27th January, 2011

# MINUTES OF CONVOCATION

Thursday, 27th January, 2011
9:00 a.m.

PRESENT:

The Treasurer (Laurie H. Pawlitza), Aaron (by telephone), Anand, Backhouse (by telephone), Banack, Boyd, Braithwaite, Bredt, Bryant, Campion, Caskey, Conway, Copeland, Crowe, Dickson, Dray, Epstein, Eustace, Falconer, Feinstein, Fleck (by telephone), Furlong, Go, Gold, Gottlieb, Haigh, Hainey, Halajian (by telephone), Hare, Hartman, Heintzman, Hunter (by telephone) Krishna, Lewis, MacKenzie, McGrath, Manes, Marmur (by telephone), Minor, Murray, Potter, Pustina, Rabinovitch, Richer, Robins, Ross, Ruby (by telephone), Sandler, Schabas, Sikand, Silverstein, Simpson, C. Strosberg, H. Strosberg (by telephone), Swaye, Symes, Tough (by telephone), Wardlaw, Wright and Yachetti (by telephone).

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Secretary: James Varro

The Reporter was sworn.

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IN PUBLIC

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## TREASURER'S REMARKS

The Treasurer noted the passing of Caron Wishart, Vice-President of Claims at LAWPRO on December 19, 2010.

Congratulations were extended to Beth Symes and Paul Copeland on their appointments to the Order of Canada.

The Treasurer congratulated Clare Lewis, the Law Society's former Complaints Resolution Commissioner, who was among the appointees named to the Order of Ontario.

Congratulations were extended to Derry Millar who will be awarded The Toronto Lawyers Association's Award of Distinction at its Awards ceremony on February 10, 2011.

The Treasurer announced that a Celebration to honour the life of former Treasurer, Laura Legge, will take place on February 23, 2011 from 5 to 6:30 p.m. in Convocation Hall.

The Treasurer introduced Maria Cifelli, Acting Executive Assistant to the Treasurer.

## DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of November 25, 2010 were confirmed.

## REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Director of Professional Development and Competence reports as follows:

### CALL TO THE BAR AND CERTIFICATE OF FITNESS

#### Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with section 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, January 27th, 2011.

ALL OF WHICH is respectfully submitted

DATED this 27th day of January, 2011

### CANDIDATES FOR CALL TO THE BAR

January 27, 2011

Elizabeth Ann Cole
Caroylnn Verna Conron
Noel Arthur Corriveau
Monica Alice Dingle
Kathy May Dunstan
James McKenzie Ferguson
Véronique Marie-France Marie Fortin
Geneviève Marie Sylvette Frigon
Neil Gurmukh
David Simon Huard
Sara Elizabeth Josselyn
Richard Elliot Mar

David Joseph McCashin
David Gordon Moffat
Kaelen Lee Onusko
Sarah Louise Gauthier Pottle
Yaniv Félix Saragosti
Yves Joseph Denis St-Cyr
David Lea Steeves
Daniel Tsai
Marc Laughton Bird Unger
Christopher Robert Viney
Charles Paul Walker
Matthew David Wanford

It was moved by Mr. Conway, seconded by Ms. Dickson, that the Report of the Director of Professional Development and Competence listing the names of the Call to the Bar candidates be adopted.

Carried

MOTION – APPOINTMENT RESPECTING THE 2011 BENCHER ELECTION

Whereas, subsection 4(4) of By-Law 3 provides as follows:

4.(4) If the Treasurer is a candidate in an election of benchers, Convocation shall, as soon as practicable after the Treasurer's nomination as a candidate is accepted, appoint a licensee to preside over the election and to exercise the powers and perform the duties of the Treasurer under this Part.

It was moved by Mr. Banack, seconded by Mr. Schabas, that –

W. A. Derry Millar of Toronto be appointed to preside over the bencher election.

Carried

TRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Report.

Report to Convocation
January 27, 2011

Tribunals Committee

Committee Members
Mark Sandler (Co-Chair)
Linda Rothstein (Co-Chair)
Alan Gold (Vice-Chair)
Raj Anand
Jack Braithwaite
Christopher Bredt
Paul Dray
Jennifer Halajian
Tom Heintzman
Heather Ross
Paul Schabas
Beth Symes
Bonnie Tough

Purposes of Report: Decision
Information

Prepared by the Policy Secretariat
(Sophia Sperdakos 416-947-5209)

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For Decision

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Two Year Review on Non-Bencher Adjudicator Initiative

COMMITTEE PROCESS

1. The Committee met on January 13, 2011. Committee members Mark Sandler (Co-Chair), Alan Gold (Vice Chair), Raj Anand, Jack Braithwaite, Christopher Bredt, Jennifer Halajian, Paul Schabas and Beth Symes attended. CEO Malcolm Heins attended. Staff members Helena Jankovic, Grace Knakowski, Denise McCourtie, Elliot Spears and Sophia Sperdakos also attended.

FOR DECISION

a) PRE-PROCEEDING CONSENT RESOLUTION CONFERENCE: RULES OF PRACTICE AND PROCEDURE

Motion

2. That Convocation amend the Rules of Practice and Procedure applicable to proceedings before the Law Society Hearing Panel to implement the pre-proceeding consent resolution conference, as set out in the official bilingual version provided at Convocation, the English version also set out at Appendix 2.

Background and Information

3. In April 2009 the Professional Regulation Committee began consideration of a proposal for an expedited investigations and hearing process for lawyers and paralegals who,

   a. admit to conduct allegations against them; and
   b. agree to a joint penalty or range of appropriate penalty to be submitted to a Hearing Panel to obtain an Order.

4. The proposal necessitated discussions with the Tribunals Committee and the Paralegal Standing Committee and culminated in a joint meeting of the Committees in November 2009.

5. In January 2010 Convocation approved the proposed policy for a Pre-Proceeding Consent Resolution Conference as a two-year pilot project. The full report Convocation approved is set out at Appendix 1.

6. The proposed English amendments to the Rules of Practice and Procedure to implement the policy are set out at Appendix 2. The official bilingual version of the proposed rules will be provided under separate cover to Convocation for approval.

APPENDIX 1

PRE-PROCEEDING CONSENT RESOLUTION CONFERENCE
(JOINT REPORT WITH THE PARALEGAL STANDING COMMITTEE AND THE TRIBUNALS COMMITTEE)

Motion

1. That Convocation approve the policy for the Pre-Proceeding Consent Resolution Conference for a two-year pilot project.

