDENTIAL

16. The Committee reviewed the Management Letter received from the auditors attached as Tab 7 (confidential) to this report, and discussed other systems, controls and business risks.

AUDIT COMMITTEE TERMS OF REFERENCE

17. Under the Law Society's Governance Policies, an Audit Committee, comprising Messrs. Crowe, Swaye, and White, has been set up as a Working Group of the Finance and Audit Committee. The Audit Committee Terms of Reference, attached as Tab 8 to this report, were approved by the Finance and Audit Committee.

INVESTMENT COMPLIANCE REPORT

18. The Committee reviewed the Investment Compliance Report for the three months ended December 31, 1999 attached as Tab 9. There were no breaches of Policy.

TAB 1

General Fund
Notes to Financial Statements
For the year ended December 31, 1999

(Stated in whole dollars except where indicated)

1. Description of Fund

The Law Society of Upper Canada (the "Society") was founded in 1797 and was incorporated in 1822 with the enactment of the *Law Society Act.* The Society exists to govern the legal profession in the public interest. This is achieved by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct and by upholding the independence, integrity and honour of the legal profession, for the purpose of advancing the cause of justice and the rule of law. This mandate is carried out by the governing body of the Society which is known as *Convocation.*

The *Law Society Amendment Act, 1998* received royal assent in December 1998 and came into force on February 1, 1999. This Act makes substantive and important amendments to the *Law Society Act,* including a restructuring scheme of professional governance based on the authority in the statute. The *Law Society Amendment Act, 1998,* authorizes the Society to make regulations, by-laws and rules of practice and procedure as a means of governing all proceedings described in the Act.

The Society is not subject to income or capital taxes because it is a not-for-profit corporation.
These financial statements represent the financial position of operations of the Law Society of Upper Canada - General Fund, which includes certain internally restricted funds, and do not purport to represent all assets and liabilities under the control of the Society.

Separate financial statements have been prepared for the following related entities:

Lawyers Fund for Client Compensation

The Society maintains the Lawyers Fund for Client Compensation pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. The Lawyers Fund for Client Compensation is financed by members' annual fees and investment income. The Lawyers Fund for Client Compensation reimburses the Society for certain administrative expenses, totalling in 1999 $1,331,750 (1998 - $1,023,000).

Errors & Omissions Insurance Fund and Lawyers' Professional Indemnity Company

The Society provides professional liability insurance to the legal profession through the Errors and Omissions Insurance Fund (the "E&O Fund") and the Lawyers' Professional Indemnity Company ("LPIC"). The E&O Fund was originally set up in the Society's accounts to record insurance claims and expenses and related levies and their investment. Prior to July 1, 1990 the Errors and Omissions Insurance program was underwritten by various insurance carriers. LPIC took over underwriting the program commencing July 1, 1990. LPIC is a wholly owned subsidiary of the Society that was incorporated in 1990 and licensed as an insurer in Ontario and Newfoundland. Combined financial statements are prepared for the E&O Fund and LPIC.

Law Society Foundation

The Law Society Foundation (LSF) was incorporated by Letters Patent in October 1962. The LSF is a registered charity under the terms of the Income Tax Act and as such, is exempt from income taxes. The objects of the LSF are to foster, encourage and promote legal education in Ontario, provide financial assistance to law students in Ontario, restore and preserve land and buildings of historical significance to Canada's legal heritage, receive gifts of muniments and legal memorabilia of interest and significance to Canada's legal heritage and to maintain a collection of gifts of books and other written material for use by educational institutions in Canada. In 1999 Supplementary Letters Patent were obtained to expand the objects of the LSF enabling it to receive donations and maintain a fund for the relief of poverty by providing meals to persons in need.

The Law Foundation of Ontario

The Law Foundation of Ontario was created to receive interest accruing on monies held in lawyers' mixed trust accounts and to establish and maintain a fund to be used for the purposes of legal education and legal research, legal aid and the establishment, maintenance and operation of law libraries. During 1999 the Law Foundation of Ontario contributed to the General Fund of the Society $1,062,900 (1998 - $1,062,900) for the operation of the bar admission course and $895,000 (1998 - $599,500) for library programs.

Legal Aid Fund

Until March 31, 1999 the Society was empowered to administer the Legal Aid Plan and to maintain the Legal Aid Fund in accordance with the Legal Aid Act. The Society reported annually to the Attorney General of Ontario on the accounts and financial transactions of the Legal Aid Fund. The financial statements of the Legal Aid Fund are subject to audit by the Provincial Auditor. The Legal Aid Plan was administered by the Society pursuant to the Legal Aid Act and Regulations and a Memorandum of Understanding (MOU) between the Province of Ontario and the Society. This MOU expired on March 31, 1999 at which time all Society obligations under the MOU and the Legal Aid Act ended.

2. Significant Accounting Policies

Fund Accounting

The Society follows the restricted fund method of accounting.

The *Unrestricted Fund* accounts for the Society's programme delivery and administrative activities. This fund reports unrestricted resources. All acquisitions, amortization and other expenditures relating to capital assets are reported in the *Invested in Capital Assets Fund.*

The *Legal Aid Fund* reports any funds on hand and not yet turned over to the Ontario Legal Aid Plan. This fund was established by Convocation to enable the Society to meet its funding obligation as detailed in Legal Aid Act. The Society has met its obligations under the Legal Aid Act and the nil balance represents the wind up of this fund.

The *Osgoode Hall Capital Fund* reports funds that have been internally restricted by Convocation for the purposes of undertaking capital projects at Osgoode Hall. On an annual basis, capital works are identified and appropriate funding is raised through a levy on the membership.

The *County Library Fund* accounts for funds raised on behalf of the 48 County and District Law Libraries. These funds are internally restricted for use by these Law Libraries to carry out their annual operations and any special projects approved by Convocation. The fund balance is available for disbursement in future periods.

The *Project 200 Fund* accounts for funds restricted in use by Convocation for the purposes of completing the Society's restructuring and process re-engineering project known as *Project 200.* Funds have been raised in accordance with a detailed business plan and internally restricted by Convocation. Project 200 has been substantially completed and the nil balance represents the wind up of this fund.

The *Insurance Levy Waiver Fund* records the restricted resources available to provide financial assistance to lawyers who experience difficulty in meeting their liability insurance premiums.
The Fund is internally restricted by Convocation.

The *Technology Enhanced Learning Fund* reports resources set aside for development and implementation of assistive technology for the Bar Admission Course. This fund was established in 1999 with a capital grant of $775,000 received from the Law Foundation of Ontario. This fund is internally restricted by Convocation.

The Society administers two *Endowment Funds*. The Law Society Trust has been established in accordance with the terms of the endowment so that the Society can award prizes, bursaries and gifts to deserving students in the Bar Admission Course. The J. Shirley Denison Fund has been established to provide relief and assistance to members and former members who find themselves in difficult financial circumstances. Contributions for endowment are recognized as revenue in the Endowment Fund. For 1999 no funds were contributed for endowment purposes. Increases to the fund balances are reflective of interest income only.

Cash and short-term investments

Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy. Short-term investments are stated at the lower of cost and market value. Investment income, except income earned on resources held for endowment, is retained in and reported by the Unrestricted Fund.

Capital assets

Land, buildings, major building improvements, furniture, equipment and computer hardware and software are presented at cost net of accumulated amortization and grants. Amortization is charged to expense on a straight-line basis over the estimated useful lives of the assets commencing in the year following acquisition as follows:

Buildings	30 years
Building improvements	3 to 10 years
Furniture, equipment and computer hardware and software	3 to 5 years

Revenue Recognition

Restricted contributions related to the general operations are recognized as revenue of the General Fund in the year in which the related expenses are incurred. All other restricted contributions are recognized as revenue of the appropriate restricted fund.

Unrestricted contributions are recognized as revenue of the Unrestricted Fund in the year received or receivable if the amount can be reasonably estimated and collection is reasonably assured.

Collections

The Society owns a collection of legal research and reference material as well as a collection of portraits and sculptures. The cost of additions to the collections is expensed as incurred. No value is recorded in these financial statements for donated items.

Volunteer services
The work of the Society is dependent on the voluntary services of the elected Benchers and other members of the profession. These services are received gratuitously, therefore, no value has been included in these financial statements.

Financial instruments

The estimated fair value of cash and short-term investments, accounts receivable, prepaid expenses, accounts payable and accrued liabilities approximate their carrying amounts in the financial statements due to the relatively short period to maturity of these instruments.

Measurement Uncertainty

The preparation of the financial statements in accordance with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingencies at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

3. Capital Assets

As at December 31, 1999	Cost $000's	Accumulated Amortization $000's	Net $000's
Land and buildings	28575	13716	14859
Building improvements	2321	1522	799
Furniture, equipment and computer hardware and software	7542	4706	2836
	38438	19944	18494

As at December 31, 1999	Cost $000's	Accumulated Amortization $000's	Net $000's

As at December 31, 1998	Cost $000's	Accumulated Amortization $000's	Net $000's
Land and buildings	28099	13175	14924
Building improvements	2307	1350	957
Furniture, equipment and computer hardware and software	6085	3917	2168
	36491	18442	18049

4. Membership Fees

Membership fees are levied for the operation of the Society and the following restricted funds: County Libraries, Osgoode Hall Capital, Legal Aid, Insurance Levy Waiver and Project 200. Membership fees are recorded when billed. The restricted funds are collected and accumulated in special purpose funds and reported on the Balance Sheet under the Liabilities and Fund Balances Section.

5. Pension Plan

The Society maintains a defined contribution plan for all eligible employees of the Society. The plan covers employees of the Society and the Lawyers Fund for Client Compensation. The Society matches its employees' contributions to the plan.

The Society's pension expense [excluding the Lawyers Fund for Client Compensation] for the year ended December 31, 1999 amounted to $537,243 (December 31, 1998 - $540,537)

6. Commitments

The Society is committed to monthly lease payments for property and computer facilities under leases having various terms up to the end of 2010. In addition, the Society is committed to a minimum monthly payment to 2003 for its contracted printing and mailroom services Aggregate monthly payments over the next five years and beyond in total are estimated as follows:

Year	$000's
2000	1488
2001	1458
2002	1134
2003	370
2004	331
2005 & beyond	2109
Total	6890

7. Contingent Liabilities

At December 31, 1999, favourable judgement with respect to three claims made against the Society as a result of an alleged copyright infringement had been made. The plaintiffs have appealed and the Society has cross appealed. At this point in time the only financial exposure to the Society is for legal costs of the plaintiff in the event that the Society is not successful on appeal. No provision has been included in the financial statements.

There is one claim which was reported in 1991 where the damages sought are $13,000,000. The Society's lawyer brought an Application for Summary Judgement and the action was dismissed as disclosing no cause for action. The counsel for the plaintiff has launched an appeal and if successful will proceed with an Application for Certification as a Class Action. The Society will resist this application. No provision has been included in the financial statements.

In addition, a number of claims or potential claims are pending against the Society. It is not possible for the Society to predict with any certainty the outcomes of such claims or potential claims. Management is of the opinion that based on the information presently available, it is unlikely that any liability, to the extent not covered by insurance, would be material to the Society's financial position.

8. Comparative Financial Statements

Certain amounts in the comparative financial statements have been reclassified to conform to the current year's presentation.

TAB 2

Lawyers Fund for Client Compensation
Notes to Financial Statements
For the year ended December 31, 1999

(Stated in whole dollars except where indicated)

1. Description of Fund

The Lawyers Fund for Client Compensation (the "Fund") is maintained by The Law Society of Upper Canada (the "Society") pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. The fund is financed by members' annual fees and investment income.
The Fund is not subject to income or capital taxes because it is a fund of the Society, a not-for-profit corporation.

Certain services are provided by the General Fund of the Society to the Fund. The cost of these services is included in administrative expenses. The charges for the year amount to $1,331,750 (1998 - $1,023,000).

2. Significant Accounting Policies

Fund Accounting

The Lawyers Fund for Client Compensation follows the restricted fund method of accounting. The Fund accounts for the programme delivery, administration and payment of grants from the Fund. The Fund is restricted in use by the Law Society Act.

Cash and short-term investments
Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy. Short-term investments are stated at the lower of cost and market value.

Portfolio investments

Portfolio investments are recorded at cost, net of amortization of premiums and discounts. Investments consist of government and corporate bonds.

Grants
Pursuant to section 51(5) of the Law Society Act, the payment of grants from the Fund is at the discretion of Convocation, the governing body of the Society. Grants paid are subject to a $100,000 limit per applicant. A reserve for unpaid grants is recorded as a liability on the balance sheet. This reserve represents an estimate of the present value of grants to be paid for unprocessed claims and the associated administrative costs, as determined by an actuary. The related grant expense represents grant payments during the year plus the current year experience gain/loss of the reserve for unpaid grants, net of recoveries.

Financial instruments

The estimated fair value of cash and short-term investments, interest and other receivables and accounts payable and accrued liabilities approximate their carrying amounts in the financial statements due to the relatively short period to maturity of these instruments.

3. Measurement Uncertainty

The valuation of unpaid grants anticipates the combined outcomes of events that are yet to occur. There is uncertainty inherent in any such estimations and therefore a limitation upon the accuracy of these valuations. Future loss emergence may deviate from these estimates. No provision has been made for otherwise unforeseen changes to the legal or economic environment in which claims are settled, nor for causes of loss which are not already reflected in

the historical data. Management believes that the techniques employed and assumptions made are appropriate and the conclusions reached are reasonable given the information currently available. Estimates of unpaid grants are reviewed at least annually by an actuary and, as adjustments become necessary, they are reflected in current operations.

4. Subsequent Event

Subsequent to December 31, 1999 a significant matter has come to the attention of management. The Society's audit department has identified claims and potential claims resulting from the actions of one lawyer. The total amount is estimated at $4 million, before applying the $100,000 limit per applicant. At December 31, 1999 no claims with respect to this matter had been reported and consequently no liability for any potential claims has been included in the balance sheet.

5. Comparative Financial Statements

Certain amounts in the comparative financial statements have been reclassified to conform to the current year's presentation.

TAB 8

LAW SOCIETY OF UPPER CANADA
AUDIT COMMITTEE
TERMS OF REFERENCE

Summary

The Terms of Reference of the Audit Committee are:

- To receive and review interim and annual financial statements for the Law Society of Upper Canada and the Lawyers' Professional Indemnity Company.
- To review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Law Society.

To recommend the appointment of the external auditor, and to review the proposed audit scope, audit fees and the annual auditor's management letter.

Membership Requirements

Under the Law Society's Governance Policies, the Audit Committee has been set up as a Working Group of the Finance and Audit Committee.

Members of the Audit Committee should be able to maintain an independent mind, and be financially literate, particularly in the area of not-for-profits and fund accounting.

Committee Structure

- The Audit Committee should comprise at least three members.
- A majority of members being physically or electronically present, constitutes a quorum for the purposes of the transaction of business.
- Committee members can be elected, non-elected or lay benchers at the discretion of the Finance and Audit Committee.
- The Audit Committee Chair is elected by the members of the Audit Committee.

- Membership of the Audit Committee should turn over once every three years in a staggered fashion, so that a balance of institutional knowledge and new ideas is maintained.
- Members of the Audit Committee should educate themselves through bencher orientation and with the assistance of management, auditors and third party sources, concerning the knowledge and skills required to fulfill the committee's mandate.

Committee Process

- Continuous financial disclosure requirements are set out in the Governance Policies of the Law Society which state that quarterly financial statements should be provided to Convocation. The Audit Committee will meet to approve these quarterly, unaudited financial statements prior to their submission to the Finance and Audit Committee. Additional meetings, beyond those surrounding the quarterly and year end processes are at the discretion of the Chair of the Audit Committee.
- The Audit Committee should meet at least once a year to review the published year end financial statements, and to discuss these statements with management and the auditors. This meeting should precede the relevant Finance and Audit Committee meeting, Convocation and Annual General Meeting by sufficient time to allow processing of any actions requested by the Audit Committee.

Scope of Audit Committee's Responsibilities

The Audit Committee is not a decision-making body, but a fact-finding one. It reports findings to the Finance and Audit Committee, and onwards to Convocation.

The Audit Committee's duties concerning the Law Society's General Fund, Compensation Fund and Lawyers' Professional Indemnity Company are directed to quarterly and year-end financial reports, and are facilitated by continuous disclosure resources. At the Law Society, continuous disclosure resources primarily take the form of unaudited, quarterly financial reports and management's related discussion and analysis.

The Audit Committee is responsible for:

- The receipt and review of the annual published financial statements for the Society and the Lawyers' Professional Indemnity Company with the objective of enhancing the usefulness, integrity, consistency and fair presentation of financial statements in accordance with generally accepted accounting principles
- Recommending the appointment of the external auditor, and the review of the proposed audit scope, audit fees and the annual auditor's management letter.
- The review of the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Law Society.
- The Audit Committee should understand the nature, extent and costs of the work performed by the independent auditor, and make additional requests if desired. The Audit Committee should discuss and review specific issues with the auditor, such as ensuring their audit approach maximised opportunities to add value, and recommendations for improving the Law Society's performance.
- The Audit Committee should review the Management Letter from the auditor, and any other communications from the auditor which comments on the Law Society's systems and internal controls, and obtain management's representations and intended course of action to address any concerns of the auditor.
- The Audit Committee should review the auditor's engagement letter. The Audit Committee is responsible for the evaluation of the auditor, and is responsible for recommending a change in auditor, or the retention of the existing auditor to the Finance and Audit Committee.

Scope of Independent Auditor's Responsibilities

The auditor is ultimately accountable to Convocation and through the Audit Committee to the Finance and Audit Committee.

The auditor's basic responsibility is to express an independent opinion on the Law Society's annual financial statements.

In addition to the auditor's responsibility under generally accepted auditing standards the auditor will:

- Discuss with the Audit Committee, the auditor's judgements about the quality (relevance, reliability, comparability, understandability), not just the acceptability of the Law Society's accounting principles, and lead discussion on the subjective issues reflected in the financial reports.
- Discuss such matters as:
  - illegal acts;
  - significant transactions that are inconsistent with the ordinary course of business;
  - unusual actions which significantly increase the risk of loss to the Law Society;
  - actions which might cause embarrassment to the Law Society.

Scope of Management's Responsibilities

Management has primary responsibility for:

- The preparation, integrity consistency and fair presentation of financial statements in accordance with generally accepted accounting principles;
- The design and implementation of an effective system of internal control;
- The management of the Law Society's affairs in compliance with applicable laws, regulations, standards of conduct and the Law Society's Governance Policies including Executive Limitations;
- Acting as a resource for the Audit Committee. The Chief Financial Officer will provide the primary support to the Audit Committee.

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

(1) Copy of the General Fund draft audited financial statements for the year ended December 31, 1999. (Tab 1, pages 6 - 20)

(2) Copy of the draft audited financial statements for the Lawyers Fund for Client Compensation for the year ended December 31, 1999. (Tab 2, pages 21 - 28)

(3) Copy of the draft audited financial statements for the Errors and Omissions Insurance Fund for the year ended December 31, 1999. (Tab 3, pages 29 - 47)

(4) Copy of the Capital Expenditures and Sources of Funds for 2000. (Tabs 4 & 5 pages 48 - 67)

(5) Copy of three applications to the J. Shirley Denison Fund (in camera). (Tab 6, pages 68 - 83)

(6) Copy of the 1999 Auditor's Management Letter - Confidential. (in camera) (Tab 7, pages 84 - 90)

(7) Copy of the Audit Committee Terms of Reference. (Tab 8, pages 91 - 93)

(8) Copy of the Investment Compliance Report for the three months ended December 31, 1999.
(Tab 9, pages 94 - 99)

Draft General Fund Financial Statements for the year ended December 31, 1999

It was moved by Mr. Krishna, seconded by Mr. Crowe that the Draft General Fund Financial Statements for the year ended December 31, 1999 be approved.

Carried

Draft Lawyers Fund for Client Compensation Financial Statements for the year ended December 31, 1999

It was moved by Mr. Krishna, seconded by Mr. Crowe that the Draft Lawyers Fund for Client Compensation Financial Statements for the year ended December 31, 1999 be approved.

Carried

Appointment of Auditors for year ended December 31, 2000

It was moved by Mr. Krishna, seconded by Mr. Crowe that Arthur Anderson LLP be reappointed as auditor for the year ended December 31, 2000.

Carried

Draft Errors and Omissions Insurance Fund Financial Statements for the year ended December 31, 1999

Mr. Murray presented the Draft Errors and Omissions Insurance Fund Financial Statements.

It was moved by Mr. Krishna, seconded by Mr. Crowe that the Draft Errors and Omissions Insurance Fund Financial Statements for the year ended December 31, 1999 be approved.

Carried

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RESUMPTION OF THE FINANCE & AUDIT COMMITTEE REPORT

Information Systems and Facilities Capital Program in 2000

It was moved by Mr. Krishna, seconded by Mr. Crowe that the capital expenditures and sources of funds for 2000 as set out in the Report be approved.

Carried

Mr. Swaye thanked the Finance staff for their work.

LPIC REPORT

Mr. Murray reported on the Lawyers Professional Indemnity Company's Annual Report and Statements.

(Copy of Report in Convocation file)

DRAFT MINUTES OF CONVOCATION

It was moved by Ms. Pilkington, seconded by Mr. Bindman that the following Draft Minutes be adopted:

February 18th, March 23rd, 24th and 30th, 2000 and the Call to the Bar Ceremonies on February 15th, 17th, 24th and 25th, 2000.

Carried

MOTION - LAW SOCIETY MEDAL COMMITTEE

It was moved by Mr. Ruby, seconded by Mr. MacKenzie that the bencher members of the Law Society Medal Committee be: Nancy Backhouse, Heather Ross, Niels Ortved and Greg Mulligan.

Carried

REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Ms. Cronk presented the Report of the Professional Development and Competence Committee for approval by Convocation.

Professional Development & Competence Committee
April 13, 2000

Report to Convocation

Purpose of Report: Decision Making
Information

Prepared by the Policy Secretariat
(Sophia Sperdakos 947-5209)

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APPENDIX 1 - BY-LAW 28 (FRENCH VERSION)

APPENDIX 2 - APPLICATION FOR CERTIFICATION IN CONSTRUCTION LAW

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on April 13, 2000. Committee members in attendance were Eleanore Cronk (Chair), Earl Cherniak (Vice-Chair), Ron Manes (Vice-Chair), Stephen Bindman, Kim Carpenter-Gunn, Seymour Epstein, Dino DiGiuseppe, Greg Mulligan, Judith Potter, and Bill Simpson. A newly- appointed lay bencher, Robert Lalonde also attended. Susan Elliott attended a portion of the meeting. Staff in attendance were Carol Austin, Bob Bernhardt, Scott Kerr, Janine Miller, Dolly Konzelmann, Lucy Rybka-Becker, Felecia Smith, Sophia Sperdakos, and Paul Truster.

2. The Committee is reporting on the following matters:

Policy - For Decision
- Virtual Law Library - Pilot Project Funding
- French Version of By-Law 28

Information
- Progress Report on Consultation Plan Regarding Implementing the Law Society's Competence Mandate
- Report on Specialist Certification Matters Finalized by the Working Group of the Committee on March 7, 2000 and Approved in Committee on March 16, 2000
- Report on Specialist Certification Matters Finalized by the Working Group of the Committee on April 3, 2000 and Approved in Committee on April 13, 2000

POLICY - FOR DECISION

VIRTUAL LAW LIBRARY - PILOT PROJECT FUNDING

1. The Federation of Law Societies has proposed the establishment of a planning team to prepare a business plan on the costs of the creation of a national virtual law library. Each Law Society has been requested to contribute $2 per member. The Law Society of Upper Canada has been requested to contribute approximately $50,000.

2. On March 23, 2000 Convocation approved the establishment of such a team, and the Law Society's participation on it, subject to further discussion about the source of funding for the planning team and of the Law Society's contribution. The libraries working group was asked to provide its views on whether the $50,000 should be funded out of a reserve fund held for the county libraries ("library reserve fund"). Convocation's approval in principle was also subject to the outcome of any discussions the Treasurer may have with the Federation of Law Societies, concerning whether the funding for the virtual library planning team should come from a Federation of Law Societies surplus.

3. The Committee received a report from Susan Elliott, the Chair of the libraries working group. The working group considered that there are three possible sources for the money requested from the Law Society of Upper Canada to fund its requested share of the pilot project costs (ie. $2 per member):

a) using money from Federation of Law Societies surplus to fund the pilot project. The impact of this would be that none of the law societies would contribute funds from their own resources;
b) levying Law Society of Upper Canada members a $2 amount per member in the 2001 budget, with funds being borrowed from the 2000 fiscal year funds as a loan; and
c) allocating $50,000 from the library reserve fund, to fund the project.

4. The libraries working group is of the view that, although there are library-related issues involved in the development of the virtual law library, many of the developmental issues are technologically-related and are better suited to discussion in the Technology Task Force. It is of the view that, from this point forward, primary consideration of virtual law library issues should be considered by the Technology Task Force, with input from the Professional Development and Competence Committee and its libraries working group.

5. On the issue of funding the pilot project, the libraries working group did not comment on the issue of the Federation of Law Societies surplus. With respect to the other two funding options the working group is of the view that it would be more appropriate to fund the pilot project by way of a $2 levy of the membership, rather than by allocating $50,000 from the library reserve fund.

6. The library reserve fund consists of monies designated for county library purposes. While the library working group is of the view that the virtual law library initiative is highly worthwhile, it is also of the view that it has application to all members, not just those who are members of county law associations and libraries. Further, it is not simply a library matter, but is, in large measure, a technology initiative. As such contribution toward the pilot project should come from all the members.

7. The Professional Development and Competence Committee has considered the library working group's views and recommendation and agrees with it, subject to any discussions the Treasurer may have had with the Federation of Law Societies concerning alternate sources of funding through the Federation's surplus.

Request to Convocation

8. Having approved, in principle, the Law Society's participation in a virtual law library pilot project, Convocation is now requested to consider, and if appropriate, approve the funding of the Law Society's contribution to the pilot project by way of a $2 per member fee in the 2001 budget. Funds would be borrowed from those available in the fiscal year 2000 to be paid back out of the 2001 budget.

9. Convocation's approval would be subject to any discussions the Treasurer may have had with the Federation of Law Societies concerning alternate sources of funding through the Federation's surplus.

BY-LAW 28 - FRENCH TRANSLATION

1. By-Law 28 [Requalification] was made by Convocation on October 29, 1999 and amended by Convocation on December 10, 1999. A French version of the by-law has now been prepared and is set out in Appendix 1.

Request to Convocation

2. Convocation is requested to approve the motion set out in Appendix 1 to further amend By-law 28 by adding the French version:

FOR INFORMATION

CONSULTATION PLAN ON COMPETENCE REGARDING IMPLEMENTING THE LAW SOCIETY'S COMPETENCE MANDATE

1. On March 30, 2000 Convocation approved the distribution to the profession of a document entitled *Implementing the Law Society's Competence Mandate: A Consultation Document.*

2. The document will be mailed to members shortly, with an enclosed survey that members are being requested to complete and return to the Law Society in a self-addressed envelope by June 15, 2000.

3. The Committee is discussing the additional components to be included in a consultation plan. The Chair will provide Convocation with a progress report on those discussions.

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON MARCH 7, 2000 AND APPROVED IN COMMITTEE ON MARCH 16, 2000

1. The Professional Development and Competence 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:

Civil Litigation:	Thomas S. Kent (of Vaughan) Michael S. Teitelbaum (of Toronto) P. James Wallbridge (of Timmins)
Environmental Law:	Larry Cobb (of Toronto)
Intellectual Property Law:	Andrea Rush (of Toronto)

2. The Professional Development and Competence Committee is please to report final approval of the following lawyers' applications for re-certification for an additional five years, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation:	John Paul Bannon (of Mississauga) Peter K. Boeckle (of Toronto) John Cannings (of Toronto) Desmond H. Dixon (of Toronto) Edward M. Futerman (of Toronto) Morton Greenglass (of Toronto) Richard F. L. Rose (of Toronto) Robert Roth (of Toronto) Mark Scharf (of Barrie) Jack S. Shinehoft (of Hamilton) Gary W. Tranmer (of Toronto)

Criminal Law:	Donald B. Bayne (of Ottawa) J. Ronald Charlebois (of St. Catharines) Patrick S. Duffy (of Toronto) Michael D. Edelson (of Ottawa) Damien R. Frost (of Toronto) Michelle K. Fuerst (of Toronto) Aan D. Gold (of Toronto) Michael H. Gordner (of Windsor) Brian H. Greenspan (of Toronto) David A. Harris (of Oakville) J. David Hobson (of Newmarket) Irwin Koziebrocki (of Toronto) Gilbert L. Labine (of Thunder Bay) J. Michael Lomer (of Toronto) Norman Peel (of London) Gregory M. Read (of Hamilton) Richard A. Reimer (of Pembroke) Mark J. Sandler (of Toronto) Rod Sellar (of Ottawa) Louis D. Silver (of Toronto) George P. Smith (of Brampton) William M. Trudell (of Toronto) Keith E. Wright (of Toronto)
Family Law:	C. Richard Buck (of Kitchener)
Intellectual Property Law:	G. Alexander Macklin (of Ottawa)

3. The Committee is pleased to report approval of the addition of Barbara L. Jackman as a member of the Immigration Law Specialty Committee to replace Prof. William H. Angus who retired in the summer of 1999. The Professional Development and Competence Committee expresses thanks to Professor Angus for his contributions to the Specialty Committee's work. The membership on the Immigration Law Specialty Committee is as follows:

Mendel Green (of Toronto)
Marshall Drukarsh (of Toronto)
Howard Greenberg (of Toronto)
Barbara Jackman (of Toronto)
Urszula Kaczmarczyk (of Toronto)
Roderick McDowell (of Fort Erie)
Cecil Rotenberg (of Toronto)
Lorne A. Waldman (of Toronto)

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON APRIL 3, 2000 AND APPROVED IN COMMITTEE ON APRIL 13, 2000

1. The Professional Development and Competence 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:

Civil Litigation:	Robert J. Nightingale (of Simcoe) Wolfrum U. Tausendfreund (of Belleville)
Immigration Law:	David L. P. Garson (of Toronto) Robert R. Young (of Toronto)
Labour Law:	Stephen Bird (of Ottawa)

2. The Professional Development and Competence Committee is please to report final approval of the following lawyers' applications for re-certification for an additional five years, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation:	Lawrence A. Berg (of Ajax) Brian J. Brock (of Toronto) Raymond G. Colautti (of Windsor) Hillel David (of Toronto) Igor Ellyn (of Toronto) John W. Erickson (of Thunder Bay) Irwin W. Fefergrad (of Toronto) Roderick G. Ferguson (of Midland) Norman J. Freedman (of Toronto) George S. Gage (of Hamilton) Frank K. Gomberg (of Toronto) Mark S. Hayes (of Toronto) James A. Hodgson (of Toronto) Roger T. Hughes (of Toronto) Paul M. Iacono (of Toronto) Don H. Jack (of Toronto) Gregory P. Kelly (of Ottawa) John J. Kelly (of Kitchener) Walter T. Langley (of Ottawa) Rudolph Lobl (of Toronto) Michael McGowan (of Toronto) Crawford M. MacIntyre (of Toronto) John A. McLeish (of Toronto) James E. McNamara (of Ottawa) J. Brian Parnega (of Ottawa) Kenneth R. Peel (of Toronto) Harvin Pitch (of Toronto) Nancy Ralph (of Toronto) John A. Soule (of Hamilton)
Immigration Law:	David A. Bruner (of Toronto) Peter Rekai (of Toronto) Robin Seligman (of Toronto)

3. The Committee is pleased to report approval of Elizabeth Elliott (of Ottawa) and Timothy Sinnott (of Toronto) as members of the Intellectual Property Specialty Committee to replace David Morrow (of Ottawa) and Carol Hitchman (of Toronto) whose terms have expired. The Professional Development and Competence Committee expresses thanks to Mr. Morrow and Ms. Hitchman for their contributions to the Specialty Committee's work. The membership on the Intellectual Property Specialty Committee is as follows:

John Macera (Chair) (of Ottawa)	(member until 09/00)
Donald Cameron (of Toronto)	(member until 09/01)
Diane Cornish (of Ottawa)	(member until 09/00)
Elizabeth Elliott (of Ottawa)	(member until 04/03)
Janet Fuhrer (of Ottawa)	(member until 09/01)
Scott Jolliffe (of Toronto)	(member until 09/00)
Greg Piasetzki (of Toronto)	(member until 09/01)
Timothy Sinnott (of Toronto)	(member until 04/03)

4. The Committee is pleased to report approval of the construction law specialty application materials, set out in Appendix 2, and the membership of the new Construction Law Specialty Committee, as the final steps in the implementation of the construction law specialty area.

Stephen Tatrallyay (of Toronto)	(member until 05/02)
Stanley Naftolin (of Toronto)	(member until 05/02)
Marc Doucet (of Ottawa)	(member until 05/02)
Anne McNeely (of Toronto)	(member until 05/02)
Anna Esposito (of Mississauga)	(member until 05/03)
Joseph Gottli (of St. Catharines)	(member until 05/03)
Janine Kovach (of Toronto)	(member until 05/03)
Robert Beaumont (of Toronto)	(member until 05/03)
Gregory Hemsworth (of Woodbridge)	(member until 05/03)

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 28
[REQUALIFICATION]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 28, 2000

MOVED BY

SECONDED BY

THAT By-Law 28 [Requalification] made by Convocation on October 29, 1999 and amended by Convocation on December 10, 1999 be further amended by adding the following French version:

RÈGLEMENT ADMINISTRATIF N^{O} 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 de secrétaire

2. Une ou un employé du Barreau qui occupe le poste d'avocat-conseil ou d'avocate-conseil du Comité chargé de la compétence professionnelle peut, sous réserve des modalités édictées par le ou la secrétaire, exercer ses pouvoirs et fonctions conformément à l'article 49.1 de la *Loi sur le Barreau* et au présent règlement administratif.

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.

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

L. 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.

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, au plus tard 60 jours 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 à l'emploi d'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.

APPENDIX 2

THE LAW SOCIETY OF UPPER CANADA
SPECIALIST CERTIFICATION PROGRAM

APPLICATION FOR CERTIFICATION IN
CONSTRUCTION LAW

This application must be clearly typed or printed in ink. Please refer to the Standards for Certification when completing this form. If more space is needed, attach additional sheets. Please include the non-refundable application fee with your application. A confirmation indicating receipt of your application will be mailed to you. Completed applications should be submitted to:

The Law Society of Upper Canada
Specialist Certification Program
130 Queen Street West
Osgoode Hall
Toronto, Ontario M5H 2N6
(416) 947-3920

A. PERSONAL INFORMATION:

1. Name: _____
Firm Name: _____
Address: _____
_____
City: _____ Province: _____ Postal Code: _____
Phone: _____ Fax: _____

2. Law Society Member Number: _____

3. Application Fee enclosed ☐ $321.00 (please make cheques payable to Law Society of Upper Canada and indicate "Specialist Certification Program" on cheque)

B. LEGAL BACKGROUND:

1. Name of College or Law School | Date From | Date To | Degree Received

_____ _____ _____ _____

_____ _____ _____ _____

_____ _____ _____ _____

2. List all provinces/states/jurisdictions in which you are now or have ever been licensed to practice.

Jurisdiction	Date Admitted	Still Licensed? Y/N
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Years in the Full Time Practice of Law | Percentage of Time Devoted to Construction Law

a. in Ontario

_____ _____

_____ _____

_____ _____

b. in other jurisdictions (specify)

_____ _____

_____ _____

_____ _____

4. Have you ever been disbarred, suspended, reprimanded or otherwise disciplined by the Law Society of Upper Canada in the past seven years? Are you aware of any unresolved complaints against you? Or, in the past five years, have you been a candidate for the Law Society's Practice Review Programme? YES or NO. If YES, please explain:

_____

_____

_____

Please tell us the number of claims which you reported to LPIC in the last seven years preceding the date of this application: _____? How many of those claims, if any, resulted in a payment: _____

C. EMPLOYMENT HISTORY: Please list all places of employment (within the legal profession) including firm articled with:

a.

Employer	Address
Title	
Dates started and ended	

b.

Employer	Address
Title	
Dates started and ended	

c.

Employer	Address
Title	
Dates started and ended	

D. CONSTRUCTION LAW EXPERIENCE: During the five years of recent experience defined in Section 4 of the Standards, describe how you meet the requirements of substantial involvement in at least six of the following categories. You are required to demonstrate as having performed at least fifty of the tasks enumerated below.

1. DEVELOPMENT
   1. Represent either party in negotiating/drafting a property development contract.
   2. Represent either party in negotiating/drafting an access easement agreement.
   3. Represent either party in negotiating/drafting an access licence agreement.
   3. Represent either party in negotiating/drafting a servicing agreement.
   4. Advise on permitting issues.
   5. Advise on project structure.
   6. Represent either party in negotiating/drafting a demolition contract.
   7. Represent either party in negotiating/drafting a joint venture agreement.
   8. Represent either party in negotiating/drafting a concession agreement.
   9. Represent either party in negotiating/drafting a consortium agreement.
   10. Represent either party in negotiating/drafting a confidentiality agreement.
   11. Advise any Canadian participant on international projects.

2) FINANCING

   1. Represent owner/developer in obtaining financing for development.
   2. Represent either party in negotiating/drafting a loan agreement and security documents to provide financing for development.
   3. Represent either party in negotiating/drafting a construction loan agreement and security documents and registering a construction-financing mortgage.
   4. Represent either party on construction financing throughout the construction of a project.
   5. Represent a lender's engineer in negotiating/drafting a monitoring agreement.

6. Represent a consultant in negotiating/drafting the consultant's certificate to be delivered to the lenders.
7. Provide an enforceability opinion with respect to construction documents.
8. Represent any party in negotiating/drafting an assignment agreement.

3) TENDERS & PROPOSALS

1. Represent an owner in preparing a request for tenders including the invitation to tenders, instructions to tenders and a form of tender and/or advise an owner, consultant or sub-consultant in regard to the preparation of same.
2. Represent a tenderer in responding to a request for tenders.
3. Represent an owner in preparing a request for qualifications.
4. Represent a party in responding to the request for qualifications.
5. Represent an owner in preparing a request for proposals.
6. Represent a party in responding to a request for proposals.
7. Represent either party in interpreting tender or proposal requirements.
8. Represent either party in a dispute (negotiating, arbitration and/or litigation) about an unsuccessful tender.

4) DESIGN/PROFESSIONAL SERVICES

1. Represent either party in negotiating/drafting an architects agreement.
2. Represent either party in negotiating/drafting an engineers agreement.
3. Represent either party in negotiating/drafting an interior design agreement.
4. Represent either party in negotiating/drafting a project management agreement.
5. Represent either party in negotiating/drafting a sub-consultant agreement.
6. Represent either party in negotiating/drafting a design-build agreement or engineering, procurement and construction contract.
7. Represent either party in negotiating/drafting a program management agreement.
8. Represent either party in interpreting any of the above-noted design/professional services agreement.
9. Advise a party with respect to the application of the *Professional Engineers Act.*
10. Advise a party with respect to the application of the *Architects Act.*
11. Represent an architect or the applicable architects' association in a discipline hearing.
12. Represent an engineer or the applicable engineers' association in a discipline hearing.
13. Advise either party with respect to intellectual property rights related to design drawings.

