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Report of the Committee on Governance Restructuring

Change through Leadership: A Blueprint for Law Society Governance

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I. INTRODUCTION & OVERVIEW

This document is about changing the way Convocation works. Implementation of these proposals will fundamentally alter how Convocation governs.

Over the last several years, many Convocations have struggled with the manner in which they governed but have failed to propose a new method through which benchers could exercise meaningful leadership. The need for change became urgent with the crisis of confidence in our leadership of the profession generated by recent events such as the problems with insurance and legal aid.

Traditional methods of governance evolving over the last two centuries were inadequate to address the growing challenges facing the Society and the profession. There is a growing sense that the Law Society lacks vision and overall direction. Many of us believe that Convocation has not been sufficiently committed to mapping out clear objectives and results for the Society to achieve and against which its successes are measured. In the past creative, progressive ideas have faltered due to a disjointed governing process. Convocation's will to change was thwarted by the lack of a modern system of governance.

The process of changing our governance began when Convocation adopted the Policy Governance model in December 7, 1995 and mandated the Governance Committee to develop a new blueprint for our future leadership. Those benchers who are interested in examining in greater detail the way in which the Committee went about accomplishing the tasks that led up to this report are invited to turn to Appendix A.

Goals of this report

The Policy Governance Model *empowers* Convocation whereas the present governance manner *diminishes* Convocation's leadership. Empowerment is best realized by Convocation adopting a "hands-on" approach to policy and "hands-off" approach to policy implementation: a clear division of jurisdiction between "ends" and "means", if you will. Whereas some may see delegating power to managers as a diminution in Convocation's power, it in fact frees the leaders to lead and the managers to manage.

The goals this report seeks to achieve are as follows:

- to establish clear policies and guidelines to ensure that the Society is managed efficiently and effectively
- to define the roles and responsibilities of benchers and staff and their respective accountability
- to institute a regular strategic planning or direction setting exercise for Convocation so that it can avoid becoming the captive of externally generated crises or demands

- to define with greater clarity the results the Society is committed to achieving
- to institute mechanisms to ensure regular consultation and input from a variety of perspectives prior to decision-making. (Consultations during crises such as LPIC or Legal Aid are less than ideal tools for obtaining thoughtful feedback on issues.)

To achieve these goals and ensure effective governance this report contains policies outlining:

- the processes and structures of the Society's governance
- the respective roles and responsibilities of benchers and staff
- the limits imposed upon the staff's discretion and jurisdiction, and,
- an incomplete set of "ENDS" policies more commonly known as the results Convocation wishes to achieve for its various stakeholders

Objectives of good governance

Good governance satisfies eight objectives. Recognizing that there is no one best way to design and manage a nonprofit board, the Governance Committee concluded that proposed recommendations for change must respect the needs created by the Society's traditions, present culture and future plans. The Committee then identified a series of eight objectives considered necessary to the practice of good governance, namely:

1. **Vision.** Convocation should be preoccupied with outward vision rather than internal administrative detail. The focus of Convocation's work should be on the results it wishes to achieve for clearly defined groups or constituencies rather than on the minutiae of ways, means and program details.
2. **Direction.** Convocation should focus on setting policies and long-term strategic directions for the Law Society. Benchers should turn their attention regularly to setting the overall purpose and agenda for the Society--why it exists and who it should serve. Without such direction, the Law Society's work is aimless.
3. **Definition of roles and responsibilities.** Bencher and staff roles must be clearly distinguished and appropriate accountability defined. Leaky accountability occurs when benchers do staff work and vice-versa.
4. **Proper fiscal and legal oversight.** Convocation must ensure that the Society behaves in a fiscally and legally responsible manner. Appropriate policies and guidelines should be instituted to deal with, among other things, asset administration, budgeting, and compliance with various laws applying to the organization.
5. **Adequate funding.** Convocation must ensure that adequate funds are available to achieve the Society's mission and ends as defined by Convocation.

6. **Sound management.** Convocation must ensure that the Society and all programs for which it is responsible are managed efficiently and effectively, e.g. that it has proper administrative structures and policies, information systems, human resource policies, etc.
7. **Consultation and advocacy.** Convocation's role is to "take the inside out" by representing the interests of the organization to its external publics; and, "bringing the outside in" by ensuring that the interests of key external constituencies are made known inside the Law Society. Changes to the governance structure and policy-making process should ensure that a greater variety of perspectives are considered prior to decision-making.
8. **Effective self-management (of Convocation).** Convocation must ensure that the structures and procedures it adopts will allow it to function effectively eg. committee structure, benchers conduct guidelines, meeting rules, role of benchers, Treasurer, etc.

The Governance Committee has spent the last five months drafting the Governance Policies to conform to the eight objectives outlined above and described below in Section II of this report. The policies themselves are included in their entirety in *Appendix C*.

II. INTRODUCTION TO POLICY GOVERNANCE

Overview: features and benefits of Policy Governance

What does it mean to govern through policies and how is the proposed governance structure different from the present model under which Convocation operates?

Briefly, governing by policy will empower Convocation and enforce accountability. It will enable benchers as a group to attend to the "big picture" and the fundamental questions, to focus on the long-term, to avoid trivia, to support excellence and accountability in management and to overcome the lack of focus that bedevils many not-for-profit boards that do not have a market and crisp bottom lines to serve as markers of how well they are doing. The new model allows benchers to trade in their "doers and tinkerers" role for the much more rewarding role of "leaders and strategic thinkers"--the real value they were elected to provide to the Law Society. The intended effect of the proposed governance structure is to remove much of the caprice from board actions, to define roles clearly, and to empower the CEO within established limits.

The new model refocuses benchers involvement in a way that fundamentally:

- clarifies the accountability of all key players including benchers, the Treasurer and staff
- stops non-essential and unproductive committee work
- sets out clear procedures for policy development and formulation
- prevents unnecessary intrusion into administrative operations

- provides clear guidelines and criteria for administrative evaluation
- eliminates trivia

The following changes are key features and benefits of the Society's proposed governance structure:

1. *Benchers lead by attending to the higher-order decisions that are Convocation's alone to make, for example, by setting policy about results (or ends/mission) to be achieved rather than making limitless decisions about particular ways, means or events.* In the future Convocation will concentrate on defining the Society's results and formalizing these in its mission and ends policies. To be effective and responsive to the ever-changing circumstances and conditions in both the profession's and public's domain, this exercise must be continuous. The policies through which we govern, must be "living", subject to constant change, review and revision.
2. *Benchers create policies in categories that are appropriate to governance rather than mirroring those of administration.* Effective leadership by policy requires that benchers think in categories relevant to governing and concentrate on *where* the Society is going versus *how* it is getting there. Benchers must distinguish between: i) ENDS--the expected results defined as what benefits the Law Society will confer, on which people, at what cost and; ii) MEANS--practices, procedures and methods used by the CEO and staff to produce the results. Committing to an ENDS focus will shift the conversation in Convocation away from what the Law Society *does* and toward what results the Society should *seek to achieve* eg. a competent legal profession .
3. *With benchers attending to ENDS and results and staff attending to ways and MEANS, accountability is clear.* Benchers add value to the Law Society by establishing forward-looking vision, formulating higher-level policies and monitoring results. This is the task of leadership. Benchers are governors not advisors to management. Professional administrative staff are charged with the task of managing operations and establishing procedures to get things done. Other than setting out what staff are *not* permitted to do in order to achieve Convocation's desired results, staff must have the freedom and flexibility to manage the day-to-day delivery of programs and services without interference.
4. *Improved group decision-making flows from a simplified committee structure informed by clear guidelines for policy formulation.* Insofar as possible, policy formulation occurs at Convocation. (Committees exist only in areas where there is a significant link to the Society's mandate and where there is a requirement or expectation that policy formulation will be ongoing). Committees and task forces receive their terms of reference and instructions directly from Convocation and are not the servants of individual benchers or groups of benchers with particular interests. Under the proposed scheme, the role of committees has been clarified such that their responsibility is to formulate and

present available policy *options* for Convocation's consideration, rather than to *make* or *recommend* policy. In other words, committees exist to do pre-board work at the request, and with the consent, of Convocation.