Introduction and Background

2. In April 2009, the Committee began consideration of a proposal for an expedited investigations and hearing process for lawyers and paralegals who admit to conduct allegations against them and agree to a joint penalty to be submitted to a Hearing Panel to obtain an Order. The proposal necessitated discussions with the Tribunals Committee

and the Paralegal Standing Committee, and culminated in a joint meeting of the Committees in November 2009.

3. This report includes the Committees' joint proposal for the new process, which is titled the Pre-Proceeding Consent Resolution Conference ("the Conference"), for Convocation's consideration.

4. If approved, amendments to the *Rules of Practice and Procedure* to implement the proposal will be required. These amendments will be presented at a future Convocation.

Why the Conference is Being Proposed

5. The Conference is intended to provide lawyers and paralegals with an alternative process to the regular investigations and hearing stream. Through this process, they may admit to conduct allegations and consent to a joint penalty to be submitted to a Hearing Panel for an Order.

6. The proposed process:

   a. is flexible in that it provides for negotiations at an early stage for lawyers and paralegals who are interested in making early admissions in aid of a fast outcome that is more certain;
   b. has the potential to reduce the time and resources required for full investigation and prosecution of some cases in an environment where caseloads that require a discipline response are increasing[1] ;
   c. will save significant costs for the licensee[2] ; and

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[1] In 2008, the Professional Regulation Division received 15% more cases than in the previous year, including an approximately 7% increase in conduct allegations. In 2009, this number has increased a further 3% and is expected to rise before the end of the year. The increasing number of lawyers and paralegals licensed in Ontario each year makes it unlikely that there will be an overall decrease in the number of complaints.

As the caseload increases, inevitably there is a related increase in cases that will require a formal response up to and including prosecution. An extensive investment of resources is required for any case that is taken to the Proceedings Authorization Committee (PAC) for either resolution or authorization for prosecution. Cases that are prosecuted require even more extensive investigatory and discipline resources. For example, in a mortgage fraud case, Discipline Counsel typically spend 200 to 400 hours working on each case. In more complex cases, Counsel spend in excess of 400 hours.

[2] Under the current process, where the evidence suggests that an investigation is likely to require authorization for a conduct application, the full investigation and discipline process must be deployed. This is the case even where the lawyer or paralegal who is the subject of the investigation admits to the wrongdoing and is seeking an early conclusion with sanction. There is no alternative fast track process. Although many hearings are streamlined at the hearing stage through Agreed Statements of Fact (ASF), this occurs after the completion of the full investigation (Investigation Report, Authorization Memorandum, witness statements, disclosure completed). In the absence of an ASF, Discipline Counsel must prepare for a fully contested hearing. Moreover, the experience of staff with lawyer complaints is that in cases where a lawyer considers admitting to wrongdoing to complete the matter quickly at the investigation stage, the lawyer's willingness to cooperate is significantly diminished by the time the lawyer reaches discipline. By that point, the lawyer has invested time and resources in the process and is often inclined to resist full engagement in the process.

d. with increased efficiencies, will continue to provide the public with a transparent and appropriate outcome in response to a conduct issue.

Cases Suitable for the Process

7. The Conference would be suitable for cases that meet the criteria discussed below, regardless of the nature of the conduct.[3]

8. Since the public interest is paramount in the Law Society's regulatory processes, cases of a serious nature and that present a novel issue that should be fully tried at a hearing will not be appropriate for the process. Further, a case will not be appropriate for the process if there is a concern that sufficient facts cannot be included in the record of the hearing resulting from the Conference to satisfy the Law Society's obligation to have a transparent and fair process.

9. There will also be other cases where the public interest requires that there be a full hearing on the merits. The Proceedings Authorization Committee (PAC), which will be involved in approving a case for the process, as described below, will have the opportunity to apply these criteria when reviewing cases that may be suitable for a Conference.

Overview of the Process

10. Lawyers and paralegals would be notified of the availability of the Conference at the start of an investigation. A decision to move a matter to a Conference would be made only after an investigation sufficient to ensure that the regulatory issues are known and complete. The process would be available only where no disciplinary proceedings have been authorized in the case.

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[3] To elaborate:

Mortgage fraud. The evidence used in a mortgage fraud case is largely documentary. In this type of case, the Society can often be certain that the lawyer's admissions are supported by the evidence, and can assess the appropriate penalty to be proposed to the lawyer and his or her counsel. Given the size of mortgage fraud investigation files, the time saved by not having to prepare the file for disclosure and for hearing, not having to prepare witnesses and forgoing the hearing, are significant.

Financial transactions. The evidence used in cases of financial misconduct is often supported by documents. Where documentary evidence is lacking, for example, where a lawyer or paralegal's books and records are not up to date, the lawyer's or paralegal's admissions would assist the Society in completing its investigation and would save the time and resources required for a contested hearing.

Fail to serve. Where a lawyer or paralegal fails to serve his or her clients, evidence is obtained from the client file, court documents and from the lawyer or paralegal and clients. Where the lawyer or paralegal does not admit to the allegations, they can take a significant amount of time to prove. If a lawyer or paralegal is willing to admit to a failure to serve his or her clients, consideration should be given to the appropriateness of the consent process.

Professionalism. Where allegations of incivility or misleading the court arise out of proceedings, the factual issue of what the lawyer or paralegal said or did may not be in dispute and is often supported by transcripts or documents. However, the lawyer or paralegal often raises a defence justifying his or her conduct, for example, on the basis of the actions of the opposing party or the adjudicator. Investigating and prosecuting these cases is very time-consuming. If a lawyer or paralegal is willing to agree to a discipline outcome and penalty, consideration should be given to the appropriateness of the consent process and the fact that it will result in a public order and record of this conduct.

11. Cases dealt with through the Conference process would result in a Hearing Panel Order or would be returned to the Society for further investigation.

12. If the parties agree on the facts and penalty, after authorization by the PAC, the agreement would be considered at the Conference (a meeting of a three-person panel similar to a pre-hearing conference). If the agreement is approved, the Notice of Application in the matter would be issued and served. The Conference panel would then convene as the Hearing Panel and order the agreed-upon result. Some matters may be heard by a single member of the Hearing Panel, selected from the three panel members who convened for the Conference.

13. If the Conference panel rejects the agreement, the Law Society would resume its investigation.

Pilot Project

14. As this is a new process, the Committees are proposing a pilot project. The pilot project would provide for a two year review on the anniversary of the approval of the policy by Convocation, at which time it could be continued, amended or ended.