5) PROCUREMENT AND CONSTRUCTION

1. Represent either party in negotiating/drafting/advising as to the meaning of language in a stipulated price general contract.
2. Represent either party in negotiating/drafting/advising as to the meaning of language in a unit price general contract.
3. Represent either party in negotiating/drafting/advising as to the meaning of language in a cost-plus general contract.
4. Represent either party in negotiating/drafting/advising as to the meaning of language in a material supply agreement.
5. Represent either party in negotiating/drafting/advising as to the meaning of language in an equipment supply agreement.
6. Represent either party in negotiating/drafting/advising as to the meaning of language in an off-site storage agreement.

7. Represent either party in negotiating/drafting/advising as to the meaning of language in a construction management contract.
8. Represent either party in negotiating/preparing/advising as to the meaning of language in a construction subcontract.
9. Advise parties with respect to the application of NAFTA including importation of employees and service representatives.

6) INSURANCE

1. Advise any party with respect to liability insurance.
2. Advise any party with respect to errors and omissions insurance.
3. Advise any party with respect to property insurance.
4. Advise any party with respect to wrap-up insurances
5. Represent any party in an insurance claim.

7) LABOUR

1. Advise any party on the operation of the *Ontario Occupational Health and Safety Act.*
2. Represent a party in construction industry labour relations issues including: a work jurisdiction dispute between two or more trades, a grievance under a Provincial Collection Agreement, union and non-union construction sites, a sub-contracting dispute.

8) VIOLATIONS OF REGULATORY REQUIREMENTS

1. Represent a person/corporation charged with violation of the *Competition Act.*
2. Represent a builder charged in violation of municipal by-laws (eg. constructing without building permit).
3. Represent a person/corporation charged with a violation of the Construction Regs./O.H.S.A.
4. Represent a builder/developer charged with a violation of the *Environmental Protection Act.*
5. Represent a builder/developer faced with responsibility for a site cleanup as a result of a negative environmental assessment.

9) POST-CONSTRUCTION

1. Represent either party in negotiating/drafting an extended warranty agreement.
2. Represent either party in negotiating/drafting a maintenance of equipment agreement.
3. Advise any party on the termination of a contract or sub-contract.

10) SECURITY FOR PAYMENT AND PERFORMANCE

1. Represent an indemnitor re a corporation obtaining bonding on a construction project.
2. Represent a construction company obtaining bonding for a project.
3. Represent an owner seeking bonding for a project.
4. Advise on performance bonds.
5. Advise on labour and material payment bonds.
6. Advise on indemnity agreement.
7. Advise on dual obligee riders.
8. Represent a party in negotiating/drafting a performance bond.
9. Represent a party in negotiating/drafting a labour and material payment bond.
10. Represent a party in negotiating/drafting an indemnity agreement.
11. Represent a party in negotiating/drafting a dual obligee rider.

12. Prepare and deliver a notice of claim under a Labour and Material Payment Bond.
13. Represent a claimant in an action to enforce a claim under a Labour and Material Payment Bond.
14. Represent a bonding company in an action to enforce a claim under a Labour and Material Payment Bond.
15. Participate in the trial of an action to enforce a claim under a Labour and Material Payment Bond.
16. Represent an obligee giving a notice of a default under a Performance Bond.
17. Represent the surety in circumstances where notice of the principal's default under a Performance Bond has been given.
18. Represent the principal where notice of default under a Performance Bond has been given.
19. Represent the indemnitor in circumstances either of default under a Performance Bond or of claim(s) under a Labour and Material Payment Bond.
20. Advise on holdback obligations pursuant to the *Construction Lien Act*.
21. Advise either party in negotiating/drafting a parent company guarantee.
22. Advise any party in negotiating/drafting a letter of credit.
23. Represent any party in negotiating/drafting international performance guarantees.

11) TRUST CLAIMS

1. Represent a Plaintiff in a breach of trust action.
2. Represent an individual Defendant in a breach of trust action.
3. Represent a corporate or bank Defendant in a breach of trust action.
4. Participate in the trial of a breach of trust action.
5. Provide assistance to the Court in the determination of the validity and quantum of claims against trust funds under and pursuant to an appointment in that respect by Court Order.
6. Prepare materials and attend a Court motion for directions re trust funds under Section 66 of the *Construction Lien Act*.
7. Prepare materials and attend on a motion for the appointment of a lien trustee pursuant to Section 68 of the *Construction Lien Act*.

12) DISPUTES

1. Represent a Plaintiff in an action for damages for defective construction.
2. Represent a Defendant in an action for damages for defective construction.
3. Represent a Plaintiff or Defendant in an action for delay.
4. Represent a Plaintiff or Defendant in action for breach of contract.
5. Represent a party in a bankruptcy or insolvency.
6. Represent a Plaintiff or Defendant in a warranty claim.
7. Represent a Plaintiff or Defendant in a negligence claim.
8. Represent a claim in an arbitration of a construction dispute.
9. Represent any party in negotiating/drafting a settlement agreement.
10. Represent a party at the mediation or arbitration of a construction dispute.
11. Have acted as mediator or arbitrator of a construction dispute.
12. Advise on the creation of, or represent a party in an appearance before, a Dispute Resolution Board such as CDAB.
13. Advise on or assist in the preparation of a Teaming Agreement, Alliancing Agreement or Partnering Agreement.

13) LIENS

1. Provide Section 19 notice to a landlord of an improvement to be made for a tenant.
2. Respond to a Section 19 notice on behalf of an owner/landlord.
3. Prepare and deliver a request for information under Section 39.
4. Respond to a request for information under Section 39.
5. Prepare and register a Claim for Lien.
6. Prepare and serve a Claim for Lien in circumstances where Lien does not attach to land.
7. Bring a motion to vacate a Claim for Lien on posting security - uncontested (Section 44(1)).
8. Appear on a motion to vacate a claim by posting security - contested (Section 44(2)).
9. Appear on a motion to discharge a Claim for Lien without the posting of security.
10. Attend on a cross-examination on an Affidavit of Verification.
11. Commence an action to enforce a Claim for Lien.
12. Prepare and register a Certificate of Action.
13. Attend on a motion for directions in a Lien action.
14. Attend at a settlement meeting in a Lien action.
15. Obtain a Judgment referring a Lien action to the Master for trial.
16. Represent an "Owner" Defendant in a Lien action.
17. Represent a general contractor Defendant in a Lien action.
18. Represent a subcontractor Defendant in a Lien action.
19. Attend at discoveries to a Lien action.
20. Appear on a motion for the reduction or return of security.
21. Appear on a motion to discharge a Lien for failure to comply with Section 37.
22. Appear as counsel at the trial of a Lien action.
23. Appear as counsel at a reference of a Lien action.
24. Bring a motion to oppose confirmation of a Master's Report to a Lien action.
25. Perfect an appeal from a Judgment in a construction-related action.
26. Appear on an appeal in a construction-related matter.
27. Bring proceedings to enforce a Lien Judgment by the sale of the land.
28. Bring proceedings to enforce a Lien Judgment from the proceeds of a Lien Bond.
29. Bring proceedings to enforce a personal Judgment in a construction-related action.

E. CONTINUING LEGAL EDUCATION / PROFESSIONAL DEVELOPMENT: For purposes of meeting the requirements of Section 7 of the Standards, please list your involvement in Bar Admission, CLE and other programs or activities directly related to Construction Law.

Name/Description of Course	Registrant or Participant	Date

Other Professional Development (refer to Standards):

F. CURRENT MEMBERSHIPS IN PROFESSIONAL ORGANIZATIONS:

G. OTHER QUALIFICATIONS: Include any postgraduate degrees with the educational institution and date, or any other factors which you consider relevant to certification.

H. REFERENCES: Since the Standards require responses from four references, please provide six for us to contact (including at least two Specialist names) to allow for non-responding references. See Standards for list of disallowed references. All replies will be held in confidence.

Name:
_____

Address:
_____

_____

Name:
_____

Address:
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_____

Name:
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Address:
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Name:
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Address:
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Name:
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Address:
_____

_____

For office use only

Certified In P/D/I* Date Received

Unsolicited References Received? _____

* P=Provided D=Declined I=Incomplete

I. DECLARATION:

I, _____, am a member in good standing of the Law Society of Upper Canada and do solemnly declare that I meet the requirements for certification as a Specialist in CONSTRUCTION LAW in all respects according to the Standards for Certification of Specialists provided by the Law Society of Upper Canada.

I authorize the Law Society of Upper Canada to make confidential inquiries relevant to my application, including inquiries into all Law Society records and records of the Lawyers' Professional Indemnity Company (LPIC) regarding my claims history, if any. Accordingly, I direct LPIC to release to the Law Society all information and material it requests about any filed claims in which I am named. [italics added]

I am prepared to attend for an interview in connection with my application if requested to do so by the Construction Law Specialty Committee or the Specialist Certification Board.

If an interview is required, I wish to be interviewed by a panel of certified specialists from outside my geographic district:

YES_____ NO_____

(I understand the the Law Society of Upper Canada will make every reasonable effort to arrange interviews in my geographic district.)

I authorize the Law Society of Upper Canada to publish my name in the *Ontario Reports* as an applicant for Specialist status in CONSTRUCTION LAW.

I acknowledge that all materials and information provided with respect to my application shall be held in confidence by the Law Society and shall not be made available or disclosed to me or any other person except as may be required for purposes of my application. I release any person who has provided reference information to the Law Society at my request from any claims whatsoever.

In making this DECLARATION, I acknowledge that I am obliged to notify the Law Society promptly, if I cease to meet the minimum standards at any time during the currency of the Certificate.

I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act.*

DECLARED before me at the

_____ of _____

in the _____ of _____

this _____ day of _____, 19____

_____
Signature of Commissioner, etc.

_____
Name (printed)

_____
Signature of Declarant

THE LAW SOCIETY OF UPPER CANADA
SPECIALIST CERTIFICATION PROGRAM

STATEMENT OF REFERENCE

This reference form should be clearly typed or printed in dark ink. Please refer to the Standards for Certification when completing this form. If more space is needed, attach additional sheets. Your cooperation in completing this form promptly is greatly appreciated. The completed form should be submitted to:

The Law Society of Upper Canada
Specialist Certification Program
130 Queen Street West
Osgoode Hall
Toronto, Ontario M5H 2N6
(416) 947-4062 / fax (416) 947-3926

This Statement of Reference Concerns the Application of _____ as a

CONSTRUCTION LAW SPECIALIST.

1. Your Name: _____

2. Firm Name: _____

3. Your Position in the Firm: _____

4. Briefly describe the nature and extent of your practice:

_____

_____

_____

5. I have been acquainted with the applicant since _____.
(year)

6. State how well you know the applicant and what opportunity you have had to form an opinion of the applicant's knowledge, skills and proficiency in the practice of construction law. To your knowledge, in what areas of construction law does the applicant practice? Where possible, give percentages.

_____

_____

_____

_____

7. Have you referred, or would you refer, a construction law matter of substance to this lawyer?

Yes _____ No _____

If not, why not?

_____

_____

_____

_____

8. Are there any incidents in the applicant's law practice which, in your opinion, reflect a lack of competence in the practice of construction law?

Yes _____ No _____

If so, please describe each such incident:

_____

_____

_____

_____

9. State your opinion of the applicant's ability to handle, resolve through negotiation, try and/or appeal a serious or complex construction law dispute:

_____

_____

_____

_____

_____

10. Please rate the applicant as to the criteria listed below in comparison with all other construction law practitioners with whose practices you are familiar, by checking the appropriate space:

	Outstanding	Above Average	Average	Below Average	Unknown
Preparation					
Resourcefulness					
Knowledge of substantive construction law					
Knowledge of construction law practice					
Effectiveness of oral presentations					
Consideration of clients' interests					
Reputation in the legal community for ability to conduct a construction law case					
Reputation in the legal community for ethical conduct					
Drafting ability					
Negotiation skills					
Ability to conduct a construction law case					

11. Do you have any further comments which you feel may be helpful in the assessment of this applicant?

_____

_____

_____

_____

_____

_____

12. In your opinion, does the applicant have the skill, aptitude and experience in Construction Law to justify identifying the applicant to the public as a certified Specialist?

_____ YES _____ NO _____ UNKNOWN

I HEREBY CERTIFY THAT THE INFORMATION GIVEN IN THE FOREGOING ANSWERS IS, WHERE GIVEN FROM PERSONAL KNOWLEDGE, CORRECT AND, WHERE GIVEN FROM INFORMATION RECEIVED FROM OTHERS, HAS BEEN OBTAINED FROM SOURCES WHICH I BELIEVE TO BE RELIABLE, AND HAS NOT BEEN SECURED FROM THE APPLICANT OR THE APPLICANT'S FAMILY.

I AM GIVING THIS INFORMATION BASED UPON YOUR ASSURANCES THAT SAID INFORMATION WILL BE KEPT CONFIDENTIAL, BUT I UNDERSTAND THAT A COMPOSITE SUMMARY OF ALL ASSESSMENTS RECEIVED MAY BE PROVIDED TO THE APPLICANT WITHOUT IDENTIFYING THEIR SOURCE.

A COPY OF THIS STATEMENT OF REFERENCE SHOULD NOT BE SENT TO THE APPLICANT.

_____ (date) _____ (signature)

.....

Virtual Law Library - Pilot Project Funding

It was moved by Ms. Cronk, seconded by Mr. Millar that the funding of the Law Society's contribution to the pilot project be by way of a $2 per member fee in the 2001 budget.

Not Put

It was moved by Mr. Krishna, seconded by Mr. Swaye that $50,000 be allocated immediately out of the reserve fund for the Pilot Project.

Carried

MOTION - APPOINTMENTS

It was moved by Ms. Ross, seconded by Ms. Carpenter-Gunn that Adrianna Doyle, Gerry Sadvari, Judy Shea and Tamara Stomp be appointed to the Family Rules Committee pursuant to s. 67 (2) (k) of the Courts of Justice Act, the term of appointment to expire on October l, 2002.

Carried

NOTICE OF MOTION re: Iqbal Raad

Mr. Wright presented his motion regarding the murders of Iqbal Raad, one of two senior lawyers defending Pakistan's deposed prime minister, Mr. Iqbal's office assistant and guest and the recent death threats directed at human rights lawyers Asma Jahangir and Hina Jilani and the murder of their client.

It was moved by Mr. Wright, seconded by Mr. Copeland and Ms. Puccini that the Law Society convey to the appropriate authorities in Pakistan with copies to the appropriate parties in the United Nations, the Canadian Government, and the Lawyer to Lawyer Network:

1. Convocation's dismay over the murder of Iqbal Raad and Mr. Iqbal's office assistant and guest.

2. Convocation's dismay over the death threats directed at lawyers Asthma Jahangir and Hina Jilani and the murder of their client in their offices; and

3. Convocation's hope that the Pakistani authorities will take all actions necessary:

   a) to protect lawyers and their staff in the carrying out of their duties;

   b) to bring the perpetrators of these criminal acts to justice; and

   c) to reaffirm their commitments to the rule of law and to the United Nations Declaration on Human Rights Defenders and the United Nations Basic Principles on the Role of Lawyers.

Carried

PROPOSED DRAFT RULES OF PROFESSIONAL CONDUCT

Mr. MacKenzie gave a brief introduction to the proposed Rules and referred to his memorandum which identified the proposed rules on which major policy decisions needed to be made.

Report to Convocation
April 28, 2000

Final Report of the Task Force on
Review of the Rules of Professional Conduct

Purpose of Report: Decision

TABLE OF CONTENTS

EXECUTIVE SUMMARY

In June, 1998, Convocation established a Task Force to review the Law Society's Rules of Professional Conduct. The Task Force's mandate was to examine the rules and, if necessary, redraft them in a way that would continue to protect the public and to provide guidance to lawyers while also facilitating the creative practice of law and assisting the profession to remain competitive. The members of the Task Force are Gavin MacKenzie and Derry Millar (Co-Chairs), Justice John I. Laskin of the Court of Appeal for Ontario, and Heather Ross. Jim Varro served as Secretary to the Task Force, which was also assisted by Stephen Traviss, former Senior Counsel - Professional Conduct at the Law Society. Paul Perell of Weir & Foulds was engaged to do the redrafting.

In April 1999, the Task Force presented proposed rules to Convocation with a report explaining the major changes to the existing rules. That report highlighted the results of the 15 meetings held by the Task Force and noted the receipt of useful and thoughtful responses from members of the profession, legal organizations and Law Society staff, largely in response to a call for input published in the fall of 1998.

Convocation requested that the Task Force seek additional submissions on the proposed rules from the profession. Notices inviting such submissions were published between May and October 1999 and the proposed rules were made available on the Society's website or in hard copy on request. From May 1999 to January 2000 the Task Force met on another 17 occasions to review the many submissions received and to consider the results of additional research conducted on behalf of the Task Force. A revised proposed draft of the rules is the result of those deliberations.

As it noted in its April report, the Task Force re-organized the rules to specify lawyers' professional obligations in the context of relationships between lawyers and others (clients, other lawyers and the administration of justice). The re-organization enabled the Task Force to group rules dealing with similar subjects, to establish a more rational distinction between rules (which are mandatory) and commentaries (which are explanatory and advisory), and to eliminate redundancies.

The policy issues identified by the Task Force, members of the profession, and other committees, task forces and staff in the course of the review led to substantive changes in the text of some of the rules, including the deletion of some rules, amendments to current language, and the addition of new rules.

The most significant changes recommended by the Task Force, which include those made after April 1999, may be summarized as follows:

1. Citation and Interpretation (Rule 1)

Various terms, including "associate", "conduct unbecoming a barrister and solicitor", "consent", "independent legal advice", "professional misconduct" and "tribunal" are defined (rule 1.02), with appropriate commentary to elaborate on the application of certain definitions. Rule 1.03 provides that the rules shall be interpreted in accordance with certain fundamental principles, including for example lawyers' duties to conduct themselves at all times with integrity and to recognize the diversity of the Ontario community.

2. Competence (rule 2.01)

The definition of the "competent lawyer" (as developed by the first Competence Task Force), which since 1998 has been included in the Foreword to the *Rules of Professional Conduct*, has now been incorporated into rule 2.01. The list of conduct evidencing "unsatisfactory professional practice" has been deleted, as it has effectively been superseded by the definition of the "competent lawyer". More generally, the redrafted rule reflects an approach to competence that is consistent with the Law Society's overall direction on the subject.

3. Quality of Service (rule 2.02)

This rule incorporates provisions from existing rules on advising clients and rules dealing with specific subjects (*e.g.,* title insurance). A new rule has been added dealing with a lawyer's obligations to clients with disabilities. An expanded commentary provides more detailed guidance to lawyers in circumstances in which the lawyer believes a client's ability to properly instruct the lawyer is affected.

4. Confidentiality - Justified or Permitted Disclosure (Rule 2.03((2) - (5))

The Task Force considered the Supreme Court of Canada's decision in *Smith v. Jones*, [1999] 1 S.C.R. 455, in which the Court recognized a public safety exception to solicitor-client privilege.

Adopting the test established by the Supreme Court, the Task Force restructured the rule from the earlier draft presented in April 1999 and proposes a permitted disclosure rule which mirrors the Court's language. Rule 2.03 (3) provides that "[w]here a lawyer has reasonable grounds for believing that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including psychological harm that substantially interferes with health or well-being, the lawyer may disclose confidential information to prevent the death or harm, but shall not disclose more information than is required."

The Task Force also proposes that the rules permit limited disclosure where a lawyer has reasonable grounds for believing that there is an imminent risk of substantial harm to the welfare or security of a child or other vulnerable person (rule 2.03 (4)) and where a lawyer has reasonable grounds for believing that there is an imminent risk that a fraud that may cause substantial financial injury to another is likely to be committed (rule 2.03 (5)). All of the proposed rules governing justified or permitted disclosure stipulate that the lawyer shall not in any case disclose more information than is required.

The Task Force also proposes the addition of a new commentary following rule 2.03(5), to provide guidance on the troublesome problem of what a lawyer who is employed or retained by a corporation or other organization should do if he or she learns of wrongdoing by the corporate or organizational client. The commentary outlines the steps the lawyer should take in these circumstances to draw the misconduct to higher authorities in the corporation or organization in the client's interest while observing the lawyer's duty of confidentiality.

5. Conflict of interest (rules 2.04 and 2.05)

New draft rule 2.04(5) would permit a lawyer's partner or associate to act in a new matter against a former client where confidential information relevant to the former client is in issue, if the former client consents, or if it is in the interests of justice that the law firm act, and measures are taken to ensure that no disclosure of the confidential information takes place. This new subrule would extend to situations involving law firms acting against former clients, the rules dealing with client conflicts arising from lawyer transfer between law firms.

The Task Force is also seeking Convocation's decision on whether the rule should be further amended to permit law firms to represent multiple parties in a transaction on the basis that confidential information will not be divulged to other parties in the transaction who are represented by the same law firm. This proposal would require parties to the transaction to obtain independent legal advice, and would require law firms to utilize screening mechanisms in the nature of those contemplated in rule 2.05, which deals with conflicts of interest arising as a result of the transfer of lawyers between law firms.

The rule and commentary dealing with joint retainers (rule 2.04(6) and (7)), and commentary following these rules) have been re-worded to make it clear that even if all parties concerned 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. The rule and commentaries also specify when the lawyer must or should advise clients to obtain independent legal advice about a joint retainer.

A new rule (rule 2.04(11)) has been added prohibiting a lawyer or law firm acting for both a borrower and lender (expanded from the earlier draft from a mortgagor and mortgagee) except in limited defined circumstances (for example, where a mortgage loan is part of the purchase price of the property, where the lender is a financial institution, or where the transaction occurs in a remote location and as a result it is inconvenient for the clients to obtain separate representation).

6. Doing business with clients - guarantees by lawyer (rule 2.06 (9) and (10))

The absolute prohibition against lawyers guaranteeing indebtedness in cases in which clients are either borrowers or lenders has been qualified. Under proposed new rule 2.06 (10) lawyers would be permitted to give personal guarantees, for example where the lawyer has entered into a business venture with a client and the lender requires personal guarantees from all participants in the venture as a matter of course, provided that the lawyer has complied with the rules governing avoidance of conflicts of interest and doing business with a client, and the lender and the participants in the venture who are or were clients of the lawyer have received independent legal representation.

7. Fees and disbursements (rule 2.08)

The proposed new rule would permit referral fees between lawyers where the referral is made because of the expertise and ability of the lawyer to whom the client is being referred, the fee is reasonable, and the client is informed of the referral fee and consents to it.

The prohibition on fee-splitting between lawyers and non-lawyers is maintained, with an exception for multi-discipline partnerships where the partnership agreement provides for sharing of fees and profits.

8. Making legal services available and Advertising (rules 3.01 - 3.06)

The Task Force is proposing by way of amendments to the present rules that:

(1) The requirement that any factual information in an advertisement must be verifiable be deleted.

(2) The requirement that advertising must be "in good taste" be deleted, while the requirement that the advertising not bring the profession or the administration of justice into disrepute be maintained.

(3) The prohibition against comparing services or charges with those of other lawyers be deleted.

(4) The prohibition against indicating that a price is a discount or reduction or special rate be deleted.

(5) The prohibition against indicating that a lawyer has a "preferred area of practice" be deleted.

(6) A new rule governing "Offering Professional Services" (rule 3.06) replace the current prohibitions against solicitation. Under the new rule, lawyers would be permitted to seek to be engaged in professional employment by a prospective client provided that the means adopted are not false or misleading; do not involve coercion, duress or harassment; do not take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover; do not interfere with an existing relationship between another lawyer and client for the purpose of obtaining the client's retainer, unless the change of retainer is initiated by the client; or that otherwise are such as to bring the profession or the administration of justice into disrepute.

9. Advocacy (rule 4.01)

Existing commentary on the prosecutor's duty of disclosure has been revised and made a rule (rule 4.01 (3)). New commentary, added after April 1999, explains that this rule is not to be applied in cases of inadvertent failure to disclose, but rather only in cases in which the prosecutor is acting dishonestly or in bad faith.

A new rule (rule 4.01(4)) on lawyers' discovery obligations has been added.

Changes have been made to the rules relating to agreements on guilty pleas (rules 4.01(8) and (9)) to define more clearly the circumstances in which it is proper for a lawyer to enter into an agreement with the prosecutor about a guilty plea. Amendments have also been made to make it clear that the defence lawyer and prosecutor may discuss disposition of the case, with the client's consent, before or at any time after a charge is laid.

New rules have been added to deal with the circumstances in which a lawyer may interview employees of a corporate party that is represented by a lawyer (rule 4.03(3) and new paragraphs of commentary), and on lawyers' duties respecting relations with jurors (rule 4.05).

10. Supervision (Rule 5.01)

The phrase "employed by only one lawyer or law firm" was deleted from the last part of the commentary under rule 5.01(2) relating to litigation, so that it is clear that law clerks acting under the supervision of a lawyer may attend on such matters as uncontested motions whether or not they are employed by a single lawyer or firm.

The Task Force also recommends deletion of the prohibition against delegating to non-lawyers the setting of fees. The Task Force's view is that, in light of the supervision that the lawyer is required to exercise over the non-lawyer, this prohibition is unnecessary.

11. Discrimination (rule 5.04)

Extensive commentary, based on bulletins published by the Law Society for the profession respecting current Rule 28, has been added to the rule, in an effort to provide guidance to the profession on the essence of discrimination.

12. Public appearances and public statements (rule 6.06)

A list of examples of extra-judicial statements that may materially prejudice a party's right to a fair trial or hearing has been added to the commentary to rule 6.06 (2), together with a list of examples of statements that are not likely to do so. Since April 1999, the Task Force has had a number of discussions on the particulars of these statements, primarily with representatives of the Criminal Lawyers' Association. As a result, the commentary has been refined to reflect, for example, that in exceptional cases it may be proper for lawyers to make statements that might otherwise be inappropriate, to protect a client from prejudicial publicity initiated by others.

13. Preventing unauthorized practice (rule 6.07)

The process by which a lawyer seeks Convocation's approval to hire disbarred or suspended lawyers or lawyers who have been granted permission to resign through the hearing process has been restructured. Lawyers may now seek permission to hire administratively suspended lawyers from a panel of benchers rather than Convocation.

14. Responsibility in Multi-Discipline Practices (rule 6.10)

A new rule has been added requiring lawyers to ensure that non-lawyer partners and associates in multi-discipline practices comply with the rules of conduct and ethical principles governing lawyers.

TERMS OF REFERENCE

Background to the Review of the Rules

1. In June 1998, Convocation struck the Task Force to Review the Rules of Professional Conduct ("the Task Force") in response to a need to address a broad spectrum of issues related to the rules, emanating from committees of Convocation, other task forces, and Convocation itself. Although it is accepted that the rules are a necessary part of the fabric of a regulatory scheme established to govern lawyers in the public interest, there were expressions of concern about the current rules related to:
   - the perceived competitive disadvantages some rules create for lawyers, particularly in light of incursions by other service providers into traditional areas of legal practice;
   - The continuing relevance of some rules in society today;
   - The possible inhibiting effect of some rules on access to justice for people in need of legal advice and representation; and
   - The adequacy of some rules to protect the public.

APPROACH TO THE REVIEW

Information and Initiatives Considered by the Task Force

2. In framing the policy agenda for the rules review, the Task Force was guided by a number of rule-related issues that had been considered by committees or Convocation within the past few years. This was used as a resource in defining some of the key issues relevant to the structure and content of the rules.

3. The Task Force was also mindful of other initiatives at the Law Society that impinged on its review of the rules. These included a number of reviews of individual rules through the Professional Regulation Committee, and the work of the Competence Task Force, the Futures Task Force Working Group on Multi-Discipline Partnerships, the Multi-Disciplinary Practice Task Force (struck in June 1999) and the Treasurer's Equity Advisory Group.

4. While the Task Force favoured an approach to the review of the current rules free of any preconceived notions of what a revised set of rules should contain or how it should look, it was mindful of work done in the past respecting the rules, most notably through a special committee struck in 1992, chaired by Marc Somerville. The Task Force reviewed the work produced by the Somerville committee on a rule by rule basis and where appropriate, borrowed from the concepts identified by that committee in structuring the revised rules.

5. The primary sources of written information accessed by the Task Force and in some instances adapted in reformulating the rules were the rules of conduct of other jurisdictions, including Alberta, British Columbia, and New York State. The Task Force also reviewed the American Bar Association's Model Rules of Professional Conduct and Model Code of Professional Responsibility, both of which have been adopted by the state bar associations of a number of states. The New York Bar Association invited the co-chairs and secretary of the Task Force to attend a meeting in October 1999 where the New York rules and the Society's proposed draft rules were discussed. This was useful in highlighting some aspects of the New York rules that were considered in the Task Force's review. The Task Force also reviewed and in some instances adapted the American College of Trial Lawyers' draft Canadian Code of Trial Conduct.

Call for Input/Requests for Input

Prior to April 1999

6. The Task Force invited members to provide submissions on the rules. To that end a notice was published in the *Ontario Reports*, the *Ontario Lawyers Gazette* and on the Law Society's website inviting submissions from the profession on issues of concern relating to the rules of conduct.

7. The Task Force also sent letters to various groups representing different constituencies within the legal profession asking for input on issues they felt should be addressed in a review of the rules of conduct. Similar letters were also sent to the chief justices of the Court of Appeal for Ontario and the Ontario Court (General Division) asking for input from the judiciary. Key regulatory and advisory staff within the Law Society were also asked for input and views on the current rules and issues or concerns arising from their application in the Law Society's processes. Consultations were also arranged through the Treasurer's Equity Advisory Group with lawyers representing equity-seeking groups within the profession and from various organizations that focus on equity issues in the profession.

8. The responses to the call for input were generally well-articulated and thoughtful suggestions for improvements to the rules. While the responses covered a broad range of issues, a few common themes emerged, and they focussed on:

- the need to reorganize the rules in a more cohesive, common sense format;
- elimination of certain marketing and advertising restrictions;

- clarification of certain obligations in the area of advocacy;
- the need for increased flexibility in the application of the conflicts rules in certain circumstance;
- improved communication by the Law Society of what is included in the rules, to both the profession and the public.

9. The Task Force was encouraged by the fact that some of the respondents' suggestions were already the subject of discussion and action by the Task Force. In some instances, the proposals raised new and important substantive issues that led the Task Force to recommend changes to the rules. A few comments received were beyond the scope of what could be accomplished through a review of the rules.

10. The Task Force wishes to publicly thank all those who contributed to this phase of the review.

After April 1999

11. In April 1999, the Task Force presented to Convocation a report and proposed draft revised Rules of Professional Conduct ("the draft rules"). Convocation received the report and discussed the draft rules. While approving in principle the direction of the Task Force, Convocation directed that further submissions be sought from the profession on the draft rules.

12. Since April, the Task Force has met on 17 occasions and continued with its work as directed by Convocation. This work has included:
- a written request to numerous legal organizations which received a copy of the draft rules in April for any input that they may wish to offer on the draft rules;
- further research and deliberation on the policy issues identified by Convocation in April;
- written communications to certain legal organizations, including the Canadian Bar Association – Real Property Section, the Family Law Lawyers Association and the Ontario Real Estate Lawyers Association, on specific draft rule issues relating to the policy reviews;
- a meeting with Paul Stern, on behalf of the Criminal Lawyers Association, respecting issues he wished to raise with the Task Force relating to the draft rules;
- beginning in May 1999 and continuing throughout the summer, publication in the *Ontario Reports* and on the Society's website of a call for input on the draft rules with a deadline of October 1, 1999; distribution of approximately 150 paper copies of the Task Force's report and draft rules to members who requested them as a result of reading the call for input;
- consideration of responses on aspects of the draft rules received as a result of the call for input.

13. The call for input was also published in the *Ontario Lawyers Gazette.* Also, articles have appeared in various legal publications, including the *Law Times* and *Lawyers Weekly,* on the work of the Task Force and some of the proposed changes to the rules, including the "two lawyer" rule[1].

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[1]This rule, discussed in more detail later in this report, is based on material prepared by the Lawyers Fund for Client Compensation Committee in March 1999, which recommended that a rule be added prohibiting a lawyer from acting for both a mortgagor and mortgagee except in limited circumstances. This issue originated some years ago in the form a motion of bencher James Wardlaw (which was subsequently tabled), who proposed what became known as the "two lawyer" rule for real estate transactions.

14. In response to the call for input and requests for input on specific rule issues from legal organizations, the Task Force received approximately 40 letters or e-mails, commenting on a variety of aspects of the proposed draft rules. Insofar as the reorganization of the rules is concerned, the majority of the comments were positive. A number of thoughtful submissions prompted changes to the draft rules, which are reflected in the revised draft rules that accompany this report. The Task Force thanks all those who contributed to its work in this way. Copies of the responses received by the Task Force throughout its study are available in a separate bound volume upon request.

Engagement of Drafter

15. The Task Force concluded early in the process that while it would have responsibility for making policy decisions about revisions to rules of conduct, a drafter, external to the Law Society and preferably a lawyer, should be selected to assist in drafting amended or new rules. Paul M. Perell, a partner and research director at Weir & Foulds, was engaged for this task. Mr. Perell continued to work with the Task Force after the initial report to Convocation in April, and the Task Force is indebted to him for his skillful and intelligent approach to the drafting initiative.

Problems with the Current Rules

16. The Task Force and a number of members of the profession who responded to the Task Force's call for input, recognized that the current format of the rules is problematic. Over the course of years, rules have been added without appropriate integration in the existing text. This lack of cohesion led the Task Force to conclude that a reorganization of the rules into a more user-friendly and intelligible format was essential.

Reorganization

17. The Task Force is grateful to Paul Perell for his outstanding work in reformatting the rules. The reformatted rules alone in a number of instances give fresh meaning to the language of the existing rules.

Rule *versus* Commentary

18. The Task Force decided to continue with the division between rules and commentaries, but was concerned about possible confusion about the characterization of rules and commentaries in the enforcement of the *Rules of Professional Conduct.*

19. Thus a significant part of the process of reorganizing the rules was determining what should be rules and what should be commentary. The Task Force found that a number of duties appeared in commentary, and that some of the rules made broad statements about what a lawyer "should" do, rather than "shall" do.

20. The Task Force concluded that rules should be expressed in mandatory language, and that explanatory and advisory language should appear in the commentaries.

Scheme of the Reorganized Rules

21. The reorganized rules focus on relationships within which ethical principles are required to be observed. The Task Force saw this as preferable to an iteration of ethical concepts which are not contextualized within particular relationships. The redraft of the rules orders the ethical principles in a way that effectively tells the "story" of the lawyer's relationships with and duties to, for example, the client, the courts and other lawyers.

22. In reorganizing the rules, the Task Force attempted to fulfill two main functions for the rules suggested by the Somerville Committee, namely, a hortative or inspirational function and a regulatory function setting out "black letter" rules.

23. Structurally, the redraft is based on the *Rules of Civil Procedure*. Commentaries have been placed in "boxed" text in close proximity to the rule to which they relate. Footnotes in the current rules were either deleted or transformed in the redraft into either a rule or commentary, as appropriate.

24. A "top to bottom" integration was completed with respect to some concepts or aspects running through the rules, an example being independent legal advice, which appears in the context of the conflicts rules and lawyers' business transactions with clients, but may also apply in proceedings in a family law or real estate setting. The redrafting process enabled the Task Force to achieve a consistency of language that is lacking in the existing *Rules*.

25. As discussed above, the word "duty", appearing in a number of rules and commentaries, caused the Task Force to question whether other language should be used, for example, by changing the nature of the duty to a statement that a lawyer "shall" do something, whether the language of "duty" is intended to be in the form of a commandment (and whether that is appropriate), and whether the word "duty" should appear in commentary. In light of these issues, a rule-by-rule analysis was undertaken to determine the propriety of the language and whether duties expressed in commentary should be recast as rules. In a number of instances, commentaries were elevated to rules and, on occasion, the opposite occurred. Accordingly, in the redraft, the rules, with the exception of those in the interpretive section in new Rule 1, use the mandatory "shall" and the commentaries use the subjunctive "should".

26. The result was a redraft which includes the following major headings:

Rule 1 Citation and Interpretation
- 1.01 Citation
- 1.02 Definitions
- 1.03 Interpretation

Rule 2 Relationship to Clients
- 2.01 Competence
- 2.02 Quality of Service
- 2.03 Confidentiality
- 2.04 Avoidance of Conflicts of Interest
- 2.05 Conflicts from Transfer Between Law Firms
- 2.06 Doing Business With a Client
- 2.07 Preservation of Client's Property
- 2.08 Fees and Disbursements
- 2.09 Withdrawal From Representation

Rule 3 The Practice of Law
- 3.01 Making Legal Services Available
- 3.02 Law Firm Name
- 3.03 Letterhead
- 3.04 Advertising
- 3.05 Advertising Nature of Practice
- 3.06 Offering Professional Services
- 3.07 Interprovincial Law Firms

Rule 4 Relationship to the Administration of Justice
- 4.01 The Lawyer as Advocate
- 4.02 The Lawyer as Witness
- 4.03 Interviewing Witnesses
- 4.04 Communication with Witness Giving Evidence
- 4.05 Relations with Jurors
- 4.06 The Lawyer and the Administration of Justice
- 4.07 Lawyers as Mediators

Rule 5 Relationship to Associates, Students, Employees and Others
- 5.01 Supervision
- 5.02 Students
- 5.03 Sexual Harassment
- 5.04 Discrimination

Rule 6 Relationship to the Society and Other Lawyers
- 6.01 Responsibility to the Profession Generally
- 6.02 Responsibility to the Society
- 6.03 Responsibility to Lawyers and Others
- 6.04 Outside Interests and the Practice of Law
- 6.05 The Lawyer in Public Office
- 6.06 Public Appearances and Public Statements
- 6.07 Preventing Unauthorized Practice
- 6.08 Retired Judges Returning to Practice
- 6.09 Errors and Omissions
- 6.10 Responsibility in Multi-Discipline Practices
- 6.11 Discipline

27. The redraft also includes an extensive bibliography.

CHANGES TO THE PROPOSED RULES

Rules Identified for Policy Review

28. The Task Force identified rules requiring specific attention in its policy review, and was also guided by Convocation in this respect after its initial review of the draft rules in April 1999. The review of the reorganized rules assisted in identifying areas where the rules required amendment. As the work progressed, both before and after the first draft was presented to Convocation in April 1999, the policy review was augmented by information received through the calls for input and from other sources, as noted previously.