5. *A planning cycle will allow for more pro-activity and less crisis management.* The new governance structure emphasizes planning for the future rather than reacting to the past. A significant portion of Convocation's job will be to spend time deliberating what it wants to do and what it wishes to achieve, rather than having its work predetermined by the agendas of others or events that have spiralled out of control. The planning process will precede the annual budget-setting exercise so that staff can be clear on the results the budget is expected to deliver and so that Convocation can ensure that the services and activities that the budget is designed to fund are consistent with the Society's mission and its strategic objectives.
6. *Under the proposed governance system, the activities to be monitored and the frequency of monitoring will be spelled out clearly in advance so that both benchers and staff are clear about what is expected.* This will take the guesswork out of staff work. It will also give benchers the comfort that they are getting the necessary information on a regular basis to satisfy themselves that the results they have asked for are being achieved. Since the monitoring data is agreed upon in advance by Convocation, the costs and related inefficiencies associated with frequent arbitrary requests for information by individual benchers will be avoided. In setting out the data to be monitored, Convocation must be mindful that its purpose is two-fold: to give an accurate and clear picture about the past, and, to provide the necessary tools to map out future direction and strategy.

Overview of the four governance policy types

Following the direction of Convocation on December 7, 1995 that the Governance Committee should draft Governance Policies consistent with the eight objectives of good governance, it was determined that every policy of Convocation must fall under one of the following four categories:

- I. Mission and Ends
- II. Governance Process
- III. Executive Limitations
- IV. Board-Staff Relationships

A brief overview of the policy types follows.

Mission & Ends. ENDS get right to the heart of why the Law Society exists. The broadest expression of ends is contained in the mission statement. ENDS address what benefits or results the Law Society will create for which groups at what cost. ENDS do not relate to what activities or programs the Society will run, but rather to what *difference* the Law Society intends to make for the public and legal profession in the community.

Decisions and policies about ENDS are made strictly by benchers.

MEANS, on the other hand, include practices, methods, conduct, procedures and other activities (such as programs) that the Law Society undertakes to pursue ENDS. Just as *The Law Society Act* confers upon Convocation the important task of *governing*, so Convocation then delegates to the CEO the task of *managing and doing* otherwise known as the MEANS. Convocation's role is not to look over staff's shoulders about management issues, but to lead in expressing the Society's vision and expected results.

The Law Society's ENDS policies are expressed in Section I of *Appendix C* to this report (Mission & Ends). As this is an evolutionary document, Convocation will in the future further refine and expand upon its ENDS. One of the first steps involved in the implementation of this report will be the development of ENDS by committees for consideration by Convocation. ENDS must be reviewed during the annual planning exercise to ensure that the budget which the staff produces is consistent with the results Convocation wishes to achieve.

Governance Process. These policies deal with how Convocation will run itself and its own procedures and how it will provide leadership to the Law Society. Governance Process policies are based on the recognition that Convocation is responsible for its own development, its own job design, its own discipline and performance.

Convocation's Governance Process policies are found at Section II of *Appendix C* to this report. The policies set out job descriptions for Convocation, the Treasurer and benchers as well as a bencher code of conduct. Since this section deals largely with matters of structure, a proposed committee system is included spelling out the mandate and policy contributions expected of each committee. The purpose of committees, task forces and working groups and how they are to be constituted and run is also explained.

Executive Limitations. Convocation exercises control over management through the constraints it places on the means or ways in which the staff achieve the ENDS. If Convocation wishes to ensure that the Law Society's actions are prudent and ethical, it must delineate *beforehand* what it will not accept. The sum total of Convocation's directions to the CEO and his/her administration are expressed in:

- ENDS--the results the administration must achieve, and;
- EXECUTIVE LIMITATIONS--what may not be done by the administration in the process of achieving those ENDS or results.

The proposed Executive Limitations policies are found at Section IV of the *Appendix B* to this report. Benchers will note that these policies are stated in the negative. This has been done deliberately in keeping with the policies' purpose which is to limit staff actions or means in the achievement of results (ENDS). In the task of drafting these policies, the committee was guided by the wisdom of John Carver who expresses the principle in this way:

The most positive approach a board can take toward the means of its subordinates is verbally negative. Conversely, the most negative approach is prescriptive and positive. Telling a subordinate how to do a task automatically eliminates all other methods. Telling a subordinate how not to do it leaves open all other possible methods. Better supervision leaves as much freedom as possible. (Boards That Make a Difference, p.88)

Among other things, the Executive Limitations policies set out what activities the CEO and staff may not engage in:

- when preparing and adhering to the budget
- during the course of administering the Society's financial and capital assets
- when acquiring goods or services
- when dealing with staff and personnel matters
- when setting compensation and benefits policies and practices
- when providing information and counsel to Convocation.

Bencher - Staff Relations. These policies address the manner in which authority is delegated to the CEO and how the CEO will be assessed on the use of that authority. The most important principle informing this final set of policies is that the CEO's is accountable to Convocation (through the Treasurer) and not to individual benchers or bencher committees. This does not prevent significant interaction and discussion between the CEO and committees or benchers as long as the CEO is instructed only by Convocation as a whole. Being held accountable to Convocation for the Law Society's performance is a basic imperative of the CEO function. For most official purposes, Convocation has only one employee, the CEO. The rest of the staff are accountable to the CEO. Again, this does not mean that staff and benchers are prohibited from having any contact; but rather that neither Convocation nor individual benchers may direct or assess staff performance, other than that of the CEO.

Bencher-Staff Relations policies are found at Section III in *Appendix C* to this report.

III. CONNECTING COMMITTEES WITH CONVOCATION

In carrying out its task of restructuring the Society's committees, the Governance Committee was guided by Policy Governance Model principles concerning the creation and function of board committees. Two Policy Governance principles were identified which guided the Committee's recommendations for a new committee structure:

- ***Minimalism.*** Under this principle, committees should only be created when their function is absolutely necessary, having regard to the Convocation's mission and ends. Structure is best kept to the minimum necessary to accomplish

Convocation's ends. In order to avoid "fractionalization" and over-lap of responsibilities among committees and Law Society operations, committees should be kept to a minimum;

- ***Policy options development.*** Generally, standing board committees do not have broad oversight functions; rather, their purpose is to identify and develop policy options, and related implications, for consideration by Convocation to assist Convocation in its decision-making process and, ultimately, in meeting its responsibilities and mission. Broad oversight functions are reserved to Convocation and to the monitoring policies of Convocation.

Criteria for the creation of committees

With the above two principles in mind, the Governance Committee identified three criteria which, in its view, must be met in order to warrant the creation of a standing committee of Convocation. These are as follows:

- ***Connection to the Law Society's mission and legislative mandate.*** Ongoing policy matters relating to the Law Society's core self-regulatory responsibilities will require that extensive pre-board work be done in committee before policy options and implications can be the subject of informed debate in Convocation, that is, at the level of the whole board. This necessitates identification of the Law Society's core responsibilities in the area of self-regulation.
- ***Accountability of Convocation.*** Committees should develop policy options and implications, for consideration by Convocation, in those areas where Convocation has a high degree of accountability to the public and its membership.
- ***Due diligence.*** In a few instances, Convocation must perform a due diligence and ongoing monitoring function with respect to certain services offered either to the public or the Law Society's membership. Convocation as a whole is responsible to carry out these broad oversight functions. Accordingly, only in exceptional circumstances and for clearly defined purposes should standing committees have broad oversight functions.

Once the above criteria have been met, the following two factors must also be considered before Convocation decides whether to establish a committee or task force.

- ***Fiscal responsibility.*** In the future, standing committees of Convocation should be required to justify, on the basis of each committee's work and results, the costs and resources of the Law Society associated with the functioning of that committee. Each standing committee's work and results must be directly related

to the mission and ends of the Law Society. A proliferation of standing committees should also be avoided having regard to their impact on the Law Society's operating budget.

- ***Management responsibility.*** Committees exist to help Convocation do its job of governing and setting policy, not to assist staff with their job of managing and administering operations and programs. The functions of standing committees of Convocation, therefore, must be distinguished from operational functions and must be grounded clearly in policy options development.

The Law Society's current 18 standing committees were formed when Convocation functioned as a "working board" as opposed to a "governing board". Historically, this meant that benchers assumed administrative responsibilities for a variety of functions which, more recently, have been taken over by professional management and/or administrative staff. (Some of the existing standing committees were formed early in the last century.) In addition, the historical approach led to the creation of individual committees to shadow the progress and development of individual programs and activities of the Law Society. When these committees no longer had any substantive policy issues to develop for Convocation's consideration, committee members were indirectly encouraged to become involved in program implementation decisions and in program "means" rather than program "results" so that they would have something to do in that committee. A review of the agendas of a number of standing committees has revealed that many committees have not developed policy in a number of years. In some cases, the line between policy and implementation has become so blurred, that a number of items designated as "policy" on committee agendas are in reality administrative matters that have been incorrectly designated.

The proposed committee structure takes note of benchers' concerns expressed in the survey undertaken by the Governance Committee in the fall of 1995, namely that:

- Benchers are frustrated by the lack of opportunity to develop substantive policy in committees and do not feel that there are sufficient avenues to express leadership in their role as benchers and committee members.
- There are too many committees and committee responsibilities are exceedingly onerous.
- Many committees are unproductive and much committee time is spent dwelling on trivial matters.