Details of the Conference Process

15. The following is a narrative description of the steps in the proposed Conference. A diagram following paragraph 35 illustrates the process.

<u>Step 1 - Initiating the Conference</u>

16. Either the lawyer/paralegal or the Law Society may initiate discussion about the Conference. The Director, Professional Regulation must approve a case in order for it to be diverted to this process. The Director will only approve a case where, in the Director's opinion, diversion would fulfill the Law Society's duty to act in a timely, open and efficient manner and its duty to protect the public interest.

17. In addition to the general test set out in paragraph 16 above, before approving a case, the Director must ensure that the following criteria are met:

    a. The public interest can be addressed through a consent order. Cases will not be included in the process if they present novel issues, or issues which, for reasons of regulatory effectiveness or transparency, require a full hearing.
    b. There is sufficient Law Society jurisprudence on the issue of conduct and penalty for the Society to be able to agree to the process (the jurisprudence forms the basis for the Society's agreement to a penalty or range of penalties on the basis of the applicable law and facts);
    c. Discipline proceedings have not yet been authorized in the matter;
    d. The lawyer or paralegal is prepared to admit to the allegations made by the Society;
    e. There is no issue of failure to cooperate with the Law Society; for example, the lawyer or paralegal is responding promptly to the Law Society;

f. The lawyer or paralegal agrees to abide by the timeline of 30 days to arrive at an agreement;
g. The Law Society has no concerns about the lawyer's or paralegal's capacity to engage in negotiations;
h. The lawyer or paralegal understands that the result of the Conference will be a public hearing, although it will be abbreviated, and a public Order;
i. The lawyer or paralegal has legal representation, failing which the lawyer or paralegal affirms that he or she has been advised to obtain independent legal advice about his or her rights in the Conference process.

18. The Law Society has the right to decide that a case is not suitable for the Conference where any of the factors listed in paragraphs 16 and 17 above would make it unsuitable or where the Law Society is not satisfied that there has been sufficient investigation to make a determination on the suitability of the process.

19. Other matters may affect the Law Society decision to continue with the process. For example, if new evidence relevant to the subject of the Conference comes to the Law Society's attention, or if allegations of misconduct about the lawyer or paralegal arise after the process has begun, it may not be appropriate for the Law Society to continue with the resolution of the original matter pending the assessment of the evidence or the outcome of the new investigation.

Step 2 - Diversion into the Conference Process

20. The Law Society and the lawyer or paralegal would negotiate a tentative agreement on admissions and penalty. The Law Society would conduct a fast-track investigation before finalizing the agreement. The Law Society would obtain the lawyer's or paralegal's admissions and such evidence as necessary to satisfy the Law Society that the admissions are accurate and would support a finding of professional misconduct or conduct unbecoming.

21. The consent proposal would be prepared by the Law Society and presented to the lawyer or paralegal. The lawyer or paralegal would have 30 days to accept or reject the agreement, or to negotiate changes with the Law Society. The consent proposal would be based on a standard template that includes the lawyer's or paralegal's admissions and the joint penalty proposal, including an explanation of the basis for the penalty recommendation. The template will include the lawyer's or paralegal's declaration that the information provided is complete and accurate.

22. Where there is no agreement on penalty, the parties may still use the process if there is agreement on a finding of professional misconduct and agreement on the range of an appropriate penalty. In that case, the parties would provide their position on the range of penalty and this will be included in the documentation filed for the Conference.

23. With agreement as described above, the case will proceed to hearing based on the penalty or the range of penalty submitted.

24. If one of the parties is unable to agree to the outcome, the consent process would terminate and the matter would be returned to the Investigation department. The documents prepared in support of the Conference would be excluded from any further proceedings.

Step 3 - Submission of the Consent Proposal to the PAC

25. Upon approval of the agreement by the Director, Professional Regulation, the consent proposal would be presented to the PAC for authorization of a conduct proceeding and authorization to proceed with the Conference.

26. As with all conduct proceedings, pursuant to By-Law 11[4] , section 51(2)), the PAC must be satisfied that there are reasonable grounds for believing that the lawyer or paralegal has contravened section 33 of the *Law Society Act.*

27. If the PAC approves the agreement, the matter would be submitted to a three-person Conference panel for consideration. The Notice of Application would not be issued at this stage.

28. If the PAC is not satisfied to the requisite standard that discipline proceedings are warranted, the consent agreement would fail and the matter would be returned to the Investigation department to proceed in the normal course.

Step 4 - Presentation to a Conference Panel

29. The proposal would be presented at the Conference for approval. The submission would include a draft Notice of Application, a draft Order and the consents from the lawyer or paralegal and the Law Society that if the individuals who convene as the Conference panel accept the proposal, they may subsequently convene as the Hearing Panel to determine the matter. The Hearing Panel would not meet until after the Notice of Application is issued and served.

30. Consistent with the current Convocation policy on joint submissions (attached as [TAB 1]), the members of the Conference panel should accept the consent proposal unless the panel concludes that the joint submission on penalty is outside the reasonable range, in the circumstances.

31. Where the Conference panel does not accept the joint submission, the panel may reject the consent proposal, or may give its views to the parties about the case, including penalty. The parties may agree to adopt the Conference panel's views about the case and the penalty the panel proposes. The decision resulting from the Conference is by consent only. If the panel or either party disagrees, the proposal would fail. No costs are to be awarded to either party in a subsequent proceeding for failure to accept an alternate proposal by the Conference panel.

[4] Regulation of Conduct, Capacity and Professional Competence.

32. If the Conference panel does not approve the proposal, the Law Society would complete its investigation and proceed through the process in the normal manner. The draft agreement and Order are not admissible for the purpose of any subsequent investigation and prosecution of the same allegations.