29. As a result, the Task Force recommends changes of substance to the following rules:

Rule 2 - Competence and Quality of Service
Rule 3 - Advising Clients
Rule 4 - Confidentiality of Information
Rule 5 - Conflict of Interest
Rule 7 - Borrowing from Clients
Rule 8 - Withdrawal of Services

Rule 9 - Fees and Disbursements
Rule 10 - The Lawyer as Advocate
Rule 11 - The Lawyer and the Administration of Justice
Rule 12 - Advertising and Making Legal Services Available
Rule 13 - Responsibility to the Profession Generally
Rule 14 - Responsibility to Lawyers Individually
Rule 16 - Delegation to Non-Lawyers
Rule 18 - The Lawyer in Public Office
Rule 20 - Disbarred Persons
Rule 21 - Lawyers in their Public Appearances and Public Statements
Rule 23 - Lawyers in Mortgage Transactions
Rule 28 - Non-Discrimination
Rule 29 - Conflicts Arising as a Result of Transfer Between Law Firms

30. The proposed new rules are presented in a separate document, together with the existing rules for comparison purposes. The concordance to the rules included at the end of the proposed new rules shows where text of the existing rules has been incorporated in the redraft and where new rules have been added.

Discussion of Individual Rules

31. The following discussion highlights the substantive changes to the rules proposed by the Task Force and other important amendments to existing language. Generally, it does not identify the numerous grammatical changes that, in the Task Force's view, improve the text of existing rules. Reference to the "earlier draft" of the rules is a reference to the proposed rules presented to Convocation in April 1999.

Rule 1 - Citation and Interpretation

32. The Task Force determined that as an aid in the interpretation and application of the rules, a number of definitions should be included in the introductory section of the rules. New rule 1.02 includes those terms that the Task Force believes should be defined for the purposes of the rules.

33. "Associate" is now a defined term, which was added to avoid confusion about the meaning of the term in the rules. The definition includes lawyers who are employees in a firm as well as non-member employees of multi-discipline partnerships and lawyers who share common expenses with other members who otherwise practice independently.

34. A new commentary, added after April 1999, makes it clear that a lawyer may have legal and ethical responsibilities similar to those arising from a solicitor-client relationship even though the lawyer is not retained, as for example where the lawyer receives confidential information in what is colloquially known as a "beauty contest". In such circumstances the lawyer may have a disqualifying conflict of interest. The commentary emphasizes that it is in the lawyer's interest that such situations be managed effectively.

35. A new definition of "consent", has been added to make it clear that where a client's consent is required under the rules, most notably in the area of lawyers' conflicts of interest, the consent must be in writing or, where an oral consent has been provided, must be confirmed in writing.

36. Changes were made from the earlier draft to the definitions of "independent legal advice" and "independent legal representation" to incorporate the concept of in-house counsel for a client as a form of independent advice or representation, following a suggestion made by Osler, Hoskin & Harcourt.

37. The definition of "law firm" was amended after April 1999 to delete reference to a "professional law corporation", as that type of structure cannot exist in Ontario for the practice of law, and to add reference to legal clinics under the *Legal Aid Services Act*. This addition was made to provide more certainty to those working at such clinics. The Law Society staff reported that advisory services personnel received a number of calls about whether the rules applicable to law firms apply to clinics.

38. "Professional misconduct" and "conduct unbecoming a barrister or solicitor" will become defined terms. Changes were made to the earlier draft of these definitions based on a submission received after April 1999 from Glenn Stuart, Discipline Counsel with the Society. The effect of the changes is to provide a list of examples of conduct unbecoming and a more definitive list of conduct that would amount to professional misconduct.

39. A definition of "tribunal' was added to clarify the use of this term in a number of rules. The term is now used in rules where only the word "court", for example, previously appeared.

40. Rule 1.03, entitled "Interpretation", expands considerably on the interpretation section that precedes the text of the current rules. It articulates several overarching principles as guides to interpretation, for example, that lawyers have a duty to conduct their practices and to discharge all duties owed to clients, tribunals, the public, and other members of the profession honourably and with integrity. The rule also acknowledges lawyers' special responsibilities to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario. In the Task Force's view, the new rule establishes a sound basis on which the profession and public may interpret the rules, with a focus on the professionalism, ethics and integrity of lawyers.

Rule 2.01 - Competence

41. The work of the first Competence Task Force, which led in 1998 to the inclusion of the definition of competence in the Foreword to the current rules, and the work of the current Competence Task Force with respect to the move towards articulating standards, were considered by the Task Force in reviewing the text of existing Rule 2.

42. Of additional importance to the review were the provisions in the *Law Society Amendment Act, 1998* for mandatory practice reviews and the authority to authorize proceedings against lawyers for failure to meet standards of professional competence.

43. The Task Force closely followed the work of the current Competence Task Force, and considered its report to November 1998 Convocation, which proposed a framework for a comprehensive competence initiative at the Law Society. The report was adopted and the first of a series of guidelines is being drafted. By-laws on certain aspects of the competence scheme were adopted at the March 26, 1999 Convocation.

44. The Task Force agreed that current Rule 2 requires significant revision. The form of the revision was dictated largely by the incorporation of the definition of competence in the various sections of the rule. Much of the existing commentary remains, although current commentary 8, listing conduct evidencing "unsatisfactory professional practice" was deleted, as it has effectively been superceded by the broader scope and detail of the incorporated definition of competence.

45. A substantive change to current commentary 9 was made, to mirror the legislative scheme for competence found in the *Law Society Act* as amended.

46. An addition to the commentary appearing under rule 2.01(1) was made to mirror the existing obligation of a lawyer, included in the last paragraph of that commentary, in a multi-discipline practice environment, where non-lawyers may be in a position to provide advice within their sphere of expertise outside of the retainer of the firm as a multi-discipline practice.

47. The redrafted rule 2.01, in the Task Force's view, reflects an approach that is consistent with the Law Society's overall direction on competence.

Rule 2.02 - Quality of Service

48. This rule incorporates most of the text of existing Rule 3. The last commentary to the current rule was removed from this rule and combined with the text from what is currently commentary 15 to Rule 5. This duty is now set out in a separate rule, rule 6.09, on reporting requirements with respect to errors and omissions.

49. New text appears in rule 2.02(6) and the commentary in the section entitled "Client Under a Disability", which is based on rule 1.16 of the ABA Model Code. The current rules are silent on this issue, and it was thought appropriate to provide direction to lawyers on how to deal with clients suffering from disabilities that affect their ability to instruct lawyers.

50. Rule 2.02 also incorporates the texts of other current rules that focus on advice or services in a particular area of law, including Rule 26 on Medical-Legal Reports and Rule 30 on Title Insurance in Real Estate Conveyancing.

51. Rule 2.02(3) includes changes from the text of the earlier draft rule, which incorporated the language of existing Rule 10, Commentary 6A. Instead of the initial phrase "The lawyer shall consider the appropriateness of alternative dispute resolution (ADR) to the resolution of issues in every case", the new language is "The lawyer shall consider the use of alternative dispute resolution (ADR) for every dispute". In the view of the Task Force, this focusses on the duty of the lawyer to consider ADR rather than on the appropriateness of ADR; the Task force was concerned that the "appropriateness" test may be too subjective.

52. The commentary under rule 2.02(6) (Client Under a Disability) has been expanded to provide greater guidance to the profession in circumstances in which the lawyer believes a client's ability to properly instruct is affected. The commentary also makes it clear that lawyers have an ethical obligation to ensure that the client's interests are not abandoned.

53. The Task Force after April 1999 reviewed the background to the existing rule on medical-legal reports, Rule 26, incorporated as rule 2.02(7), (8) and (9), in response to a submission questioning the merits of the rule. Rule 26 was adopted by Convocation in October 1986 based on a report of the Professional Conduct Committee, which reported on the results of a review by a sub-committee on Disclosure of Documents Designated Confidential - For Professional Use Only. The mandate of the sub-committee was, among other things, to consider whether a lawyer had a discretion not to show a client a medical report he or she had received.

54. Based on this material, and the careful review that it reflected, the Task Force determined that no changes were required to the rule.

55. In summary, in the Task Force's view, rule 2.02 contains a logical grouping of provisions appearing throughout the current rules that focus on quality service.

Rule 2.03 - Confidentiality

56. The Task Force agreed that virtually all of existing Rule 4 and its commentaries should be incorporated in the new rules. The policy discussion focussed on the sufficiency and efficacy of the existing commentary on justified disclosure.

57. In reviewing this commentary, the Task Force considered expanding the areas in which disclosure of otherwise confidential information by a lawyer is justified, and also considered the possibility of making disclosure mandatory in certain cases. The Task Force reviewed the Alberta rule and the Canadian Bar Association Code which *permit* disclosure in cases of future crimes but *require* disclosure in cases of future crimes involving imminent personal harm or death.

58. The Task Force wrote to the Advocates' Society, the Canadian Bar Association - Ontario, the Family Lawyers' Association, the Middlesex Family Lawyers' Association and the Criminal Lawyers' Association to invite comment on this issue.

59. It was apparent from the formal and informal responses received by the Task Force that the bar generally is opposed to requiring the disclosure of confidential information to prevent a crime. The redrafted rule that appeared in the earlier draft permitted disclosure of confidential information to prevent criminal offences that are likely to be committed, and adapted wording from the American College of Trial Lawyers' Code of Conduct. It made it clear that in cases in which disclosure is justified, the lawyer must not disclose more information than is required.

60. The Task Force received a number of responses over the summer and into the fall of 1999 from members of the profession relating to the issue of justified disclosure where crimes or serious bodily harm may result if information was not otherwise disclosed. The Criminal Lawyers' Association was particularly helpful in providing a perspective on the appropriateness of limiting disclosure, emphasizing that any permitted disclosure is an incursion on the fundamental principles of solicitor and client privilege and confidentiality.

61. The Task Force considered the Supreme Court of Canada's decision in *Smith v. Jones*, [1999] 1 S.C.R. 455 in which the Court recognized a public safety exception to solicitor-client privilege. The Court commented on the Law Society's current rule, which permits disclosure where the solicitor believes a crime is likely to be committed.

62. Adopting the test established by the Supreme Court of Canada, rule 2.03 (3) provides that disclosure is justified where the lawyer has reasonable grounds for believing that there is "an imminent risk of serious bodily harm or death to an identifiable person or group". The rule also provides, as did the Court, that serious bodily harm includes psychological harm that substantially interferes with health or well-being.

63. The Task Force also proposes that the rules permit limited disclosure where a lawyer has reasonable grounds for believing that there is an imminent risk of substantial harm to the welfare or security of a child or other vulnerable person (rule 2.03 (4)) and where a lawyer has reasonable grounds for believing that there is an imminent risk that a fraud that may cause substantial financial injury to another is likely to be committed (rule 2.03 (5)). All of the proposed rules governing justified or permitted disclosure stipulate that the lawyer shall not in any case disclose more information than is required.

64. The Task Force's proposed rules on justified or permitted disclosure were informed by helpful submissions received from members who practice in the areas of criminal law and family law particularly, and by the rules of professional conduct of other jurisdictions. Rather than proposing the adoption in its entirety of any other jurisdiction's rule or any submission it received, the Task Force has proposed the adoption of rules that strive to balance the public policy interests at stake in the light of changing attitudes and values in the profession and in society.

65. The following is a brief summary of the current rules governing justified or permitted disclosure in selected Canadian and American jurisdictions:

1. The Law Society of Upper Canada's current rules (in rule 4, commentary 11) provide that disclosure of information necessary to prevent a crime will be justified if the lawyer has reasonable grounds for believing that a crime is likely to be committed. British Columbia's rule (chapter 5, rule 12) is to the same effect.
2. The Canadian Bar Association's Code of Professional Conduct (which has been adopted in whole or in part by some other Canadian law societies) also provides (in Chapter IV, commentary 11) that disclosure of information necessary to prevent a crime will be justified if the lawyer has reasonable grounds for believing that a crime is likely to be committed. It adds, however, that disclosure is mandatory when the anticipated crime is one involving violence. Alberta's rule is similar, and requires disclosure in cases of future crimes involving imminent personal harm or death.
3. New Brunswick's rule (Part C, rule 5) provides that lawyer-client confidentiality may be breached in relation to "communications relating to criminal or fraudulent transactions unless the lawyer is advising a client who has been charged with a criminal offence." The rule adds that "[a] lawyer is under a duty to volunteer information concerning the commission of serious crime."
4. The A.B.A. *Model Rules of Professional Conduct* and the American College of Trial Lawyers' *Code of Trial Conduct* both provide that a lawyer may reveal confidential information to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death of substantial bodily harm.
5. The New York State Bar Association's *Code of Professional Responsibility* provides that a lawyer may reveal the intention of a client to commit a crime and the information necessary to prevent the crime.

66. It was apparent from submissions received by the Task Force that there is a widespread view among members that a rule *requiring* (as opposed to permitting) disclosure of confidential information, except where required by law or by order of a tribunal of competent jurisdiction, would undermine the principle of confidentiality that is so vital to the lawyer-client relationship. The Task Force accordingly rejected the approach that has been adopted in Alberta and New Brunswick, and in jurisdictions that have adopted the CBA Code.

67. The Task Force also rejected the idea of defining the circumstances in which disclosure is justified by reference to whether disclosure is necessary to prevent "a crime" (an approach adopted in the Society's current rules, and in other jurisdictions). Such an approach would be inconsistent with the Supreme Court of Canada's decision in *Smith v. Jones* and would not distinguish among crimes by regard to the severity of the harm that may be prevented by disclosure. In some cases compromising the general rule of confidentiality would not be justified by the need to prevent a relatively minor, and perhaps victimless, offence.

68. The Task Force's approach, therefore, was to define the circumstances in which disclosure is permissible by reference to the nature and severity of the harm that may be prevented by disclosure. The Task Force adopted the Supreme Court of Canada's language in *Smith v. Jones*, partly in the interest of avoiding confusion over the applicable test. The proposed rule also makes it clear (as did the Supreme Court of Canada) that the term "bodily harm" includes psychological harm that substantially interferes with health or well-being. The Task Force also proposes that the rules permit disclosure where the lawyer has reasonable grounds for believing that there is an imminent risk of substantial harm to the welfare or security of a child or other vulnerable person, or that there is an imminent risk that a fraud that may cause substantial financial injury is likely to be committed.

69. The Task Force also proposes the addition of a new commentary following rule 2.03(5), to provide guidance on the troublesome problem of what a lawyer who is employed by or works for a corporation or other organization should do if he or she learns of wrongdoing by the corporate or organizational client. The commentary outlines the steps the lawyer should take in these circumstances to draw the misconduct to higher authorities in the corporation or organization in the client's interest while observing the lawyer's duty of confidentiality.

70. The whistleblowing problem has not previously been addressed specifically in Canadian rules of professional conduct. It has been addressed in some American jurisdictions. For example, the American Bar Association's Model Rules of Professional Conduct provide as follows:

> " Rule 1.13 Organization As Client
>
> (a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.
>
> (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:
>
> (1) asking reconsideration of the matter;
>
> (2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and
>
> (3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.
>
> (c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyers may resign in accordance with Rule 1.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing."

71. The Task Force concluded that it would be helpful to the profession to provide the guidance spelled out in the proposed commentary, which makes it clear that the lawyer has no duty to disclose the information outside the corporation or organization.

72. Rule 2.03(6) deals with the circumstances in which a lawyer may disclose confidential information to defend against allegations of professional negligence or misconduct. The rule makes it clear that disclosure is permissible to defend against such allegations whether they emanate from a client or third party. In all situations, however, the lawyer must not disclose more information than is required. Again, the amendments were based on material from the American College of Trial Lawyers' *Code of Trial Conduct.*

Rule 2.04 - Avoidance of Conflicts of Interest

73. As noted earlier in this report, the reorganized format of the rules was driven largely by the need to place rules and commentaries dealing with similar issues and concepts in one grouping. The new conflicts rules are a good example of how this feature of the new rules works.

74. Although significantly reformatted, the conflicts rule has largely been incorporated in the new rules, with appropriate grammatical and clarifying language changes, in rule 2.04. A companion rule, rule 2.05, includes the text of existing Rule 29 on conflicts arising when lawyers transfer between law firms.

75. A number of changes, however, of a substantive nature have been made to the text of these two rules.

76. The commentary following rule 2.04(3), largely drawn from commentary to current Rule 5, has been expanded to remind lawyers to be mindful of circumstances throughout a retainer that may reveal a conflict, and to reflect the advisability in some circumstances of recommending that a client obtain independent legal advice with respect to a matter where a conflict arises and the lawyer, with the client's consent, may continue to act.

77. One of the more recent changes arose from discussions this past fall on the consequences of a conflict of interest that arises from a lawyer's partner or associate acting against the lawyer's former client where confidential information from that former retainer is relevant to the new matter. Comment on such situations appeared in *MacDonald Estate v. Martin*, [1990] 35 S.C.R. 1235, which formed the basis for Rule 29 on lawyer transfers between law firms (incorporated in proposed draft rule 2.05). The new proposed draft rule is rule 2.04(5), which would permit a lawyer's partner or associate to act in a new matter against a former client where confidential information relevant to the former client is in issue if the former client consents or it is in the interests of justice that the law firm act, provided that reasonable measures are taken to ensure that no disclosure of the confidential information takes place.

78. Another issue, included in the April 1999 report, was prompted by issues raised by bencher Clayton Ruby about the joint retainer provisions of the rule, and confusion arising from the application of a particular commentary to the rule. Based on these concerns, the Task Force considered it appropriate to amend the last sentence of what would become a commentary to rule 2.04(7), so that it is clear that the rule on joint retainers applies to situations in which the lawyer is asked to act for more than one party, rather than for "both sides", as the commentary currently reads.

79. Mr. Ruby also suggested that in all cases involving joint retainers lawyers should be required to ensure that the clients receive independent legal advice about the retainer. Prior to the April 1999 report, the Task Force engaged in considerable discussion on this issue and determined that the following would be the most practical approach that is consistent with providing adequate protection for the clients:

- a new subrule (rule 2.04(7)) would be added to require a lawyer to recommend that a prospective client receive independent legal advice about a joint retainer in which the lawyer is also asked to act for another client with whom the lawyer has a continuing relationship and acts regularly;
- commentary would be added to the rule to provide that, in addition to advising clients as set out in subrule (6), the lawyer in certain circumstances (*e.g.* where one of the clients is less sophisticated or more vulnerable than the other) should recommend independent legal advice about the joint retainer to ensure that the client's consent is informed, genuine, and uncoerced;

80. The Task Force also considered adding new commentary following subrule (7) to the effect that in some circumstances, for example, where the client is unsophisticated or vulnerable, it may be desirable for the lawyer to recommend that the client receive independent legal representation for the transaction. However, in light of the fact that the definition of "independent legal advice" in rule 1.02, requires that the lawyer providing the advice emphasize to the client that he or she has the right to independent legal representation, the Task Force decided that the commentary was not necessary.

81. The Task Force in the fall of 1999 considered the New York State Bar's *Code of Professional Responsibility's* treatment of joint retainers, which presented a third option to the suggestion of Mr. Ruby and the Task Force's proposal outlined above. The New York rule establishes a "disinterested lawyer" standard for the purposes of the consent of clients to joint representation. The New York rule includes the following provision:

> If a disinterested lawyer would conclude that any of the affected clients should not agree to the representation under the circumstances, the lawyer involved should not ask for such agreement or provide representation of the basis of the client's consent.

82. The Task Force determined that a number of problems could result from imposing such a standard, including, in the context of discipline for an alleged breach of the rule, the likelihood of conflicting evidence about what a disinterested lawyer would conclude in any given case.

83. Although the Task Force believes its original proposal outlined above is the most reasonable and workable, it presents for Convocation's consideration in addition to its recommended approach, that suggested by Mr. Ruby and the New York State Bar rule.

84. Bencher Brad Wright suggested to the Task Force this past fall that the rules provide for an exemption from the operation of the joint retainer provisions. The primary concern is in situations in which spouses are purchasing a residential real estate property. By operation of the joint retainer rule, a lawyer in that situation would be required to advise the clients as set out in proposed draft rule 2.04(6). The Task Force agreed with the concern that in many such situations the advice required by the rule may be unnecessary, but concluded that to eliminate the requirement in all such cases may deprive clients of a necessary safeguard. Accordingly, the Task Force is presenting this constructive suggestion to Convocation for its review and consideration without a recommendation that it be included in the rules.

85. The Task Force, as reported in April 1999, considered an issue raised by a member responding to the call for input on whether it was necessary for firms in representing multiple parties in a transaction to advise them that no information as between the clients could be kept confidential. The member, John B. Laskin, advocated a more flexible approach, based on the scheme outlined in current Rule 29 for lawyers transferring between law firms. This issue was the subject of extensive discussion within the Task Force, which went as far as reviewing a draft of a new rule prepared by Mr. Perell, set out below:

> Despite paragraph (b) of subrule 2.04(6), where a law firm accepts employment for more than one client in a matter or transaction, the law firm may treat information received from one client as confidential and not disclose it to the other clients, if each client, after having received advice from a lawyer independent of the law firm about the risks of this arrangement, consents to it in writing, and each client is represented by a different lawyer at the law firm and the firm institutes satisfactory screening measures.

86. The draft includes a requirement for an independent lawyer to give the client(s) legal advice on the firm acting for the parties. Accordingly, a range of options would be provided - the client could choose separate representation, have the firm act where all information must be shared, or have the firm act jointly but with the requirement for independent legal advice and institutionalized screening measures. The lawyer providing independent legal advice would also have to advise on the adequacy of the screening measures within the firm.

87. While the Task Force acknowledged the compelling arguments in favor of a change, focusing on the issues of choice of counsel and market realities, and the benefits in particular for smaller firms, the concern is that there will be cases in which the lawyer does not disclose relevant information known to his or her firm and the client suffers a disadvantage as a result. In other cases it will be apparent that one of the clients would have received better representation if he or she had had separate counsel. There is a risk that permitting lawyers to act on both sides of transactions, even with these protections, will be perceived as an unacceptable dilution of the conflicts of interest rule.

88. Ultimately, the Task Force decided that rather than proposing a change to the rule, this proposal should be highlighted for Convocation's review as a thoughtful recommendation for a suggested policy change. Accordingly, the Task Force is requesting that Convocation specifically address this issue.

89. A further proposed change is the addition of a new subrule, rule 2.04(13), which requires lawyers to ensure compliance by non-lawyer partners and associates in a multi-discipline practice with the Law Society's conflicts rules, both in connection with work within the practice and with respect to common clients of the practice and any work that the non-lawyers may do separate from the multi-discipline practice. A similar change was made to the text from existing Rule 29, now found in new rule 2.05(9), to oblige lawyers to ensure that non-lawyers in multi-discipline practices comply with the rule and do not disclose confidences as set out in the rule.

Rules 2.04(11) and (12) - Avoidance of Conflicts of Interest - Prohibition Against Acting for Borrower and Lender

90. The earlier draft of the proposed rules included the new "two lawyer rule", explained more fully below. As a matter of reorganizing the earlier draft to better reflect the continuity of the subject of each rule, this proposed rule has been moved from rule 2.06 to the general conflicts of interest rule 2.04, and now appears as rules 2.04(11) and (12). The title has also been changed to reflect the rule's application to all loan transactions, not only those secured by a mortgage.

91. Prior to the April 1999 report, the Task Force reviewed material prepared by the Lawyers' Fund for Client Compensation Committee in March 1999, which recommended that a rule be added prohibiting a lawyer from acting for both a mortgagor and a mortgagee. This issue originated some years ago in the form a motion of bencher James Wardlaw (which was later tabled), who proposed what became known as the "two lawyer" rule for real estate transactions.

92. The following are excerpts from a memorandum prepared by David McKillop of the Law Society's staff for the Committee:

> Investment type claims have always had a significant impact on the Fund, both in terms of the resources required to administer the large number of claims and the money needed to pay legitimate claims. The most common form of investment claim occurs when a client utilizes the services of a lawyer in order to invest in mortgages registered against real property.
>
> Investment type claims have traditionally represented about 70% to 75% of all claims received by the Fund. Clients typically submit investment claims when the investment turns out to be a partial or total failure and it is learned the lawyer's dishonest acts were largely responsible for the loss.
>
> The Lawyers Fund for Client Compensation Committee believes that a rule which requires both borrowers and lenders to have separate and independent representation in private mortgage transactions would be a valuable tool to prevent and curb investment related claims to the Fund.
>
> ...
>
> Private lenders often lack the necessary level of sophistication to make such decisions. Many of these individuals are primarily motivated by the potential for attractive rates of return and the desire to avoid paying legal fees. In such a state of mind, they become easy prey for dishonest lawyers who either avoid explaining the potential for conflict or abuse the inherent power imbalance that often exists between lawyers and their clients.
>
> Private mortgages frequently involve brokering fees as well, thus making the lawyer a third 'client' and introducing another level of conflict into the transaction.
>
> The adoption of a two lawyer rule would require an amendment to Rule 23...to prohibit lawyers from acting for both lenders and borrowers other than in limited circumstances. Similar rules in other jurisdictions permit acting for both sides if the lender is an institutional lender, in vendor take back situations, in remote areas where no other lawyer is available, when the mortgage loan is being made on a non-arm's length basis (i.e. from a parent to a child) or when consideration for the mortgage is relatively small.
>
> The Law Society of British Columbia has had a two lawyer rule in effect for over ten years. The rule was first introduced in response to an early 1980's discipline case involving an unrepresented vendor, and what British Columbia perceived as a major problem in Ontario with the losses that occurred following the recession of the early 1980's. Since the introduction of the rule, they have had only two incidents of mortgage fraud which is a substantial improvement over their pre-rule experience.

The British Columbia rule is broader than the proposed Ontario rule as it also prohibits lawyers from acting for both vendor and purchaser in real estate transactions.

The Law Society (England and Wales) has also had a two lawyer rule in effect for many years. It feels very strongly there are fundamental conflicts of interest inherent in the transfer of title to real estate or in private mortgage transactions that can not be addressed when a single lawyer represents both clients notwithstanding warnings and obtaining consent to act. In fact, England and Wales are considering expanding the rule to prohibit lawyers acting for both sides in institutional lending situations.

The experience in England and Wales has been very positive.

The England and Wales rule has been in effect since the early 1970's and is now so established, breaches of the rule are not a major problem.

...

The Committee recommends that the Rules of Professional Conduct be amended to provide that no lawyer shall act or continue to act for both lender and borrower in a mortgage transaction unless:

- it is a remote area of Ontario and it is not practical for the lender or the borrower to retain another lawyer.
- the mortgage is a vendor take back mortgage incidental to the transfer of title to real property.
- the lender is a financial institution.
- the face value of the mortgage does not exceed $15,000.
- the lender and the borrower are not at arm's length.

POSSIBLE 'ESTABLISHED CLIENT' EXEMPTION TO APPLICATION OF TWO LAWYER RULE

When bencher James Wardlaw tabled his motion for the introduction of a Two Lawyer Rule in June of 1994, one of the most common complaints from the profession was that such a rule would interfere with long standing solicitor/client relationships, particularly in smaller centres. Some members of the profession objected to having to send one of two long standing clients to another lawyer for independent representation. The Two Lawyer Rule used in England addresses this concern but does open up the Rule to potential abuse.

England exempts from the operation of its rule situations where both parties can be considered "established" clients. Commentary 3 to the Rule expands on the concept of what an established client is.

> "The test of whether a person is an 'established client' is an objective one. That is, whether the ordinary, reasonable and fair minded solicitor would regard a person as an established client. An existing client is not the same as an established client. Thus, if a purchaser instructs a solicitor for the first time and, after those instructions are received, it is discovered that the vendor is an established client, the exception in Rule 6(2) would not apply and consequently the solicitor could not act for both parties."

If an objective 'established client' test is established, it is always open for the dishonest lawyer to convince others that the clients are both 'established' and therefore may benefit from the exception. While it would be preferable not to have this exception, it is acknowledged that it may make the difference between limited and widespread opposition to a Two Lawyer Rule. Also, once introduced, the exception can always be eliminated in future if it proves to be open to widespread abuse.

93. The Task Force agreed with the recommended action (including the recommendation that there be no "established client exemption"). New rules 2.04(11) and (12) include the prohibition and the limited exceptions reflected in the memorandum.

94. The Task Force received a submission in response to the call for input this fall from lawyer Douglas Grenkie who suggested that the amount of the mortgage or loan which would be exempt from the rule's application should be increased from $15,000 to $50,000. The Task Force determined that $15,000 was too low an amount over which the rule would apply, and could be disadvantageous to those in locations where, for example, property values are low enough that a mortgage loan between $15,000 and $50,000, the new proposed limit, would be possible. Requiring individuals to engage separate lawyers for the loan or mortgage transaction in these circumstances could make the purchase of a property unaffordable. While the Task Force discussed a range from $30,000 to $50,000, it is proposing that $50,000 be the new limit subject to any desire on the part of Convocation to establish a lesser amount.

Rule 2.05 - Conflicts Arising from Transfer Between Law Firms

95. A change was made to rule 2.05(8) with respect to compliance with the rule on transfers. Paragraph 8 of the current rule, provides members with the option of applying to the Law Society or the courts for a determination of compliance with the rule. In the view of the Task Force, this overstates the Society's ability to resolve disputes under this rule and does not address the question of whether the court may override the Society's determination. The Task Force also noted the following:

- most of the conflicts from transfer situations will arise in litigation, where the courts ultimately have jurisdiction, and there is developed case law on what happens in these situations;
- there is an advantage to having the courts consider the issues, as they have an established reporting mechanism (unlike the Society);
- in the *MacDonald Estate* case, the Supreme Court of Canada said that while it would be interested in what the Law Societies may have to say, the decision was one for the courts;
- the Society is not conceding any measure of independence of the profession simply because the Society has a rule that recognizes the authority of the courts.

96. The Task Force ultimately decided that if there is continuing litigation, where most of these issues will arise, it would be incongruous to provide that the Law Society may determine conflict issues arising in the litigation. This amendment would not preclude the Society from providing advice (as contrasted with binding determinations) concerning the application of the rule.

97. A new amendment to the proposed rule deletes the words "not yet in effect" after the third paragraph in the commentary following rule 2.05(3). With this change, the rule would apply to government employees and in-house counsel, who are brought within the definition of "law firm" in the rules. The Task Force recognized that the existing rule, Rule 29, was drafted as an initiative of the Federation of Law Societies in response to the *MacDonald Estate* case, and considered that the coming into force of this particular provision in the commentary should be a matter for individual law societies to determine. In the Task Force's view, there was no compelling reason not to make the commentary operative now.

Rules 2.06(4) - Doing Business with a Client-Borrowing from Clients, 2.06(6) - Lawyers in Loan or Mortgage Transactions

98. As the title indicates, the focus of new rule 2.06 and its various subrules is on those aspects of a lawyer's business relationship with a client that require ethical guidance.

99. One of the subrules, 2.06(4), includes the provisions of existing Rule 7, with the exception of the last half of existing commentary 2. This deletion flows from a suggestion of Law Society staff that discussing investments by lawyers of clients funds as "the normal and traditional function of the lawyer" is neither accurate nor desirable for inclusion in the rules. The Task Force also felt that this passage is really about professional negligence, and the inclusion of these words diverts attention from the real focus of the rule, that of borrowing from clients. Accordingly, the Task Force recommends deleting the portion of the existing commentary 2 beginning with the words "This practice...".

100. In its review after April 1999, the Task Force determined that a change to rule 2.06(6)(b) should be made, based on a submission received from Malcolm Heins on behalf of the Lawyers Professional Indemnity Company. The earlier draft of the rule, based on the text of current Rule 23, paragraph 2(b), allowed a lawyer to arrange a syndicated mortgage with a client where the lawyer was also an investor if the client had competent independent legal advice or was a knowledgeable investor. The Task Force decided that where the lawyer's interests may overlap with those of the client, it is important that *all* investors, including those who may be knowledgeable, be required to obtain independent legal advice with respect to the transaction. Further, because there are other areas in which the rules require or suggest that independent legal advice be afforded clients, the Task Force determined that the adjective "competent" with respect to the legal advice in this context, could cause a problematic differentiation in standards. Accordingly, the Task Force proposes that this adjective be deleted.

Rules 2.06(9) and (10) - Doing Business with a Client-Guarantees by a Lawyer

101. The Task Force reviewed material received from the Professional Regulation Committee in late 1998 arising from a review by one of its working groups on issues relating to current Rule 23. The review was prompted by concerns about the scope of the rule. Rule 23 generally prohibits members from guaranteeing indebtedness where a client is either the lender or borrower. This rule was promulgated in order to prevent lawyers from inducing clients to enter into loan transactions based on a perception of creditworthiness of lawyers. However, it is permissible for members to enter into joint business ventures with clients provided that they comply with the conflicts of interest and borrowing from clients rules. Typically, when raising capital for the joint business venture, all participants in the venture are called upon to provide joint and several personal guarantees for any loans. This is a business requirement regardless of whether the participant in the venture is a lawyer or not. There is no concern of undue influence or unfair inducement arising from the lawyer's status in such cases. Notwithstanding this, Rule 23 (6) appears to prohibit a lawyer from providing a guarantee in these circumstances, a prohibition that effectively prevents a member from participating in an otherwise permissible activity.

102. The proposals of the Professional Regulation Committee for changes to the rule, with which the Task Force agreed, would permit a lawyer's guarantee in prescribed circumstances, in a manner that ensures clients' rights and interests are protected.

103. Accordingly, new rule 2.06 focusing on business relationships with clients includes these provisions in rule 2.06(9) on guarantees. Rule 2.06 also includes the text of current Rule 7 on borrowing from clients and those portions of current Rule 5 on conflicts that deal with investment by a client where the lawyer has an interest.

Rule 2.08 - Fees And Disbursements

104. Virtually all of current Rule 9 has been incorporated in new rule 2.08. A small amendment to existing Rule 9(a) was made, now appearing in rule 2.08(1), to simplify the language respecting charging fair and reasonable fees and disbursements.

105. A significant change is an amendment to permit referral fees between lawyers if the fee is reasonable and the client is informed and consents. The review of the referral fee issue was prompted by former bencher Elvio DelZotto's motion before Convocation in September 1998, to permit these arrangements.[2]

106. The proposal for referral fees appeared in the April 1999 report as a commentary, but further review was undertaken by the Task Force over the summer and into the fall of 1999, in response to a suggestion, again from Elvio DelZotto, that referral fees also be permitted between lawyers and non-lawyers. Convocation also asked the Task Force to give further consideration to the implications of the proposal on the prohibition against fee splitting.

107. The Task Force examined these and other issues. A memorandum prepared for the Task Force's review included information on other jurisdiction's treatment of referral fees between lawyers and between lawyers and non-lawyers. The former have been permitted in two other jurisdictions in Canada, British Columbia and Saskatchewan, and as a result of inquiries on its behalf the Task Force has confirmed that these jurisdictions have not been called upon to deal with any significant problems arising out of their referral fee rules.

108. The new text, reorganized from the earlier draft of the proposed rules, was elevated from a commentary to a rule and is found at rule 2.08(8). The Task Force affirmed the purpose of permitting referral fees as a way to offer some flexibility for lawyers in creating new business opportunities. More importantly, the rule would advance the public interest in seeing that the a client's legal work is done by the best qualified lawyer.

109. The Task Force determined that referral fees should only be permitted where the lawyer to whom the matter is being referred has a particular expertise or ability in the relevant area of law. The lawyer would not have to be a certified specialist. The Task Force also felt that a referral fee should not be permissible in situations in which the referral was necessitated by a conflict of interest.

110. The Task Force expects that the referral fee rule may evolve over time, perhaps by requiring that the referral fee be a percentage of the fee charged by the lawyer to whom the matter is referred. The Task Force did not consider it advisable to impose such a condition now, particularly in light of the experience in British Columbia and Saskatchewan. The proposed approach narrows the circumstances in which referral fees would be permitted and should allow lawyers to obtain the benefit of referrals while ensuring that the best advice for clients is obtained. The Task Force emphasizes that the permissibility of referral fees between lawyers will encourage lawyers who lack experience or expertise in particular fields to refer matters to lawyers who are better qualified to serve clients in those fields. It will also permit lawyers in sole practice to accomplish what lawyers in larger firms are able to accomplish indirectly through compensation arrangements that reward lawyers who attract work to the firm.

111. A companion change to rule 2.08(9) makes it clear that the prohibition against referral fees applies only to payments made to non-lawyers.

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[2]The motion also included other proposals for changes to the advertising and marketing rules, discussed later in this report.

112. The Task Force amended rule 2.08(10) by adding language that would except multi-discipline practices from the application of the prohibition on fee-splitting or division of fees with non-lawyers. In multi-discipline practices the sharing of fees and profits will occur between non-lawyers and lawyers by virtue of the structure.

113. The Task Force decided not to recommend that referral fees between lawyers and non-lawyers be allowed at this time. Based on the submissions it received the Task Force concluded that there is no consensus in the profession that referral fees between lawyers and non-lawyers be permitted, and felt that further consideration of the issue should await an assessment of the Society's experience with referral fees between lawyers.

114. The Task Force discussed whether there should be a requirement that lawyers provide *pro bono* services. The Task Force considered whether:

- lawyers would be disciplined for a breach of a *pro bono* requirement;
- language encouraging the provision of such services is preferable to an obligation;
- whether lawyers should be forced to take a case for no fee or represent a cause that they do not believe in.

The Task Force concluded that a change of this significance should be effected, if at all, only after a focussed consultation process that the Task Force could not effectively undertake in the time available.

115. Within the scope of the *pro bono* issue, however, the Task Force decided that it would be appropriate to add language to the last paragraph of the commentary under rule 2.08(2) to the effect that it is in the best traditions of the legal profession to provide *pro bono* services, in cases of hardship or poverty or where the client would otherwise be deprived of adequate legal advice or representation.

Rules 3.01 - Making Legal Services Available, 3.02 - Law Firm Name, 3.03 - Letterhead, 3.04 - Advertising, 3.05 - Advertising Nature of Practice, 3.06 - Offering Professional Services

116. The Task Force is recommending a number of significant changes to the text of the rules governing advertising and marketing.

117. The Task Force felt it appropriate to amend the earlier draft of subrule 3.01(2), based on a submission received after April 1999 from a member of the Society's staff, who suggested that a mandatory rule requiring a lawyer who is unable to act for a prospective client to assist the client to find another lawyer who is qualified and able to act, may have unfair consequences in some cases. Accordingly, rule 3.01(1) has become simply 3.01 and a new commentary was drawn from the language of rule 3.01(2) with use of the word "should" rather than "shall".

118. The Task Force received comments in November 1999 on the firm name rule, rule 3.02, from Michael Thompson, a lawyer with Ernst & Young's affiliated law firm, Donahue & Partners. He submitted that firm names should not be restricted to the names of lawyers (living or deceased) qualified to practise in Ontario. He used the British Columbia rule as an example, which would permit trade names and figures of speech as long as they meet the marketing rule threshold as being professional and in the "best interests of the public".