Recommended committee structure

To remedy the concerns expressed by benchers, the Governance Committee decided that effective governance requires benchers to focus their attention on the Society's core mandate and the development of mission and ends policies. It is within this context, that the Committee developed its recommendations concerning a future committee structure for the Law Society.

Existing committees with related functions and/or areas of responsibility were grouped together under one new committee. This recognizes the direct relationships between standing committees and the Law Society's defined core responsibilities and has resulted in fewer committees with greatly expanded policy mandates. Under this approach, the time and energies of committee members will be freed from administrative matters and will be available for the formulation of policy options. This approach to committee structure ensures that policy options development will be informed by a more organic and less "piecemeal" approach to issues.

The proposed committee structure contemplates the creation of the following for defined and distinct purposes, namely:

- Committees: established by Convocation to develop on-going policy in areas connected to the Law Society's core mandate and responsibilities.
- Task Forces: established by Convocation for a time-limited period to develop policy on specific issues that fall outside the scope of on-going committees.
- Working Groups: established by committees to function as time-limited subcommittees to develop policy in discrete areas of a committee's overall mandate.

It must be emphasized that the new committee model is a fundamental change from the status quo. The purpose of this restructuring is not simply to create new committees with old functions and responsibilities folded in. The work of committees is to concentrate on the development of higher-level policy that cuts across a much wider spectrum of the Society's responsibilities.

The fact that a new committee may have the work of several former committees folded into it does not mean that several working groups must be created. Working groups should be rare and created only for specific and time-limited purposes when the work is too labour intensive for the entire committee. Working groups may consist of any mix of benchers, non-benchers (such as issue experts) or staff deemed appropriate for the purpose of completing the assigned task.

The functions of committees, task forces and working groups are set out in paragraphs 2.0, 2.1 and 2.2 of the section entitled "Convocation Committee and Task Force Principles" found at Section II: Governance Process Policies in *Appendix C* to this report.

Should the committee structure proposed here be adopted, appropriate amendments will need to be made to Law Society Regulation 708 and applicable Rules. Staff charged with the responsibility for this function have advised that they foresee no difficulty in obtaining the necessary changes.

Proposed future committees

The Governance Committee proposes the creation of the committees set out below. The proposed mandates and examples of the types of policies it is expected that each will produce are outlined in the section entitled "Committee Structure" found at Section II: Governance Process Policies in *Appendix C* to this report. Areas of responsibility for each committee are also included below.

I. Accreditation/Admissions/Access Committee

Areas of policy responsibility:

- bar admissions
- transfers from other provinces
- memberships
 - resignations
 - retirements
 - admissions
- gender & equity issues

II. Professional Regulation Committee

Areas of policy responsibility:

- audit & investigation
- complaints
- discipline
- practice review program
- professional conduct
- ethics
- unauthorized practice
- compensation fund

III. Professional Development and Competence Committee

Areas of policy responsibility:

- practice advisory
- libraries and information services
- continuing legal education
- certification
- professional standards development
- issues related to the practice of law
- requalification

IV. **Legal Aid: Judicare & Clinic System**

Areas of policy responsibility:

- certificate (judicare) system
- clinic (staff delivery) system
- access to justice

*NB Specific comments regarding the future linkage between the Legal Aid and Clinic Systems Committee and Convocation are included below.

V. **Finance and Audit Committee**

Policy examples

- financial controls
- audit scope
- budget

***Legal Aid: Judicare and Clinic Systems:** Although the existing Legal Aid and Clinic Funding Committees are concerned with two distinct legal aid delivery models and have varying statutory requirements with respect to their duties and composition, the Governance Committee considers it both desirable and inevitable that at an appropriate future time these committees be merged for the following reasons:

- (i) their functions are inherently similar in that both are concerned with the delivery of legal services to the disadvantaged;
- (ii) there is a long-standing historical link between the certificate and the clinic systems - the latter having branched off from the judicare system for the purpose of providing services in those areas of law that the private bar found uneconomical. Funding constraints in the judicare system may well entail greater reliance on clinic services if the private bar abandons certain areas of law;
- (iii) securing stable and adequate funding from third party sources, including governments, for the provision of legal services to the disadvantaged is best accomplished by adopting a unified approach;
- iv) meaningful and informed oversight by Convocation on an ongoing basis may be achieved more readily if policy options development for both systems is centralized in one committee.

The Governance Committee has been made aware of an ongoing review of the Legal Aid Plan operations and reporting structures and of an intended review of Clinic Funding operations. Accordingly, at this time, the Committee has considered it inappropriate for it to attempt to define the specific mandate or areas of responsibility for a merged Legal Aid: Judicare and Clinic Systems

Committee. The Committee recommends, however, that the ongoing review specifically include consideration of the following:

- clarification of committee responsibilities;
- definition of the nature and scope of reports and information to be provided to Convocation including specification of the frequency of required reporting;
- clarification of the roles and responsibilities of senior management for both the Legal Aid Certificate and Clinic Systems and identification of reporting relationships.

Until these reviews are completed and Convocation receives a policy report, it is acknowledged that the two committees will continue to operate separately.

Lawyers' Professional Indemnity Company. Clear reporting requirements and accountability mechanisms must be developed for LPIC's operations. These will follow the framework established for the monitoring of policies as set out in Section D of the Bencher-Staff Relations policies found at *Appendix C* of this report. These policies, which will be developed and brought to Convocation in future, must define the nature and scope of reports and information to be provided to Convocation on a regular basis by LPIC.

This is a major undertaking which requires significant input from both LPIC and Law Society staff in order to be thorough and complete for consideration by the Finance & Audit Committee prior to presentation to Convocation and, as such is not ready yet for presentation in this report. Other issues which may impact on LPIC, such as standards development, can be accommodated under the new committee structure.

The Policy Secretariat: dedicated staff support for committees

An important factor in the success of the proposed Policy Governance Model as adapted for the Society is the provision of staff support to ensure that policy initiatives are developed and brought forward to Convocation in a comprehensive and consistent manner.

At present there are basically two levels of staff support for committees: senior management who act as policy and administrative advisors in their areas of expertise and operational or line staff who provide policy input and support. Under the new structure, the primary responsibility for policy development will lie with a policy secretariat comprising staff whose full-time responsibility will be to assist committees, their working groups and task forces to develop policy for Convocation's consideration. The Policy Secretariat staff are therefore, much more than "recording secretaries" and will have the major responsibility for research and policy development. Senior managers and administrators will continue, under the proposed scheme, to offer advice and input to committees in their various areas of expertise but overall they will be relieved of the task of acting as secretaries to committees. The Policy Secretariat will be established through staff reallocations as part of the ongoing operational restructuring exercise currently underway.

IV. A COMPREHENSIVE POLICY-MAKING PROCESS

The problems with current practice

The most important work performed by Convocation is the setting of policy for the Law Society and the profession. At the present time there are no guidelines or procedures for the formulation of policy at the Society. Each committee works in relative isolation with its own procedures. Practice is not uniform. Lack of uniformity and lack of planning lead to a number of consequences which hamper the effective development and implementation of policy. Due to divided jurisdiction over issues, committees rarely canvass all relevant dimensions of an issue. Agendas for committees are not planned far enough in advance. Reports are sent back from Convocation for further consideration by the committee because a vital step in the policy formulation process was omitted. Demands for consultation with interested parties are received just prior to a policy's submission to Convocation or, in many cases, at Convocation. Policies are adopted by Convocation when no provision has been made for financial impact or staffing requirements. The result is a growing number of policies which, while adopted by Convocation in good faith, encounter great difficulty at the implementation stage.

Recommended policy development process: a mandatory checklist for the future

The following checklist is a recommended mandatory process for the development of policy. A committee will be required to take the following steps **prior** to submitting their report to Convocation:

- define key issues and point out current policies that exist on the issue
- receive and review background information from the staff and any relevant outside experts
- clearly articulate the reasons why the Law Society is the appropriate body or institution to make policy on the particular issue under review
- consult other committees and Convocation
- set policy objectives and articulate intended consequences or results of policy and how these contribute to the mission and ENDS of the Law Society
- determine whether consultation with interested parties is necessary and if so, consult with relevant stakeholders (relevant segments of the public, bar, government, etc.)
- analyse available range of options
- consider implications of options on relevant stakeholders (affected segments of the public and/or the bar) and the Law Society itself including legislative, financial, and staffing impacts etc.