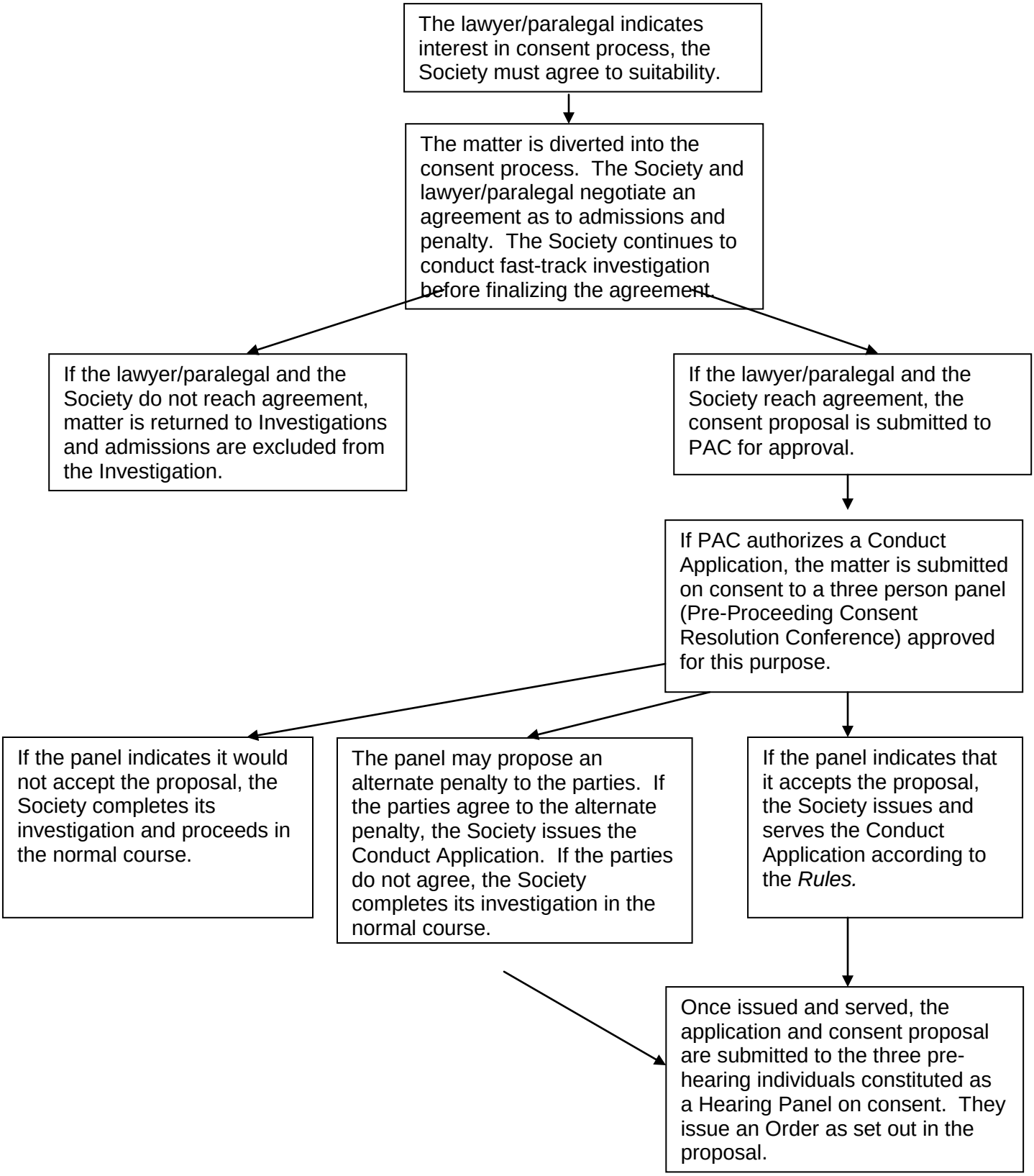
Step 5 – The Hearing

33. If the Conference panel approves the proposal, the Law Society would then issue the Notice of Application. Once issued, the Notice would be served according to the *Rules of Practice and Procedure* and would become a public document.

34. A hearing would be held before the individuals who convened as the Conference panel and who now sit as the Hearing Panel for the purpose of making a determination on the consent proposal. Some matters may be heard by a single member of the Hearing Panel, who would be selected from the three persons who convened for the Conference.

35. The proposal, which includes the lawyer's or paralegal's admissions, would be filed as an exhibit at the hearing to become part of the public record. The Hearing Panel would issue an Order in the normal course. Reasons for the Order are an important component of the public nature of this process.

PROPOSED CONSENT PROCESS



Key Elements of the Process

36. The following highlights some key elements of this consent process.

Transparency

37. If the proposed agreement is approved by the PAC and at the Conference, it will result in public notice, a public hearing and a public Order. From a public perspective, there is no significant difference between the current process in which matters are resolved through an Agreed Statement of Fact (ASF), and the Conference process. The following chart illustrates the similarities and differences between the two processes.

| Current Process | Conference Process |
|---|---|
| Non-public investigation | Non-public investigation |
| Non-public, off-the-record settlement discussions | Non-public, off-the-record consent resolution discussions |
| | Non-public drafting of consent agreement |
| | Non-public agreement on disposition |
| Non-public consideration by PAC | Non-public consideration by PAC |
| **Public** Notice of Application | Non-public settlement conf. |
| Non-public Pre-Hearing Conf. | **Public** Notice of Application |
| Non-public drafting of ASF | |
| Non-public agreement on disposition | |
| **Public** hearing; revelation of ASF and joint submission on disposition | **Public** hearing; revelation of consent agreement and joint submission on disposition |

38. As illustrated above, the Notice of Application is issued and served following the approval at the Conference, and this is necessary for the following reason. If the Conference panel were to reject an agreement, the proposal would fail, and the Society would complete its investigation. If the Notice was public at that time and the Conference panel rejected the proposal, it would be unfair to the licensee and difficult for the Society to complete its confidential investigation.

39. Once the Notice of Application is issued and served, it becomes public. As with all investigations, new complaints are sometimes received as a result of this public notice. If a new complaint was received after the issuance of the Notice of Application that results from the Conference, that complaint would be investigated separately from the complaint that is the subject of the consent proposal, as is done in the regular discipline stream.

Penalties and Mitigation

40. The agreed penalty in the consent proposal must be proportionate. It should reflect penalties imposed in cases with comparable findings, taking into account the costs saved by making the early admission. All penalties would be available in this process, including revocation.

41. There may be a range of possible penalties. A number of factors informing penalty are described in *Law Society of Upper Canada v. Ricardo Max Aguirre*, 2007 ONLSHP 0046 and these are all relevant to the consent process as well. The following factors inform the appropriate penalty to be proposed, with those most relevant to the consent process emphasized:

    a. The existence or absence of a prior disciplinary record;
    b. *The existence or absence of remorse, acceptance of responsibility or an understanding of the effect of the misconduct on others;*
    c. Whether the member has since complied with his or her obligations by responding to or otherwise co-operating with the Society;
    d. The extent and duration of the misconduct;
    e. The potential impact of the member's misconduct upon others;
    f. *Whether the member has admitted misconduct, and obviated the necessity of its proof*;
    g. Whether there are extenuating circumstances (medical, family-related or others) that might explain, in whole or in part, the misconduct);
    h. Whether the misconduct is out-of-character, or, conversely, likely to recur.