119. The Law Society's Secretary, Richard Tinsley, at the Task Force's request advised on developments at the Federation of Law Societies. The Federation's initiative was in the form of a protocol for inter-jurisdictional practice, one part of which deals with firm names in the context of international firms and a lawyer's entitlement to practise law in a Canadian province or a foreign jurisdiction. Mr. Tinsley's advice also included information about British Columbia's experience with its rule, to the effect that there have been no problems with the rule in British Columbia and that some firms there have adopted trade names.

120. In considering the alternatives for firm name rule, the Task Force discussed the following possibilities:
- adopting the Federation's protocol, which would apply prospectively, as does not currently apply to any firms;
- adopting a rule similar to that in British Columbia, or
- leaving rule 3.02 as it is.

121. The Task Force found attractive the emphasis in the current rule on the personal relationship between the lawyer as an individual practitioner and a client, and the expectations, responsibilities and standards that that relationship engenders. It emphasizes people as opposed to an organization, professionalism as opposed to commerce.

122. The Task Force concluded that no changes to the firm name rule should be recommended at this time. The Task Force appreciates, however, that the Multi-Disciplinary Practices Task Force may also be dealing with the issue.

123. Other changes were made to the text incorporated from existing Rule 12 with respect to firm names, letterhead and advertising the nature of a practice. Rule 3.02(8) was added to reflect requirements in the amended *Partnerships Act* for firms carrying on the practice of law as limited liability partnerships. If a law firm is a limited liability partnership, the phrase "limited liability partnership", or the letters "LLP", are to be included as the last words or letters in the firm name. Similarly, rule 3.03(1)(g) stipulates that these words or letters are to appear on the letterhead and other identifying signs of the law firm, where applicable.

124. Rule 3.03(1)(f) is a new provision, resulting from a suggestion from lawyer David Fernandes in response to the call for input after April 1999 that the letterhead of a law firm may include a statement that a member of the firm is qualified to practice in another jurisdiction.

125. Proposed rule 3.03(3), drawn from current Rule 12(7)(a) and (b), includes additional language permitting the identification on letterhead of a multi-discipline practice of non-lawyer partners and their designations if any. Other changes, also as a result of the implementation of the multi-discipline practice model, have been made in rule 3.03(1)(h), which would permit the use of the phrase "multi-discipline practice" or "multi-discipline partnership" on letterhead where applicable; and in new rule 3.05(6), which adds to the text in existing Rule 12(8)(b) language providing that the services provided by non-lawyers in a multi-discipline firm may be specified.

126. Because the words "false and misleading" in current Rule 12 paragraph 2(a) encompass what would be included by virtue of the phrase "and any factual information in the advertisement is verifiable", also appearing in paragraph 2(a), this latter phrase was deleted from what would become rule 3.04 (1) (a).

127. In rule 3.04(1)(b), the words "in good taste" in current Rule 12 paragraph 2(b) were deleted, given the very subjective nature of that test, the lack of any history of breaches of the rule, and the fact that under the proposed new rule lawyers would still have a duty to ensure that advertising does not bring the profession or the administration of justice into disrepute. When Convocation reviewed this change in April 1999, concern was expressed about deleting the good taste requirement. The Task Force undertook a further policy review of the issue, and received a memorandum outlining the Society's history with the provision. The current rule resulted from a report of the Special Committee on Advertising, the mandate of which was to "review and consider such matters or concerns that might, from time to time, arise related to advertising and to report to Convocation and make such recommendations as it considers appropriate". After canvassing other jurisdictions in Canada and abroad, the Committee recommended that Convocation adopt a rule on advertising in the language of a draft rule contained in the report, which became current Rule 12, paragraphs 2 and 3. The original draft did not contain mention of good taste, but a phrase to that effect was added by a motion.

128. A number of years later, paragraph 2(b) of Rule 12 was the focus of a debate, in the context of an issue concerning the appropriateness of an advertisement of lawyers' practices in a magazine, in a section entitled "Goodlife's Registry of Professional Specialists", tied to another list, the "Goodlife Index of Affluence". Bencher David Scott said:

> ...the requirement that an advertisement be in good taste, I see that it [sic] as outdated. There should be some better way of defining acceptable advertising, good taste being very much in the eye of the beholder. ... The test should have something to do with professional standards and not good taste, and that therefore I would simply ask that at some stage this Committee revisit the advertising question insofar as this rather anachronistic requirement that advertisements be in good taste; that we develop some alternative language.

129. The matter was then referred to a subcommittee of the Professional Conduct Committee that was reviewing the rules of conduct. This review appears to have been subsumed by the Somerville Committee's deliberations. In material prepared in April 1994, the Somerville Committee, echoing a submission received from one law firm on the topic, said: "Advertising subject to the proviso that it "must be in good taste" needs to be clarified. Whose "good taste" are we measuring the advertising against?"

130. The Task Force considered the above material and canvassed other jurisdictions on the good taste issue. It found that a number of American and Canadian jurisdictions simply rely on the requirement for professionalism in advertising by lawyers. The American Bar Association appears to have recognized the difficulty in making the good taste test part of a binding rule of conduct, but saw fit to include commentary on the need for "dignified" advertising in an aspirational statement. In Canadian jurisdictions that include language reflecting good taste, the language appears not in a rule but in commentary or guidelines to a rule.

131. Based this information, which confirmed that Task Force's view that the good taste requirement was a wholly subjective standard and virtually unenforceable, the Task Force continues to recommend that it be deleted. However, the Task Force recommends an amendment to the language of the commentary following rule 3.04(3), which in its amended form would specify that the means by which legal services are made available must be consistent with the public interest and must not detract from the integrity, independence, dignity or effectiveness of the legal profession.

132. Current Rule 12 (2)(c) prohibits lawyers from comparing services or charges with other lawyers. The Task Force recommends that this prohibition be deleted, as it is in the public's interest that potential clients have comparative information about fees. The Task Force also concluded that any legitimate concerns about the way in which improper comparisons may be made will be covered by rule 3.04 (1) (which prohibits false or misleading advertising and advertising that brings the profession into disrepute) and by the commentary under rule 3.04 (3) (which specifies that advertising must not detract from the integrity or dignity of the profession). A change was made to this commentary to delete language describing promotional advertising as not being in the public's or profession's interest, as the advertising expressly permitted by the rule may well be characterized as "promotional".

133. Rule 3.04(2)(c), which is taken from current Rule 12 paragraph 3(c), was the subject of debate within the Task Force on whether the rule was too restrictive. The Task Force recognized that privately, lawyers and clients may routinely enter into arrangements for discounted or special-rate fees, and the question is whether what is done privately should be reflected publicly in a permissively-stated rule (or permitted by the absence of prohibiting language). The Task Force's view is that this part of the rule, being the words "nor shall advertisements indicate that a price is a discount or reduction or special rate", should be deleted.

134. Although there was some discussion about the need for rule 3.04 (3)(b) (which is now Rule 12 paragraph 5(b)), the Task Force agreed that it is a necessary provision in light of the potential for misleading information and abuse by corporations, for example, in using the name of a lawyer to add credibility to a corporation. The key words are "while in private practice". The reference at the end of the rule was changed to read "standing committee of Convocation responsible for professional conduct" instead of "Professional Conduct Committee."

135. The Task Force reviewed the current prohibition against indicating preferred areas of practice, in current Rule 12 paragraph 8(a). Although it appears that the primary reason for including the phrase was to avoid confusion with language indicating specialization, the Task Force felt that the prohibition is anachronistic. As there does not appear to be a good policy reason to maintain the prohibition, the words "but may not indicate that the lawyer has a preferred area of areas of practice" were deleted from what is now rule 3.05(3)of the proposed new rules.

136. Issues arising from former bencher Elvio DelZotto's motion before the September 1998 Convocation encompassed two issues dealing with current Rule 12, namely, steering and referral arrangements found in Rule 12(5)(f) and (g) respectively, and the prohibition on solicitation found in Rule 12(4).

137. The Task Force concluded that substantive revisions should be made to the solicitation rule, now rule 3.06, and the paragraphs which followed it on prohibited marketing activities, found in current Rule 12, paragraph 5(c) through (g). The revisions remove the prohibitions on solicitation, steering and referral arrangements, and involve as a first step the deletion of Rule 12, paragraphs 4 and 5(c) through (g). The proposed new rule is entitled "Offering Professional Services", a change from the title in the earlier draft of "Seeking Professional Employment", a title that, on reflection, the Task Force thought might be confusing.

138. The new rule addresses the means by which lawyers offer to make legal services available rather than prohibiting solicitation *per se*. Under the new rule, lawyers would be permitted to seek to be engaged in professional employment by a prospective client provided that the means adopted are not false or misleading; do not involve coercion, duress or harassment; do not take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover; do not interfere with an existing relationship between another lawyer and client for the purpose of obtaining the client's retainer, unless the change of retainer is initiated by the client; or that otherwise are such as to bring the profession or the administration of justice into disrepute. The Task Force noted that the Alberta rules, while not prohibiting solicitation generally, include a commentary that appears to prohibit solicitation of persons in a "vulnerable position". The new rule was drafted in the format of the new advertising rule, beginning with "Subject to subrule (2), a lawyer may..." This is followed by restrictions set in (2), such as ensuring that the profession is not brought into disrepute by solicitation, and obliging lawyers not to solicit from vulnerable persons or those whom the lawyer knows have counsel in a particular matter. A basket clause concludes the list, intended to be applied in the context of the narrowly structured restrictions.

139. Issues were raised at the April 1999 Convocation session on the rules with respect to the effect of rule 3.06(2)(d). The concerns related to whether "interfering" with an existing retainer, as used in the earlier draft, meant that cold calls to potential clients or letters to those whom the lawyer might assume have legal representation, would offend the rule.

140. The Task Force directed further research on the rule, and received a memorandum to assist in its discussions. It noted that the prohibition on solicitation in the current rule emphasizes the attempt to be retained in a particular matter. The conduct that the rule proscribes is contacting a client whom the lawyer knows has a particular retainer with a particular lawyer, for the purposes of having that retainer transferred to the lawyer making the contact, where no change of retainer has been initiated by the client. Especially where the lawyer persists after the client says the contact is unwelcome, the contact with the prospective client is unwarranted, the only motive for it being the lawyer's desire to obtain more business.

141. The Task Force concluded that the rule should remain but that the word "interfere" should be replaced. This resulted in revisions to rule 3.06(2)(d), which in its present form provides that in offering professional services a lawyer shall not use means that are intended to influence a person who has retained another lawyer for a particular matter to change his or her lawyer for that matter, unless the change is initiated by the person or the other lawyer.

142. In summary, with the above amendments, the Task Force believes that one of the aims of the rules revision will be accomplished — that of increasing access to legal services through fewer restrictions while ensuring that adequate protections are in place.

Rules 4.01 - The Lawyer as Advocate, 4.02 - The Lawyer as Witness, 4.03 - Interviewing Witnesses, 4.04 - Communications with Witnesses Giving Evidence, 4.05 - Relations With Jurors, 4.06 - The Lawyer and the Administration of Justice, 4.07 - Lawyers as Mediators

143. The rule on advocacy was substantially reorganized to more clearly indicate the individuals or entities to whom the lawyer as advocate owes various obligations. The proposed new rules elevate certain text formerly appearing in commentaries to current Rule 10 to the status of rules, with appropriate commentary either reorganized or added.

144. The Task Force reviewed the American College of Trial Lawyers' draft Canadian *Code of Trial Conduct*, and adapted some of the rules in that code. Several important changes were made to the advocacy rules.

145. The sub-title "Abuse of Process" appearing before current commentary 2 was deleted, as the concepts discussed in that portion of the rule are broader than the title would suggest. The subject matter is better described by the more general title of rule 4.01, "The Lawyer as Advocate".

146. New commentary was added following rule 4.01(1), as a result of a submission received from law professor Nicholas Bala, who suggested that there is a need to highlight the special responsibilities of lawyers in cases in which children's interests may be affected. The commentary, which appears at paragraph four, exhorts lawyers to advise their clients to take into account the best interests of the child in such circumstances.

147. The Task Force received a response to the call for input from the Canadian Bar Association - ADR Section, which suggested that the commentary under rule 4.01(1) be amended to make it clear that the rule on advocacy applies to lawyers acting as counsel in mediations, arbitrations, and other ADR initiatives. The Task Force considered this an appropriate amendment and is proposing this change.

148. The Task Force recommends moving commentary that appeared under rule 6.06 of its previous draft, dealing with a lawyer's personal opinions on the merits of a client's case, to the advocacy rule. This now appears at the fourth paragraph in the commentary under rule 4.01(1). The commentary is not new; current commentary to Rule 21 is to the same effect.

149. The last phrase of current commentary 2(g), now rule 4.01(2)(g), was amended to clarify and simplify the prohibition against asserting facts for which there is no reasonable basis in evidence.

150. The duty of a lawyer serving as prosecutor to disclose all relevant information as required by law was drawn from current commentary and made a rule (rule 4.01(3)). In the fall of 1999, the Task Force received a submission from Deputy Attorney-General Andromache Karakatsanis, who suggested that the proposed rule (and, presumably, the current commentary) are *ultra vires* the Law Society, on the basis that the Law Society does not have jurisdiction to discipline the Attorney General or his agents in relation to their exercise of prosecutorial discretion, and that a provincial body cannot "legislate" in the area of criminal law. Ms. Karakatsanis cited *Krieger v. Law Society of Alberta*, [1997] A.J. No. 689, an Alberta decision that has been appealed to the Alberta Court of Appeal, in which Justice MacKenzie of the Alberta Court of Queen's Bench held that a law society lacks jurisdiction to discipline a Crown Attorney for failing to disclose relevant information in the absence of proof of dishonesty or bad faith. The Alberta rule was held to be constitutional, however, as commentary to it made it clear that a prosecutor who inadvertently failed to disclose relevant information would not violate the prohibition.

151. The Task Force did not accept the submission that the Law Society has no jurisdiction to discipline Crown Attorneys for failing to disclose information as required by law, and proposes no change to the draft rule. The Task Force does recommend, however, the addition of a commentary after rule 4.01 (3) to specify that the rule is not meant to apply to circumstances in which a prosecutor has inadvertently failed to disclose relevant information, but rather is intended to be applied in circumstances in which the prosecutor is acting dishonestly or in bad faith.

152. A new rule on "discovery obligations" found at rule 4.01(4) was drafted to bring home to lawyers their professional obligations in this area.

153. In response to the call for input after April 1999, the Task Force received suggestions for changes to rule 4.01(8) relating to agreements on guilty pleas as it appeared in the earlier draft. As a result of a submission from Paul Stern on behalf of the Criminal Lawyers Association, and after considering the text of the Martin Report[3] the Task Force agreed that a change should be made in the rule. The Task Force has revised the text of the proposed rule to define more clearly the circumstances in which it is proper for a defence lawyer to enter into an agreement with the prosecutor about a guilty plea. The proposed rule was also amended to make it clear that the defence lawyer and prosecutor may discuss disposition of the case, with the client's consent, before or at any time after a charge is laid.

154. Rule 4.03(3) is a new rule that the Task Force proposes should be added to deal with the circumstances in which it is permissible for counsel to interview witnesses who are employees of a corporate party that is represented by a lawyer. The proposed rule would prohibit a lawyer seeking information from a corporate party that is adverse in interest from approaching directors and officers of the corporation, as well as persons likely involved in the decision making process with respect to the matter. The proposed commentary to the rule provides that a person acting for a corporation cannot claim to represent an employee as a witness unless he or she has complied with the requirements of rule 2.04 (6) through (10) (joint retainers). This admonition is designed to prevent counsel for a corporate party from sheltering factual information from another party.

155. Submissions received by the Task Force on this rule after April 1999 focussed on two aspects. The Advocates' Society submitted that language proposed in an earlier draft of the rule which prohibited approaching "management personnel" as well as directors and officers, was too vague. The suggestion was that a term in keeping with the case law on the subject be used, and the Task Force agreed that the phrase "persons involved in the decision making process with respect to the matter" was more appropriate. The second aspect, raised by Borden & Elliot, related to situations in which an employee who is not a director, officer or "decision maker" is the person whose conduct is called into question in the litigation. The Task Force considered it appropriate to make it clear that the rule applied to these individuals and accordingly adopted language in rule 4.03(3) that reflected this concept. Companion changes were also made to the commentary following the rule.

156. In its earlier draft, the Task Force proposed a new rule on the responsibility of lawyers to complainants in criminal cases (rule 4.04). The proposed rule was based upon a similar provision in the Law Society of Alberta's rules of professional conduct .

157. Over the summer of 1999, the Task Force received a submission from the Criminal Lawyers' Association on this rule, through Paul Stern, who raised a number of issues. The Association pointed out that this type of discussion occurs in a variety of cases and is often useful in resolving matters. The Association submitted that such discussions should not be prohibited, provided that counsel are mindful of the need to ensure there is no obstruction of justice.

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[3]Martin, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions* (Toronto: Queen's Printer, 1993).

158. The Task Force discussed the mischief the rule was intended to address, namely, the possibility of abuse of power where a lawyer communicates directly with an unrepresented and possibly vulnerable person, perhaps "buying off" the complainant through a benefit. The Task Force agreed with the Criminal Lawyers Association's submission that the proposed new rule was over broad, and concluded that a narrower rule would prevent the mischief identified without potentially interfering with discussions that are in the public interest.

159. Proposed rule 4.01 (2)(1) already provides that a lawyer representing an accused or potential accused shall not influence or attempt to influence a vulnerable complainant with respect to the laying, prosecution or withdrawal of criminal charges. The Task Force concluded that rule 4.01 (2) (1) adequately addresses the problem, and recommends the deletion of what was rule 4.04 in its previous draft. The Task Force decided, however, that a commentary should be added after rule 4.0192) based on the commentary following the earlier draft of rule 4.04. The commentary makes it clear that a defence lawyer may communicate with a complainant to obtain factual information or arrange for restitution or an apology, for example, but must take care not to take unfair or improper advantage if the complainant is vulnerable. The commentary also provides that where the complainant is unrepresented the lawyer should be governed by the rules dealing with represented persons.

160. As a drafting matter, the Task Force determined that rules 4.01(2)(m) and (n) in the earlier draft, which address conduct by counsel for a complainant in threatening the laying or withdrawal of charges to achieve a benefit, should be combined. They now appear as rule 4.01(2)(m).

161. New commentary was added this past fall to proposed rule 4.04 on Communication with Witnesses Giving Evidence. The rule draws the text from current Rule 10, commentary 15. In response to input received from Society staff, the Task Force felt it appropriate to add commentary to the effect that these rules apply with necessary modifications to examinations out of court, in accordance with the language in the *Rules of Civil Procedure.*

162. A new provision on advocates' duties respecting relations with jurors was added (rule 4.05), after input was received from the Criminal Lawyers' Association on this topic. Again, the American College of Trial Lawyers' Draft Canadian *Code of Trial Conduct* was used as a prototype.

163. New commentary, drafted after April 1999, appears following rule 4.06(3) based on a suggestion of the Criminal Lawyers' Association. The new text is in the second paragraph of the commentary, and elaborates on lawyers' actions in assisting in security of court facilities in a way that does not interfere with a party's right to a fair trial.

164. The Task Force proposes an amendment to rule 4.07 on lawyers as mediators (rule 4.08 in the earlier draft, incorporating the provisions of current Rule 25) based on submissions received in the fall of 1999. With the growth of mediation and other alternative dispute resolution services among lawyers (and non-lawyers) and a move to mandatory mediation in the civil justice system, the Task Force determined that to require lawyer mediators in every case to advise parties that " the function being discharged is not part of the traditional practice of law" is no longer appropriate. The Task Force recommends deleting that phrase.

Rule 5.01 - Supervision

165. The Task Force proposes that the title of Rule 5 be amended from that appearing in the earlier draft ("Relationship to Associates, Students, and Employees") to add the words "and Others", as Rule 5 includes two rules, on discrimination and sexual harassment, that apply beyond the groups in the original title.

166. The Task Force incorporated the text of current Rule 16 in the new rule on supervision but with some reorganization of the rule and commentaries. In addition the Task Force made the following changes.

167. Current commentary 2(d) of Rule 16 dealing with delegated tasks in litigation, specifies that law clerks may attend in court unaccompanied by a lawyer on certain matters (*e.g.* routine examinations in uncontested matters) but only if the law clerk is employed by only one lawyer or firm. The rationale for confirming this permissible delegation to full time employees of one lawyer or law firm is the assumption that a full time employee can be expected to be more closely supervised. The Task Force felt that the same rationale, however, would apply to a law clerk employed, for example, by two lawyers who are not partners or associates, but who share office space and other facilities in the manner of an association. With respect to other arrangements, the rules require that any clerk employed by one or a number of lawyers must be adequately supervised, given the lawyers' responsibilities to the client for the actions of all employees. Accordingly, the phrase "employed by only one lawyer or law firm" was deleted from the last sentence of the first paragraph of commentary 2(d), which now appears as the last part of the commentary under rule 5.01(2).

168. In the earlier draft, the Task Force discussed the language in current commentary 3(b) to Rule 16, as it relates to "fee schedules". In light of the history of discussions concerning fee schedules and issues of law concerning anti-competitive practices that have resulted in some law organizations coming under the scrutiny of investigators from the Bureau of Competition Policy, the Task Force felt it appropriate to delete reference to "fee schedules" in this rule, noting that the change does not affect the essence of the commentary. Accordingly, the commentary was incorporated in the earlier draft as new rule 5.01(3)(b), which prohibited lawyers from allowing non-lawyers to "set fees". The Task Force revisited this particular prohibition on delegation after its April 1999 report, and determined that in light of the supervision that lawyers are required to exercise over non-lawyers, there is no compelling reason why a non-lawyer should not be entitled to set fees. Accordingly, the Task Force is proposing that this prohibition be deleted.

169. The Task Force drew what now appears as rule 5.01(3)(m) from the existing commentary, as the importance of this statement, in the Task Force's view, requires that it appear as a rule.

Rule 5.02(1) – Students - Recruitment Procedures

170. The Task Force, in keeping with its focus on eliminating unnecessary or redundant language in the rules, amended the language in commentary 7 to current Rule 13 respecting the lawyer's duty to comply with procedures (formerly described as "guidelines") respecting the hiring of summer or articling students. The commentary was changed to a rule within the new rule on students, rule 5 .02. The rule was then amended to change the word "guidelines" to "procedures" to be consistent with the procedures, so titled, approved by Convocation for the recruitment of summer and articling students.

Rules 5.03 - Sexual Harassment, 5.04 - Discrimination

171. As a result of submissions received from at least two members since April 1999, the Task Force determined that rule 5.03(2) should be amended to delete the words "in a professional context", which unnecessarily narrowed the application of the rule. A further change was made to amend the language in rule 5.03(1)(a) to change the subject of the conduct of the lawyer in these situations from "another person or group" to "the recipient(s) of the conduct", in keeping with language in human rights legislation as suggested by the Advocates' Society.

172. Input was received from Charles Smith, the Society's equity officer, and from the consultations through the Treasurer's Equity Advisory Group, on the discrimination rule. The Task Force decided that it was necessary to expand the commentary to current Rule 28 to more fully explain the nature of discrimination and how it may manifest itself. The text of the new commentary was drawn from a number of bulletins published by the Society at the time that Rule 28 was adopted, which discussed in detail matters related to discrimination.

173. In an effort to highlight the importance of lawyers' observance of the principles of equity and diversity in the profession, the Task Force, as noted earlier in this report, included a statement to this effect in the Interpretation rule and has included in the bibliography to the rules references to a number of articles and studies focussing on equity issues.

Rules 6.01 - Responsibility to the Profession Generally, 6.01(1) - Integrity, 6.01(2) - Meeting Financial Obligations

174. The commentary appearing under existing rule 1 with respect to integrity has been moved to Rule 6.01(1), which is a general statement on the lawyer's obligation to maintain the integrity of the profession.

175. In the fall of 1999, the Task Force received a submission from the Medico-Legal Society of Toronto respecting lawyers' obligations in fulfilling financial obligations relating to medical reports. As a result of that submission, the Task Force decided that it would be appropriate to expand the commentary appearing in the earlier draft, drawn from the current rules (Rule 13 Commentary 6) to advise lawyers that when retaining experts or consultants, the terms of the retainer should be clarified in writing and that if there is a change of solicitor, that fact should be communicated to the expert or consultant.

Rule 6.01(3) - Responsibility to the Profession Generally - Duty to Report Misconduct

176. A new commentary was added to this rule to address the unique position of the Society's new Discrimination and Harassment Counsel ("the counsel") in the context of the duty to report the misconduct of lawyers.

177. In the fall of 1998, Convocation approved the report of the ADR Systems Design Team ("the report") which included a proposal for the provision of ADR services in the Society's regulatory operations. The design was approved as a one year pilot project, but was later extended to December 2000. Part of the design involved establishing the position of the counsel who, in the words of the report, "is to ensure that members of the public and members of the legal profession who experience harassment or discrimination either in their workplace or as a result of contact with lawyers...have access to the assistance of a knowledgeable resource person who can offer information and advice, and...act to resolve the complaint in an informal way".

178. The report highlights the fact that confidentiality is central to the role of the counsel. It states:

> The ombudsperson is not under any obligation to report any information received from the complainant to the Law Society... Conversations between the ombuds and those who contact the ombuds' office are to be kept in the strictest of confidence, to help people who contact the ombudsperson to decide themselves how to deal with their concerns.

This is in keeping with the general philosophy of ADR in the regulatory process, where confidentiality and without prejudice discussions are essential parts of the process. In adopting the report, Convocation agreed that, as stated in the report,

> ...information obtained from the [negotiation and mediation] process should be without prejudice in the sense that it cannot be used by the Society for any other purpose unless it is information that the Society must act on pursuant to Rule 13 commentary 1... An important advantage of restricting the Society's use of information in this setting is to encourage the member to participate meaningfully.

179. The report notes two exceptions to confidentiality. One is where the counsel may be subpoenaed to testify before a court or tribunal, and the other, relevant to this discussion, is where the counsel, if a member of the Law Society, will be bound by the rules requiring him or her to report misconduct of a lawyer to the Society.

180. Charles Smith, the society's equity officer, after discussions at the Treasurer's Equity Advisory Group ("TEAG"), raised with the Task Force the issue of the confidentiality of information received by the counsel from individuals in the context of these reporting requirements.

181. Within the TEAG , views were expressed that "the obligations of [Rule 13] will have an adverse impact on those who may need the support services of the Ombudsperson".[4] The British Columbia ombudsperson's model was noted and in particular the fact that the ombudsperson must maintain confidentiality of all matters.

182. The Task Force agreed with TEAG that without some guarantee of confidentiality, the efficacy of the counsel's role may be affected, but recognized as well the force of the argument that serious consequences could arise from the failure of a lawyer to report serious past, continuing or future misconduct.

183. The Task Force noted that this was an issue similar to that discussed when the Ontario Bar Assistance Program ("OBAP") requested an exception for lawyer counsellors who become aware of lawyer misconduct during counselling. TEAG also noted the treatment given to issues of confidentiality with respect to such counsellors, now appearing in recently approved commentary 1A to Rule 13. It was decided that this commentary (now the second paragraph of the commentary under rule 6.01(3)) should be used as a precedent for a new commentary on confidentiality and reporting requirements for the counsel. Accordingly, the third paragraph in the commentary following rule 6.01(3), reflects these principles.

184. A new commentary was added to the rule that establishes a duty to report lawyers' misconduct, to address the unique position of the Society's new Discrimination and Harassment counsel, who has a duty to maintain communications in confidence. The language is similar to the language in the commentary to current rule 13, which recognizes the confidentiality of counselling provided by such organizations as the Ontario Bar Assistance Program and LINK. Both paragraphs of the commentary provide, however, that lawyers serving as counsellors have an ethical obligation to report serious misconduct or criminal activity related to a lawyer's practice.

Rule 6.03 - Responsibility to Lawyers and Others

185. As a preliminary matter, the Task Force felt it appropriate to amend the title to rule 6.03 from the earlier draft, "Responsibility to Other Lawyers", so that it now reads as above. The change is necessary as the rule does not apply only to lawyers, but also to others who may be acting on their own behalf in a matter in which a lawyer represents the other party.

186. Another change to the earlier draft is recommended by the Task Force, in response to a submission that the application of rule 6.03(1) be more universal. Accordingly, the proposed rule now requires lawyers to be courteous and to act in good faith with *all* persons with whom the lawyer has dealings.

187. Commentary 4 to current Rule 13 deals with the proper tone of professional communications. The Task Force concluded that this provision is best placed in the context of the lawyer's professional relationship to other lawyers, and should be elevated to a rule. It now appears as proposed rule 6.03(5). The amendment to the rule is to add the words "or otherwise communicate" to broaden the scope of the rule so that all types of communications, not only written communications as currently covered by the rule, are subject to the rule.

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[4]TEAG report to Convocation, March 10, 1999, page 12.

Rule 6.05 - The Lawyer in Public Office

188. The Task Force reviewed material referred to it by the Professional Regulation Committee, which had begun a review of this rule based on a matter referred to the Committee from the Proceedings Authorization Committee. Discussion centred on whether the rule should be kept or deleted, with a particular focus on the appropriate definition of "public office" and "official body" and what a lawyer is expected to do when his or her duties as a lawyer and as an individual in public office conflict.

189. The Task Force decided that the rule should remain, and should exist as a free-standing rule dealing with a discrete relational issue, in keeping with the general thrust of the re-organized rules. The Task Force felt that users of the rules would look to this heading first for ethical guidelines for the lawyer in public office, rather than to the conflicts rules, for example.

Rule 6.06 - Public Appearances and Public Statements

190. The primary focus for the Task Force's review of current Rule 21, now rule 6.06 in the redraft, was material received from The Honourable Charles L. Dubin, Q.C. with his letter to the Treasurer in June 1998, which included draft guidelines included in a protocol regarding public statements in criminal proceedings, and a suggestion that the Society incorporate the guidelines in its rule on public statements by lawyers. The protocol was developed in consultation with representatives of the Criminal Lawyers' Association and the Crown, together with other interested organizations. The Task Force determined that the guidelines provided helpful guidance for lawyers and that an adapted version should be incorporated within the commentary to rule 6.06.

191. This led to a broader amendment to the current rule, to address clearly the competing interests of the public's right to information and a party's right to a fair trial, both of which are relevant to a lawyer's decision to make public statements about proceedings before the courts or tribunals. As the rule deals with public appearances and statements, and not with what may be, for example, indiscreet talk by a lawyer in a less public setting, the focus is on what may be disseminated in the media.

192. Since the April 1999 report, the Task Force has engaged in a continuing dialogue with the Criminal Lawyers' Association, in particular with its spokesperson, Paul Stern. Written communications were also received from the Association's president, Alan Gold. The Association expressed serious concerns about a number of aspects of commentary to the proposed rule as it appeared in the earlier draft. It focused on the first set of paragraphs in the commentary following rule 6.06(2), which provide examples of statements that are likely to prejudice a party's right to a fair hearing.

193. Of particular concern was paragraph (f) in the earlier draft, which provided as an example of a statement that may materially prejudice a party's right to a fair hearing "opinions concerning the guilt or innocence of the accused, the evidence or the merits of the case". The Association also took issue with paragraph (g) in the earlier draft, which cited as an example of such a statement "unsubstantiated out-of-court criticisms of the competence, conduct, advice or motivation of a lawyer, police officer, public official or of the judge involved in the matter." The Association's view is that paragraph (g) would place an unwarranted and unnecessary chill on defence counsel, particularly junior counsel.

194. The Association submitted that the entire commentary to rule 6.06(2) should be removed, and explained its prior approval of the protocol on the basis that that approval was provided on the understanding that the guidelines should apply to all interested or affected groups, such as the police and the media. In the Association's view it would be an unacceptable restriction on lawyers if the other groups did not subscribe to similar guidelines, and to date it is the Task Force's understanding that the other groups have not pursued implementation of the protocol.

195. With respect paragraph (f) under 6.06(2), the key question in the Association's submission is whether defence counsel should be permitted to express publicly their personal opinions concerning their clients' innocence (though the commentary also has the effect, of course, of advising Crown Attorneys of the danger that the expression by them of an opinion concerning the guilt of an accused person is likely to prejudice that person's right to a fair trial).

196. Ultimately, the Task Force as a matter of policy felt that it was better to remove the example in paragraph (f), on the basis of the criminal bar's view that there is a body of opinion that this should not be discouraged. James Lockyer, a defence counsel who has represented a number of persons who have been found to have been wrongly convicted, commented on this paragraph. He submitted that to include paragraph (f) may inhibit lawyers for such persons from assisting them effectively by bringing pressure to bear on authorities for the purpose of trying to remedy injustice in such cases.

197. With respect to paragraph (g) in the earlier draft, noted above, the Task Force acknowledged that the word "unsubstantiated" may be somewhat vague, and that there may be merit in the Association's concern that paragraph (g) may have a chilling effect on junior counsel. The Task Force concluded that paragraph (g) should be deleted. It also decided to add commentary in the introductory paragraph to the list of statements that may prejudice a fair trial, which would provide an exception for statements that the lawyer reasonably believes are necessary to counteract adverse publicity about the client or the case. The Task Force also decided to substitute the word "may" for the words "is likely to" in the introductory language preceding the list of examples, to emphasize that the purpose of the commentary is to provide guidance and to serve as an aid to the interpretation of the rule.

198. As a final matter in connection with this commentary, based on submissions received from the Association and its members after April 1999, the Task Force agreed to add two paragraphs to the commentary (now (f) and (g)) that would include the following in the list of statements that may prejudice a fair trial or hearing:

- a statement about any search or seizure of documents intended to be used as evidence, and
- a statement about anything that may be privileged from admission as evidence.

Rule 6.07(2) - Disbarred Persons, Suspended Lawyers, and Others

199. The Task Force reviewed a report issued in late 1998 by the Professional Regulation Committee, a working group of which studied a number of issues relating to current Rule 20. In particular, the working group proposed, and the Professional Regulation Committee agreed, that the name of the rule should be changed to reflect the broader scope of the rule and that the status list should include members who have undertaken not to practice.

200. The Professional Regulation Committee also proposed that applications to employ lawyers who have been suspended through the summary order provisions in the amended *Law Society Act* need not be reviewed by Convocation. They should be reviewed by a committee of benchers, and the Proceedings Authorization Committee was suggested as the most appropriate body. Its use would permit a more responsive and timely process for these types of applications. The Professional Regulation Committee concluded that if a lawyer's membership in the Society has been revoked as a result of the continuation of a summary order for suspension, applications under rule 6.07(2) involving those former members should be referred to Convocation.

201. The Task Force endorses these proposals. In particular, it agrees with the Professional Regulation Committee that a simplified procedure for administrative suspensions is appropriate, providing greater accommodation for the practising bar while ensuring that public interest protections through review by benchers remains intact. Accordingly, the Task Force redrafted this rule to reflect these decisions.

202. A further amendment to the rule was made by adding the words "partner or associate with" in the list of associations described in the rule requiring approval, to cover those situations where a multi-discipline practice or partnership may wish to include in the firm a non-lawyer who is a disbarred lawyer or who had resigned through the discipline process.

Rule 6.08 - Retired Judges Returning to Practices

203. At the April 1999 session of Convocation on the rules, a bencher asked whether rule 6.08, which incorporates the text of current Rule 15, should apply to what were then provincial court judges (now judges of the Ontario Court of Justice).

204. The Task Force directed research on the issue and was provided with a memorandum on the background to the current rule. This material suggests that there were good policy reasons for not including provincial court judges within the ambit of the rule. A review of the issue by the Professional Conduct Committee in 1991 concluded that the current rule, Rule 15, not apply to provincially appointed judges. The concern was with implementing a rule that would hinder the policy of the Judicial Appointments Committee of trying to attract candidates to the bench who would service as judges for relatively short periods. Convocation agreed and excepted these judges from the rule's application.

205. The Task Force was of the view that the circumstances have not changed to the extent that the rule should apply to judges of the Ontario Court of Justice, and thus is not proposing any expansion of the rule to include them.

Rule 6.09 - Errors and Omissions

206. The draft rules presented with this report expand rule 6.09(1) (Informing Client of Error of Omission). The adverb "readily" has been added to modify the verb "rectified", to avoid uncertainty about the circumstances in which the advice required by the rule must be provided. Paragraph (c) was added to clarify that in circumstances in which an error or omission occurs, the lawyer may no longer be able to act.

207. John B. Laskin, already mentioned above as a respondent to the Task Force's call for input, raised an issue relating to errors or omissions. He discussed the problem that lawyers may encounter in attempting to fulfill obligations to their liability insurer in circumstances of potential claims while being obliged to maintain the confidentiality and privilege of client information.

208. In the earlier draft of the proposed rules, the commentary which now appears after rule 6.09(2), paragraph number 3, instructed lawyers, in the case of an error or omission that may result in a claim, to "inform the Lawyers Professional Indemnity Company (LPIC), of the facts of the situation." There was some question whether this would require a lawyer to disclose confidential information under threat of being denied coverage for not complying with the insurer's requirements to report with sufficient detail for the insurer's purposes.

209. The Task Force consulted with LPIC on this issue, and determined that the insurer would not expect a lawyer to disclose confidential information to fulfill the reporting requirement. To provide assurance to this effect, in the narrow circumstances in which the issue may arise, the Task Force is proposing an amendment to paragraph 3 to add the words "Subject to rule 2.03 (Confidentiality)".

Rule 6.10 - Responsibility in Multi-Discipline Practices

210. A new rule has been added to emphasize the responsibility of lawyers in a multi-discipline practice to ensure that non-lawyer partners and associates comply with the rules and all ethical principles governing lawyers.

This mirrors concepts in the multi-discipline practice by-law whereby members accept responsibility for the professional conduct and competence of non-lawyers in this type of firm.

DECISION FOR CONVOCATION

211. Convocation is requested to review the redrafted Rules of Professional Conduct and approve the new rules as drafted, or as amended by Convocation, effective on a date to be fixed by Convocation.

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Task Force on Review of the

Rules of Professional Conduct

Draft
February 25, 2000

RULES OF PROFESSIONAL CONDUCT

RULE 1 - CITATION AND INTERPRETATION

1.01 CITATION

1.01 These rules may be cited as the *Rules of Professional Conduct.*

1.02 DEFINITIONS

1.02 In these rules, unless the context requires otherwise,

"associate" includes:

(a) a member who is an employee of a law firm;

(b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law; and

(c) a member who shares certain common expenses with another member but who is otherwise an independent practitioner;

"client" includes 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;

Commentary:

A solicitor and client relationship is often established without formality. For example, an express retainer or remuneration is not required for a solicitor and client relationship to arise. Also, in some circumstances a lawyer may have legal and ethical responsibilities similar to those arising from a solicitor and client relationship. For example, a lawyer may meet with a prospective client in circumstances that impart confidentiality, and although no solicitor and client relationship is ever actually established, the lawyer may have a disqualifying conflict of interest if he or she were later to act against the prospective client. It is, therefore, in a lawyer's own interest to carefully manage the establishment of a solicitor and client relationship.