Once Convocation has selected and approved a particular option, Convocation will direct the CEO and his/her staff to complete the following components of the policy development checklist:

- formulate draft implementation plans, including communications plan
- design appropriate evaluation mechanisms.

It will be the responsibility of the chairs and secretaries of committees to adhere to the policy development checklist. The Secretary to Convocation will ensure that policies submitted for Convocation's agenda have completed the process. Although matters for final adoption by Convocation will be required to complete all steps in the process, committees will be encouraged to consult and inform Convocation as they proceed with their work.

It also recommended that policies be written in plain language, that they follow a general format (e.g. Table of Contents, Terms of Reference, Evaluation Mechanism etc.) and that they clearly define issues, options and policy objectives. It will be suggested that a range of options be developed in most cases. Communication and consultation will be key elements.

A draft format for policy proposals that are to be submitted to Convocation is included in *Appendix D*.

Benefits of a uniform policy making process

A uniform process for the development of policy will lend a number of benefits, including:

- Convocation will benefit from better long-range planning given the ability to control and initiate its long-term and short-term agendas with a consistent policy approach.
- The presentation of multiple options will increase Convocation's comfort that a number of alternatives have been canvassed, not solely the preferred choices of individual benchers. The ultimate task of selecting an option is left to Convocation to decide in its role as the only policy-making body of the Law Society.
- The possible need for consultation will be considered early in the committee's deliberations so as not to delay the process unduly. Fuller consultation will improve the quality of the policy options put forward and will give benchers a better appreciation of the way in which the various policy options will affect stakeholders.
- A full consideration of the legislative and financial impact and resource implications of policy options will identify the potential barriers to be overcome in order to implement policies effectively. Early and thorough consideration will reduce delays once the policy is adopted.
- A uniform format for reports concerning policy will expedite the business of Convocation. Benchers will know what to look for in reports and where to look.

V. MODEL IMPLEMENTATION AND FUTURE WORK

The proposals and recommendations contained within this report and the policies found in the appendices are not intended to be cast in stone. It is not only expected, but also encouraged, that the Society's Governance Policies will undergo regular review, revision and in some cases wholesale change. In order to avoid repeating the mistakes of the past and finding itself at some unspecified future date in a situation where its method of governance is outdated and ill-equipped to meet pressing challenges, the Society should institutionalize the process of reviewing its Governance Policies as part of its annual planning process. In fact, some organizations including the Law Society of British Columbia, which has been operating under the Policy Governance Model since 1993, review their Governance Policies at the conclusion of every board meeting to ensure that they meet the needs of their governance mandate.

It is strongly recommended by the Committee, on the advice of governance experts, that *a thorough review of the proposed model be undertaken within two years of its implementation.*

Moving to the new model of governance

During the transition to the new model, Convocation will need to balance the need to maintain momentum with the need to ensure involvement and acceptance from all benchers. Once the Governance Policies are approved by Convocation, the new system will be put into place immediately and will be monitored on a regular basis by the Treasurer, CEO and interested benchers. It has been observed that in the early transitional stages, boards often experience withdrawal as a result of having to give up their time-worn traditional role. This will be more or less true for benchers depending on their length of service, their attachment to the status quo and their level of frustration with or approval of present governance practice.

In the words of John Carver:

[During the transitional phase], boards usually have to struggle to remain focused on criteria rather than reports. It is easier to think about familiar reports (balance sheets, overdue accounts list) than the criteria for which disclosure data are to be received...Accustomed more or less to flying by the seat of their pants, boards must learn in this early period to be comfortable with more sophisticated systems. A jumbo jet cannot be flown using the cockpit technology of a crop duster. (Boards That Make a Difference, p. 186.)

For the most part, Convocation's agendas have been adhering to the principles of Policy Governance since last Fall; therefore, other than enshrining an annual planning process, changes at this level will be minor. More significant will be the changes to the Society's committee structure. Much work-in-progress being undertaken by those committees which are being phased-out under the proposed system will be performed under one of the new committees. Some work cannot easily be subsumed

in this way. In such cases, time-limited task forces will be established to give those committees a clear mandate and window to complete whatever policy development is currently underway.

A summary of the work-in-progress which will be converted into time-limited task forces until its completion is included in *Appendix E* of this report.

Issues for future consideration

Size of Convocation. According to generally accepted wisdom in the field of corporate governance, to be optimally effective a board should have no more than fifteen members. In keeping with the notion that less is better, the Law Societies of British Columbia and Manitoba have both elected to reduce the number of benchers on their board. A number of benchers who responded to the Governance Committee's survey last fall expressed concern about the size of Convocation and the fact that it is not an effective forum for setting policy and/or exhibiting leadership. Similar sentiments are expressed anecdotally and orally on a frequent basis around Osgoode Hall. Should benchers consider the issue of their own numbers in the future and with it, the issue of setting criteria and/or qualifications for serving as members of Convocation?

Other possible governance process topics for future deliberation include:

- enforcement provisions for bencher code of conduct
- term limits for benchers
- improving the democratic nature of Convocation (voting rights of the various categories of benchers)
- setting clear reporting requirements and chains of accountability for arms length operations eg. Lawyers' Professional Indemnity Company and Legal Aid.

VI. CONCLUSION

Implementation of the Policy Governance Model will enable Convocation to lead and effect change. This report establishes the framework for development of the ENDS statements which are, in effect, the policy directives of Convocation, to be implemented by management.

Convocation must now define its ENDS for all to see (upon recommendation of its Committees). "What good, for what people, at what cost." It is by virtue of this process that change is effected.

VII. APPENDICES

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|--------------------------------|--|
| A. Committee mandate and work | D. Proposed Formats for Policy Proposals |
| B. Bibliography of Governance | E. Recommended Task Forces to Deal with Work-in-Progress |
| C. Governance Process Policies | |

APPENDIX A: COMMITTEE MANDATE AND WORK

Terms of reference

The Governance Committee was constituted in August 1995 for the purpose of:

- recommending such changes to the Law Society's method of governance as are consistent with the duties and obligations of a policy-making board taking into account the special circumstances arising from Convocation's regulatory and quasi-judicial responsibilities;
- developing policies to ensure effective governance, such policies to define, among other things, the following: the processes and structures of the Society's governance, the respective roles and responsibilities of benchers and staff, the limits imposed upon the staff's discretion and jurisdiction, and finally, the results Convocation wishes to achieve for its various constituencies, otherwise known as the Society's "ends".

Committee meetings and membership

The Governance Committee met on fifteen occasions between August 1995 and May 1996 and comprising of the following members: Abe Feinstein (chair), Ron Manes (vice-chair), Eleanore Cronk, Mary Eberts, Philip Epstein, Ross Murray, Hope Sealy and Rich Wilson. Susan Elliott has also attended all meetings of this committee as have John Saso and Richard Tinsley. Gemma Zecchini has acted as Secretary to the Committee. In addition, a working group charged with the task of proposing a new committee structure for the Society, chaired by Eleanore Cronk, met eight times between January - March 1996.

The Committee's work & approach

The following is a summary of the tools and resources that informed the Committee's deliberations:

Survey of benchers. One of the committee's first tasks was to draft a survey asking benchers to identify problems with the Society's governance and suggest areas for improvement. Surveys designed to provide feedback on bencher roles and responsibilities, the Law Society's committee structure and governance process and bencher-staff relations were distributed to all benchers and recent former benchers during the second week of September 1995. A total of 48 responses were received--37 from current benchers and 11 from recent former benchers. The responses from both groups were more or less consistent.

Among the 37 current benchers who responded, the survey found that:

- over three quarters of benchers agreed that there were too many committees
- six in ten benchers said that committee work took up too much time
- a clear majority of respondents--over 60 per cent--were unclear as to the purpose and mandate of many bencher committees

- the majority agreed that committees should be used sparingly to develop policy on specific topics and not at all to monitor organizational performance on that topic
- only three out of 37 respondents agreed that committee agendas were stimulating and made the best use of bencher's time and leadership skills
- only four out of 37 respondents said they found Convocation's agendas stimulating.

In addition, the survey identified bencher concerns in a number of other areas. Benchers frequently cited wasted meeting time, meetings that accomplished little and meetings called to deal with avoidable emergencies as reminders that they bear the cost of poor governance. Many benchers expressed a strong desire to use their leadership skills to create a vision for the Society's future as well as to improve the decision-making and policy-making process. The portion of the survey dealing with committees and Convocation prompted a number of comments about Convocation being an inadequate structure for important policy formulation and decision-making. One respondent noted that, "It [Convocation] is too big and too much grand-standing goes on".