Three-Member Conference Panel and Hearing Panel

42. The proposed process provides that the same individuals would convene for the Conference and the Hearing Panel, by consent of the parties.

43. This feature of the proposed process resembles the process that may be followed when agreement is reached on facts and issues at a pre-hearing conference before a single panelist and, with the consent of the parties, the single panelist presides at the hearing on the merits. Rule 22.10 (2) of the *Rules of Practice and Procedure* provides that a single panel member may hear a case, on consent of the parties. This is an alternative dispute resolution process which, with adequate protections, is useful for the parties and the tribunal. In the proposed Conference process, rather than a single individual convening for the pre-proceeding Conference, three individuals would convene as the Conference panel.

44. There are two reasons for having a three-person panel at the Conference. First, the agreement of a three-person panel on the outcome between the Society and a lawyer or paralegal would have greater weight. Secondly, if only one member of a three-person panel were to preside at the Conference, the Hearing Panel might reject the agreement that the Conference panel had accepted.

45. At the hearing stage that follows the Conference, in some cases, it may be appropriate for a single member of the Hearing Panel to preside at the hearing. This person would be selected from the three persons who convened as the Conference panel, as he or she would be familiar with the facts and the issues that led to the consent agreement. Similar to the process described in paragraph 43, this person would sit as a single member with the consent of the parties.[5]

Legal Representation

46. The process is predicated on the lawyer or paralegal having legal representation. The lawyer's or paralegal's admissions and agreement to the proposal are essential to the success of the consent process. While legal representation is not a prerequisite to participating in the Conference, it would be strongly encouraged by the Society. Lawyers and paralegals who participate in the process would be advised by the Law Society to obtain legal advice.

Timelines

47. Since the Conference is a diversionary, "without prejudice" process, it is not in the public interest to stall the investigation during protracted negotiations and delay. The Committees propose that the timeline for arriving at an agreement be 30 days from the time that the agreement is presented to the lawyer or paralegal by the Law Society. If agreement is not reached in 30 days, the Law Society would resume its investigation.

Documents and the Record

48. The documents filed before the Hearing Panel should be public in the normal course, with the notation that it is the result of a consent proposal that would also be public as part of the Tribunal record.

Tribunals Office's Administration of the Process

49. Attached at [TAB 2] is a proposed template prepared by the Tribunals Office for the administration of the process, with particular emphasis on ensuring the process is open and transparent and in keeping with general Tribunals administration.

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[5] Ontario Regulation 167/07 (Hearings Before the Hearing and Appeal Panels) provides as follows:

**Proceedings to be heard by one member**

2. (1) Subject to subsection (2), the chair or, in the absence of the chair, the vice-chair, shall assign either one member or three members of the Hearing Panel to a hearing to determine the merits of any of the following applications:

…

2. An application under subsection 34 (1) of the Act, if the parties to the application consent, in accordance with the rules of practice and procedure, to the application being heard by one member of the Hearing Panel.

Amendments to the *Rules of Practice and Procedure*

50. To implement the Conference process, amendments to the *Rules of Practice and Procedure* would be required. They would refer to the process as a "pre-proceeding consent resolution conference", and codify the procedural elements of the process described in this report. Consequential amendments to certain Rules may also be required.

51. Amendments to the Rules will be provided at a future Convocation should Convocation agree to the proposal for the Conference.

TAB 1

CONVOCATION POLICY ON JOINT SUBMISSIONS
(Discipline Policy Committee Report to Convocation)

B.l. Joint Submissions of Counsel

B.1.1. The Committee was asked to consider the manner in which the joint submissions of counsel are currently treated by Discipline Panels, in light of the principles adopted by Convocation on March 27, 1992 in respect of joint submissions.

B.1.2. On March 27, 1992, Convocation adopted the recommendations of this Committee which provided, inter alia,

"5(a) Convocation encourages benchers sitting on discipline committees to accept a joint submission except where the committee concludes that the joint submission is outside a range of penalties that is reasonable in the circumstances.

"5(b) If the Committee, after hearing and considering submissions of counsel, does not accept the joint submission as to a particular penalty or as to the shared submission as to a range of penalties, the Committee will be at liberty to impose the penalty that it deems proper and should give reasons for not accepting the joint submission."

B.l.3. Some members of the Committee expressed concern that these principles are not being followed at the Committee level or at Convocation and that a lack of certainty in the process might discourage counsel from entering into Agreed Statements. The Committee noted that where, following negotiations of an Agreed Statement of Facts on the basis of a joint submission as to penalty, the proposed penalty is rejected, it might be appropriate to provide the Solicitor the option of commencing the hearing anew before another Committee.

B.l.4. Your Committee established a Sub-Committee, chaired by Robert J. Carter, Q.C., to consider the present practice regarding joint submissions at both the Committee level and at Convocation, to consider the consequences of the practice and to report to the Committee with recommendations.

…

ALL OF WHICH is respectfully submitted
DATED this 24th day of February, l995
D. Scott, Chair

THE REPORT WAS ADOPTED

TAB 2

Tribunals Offices' Administration of the Proposed Consent Process

1. Discipline Counsel will request in writing a date from the Hearings Coordinator, Tribunals Office for the Pre-Proceeding Consent Resolution Conference ("the Conference"), and provide a time estimate.

2. The Hearings Coordinator will schedule the Conference date and secure a three person panel as assigned by the Chair of the Hearing Panel.

3. The composition of the Conference panel will mirror the requirements of *Ontario Regulation 167/07* to allow this panel to convert to a Hearing Panel should the parties' proposal to the Conference panel be accepted.

4. The Hearings Coordinator will advise Discipline Counsel and the lawyer or paralegal of the assigned Conference date and panel. The parties will immediately advise the Hearings Coordinator of any conflicts with the date or panel.

5. If the parties' proposal is accepted by the Conference panel, the Hearings Coordinator will attend in person at the Conference to facilitate scheduling a hearing date for the Hearing Panel and parties to convene at a future date.

6. If the matter is to be heard by a single member of the Hearing Panel, the members of the Conference panel shall elect one member to preside on the hearing date as a Hearing Panel and will so notify the Hearings Coordinator.