"conduct unbecoming a barrister or solicitor" means conduct in a lawyer's personal or private capacity that tends to bring discredit upon the legal profession including for example:

(a) committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(b) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of another; or

(c) engaging in conduct involving dishonesty;

Commentary:

Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer, the Society may be justified in taking disciplinary action.

Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

"consent" means:

(a) a consent in writing, provided that where more than one person consents, each may sign a separate document recording his or her consent, or

(b) an oral consent, provided that each person giving the oral consent receives a separate letter recording his or her consent;

"independent legal advice" means a retainer where:

(a) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction;

(b) the client's transaction involves doing business with

(i) another lawyer,

(ii) a corporation or other entity in which the other lawyer has an interest other than a corporation or other entity whose securities are publicly traded, or with,

(iii) a client of the other lawyer;

(c) the retained lawyer has advised the client that the client has the right to independent legal representation;

(d) the client has expressly waived the right to independent legal representation and has elected to receive no legal representation or legal representation from the other lawyer;

(e) the retained lawyer has explained the legal aspects of the transaction to the client, who appeared to understand the advice given; and

(f) the retained lawyer informed the client of the availability of qualified advisers in other fields who would be in a position to give an opinion to the client as to the desirability or otherwise of the proposed investment from a business point of view;

Commentary:

Where a client elects to waive independent legal representation but to rely on independent legal advice only, the retained lawyer has a responsibility that should not be lightly assumed or perfunctorily discharged.

"independent legal representation" means a retainer where:

(a) the retained lawyer, who may be a lawyer employed as in-house counsel for the client, has no conflicting interest with respect to the client's transaction; and

(b) the retained lawyer will act as the client's lawyer in relation to the matter;

" interprovincial law firm" means a law firm that carries on the practice of law in more than one province or territory of Canada;

"law firm" includes one or more members practising,

(a) in a sole proprietorship,

(b) in a partnership,

(c) in association for the purpose of sharing certain common expenses but who are otherwise independent practitioners,

(d) as a clinic under the *Legal Aid Services Act*,

(e) in a government, a Crown corporation or any other public body, and

(f) in a corporation or other body;

"lawyer" means a member of the Society, and includes a law student registered in the Society's pre-call training program;

"member" means a member of the Society, and includes a law student registered in the Society's pre-call training program;

"professional misconduct" means conduct in a lawyer's professional capacity that tends to bring discredit upon the legal profession including:

(a) violating or attempting to violate one of the rules in the *Rules of Professional Conduct,* or a requirement of the *Law Society Act* or its regulations or by-laws;

(b) knowingly assisting or inducing another lawyer to violate or attempt to violate the rules in the *Rules of Professional Conduct,* or a requirement of the *Law Society Act* or its regulations or by-laws;

(c) knowingly assisting or inducing a non-lawyer partner or associate of a multi-discipline practice to violate or attempt to violate the rules in the *Rules of Professional Conduct,* or a requirement of the *Law Society Act* or its regulations or by-laws;

(d) misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property;

(e) engaging in conduct that is prejudicial to the administration of justice;

(f) stating or implying an ability to influence improperly a government agency or official; or

(g) knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

"Society" means The Law Society of Upper Canada;

"tribunal" includes courts, boards, arbitrators, mediators, administrative agencies, and bodies that resolve disputes regardless of their function or the informality of their procedures.

1.03 INTERPRETATION

Standards of the Legal Profession

1.03 (1) These rules shall be interpreted in a way that recognizes that:

(a) a lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity;

(b) a lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario;

(c) a lawyer has a duty to uphold the standards and reputation of the legal profession and assist in the advancement of its goals, organizations, and institutions;

(d) the rules are intended to express to the profession and to the public the high ethical ideals of the legal profession;

(e) the rules are intended to specify the bases on which lawyers may be disciplined; and

(f) rules of professional conduct cannot address every situation, and a lawyer should observe the Rules in the spirit as well as in the letter.

General Principles

(2) In these rules, words importing the singular number include more than one person, party, or thing of the same kind and a word interpreted in the singular number has a corresponding meaning when used in the plural.

RULE 2 - RELATIONSHIP TO CLIENTS

2.01 COMPETENCE

Definitions

2.01 (1) In this rule,

"competent lawyer" means a lawyer who has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client including:

(a) knowing general legal principles and procedures, and the substantive law and procedure for the areas of law in which the lawyer practises;

(b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client on appropriate courses of action;

(c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills including:

(i) legal research,
(ii) analysis,
(iii) application of the law to the relevant facts,
(iv) writing and drafting,
(v) negotiation,
(vi) alternative dispute resolution
(vii) advocacy, and
(viii) problem solving ability;

(d) communicating at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client;

(e) performing all functions, conscientiously, diligently, and in a timely and cost effective manner;

(f) applying intellectual capacity, judgment, and deliberation to all functions;

(g) complying in letter and in spirit with the *Rules of Professional Conduct*;

(h) recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;

(i) managing one's practice effectively;

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and

(k) adapting to changing professional requirements, standards, techniques, and practices.

Commentary

As a member of the legal profession, a lawyer is held out as knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with legal matters to be undertaken on the client's behalf.

A lawyer who is incompetent does the client a disservice, brings discredit to the profession, and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

A lawyer should not undertake a matter without honestly feeling competent to handle it, or able to become competent without undue delay, risk or expense to the client. This is an ethical consideration, and is to be distinguished from the standard of care that a tribunal would invoke for purposes of determining negligence.

A lawyer must be alert to recognize any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task. If consulted in such circumstances, the lawyer should either decline to act or obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent in that field. The lawyer may also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields, and in such a situation the lawyer should not hesitate to seek the client's instructions to consult experts.

A lawyer should clearly specify the facts, circumstances and assumptions upon which an opinion is based. Unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. If the circumstances do not justify an exhaustive investigation with consequent expense to the client, the lawyer should so state in the opinion.

A lawyer should be wary of bold and confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.

In addition to opinions on legal questions, the lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, policy or social implications involved in the question, or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, where and to the extent necessary, point out any lack of experience or other qualification in the particular field, and should clearly distinguish legal advice from other advice.

In a multi-discipline practice, a lawyer must be particularly alert to ensure that the client understands that he or she is receiving legal advice from a lawyer supplemented by the services of a non-lawyer. If other advice or service is sought from non-lawyer members of the firm, it must be sought and provided independently of and outside the scope of the retainer for the provision of legal services and will be subject to the constraints outlined in the relevant by-laws and regulations governing multi-discipline practices. In particular, the lawyer must ensure that such advice or service of non-lawyers is provided from a location separate from the premises of the multi-discipline practice.

Whenever it becomes apparent that the client has misunderstood or misconceived the position or what is really involved, the lawyer should explain as well as advise, so that the client is apprised of the true position and fairly advised about the real issues or questions involved.

The requirement of conscientious, diligent and efficient service means that a lawyer must make every effort to provide service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

Competence

(2) A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary:

This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule.

Incompetent professional practice may give rise to disciplinary action under this rule.

In addition to this rule, the Law Society Act provides that the Society may conduct a review of a member's practice to determine if the member is meeting standards of professional competence. A review will be conducted in circumstances defined in by-laws.

A member may also be subject to a hearing at which it will be determined whether the member is failing or has failed to meet standards of professional competence.

The Act provides that a member fails to meet standards of professional competence if there are deficiencies in (1) the member's knowledge, skill or judgment, (2) the member's attention to the interests of clients, (3) the records, systems or procedures of the member's practice, or (4) other aspects of the member's practice, and the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

2.02 QUALITY OF SERVICE

Honesty and Candour

(1) When advising clients, a lawyer shall be honest and candid.

Commentary:

The lawyer's duty to the client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law, and the lawyer's own experience and expertise.

The advice must be open and undisguised, and must clearly disclose what the lawyer honestly thinks about the merits and probable results.

Encouraging Compromise or Settlement

(2) A lawyer shall advise and encourage the client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis, and shall discourage the client from commencing useless legal proceedings.

(3) The lawyer shall consider the use of alternative dispute resolution (ADR) for every dispute, and, if appropriate, the lawyer shall inform the client of ADR options and, if so instructed, take steps to pursue those options.

Threatening Criminal Proceedings

(4) A lawyer shall not advise, threaten or bring a criminal or quasi-criminal prosecution in order to secure a civil advantage for the client.

Dishonesty or Fraud by Client

(5) When advising a client, a lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime or illegal conduct, or instruct the client on how to violate the law and avoid punishment.

Commentary:

A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client or persons associated with such a client.

A bona fide test case is not necessarily precluded by subrule 2.02 (5) and, so long as no injury to the person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.

Client Under a Disability

(6) When a client's ability to make decisions is impaired because of minority, mental disability or for some other reason, the lawyer shall as far as reasonably possible maintain a normal lawyer and client relationship.

Commentary:

A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions, however, depends on such factors as his or her age, intelligence, experience, and mental and physical health and on the advice, guidance, and support of others. Further, a client's ability to make decisions may change for better or worse over time. When a client is or comes to be under a disability that impairs his or her ability to make decisions, the impairment may be minor or it might prevent the client from having the legal capacity to give instructions or to enter into binding legal relationships. Recognizing these factors, the purpose of this rule is to direct a lawyer with a client under a disability to maintain, as far as reasonably possible, a normal lawyer and client relationship.

A lawyer with a client under a disability should appreciate that if the disability of the client is such that the client no longer has the legal capacity to manage his or her legal affairs, then the lawyer may need to take steps to have a lawfully authorized representative appointed, for example, a litigation guardian, or to obtain the assistance of the Office of the Public Guardian and Trustee or the Office of the Children's Lawyer to protect the interests of the client. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned.

Medical-Legal Reports

(7) A lawyer who receives a medical-legal report from a physician or health professional that is accompanied by a proviso that it not be shown to the client shall return the report immediately to the physician or health professional unless the lawyer has received specific instructions to accept the report on this basis.

Commentary:

The lawyer can avoid some of the problems anticipated by the rule by having a full and frank discussion with the physician or health professional, preferably in advance of the preparation of a medical-legal report, which exchange will serve to inform the physician or health professional of the lawyer's obligation respecting disclosure of medical-legal reports to the client.

(8) A lawyer who receives a medical-legal report from a physician or health professional containing opinions or findings that if disclosed might cause harm or injury to the client shall attempt to dissuade the client from seeing the report but, if the client insists, the lawyer shall produce the report.

(9) Where a client insists on seeing a medical-legal report about which the lawyer has reservations for the reasons noted in subrule (8), the lawyer shall suggest that the client attend at the office of the physician or health professional to see the report in order that the client will have the benefit of the expertise of the physician or health professional in understanding the significance of the conclusion contained in the medical-legal report.

Title Insurance in Real Estate Conveyancing

(10) A lawyer shall assess all reasonable options to assure title when advising a client about a real estate conveyance and shall advise the client that title insurance is not mandatory and is not the only option available to protect the client's interests in a real estate transaction.

Commentary:

A lawyer should advise the client of the options available to protect the client's interests and minimize the client's risks in a real estate transaction. The lawyer should be cognizant of when title insurance may be an appropriate option. Although title insurance is intended to protect the client against title risks, it is not a substitute for a lawyer's services in a real estate transaction.

The lawyer should be knowledgeable about title insurance and discuss with the client the advantages, conditions and limitations of the various options and coverages generally available to the client through title insurance. Before recommending a specific title insurance product, the lawyer should be knowledgeable about the product and take such training as may be necessary in order to acquire the knowledge.

(11) A lawyer shall not receive any compensation, whether directly or indirectly, from a title insurer, agent or intermediary for recommending a specific title insurance product to his or her client.

(12) A lawyer shall disclose to the client that no commission or fee is being furnished by any insurer, agent or intermediary to the lawyer with respect to any title insurance coverage.

Commentary:

The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer including the lawyer's law firm, any employee or associate of the firm or any related entity of any hidden fees.

(13) If discussing TitlePlus insurance with the client, a lawyer shall fully disclose the relationship between the legal profession, the Society, and the Lawyers' Professional Indemnity Company (LPIC).

2.03 CONFIDENTIALITY

Confidential Information

2.03 (1) A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and shall not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.

Commentary:

A lawyer cannot render effective professional service to the client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client's part , matters disclosed to or discussed with the lawyer will be held in strict confidence.

This rule must be distinguished from the evidentiary rule of lawyer and client privilege concerning oral or documentary communications passing between the client and the lawyer. The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.

A lawyer owes the duty of confidentiality to every client without exception, and whether or not is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client, whether or not differences have arisen between them.

Generally, the lawyer should not disclose having been consulted or retained by a particular person about a particular matter unless the nature of the matter requires such disclosure.

A lawyer should take care to avoid disclosure to one client of confidential information concerning or received from another client, and should decline employment that might require such disclosure.

A lawyer should avoid indiscreet conversations, even with the lawyer's spouse or family, about a client's affairs and should shun any gossip about such things even though the client is not named or otherwise identified. Similarly, a lawyer should not repeat any gossip or information about the client's business or affairs that is overheard or recounted to the lawyer. Apart altogether from ethical considerations or questions of good taste, indiscreet shop-talk between lawyers, if overheard by third parties able to identify the matter being discussed, could result in prejudice to the client. Moreover, the respect of the listener for lawyers and the legal profession will probably be lessened.

Although the rule may not apply to facts that are public knowledge, nevertheless the lawyer should guard against participating in or commenting on speculation concerning the client's affairs or business.

In some situations, the authority of the client to divulge may be implied. For example, some disclosure may be necessary in court proceedings, in a pleading or other court document. Also, it is implied that a lawyer may, unless the client directs otherwise, disclose the client's affairs to partners and associates in the law firm and, to the extent necessary, to non-legal staff such as secretaries and filing clerks. But this implied authority to disclose places the lawyer under a duty to impress upon associates, employees and students the importance of non-disclosure (both during their employment and afterwards) and requires the lawyer to take reasonable care to prevent their disclosing or using any information that the lawyer is bound to keep in confidence.

Justified or Permitted Disclosure

(2) When required by law or by order of a tribunal of competent jurisdiction, a lawyer shall disclose confidential information, but the lawyer shall not disclose more information than is required.

(3) Where a lawyer has reasonable grounds for believing that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including psychological harm that substantially interferes with health or well-being, the lawyer may disclose confidential information to prevent the death or harm, but shall not disclose more information than is required.

(4) Where a lawyer has reasonable grounds for believing that there is imminent risk of substantial harm to the welfare or security of a child or other vulnerable person, the lawyer may disclose confidential information to prevent the harm, but shall not disclose more information than is required.

(5) Where a lawyer has reasonable grounds for believing that there is imminent risk that a fraud that may cause substantial financial injury to another is likely to be committed, the lawyer may disclose confidential information to prevent the fraud, but shall not disclose more information than is required.

Commentary:

A lawyer employed or retained to act for an organization, including a corporation, confronts a difficult problem about confidentiality when he or she becomes aware that the organization may commit a dishonest, fraudulent, criminal, or illegal act. This problem is sometimes described as the problem of whether the lawyer should "blow the whistle" on his or her employer or client. Although the Rules of Professional Conduct make it clear that the lawyer shall not knowingly assist or encourage any dishonesty, fraud, crime, or illegal conduct (rule 2.02 (6)), it does not follow that the lawyer should disclose to the appropriate authorities an employer's or client's proposed misconduct. Rather, the general rule, as set out above, is that the lawyer shall hold the client's information in strict confidence, and this general rule is subject to only a few exceptions. Assuming the exceptions do not apply, there are, however, several steps that a lawyer should take when confronted with the difficult problem of proposed misconduct by an organization. The lawyer should recognise that his or her duties are owed to the organization and not to the officers, employees, or agents of the organization. The lawyer should therefore ask that the matter be reconsidered, and the lawyer should, if necessary, bring the proposed misconduct to the attention of a higher (and ultimately the highest) authority in the organization despite any directions from anyone in the organization to the contrary. If these measures fail, then it may be appropriate for the lawyer to resign in accordance with the rules for withdrawal from representation. (rule 2.09).

(6) Where it is alleged that a lawyer or the lawyer's associates or employees are:

(a) guilty of a criminal offence involving a client's affairs;

(b) civilly liable with respect to a matter involving a client's affairs; or

(c) guilty of malpractice or misconduct,

a lawyer may disclose confidential information in order to defend against the allegations, but the lawyer shall not disclose more information than is required.

(7) A lawyer may disclose confidential information in order to establish or collect the lawyer's fees, but the lawyer shall not disclose more information than is required.

Literary Works

(8) If a lawyer engages in literary works such as a memoir or an autobiography, the lawyer shall not disclose confidential information without the client's or former client's consent.

Commentary:

The fiduciary relationship between lawyer and client forbids the lawyer from using any confidential information covered by the ethical rule for the benefit of the lawyer or a third person, or to the disadvantage of the client.

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 both sides 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

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

(A) the adequacy of the measures taken under (ii),
(B) the extent of prejudice to any party,
(C) the good faith of the parties,
(D) the availability of suitable alternative counsel, and
(E) issues affecting the public interest, and

(ii) it has taken reasonable measures 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.

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:

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

(b) that 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) that, 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, their 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 their lawyer may continue to advise one of the 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.

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 the provisions of rule 2.04 (Avoidance of Conflicts of Interest), 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.

2.05 CONFLICTS FROM TRANSFER BETWEEN LAW FIRMS

Definitions

2.05 (1) In this rule:

"client" includes anyone to whom a member owes a duty of confidentiality, whether or not a solicitor-client relationship exists between them;

"confidential information" means information obtained from a client that is not generally known to the public;

> *Commentary:*
>
> *The duties imposed by this rule concerning confidential information should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.*

"matter" means a case or client file, but does not include general "know-how" and, in the case of a government lawyer, does not include policy advice unless the advice relates to a particular case;

Application of Rule

(2) This rule applies where a member transfers from one law firm ("former law firm") to another ("new law firm"), and either the transferring member or the new law firm is aware at the time of the transfer or later discovers that,

(a) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents its client ("former client");

(b) the interests of those clients in that matter conflict; and

(c) the transferring member actually possesses relevant information respecting that matter.

(3) Subrules (4) to (7) do not apply to a member employed by the federal, a provincial or a territorial Attorney General or Department of Justice who, after transferring from one department, ministry or agency to another, continues to be employed by that Attorney General or Department of Justice.

Commentary:
The purpose of the rule is to deal with actual knowledge. Imputed knowledge does not give rise to disqualification.

Lawyers and support staff - This rule is intended to regulate members of the Society and articled law students who transfer between law firms. It also imposes a general duty on members to exercise due diligence in the supervision of non-lawyer staff, to ensure that they comply with the rule and with the duty not to disclose confidences of clients of the member's firm; and confidences of clients of other law firms in which the person has worked.

Government employees and in-house counsel - The definition of "law firm" includes one or more members of the Society practising in a government, a Crown corporation, any other public body and a corporation. Thus, the rule applies to members transferring to or from government service and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.

Law firms with multiple offices - The rule treats as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm and a legal aid program with many community law offices. The more autonomous each unit or office is, the easier it should be, in the event of a conflict, for the new firm to obtain the former client's consent or to establish that it is in the public interest that it continue to represent its client in the matter.

Practising in association - The definition of "law firm" (rule 1.02) includes one or more members practising in association for the purpose of sharing certain common expenses but who are otherwise independent practitioners. This recognizes the risk that lawyers practising in association, like partners in a law firm, will share client confidences while discussing their files with one another.

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,

(i) it is in the interests of justice that it act in the matter, having regard to all relevant circumstances, including,

(A) the adequacy of the measures taken under (ii),
(B) the extent of prejudice to any party,
(C) the good faith of the parties,
(D) the availability of suitable alternative counsel, and
(E) issues affecting the public interest; and

(ii) it has taken reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur.

Commentary:

The circumstances enumerated in subrule (4)(b)(i) are drafted in broad terms to ensure that all relevant facts will be taken into account. While clauses (B) to (D) are self-explanatory, clause (E) addresses governmental concerns respecting issues of national security, cabinet confidences and obligations incumbent on Attorneys General and their agents in the administration of justice.

Transferring Lawyer Disqualification

(5) 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).

(6) A transferring member described in the opening clause of subrule (4) or (5) 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.

(7) 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 (5) the new law firm's representation of its client or the former law firm's representation of the former client in that matter.

Determination of Compliance

(8) Anyone who has an interest in, or who represents a party in, a matter referred to in this rule may apply to a tribunal of competent jurisdiction for a determination of any aspect of this rule.

Due Diligence

(9) A member shall exercise due diligence in ensuring that each member and employee of the member's law firm, each non-member partner and associate and each other person whose services the member has retained,

(a) complies with this rule; and

(b) does not disclose,

(i) confidential information of clients of the firm, and

(ii) confidential information of clients of another law firm in which the person has worked.

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 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 which 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, they must 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, then 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 interest.

In determining whether the transferring member possesses confidential information, both the transferring member and the new law firm need to be very careful to ensure that they do not, during the interview process itself, disclose client confidences.

Matters to consider before hiring a potential transferee

After completing the interview process and before hiring the transferring member, the new law firm should determine whether a conflict exists.

A. WHERE A CONFLICT DOES EXIST:

If the new law firm concludes that the transferring member does actually possess relevant information respecting a former client that is confidential and that, if disclosed to a member of the new law firm, may prejudice the former client, then if the transferring member is hired, the new law firm will be prohibited from continuing to represent its client in the matter unless,

> *(a) the new law firm obtains the former client's consent to its continued representation of its client in that matter; or*
>
> *(b) the new law firm complies with subrule (4)(b), and in determining whether continued representation is in the interests of justice, both clients' interests are the paramount consideration.*

If the new law firm seeks the former client's consent to the new law firm continuing to act it will, in all likelihood, be required to satisfy the former client that it has taken reasonable measures to ensure that no disclosure to any member of the new law firm
of the former client's confidential information will occur. The former client's consent must be obtained before the transferring member is hired.

Alternatively, if the new law firm applies under subrule (8) for a determination that it may continue to act, it bears the onus of establishing the matters referred to in subrule (4)(b). Again, this process must be completed before the transferring person is hired.

B. WHERE NO CONFLICT EXISTS:

Although subrule 2.05 (5) does not require that the notice required by that subrule be in writing, it would be prudent for the new law firm to confirm these matters in writing. Written notification eliminates any later dispute about whether notice has been given and about its timeliness and content.

The new law firm might, for example, seek the former client's consent to the transferring member acting for the new law firm's client in the matter because, in the absence of such consent, the transferring member may not act.

If the former client does not consent to the transferring member acting, it would be prudent for the new law firm to take reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur. If such measures are taken, it will strengthen the new law firm's position if it is later determined that the transferring member did in fact possess confidential information which, if disclosed, may prejudice the former client.

A transferring member who possesses no such confidential information puts the former client on notice by executing an affidavit or solemn declaration and delivering it to the former client. A former client who disputes the allegation of no such confidential information may apply under subrule (8) for a determination of that issue.

C WHERE THE NEW LAW FIRM IS NOT SURE WHETHER A CONFLICT EXISTS

There may be some cases where the new law firm is not sure whether the transferring member actually possesses confidential information respecting a former client that, if disclosed to a member of the new law firm, may prejudice the former client. In such circumstances, it would be prudent for the new law firm to seek guidance from the Society before hiring the transferring member.

Reasonable measures to ensure non-disclosure of confidential information

As noted above, there are two circumstances in which the new law firm should consider the implementation of reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur:

(a) where the transferring member actually possesses confidential information respecting a former client that, if disclosed to a member of the new law firm, may prejudice the former client; and

(b) where the new law firm is not sure whether the transferring member actually possesses such confidential information, but it wants to strengthen its position if it is later determined that the transferring member did in fact possess such confidential information. It is not possible to offer a set of "reasonable measures" that will be appropriate or adequate in every case. Instead, the new law firm that seeks to implement reasonable measures must exercise professional judgment in determining what steps must be taken "to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur."

In the case of law firms with multiple offices, the degree of autonomy possessed by each office will be an important factor in determining what constitutes "reasonable measures". For example, the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm or a legal aid program may be able to argue that, because of its institutional structure, reporting relationships, function, nature of work and geography, relatively fewer "measures" are necessary to ensure the non-disclosure of client confidences.

The guidelines at the end of this Commentary, adapted from the Canadian Bar Association's Task Force report entitled: Conflict of Interest Disqualification: Martin v. Gray and Screening Methods (February 1993), are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.

In cases where a transferring lawyer joining a government legal services unit or the legal department of a corporation actually possesses confidential information respecting a former client that, if disclosed to a member of the new "law firm", may prejudice the former client, the interests of the new client (Her Majesty or the corporation) must continue to be represented. Normally, this will be effected either by instituting satisfactory screening measures or, when necessary, by referring the conduct of the matter to outside counsel. As each factual situation will be different, flexibility will be required in the application of subrule (4)(b), particularly clause (E).

GUIDELINES

1. The screened member should have no involvement in the new law firm's representation of its client.

2. The screened member should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.

3. No member of the new law firm should discuss the current matter or the previous representation with the screened member.

4. The current matter should be discussed only within the limited group that is working on the matter.

5. The files of the current client, including computer files, should be physically segregated from the new law firm's regular filing system, specifically identified, and accessible only to those lawyers and support staff in the new law firm who are working on the matter or who require access for other specifically identified and approved reasons.

6. No member of the new law firm should show the screened member any documents relating to the current representation.

7. The measures taken by the new law firm to screen the transferring member should be stated in a written policy explained to all lawyers and support staff within the firm, supported by an admonition that violation of the policy will result in sanctions, up to and including dismissal.

8. Affidavits should be provided by the appropriate law firm members, setting out that they have adhered to and will continue to adhere to all elements of the screen.

9. The former client, or if the former client is represented in that matter by a member, that member, should be advised,

(a) that the screened member is now with the new law firm, which represents the current client, and

(b) of the measures adopted by the new law firm to ensure that there will be no disclosure of confidential information.

10. The screened member's office or work station and that of the member's secretary should be located away from the offices or work stations of lawyers and support staff working on the matter.

11. The screened member should use associates and support staff different from those working on the current matter.

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) 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 insist 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.

Commentary:

If the lawyer does not choose to make disclosure of the conflicting interest or cannot do so without breaching a confidence, the lawyer must decline the retainer.

The lawyer should not uncritically accept the client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined.

Generally, in disciplinary proceedings under this rule the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, and that the client's consent was obtained.

If the investment is by borrowing from the client, the transaction may fall within the requirements of subrules 2.06 (4) or (5).

Certificate of Independent Legal Advice

(3) A lawyer retained to give independent legal advice shall, before any advance of funds has been made by the client,

(a) provide the client with a written certificate that the client has received independent legal advice, and

(b) obtain the client's signature on a copy of the certificate of independent legal advice and send the signed copy to the lawyer with whom the client proposes to transact business.

Borrowing from Clients

(4) A lawyer shall not borrow money from a client unless:

(a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public; or

(b) the client is a related person as defined by the *Income Tax Act (Canada)* and the lawyer is able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal advice or independent legal representation.

Commentary:

The relationship between lawyer and client is a fiduciary one, and no conflict between the lawyer's own interest and the lawyer's duty to the client can be permitted.

Whether a person lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is to be considered a client within this rule is to be determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice in respect of the loan or investment, then the lawyer will be considered bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

(5) In any transaction, other than a transaction within the provisions of subrule (4), in which money is borrowed from a client by a lawyer's spouse or by a corporation, syndicate or partnership in which either the lawyer or the lawyer's spouse has, or both of them together have, directly or indirectly, a substantial interest, the lawyer shall ensure that the client's interests are fully protected by the nature of the case and by independent legal representation.

Lawyers in Loan or Mortgage Transactions

(6) A lawyer engaged in the private practice of law in Ontario shall not directly, or indirectly through a corporation, syndicate, partnership, trust or other entity in which the lawyer or a related person has a financial interest, other than an ownership interest of a corporation or other entity offering its securities to the public of less than five per cent (5%) of any class of securities,

(a) hold a syndicated mortgage or loan in trust for investor clients unless each investor client receives;

(i) a complete reporting letter on the transaction;

(ii) a trust declaration signed by the person in whose name the mortgage or any security instrument is registered; and

(iii) a copy of the duplicate registered mortgage or security instrument;

(b) arrange or recommend the participation of a client or other person as an investor in a syndicated mortgage or loan where the lawyer is an investor unless the lawyer can demonstrate that the client or other person had independent legal advice in making the investment; or

(c) sell mortgages or loans to, or arrange mortgages or loans for, clients or other persons except in accordance with the skill, competence and integrity usually expected of a lawyer in dealing with clients.

Commentary:

Acceptable Mortgage or Loan Transactions:

A lawyer may engage in the following mortgage or loan transactions in connection with the practice of law:

(a) a lawyer may invest in mortgages or loans personally or on behalf of a related person or a combination thereof;

(b) a lawyer may deal in mortgages or loans as an executor, administrator, committee, trustee of a testamentary or inter vivos trust established for purposes other than mortgage or loan investment or under a power of attorney given for purposes other than exclusively for mortgage or loan investment; and

(c) a lawyer may collect, on behalf of clients, mortgage or loan payments that are made payable in the name of the lawyer under a written direction to that effect given by the client to the mortgagor or borrower provided that such payments are deposited into the lawyer's trust account.

A lawyer may introduce a borrower (whether or not a client) to a lender (whether or not a client) and the lawyer may then act for either and when subrule 2.04 (12) applies, the lawyer may act for both.

Disclosure

(7) Where a lawyer sells or arranges mortgages for clients or other persons, the lawyer shall disclose in writing to each client or other person the priority of the mortgage and all other information relevant to the transaction that is known to the lawyer that would be of concern to a proposed investor.

No Advertising

(8) A lawyer shall not promote, by advertising or otherwise, individual or joint investment by clients, or other persons who have money to lend, in any mortgage in which a financial interest is held by the lawyer, a related person, or a corporation, syndicate, partnership, trust or other entity in which the lawyer or related person has a financial interest, other than an ownership interest of a corporation or other entity offering its securities to the public of less than five per cent (5%) of any class of securities

Guarantees by a Lawyer

(9) Except as provided by subrule (10), a lawyer shall not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

(10) A lawyer may give a personal guarantee in the following circumstances:

(a) the lender is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer's spouse, parent or child;

(b) the transaction is for the benefit of a non-profit or charitable institution where the lawyer as a member or supporter of such institution is asked, either individually or together with other members or supporters of the institution, to provide a guarantee; or

(c) the lawyer has entered into a business venture with a client and the lender requires personal guarantees from all participants in the venture as a matter of course and

(i) the lawyer has complied with rules 2.04 (Avoidance of Conflicts of Interest) and 2.06 (Doing Business with a Client), and

(ii) the lender and participants in the venture who are or were clients of the member have received independent legal representation.

2.07 PRESERVATION OF CLIENT'S PROPERTY

Preservation of Client's Property

2.07 (1) A lawyer shall care for a client's property as a careful and prudent owner would when dealing with like property and shall observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.

Commentary:

The duties concerning safekeeping, preserving and accounting for clients' monies and other property are set out in the by-laws made under the Law Society Act.

These duties are closely related to those regarding confidential information. The lawyer should keep the clients' papers and other property out of sight as well as out of reach of those not entitled to see them and should, subject to any rights of lien, promptly return them to the client upon request or at the conclusion of the lawyer's retainer.

Notification of Receipt of Property

(2) A lawyer shall promptly notify the client of the receipt of any money or other property of the client, unless satisfied that the client is aware that they have come into the lawyer's custody.

Identifying Client's Property

(3) A lawyer shall clearly label and identify the client's property and place it in safekeeping distinguishable from the lawyer's own property.

(4) A lawyer shall maintain such records as necessary to identify a client's property that is in the lawyer's custody.

Accounting and Delivery

(5) A lawyer shall account promptly for a client's property that is in the lawyer's custody and upon request shall deliver it to the order of the client.

(6) Where a lawyer is unsure of the proper person to receive a client's property, the lawyer shall apply to a tribunal of competent jurisdiction for direction.

Commentary:

The lawyer should be alert to claim on behalf of clients any privilege in respect of their property seized or attempted to be seized by an external authority. In this regard, the lawyer should be familiar with the nature of the client's privilege and with such relevant statutory provisions as are found in the Income Tax Act (Canada).

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 loss of other retainers, 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).

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.

Champerty and 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 either expressly or impliedly, fees for a matter may be divided between lawyers.

(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

(b) the client is informed and consents.

(9) A lawyer shall not directly or indirectly share, split or divide his or her fees or give any financial or other reward to conveyancers, notaries public, students, clerks or other persons who are not lawyers.

Commentary:

An arrangement between a lawyer and a conveyancer to divide fees on applications for probate or administration is improper whether or not both participate in the work.

It is improper for a lawyer, in return for a fee, to permit the lawyer's name to be placed on applications that have been prepared by the conveyancer.

Exception for Multi-discipline Practices

(10) Subrule (9) does not apply to multi-discipline practices of lawyer and non-lawyer partners where the partnership agreement provides for the sharing of fees and profits.

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*.

2.09 WITHDRAWAL FROM REPRESENTATION

Withdrawal from Representation

2.09 (1) A lawyer shall not withdraw from representation of a client except for good cause and upon notice to the client appropriate in the circumstances.

Commentary:

Although the client has the right to terminate the lawyer-client relationship at will, the lawyer does not enjoy the same freedom of action. Having undertaken the representation of a client, the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship.

No hard and fast rules can be laid down as to what will constitute reasonable notice before withdrawal. Where the matter is covered by statutory provisions or rules of court, these will govern. In other situations, the governing principle is that the lawyer should protect the client's interests to the best of the lawyer's ability and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril.

Optional Withdrawal

(2) Subject to the rules about criminal proceedings and the direction of the tribunal, where there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.

Commentary:

A lawyer who is deceived by the client will have justifiable cause for withdrawal, and the refusal of the client to accept and act upon the lawyer's advice on a significant point might indicate a loss of confidence justifying withdrawal. However, the lawyer should not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

Non-Payment of Fees

(3) Subject to the rules about criminal proceedings and the direction of the tribunal, where after reasonable notice the client fails to provide funds on account of disbursements or fees, a lawyer may withdraw, unless serious prejudice to the client would result.

Withdrawal from Criminal Proceedings

(4) Where a lawyer has agreed to act in a criminal case and where the interval between a withdrawal and the trial of the case is sufficient to enable the client to obtain another lawyer and to allow such other lawyer adequate time for preparation, the lawyer who has agreed to act may withdraw because the client has not paid the agreed fee or for other adequate cause provided that the lawyer:

(a) notifies the client, preferably in writing, that the lawyer is withdrawing because the fees have not been paid or for other adequate cause

(b) accounts to the client for any monies received on account of fees and disbursements;

(c) notifies Crown counsel in writing that the lawyer is no longer acting;

(d) in a case when the lawyer's name appears on the records of the court as acting for the accused notifies the clerk or registrar of the appropriate court in writing that the lawyer is no longer acting.

Commentary:

A lawyer who has withdrawn because of conflict with the client should not indicate in the notice addressed to the court or Crown counsel the cause of the conflict, or make reference to any matter that would violate the privilege that exists between lawyer and client. The notice should merely state that the lawyer is no longer acting and has withdrawn.

(5) Where a lawyer has agreed to act in a criminal case and where the date set for trial is not far enough removed to enable the client to obtain another lawyer or to enable another lawyer to prepare adequately for trial, the lawyer who agreed to act may not withdraw because of non-payment of fees.

(6) Where the lawyer is justified in withdrawing from a criminal case for reasons other than non-payment of fees, and there is not a sufficient interval between a notice to the client of the lawyer's intention to withdraw and the date when the case is to be tried to enable the client to obtain another lawyer and to enable such lawyer to prepare adequately for trial, the first lawyer may withdraw from the case only with the permission of the court before which the case is to be tried.

Commentary:

Where circumstances arise that in the opinion of the lawyer require an application to the court for leave to withdraw, the lawyer should promptly inform Crown counsel and the court of the intention to apply for leave in order to avoid or minimize any inconvenience to the court and witnesses.

Mandatory Withdrawal

(7) Subject to the rules about criminal proceedings and the direction of the tribunal, a lawyer shall withdraw:

(a) if discharged by the client;

(b) if the lawyer is instructed by the client to do something inconsistent with the lawyer's duty to the tribunal and, following explanation, the client persists in such instructions;

(c) if the client is guilty of dishonourable conduct in the proceedings or is taking a position solely to harass or maliciously injure another;

(d) if it becomes clear that the lawyer's continued employment will lead to a breach of these rules; or

(e) if the lawyer is not competent to handle the matter.

Commentary:

When a law firm is dissolved it will usually result in the termination of the lawyer-client relationship as between a particular client and one or more of the lawyers involved. In such cases most clients will prefer to retain the services of the lawyer whom they regarded as being in charge of their business before to the dissolution. However, the final decision rests with the client, and the lawyers who are no longer retained by that client should act in accordance with the principles here set out, and in particular should try to minimize expense and avoid prejudice to the client.

Manner of Withdrawal

(8) When a lawyer withdraws, the lawyer shall try to minimize expense and avoid prejudice to the client and shall do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.

(9) Upon discharge or withdrawal, a lawyer shall:

(a) subject to the lawyer's right to a lien, deliver to or to the order of the client all papers and property to which the client is entitled;

(b) give the client all information that may be required in connection with the case or matter;

(c) account for all funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during the representation;

(d) promptly render an account for outstanding fees and disbursements; and

(e) co-operate with the successor lawyer so as to minimize expense and avoid prejudice to the client.

Commentary:

The obligation to deliver papers and property is subject to a lawyer's right of lien. In the event of conflicting claims to such papers or property, the lawyer should make every effort to have the claimants settle the dispute.

A lawyer acting for several clients in a case or matter who ceases to act for one or more of them, should co-operate with the successor lawyer or lawyers to the extent required by the rules, and should seek to avoid any unseemly rivalry, whether real or apparent.

Where upon the discharge or withdrawal of the lawyer the question of a right of lien for unpaid fees and disbursements arises, the lawyer should have due regard to the effect of its enforcement upon the client's position. Generally speaking, the lawyer should not enforce the lien if to do so would prejudice materially the client's position in any uncompleted matter.

Duty of Successor Lawyer

(10) Before agreeing to represent a client, a successor lawyer shall be satisfied that the former lawyer approves, or has withdrawn or has been discharged by the client.

Commentary:

It is quite proper for the successor lawyer to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the former lawyer, especially if the latter withdrew for good cause or was capriciously discharged. But if a trial or hearing is in progress or imminent, or if the client would otherwise be prejudiced, the existence of an outstanding account should not be allowed to interfere with the successor lawyer acting for the client.

RULE 3 - THE PRACTICE OF LAW

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:

It is essential that a person requiring legal services be able to find, with a minimum of difficulty or delay, a lawyer qualified to provide such services.