Literature review. Once the Governance Committee had reviewed the results of the bencher survey, committee members canvassed the available literature on the subject of board governance which is still largely in its infancy. The Committee consulted numerous articles, abstracts and texts including John Carver's *Boards that Make a Difference*, widely considered the bible of non-profit governance today. The Committee explored the Policy Model of Governance espoused by Carver and others in great detail. In addition to the Policy Governance Model, the Committee looked at working board, management board and membership board models in an attempt to identify possible solutions to the Society's structural and procedural problems. Only the Policy Governance Model offered a coherent framework or approach to governance. The others were at best a set of procedures or best practices that suffered from a lack of holism or "big-picture" vision. A bibliography of the literature consulted by the committee is included in *Appendix B*.

Exploring the work of other organizations. The board policies of five not-for-profit organizations were consulted to gain a better understanding of how Policy Governance principles were applied to various institutions, namely:

- the Law Society of British Columbia (which adopted the Policy Governance model in 1993)
- the Law Society of Manitoba (which adopted the Policy Governance model in 1995)
- the YWCA of Canada (a national women's advocacy organization which has been operating according to Policy Governance principles since 1992)

- Georgian and Niagara Colleges of Applied Arts and Technology (two Ontario post-secondary institutions whose boards have adopted the Policy Governance Model).

Consultations. On October 26, 1995, Dr. John Carver was invited to deliver a seminar on board governance to Law Society benchers and senior management. Thirty-three benchers attended the all-day session which was a combination lecture and question-and-answer format. Dr. Carver and the staff of the Policy Governance Academy in Atlanta, Georgia have played an important mentoring role to the Governance Committee throughout the course of its work. The Committee has had the benefit of Dr. Carver's advice on several occasions during the drafting of its policies.

In addition, the Committee has consulted on a number of occasions with the Law Societies of British Columbia and Manitoba regarding the implementation of the Policy Governance model in their respective institutions. Extensive discussions have taken place with the Law Society of British Columbia and as benchers will recall, Treasurer Grant Burnyeat and Secretary Bryan Ralph from B.C. were present to answer questions about their experience with the Policy Governance Model at a special meeting of Convocation on December 7, 1995.

The topic of governance was a prominent item on the agenda of the Federation of Law Societies meeting in Winnipeg last July and a special half-day workshop was held to discuss this topic and share experiences among the various Canadian law societies in attendance. The Treasurer, Chair and senior staff of the Governance Committee attended this session. With British Columbia spearheading the effort, and Manitoba and Ontario following closely behind, governance restructuring has featured prominently on the agendas of a number of law societies in recent years.

Mandate and direction of Convocation

At a special meeting of Convocation on December 7, 1995, benchers unanimously agreed that:

- Convocation was committed to a fundamental change in its method and processes of governance;
- Convocation's governance model should satisfy the eight primary objectives of good governance described above, namely: outward vision, long-term strategic focus, clear distinction between staff and bencher roles, proper legal and fiscal oversight, sound management (of the Society), effective self-management (of Convocation) and effective linkage with the membership and the public through consultation and advocacy;
- the Governance Committee should draft policies consistent with the objectives expressed above.

APPENDIX B BIBLIOGRAPHY

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APPENDIX C: GOVERNANCE PROCESS POLICIES

I. MISSION AND ENDS

A. MISSION

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

- *ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct; and*
- *upholding the independence, integrity and honour of the legal profession; for the purpose of advancing the cause of justice and the rule of law.*

Note:

The above mission or role statement was adopted by Convocation in October 1994. While in the process of adopting the Policy Governance Model and pending further deliberations by Convocation on the development of specific ENDS or policy results to be achieved by the Law Society, the policies of the Society will remain as catalogued in the *Index of Convocation Policies* distributed to all benchers as part of their orientation package. The focus of the Governance Committee's work has been the development of the three policy areas that follow which provide the framework within which the ENDS or results will be developed. This process will be initiated by the individual committees which will be charged with the task of proposing, for Convocation's consideration, ENDS or results that specify what benefits to be provided by the Law Society, for whom, and, at what cost.

II.

GOVERNANCE PROCESS

A. GOVERNANCE COMMITMENT

- 1.0 Convocation will govern as a self-regulating body so as to ensure that the Law Society of Upper Canada is accountable to the Ontario public and the legal profession by establishing and delivering appropriate goals and avoiding unacceptable outcomes.

B. GOVERNING APPROACH

- 1.0 In governing, the benchers will emphasize strategic leadership, policy making, and the creation of effective accountability mechanisms. They will define values, and plan, looking outward and forward. They will be proactive, while preserving the capacity to react appropriately to unforeseen challenges and issues. The benchers will clearly distinguish between their role, and that of staff, and allocate to the staff responsibility for implementation of policies developed by Convocation and for administrative matters.

C. THE ROLE OF CONVOCATION

- 1.0 Convocation is the only body charged with the responsibility of making policy relating to the governance of the legal profession in Ontario.
- 1.1 The responsibility of Convocation is to ensure the achievement of the Law Society's Mission and Ends and carry out its legal obligations.
- 2.0 Convocation shall:
 - 2.1 Govern the affairs of the Society effectively and efficiently, guided by long-term objectives.
 - 2.2 Establish policies for the governance of the legal profession in Ontario and the Law Society of Upper Canada.
 - 2.2. In establishing policies, consult with appropriate stakeholders.
 - 2.3. Focus on long-term goals rather than the methods of achieving them.
 - 2.4. Impose upon itself whatever discipline is needed to govern with excellence.
 - 2.5 At each regular sitting, monitor its own performance.

- 2.6 Receive the report of the Treasurer re: the performance of the Chief Executive Officer and direct the Treasurer accordingly.

D. TREASURER'S JOB DESCRIPTION

- 1.0 The Treasurer shall adhere to the Policy Governance Model.

- 1.2. The responsibilities of the Treasurer shall be:

- to be the public and ceremonial representative of the Law Society of Upper Canada and the only bencher authorized to speak for Convocation.
- to ensure that benchers act in a manner consistent with Convocation policy
- to chair meetings of Convocation in accordance with Policy Governance Model.
- to prepare Convocation's agenda, on advice of Convocation
- in consultation with benchers and senior staff, to develop for Convocation's approval, priorities for the Law Society for the upcoming year
- to coordinate, in consultation with staff and committee chairs, the work and responsibility of committees and to ensure policy issues are assigned to appropriate committees
- to appoint chairs and vice-chairs and members of committees subject to ratification by Convocation.
- to call for the resignation of benchers who are unable to fulfil their duties or who are in breach of the bencher code of conduct.
- to be an ex-officio member of all committees and task forces.
- to provide such reports and evaluations as Convocation may request from time-to-time including an evaluation of the performance of the Chief Executive Officer.

E. BENCHER JOB DESCRIPTION

- 1.1 A bencher's role is to participate in Convocation by:

- a) formulating policy
- b) deciding discipline, admissions and competency matters.

- 1.2 A bencher's role is to act as a member of:

- committees
- task forces
- working groups
- related boards.
- discipline panels
- practice review panels
- admissions and competency hearings

1.3 Benchers participate in external organizations on behalf of the Law Society as authorized or directed by the Treasurer or Convocation.

2.0 Benchers must be familiar with:

- Law Society structure, mission and governance policies
- relevant legislation and jurisprudence.

F. BENCHER CODE OF CONDUCT

1.0 The benchers commit themselves to ethical and businesslike conduct. This includes proper use of authority and appropriate decorum when acting as benchers.

1.1 Benchers are expected to consider and represent the interests of the Society in preference to any other interests.

1.2 Benchers must declare conflicts of interest and act in accordance with Convocation's policy on conflicts of interest.

1.3 Benchers must not use their positions to obtain employment or preferential treatment for themselves, family members, friends or associates.

1.4 Benchers will not exercise authority over staff except with the concurrence of the Chief Executive Officer.

1.5 No bencher shall purport to speak for Convocation or the Law Society unless designated by the Treasurer.

1.6 When exercising adjudicative powers, benchers shall behave in a judicial manner.

1.7 Benchers may not publish or otherwise communicate or disclose to anyone outside members of Convocation matters discussed, information received, decisions made during the course of in-camera sessions.

The following matters are in-camera subject to determination to the contrary by a vote in Convocation:

- negotiations with government
- on-going litigation involving the Society
- Law Society personnel matters
- information of a sensitive or personal nature
- any matter at the discretion of the Treasurer.

- 1.8 Benchers sitting on hearing panels must adhere to the provisions set out in the guidelines for applications to proceed in camera and must strictly maintain the confidentiality of all matters subsequently heard in camera.
- 1.9 All members of committees, task forces and working groups must respect the confidentiality of in-camera matters. Accordingly, the following matters are in-camera:
- negotiations with government
 - on-going litigation involving the Society
 - Law Society personnel matters
 - information of a sensitive or personal nature
 - any matter at the discretion of the Chair.