7. The matter will now follow the same protocol applied by the Tribunals Office as in other hearings.

8. In accordance with Rule 9 of the *Rules of Practice and Procedure*, Discipline Counsel will request the Tribunals Office to issue and file the notice of application and will serve it.

9. Once filed, the notice of application will be publicly available.

10. The notice of application will refer to the hearing date scheduled in paragraph 5 above. The matter will by-pass the Proceedings Management Conference (PMC) and go straight to a hearing date.

11. To satisfy transparency requirements, two to four weeks prior to the hearing date, the Tribunals Office will prepare a summary of the notice of application for publication on the Law Society's "Current Hearings" website.

12. During the hearing, the accepted proposal referred to in paragraph 5 above will be marked as an exhibit and thereby form part of the public record. The Hearing Panel will endorse the notice of application to reflect its Decision and Order as set out in the accepted proposal.

13. After the hearing, the Office will
- prepare any required formal orders from the Hearing Panel's endorsement;
- deliver the Decision and Order and reasons of the Hearing Panel, if any, to the parties;
- publish an order summary on the Law Society's "Tribunal Orders and Dispositions" website and in the *Ontario Reports*; and
- publish the Hearing Panel's reasons, if any on the Canadian Legal Information Institute (CanLII) and Quicklaw databases.

14. The matter will then be closed, catalogued and archived off site.

15. After the matter is closed and on request, it would be made available to the public for viewing or copies of content, unless the Hearing Panel had ordered otherwise in the course of the hearing.

APPENDIX 2

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE
(applicable to proceedings before the Law Society Hearing Panel)
MADE UNDER
SECTION 61.2 OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 27, 2011

MOVED BY

SECONDED BY

THAT the rules of practice and procedure applicable to proceedings before the Law Society Hearing Panel, made by Convocation on February 26, 2009 and amended by Convocation on June 25, 2009 and June 29, 2010, (the "Rules") be amended as follows:

1. The definition of "hearing" in subrule 1.02 (1) of the English version of the Rules is revoked and the following substituted:

"hearing" does not include a consent resolution conference, a proceeding management conference or a pre-hearing conference;

2. Rule 25.01 of the English version of the Rules is amended by adding the following subrule:

Consent resolution conference: no costs

(4) Despite subrules (1) and (2), no costs shall be awarded against the Society or the subject of the proceeding based on,

(a) either party's refusal to participate or either party's withdrawal from participation in a consent resolution conference; or

(b) the fact that a consent resolution conference did not result in the settlement of the decision and order to be made by the Hearing Panel in the conduct proceeding or the settlement of the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding.

3. The English version of the Rules are further amended by adding the following Rule:

RULE 29

CONSENT RESOLUTION CONFERENCE

Definitions

29.01 In this Rule,

"consent resolution conference" means a conference between the Society and the subject of a potential proceeding, that is conducted by a consent resolution panel, held prior to the commencement of the conduct proceeding for the purposes of settling,

(a) the decision and order to be made by the Hearing Panel in the conduct proceeding; or

(b) the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding;

"consent resolution panel" means the panelist or, collectively, the panelists assigned to conduct a consent resolution conference;

"potential proceeding" means a conduct proceeding that has not been commenced;

"subject of a potential proceeding" means the person who will be the subject of a conduct proceeding once it has been commenced.

Consent resolution conference: when shall be conducted

29.02 (1) The chair, or, in the absence of the chair, the vice-chair, of the Hearing Panel shall direct that a consent resolution conference be conducted if the following conditions are present:

1. The Society has obtained the authorization of the Proceedings Authorization Committee,

   i. to commence a conduct proceeding, and

   ii. to request the Hearing Panel to direct that a consent resolution conference be conducted.

2. The conduct proceeding has not been commenced.

3. The Society and the subject of the potential proceeding have agreed to,

   i. the decision and order to be made by the Hearing Panel in the conduct proceeding; or

   ii. the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding.

4. The subject of the potential proceeding has consented to participate in a consent resolution conference.

5. The Society has requested a consent resolution conference.

Who conducts consent resolution conference

(2) Where the chair, or, in the absence of the chair, the vice-chair, of the Hearing Panel directs that a consent resolution conference be conducted under subrule (1), the chair, or, in the absence of the chair, the vice-chair, shall assign either one or three panelists to conduct the consent resolution conference.

Request to Tribunals Office

29.03 (1) The Society may request a consent resolution conference by submitting a request in writing to the Tribunals Office.

Information re conditions

(2) The Society shall include in its written request for a consent resolution conference sufficient information to satisfy the chair, or, in the absence of the chair, the vice-chair, of the Hearing Panel of the existence of the conditions set out in rule 29.02.

Contact information of subject of potential proceeding

(3) The Society shall also include in its written request for a consent resolution conference the name of the subject of the potential proceeding and her or his address for service, telephone number, fax number, if any, and e-mail address, if any.

Notice of consent resolution conference: Society

29.04 Where the chair, or, in the absence of the chair, the vice-chair, of the Hearing Panel directs that a consent resolution conference be conducted, the Tribunals Office shall send to the Society and to the subject of the potential proceeding notice of the date, time and location of the consent resolution conference.

Procedure applicable to consent resolution conference

29.05 (1) The practices and procedures applicable to proceedings before the Hearing Panel that are set out in Rules 2 to 20 and Rules 22 to 28 do not apply with respect to a consent resolution conference.

(2) Subject to this Rule, the practices and procedures applicable with respect to a consent resolution conference shall be determined by the consent resolution panel conducting the consent resolution conference.

Consent resolution conference not open to public

(3) A consent resolution conference shall be conducted in the absence of the public.

Withdrawing participation in consent resolution conference

29.06 (1) At any time before or during the conduct of a consent resolution conference, the Society or the subject of the potential proceeding may withdraw from participating in the consent resolution conference.

Notice of withdrawal

(2) Where the Society or the subject of the potential proceeding wishes to withdraw from participating in the consent resolution conference under subrule (1), the withdrawing party shall so notify in writing the other party and the Tribunals Office.

Settlement at consent resolution conference: commencement of conduct proceeding

29.07 (1) Where a consent resolution conference results in the settlement of the decision and order to be made by the Hearing Panel in the conduct proceeding or the settlement of the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding the Society shall,

(a) commence the conduct proceeding; and

(b) notify the Tribunals Office in writing of the fact and general nature of the settlement at the consent resolution conference not later than the day on which the conduct proceeding is commenced.