The lawyer may assist in making legal services available by participating in the Legal Aid Plan and lawyer referral services, by engaging in programmes of public information, education or advice concerning legal matters, and by being considerate of those who seek advice but are inexperienced in legal matters or cannot readily explain their problems.

Right to Decline Representation - The lawyer has a general right to decline a particular representation (except when assigned as counsel by a tribunal), but it is a right to be exercised prudently, particularly if the probable result would be to make it difficult for a person to obtain legal advice or representation. Generally, the lawyer should not exercise the right merely because a person seeking legal services or that person's cause is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of the lawyer's private opinion about the guilt of the accused. A lawyer declining representation should assist in obtaining the services of another lawyer qualified in the particular field and able to act.

In a relatively small community where lawyers are well-known, a person seeking a lawyer will usually be able to make an informed choice and select a qualified lawyer in whom to have confidence. However, in larger centres these conditions will often not occur, and as the practice of law becomes increasingly complex and the practice of many individual lawyers becomes restricted to particular fields of law, the reputations of lawyers and their competence or qualification in particular fields may not be sufficiently well-known to enable a person to make an informed choice. Thus, one who has had little or no contact with lawyers or who is a stranger in the community may have difficulty finding a lawyer with the special skill required for a particular task. Telephone directories, legal directories, and referral services may help find a lawyer, but not necessarily the right one for the client's need.

When a lawyer offers a client or prospective client assistance in finding another lawyer, the assistance should be given willingly and, except in very special circumstances, 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 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 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 deceased or retired members of the firm.

(3) A lawyer who purchases a practice may, for a reasonable length of time, use the words "Successor to _____" in small print under the lawyer's own name.

Restrictions

(4) The name of a law firm shall not include a trade name, a commercial name, or a figure of speech.

(5) The name of a law firm shall not include the use of phrases such as "John Doe and Associates", or "John Doe and Company" and "John Doe and Partners" unless there are in fact, respectively, two or more other lawyers associated with John Doe in practice or two or more partners of John Doe in the firm.

(6) When a lawyer retires from a law firm to take up an appointment as a judge or master, or to fill any office incompatible with the practice of law, the lawyer's name shall be deleted from the firm name.

(7) A lawyer or law firm may not acquire and use a firm name unless the name was acquired along with the practice of a deceased or retiring member who conducted a practice under the name.

Limited Liability Partnership

(8) If a law firm practices as a limited liability partnership, the phrase "limited liability partnership" or the letters "LLP" shall be included as the last words or letters in the firm name.

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-at-law", "barrister and solicitor", "lawyer", "law office", 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 practice law in another jurisdiction;

(g) a statement that a member of the law firms 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 and office hours and the languages in which the lawyer or law firm is competent and capable of conducting a practice; and

(k) a logo.

(2) A lawyer or law firm that practises in the industrial property field may show the names of patent and trademark agents who are identified as such but who are not lawyers.

(3) A lawyer or law firm may place after the names on its letterhead degrees from *bona fide* universities and post secondary institutions including honorary degrees; professional qualifications such as the designations of P.Eng., C.A., and M.D.; and recognized civil and military decorations and awards and where the firm is a multi-discipline practice, a list or partners and associates who are non-lawyers identified as such and their designations, if any.

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 the advertising:

(a) is not false or misleading; and

(b) is not such as to bring the profession or the administration of justice into disrepute.

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 upon 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 to the public; 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.

3.05 ADVERTISING NATURE OF PRACTICE

General Practice

3.05 (1) A lawyer or law firm may state that the lawyer or law firm is in general practice if such is the case.

Restricted Practice

(2) A lawyer may state that the lawyer is a specialist in a particular area of the law only if the lawyer has been so certified by the Society.

(3) A lawyer may state that the lawyer's practice is restricted to a particular area or areas of the law or may state that the lawyer practises in a certain area or areas of the law if such is the case.

(4) A law firm may state that it practises in certain areas of the law or that it has a restricted practice if such is the case.

(5) A law firm may specify the area or areas of law in which particular members practise or to which they restrict their practice.

Multi-discipline Practice

(6) A lawyer of a multi-discipline practice may state the services or the nature of the services provided by non-lawyer partners or associates in the practice.

3.06 OFFERING PROFESSIONAL SERVICES

Offering Professional Services

3.06 (1) Subject to subrule (2), a lawyer may offer professional services to a prospective client by any means.

Restrictions

(2) In offering professional services, a lawyer shall not use means:

(a) that are false or misleading;

(b) that amount to coercion, duress or harassment;

(c) that take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover;

(d) that are intended to influence a person who has retained another lawyer for a particular matter to change his or her lawyer for that matter, unless the change is initiated by the person or the other lawyer; or,

(e) that otherwise bring the profession or the administration of justice into disrepute.

Commentary:

A person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover may need the professional assistance of a lawyer, and this rule does not prevent a lawyer from offering his or her assistance to such a person. Rather, the rule prohibits the lawyer from using unconscionable or exploitive means that bring the profession or the administration of justice into disrepute.

3.07 INTERPROVINCIAL LAW FIRMS

Interprovincial Law Firms

3.07 (1) Lawyers may enter into agreements with lawyers in other Canadian jurisdictions to form an interprovincial law firm, provided they comply with the requirements of this rule.

Requirements

(2) A lawyer who is a member of an interprovincial law firm and qualified to practise in Ontario shall comply with all the requirements of the Society.

(3) A lawyer who is a member of an interprovincial law firm and qualified to practise in Ontario shall ensure that the books, records and accounts pertaining to their practice in Ontario are available in Ontario on demand by the Society's auditors or their designated agents.

(4) A lawyer who is a member of an interprovincial law firm and qualified to practise in Ontario shall ensure that his or her partners, associates, or employees who are not qualified to practise in Ontario are not held out as and do not represent themselves as qualified to practise in Ontario.

RULE 4 - RELATIONSHIP TO THE ADMINISTRATION OF JUSTICE

4.01 THE LAWYER AS ADVOCATE

Advocacy

4.01 (1) When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary:

The lawyer has a duty to the client to raise fearlessly every issue, advance every argument, and ask every question, however distasteful, which the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing where justice can be done. Maintaining dignity, decorum and courtesy in the courtroom is not an empty formality because unless order is maintained, rights cannot be protected.

This rule applies to the lawyer as advocate, and therefore extends not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals, arbitrators, mediators, and others who resolve disputes regardless of their function or the informality of their procedures.

Role in Adversary Proceedings - In adversary proceedings the lawyer's function as advocate is openly and necessarily partisan. Accordingly, the lawyer is not obliged (save as required by law or under these rules and subject to the duties of a prosecutor set out below) to assist an adversary or advance matters derogatory to the client's case.

In adversary proceedings that may affect the health, welfare or security of a child, a lawyer should advise the client to take into account the best interests of the child.

When acting as an advocate, a lawyer should refrain from expressing the lawyer's personal opinions on the merits of a client's case.

When opposing interests are not represented, for example in without notice or uncontested matters, or in other situations where the full proof and argument inherent in the adversary system cannot be achieved, the lawyer must take particular care to be accurate, candid and comprehensive in presenting the client's case so as to ensure that the tribunal is not misled.

Duty as Prosecutor - When engaged as a prosecutor, the lawyer's prime duty is not to seek to convict, but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power, and must act fairly and dispassionately. The prosecutor should not do anything that might prevent the accused from being represented by counsel or communicating with counsel.

Duty as Defence Counsel - When defending an accused person, a lawyer's duty is to protect the client as far as possible from being convicted except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged. Accordingly, and notwithstanding the lawyer's private opinion on credibility or the merits, a lawyer may properly rely on any evidence or defences including so-called technicalities not known to be false or fraudulent.

Admissions made by the accused to a lawyer may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits to the lawyer the factual and mental elements necessary to constitute the offence, the lawyer, if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, or to the form of the indictment, or to the admissibility or sufficiency of the evidence, but must not suggest that some other person committed the offence, or call any evidence which, by reason of the admissions, the lawyer believes to be false. Nor may the lawyer set up an affirmative case inconsistent with such admissions, for example, by calling evidence in support of an alibi intended to show that the accused could not have done, or in fact has not done, the act. Such admissions will also impose a limit on the extent to which the lawyer may attack the evidence for the prosecution. The lawyer is entitled to test the evidence given by each individual witness for the prosecution and argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but the lawyer should go no further than that.

The lawyer should never waive or abandon the client's legal rights, for example an available defence under a statute of limitations, without the client's informed consent.

In civil matters it is desirable that the lawyer should avoid and discourage the client from resorting to frivolous or vexatious objections or from attempts to gain advantage from slips or oversights not going to the merits, or from tactics that will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.

In civil proceedings, the lawyer has a duty not to mislead the tribunal about the position of the client in the adversary process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

(2) When acting as an advocate, a lawyer shall not:

(a) abuse the process of the tribunal by instituting or prosecuting proceedings which, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;

(b) knowingly assist or permit the client to do anything that the lawyer considers to be dishonest or dishonourable;

(c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence or inducement affecting the impartiality of the officer;

(d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;

(e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime or illegal conduct;

(f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;

(g) knowingly assert as true a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;

(h) deliberately refrain from informing the tribunal of any pertinent authority that the lawyer considers to be directly on point and that has not been mentioned by an opponent;

(i) dissuade a witness from giving evidence, or advise a witness to be absent;

(j) knowingly permit a witness or party to be presented in a false or misleading way, or to impersonate another;

(k) needlessly abuse, hector, or harass a witness;

(l) when representing an accused or potential accused influence or attempt to influence a vulnerable complainant or potential complainant concerning the laying, prosecution or withdrawal of criminal charges;

(m) when representing a complainant or potential complainant attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge; and

(n) needlessly inconvenience a witness.

Commentary:

A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, where the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. Where the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused and accordingly the lawyer's comments may be partisan.

Disclosure by Prosecutor

(3) When engaged as a prosecutor, a lawyer shall disclose all relevant information to the accused as required by law.

Commentary:

The rule about disclosure by a prosecutor is not meant to interfere with the proper exercise of prosecutorial discretion nor is it meant to be applied in circumstances where there has been an inadvertent failure to disclose relevant information; rather, the rule is intended to be applied in circumstances where the prosecutor is acting dishonestly or in bad faith.

Discovery Obligations

(4) Where the rules of a tribunal require the parties to produce documents or attend on examinations for discovery, a lawyer when acting as an advocate

(a) shall explain to his or her client:

(i) the necessity of making full disclosure of all documents relating to any matter in issue; and

(ii) the duty to answer to the best of his or her knowledge, information and belief, any proper question relating to any issue in the action or made discoverable by the *Rules of Civil Procedure* or the rules of the tribunal;

(b) shall assist and supervise the client in fulfilling his or her obligations to make full disclosure; and

(c) shall not make frivolous requests for the production of documents or make frivolous demands for information at the examination for discovery.

Disclosure of Error or Omission

(5) A lawyer who has unknowingly done or failed to do something that if done or omitted knowingly would have been in breach of this rule and who discovers it, shall, subject to rule 2.03 (Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

Commentary:

If the client desires that a course be taken that would involve a breach of this rule, the lawyer must refuse and do everything reasonably possible to prevent it. If that cannot be done the lawyer should, subject to rule 2.09 (Withdrawal of Employment), withdraw or seek leave to do so.

Courtesy

(6) A lawyer shall at all times be courteous and civil to the tribunal and to those engaged on the other side.

Commentary:

Legal contempt of court and the professional obligation outlined here are not identical, and a consistent pattern of rude, provocative or disruptive conduct by the lawyer, even though unpunished as contempt, might well merit discipline.

Undertakings

(7) A lawyer shall strictly and scrupulously carry out an undertaking given to the tribunal or to another lawyer in the course of litigation.

Commentary:

Unless clearly qualified, the lawyer's undertaking is a personal promise and responsibility.

Agreement on Guilty Plea

(8) Before a charge is laid or at any time after a charge is laid, a lawyer for an accused or potential accused may discuss with the prosecutor the possible disposition of the case, unless the client instructs otherwise.

(9) Where following investigation,

(a) a lawyer for an accused or potential accused advises his or her client about the prospects for an acquittal or finding of guilt;

(b) the lawyer advises the client of the implications and possible consequences of a guilty plea and particularly of the sentencing authority and discretion of the court, including the fact that the court is not bound by any agreement about a guilty plea;

(c) the client voluntarily is prepared to admit the necessary factual and mental elements of the offence charged; and

(d) the client voluntarily instructs the lawyer to enter into an agreement as to a guilty plea;

the lawyer may enter into an agreement with the prosecutor about a guilty plea.

Commentary:

The public interest in the proper administration of justice should not be sacrificed in the interest of expediency.

4.02 THE LAWYER AS WITNESS

Submission of Affidavit

4.02 (1) Subject to any contrary provisions of the law or the discretion of the tribunal before which a lawyer is appearing, a lawyer who appears as advocate shall not submit his or her own affidavit to the tribunal.

Submission of Testimony

(2) Subject to any contrary provisions of the law or the discretion of the tribunal before which a lawyer is appearing, a lawyer who appears as advocate shall not testify before the tribunal unless permitted to do so by the *Rules of Civil Procedure* or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.

Commentary:

A lawyer should not express personal opinions or beliefs, or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge. The lawyer should not in effect appear as an unsworn witness or put the lawyer's own credibility in issue. The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer. There are no restrictions on the advocate's right to cross-examine another lawyer, however, and the lawyer who does appear as a witness should not expect to receive special treatment because of professional status.

Appeals

(3) A lawyer who is a witness in proceedings shall not appear as advocate in any appeal from the decision in those proceedings.

4.03 INTERVIEWING WITNESSES

Interviewing Witnesses

4.03 (1) Subject to subrule (2), 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 professionally 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) directors, officers, or persons likely involved in the decision-making process concerning that matter; or

(b) persons, including employees 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.

Commentary:

This rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by counsel concerning the matter to which the communication relates. A lawyer may communicate with a represented person, or an employee or agent of such a person, concerning matters outside the representation. Also parties to a matter may communicate directly with each other.

The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but actual knowledge may be inferred from the circumstances. This inference may arise where there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

This rule applies to corporations and "other organizations". "Other organizations" include partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals, regulatory bodies, and sole proprietorships.

In the case of a corporation or other organization (including for example an association or government department), this rule prohibits communications by a lawyer for another person or entity concerning the matter in question with persons likely involved in the decision-making process about the matter. If an agent or employee of the organization in represented in the matter by his or her counsel, the consent of that counsel to a communication will be sufficient for purposes of this rule.

A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances the lawyer must comply with the requirements of rule 2.04 (avoidance of conflicts of interest), and particularly subrules 2.04 (6) through (10). A lawyer must not represent that he or she acts for an employee of a client unless the requirements of rule 2.04 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.

4.04 COMMUNICATION WITH WITNESSES GIVING EVIDENCE

Communication with Witnesses Giving Evidence

4.04 Subject to the direction of the tribunal, the lawyer shall observe the following rules respecting communication with witnesses giving evidence:

(a) during examination-in-chief the examining lawyer may discuss with the witness any matter that has not been covered in the examination up to that point;

(b) during examination-in-chief by another lawyer of a witness who is unsympathetic to the lawyer's cause, the lawyer not conducting the examination-in-chief may discuss the evidence with the witness;

(c) between completion of examination-in-chief and commencement of cross-examination of the lawyer's own witness, the lawyer ought not to discuss the evidence given in chief or relating to any matter introduced or touched on during the examination-in-chief;

(d) during cross-examination by an opposing lawyer, the witness's own lawyer ought not to have any conversation with the witness about the witness's evidence or any issue in the proceeding;

(e) between completion of cross-examination and commencement of re-examination the lawyer who is going to re-examine the witness ought not to have any discussion about evidence that will be dealt with on re-examination;

(f) during cross-examination by the lawyer of a witness unsympathetic to the cross-examiner's cause, the lawyer may discuss the witness's evidence with the witness;

(g) during cross-examination by the lawyer of a witness who is sympathetic to that lawyer's cause, any conversations ought to be restricted in the same way as communications during examination-in-chief of one's own witness; and

(h) during re-examination of a witness called by an opposing lawyer, if the witness is sympathetic to the lawyer's cause the lawyer ought not to discuss the evidence to be given by that witness during re-examination. The lawyer may, however, properly discuss the evidence with a witness who is adverse in interest.

Commentary:

If any question arises whether the lawyer's behaviour may be in violation of this rule, it will often be appropriate to obtain the consent of the opposing lawyer or leave of the tribunal before engaging in conversations that may be considered improper.

This rule applies with necessary modifications to examinations out of court.

4.05 RELATIONS WITH JURORS

Communications Before Trial

4.05 (1) When acting as an advocate, before the trial of a case a lawyer shall not before the trial of a case communicate with or cause another to communicate with anyone that the lawyer knows to be a member of the jury panel for that trial.

Commentary:

A lawyer may investigate a prospective juror to ascertain any basis for challenge, provided that the lawyer does not directly or indirectly communicate with the juror or with any member of the juror's family. But a lawyer should not conduct or cause by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a member of the jury panel or a juror.

Disclosure of Information

(2) When acting as an advocate, a lawyer shall disclose to the judge and opposing counsel any information of which the lawyer is aware that a juror or prospective juror:

(a) has or may have an interest, direct or indirect, in the outcome of the case;

(b) is acquainted or connected in any manner with any litigant; or

(c) is acquainted or connected in any manner with any person who has appeared or who is expected to appear as a witness;

unless the judge and opposing counsel have previously been made aware of the information.

(3) A lawyer should promptly disclose to the court any information that the lawyer has about improper conduct by a member of a jury panel or by a juror toward another member of the jury panel, another juror, or to the members of a juror's family.

Communication During Trial

(4) Except as permitted by law, when acting as an advocate, a lawyer shall not during a trial of a case communicate with or cause another to communicate with any member of the jury.

(5) A lawyer who is not connected with a case before the court shall not communicate with or cause another to communicate with any member of the jury about the case.

Commentary:

The restrictions on communications with a juror or potential juror should also apply to communications with or investigations of members of his or her family.

4.06 THE LAWYER AND THE ADMINISTRATION OF JUSTICE

Encouraging Respect for the Administration of Justice

4.06 (1) A lawyer shall encourage public respect for and try to improve the administration of justice.

Commentary:

The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet for the same reason a lawyer should not hesitate to speak out against an injustice.

The admission to and continuance in the practice of law implies on the part of a lawyer a basic commitment to the concept of equal justice for all within an open, ordered and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public, and because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby maintain public respect for it.

Criticizing Tribunals - Although proceedings and decisions of courts and tribunals are properly subject to scrutiny and criticism by all members of the public including lawyers, judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate or unsupported by a bona fide belief in its real merit, bearing in mind that in the eyes of the public professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Thirdly, where a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to and should support the tribunal, both because its members cannot defend themselves and because in doing so the lawyer is contributing to greater public understanding of and therefore respect for the legal system.

A lawyer, by training, opportunity and experience is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions and public authorities. A lawyer should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.

Seeking Legislative or Administrative Changes

(2) A lawyer who seeks legislative or administrative changes shall disclose the interest being advanced, whether the lawyer's interest, the client's interest, or the public interest.

Commentary:

The lawyer may advocate legislative or administrative changes on behalf of a client although not personally agreeing with them, but the lawyer who purports to act in the public interest should espouse only those changes that the lawyer conscientiously believes to be in the public interest.

Security of Court Facilities

(3) A lawyer who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility shall inform the local police force and give particulars.

Commentary:

Where possible, the lawyer should suggest solutions to the anticipated problem such as: (a) the necessity for further security; and (b) that judgment ought to be reserved.

Where possible, the lawyer should also notify other lawyers who are known to be involved in proceedings at the court facility where the dangerous situation is likely to develop. Beyond providing a warning of danger, this notice is desirable because it may allow them to suggest security measures that do not interfere with an accused's or a party's right to a fair trial.

4.07 LAWYERS AS MEDIATORS

Role of Mediator

4.07 A lawyer who acts as a mediator shall at the outset of the mediation ensure that the parties to it understand fully that:

(a) the lawyer is not acting as a lawyer for either party but, as mediator, is acting to assist the parties to resolve the matters in issue; and

(b) although communications pertaining to and arising out of the mediation process may be covered by some other common law privilege, they will not be covered by the solicitor-client privilege.

Commentary:

In acting as a mediator, generally a lawyer should not give legal advice as opposed to legal information to the parties during the mediation process.

Generally, neither the lawyer-mediator nor a partner or associate of the lawyer-mediator should render legal representation or give legal advice to either party to the mediation, bearing in mind the provisions of rule 2.04 and its commentaries and the common law authorities.

Generally a lawyer-mediator should suggest and encourage the parties to seek the advice of separate counsel before and during the mediation process if they have not already done so.

Where in the mediation process the lawyer-mediator prepares a draft contract for the consideration of the parties, the lawyer-mediator should expressly advise and encourage them to seek separate independent legal representation concerning the draft contract.

RULE 5 - RELATIONSHIP TO ASSOCIATES, STUDENTS, EMPLOYEES, AND OTHERS

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;

(i) routine adjournments in provincial courts;

(ii) 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;

(iii) 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;

(iv) simple without notice matters or motions for a consent order before a master; and

(v) 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; and

(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; or

(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.

5.02 STUDENTS

Recruitment Procedures

5.02 (1) A lawyer shall observe the procedures of the Society about the recruitment of articling students and the engagement of summer students.

Duties of Principal

(2) A lawyer acting as a principal to a student shall provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.

Duties of Articling Student

(3) An articling student shall act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

5.03 SEXUAL HARASSMENT

Definition

5.03 (1) In this rule, sexual harassment is one incident or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature,

(a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence or humiliation to the recipient(s) of the conduct;

(b) when submission to such conduct is made implicitly or explicitly a condition for the provision of professional services;

(c) when submission to such conduct is made implicitly or explicitly a condition of employment;

(d) when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of files, matters of promotion, raise in salary, job security and benefits affecting the employee); or

(e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile or offensive work environment.

Commentary:

Types of behaviour that constitute sexual harassment include, but are not limited to,

(a) sexist jokes causing embarrassment or offence, told or carried out after the joker has been advised that they are embarrassing or offensive, or that are by their nature clearly embarrassing or offensive

(b) leering

(c) the display of sexually offensive material

(d) sexually degrading words used to describe a person

(e) derogatory or degrading remarks directed towards members of one sex or one's sexual orientation

(f) sexually suggestive or obscene comments or gestures

(g) unwelcome inquiries or comments about a person's sex life

(h) unwelcome sexual flirtations, advances, propositions

(i) persistent unwanted contact or attention after the end of a consensual relationship

(j) requests for sexual favours

(k) unwanted touching

(l) verbal abuse or threats

(m) sexual assault.

Sexual harassment can occur in the form of behaviour by men towards women, between men, between women or by women towards men.

Prohibition on Sexual Harassment

(2) A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.

5.04 DISCRIMINATION

Special Responsibility

(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 provincial offences.

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:

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.

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 persons 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 reasonably 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 service 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 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 residency. 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, ethnicity, 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.

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. However, the following principles are well established.

If a rule, requirement or expectation creates difficulty for an individual because of factors related to the personal characteristics noted in rule 5.04, the following obligations arise:

> *The rule, requirement or expectation must be examined to determine whether it is "reasonable and bona fide". If the rule, requirement or expectation is not imposed in good faith and is not strongly and logically connected to a business necessity, it cannot be maintained. There must be objectively verifiable evidence linking the rule, requirement or expectation with the operation of the business.*
>
> *If the rule, requirement or expectation is imposed in good faith and is strongly logically connected to a business necessity, the next step is to consider whether the individual who is disadvantaged by the rule can be accommodated.*
>
> *The duty to accommodate operates as both a positive obligation and as a limit to obligation. Accommodation must be offered to the point of undue hardship. Some hardship must be tolerated to promote equality; however, if the hardship occasioned by the particular accommodation at issue is "undue", that accommodation need not be made.*

RULE 6 - RELATIONSHIP TO THE SOCIETY AND OTHER LAWYERS

6.01 RESPONSIBILITY TO THE PROFESSION GENERALLY

Integrity

6.01 (1) A lawyer shall assist in maintaining the integrity of the profession.

Commentary:

Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.

Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect credit on the legal profession, inspire the confidence, respect and trust of clients and the community, and avoid even the appearance of impropriety.

Meeting Financial Obligations

(2) A lawyer shall promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability insurance policy when properly called upon to do so.

Commentary:

In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken on behalf of clients unless, before incurring such an obligation the lawyer clearly indicates in writing that the obligation is not to be a personal one.

When a lawyer retains a consultant, expert, or other professional, the lawyer should clarify the terms of the retainer in writing including specifying: the fees, the nature of the services to be provided, and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, nevertheless, if it is reasonably possible to do so, the lawyer should help in making satisfactory arrangements for payment.

If there is a change of lawyer, the lawyer who originally retained a consultant, expert, or other professional should advise him or her about the change and provide the name, address, telephone number, fax number, and e-mail address of the new lawyer.

Duty to Report Misconduct

(3) A lawyer shall report to the Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege:

(a) the misappropriation or misapplication of trust monies;

(b) the abandonment of a law practice;

(c) participation in serious criminal activity related to a lawyer's practice;

(d) the mental instability of a lawyer of such a serious nature that the lawyer's clients are likely to be severely prejudiced; and

(e) any other situation where a lawyer's clients are likely to be severely prejudiced.

Commentary:

Unless a lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer).

Nothing in this paragraph is meant to interfere with the traditional solicitor-client relationship. In all cases the report must be made bona fide without malice or ulterior motive.

Often instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports the Ontario Bar Assistance Program (OBAP), LINK, and other support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for OBAP and other support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

The Society also recognizes that communications with the harassment and discrimination counsel appointed to assist in resolving complaints of discrimination or harassment against lawyers must generally remain confidential. Therefore, the harassment and discrimination counsel will not be called by the Society or by any investigative committee to testify at any conduct, capacity or competence hearing without the consent of the person from whom the information was received. Notwithstanding the above, a lawyer serving as harassment and discrimination counsel has an ethical obligation to report to the Society upon learning that a lawyer is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice.

Encouraging Client to Report Dishonest Conduct

(4) A lawyer shall attempt to persuade a client who has a claim against an apparently dishonest lawyer to report the facts to the Society before pursuing private remedies.

(5) If the client refuses to report his or her claim against an apparently dishonest lawyer to the Society, the lawyer shall inform the client of the policy of the Lawyers' Fund for Client Compensation and shall obtain instructions in writing to proceed with the client's claim without notice to the Society.

(6) A lawyer shall inform a client of the provision of the Criminal Code of Canada dealing with the concealment of an indictable offence in return for an agreement to obtain valuable consideration (section 141).

(7) If the client wishes to pursue a private agreement with the apparently dishonest lawyer, the lawyer shall not continue to act if the agreement constitutes a breach of section 141 of the Criminal Code of Canada.

6.02 RESPONSIBILITY TO THE SOCIETY

Communications from the Society

6.02 A lawyer shall reply promptly to any communication from the Society.

6.03 RESPONSIBILITY TO LAWYERS AND OTHERS

Courtesy and Good Faith

6.03 (1) A lawyer shall be courteous and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

Commentary:

The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their function properly.

Any ill feeling which may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

(2) A lawyer shall agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

(3) A lawyer shall avoid sharp practice and shall not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of a client's rights.

(4) A lawyer shall not use a tape recorder or other device to record a conversation between the lawyer and a client, or another lawyer, even if lawful, without first informing the other person of the intention to do so.

Communications

(5) A lawyer shall not in the course of a professional practice send correspondence or otherwise communicate, to a client, another lawyer or any other person in a manner that is abusive, offensive or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

(6) A lawyer shall answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer shall be punctual in fulfilling all commitments.

(7) A lawyer shall not communicate with or attempt to negotiate or compromise a matter directly with any person who is represented by a lawyer except through or with the consent of that lawyer.

Undertakings

(8) A lawyer shall not give an undertaking that cannot be fulfilled and shall fulfill every undertaking given.

Commentary:

Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as "on behalf of my client" or "on behalf of the vendor" does not relieve the lawyer giving the undertaking of personal responsibility.

6.04 OUTSIDE INTERESTS AND THE PRACTICE OF LAW

Maintaining Professional Integrity and Judgment

6.04 (1) A lawyer who engages in another profession, business, or occupation concurrently with the practice of law shall not allow such outside interest to jeopardize the lawyer's professional integrity, independence, or competence.

(2) A lawyer shall not allow involvement in an outside interest to impair the exercise of the lawyer's independent judgment on behalf of a client.

Commentary:

The term "outside interest" covers the widest possible range of activities and includes activities that may overlap or be connected with the practice of law such as engaging in the mortgage business, acting as a director of a client corporation, or writing on legal subjects, as well as activities not so connected such as, for example, a career in business, politics, broadcasting or the performing arts. In each case the question of whether and to what extent the lawyer may be permitted to engage in the outside interest will be subject to any applicable law or rule of the Society.

Where the outside interest is not related to the legal services being performed for clients, ethical considerations will usually not arise unless the lawyer's conduct might bring the lawyer or the profession into disrepute, or impair the lawyer's competence as, for example, where the outside interest might occupy so much time that clients' interests would suffer because of inattention or lack of preparation.

6.05 THE LAWYER IN PUBLIC OFFICE

Standard of Conduct

6.05 (1) A lawyer who holds public office shall in the discharge of official duties adhere to standards of conduct as high as those that these Rules require of a lawyer engaged in the practice of law.

Commentary:

The rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the lawyer attained the office because of professional qualifications. Because such a lawyer is in the public eye, the legal profession can more readily be brought into disrepute by a failure to observe its ethical standards.

Generally, the Society will not be concerned with the way in which a lawyer holding public office carries out official responsibilities, but conduct in office that reflects adversely upon the lawyer's integrity or professional competence may be the subject of disciplinary action.

Conflict of Interest

(2) A lawyer who holds public office shall not allow professional or personal interests to conflict with the proper discharge of official duties.

Commentary:

The lawyer holding part-time public office must not accept any private legal business where duty to the client will, or may, conflict with official duties. If some unforeseen conflict arises, the lawyer should terminate the professional relationship, explaining to the client that official duties must prevail. The lawyer who holds a full-time public office will not be faced with this sort of conflict, but must nevertheless guard against allowing independent judgment in the discharge of official duties to be influenced either by the lawyer's own interest, that of some person closely related to or associated with the lawyer, that of former or prospective clients, or former or prospective partners or associates.

Subject to any special rules applicable to the particular public office, the lawyer holding the office who sees that there is a possibility of a conflict of interest should declare the possible conflict at the earliest opportunity, and not take part in any consideration, discussion or vote concerning the matter in question.

(3) If there may be a conflict of interest, a lawyer who holds or who held public office shall not represent clients or advise them in contentious cases that the lawyer has been concerned with in an official capacity.

Appearances before Official Bodies

(4) Subject to the rules of the official body, when a lawyer or any of his or her partners or associates is a member of an official body, the lawyer shall not appear professionally before that body.

Commentary:

Subject to the rules of the official body, a partner or associate may appear professionally before a committee of the official body if the partner or associate is not a member of that committee, provided that in respect of matters in which the partner or associate appears, the lawyer does not sit on the committee, take part in the discussions of the committee's recommendations or vote upon them.

Conduct after Leaving Public Office

(5) A lawyer who has left public office shall not act for a client in connection with any matter for which the lawyer had substantial responsibility before leaving public office.

Commentary:

It would not be improper for the lawyer to act professionally in the matter on behalf of the public body in question.

A lawyer who has acquired confidential information by virtue of holding public office should keep the information confidential and not divulge or use it notwithstanding that the lawyer has ceased to hold such office.

6.06 PUBLIC APPEARANCES AND PUBLIC STATEMENTS

Communication with the Public

6.06 (1) Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.

Commentary:

Lawyers in their public appearances and public statements should conduct themselves in the same manner as with their clients, their fellow practitioners, the courts, and tribunals. Dealings with the media are simply an extension of the lawyer's conduct in a professional capacity. The mere fact that a lawyer's appearance is outside of a courtroom, a tribunal, or the lawyer's office does not excuse conduct that would otherwise be considered improper.

A lawyer's duty to the client demands that, before making a public statement concerning the client's affairs, the lawyer must first be satisfied that any communication is in the best interests of the client and within the scope of the retainer.

Public communications about a client's affairs should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that a lawyer's real purpose is self-promotion or self-aggrandizement.

Given the variety of cases that can arise in the legal system, particularly in civil, criminal, and administrative proceedings, it is impossible to set down guidelines that would anticipate every possible circumstance. Circumstances will arise where the lawyer should have no contact with the media and other cases where the lawyer is under a specific duty to contact the media to serve properly the client - the latter situation will arise more often in the context of administrative boards and tribunals where a particular tribunal is an instrument of government policy and hence is susceptible to public opinion.

A lawyer is often involved in a non-legal setting where contact is made with the media about publicizing such things as fund-raising, expansion of hospitals or universities, programs of public institutions or political organizations, or in acting as a spokesperson for organizations that, in turn, represent particular racial, religious or other special interest groups. This is a well-established and completely proper role for the lawyer to play, in view of the obvious contribution it makes to the community.

A lawyer is often called upon to comment publicly on the effectiveness of existing statutory or legal remedies, on the effect of particular legislation or decided cases, or to offer an opinion about cases that have been instituted or are about to be instituted. This, too, is an important role the lawyer can play to assist the public in understanding legal issues.

A lawyer is often involved as advocate for interest groups whose objective is to bring about changes in legislation, governmental policy, or even a heightened public awareness about certain issues. This is also an important role that the lawyer can be called upon to play.

Lawyers should be aware that when they make a public appearance or give a statement lawyer will ordinarily have no control over any editing that may follow or the context in which the appearance or statement may be used, or under what headline it may appear.

Interference with Right to Fair Trial or Hearing

(2) A lawyer shall not make a statement to the media about a matter before a tribunal if the lawyer knows or ought to know that the statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

Commentary:

It is important to a free and democratic society that the public including the media be informed about cases before courts and tribunals. The administration of justice benefits from public scrutiny. It is also important that a person's, particularly an accused person's, right to a fair trial not be impaired by inappropriate public statements made before the case has concluded. Fair trials are fundamental to a free and democratic society.

The following are examples of extrajudicial statements that may materially prejudice a party's right to a fair trial or hearing except where the lawyer reasonably believes that the statement is necessary to protect a client from and to mitigate the effect of prejudicial publicity not initiated by the lawyer or the client:

(a) a statement about the character, credibility, reputation, or criminal record of an accused or witness;

(b) a statement about other pending charges against an accused;

(c) a statement about the existence of any confession, admission, or statement made by an accused or about the accused's failure to make a statement;

(d) a statement about the possibility of a plea of guilty to the offence charged or to a lesser offence;

(e) a statement about the performance on or results of any examination or tests or the refusal or failure of an accused to submit to examinations or tests;

(f) a statement about any search or seizure of documents intended to be used as evidence; and

(g) a statement about anything that may be privileged from admission as evidence.

The following are examples of extrajudicial statements that are not likely to materially prejudice a party's right to a fair trial or hearing:

(a) a statement about the general nature of the claim or charge;

(b) *a statement about the fact, time and place of an arrest, the charges, and the date and place of a court appearance;*

(c) *where the accused has not yet been arrested and a warrant has been issued, any information necessary to aid in apprehension of the accused or to warn the public of any danger posed by the accused but no more information than necessary for these purposes;*

(d) *a statement about the identity of the investigative agency and the length of the investigation;*

(e) *a statement about the general nature of the defence including a statement that the accused is presumed innocent and denies the charge or charges;*

(f) *a statement about the name, age, residence of a person involved except where this information would identify a victim, complainant, or young offender in violation of any judicial or statutory publication ban;*

(g) *a request for assistance in obtaining evidence and information necessary for the prosecution or the defence; or*

(h) *information already contained in the public record in the proceedings in question that is not subject to any judicial or statutory publication ban.*

6.07 PREVENTING UNAUTHORIZED PRACTICE

Preventing Unauthorized Practice

6.07 (1) A lawyer shall assist in preventing the unauthorized practice of law.

Commentary:

Statutory provisions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, regulation and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of secrecy, the professional standard of care which the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include professional liability insurance, rights with respect to the assessment of bills, rules respecting the handling of trust monies, and requirements for the maintenance of compensation funds.

Disbarred Persons, Suspended Lawyers, and Others

(2) Without the express approval of Convocation, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, suspended, undertaken not to practise, or who has been involved in disciplinary action and been permitted to resign, and has not been reinstated or readmitted.

(3) Where a person has been suspended for non-payment of fees or for some reason not involving disciplinary action, the express approval referred to in subrule (2) may also be granted by a committee of Convocation appointed for this purpose.

6.08 RETIRED JUDGES RETURNING TO PRACTICE

Definitions

6.08 (1) In this rule, "retired appellate judge" means a lawyer

(a) who was formerly a judge of the Supreme Court of Canada, the Court of Appeal for Ontario or the Federal Court of Canada, Appeal Division,

(b) who has retired, resigned, or been removed from the Bench, and

(c) who has returned to practice.

(2) In this rule, "retired judge" means a lawyer

(a) who was formerly a judge of the Federal Court of Canada, Trial Division, the Tax Court of Canada, the Supreme Court of Ontario, Trial Division, a County or District Court, the Ontario Court of Justice, or the Superior Court of Justice,

(b) who has retired, resigned, or been removed from the Bench, and

(c) who has returned to practice.

Appearance as Counsel

(3) A retired appellate judge shall not appear as counsel or advocate in any court, or in chambers, or before any administrative board or tribunal without the express approval of Convocation. This approval may only be granted in exceptional circumstances and may be restricted as Convocation sees fit.

(4) A retired judge shall not appear as counsel or advocate,

(a) before the court on which the judge served or any lower court; and

(b) before any administrative board or tribunal over which the court on which the judge served exercised an appellate or judicial review jurisdiction;

for a period of two years from the date of his or her retirement, resignation or removal without the express approval of Convocation, which approval may only be granted in exceptional circumstances and may be restricted as Convocation sees fit.

6.09 ERRORS AND OMISSIONS

Informing Client of Error or Omission

6.09 (1) When in connection with a matter for which a lawyer is responsible, the lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer shall:

(a) promptly inform the client of the error or omission being careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan, or otherwise;

(b) recommend that the client obtain legal advice elsewhere concerning any rights the client may have arising from the error or omission; and

(c) advise the client that in the circumstances, the lawyer may no longer be able to act for the client.

Notice of Claim

(2) A lawyer shall give prompt notice of any circumstance that the lawyer may reasonably expect to give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

Commentary:

The introduction of compulsory insurance has imposed additional obligations upon a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. The insurer's rights must be preserved. There may well be occasions when a lawyer believes that certain actions or the failure to take action have made the lawyer liable for damages to the client when in reality no liability exists. Further, in every case a careful assessment will have to be made of the client's damages arising from the lawyer's negligence. Many factors will have to be taken into account in assessing the client's claim and damages. As soon as a lawyer becomes aware that an error or omission may have occurred which may reasonably be expected to involve liability to the client for professional negligence, the lawyer should take the following steps:

1. Immediately arrange an interview with the client and advise the client that an error or omission may have occurred, which may form the basis of a claim by the client against the lawyer.