G. CONVOCATION COMMITTEE AND TASK FORCE PRINCIPLES

- 1.0 Committees, task forces and working groups must adhere to the Policy Governance Model.
- 1.1 The principle of minimalism shall apply to the number of committees and task forces; that is, Convocation should not establish more committees and task forces than it needs to further its mission.
- 1.2 The role of committees and task forces is not to establish policy but to *assist* Convocation in doing so. Accordingly, committees and task forces shall identify all reasonable policy options and implications to inform Convocation's decisions.
- 1.3 Committees shall assist Convocation in setting policy on ongoing matters which further the core mandate and responsibilities of the Law Society.
- 1.4 Task forces shall assist Convocation in setting policy on specific matters on a time-limited basis. All task forces must have clearly articulated terms of reference and a sunset clause.
- 1.5 Convocation, on the recommendation of the Treasurer shall establish committees and task forces and appoint members to committees including their chairs and vice-chairs. The Treasurer appoints members of task forces and their chairs and vice-chairs.
- 1.6 Chairs and vice-chairs of committees and task forces must be benchers.
- 1.7 All committee and task force members are equal and may vote. Subject to 1.6, membership on committees and task forces is not restricted to benchers. Benchers may attend meetings of any committee or task force, but voting is restricted to members of committees only.
- 1.8 The results of committee and task force proceedings are public unless the committee or task force determines otherwise in accordance with Convocation's provisions regarding confidentiality as set out in 1.9 of *Section F: Bencher Code of Conduct*.

2.0 Committees shall:

- adhere to their mandates and/or terms of reference as established by Convocation and vary same only with the approval of Convocation.
- report regularly to Convocation regarding all work in progress
- be constituted so as to ensure broad representation
- meet in camera unless the committee determines otherwise
- in their reports to Convocation, ensure that a range of options for each matter recommended for approval has been considered by the committee and has been identified for Convocation, together with the implications thereof.
- not perform staff/administrative work.

2.1 Task forces shall:

- adhere to their mandates and/or terms of reference as established by Convocation and vary same only with the approval of Convocation
- in cases where their mandate affects the work or responsibilities of committees or other task forces, consult with those committees or task forces before submitting their final report to Convocation
- report to Convocation as directed
- be constituted so as to ensure broad representation
- meet in camera unless the task force determines otherwise
- in their reports to Convocation, ensure that a range of options for each matter presented for approval has been considered by the task force and has been identified for Convocation, together with the implications thereof
- not perform staff/administrative work

2.2 Working groups:

- shall carry out such discrete and time limited functions and duties as are assigned to them by the committee to which they report
- may be comprised of non-benchers at the discretion of the committee chair
- may be chaired by non-benchers.

3.0 Chairs of committees shall:

- ensure that a plan and timetable for the work of their committee is established on an annual basis in consultation with committee members, staff and the Treasurer
- strike working groups where necessary to perform the work of the committee as set out in its mandate
- consult regularly with other committee chairs and the Treasurer re: the work of their committee
- report regularly on work in progress to the Treasurer and Convocation
- on a monthly basis, prepare agendas in consultation with staff
- ensure that the content of committee reports conforms to the guidelines established by Convocation.

H. COMMITTEE STRUCTURE

1. Accreditation/Admissions/Access

Mandate:

To develop for Convocation's approval:

- the entrance requirements for admission to the bar admission course of persons who have not been called to the bar or admitted as solicitors elsewhere
- listings of courses and universities recognized by the Law Society as meeting the requirements for entry into the bar admission course
- policies to govern the transfer of candidates who are members of other governing bodies of the legal profession within Canada and elsewhere
- policies to ensure that the accreditation process operates in a reliable, fair, open and equitable manner
- policies to promote equitable representation of women and visible minorities in the legal profession.

Policy examples:

- parameters/standards for admission to the bar admission course
- conditions for admission to the Ontario bar
- good character guidelines for admission
- prescribe those foreign legal training credentials that will be recognized in Ontario.

2. Professional Regulation

Mandate:

To identify for Convocation's approval:

- policy options on all matters relating to regulation of the profession in the areas of professional conduct, and fitness to practice
- policies and guidelines for the prosecution of unauthorized practice

Policy examples:

- Rules of Professional Conduct
- standards that must be met by members who participate in remedial programs because their practices have fallen below a satisfactory standard
- policies and procedures for the investigation and prosecution of complaints of professional misconduct
- guidelines for initiating prosecutions of unauthorized practice
- members' financial reporting requirements to the Law Society

3. Professional Development & Competence

Mandate:

To develop for Convocation's approval:

- policy options and strategic objectives for those Law Society programs and services which are designed to assist lawyers to enhance their competence and professional growth.

Policy examples:

- standards for various areas of legal practice
- goals for the delivery of province-wide CLE
- certification standards for accredited specialty areas
- strategies for the delivery of technology and information services to members
- requirements for requalification candidates

4. Legal Aid: Judicare & Clinic Systems

Mandate:

To be developed following conclusion of operational review.

Policy examples:

To be developed following conclusion of operational review.

5. Finance & Audit

Not primarily a policy making committee. Performs a due diligence function on behalf of Convocation. Its primary purpose is to monitor performance on behalf of Convocation.

Mandate:

- receive and review interim and annual financial statements for LSUC, LPIC and Legal Aid
- review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Law Society
- recommend the appointment of the external auditor and review the proposed audit scope, fees and annual Auditor's Management letter
- review budget plans and projections, provide comments and advice and recommend approval by Convocation

Policy examples:

- financial policies and controls
- audit scope
- budget

I. ANNUAL BENCHER PLANNING CYCLE

- 1.0 To accomplish its job to govern with a long-term strategic perspective Convocation shall on an annual basis:
- re-examine its Ends policies
 - set a 12-month agenda for its deliberations and policy development
 - instruct the Chief Executive Officer to prepare an implementation plan to deliver Convocation's strategic plan/agenda.
- 1.1 These activities shall precede the creation of the budget for the following year.

III. BENCHER-STAFF RELATIONS

A. Chief Executive Role

The CEO is accountable to Convocation acting as a body. Convocation will instruct the CEO through written policies, delegating to him/her interpretation and implementation of those policies.

The CEO will carry out the statutory powers and duties of that office.

B. Delegation to the Chief Executive Officer

While Convocation's job is defined as establishing policies to achieve the mission and ends of the Law Society, the implementation and subsidiary policy development is delegated to the CEO. *All Convocation authority delegated to staff is delegated through the CEO*, so that all authority and accountability of staff--as far as Convocation is concerned--is considered to be the authority and accountability of the CEO.

1. Convocation will direct the CEO to achieve specified results, through the establishment of Mission & Ends policies. Convocation limits the latitude the CEO may exercise in practices, procedures, methods and conduct through Part IV: Executive Limitations policies.
2. As long as the CEO uses any reasonable interpretation of Part I: Mission & Ends and Part IV: Executive Limitations policies, the CEO is authorized to establish all further means or procedural policies, make all decisions, take all actions, establish all practices and develop all activities necessary to achieve the results directed by Convocation.
3. Convocation may change its Mission & Ends and Executive Limitations policies, thereby shifting the boundary between Convocation and the CEO's domain. By so doing, Convocation changes the latitude of choice given to the CEO. But so long as any particular delegation is in place, Convocation and the benchers will respect and support the chief executive's choices.

4. Only decisions of the benchers acting in Convocation are binding upon the CEO.
 - a) Decisions or instructions of individual benchers, officers, or committees are not binding on the CEO except in rare instances when Convocation has specifically authorized such exercise of authority.
 - b) In the case of benchers or committees requesting information or assistance without Convocation's authorization, the CEO may decline such requests if they are disruptive or require--in his/her judgment--a material amount of staff time or unbudgeted funds.

C. CEO JOB DESCRIPTION

As Convocation's single official link to the operations of the Law Society, the CEO's performance will be considered to be synonymous with the Society's performance as a whole.

Consequently, the CEO's job is to:

1. execute Convocation's policies
2. fulfil his/her obligations under s.8 (1) of *The Law Society Act* and Rules
3. operate within the boundaries of prudence and ethics established by Convocation in Part III: Executive Limitations policies.

D. MONITORING EXECUTIVE PERFORMANCE

The CEO's performance is tied to how well the Law Society is performing. The criteria for monitoring are the extent to which Convocation's Mission & Ends policies are being implemented, whether the CEO is fulfilling his/her statutory obligations, and whether he/she is in compliance with Executive Limitations policies. Any evaluation of CEO performance, formal or informal, may be derived only from these criteria.