Settlement at consent resolution conference: non-application of certain Rules

(2) Where a consent resolution conference results in the settlement of the decision and order to be made by the Hearing Panel in the conduct proceeding, despite rule 1.01, the following Rules do not apply to the conduct proceeding:

1. Rule 6.

2. Rule 7.

3. Rule 8.

4. Rule 12.

5. Rule 13.

6. Rule 14.

7. Rule 16.

8. Rule 19.

9. Rule 20.

10. Rule 21.

11. Rule 22.

No settlement at or withdrawal from consent resolution conference: subsequent hearings

29.08 Where a consent resolution conference does not result in the settlement of the decision and order to be made by the Hearing Panel in the conduct proceeding, or the settlement of the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding, or the Society or the subject of the potential proceeding withdraws from participating in the consent resolution conference under rule 29.06,

(a) no communication shall be made to any member of the Hearing Panel assigned to any hearing in the conduct proceeding with respect to any document specifically created for and any statement made at the consent resolution conference; and

(b) no member of the consent resolution panel that conducted the consent resolution conference shall be assigned to any hearing in the conduct proceeding.

## INFORMATION

### b) TWO YEAR REVIEW ON NON-BENCHER ADJUDICATOR INITIATIVE

Summary

7. In April 2007 Convocation approved the addition of four non-bencher lawyers and four non-bencher non-lawyers to become members of the Law Society's Hearing Panel. It also directed that two years after implementing the recommendation there be a review for Convocation of the manner in which the non-bencher lawyers and the non-bencher non-lawyers have served as adjudicators.

8. The non-bencher lawyers and non-lawyers were appointed in January 2009. As directed by Convocation the Committee is providing the two year review, for Convocation's information.

9. The Committee has concluded that although it is still early to obtain a full picture of the non-bencher adjudicator initiative, indications are that it,

a. enhances the Law Society's ability to effectively adjudicate and manage its hearings process in the public interest,

b. has made it possible to provide important human resources to the Hearing Panel; and

c. offers an opportunity for non-benchers to play a valuable role in Law Society matters and become more aware of issues related to professional regulation.

Introduction and Background

10. In April 2007 Convocation approved a number of recommendations of the Tribunals Composition Task Force including,

> Recommendation 1
> That Convocation approves the eligibility of,
> a. four non-bencher lawyers, and
> b. four non-bencher non-lawyer persons
> to be members of the Law Society's Hearing Panel.
>
> Recommendation 2
> That if Convocation approves recommendation 1, all Hearing Panel members be remunerated on the same basis, except that the non-bencher lawyer and non-bencher non-lawyer members are not required to donate 26 days to the Law Society before being eligible for remuneration.
>
> Recommendation 3
> That Convocation budget annually an amount not exceeding $100,000 for the remuneration and expenses associated with adding non-bencher lawyers and non-bencher non-lawyer persons to the Hearing Panel.
>
> Recommendation 4
> That if Convocation approves Recommendation 1, two years after implementing the recommendation, Convocation authorize a review of the manner in which the non-bencher lawyers and the non-bencher non-lawyer persons have served as adjudicators on the Law Society's Hearing Panel, the results of which are to be reported to Convocation.

11. A process was developed to seek applicants for the adjudicator positions. A notice was placed in the *Ontario Reports* in English and French for lawyer applicants. Copies of the notices are set out at Appendix 3. A description of the process followed for both non-bencher lawyer and non-bencher non-lawyer adjudicator appointments is set out at Appendix 4. The appointments were made in 2009.

Scope of this Report

12. Convocation directed that a review take place after two years of operation of the non-bencher adjudicator initiative. Although it is possible to provide some assessment of the initiative, in the Committee's view there has been insufficient time to fully assess qualitative issues that require the benefit of a longer period. Accordingly, the Committee's report is impressionistic, with a general overview of the initiative over the last two years.

Use of Non-bencher Adjudicators

13. In discussing usage of non-bencher adjudicators it is important to note, as well, that in addition to the four non-bencher lawyer appointees and the four non-bencher non-lawyer appointees, the Law Society has on occasion appointed "temporary" panelists (lawyer and non-lawyer) where needed for French language hearings and temporary paralegal panelists for good character or appeal hearings. The Law Society has authority to do this pursuant to section 49.24.1 of the *Law Society Act.*

14. The issue of French language hearings illustrates one of the benefits of the non-bencher adjudicator initiative in enhancing adjudicative resources. As benchers and lay benchers are elected and appointed, respectively, those able or available to hear French language hearings can vary from time to time. To provide more continuity, three of the four non-bencher lawyer adjudicators and two of the non-bencher non-lawyer adjudicators are bilingual. This reduces the need to use "temporary" panelists. From a public interest perspective it has enhanced resources available to ensure the public and licensees are able to avail themselves of the opportunity to be heard in French.

15. Since Convocation passed the non-bencher adjudicator initiative the Law Society has also been required to populate a significant number of panels to hear paralegal good character matters. This has required extensive use of lay benchers and non-bencher non-lawyer adjudicators as well as temporary paralegal panelists. The non-bencher adjudicator initiative did not include appointments of additional non-bencher paralegal adjudicators. Given that the paralegal good character hearings are currently winding down, the need for additional temporary paralegal panelists may diminish, although this issue may require further discussion in the future.

16. The four non-bencher lawyer candidates and the four non-bencher non-lawyer appointees are sent a hearings schedule, in the same way as bencher adjudicators, and provide their availability to sit on Law Society hearings and other matters. Like all adjudicators they may be scheduled to sit on pre-hearing conferences, hearings, summary hearings, appeals, interlocutory motions, motions in hearings and appeals, short matter dates (hearings estimated by the parties to require less than one day), long matter dates (hearings estimated by the parties to require more than one day) in lawyer and paralegal matters in both English and French.

17. As with all adjudicators the non-bencher adjudicators may be assigned to a matter, with an anticipated time commitment, only to be required to participate for less time because a matter does not proceed or takes less time than anticipated. The reverse may also be true; a matter may take more time than initially anticipated.

18. The non-bencher non-lawyer adjudicators have been used on a number of matters. Their availability has assisted in scheduling hearings over the last two years. The non-bencher lawyers, in particular those who are bilingual, have also had a number of occasions to sit on hearings or otherwise participate.