2. Advise the client to obtain an opinion from an independent lawyer and that, in the circumstances, the first lawyer might no longer be able to act for the client.

3. Subject to rule 2.03 (Confidentiality), inform the insurer of the facts of the situation.

4. Co-operate fully and as expeditiously as possible with the insurer in the investigation and eventual settlement of the claim.

5. Make arrangements to pay that portion of the client's claim that is not covered by the insurance immediately upon completion of the settlement of the client's claim.

Co-operation

(3) When a claim of professional negligence is made against a lawyer, he or she shall assist and co-operate with the insurer or other indemnitor to the extent necessary to enable the claim to be dealt with promptly.

Responding to Client's Claim

(4) If a lawyer is not indemnified for a client's errors and omissions claim, or to the extent that the indemnity may not fully cover the claim, the lawyer shall expeditiously deal with the claim and shall not take unfair advantage that would defeat or impair the client's claim.

(5) In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, a lawyer has a duty to pay the balance.

6.10 RESPONSIBILITY IN MULTI-DISCIPLINE PRACTICES

Compliance with these Rules

6.10 A lawyer in a multi-discipline practice shall ensure that non-lawyer partners and associates comply with these rules and all ethical principles that govern a lawyer in the discharge of his or her professional obligations.

6.11 DISCIPLINE

Disciplinary Authority

6.11 (1) A lawyer is subject to the disciplinary authority of the Society regardless of where the lawyer's conduct occurs.

Professional Misconduct

(2) The Society may discipline a lawyer for professional misconduct.

Conduct Unbecoming a Lawyer

(3) The Society may discipline a lawyer for conduct unbecoming a lawyer.

Bibliography

Abel, "The Decline of Professionalism" (1986) 49 Mod. L.Rev. 1.

American Bar Association, *Model Rules of Professional Conduct,* (1998 ed.)

Antle, "Solicitors' Charging Liens" (1990), 48 Advocate 673.

Arlidge, "Contingent Fees" (1974) 11 Ottawa L. Rev. 374

Armstrong, "The Duty of Confidentiality and the Child Beating Client: An Ethical Conundrum" (1995), 13 C.F.L.Q. 49.

Arnup, "Some Things I Worry About" (1984), 18 L.S.U.C. Gazette 249.

Arthurs, "Authority, Accountability, and Democracy in the Government of the Ontario Legal Profession" (1971), 49 Can. Bar Rev. 1.

Arthurs, "Climbing Kilimanjaro: Ethics for Postmodern Professionals" (1993), 6 Westminister Affairs 3.

Arthurs, "Discipline in the Legal Profession in Ontario" (1970), 7 Osgoode Hall L.J. 235.

Arthurs, "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?" (1995), 33 Alta. L.Rev. 800.

Arthurs and Bucknall, *Bibliographies on the Legal Profession & Legal Education in Canada* (Toronto: York University, 1968).

Asch (ed), *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality, and Respect for Difference* (Vancouver, UBC Press in association with Centre for Constitutional Studies, University of Alberta, 1997).

Babcock, "Defending the Guilty" (1983-84), 32 Cleveland State L. Rev. 1.

Balabanian, "Our Unpopular Profession" (1997), 17 California Lawyer 96.

Bastedo, "A Note on Lawyers' Malpractice" (1970), 7 Osgoode Hall L.J. 311.

Bates and Clements, "Liability Insurance Coverage Disputes: Acting for the Insured" (1994), 16 Adv. Q. 169.

Bennett, "Confidentiality in a Solicitor and Client Relationship" (1989), 23 L.S.U.C. Gazette 257.

Bennion, *Professional Ethics: The Consultant Professions and Their Code* (London: Charles Knight, 1969).

Bickenbach, "The Redemption of the Moral Mandate of the Profession of Law" (1996), 9 Can. J.L. & Juris. 51.

Boulton, *Conduct and Etiquette at the Bar*, 5th ed. (London: Butterworths, 1971).

Bowie, "The Law: From Profession to a Business" (1988), 41 Vanderbilt L. Rev. 41.
Bowker, "Legal Ethics" (1955-61), 1 Alta. L. Rev. 71.

Boyd, "Address on Legal Ethics" (1905), 4 Can. L. Rev. 85.

Brand, *Bar Associations, Attorneys and Judges* (Chicago: American Judicature Society, 1956)

Braveman, "Civility in the Legal Profession: Time for Change" (New South Wales), (1977) 35 Law Society Journal 52.

Bress, "Professional Ethics in Criminal Trials: A View of Defence Counsels' Responsibility" (1966) 64 Mich L.Rev. 1493.

Brindle, "Solicitor-Client Confidentiality and the Implications of the Proceeds of Crime (Money Laundering) Act and Regulations" (1994), 52 *Advocate* 543.

Brockett, "New Initiatives in Legal Ethics" (1993) 6 Westminister Affairs 16.

Brockman, "Dissonance and Distrust: Women in the Legal Profession," (1998) 7 Social & Legal Studies 140.

Brockman, "The Use of Self Regulation to Curb Discrimination and Sexual Harassment in the Legal Profession," (1997) 35 Osgoode Hall Law Journal 209.

Brockman and McEwan, "Self-regulation in the Legal Profession: Funnel In, Funnel Out or Funnel Away? (1990), 5 Can. J.L & Society 1.

Brucker, "Money Laundering and the Client: How Can I Be Retained without Becoming a Party to an Offence?" (1997), 39 Crim. L.Q. 312.

Buckingham, *Legal Ethics in Canada: Theory and Practice* (Toronto: Harcourt Brace Canada, 1996).

Burke, "The Duty of Confidentiality and Disclosing Corporate Misconduct", (1981), 36 The Business Lawyer 239.

Burke, "Truth in Lawyering: An Essay on Lying and Deceit in the Practice of Law" (1984), 38 Ark. L.Rev. 1.

Burton, "More Glass Ceilings than Open Doors: Women as Outsiders in the Legal Profession," (1996) 65 Fordham Law Review 565.

Bushby, "The Maleness of Legal Language" (1989), 18 Man. L.J. 191.

Bynoe, "Unprofessional Conduct: The Role of the Discipline Committee" (1976), 10 L.S.U.C. Gazette 256.

Callaghan, "Practical Responsibilities of Members of the Bar" (1987), 21 L.S.U.C. Gazette 71.

Canadian Bar Association, *Conflict of Interest Disqualification: Martin v. Gray and Screening Methods* (Ottawa: Canadian Bar Association, 1993).

Canadian Bar Association, *Racial Equality in the Canadian Legal Profession: [report] / presented to the Council of the Canadian Bar Association by the Working Group on Racial Equality in the Legal Profession*, (Ottawa: Canadian Bar Association ,1999).

Canadian Bar Association, *Reading the Legal Word: Literacy and Justice in Canada* (Ottawa: Canadian Bar Association, 1992).

Canadian Bar Association, "Report of the Canadian Bar Association Special Committee in Legal Ethics" (1973), 7 L.S.U.C. Gazette 276.

Canadian Bar Association, "Report of the Committee on Legal Ethics" (1919), 55 Canada L. J. 294.

"Canons of Legal Ethics and Rules" (1963), 21 Advocate 132.

Cavanagh, "Conflicts of Interest and the Insurer's Right to Control the Defence of its Insured" (1988), 9 Adv. Q. 385.

Certosimo, "A Conflict is a Conflict is a Conflict: Fiduciary Duty and Lawyer-Client Sexual Relations" (1993), 16 Dalhousie L.J. 448.

Cheatham, "Availability of Legal Services: The Responsibility of the Individual Lawyer and the Organized Bar" (1965), 12 U.C.L.A. L. Rev. 438.

Cherniak, "The Ethics of Advocacy" (1985), 19 L.S.U.C. Gazette 153.

Clarry, "Inter-Provincial Law Firms" (1982), 16 L.S.U.C. Gazette 266.

"Conflicts of Interest in the Legal Profession" (1980-81), 94 Harv. L.R. 1244.

Corcos, "Portia Goes to Parliament: Women and Their Admission to Membership in the English Legal Profession," (1998) 75 Denver University Law Review 307.

Cranston (editor), *Legal Ethics and Professional Responsibility*. (Oxford: Clarendon Press, 1995).
Cullity, "Ethical Issues in an Estates Practice: A Personal View" [1996] L.S.U.C. Special Lectures 425.

Curtis, "Alternative Visions of the Legal Profession in Society: A Perspective on Ontario" (1995), 33 Alta. L. Rev. 787.

Curtis, "The Ethics of Advocacy" (1951), 4 Stanford L.Rev. 3.

Day, "Scruples (Professional Ethics for the Practice of Family Law) (1987-88), 2 C.F.L.Q. 151.

"Delegation of Authority by Solicitors" (1968) 3 L.S.U.C. Gazette. 23.

Devlin, 'Normative, and Somewhere to Go? Reflections on Professional Responsibility" (1995), 33 Alta. L.Rev. 924.

Dickson, "Access to Justice" (1989), 1 Windsor Review of Law and Social Inquiry 1.

Doran, "Ethical Duties of the Lawyer Representing a Client Who is on the Verge of Insolvency or is Insolvent" [1988] L.S.U.C. Special Lectures 1.

Drinker, *Legal Ethics* (New York: Columbia University Press, 1965).

Dubinsky, "Legal Ethics and Professional Conduct" (1964), 29 Sask. Bar Rev. 45.

Eaton, "Practising Ethics" (1966), 9 Can. Bar J. 349.

Eayers, "Some Problems of Professional Ethics in the Legal Representation of Minors" (1986), 20 L.S.U.C. Gazette 106.

Esau, "Specialization and the Legal Profession" 8 (1979), Man. L.J. 255.

Editorial "Civil Disobedience and the Lawyer" (1967) 1(3) L.S.U.C. Gazette. 5 and response thereto (1968) 2 L.S.U.C. Gazette. 44.

Elliston, "Ethics, Professionalism and the Practice of Law" (1985), 16 Loyola Univ. of Chi. L.J. 529.

Ellyn, "Remedies to Enforce Solicitor's Undertakings" (1989), 23 L.S.U.C. Gazette 311.

Evans and Trebilcock (eds.), *Lawyers and the Consumer Interest* (Toronto: Butterworths, 1982).

"Fee Splitting and Contingent Fees" (1969), 3 L.S.U.C. Gazette 178.

Fennell, "The Selection of a Lawyer and Advertising" (1975), 9 L.S.U.C. Gazette 174.

Ferguson, "Conflict Between Insured and Insurer: An Analysis of Recent Canadian Cases" (1990), 12 Adv. Q. 129.

Filipovic, "The Sex Police Cometh: Lawyer-Client Sexual Relationships" (1993), 31 Alta. L. Rev. 391.

Finlay, "The Conduct of Lawyers in Litigious Process: Some Thoughts" in *Studies in Civil Procedure* (Gertner, ed.) (Toronto: Butterworths, 1979), p. 15.

Finlayson, "The Lawyer as a Professional" (1980), 14 L.S.U.C. Gazette 229.

Finlayson, "Professional Advertising: The Fine Line between Informational and Promotional" (1979), 13 L.S.U.C. Gazette 93.

Firak, "Ethical Fictions as Ethical Foundations: Justifying Professional Ethics" (1986) Osgoode Hall L.J. 35.

Fish, "Book Review of the Code of Professional Conduct" (1989), 68 Can. Bar Rev. 857.

Flynn, "Professional Ethics and the Lawyer's Duty to Self," [1976] Wash. U.L.Q. 429.

Ford, "Notes on the Discipline Committee" (1967), 1 L.S.U.C. Gazette 2:24.
Freedman, "Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions" (1966), 64 Mich. L.Rev. 1469.

Freedman, "Solicitor-Client Privilege Under the Income Tax Act" (1969) 12 Can. Bar J. 93

Fried, "The Lawyer as Friend: The Moral Foundation of the Lawyer-Client Relation" (1976), 85 Yale L.J. 1060.

Gannage, "Mental Incapacity Rendering a Professional Unfit to Practice: The Approaches of the Medical and Legal Professions in Ontario" (1983), 21 U.W.O.L. Rev. 29.

Gillers, *Regulation of Lawyers: Problems of Law and Ethics* (New York: Aspen Law & Business, 1998).

Gittens and Cole, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System* (Toronto: Commission on Systemic Racism in the Ontario Criminal Justice System, 1995).

Glenn, "Comment - MacDonald Estate v. Martin" (1991), 71 Can. Bar Rev. 351.

Glenn, "Professional Structures and Professional Ethics" (1990), 35 McGill L.J. 424.

Gonsalves-Sabola, "Ethics and the Court Lawyer" (1997), 16 Advocates' Soc. J. 15.

Grant and Rothstein, *Lawyers' Professional Liability* (Toronto: Butterworths, 1989).

Grant, "Sex, Lies and Legal Ethics" (1990), 24 L.S.U.C. Gazette 103.

Greenspan, "The Quality of Life and the Practice of Law" (1992), 26 L.S.U.C. Gazette 86.

Gunz and Gunz, "Ethical Implications of the Employment Relationship for Professional Lawyers" (1994), 28 U.B.C.L. Rev. 123.

Haber and Baumrin, "The Moral Obligations of Lawyers" (1988), 1 Can. J.L & Juris. 105.

Hawreluk, "The Lawyer's Duty to Himself and the Code of Professional Conduct" (1993), 27 L.S.U.C. Gazette 119.

Hazard and Hodes, *The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct* (2nd ed.) (Englewood Cliffs, N.J.: Prentice Hall Law and Business, c.1990-).

Hazard and Rhode (eds.), *The Legal Profession: Responsibility and Regulation* (3rd ed.) (Westbury, N.Y.: The Foundation Press, 1994).

Henderson, "Advertising and Professional Fees under the Combines Investigation Act" [1977] L.S.U.C. Special Lectures 411.

Henderson, "Code of Ethics of the Patent and Trade Mark Institute Considered against Disciplinary Procedures against Solicitors under the Law Society Act" (1972), 4 C.P.R. (N.S.) 230.

Herman, Carman, Hardy, and Travis, "Solicitor's Liens" (1985), 19 L.S.U.C. 91.

Honsberger, "Legal Rules, Ethical Choices and Professional Conduct" (1987), 21 L.S.U.C. Gazette 113.

Horne, ed., *Cordery on Solicitors*, 8th ed. (London: Butterworths, 1988).

Huberman, "Integrity Testing for Lawyers: Is it Time?" (1997), 76 Can. Bar Rev. 47.

Hudec and Trebilcock, "Lawyer Advertising and the Supply of Information in the Market for Legal Services" (1982), 20 U.W.O.L. Rev. 53.

Huff, "The Tempations of Creon: Philosophical Reflections on the Ethics of the Lawyer's Professional Role" (1985), 46 Montana L. Rev. 47.

Hutchinson, *Legal Ethics and Professional Responsibility*. (Toronto: Irwin Law, 1999).

Iacobucci, "The Practice of Law: Business and Professionalism" (1991), 49 Advocate 859.

Iggers and Twohig, "The Disciplinary Process of the Law Society of Upper Canada" (1987), 8 Adv. Q. 1.

"International Code of Ethics of the International Bar Association" (1981) 15 L.S.U.C. Gazette 443.

Jennings, "Concepts and Values" (1990) 24 L.S.U.C. Gazette 275.

John, "Legal Advertising: A Matter of Ethics" (1977), 11 L.S.U.C. Gazette 206.

Johnson, "The Under-representation of Minorities in the Legal Profession: Acritical Race Theorist's Perspective," (1997) 95 Michigan Law Review 1005.

Johnston and Hopson, *Lawyers and Their Work* (Indianapolis: Bobbs-Merrill, 1967).

Josephson and Pearce, "To Whom Does the Government Lawyer Owe the Duty of Loyalty When Clients are in Conflict" (1986), 29 Howard L.J. 539.

Kay, *Barriers and Opportunities Within Law: Women in a Changing Legal Profession: A Longitudinal Survey of Ontario Lawyers, 1990-1996: A Report to the Law Society of Upper Canada* (Toronto: Law Society of Upper Canada, 1997).

Knepper, "Conflicts of Interest in Defending Insurance Cases" (1970) 19 Defense L.J. 515.

LaForest, "Integrity in the Practice of Law" (1987), 21 L.S.U.C. Gazette 41.

Laidlaw, "Solicitor-Client Privilege: To Disclose or Not to Disclose: Remains the Question, Even after Death" (1995), 15 Est. & Tr. J. 56.

Landy, "Investments by Professional Partners with Firm Clients: A Legal Analysis of Moral and Ethical Problem" in *Corporate Structure, Finance and Operations* (Sarna ed.) (Toronto: Carswell, 1990).

Law Society of Upper Canada, *Bicentennial Report on Equity Issues in the Legal System* (Toronto: Law Society of Upper Canada, 1997).

Legge, "Freedom of Expression of Lawyers: The Role of Professional Conduct" (1985), 23 U.W.O.L.R. 165.

Littlefield, "Silvini: Divided Loyalty" (1992), 9 C.R. (4th) 250.

Livingston, "When Libido Subverts Credo: Regulation of Attorney-Client Sexual Relations" [1993] Fordham L. Rev. 5.

Lovekin, "The Contingent Fee" (1961), 10 Chitty's L. J. 97.

Ludwig, "Practical Ethics of a Lawyer" (1909) 29 Canadian Law Times 253.

Lund, *A Guide to the Professional Conduct and Etiquette of Solicitors* (London: Law Society, 1960).

Lundy, MacKenzie and Newbury (eds.), *Barristers and Solicitors in Practice* (Toronto: Butterworths, 1998).

Lytle, "Unauthorized Practice and Real Estate Transactions" (1969), 3 L.S.U.C. Gazette 104.

Macdonald and Pink, "Murder, Silence and Physical Evidence: The Dilemma of Client Confidentiality" (1997), 2 Can. Crim. L. Rev. 111.

MacKenzie, "Lawyer Discipline and the Independence of the Bar: Can Lawyers Still Govern Themselves?" (1990), 24 L.S.U.C. Gazette 319.

MacKenzie, "Breaking the Dichotomy Habit: The Adversary System and the Ethics of Professionalism" (1995), 29 L.S.U.C. Gazette 123.

MacKenzie, "Law Society Discipline Proceedings" (1992), 11 Advocates' Soc. J. 3.

MacKenzie, *Lawyers and Ethics- Professional Responsibilities and Discipline* (Toronto: Carswell, 1993).

MacKenzie, "The Valentine's Card in the Operating Room: Codes of Ethics and the Failing Ideals of the Legal Profession" (1994), 28 L.S.U.C. Gazette 114.

Major, "Lawyers' Obligation to Provide Legal Services" (1994), 28 L.S.U.C. Gazette 101.

Manes and Silver, *Solicitor Client Privilege in Canadian Law* (Markham: Butterworths, 1992).

Margolis, "Regulation of Advertising and Soliciting by the Legal Profession" (1978), 12 U.B.C.L. Rev. 102.

Mark, "Conflict of Interest: Acting Against a Former Client" (1983), 4 Adv. Q. 437.

Martin, "Defending the Mentally Ill Client in Criminal Matters: Ethics, Advocacy, and Responsibility" (1993), 52 U.T. Fac. L. Rev. 73.

Martin, *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions* (Toronto: Queen's Printer, 1993).

Martin, "The Role and Responsibility of the Defence Advocate" (1969-70), 12 Crim. L.Q. 376.

Martin and Backof, "Historical Perspectives: Development of the Codes of Ethics in the Legal, Medical and Accounting Professions" (1991) 10 Journal of Business Ethics 99.

Maru and Clough, *Digest of Bar Association Ethics Opinions* (Chicago: American Bar Foundation, 1970).

Matthews, *Problems Illustrative of the Responsibilities of Members of the Legal Profession*, 2nd ed. (New York: Council on Legal Education for Professional Responsibility, 1968).

McIsaac, "The Contingent Fee" (1979), 37 Advocate 41.

Meechan, "More Than a Mere Citizen: The Special Responsibilities of the Lawyer in Today's Society" (1980), 14 L.S.U.C. Gazette 284.

Mercier and Trecroce, "Juggling Professional Duty and Client Loyalty: The Art of Corporate Counselling" (1994), 6 Canadian Corporate Counsel 82, 100.

Midgley, "Confidentiality, Conflicts of Interest and Chinese Walls" (1992), 55 Mod. L. Rev. 822.

Minish, "The Contingent Fee: A Re-examination" (1979), 10 Man. L.J. 65.

Mitchell, "Disciplining Lawyers for Serious Professional Misconduct: Is it Possible after Stromberg v. Law Society (Saskatchewan)?" (1996), 36 Admin. L.R. (2d) 213.

Mitchell, "The Impact, Regulation and Efficacy of Lawyer Advertising" (1982), 20 Osgoode Hall L.J. 119.

Morden, "A Succeeding Solicitor's Duty to Protect the Account of the Former Solicitor" (1971) 5 L.S.U.C. Gazette 257.

Morgan, "'An Embarrassingly and Severely Masculine Atmosphere': Women, Gender and the Legal Profession at Osgoode Hall, 1920–1960," (1996) 11 Canadian Journal of Law and Society 19.

Mucalov, "Overcoming Barriers to Client Communication: Lawyers for Literacy" (1997), 55 The Advocate 857.

National Association of Women and the Law, *Submission by the National Association of Women and the Law to the CBA Task Force on Racism in the Legal Profession* (Ottawa: National Association of Women and the Law, 1997).

O'Connor, "The Moral Role of the Lawyer" (1985), 19 L.S.U.C. Gazette 28.

Orkin, *Legal Ethics: A Study of Professional Conduct* (Toronto: Cartwright, 1957).

Penner and Wright, "When In-house Counsel Blow the Whistle" (1997), 6 Can. Corp. Counsel 85.

Perell, "Competent Independent Legal Advice" (1989), 9 Estates and Trusts Journal 225.

Perell, *Conflicts of Interest in the Legal Profession* (Toronto: Butterworths, 1995).

Perell, "Defences to the Motion to Disqualify for Conflict of Interest" (1998), 20 Adv. Q. 469.

Peterson, "Conflicts of Interest and the Insolvency Practitioner: Keeping Up Appearances" (1996), 40 C.B.R. (3d) 56.

Pirie, "The Lawyer as Mediator: Professional Responsibility Problems or Professional Problems? (1985), 63 Can. Bar. Rev. 378.

Pirsig, *Professional Responsibility* (St. Paul, Minn.: West, 1970).

"Principles of Professional Conduct of the Bars and Law Societies of the European Community" (1980), 14 L.S.U.C. Gazette 205.

"Problems in Ethics and Advocacy" [1969] L.S.U.C. Special Lectures 279.

"Professional Fees and Advertising by Professionals: Panel Discussion" [1997] L.S.U.C. Special Lectures 437.

"Profit and the Practice of Law: What's Happened to the Legal Profession," (1998) 111 Harvard Law Review 1378.

Pue, "Becoming Ethical: Lawyer's Professional Ethics in Early Twentieth Century Canada" (1991), 21 Man. L.J. 227.

Rabinowitz and Gillespie, "Blowing the Whistle and the Lawyer's Duty to Report" (1994), 7 Can. J.L. & Juris. 349.

Rabinowitz and Rabinowitz, "More about Imputing Knowledge from One Member of a Firm to Another" (1992), 13 Adv. Q. 370.

Ratushny, "Plea Bargaining and the Public" (1972) 20 Chitty's L.J. 238.

Rauf, "Must the Court Consent to Defence Counsel Withdrawing for Non-Payment of Fees?" (1997), 3 C.R. (5th) 46.

Reavley, "The Magnificent Profession, (Legal Practice)," (1997) 60 Texas Bar Journal 1037.

Reycraft, "Conflicts of Interest and Effective Representation: The Dilemma of Corporate Counsel", (1987-88), 39 Hastings L.J. 605.

Riddell, "A Code of Legal Ethics" (1919), 55 Canada L. J. 297.

Robinson, "Ethical Evolution: The Development of the Professional Conduct Handbook of the Law Society of Upper Canada" (1995), 29 L.S.U.C. Gazette 162.

Rogers, "The Ethics of Advocacy" (1899), 15 L.Q. Rev. 259.

Savarino, "60 Ways Lawyers can Improve the Image of the Legal Profession," (1996) 22 Law Practice Management 38.

Schaffer, "The Gentleman in Professional Ethics" (1984-85), 10 Queen's L.J. 1.

Schein, "Legal Secretaries and the Conflict of Interest Rule" (1993), 14 Adv. Q. 81.

Schmitt, (1988), "Ethics and the Practice of Civil Litigation" (1988) 46 Advocate 247.

Schroeder, "Some Ethical Problems in Criminal Law" [1963] L.S.U.C. Special Lectures 87

Sharpe, "The Contingent Fee" (1977), 12 Advocate 9.

Silver, "Ethical Considerations in Giving Tax Opinions" [1994] Can. Tax. Foundation 36:1-16.

Silver, "Solicitor's Conflict of Interest and Breach of Duty Acting for Spouses in the Preparation of a Will" (1993), 13 Estates and Trusts Journal 111.

Singleton, "When Must the Insurer Relinquish Control of the Defence of its Insured?" (1992), 1 Uberrima Fides 34.

Smith, "'Artificial Conscience:' Professional Elites and Professional Discipline from 1920 to 1950" (1994), 32 Osgoode Hall L.J. 65.

Smith, "Disciplinary Proceedings before Law Society," [1971] L.S.U.C. Special Lectures 285.

Smith, *Professional Conduct for Canadian Lawyers* (Toronto: Butterworths, 1989).

Smith, *Professional Conduct for Lawyers and Judges* (Fredericton: Maritime Law Book, 1998).

Southin, "What is Good Character" (1977), 35 Advocate 129.

Stager and Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990).

Steele, "Imputing Knowledge from One Member of a Firm to Another" (1991), 13 Adv. Q. 90.

Steele, "Imputing Knowledge from One Member of a Firm to Another: Lead Us Not into Temptation." (1990), 12 Adv. Q. 46.

Steiber, "Conflict of Interests - Defence Lawyer and the Insured" (1987), 55 Assurance 339.

Steiner, "Professional Liability of Corporate Counsel" (1993), 2 Canadian Corporate Counsel 113.

Sternberg, "Regulating the Legal Profession," (1997) 70 The Wisconsin Lawyer 19.

Tennant, "Discrimination in the Legal Profession, Codes of Professional Conduct and the Duty of Non-Discrimination" (1992), 15 Dalhousie L.J. 464.

Teplitsky, "Ethical Issues in Family Law" [1993] L.S.U.C. Special Lectures 5.

Thornhill, "Ethics in the Legal Profession: The Issue of Access" (1995), 33 Alta. L. Rev. 810.

Trakman, "Legal Competence Yesterday and Tomorrow," (1983), 7 Dalhousie L.J. 831.

Traviss (ed.), *Ontario Discipline Summaries*, 1972-92 (Toronto: Law Society of Upper Canada, 1997).

Traviss, " Rules of Professional Conduct: Evolution and Change" (1993) 6 Westminister Affairs 14

Traviss, *Synopses of Discipline Cases Considered by Convocation 1972-84* (Toronto: Law Society of Upper Canada, 1987).

Trebilcock, "The Case for Contingent Fees: The Ontario Legal Profession Rethinks Its Position" (1989), 15 Canadian Business Law Journal 360.

Trumbull, *Materials on the Lawyer's Professional Responsibility* (Boston: Little Brown, 1957).

Wakely, "When Corporate Counsel Should Blow the Whistle," (1993), 2 Canadian Corporate Counsel 115.

Weddington, "A Fresh Approach to Independent Judgment" (1969) 11 Ariz. L. Rev. 31.

Williams, *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 1991).

Williston, "The Contingent Fee in Canada" (1968) 6 Alta. L. Rev. 184.

Wilson and Wydranski, "Competition in the Market for Legal Services after *Jabour*" (1984) 22 U.W.O.L. Rev. 95.

Wright, "The Duty of an Advocate" (1983), 17 L.S.U.C. Gazette 327.

Woodman, "The Lawyer in Public Life" (1971) Pitblado Lectures (Manitoba) 129.

Concordance

REVISED RULES OF PROFESSIONAL CONDUCT	RULES OF PROFESSIONAL CONDUCT	NATURE OF CHANGE
1.01		New
1.02 "associate"		New
1.02 "client"	Rule 5, Commentary 16.	
1.02 "client" Commentary		New
1.02 "conduct unbecoming a lawyer"	Rule 1, Footnote 3.	New. Based on ABA Model Code, Rule 8.4
1.02 "conduct unbecoming a lawyer" Commentary	Rule 1, Commentary 2 Rule 1, Commentary 3	
1.02 "consent"		New
1.02 "independent legal advice"		New, but see Rule 5, Commentary 9 (b)
1.02 "independent legal advice" Commentary	Rule 5, Commentary 9 (c).	
1.02 "independent legal representation"		New, but see Rule 5, Commentary 9 (a)
1.02 "interprovincial law firm"	Rule 22, para. 1	
1.02 "law firm"	Rule 29 (1) (Definition)	Revised
1.02 "lawyer"	Interpretation and Rule 29(1)	Revised
1.02 "member"	Rule 29 (1) (Definition)	
1.02 "professional misconduct"	Rule 1, Footnote 3.	New. Based on ABA Model Code, Rule 8.4
1.02 "society"	Interpretation	
1.02 "tribunal"		New

1.03 (1)	Forward and Rule 1	New. Based on: Alberta Code of Professional Conduct, Chapter 1, Statement of Principle and Chapter 3, Statement of Principle; Special Committee to Review the Rules of Professional Conduct - Structure of the Revised Rules, para. 1.1.
1.03 (2)	Interpretation	
2.01 (1)	Forward	Revised Rule 2, Commentaries 1, 4, 5 and 8 deleted.
2.01 (1) Commentary	Rule 2, Commentary 10 Rule 3, Commentary 2 Rule 2, Commentary 6 - Rule 3, Commentary 3 Rule 3, Commentary 4 Rule 3, Commentary 9 Rule 2, Commentary 2 Rule 2, Commentary 7 Rule 2, Commentary 3	New for Multi-Discipline Practices Revised Rule 2 (b) deleted
2.01 (2)	Rule 2 (a)	Revised
2.01 (2) Commentary	Rule 2, Commentary 9	Revised
2.02 (1)	Rule 3	
2.02 (1) Commentary	Rule 3, Commentary 1	
2.02 (2)	Rule 3, Commentary 5 Rule 10, Commentary 6	
2.02 (3)	Rule 10, Commentary 6A	Revised
2.02 (4)	Rule 3, Commentary 8	Revised
2.02 (5)	Rule 3, Commentary 6	Revised
2.02 (5) Commentary	Rule 3, Commentary 6 Rule 3, Commentary 7	Revised Revised
2.02 (6)		New. Based on American Bar Association Model Code Rule 1.16

2.02 (6) Commentary		New. Based on American Bar Association Model Code Rule 1.16
2.02 (7)	Rule 26, Para. 1	Revised
2.02 (7) Commentary	Rule 26, Commentary 1	Revised
2.02 (8)	Rule 26, Para. 2	Revised
2.02 (9)	Rule 26, Commentary 2	Revised
2.02 (10)	Rule 30, Para. 1	
2.02 (10) Commentary	Rule 30, Commentary 1 Rule 30, Commentary 2	
2.02 (11)	Rule 30, Para. 2	
2.02 (12)	Rule 30, Para. 2	
2.02 (12) Commentary	Rule 30, Commentary 3	Revised
2.02 (13)	Rule 30, Para. 4	
2.03 (1)	Rule 4	Revised
2.03 (1) Commentary	Rule 4, Commentary 1 Rule 4, Commentary 2 Rule 4, Commentary 4 Rule 4, Commentary 3 Rule 4, Commentary 6 Rule 4, Commentary 7 Rule 4, Commentary 8 Rule 4, Commentary 9	Revised
2.03 (2)	Rule 4, Commentary 10	Revised
2.03 (3)	Rule 4, Commentary 11	Revised
2.03 (4)		New
2.03 (5)		New
2.03 (5) Commentary		New
2.03 (6)	Rule 4, Commentary 12	Revised
2.03 (7)	Rule 4, Commentary 12	
2.03 (8)	Rule 4, Commentary 5	Revised

2.03 (8) Commentary	Rule 4, Commentary 5	Revised
2.04 (1)	Rule 5, Commentary 1	Rule 5, Commentary 12 deleted; but see rule 2.07 (1).
2.04 (1) Commentary	Rule 5, Commentary 3 Rule 5, Commentary 7	
2.04 (2)	Rule 5	Revised
2.04 (3)	Rule 5	Revised
2.04 (3) Commentary	Rule 5, Commentary 2 Rule 5, Commentary 4	Revised New Revised New
2.04 (4)	Rule 5, Commentary 13	Revised
2.04 (4) Commentary	Rule 5, Commentary 13	
2.04 (5)		New
2.04 (5) Commentary		New
2.04 (6)	Rule 5, Commentary 5	
2.04 (6) Commentary		New
2.04 (7)	Rule 5, Commentary 5	Revised
2.04 (7) Commentary	Rule 5, Commentary 5	Revised
2.04 (8)	Rule 5, Commentary 5	
2.04 (9)	Rule 5, Commentary 6	Revised
2.04 (9) Commentary	Rule 5, Commentary 11 Rule 5, Commentary 6	
2.04 (10)	Rule 5, Commentary 6	
2.04 (11)		New
2.04 (12)		New
2.04 (13)		New for multi-discipline practice.
2.04 (14)	 Rule 5, Commentary 14	New See Alberta Rules C 1, Rule 5, Commentary

2.04 (14) Commentary	Rule 5, Commentary 14	Revised
2.05 (1)	Rule 29 (1)	Revised
2.05 (1) Commentary	Rule 29, Commentary 2	Revised
2.05 (2)	Rule 29 (2)	
2.05 (3)	Rule 29 (3)	
2.05 (3) Commentary	Rule 29, Commentary 1	
2.05 (4)	Rule 29 (4)	Revised
2.05 (4) Commentary	Rule 29, Commentary 3	
2.05 (5)	Rule 29 (5)	
2.05 (6)	Rule 29 (6)	
2.05 (7)	Rule 29 (7)	
2.05 (8)	Rule 29 (8)	Revised. Rule 29, Commentary 3 deleted
2.05 (9)	Rule 29 (9)	Revised (in particular for multi-discipline practice).
2.05 (9) Commentary	Rule 29, Commentary 2 Rule 29, Commentary 3 Rule 29, Commentary 4	Revised
2.06 (1)	Rule 23, Para. 1	
2.06 (2)		New, but see Rule 5, Commentaries 8 and 10
2.06 (2) Commentary	Rule 5, Commentary 10 Rule 5, Commentary 17 Rule 5, Commentary 8	Revised
2.06 (3)	Rule 5, Commentary 9 (b)	
2.06 (4)	Rule 7, Para. 1	Revised. Rule 7 Commentary 3 deleted
2.06 (4) Commentary	Rule 7, Commentary 1 Rule 7, Para. 3	Revised Rule 7, Commentary 4 deleted Rule 7, Commentary 2 deleted
2.06 (5)	Rule 7, Para. 2	

2.06 (6)	Rule 23, Para. 5 Rule 23, Para. 2	Revised
2.06 (6) Commentary	Rule 23, Para. 7	Revised
2.06 (7)	Rule 23, Para. 3	
2.06 (8)	Rule 23, Para. 4 Rule 23, Para. 5	
2.06 (9)	Rule 23, Para. 6 (a)	Revised
2.06 (10)	Rule 23, Para. 6 (b)	Revised
2.07(1)	Rule 6	Revised
2.07 (1) Commentary	Rule 6, Commentary 1 Rule 6, Commentary 5	
2.07 (2)	Rule 6, Commentary 2	
2.07 (3)	Rule 6, Commentary 3	
2.07 (4)	Rule 6, Commentary 4	
2.07 (5)	Rule 6, Commentary 4	
2.07 (6)	Rule 6, Commentary 4	Revised
2.07 (6) Commentary	Rule 6, Commentary 6	
2.08 (1)	Rule 9 (a), (c)	Revised
2.08 (2)	Rule 9, Commentary 6	
2.08 (2) Commentary	Rule 9, Commentary 1 Rule 9, Commentary 8 Rule 9, Commentary 5 Rule 9, Commentary 2	Rule 9, Commentary 9 deleted Revised.
2.08 (3)	Rule 9, Commentary 10	
2.08 (4)	Rule 9, Commentary 10	
2.08 (5)	Rule 9, Commentary 4	
2.08 (6)	Rule 9, Commentary 3	
2.08 (7)	Rule 9 (b)	Revised
2.08 (8)	Rule 9, Commentary 7	Revised

2.08 (9)	Rule 9, Commentary 7	Revised
2.08 (9) Commentary	Rule 9, Commentary 7	Revised
2.08 (10)		New for multi-discipline practice.
2.08 (11)	Rule 9 (d)	
2.09(1)	Rule 8	Revised
2.09 (1) Commentary	Rule 8, Commentary 1 Rule 8, Commentary 7	
2.09 (2)	Rule 8, Commentary 4	Revised
2.09 (2) Commentary	Rule 8, Commentary 4	
2.09 (3)	Rule 8, Commentary 5	Revised
2.09 (4)	Rule 8, Commentary 6	
2.09 (4) Commentary	Rule 8, Commentary 6	Revised
2.09 (5)	Rule 8, Commentary 6	
2.09 (6)	Rule 8, Commentary 6	
2.09 (6) Commentary	Rule 8, Commentary 6	
2.09 (7)	Rule 8, Commentary 3	Revised
2.09 (7) Commentary	Rule 8, Commentary 12	
2.09 (8)	Rule 8, Commentary 2	
2.09 (9)	Rule 8, Commentary 8	Revised
2.09 (9) Commentary	Rule 8, Commentary 8 Rule 8, Commentary 9 Rule 8, Commentary 10	
2.09 (10)	Rule 8, Commentary 11	Revised
2.09 (10) Commentary	Rule 8, Commentary 11	
3.01	Rule 12, Para. 1	Revised

3.01 Commentary	Rule 12, Commentary 1 Rule 12, Commentary 3 Rule 12, Commentary 5 Rule 12, Commentary 1 Rule 12, Commentary 2	 Revised Revised Rule 12, Commentary 2 deleted
3.02 (1)	Rule 12, Para. 7 (b)	
3.02 (2)	Rule 12, Para. 7 (a)	Revised
3.02 (3)	Rule 12, Para. 7 (e)	
3.02 (4)	Rule 12, Para. 7 (b)	
3.02 (5)	Rule 12, Para. 7 (c)	
3.02 (6)	Rule 12, Para. 7 (d)	
3.02 (7)	Rule 12 Para. 7 (f)	
3.02 (8)		New
3.03 (1)	Rule 12, Para. 7 (h)	Revised
3.03 (2)	Rule 12, Para. 7 (g)	
3.03 (3)	Rule 12, Para. 7 (i)	Revised for multi-discipline practices
3.04 (1)	Rule 12, Para. 2	Revised
3.04 (2)	Rule 12, Para. 3	Revised
3.04 (3)	Rule 12, Para. 5 (a) Rule 12, Para. 5 (b)	Revised
3.04 (3) Commentary	Rule 12, Commentary 4	Revised
3.05 (1)	Rule 12, Para. 8 (a)	Revised
3.05 (2)	Rule 12,Para. 8 (a)	Revised
3.05 (3)	Rule 12, Para. 8 (a)	Revised
3.05 (4)	Rule 12, Para. 8 (b)	Revised
3.05 (5)	Rule 12, Para. 8 (b)	Revised
3.05 (6)		New for multi-discipline practice.