1. The purpose of monitoring is simply to determine the degree to which the CEO is fulfilling Convocation's policies and his/her statutory obligations. Information which does not do this will not be monitored.(Convocation's time is to be used to create the future rather than to review the past).
2. Performance may be monitored in one or more of three ways:
 - a) Internal report: Disclosure of compliance information to Convocation from the CEO.
 - b) External report: Discovery of compliance information by a disinterested, external auditor, or source who is selected by and reports directly to

Convocation. Such reports must assess executive performance only against policies of Convocation, not those of the external party unless Convocation has previously indicated that party's opinion to be the standard.

- c) Direct inspection by Convocation: Discovery of compliance information by Convocation or its designee. This includes the inspection of documents, activities or circumstances directed by Convocation which allows a "prudent person" test of policy compliance.
3. Any policy can be monitored by any method at any time by Convocation. For regular monitoring, however, each Part I: Mission & Ends and Part IV: Executive Limitations policy will be classified by Convocation according to frequency and method.
- a) Financial planning will be monitored internally quarterly.
 - b) Human resources and staff treatment policies will be monitored internally annually.
 - c) The financial condition of the Society will be monitored internally by the Finance & Audit Committee providing to Convocation a summary of financial and management information relating to the General, Errors & Omissions and Lawyers Fund for Client Compensation Funds quarterly, and annually by an external audit.
 - d) The administration of the Society's assets will be monitored by CEO providing investment reports to the Finance & Audit Committee quarterly, and such will also be the subject of the annual external audit.
 - e) Compensation and benefits of Society staff will be reviewed annually by the CEO.
 - f) Communication and advice from the CEO will be monitored directly semi-annually.
4. Each year Convocation will have a formal evaluation of the CEO to assess his/her compliance with Convocation's policies and CEO performance expectations. That process will normally include the following elements:
- a) The CEO's annual report to Convocation
 - b) Self-assessment by the CEO
 - c) Treasurer's meeting with the CEO to discuss his/her annual performance
 - d) Convocation's approval of the final performance review report
 - e) Convocation's approval of performance expectations for the CEO for the coming year.

IV. EXECUTIVE LIMITATIONS

A. BUDGETING

- 1.0 Unless directed by Convocation, the Chief Executive Officer shall not:
- allow operating expenses to deviate from the budget in any significant way

- allow expenditures to deviate materially from the Society's mission, priorities and programs
- present a budget without:
 - a reasonable projection of revenues & expenses
 - disclosure of planning assumptions.
 - disclosure of operating and capital items.
- incur debt on behalf of the Law Society of Upper Canada, other than an operating line of credit.

B. ASSET ADMINISTRATION AND ACQUISITION OF SERVICES

- 1.0 Unless directed otherwise by Convocation, the CEO shall not:
- allow Society funds to be invested except in accordance with the Society's Investment Policy
 - allow physical assets to be subjected to improper wear and tear or insufficient maintenance
 - operate without adequate insurance
 - make any capital purchases or commit the Society to any capital purchase of a value greater than \$100,000
 - make any purchase:
 - if normally prudent protection against conflict of interest has not been taken
 - of over \$10,000 without having obtained competitive prices and quality, unless fully justified and documented
 - contract for any service that does not comply with the Law Society's policy on retaining services
 - keep books and records, receive, process or disburse funds under controls which are insufficient to meet the Society's auditor's standards.
 - acquire, encumber, or dispose of real property.

C. FINANCIAL CONDITION

- 1.0 The Chief Executive Officer shall protect the financial stability of the Law Society and shall not:
- allow tax payments or other government ordered payments or filings to be overdue or inaccurately filed.
 - fail to monitor changes in legislation or legislative interpretation affecting Law Society finances and take appropriate action to protect the Law Society or each fund from liabilities arising from such changes.
 - use reserves (except for the Errors & Omissions fund) except as budgeted.

D. HUMAN RESOURCES PRINCIPLES

- 1.0 The Chief Executive Officer shall not cause or allow conditions that are unfair or undignified to staff.
- 1.2 The Chief Executive Officer shall not operate without:
- written personnel procedures that clarify personnel rules for staff, provide effective handling of grievances, or protect against wrongful conditions
 - job descriptions and regular performance appraisals for all staff
- 1.3 The Chief Executive Officer shall not operate without a workplace equity policy for staff that:
- recognizes that every person has the right to equal opportunity without discrimination in matters relating to employment; and
 - prohibits the treatment of any person in a discriminatory manner because of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age; and
- 1.4 The Chief Executive Officer shall not operate without a workplace harassment policy for staff that prohibits the harassment of any person on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age.
- 1.5 The Chief Executive Officer shall not operate without being in compliance with all rules of the Law Society of Upper Canada, and relevant provincial and federal legislation.

E. COMPENSATION AND BENEFITS

- 1.0. With respect to employment, compensation and benefits to employees, consultants, contract workers and volunteers, the Chief Executive Officer shall not jeopardize the Society's fiscal stability.
- 1.1. The Chief Executive Officer shall not change his/her compensation and benefits.
- 1.2. The Chief Executive Officer shall not establish current compensation and benefits which deviate materially from the geographic or professional market for the skills employed.
- 1.3. The Chief Executive Officer shall not create compensation obligations that continue over a longer term than revenues can safely be projected.
- 1.4. The Chief Executive Officer shall not fail to maintain a parental leave policy for staff.

F. COMMUNICATION AND COUNSEL TO CONVOCATION

The CEO must provide Convocation with sufficient information and advice so that benchers are reasonably informed.

Accordingly, the CEO must not:

1. Neglect to submit monitoring data required by the benchers (see policy on Monitoring Executive Performance) in a timely, accurate and understandable fashion, directly addressing provisions of the policies being monitored.
2. Let Convocation be unaware of:
 - a) anticipated adverse media coverage
 - b) material external and internal changes, particularly changes in the assumptions upon which any Convocation policy has previously been established
 - c) lawsuits affecting the Law Society
 - d) relevant judicial decisions and pronouncements that create significant change in the law of governance of the legal profession
 - e) hearing reports
 - f) relevant legislation, proposed legislation and policy initiatives of government, that could compromise the independence of the legal profession.
3. Fail to advise Convocation if the benchers are not in compliance with their own policies on Part II: Governance Process and Part III: Board-Staff Relations, particularly in the case of bencher behaviour which is detrimental to the working relationship between the benchers and the CEO.

4. Fail to provide Convocation with as many staff and external points of view, issues and options as required to allow Convocation to make fully informed choices and decisions. All policy matters for deliberation by Convocation must address the following components:
 - an analysis of options available
 - economic and financial impacts on the Law Society, the profession and the public
 - impact on Law Society staffing
 - need for legislative change
 - a summary of consultations that have taken place.
5. Present information in unnecessarily complex or lengthy form.
6. Fail to deal with Convocation as a whole..
7. Fail to report in a timely manner actual or anticipated noncompliance with any policy of Convocation.

APPENDIX D

POLICY DEVELOPMENT PROCEDURES & POLICY PROPOSAL FORMATS

I. SUMMARY OF POLICY COMPONENTS

The following nine components should be included in a policy submission:

1. Title
2. Table of Contents
3. Terms of Reference and Committee Process
4. Executive Summary (optional)
5. Detailed Policy Proposal
 - issue definition
 - background information
 - policy objectives
 - option analysis
6. Consultation Report
7. Implementation plan
8. Evaluation Mechanisms
9. Appendices (Optional)

II. COMPONENTS OF A POLICY PROPOSAL

i) Title

The policy title should be concise and used consistently in all materials, agendas, background documents and reports. Simply labelling a document as the report of a committee is not particularly illuminating and creates difficulties for the purpose of conducting searches in the future.

ii) Table of Contents

In policy reports over five pages a table of contents should be used. The table of contents should list the main parts of the submission, and the supporting documents, if any, in the appendix.

iii) Terms of Reference and Committee Process

The terms of reference of the committee should be set out. In addition the following information concerning the business of the committee should be set out:

- members of the committee
- the number of meetings
- authors of submissions
- individuals, groups or organization representatives who appeared before the committee or who supplied written comments.

iv) ***Executive Summary***

Where a policy submission exceeds ten pages, an executive summary limited to 500 words should be included that summarizes the following:

- a) the issue or problem
- b) why the Law Society is the appropriate body to formulate policy on the issue
- c) optional courses of action and the implications of each in point form
- d) items that may generate contention or disagreement

v) ***Detailed Policy Proposal***

The detailed policy proposal should contain the following elements:

a) ***Issue definition***

The key problem or issue should be clearly and accurately defined. The issue statement focuses on the nature and scope of the problem to be addressed.

b) ***Background information***

Information from various sources (research findings, published literature, input from individuals, groups or other sources both internal and external) is used for the purpose of assessing the seriousness of the issue, determining whether attempts have been made to resolve it in other organizations or jurisdictions, and evaluating the experience reported. Of particular importance is any information concerning past consideration of the issue at the Law Society and the conclusions reached.

c) ***Policy objectives***

Policy objectives indicate what the policy is intended to achieve and what problems it is intended to rectify. A policy may have many objectives, and they may vary in importance for those individuals and groups to whom it is directed. Policy objectives are the **ends or results** to be achieved. Policy objectives should be examined in relation to an organization's overall corporate goals, objectives, strategic plans and other policies. If policy objectives diverge from the established direction of an organization, it may be necessary to change them unless the divergence is considered appropriate or desirable.

d) ***Option analysis***

A range of options should be developed, even in those cases where one course of action seems far superior to any others. In order to generate a spectrum of choice, it is often necessary to identify an initial range of alternatives that is extensive and intentionally imaginative. The remainder make up the list of policy options that will be analysed. The inclusion of Options Analysis in the report will allow Convocation to better follow the thinking processes of the Committees.

The depth of option analysis should be related to the requirements of the issue being addressed. In all cases, analysis must be sufficiently thorough to provide a

solid basis for informed decision making and should be as complete as time and resources allow.

When analysing policy the Law Society should develop an individually tailored checklist of items to be addressed. The checklist should be appropriate to our specific needs. The purpose of the checklist is to provide a useful tool for identifying the pros and cons (costs/benefits) of each option. These should be summarized in the policy proposal together with a brief overview of what problems and risks may flow from each option.

Checklists for option analysis should include the following:

- A determination of the appropriate Law Society role to be played in policy development including a justification for intervention by the Law Society and any considerations of urgency and priority.
- An analysis of the cause of the problem and a statement of research findings including a review of experience in Ontario and other jurisdictions; indication of the extent to which proposed option solves the problem; full statement of direct and indirect implications of policy (both pros and cons).
- A thorough consideration of the financial impacts of the policy on the Law Society must be included
- Options must clearly designate whether changes in legislation, rules or regulations are required to implement the policy. eg. *Law Society Act*, Rules of Professional Conduct, Law Society rules and regulations?
- The impact of each policy option on all affected stakeholders must be considered. eg. segments of the profession, consumers of legal services, the government, etc.

vi) ***Consultation Report***

A consultation report summarizing the findings of consultations with stakeholders should be included eg. results of surveys, polling, one-on-one interviews, town-hall meetings, solicitations for written feedback, etc.

vii) ***Implementation Plan***

Once Convocation has adopted one of the policy options, the CEO will be directed to prepare an implementation plan outlining any necessary measures which must be taken to implement the policy and indicating deadlines for certain phases of the implementation process.

viii) ***Evaluation Mechanisms***

Once Convocation has adopted a certain policy option or course of action, the CEO and staff charged with the execution of same will be required to outline the measures that will be used to evaluate the effectiveness of the proposed policy and will clearly state what indicators will be used so that Convocation can monitor the results. In addition to specifying what monitoring mechanisms will be considered, the proposal should also include a time frame for conducting an evaluation and reporting back on the effectiveness of the policy.

ix) ***Appendix (Optional)***

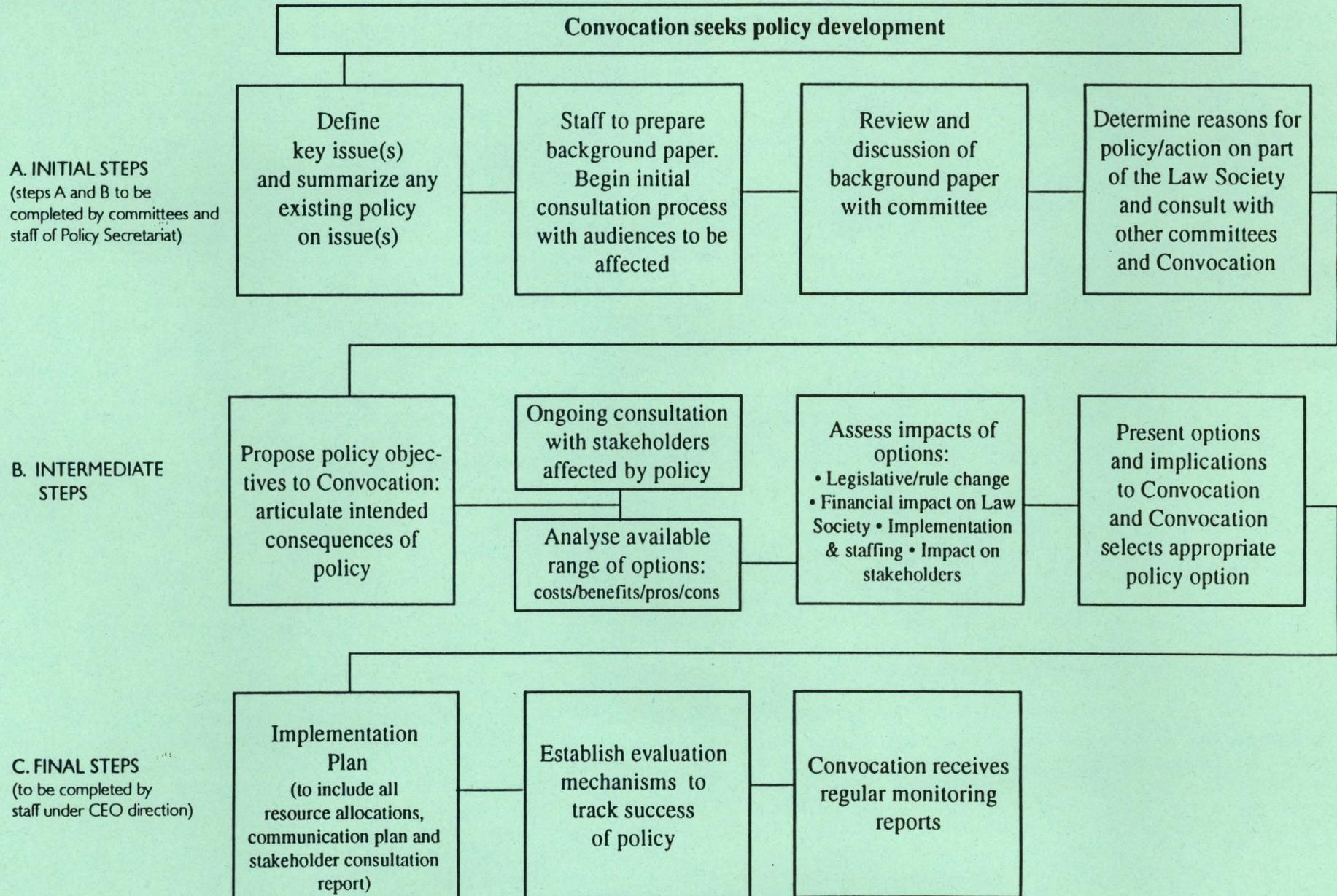
In necessary, supporting documents may be provided, for example, submissions from individuals, correspondence, tables, etc.

The chart on the following page illustrates the process that committees and task forces must follow when developing policy for consideration by Convocation.



The Law Society of
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du Haut-Canada

Process Guidelines for Policy Development by Committees and Task Forces



APPENDIX E

OUTSTANDING MATTERS REQUIRING TASK FORCE/WORKING GROUP

1. Legal Education - CLE Enhancement & MCLE
 - identified as a major task over the next 24 months if report approved by Convocation in June.
 - has considerable element of Professional Standards.
 - possibly a Task Force on its own or combine in a Special Task Force on Continuing Professional Competence which would encompass all aspects of the issue - education, standards, insurance and discipline.
2. BAC Reform
 - continuing study of ways to enhance BAC and integrate it with Law School education.
 - working group.
3. Equity in Legal Education and Practice Committee
 - various projects underway which can be dealt with in new committee structure.
 - Managing Partners' Forum and Visible Minority Symposium work groups.
4. Professional Standards
 - various matters in area of definition of standards (see comments under Legal Education regarding the formation of a Task Force on Continuing Professional Competence in the profession.
5. Women in the Legal Profession
 - various matters relating to review of policies which can be assumed by the new committee structure.
 - Ontario Transitions Re: Contact Survey report expected in fall of 1996 may require a working group to review and recommend actions to the Committee.
6. Discipline Policy
 - various matters which can be rolled into the new committee structure.
 - ongoing revision of amendments to the legislative package - Working Group
7. Libraries & Reporting
 - development of mission statement and technology and budget policies for Great Library and County libraries - Task Force