3.06 (1)		New Rule 12, Para. 4 deleted Rule 12, Para. 6 deleted
3.06 (2)		Revised and new. Rule 12, Paras. 5 (c), (d), (e), (f), and (g) replaced. See Alberta Rule 5 (Accessibility and Advertisement of Legal Services)
3.06 (2) Commentary		New
3.07 (1)	Rule 22, Para. 1	
3.07 (2)	Rule 22, Para. 2	
3.07 (3)	Rule 22, Para. 3	
3.07 (4)	Rule 22, Para. 4	
4.01 (1)	Rule 10	
4.01 (1) Commentary	Rule 10, Commentary 1 Rule 10, Commentary 2 Rule 10, Commentary 13 Rule 21, Para. 3 Rule 10, Commentary 9 Rule 10, Commentary 10 Rule 10, Commentary 11 Rule 10, Commentary 5 Rule 10, Commentary 4	Revised; see para. 17 of October 15, 1998 draft *American College of Trial Lawyers Canadian Code of Trial Conduct.* The duty of prosecutor commentary has been revised in light of new subrule 4.01 (3). The commentary about taking into account the best interests of a child is new.
4.01 (2)	Rule 10, Commentary 2	Revised para. 4.01 (2)(g) Revised para. 4.01 (2)(i) Revised para. 4.01 (2)(l) Revised para. 4.01 (2)(m)
4.01 (2) Commentary		New
4.01 (3)	Rule 10, Commentary 3	Revised
4.01 (3) Commentary		New
4.01 (4)		New
4.01 (5)	Rule 10, Commentary 3 (a)	
4.01 (5) Commentary	Rule 10, Commentary 3 (b)	

4.01 (6)	Rule 10, Commentary 7	Revised
4.01 (6) Commentary	Rule 10, Commentary 7	
4.01 (7)	Rule 10, Commentary 8	Revised
4.01 (7) Commentary	Rule 10, Commentary 8	
4.01 (8)		New
4.01 (9)	Rule 10, Commentary 12	Revised.
4.01 (9) Commentary	Rule 10, Commentary 12	Revised.
4.02 (1)	Rule 10, Commentary 16 (a), (c)	
4.02 (2)	Rule 10, Commentary 16 (b), (c)	
4.02 (2) Commentary	Rule 10, Commentary 16 (b), (c)	Revised
4.02 (3)	Rule 10, Commentary 16 (b), (c)	
4.03 (1)	Rule 10, Commentary 14	
4.03 (2)	Rule 10, Commentary 14	Revised
4.03 (3)		New
4.03 (3) Commentary		New
4.04	Rule 10, Commentary 15	Revised
4.04 Commentary	Rule 10, Commentary 15	Revised New
4.05		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (1) Commentary		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (2)		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (3)		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19

4.05 (4)		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (5)		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.05 (5) Commentary		New, based upon the *American College of Trial Lawyers Canadian Code of Trial Conduct*, Rule 19
4.06 (1)	Rule 11	
4.06 (1) Commentary	Rule 11, Commentary 1 Rule 11, Commentary 2 Rule 11, Commentary 5 Rule 11, Commentary 3	Revised Revised
4.06 (2)	Rule 11, Commentary 4	Revised
4.06 (2) Commentary	Rule 11, Commentary 4	
4.06 (3)	Rule 11, Commentary 6	Revised New
4.06 (3) Commentary	Rule 11, Commentary 6	
4.07	Rule 25 Rule 25, Commentary 3	Rule 25, Commentary 4 deleted Rule 25, Commentary 2 deleted Revised
4.07 Commentary	Rule 25, Commentary 1 Rule 25, Commentary 4 Rule 25, Commentary 5	 Revised
5.01 (1)	Rule 16, Commentary 4	Rule 16, Commentary 1 deleted
5.01 (2)	Rule 19, Commentary 2 Rule 16, Para. 4	

5.01 (2) Commentary	Rule 19, Commentary 2 - Rule 16, Para. 2 Rule 16, Para. 3 Rule 16, Commentary 2 Rule 16, Commentary 2 (a) Rule 16, Commentary 2 (b) Rule 16, Commentary 2 (c) Rule 16, Commentary 2 (d)	Revised New, but based on Rule 16, Para. 1 Revised Revised Revised
5.01 (3)	Rule 16, Commentary 3	Revised Provision about non-lawyer not being permitted to set fees deleted; 5.01(3)(m) based on part of Rule 16, Para. 2
5.01 (3) Commentary	Rule 16, Commentary 3. Rule 16, Para. 1	
5.01 (4)	Rule 30, Para. 3	Revised
5.01 (5)	Rule 19, Commentary 3	
5.02 (1)	Rule 13, Commentary 7	Revised
5.02 (2)	Rule 24, Para. 1	Revised
5.02 (3)	Rule 24, Para. 2	
5.03 (1)	Rule 27, Commentary 1	Revised
5.03 (1) Commentary	Rule 27, Commentary 2 Rule 27, Commentary 3	
5.03 (2)	Rule 27	Revised
5.04 (1)	Rule 28	
5.04 (1) Commentary	Rule 28, Commentary	Revised by the addition of commentary taken from the Law Society's five bulletins about Rule 28.
5.04 (2)	Rule 28, Commentary	
5.04 (3)	Rule 28, Commentary	Revised by the addition of commentary taken from the Law Society's five bulletins about Rule 28.

5.04 (3) Commentary	Rule 28, Commentary	
6.01 (1)	Rule 13	Revised
6.01 (1) Commentary	Forward Rule 1, Commentary 1 Rule 1, Commentary 2 Rule 1, Commentary 3	 Revised
6.01 (2)	Rule 13, Commentary 6	Revised
6.01 (2) Commentary	Rule 13, Commentary 6	New commentary about relationship with consultants
6.01 (3)	Rule 13, Commentary 1	Revised
6.01 (3) Commentary	Rule 13, Commentary 1 Rule 13, Commentary 1A	New commentary about harassment and discrimination counsel.
6.01 (4)	Rule 13, Commentary 2	
6.01 (5)	Rule 13, Commentary 2	
6.01 (6)	Rule 13, Commentary 2	
6.01 (7)	Rule 13, Commentary 2	
6.02	Rule 13, Commentary 3	
6.03 (1)	Rule 14 Rule 14, Commentary 9	Revised
6.03 (1) Commentary	Rule 14, Commentary 1 Rule 14, Commentary 2 Rule 14, Commentary 8	
6.03 (2)	Rule 14, Commentary 3	Revised
6.03 (3)	Rule 14, Commentary 4	
6.03 (4)	Rule 14, Commentary 4	
6.03 (5)	Rule 14, Commentary 4	Revised
6.03 (6)	Rule 14, Commentary 5	Revised
6.03 (7)	Rule 14, Commentary 7	
6.03 (8)	Rule 14, Commentary 6	
6.03 (8) Commentary	Rule 14, Commentary 6	

6.04 (1)	Rule 17	
6.04 (2)	Rule 17, Commentary 2	
6.04 (2) Commentary	Rule 17, Commentary 1 Rule 17, Commentary 3	
6.05 (1)	Rule 18	
6.05 (1) Commentary	Rule 18, Commentary 1 Rule 18, Commentary 2	
6.05 (2)	Rule 18, Commentary 3	
6.05 (2) Commentary	Rule 18, Commentary 3 Rule 18, Commentary 4	
6.05 (3)	Rule 18, Commentary 5	Revised
6.05 (4)	Rule 18, Commentary 6	Revised
6.05 (4)	Rule 18, Commentary 6	
6.05 (5)	Rule 18, Commentary 7	
6.05 (5) Commentary	Rule 18, Commentary 7 Rule 18, Commentary 8	
6.06 (1)		New, but see Rule 21, Commentary 1 Rule 21, Para. 3 moved to Rule 4.01 (1) Commentary
6.06 (1) Commentary	Rule 21, Para. 1 Rule 21, Para. 2 Rule 21, Para. 5 Rule 21, Commentary 5 Rule 21, Commentary 2 Rule 21, Commentary 3 Rule 21, Commentary 4 Rule 21, Commentary 6	 Revised Revised
6.06 (2)		New
6.06 (2) Commentary		New New New
6.07 (1)	Rule 19	
6.07 (1) Commentary	Rule 19, Commentary 1	

6.07 (2)	Rule 20	Revised.
6.07 (3)		New
6.08 (1)	Rule 15, Para. 1	
6.08 (2)	Rule 15, Para. 2	
6.08 (3)	Rule 15, Para. 1	
6.08 (4)	Rule 15, Para. 2	
6.09 (1)	Rule 3, Commentary 10	Revised.
6.09 (2)	Rule 3, Commentary 10	
6.09 (2) Commentary	Rule 5, Commentary 15	Revised
6.09 (3)	Rule 3, Commentary 10	Revised
6.09 (4)	Rule 3, Commentary 10	
6.09 (5)	Rule 3, Commentary 10	Revised
6.1		New for multi-discipline practice
6.11 (1)		New, based on ABA Model Code, Rule 8.5
6.11 (2)		New
6.11 (3)		New

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

Copy of the Professional Conduct Handbook - 1999 Edition (as amended to 26 June 1998)

Final Report of the Task Force on
Review of the Rules of Professional Conduct

ADDENDUM

INTRODUCTION

1. At the information session on the proposed revised rules on April 13, 2000, a number of issues about the rules were raised by benchers and invited guests from legal organizations. The Task Force met on April 20, 2000 to consider these issues and other matters raised separately by benchers.

2. The following is a summary of the Task Force's consideration of many of these issues at its April 20 meeting. Attached at Tab 1 are drafting notes prepared by Paul Perell with respect to some of the issues discussed, to which reference should be made for drafting changes proposed by the Task Force in this addendum.

3. The following responses received from those attending the information session and from benchers who provided recent written submissions on the rules are also attached:

Alan Gold and Paul Stern (Criminal Lawyers' Association)	Tab 2
Clayton Ruby	Tab 3
Carole Curtis	Tab 4
Rich Wilson	Tab 5
Earl Cherniak	Tab 6
Judith Hans (CBAO - Real Property Section)	Tab 7
Paul Kowalyshyn (CDLPA)	Tab 8

4. The following summary refers only to those rules to which modifications are proposed, although all suggestions for changes have been considered by the Task Force.

ISSUES DISCUSSED BY THE TASK FORCE

5. The following represents a summary of the matters discussed by the Task Force on April 20. Page references are to the proposed revised rules in the "gold" book, or the Task Force's final report in the "red" book where noted.

Rule 1.02, pages 6 to 10 - Definitions

6. Concern was expressed about the definition of "associate" as including lawyers who, for example, work in a law chambers structure, where they are independent practitioners but share office space and expenses. The definition would put those lawyers in conflict with every lawyer in the chambers group, on a reading of the conflicts rules.

7. The Task Force determined that as the word "associate" in the rules, with one exception, is used in the context of an employee of a law firm, the definition in paragraph (c), page 8 should be deleted.[1] The exception appears in the context of the definition of "law firm", drawn from existing Rule 29, and includes members "in association for the purpose of sharing certain common expenses but who are otherwise independent practitioners". The Task Force's view was that as this still has relevance for the transferring lawyer situation, now found in rule 2.05, it should remain.

Rule 2.03(3) to (5), page 20 - Justified or Permitted Disclosure

8. The Ontario Crown Attorneys Association suggested that disclosure be permitted to prevent crimes against the administration of justice, such as jury tampering.

9. The Task Force agrees with this suggestion and proposes that rule 2.03(5) be amended to include an exception for offences against public order and the administration of justice. Proposed language for a new subrule (6) appears in the drafting notes.

10. The Criminal Lawyers' Association (CLA) (please see its submission to the information session attached as Tab 2) takes the position that only subrule (3) of rule 2.03 should be adopted (i.e., that subrules (4) and (5) be deleted) on the basis that the erosion of solicitor-client confidentiality must be resisted. The Task Force does not agree that these subrules should be deleted.

11. The CLA also suggested that the following changes be made to the subrule (3):
- to add the feature of the Court's decision on seeking judicial authority for disclosure, the words "pursuant to judicial authorization where possible" should be added after the word "may" in the third line;
- the words "non-privileged" or "believed on reasonable grounds not to be privileged" should be added after the word "disclose" in the third line.

12. The Task Force agreed that the first language change be made, but disagreed that the second was necessary. The Task Force's view is that privileged information should not be excluded from the operation of the rule.

13. The Task Force reviewed a suggestion from Clayton Ruby that subrules (3) to (5) should be combined into one rule in recognition of the difficult judgment call involved in this area, and with the objective of providing more specific guidance (please see Clayton Ruby's letter attached at Tab 3). Suggested language is:

> A lawyer may disclose confidential information to prevent an imminent risk of substantial harm but only when he is satisfied that the harm in question clearly outweighs the benefits to the rule of law and society as a whole that the confidentiality of communications between solicitor and a client creates. Justice cannot be done if clients do not have a large measure of freedom to discuss their affairs with their lawyers. Disclosure without the client's permission should be extremely rare. Though exceptional, the balance is most likely to favour disclosure when the risk is one of death or serious bodily harm, including psychological harm and harm to a child or a vulnerable person. When a lawyer makes the decision to disclose confidential information to prevent, harm, the lawyer shall not disclose more information than is required.

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[1]The word "associate" should also be deleted from the title of Rule 5 on page 73.

14. The Task Force proposes that certain aspects of this suggestion be incorporated into a commentary following the rule, the proposed text of which appears in the drafting notes.

Rule 2.04(1), page 22 - Avoidance of Conflicts of Interest - Definition

15. Rule 2.04(2) as proposed reads "a lawyer shall not advise or represent both sides of a dispute". A suggestion has been made that an amendment be made to capture the situation where there may be more than two sides to a dispute. The Task Force agreed to amend the rule, acknowledging that there may be situations where there may be two parties in the same interest who should be represented by the same counsel. The proposed amendment, therefore, is that the rule read:

> A lawyer shall not advise or represent more than one side of a dispute.

Rule 2.04 and John B. Laskin's suggestion - pages 34-35 "red" book

16. The Task Force, in discussing this matter upon which Convocation is asked to decide, determined that if the suggested rule is adopted, a commentary should follow, modelled on that contained in the joint retainer rule, to the effect that in some circumstances it would be undesirable for lawyers in the same firm to act for more than one party to a transaction on the basis that confidential information is not shared among them. A proposed commentary appears in the drafting notes.

Rule 2.04(12), page 27 - Prohibition Against Acting for Borrower and Lender

17. The Task Force is proposing a minor amendment to correct a drafting irregularity, so that the opening phrase of subrule (12) now reads: "Provided that there is no violation of this rule, a lawyer may act...".

Rule 2.05, page 28 - Conflicts From Transfer Between Law Firms

18. The Task Force agreed with a suggestion to amend rule 2.05(4) by adding the words "and timing" after the word "adequacy" in (b)(i)(A).

19. Respecting rule 2.05(9), a concern has been expressed that the commentary under this rule imparts a wider and more onerous obligation than rule 2.05(4)(a) and (b). Under the subrule, where the law firm is willing to take the risk, it could comply with the steps outlined, hire the lawyer in question, make its application and take its chances. The commentary as drafted requires the law firm to complete the process before the transferring person is hired.

20. The Task Force, in considering how to alleviate the concern, decided that the last sentence of the paragraph before section B. in the commentary on page 33 should be amended to state: "Ideally, this process should be completed before the transferring person is hired", to give some flexibility to the law firm.

Rule 2.06(6), page 39 - Lawyers in Loan or Mortgage Transactions

21. This rule requires, in certain circumstances, that the lawyer shall insist that the client receive independent legal advice. The issue was raised about what happens when the client does not agree to obtain independent legal advice. The Task Force determined that the word "insist" should be replaced with the word "require", so that the duty of the lawyer is more clearly established. The Task Force noted that the lawyer must fulfill all of the obligations in paragraphs (a) through (c) under the rule "before accepting any retainer", and that, accordingly, it is clear that if the client does not obtain independent legal advice, the lawyer cannot act.

Rule 2.08, page 43 - Fees and Disbursements

22. The Task Force received a suggestion that the commentary under this rule should deal directly with those cases, such as serious personal injury claims, where the client cannot pay fees or disbursements as the case moves along. There is a risk of losing the case and a risk premium is accordingly justifiable in the final fee, and sometimes deferral of payment can go on for years. The suggestion is that this factor, rather than being left to the general wording of paragraph (g) in the commentary dealing with "special circumstances", be made a separate item.

23. The Task Force determined that to address this issue, paragraph (g) be amended to add the words "postponement of payment" after the word retainer.

24. The Task Force agreed with a suggestion that the commentary should specify that a member should advise a client who objects to or disputes an account or a fee of the client's right of assessment. Proposed language appears in the drafting notes.

25. It was agreed that the word "champerty" should be deleted from the title to subrules 2.08(3) and (4).

Rule 2.08(7), page 45 - Division of Fees

26. The Task Force agreed to simplify the language of the rule and delete the words "either expressly or impliedly" after the word "consent".

Rule 2.08(8), page 45 - Referral Fees

27. The Task Force proposes one change to rule 2.08(9), to add the words "for the referral of business" after the word "reward", to make it clear that the financial or other reward mentioned in the rule is related to the referral of business. This will avoid a concern raised about bonuses to staff as part of remuneration, which, without the change, may unintentionally have been caught by the rule.

Rule 3.03, page 53 - Letterhead

28. The Task Force agreed with the suggestion that this rule be amended to permit a lawyer to describe himself or herself on letterhead and signs as "barrister" without "at law" attached (although "barrister-at-law" would remain in the rule as one of the options).

Rule 3.04, page 54 - Advertising Services Permitted

29. A concern was expressed that rule 3.04(3)(a) has been drafted too widely. It appears to cover lawyers who offer legal services to the public, although presumably the rule is meant to deal with advertising for services by other than lawyers. The Task Force agreed, and is proposing an amendment to add in commas after the word "services" the phrase "other than legal services". The Task Force is also proposing that the brackets around "other than securities or legal publications" be replaced with commas.

Rule 4.01 commentary, page 58 - Advocacy

30. A suggestion was made that the commentary to this rule should be re-worded so that it is clear that the lawyer has a duty to take into account the best interests of a child and not merely to advise the client to do so. The Task Force agreed that the commentary should be amended to read as follows:

> In adversary proceedings that may affect the health, welfare of security of a child, a lawyer should take into account the best interests of the child and should advise the client to do so as well.

Rule 4.01(2), page 60 - Advocacy

31. The Task Force determined that a suggested amendment to rule 4.01(2)(h) be made by replacing the word "pertinent" with the word "binding".

32. The Task Force agreed that the commentary following rule 4.01(2) should be amended to add a counsel of caution that when a lawyer communicates with a complainant or potential complainant, the lawyer should have a witness present. Proposed language appears in the drafting notes.

Rule 4.01(3), page 62 - Disclosure by Prosecutor

33. The Ontario Crown Attorneys Association raised a number of issues about this rule, the primary concerns being the following:

- the primary interest of the Society is that the Crown be honest, have integrity and exercise good faith; it is not simply disclosure, but all the duties of the Crown that are relevant;
- the rule as stated is not appropriate; the rule has not been driven by external parties but was an elevation of the existing commentary to a rule by the Task Force in its review - yet the existing commentary (Rule 10, commentary 9) deals with matters beyond disclosure;
- disclosure is a complicated issue, and it is suggested that it is not for the Society to say what the Crown should do in this area; it is the responsibility of the courts and the Attorney General; if a Crown is acting dishonestly, that type of conduct is covered in other rules;
- the law in the area of disclosure is fluid, and the rule does not capture the complexity of disclosure.

34. There was a suggestion in response to the above that if it is wrong to single out disclosure, there could be a general rule for prosecutors that deals with fairness, honesty, and similar attributes.

35. The Task Force considered the options available to it to deal with the above concerns, including deleting the rule, changing the rule to a commentary or keeping the rule as proposed. It agreed with the primary concern of the Ontario Crown Attorneys Association that the rule singles out disclosure issues. The Task Force also acknowledged that disclosure duties are governed by the courts, which will provide guidance on the issues.

36. The Task Force decided that the proposed rule be deleted and that a new rule be drafted similar to that appearing in rule 4.01(1), with a focus on the lawyer's duties as prosecutor. The Task Force also proposes that a commentary be added that works in the concepts discussed in proposed rule 4.01(3) and the commentary that follows it. Proposed language appears in the drafting notes.

37. The Task Force also concluded, adopting Mr. Ruby's suggestion, that the issue of the prosecutor's duties generally may require further study and suggests that a working group reporting to the Professional Regulation Committee be struck to consider this issue.

Rule 4.01(4), page 62 - Discovery Obligations

38. In response to a suggestion that reference should be made in the rules to the rules governing family law proceedings, an amendment is proposed to this rule to change the words "*Rules of Civil Procedure*" to "Rules of Court", with an identical change in rule 4.02(2).

Rule 4.01(6), page 63 - Courtesy

39. A concern was raised that the rule does not apply to unrepresented parties. The Task Force noted that rule 6.03(1), another rule dealing with courtesy, has broader application. The Task Force decided that rule 4.01(6), like rule 6.03(1), should apply not only to "those engaged on the other side" but to "all persons with whom the lawyer has dealings in the course of his or her practice".

Rule 4.06(3), page 71 - Security of Court Facilities

40. The suggestion was made that this rule should be worded in such a way as to make it clear that a lawyer has a duty to warn the court about security concerns even if the concern is based on a confidential communication from the lawyer's client.

41. The Task Force agreed that this change should be made, but that the rule should be cross-referenced to rule 2.03(3) on justified or permitted disclosure to provide guidance in situations where the issues that rule addresses are relevant. Rule 2.02(3) should also be cross-referenced to rule 4.06(3). Proposed language appears in the drafting notes.

Rule 6.01, page 85 - Integrity

42. Concern was expressed about the scope of this rule, in particular, whether this is a requirement that the lawyer personally conduct himself or herself to maintain the integrity of the profession or an obligation to deal with the integrity of others, as far as is possible.

43. The Task Force agreed that clarification is required and proposes the following language:

> A lawyer shall conduct himself or herself in such a way as to maintain the integrity of the profession.

Rule 6.06(2) commentary, page 95 - Interference with Right to Fair Trial or Hearing

44. The Criminal Lawyers' Association (CLA) addressed a number of issues relating to the commentary in its submission to the information session on April 13, 2000 (please see its submission at Tab 2). Its primary thrust was that the entire commentary following subrule (2) should be deleted. Clayton Ruby also expressed a similar opinion (please see Tab 3 for his comments).

45. The Task Force's view is that the commentary provides helpful guidance to the profession and should not be deleted. It agrees, however, with one of the concerns expressed by both the CLA and Mr. Ruby, that is, that the second introductory paragraph of the commentary is not workable because the lawyer often will not be in a position to respond in the manner anticipated by this commentary, as the lawyer will not know what has been said upon which he or she is asked for comment. The Task Force agreed that the commentary should be amended, so that the last part of that paragraph reads:

> ...except where the lawyer reasonable believes that the statement is necessary to protect a client from actual or anticipated prejudicial publicity:

This will permit the lawyer to preemptively address a concern about adverse publicity.

.....

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

(1) Drafting notes prepared by Paul Perell. (Tab 1)

(2) Written submissions received from Alan Gold and Paul Stern (Criminal Lawyers' Association). (Tab 2)

(3) Written submissions received from Clayton Ruby. (Tab 3)

(4) Written submissions received from Carole Curtis. (Tab 4)

(5) Written submissions received from Rich Wilson. (Tab 5)

(6) Written submissions received from Earl Cherniak. (Tab 6)

(7) Written submissions received from Judith Hans (CBAO - Real Property Section). (Tab 7)

(8) Written submissions from Paul Kowalyshyn (CDLPA). (Tab 8)

Mr. MacKenzie thanked Jim Varro and Paul Perell for all the work they had done.

Re: Rule 2.03 (3) - (5) (page 20 of the gold book) - Justified Disclosure of Confidential Information

"(3) Where a lawyer has reasonable grounds for believing that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including psychological harm that substantially interferes with health or well-being, the lawyer may disclose confidential information to prevent the death or harm, but shall not disclose more information than is required.

(4) Where a lawyer has reasonable grounds for believing that there is imminent risk of substantial harm to the welfare or security of a child or other vulnerable person, the lawyer may disclose confidential information to prevent the harm, but shall not disclose more information than is required.

(5) Where a lawyer has reasonable grounds for believing that there is imminent risk that a fraud that may cause substantial financial injury to another is likely to be committed, the lawyer may disclose confidential information to prevent the fraud, but shall not disclose more information than is required.

Commentary:

A lawyer employed or retained to act for an organization, including a corporation, confronts a difficult problem about confidentiality when he or she becomes aware that the organization may commit a dishonest, fraudulent, criminal, or illegal act. This problem is sometimes described as the problem of whether the lawyer should "blow the whistle" on his or her employer or client. Although the Rules of Professional Conduct make it clear that the lawyer shall not knowingly assist or encourage any dishonesty, fraud, crime or illegal conduct (rule 2.02 (6), it does not follow that the lawyer should disclose to the appropriate authorities an employer's or client's proposed misconduct. Rather, the general rule, as set out above, is that the lawyer shall hold the client's information in strict confidence, and this general rule is subject to only a few exceptions. Assuming the exceptions do not apply, there are, however, several steps that a lawyer should take when confronted with the difficult problem of proposed misconduct by an organization. The lawyer should recognise that his or her duties are owed to the organization and not to the officers, employees, or agents of the organization. The lawyer should therefore ask that the matter be reconsidered, and the lawyer should, if necessary, bring the proposed misconduct to the attention of a higher (and ultimately the highest) authority in the organization despite any directions from anyone in the organization to the contrary. If these measures fail, then it may be appropriate for the lawyer to resign in accordance with the rules for withdrawal from representation. (Rule 2.09)."

The Task Force accepted Mr. Ruby's observations on the above proposed Rule and added as the last paragraph to the commentary after Rule 2.03 (1) the following:

"The rule prohibits disclosure of confidential information because confidentiality and loyalty are fundamental to the relationship between a lawyer and client and legal advice cannot be given and justice cannot be done unless clients have a large measure of freedom to discuss their affairs with their lawyers. However, there are some very exceptional situations identified in the following subrules where disclosure without the client's permission might be warranted because the lawyer is satisfied that truly serious harm of the types identified is imminent and can be prevented. These situations will be extremely rare, and even in these situations, the lawyer should not disclose more information than is required."

It was moved by Mr. T. Ducharme, seconded by Mr. Carey that paragraphs (4) and (5) in the gold book and paragraph (6) on page 2 of Tab 1 of the Addendum ("new (6)") be deleted and that the wording for Rule 2.03 (3) put forward by the Criminal Lawyers Association on page 2 of the April 28, 2000 Memorandum be inserted and that it be amended by adding the words ""where it is necessary to do so in order" after the words "confidential information" as follows:

"2.03 (3) Where a lawyer has reasonable grounds for believing that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including [serious] psychological harm that substantially interferes with health or well-being, the lawyer may disclose [, pursuant to judicial order where possible,] confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required."

It was moved by Mr. T. Ducharme, seconded by Mr. Ruby that the subsequent amendment to the Commentary after Rule 2.03 (1) be further amended by adding the words "not otherwise" after the word "can" which sentence would then read as follows:

"However, there are some very exceptional situations identified in the following subrules where disclosure without the client's permission might be warranted because the lawyer is satisfied that truly serious harm of the types identified is imminent and can not otherwise be prevented."

Mr. Wardlaw suggested that the word "serious" before the words "bodily harm" in paragraph (3); the word "substantial" before the word "harm" in paragraph (4) and the word "substantial" before the word "financial" in paragraph (5) be deleted.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

The Treasurers and Benchers had as their guests for luncheon The Hon. Allan M. Rock, Minister of Health, Randall Earle, President of the Federation of Law Societies of Canada, Maria Karaiskos and Donald Ideh (Fox Scholars) and Ms. Ross' articling student, Jan Davidson.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Aaron, Arnup, Backhouse, Banack, Bindman, Bobesich, Carey, R. Cass, Chahbar, Cherniak, Copeland, Cronk, Crowe, Diamond, DiGiuseppe, Divinsky, T. Ducharme, Epstein, Feinstein, Krishna, Lawrence, MacKenzie, Manes, Millar, Mulligan, Murphy, Murray, Ortved, Pilkington, Porter, Puccini, Ross, Ruby, Simpson, Sways, Topp, Wardlaw, White, Wilson and Wright.

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IN PUBLIC

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ADDRESS BY RANDALL EARLE

The Treasurer introduced Mr. Randall Earle, President of the Federation of Law Societies of Canada who addressed Convocation on the role and activities of the Federation of Law Societies of Canada.

RESUMPTION OF DEBATE ON PROPOSED RULES OF PROFESSIONAL CONDUCT

It was moved by Mr. Topp, seconded by Mr. Chahbar that the debate of the Rules be adjourned to 2 consecutive days to be set by the Treasurer.

Lost

The debate continued.

Mr. T. Ducharme accepted an amendment to the added commentary Rule 2.03 (3) by Messrs. Cherniak and Epstein as follows:

- that the words "and does believe" be added after the words "for believing" so that the sentence would then read:

> "Where a lawyer has reasonable grounds for believing and does believe that there is an imminent risk to an identifiable person.....";

Mr. Cherniak suggested an amendment that the word "may" be changed to "must" so that the sentence would then read:

> ".....including [serious] psychological harm that substantially interferes with health or well-being, the lawyer must disclose.....".

It was moved by Mr. Cherniak, seconded by Mr. Porter that paragraphs (4) and (5) be retained but the words "but is not bound to" be added after the word "may" in paragraphs (4), (5) and new (6) so that the sentences would then read:

(4) ".....the lawyer may but is not bound to disclose confidential information to prevent the harm, ...";

(5) ".....the lawyer may but is not bound to disclose confidential information to prevent the fraud, ...";

(6) ".....a lawyer may but is not bound to disclose confidential information in order to defend.....".

Ms. Ross suggested that the word "possible" in Rule 2.03 (3) be replaced with the word "practicable" which would then read as follows:

"Where a lawyer has reasonable grounds for believing that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including [serious] psychological harm that substantially interferes with health or well-being, the lawyer may disclose [,pursuant to judicial order where practicable,].....".

The Treasurer ruled that the vote on the motions be adjourned.

REPORT FOR INFORMATION ONLY

Report of the Federation of Law Societies Mid-Winter Meeting

Report on Federation of Law Societies Mid-Winter Meeting
March 23, 2000

Report to Convocation

Purpose of Report: Information

Prepared by the Policy Secretariat

INTRODUCTION

1. The Federation of Law Societies of Canada held its mid-winter meeting in Whitehorse, Yukon Territories between February 24 and 26, 2000. A number of people from the Law Society of Upper Canada attended the meeting - the Treasurer (by telephone on February 26 to participate in the debate on MDPs), Gerald Swaye (the Law Society's delegate to the Federation), John Saso, Katherine Corrick (for the Secretary), Gord Lalonde (to present the report on a National Certification Body), and Janine Miller (to present the report on a National Virtual Law Library). Abe Feinstein also attended as the Vice-President of the Federation.

2. The purpose of this report is to inform benchers about the major issues discussed at the meeting.

NATIONAL REAL ESTATE PROJECT

3. In February 1998, the National Real Estate Project - a joint project of the Canadian Bar Association and Federation of Law Societies - was approved by each of the participating organizations. The mandate of the project is to provide members of the legal profession and their governing bodies with a means to monitor, address, and manage issues arising from rapid changes in real estate and conveyancing practices across Canada.

4. A project plan was developed by a joint Canadian Bar Association and Federation of Law Society National Real Estate Committee and approved in February 1999.

5. The plan, which will be administered over three years, has seven primary goals.
   1. To create a clearinghouse and resource base of information on evolving real estate practices.
   2. To promote public awareness and lobby provincial and territorial governments on the importance of a continued role for lawyers and Quebec notaries in conveyancing.
   3. To promote the continued integrity of public land registration systems in Canada.
   4. To liaise at a national level with other professionals and institutions on issues relating to conveyancing.
   5. To promote uniformity of real property statutes and practices in Canada.
   6. To develop national standards or products for lawyers and Quebec notaries, where appropriate.
   7. To liaise with provincial and territorial governments, in association with CBA branches and law societies, to assist in lobbying for the regulation of title insurance where appropriate.

6. The delegates at the February 2000 meeting were updated on the accomplishments of the project to date.

7. A project manager was hired in the fall of 1999 to implement the project plan. A web page for the project was launched in January 2000. It forms part of the CBA website. The Project Manager has established contacts with a number of groups, including the Canadian Bankers Association, TitlePlus, lawyers' indemnity insurance companies and the CBA Real Property Section.

NATIONAL PKI GROUP

8. The PKI Group of the National Technology Committee, chaired by Gord Lalonde, the Law Society of Upper Canada's Chief Information Officer, reported on its study of establishing a nationally coordinated system for certifying the identity and status of lawyers engaged in electronic business.

9. The details of the report are not set out here, as they are contained in a report of the Law Society of Upper Canada's Technology Committee also being presented to Convocation on March 23, 2000.

NATIONAL VIRTUAL LAW LIBRARY

10. The report of the National Virtual Law Library Group of the National Technology Committee was presented at the meeting by Abe Feinstein. Janine Miller, the Law Society of Upper Canada's Director of Libraries, is a member of this committee and participated in the presentation of the report.

11. The details of this report will also be contained in a report of the Law Society of Upper Canada's Technology Committee being presented to Convocation on March 23, 2000.

MULTI-DISCIPLINARY PRACTICES

12. A model rule for multi-disciplinary practices was presented to the meeting for discussion. Our Treasurer, Robert Armstrong, joined the meeting by conference call for this discussion.

13. The proposed model rule is extremely broad. Unlike the Ontario rule, it does not require that a lawyer control the MDP or that the MDP be engaged in the practice of law. The debate on the rule began with a presentation by Bob Armstrong speaking against the model rule followed by a presentation of Richard Margetts, First Vice-President of the Law Society of British Columbia, speaking in favour of the rule.

14. The debate that ensued demonstrated that there is no consensus amongst Canadian law societies about how the issue of MDPs ought to be handled. Many law societies, including Alberta and Quebec, indicated that they were adopting a "wait and see" approach. The Law Societies of British Columbia and Saskatchewan favour the adoption of the very broad model rule being proposed by the Federation's Committee. The Atlantic provinces supported Ontario's position, although the MDP issue is not that urgent for them at this time.

15. It is of note that when the issue of MDPs was raised at the Federation's meeting in Edmonton in August 1999, Ontario seemed to be alone among Canadian law societies in viewing the need for lawyer control of an MDP as essential. It seems that there has been a significant shift of opinion, at least among some law societies.

16. As the model rule was presented to the meeting simply for discussion, no resolution was presented or voted upon.

NATIONAL WORLD TRADE ORGANIZATION COMMITTEE

17. Since 1996, the federal government, particularly through Industry Canada, has kept the Federation of Law Societies apprised of the work of the Working Party on Professional Services (now known as the Working Party on Domestic Regulation) of the World Trade Organization with respect to the accountancy profession. The accountancy sector began discussions with the Working Party on Professional Services in 1996. Those discussions ultimately culminated in the adoption of the Accountancy Disciplines in December 1998, which is a document binding amongst the 132 member countries of the World Trade Organization.

18. Prior to December 1998, there had been no indication that from Industry Canada that the Working Party would be examining other professions. However, since that time, architects, lawyers and engineers have been asked to entertain discussions about what disciplines should be adopted for their profession.

19. Industry Canada asked the Federation of Law Societies to examine whether the Accountancy Disciplines would be acceptable to the legal profession. To comply with this request, the Federation struck a National World Trade Organization Committee in August 1999. Every Canadian law society is a member of that committee. The Law Society of Upper Canada is represented by Richard Tinsley and Allan Lawrence.

20. Trudi Brown of British Columbia, chair of the Federation's committee, presented a draft response of the Federation to the Disciplines adopted for the Accountancy Sector to the meeting in Whitehorse. The draft response is an attempt to give the federal government some feedback on whether or not the Accounting Disciplines will be in some form applicable to the Canadian Legal Services Sector.

21. The purpose of presenting the report was to get some form of consensus from the delegates to continue an ongoing dialogue with the federal government.

22. The final report forwarded to the federal government will include a preamble dealing with matters such as the paramountcy of the protection of the public over the enhancement of trade in services; the recognition that the legal profession is more than a supplier of legal services; that lawyers are officers of the Courts; and that the justice system is a pillar of any democratic society.

23. The report was received by the delegates and the committee will continue with its dialogue with the federal government.

LE BARREAU DU QUÉBEC V. BROUSSEAU

24. Pierre Gauthier, the Executive Director of Le Barreau du Québec reported on an interesting court challenge facing Le Barreau at the meeting of the Secretaries and Executive Officers of the Law Societies.

25. Briefly, the case involves an applicant (Mr. Brousseau) to the Bar Admission Course in Québec. Mr. Brousseau was convicted of the murder of his mother when he was 13 years old. He was refused entry on three occasions to the Bar Admission Course on the basis of the good character requirement. Mr. Brousseau challenged this refusal by appealing it through many committees of Le Barreau and ultimately to the courts. At some point during the challenges, Le Barreau admitted Mr. Brousseau to the Course subject to the ruling of the court. While in the Course, Mr. Brousseau successfully completed four examinations.

26. The court ruled against Le Barreau and held that Mr. Brousseau ought to be admitted to the Course. Le Barreau has appealed this decision to the Québec Court of Appeal. The case revolves not around the process Le Barreau has followed to refuse Mr. Brousseau admittance, but around the finding of fact that he is not of good character for admission to the bar. Mr. Gauthier indicated that Le Barreau intends to pursue the matter to the Supreme Court of Canada. If that occurs, Le Barreau may approach other Canadian Law Societies to determine their interest in intervening in the matter.

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REPORTS NOT REACHED

Report of the Admissions Committee
Report of the Professional Development and Competence Committee Report re: By-Law 28 - French Translation
Report of the Professional Regulation Committee

CONVOCATION ROSE AT 4:15 P.M.

Confirmed in Convocation this 26 day of May , 2000

Treasurer