19. The existence of an additional pool of adjudicators has provided the Chair of the Hearing Panel with additional scheduling flexibility. On occasion these adjudicators have made the difference between being able to schedule a hearing or not when the time commitment involved or the last minute change in scheduling made it impossible to schedule a bencher adjudicator. The availability of additional lay and French speaking adjudicators has also facilitated flexibility in scheduling.

20. The information at Appendix 5 sets out the number of times a non-bencher adjudicator was assigned to matters in 2009 and 2010 and how much actual participation time this represented.[6] It reveals some unevenness in the use of non-bencher adjudicators, particularly non-bencher lawyers. The Committee is of the view that the non-bencher adjudicators must be given ample opportunity to participate in hearings and matters. The goal of the initiative is to develop additional and experienced adjudicative resources to enhance the operation of the Tribunal. This means that it is important to regularly schedule these adjudicators to participate on panels. Greater effort to do so will be made in 2011.

Expenses and Remuneration for Non-Bencher Adjudicators

21. In 2009 the total expenses and remuneration for non-bencher lawyer and non-bencher non-lawyer appointees was $87,099.36, representing the use of five non-lawyers and three lawyers. This was the first year of the initiative and occurred before the paralegal good character hearings were underway. In that year an additional $1,522.02 was spent on two temporary paralegal panelists.

22. From January to November 2010, $153,642.37 was spent on non-bencher lay adjudicators (approximately 60% of the total), non-bencher lawyer adjudicators (approximately 30% of the total), and temporary lawyer and lay adjudicators (approximately 10% of the total). This includes $27,615.75 (18%) for French hearings. Specifically, the expenses and remuneration for,

a. non-bencher lay adjudicators were:

| | | |
|---|---|---|
| Expenses | $31,439.34 | ($3,125.66 of which was for French hearings) |
| Remuneration | $60,274.81 | ($2,300.00 of which was for French hearings) |
| Total | $91,714.15 | ($5,425.66 or which was for French hearings) |

b. non-bencher lawyer adjudicators were:

| | | |
|---|---|---|
| Expenses | $13,455.32 | ($ 4,893.59 of which was for French hearings) |
| Remuneration | $31,873.64 | ($12,700.00 of which was for French hearings) |
| Total | $45,328.96 | ($17,593.59 or which was for French hearings) |

[6] Setting out "no. of times assigned" provides a snapshot of opportunities provided to the non-bencher adjudicator to participate. Often, however, an assigned matter will not proceed, (adjournments, withdrawals, resolutions by ASF, etc.) so the actual participation is reflected in the second number.

a. "temporary" lawyer and lay adjudicators were:

| | | |
|---|---|---|
| Expenses | $ 1,684.45 | ($1,296.50 of which was for French hearings) |
| Remuneration | $14,914.81 | ($3,300.00 of which was for French hearings) |
| Total | $16,599.26 | ($4,596.50 of which was for French hearings) |

2. In November 2010 the Committee reported to Convocation that the $100,000 limit placed on expenses for non-bencher adjudicators had been exceeded. It noted that given,

   a. the requirements of Regulation 167/07;
   b. the Law Society's commitment to having lay benchers on all hearings; and
   c. a licensee's right to a French language hearing,

   non-bencher lawyer and non-bencher non-lawyer appointees were necessarily assigned despite the cap having been reached. It noted that in all likelihood additional funds would have to be expended before the end of 2010 and that it was realistic to expect a similar experience and needs in 2011. In the 2011 budget Convocation included an increase to $175,000.

3. As a regulator of the profession in the public interest the importance of regulatory proceedings being scheduled as expeditiously as possible cannot be over-emphasized. The public in general and complainants in particular, have a right to expect that the Law Society will effectively address the issues of lawyer and paralegal competence, conduct and capacity. The non-bencher adjudicator initiative has provided greater flexibility to the Tribunals process.

4. The Committee also believes that the initiative is providing an additional benefit. Small though the numbers are, a new group of lawyers and lay people are becoming familiar with the Law Society, with the intricacies of professional regulation, the responsibilities that accompany it and the issues that affect lawyers and paralegals. Expanding adjudicative responsibilities beyond benchers strengthens the Law Society's work.

Conclusion

5. The Committee is of the view that the non-bencher adjudicator initiative is proceeding well, has added to the Law Society's capacity to regulate in the public interest and represents an important component of the Law Society's ongoing commitment to transparent, fair, and effective regulatory processes.

Appendix 3

APPENDIX 4

APPOINTMENTS PROCESS FOR NON-BENCHER ADJUDICATORS

1. The Law Society placed advertisements in the Ontario Reports for lawyer applicants. For non-lawyer applicants, it wrote to previous lay benchers and solicited from other regulators the names of lay adjudicators who might meet the Law Society's appointment criteria.

Lawyer Applicants

2. The Law Society received 229 applications from lawyers and 13 applications from non-lawyers. Of these, 133 applications were from lawyers inside Toronto and 96 were from lawyers outside of Toronto. There were 153 male applicants, and 76 female applicants.

3. The then Director, Policy and Tribunals read every lawyer resumé. Only those applicants with prior adjudicator experience were selected for further review. This reduced the number to 70.

4. The Director and other designated staff then reviewed the 70 lawyer applicants against the criteria set out in the advertisement, and selected a short list of 27 lawyers.

5. In June 2008, the Director provided the names of all 229 lawyers, including the 70 with adjudicator experience, and the short list and resumés of the 27 short-listed applicants to a bencher working group of Alan Gold, Larry Banack and Bonnie Warkentin.

6. The Working Group met on July 8, 2008 to review the applicants. It selected a short list of 6 lawyers (three from within Toronto and three from outside Toronto).

7. The shortlisted applicants were then vetted for any Law Society regulatory issues, and their references were checked. The remaining members of the working group, Alan Gold and Larry Banack reviewed the shortlist.

Non-Lawyer Applicants

8. The Law Society received 13 applications from non-lawyers. The Director reviewed the applicants and provided their resumés to the Working Group in June 2008. The Working Group discussed these applicants at its July 8 meeting, and selected a short list of five applicants. The references of the five applicants were checked.

9. Alan Gold and Larry Banack reviewed the applicants following the reference and regulatory checks, and recommended four lawyer and four non-lawyer adjudicators to the Committee for appointment to the Hearing Panel. The Committee reviewed the names and information about their experience and recommends that Convocation invite them to become members of the Hearing Panel.

APPENDIX 5

2009 NON BENCHER HEARING PANEL APPOINTEE ADJUDICATOR ATTENDANCE

| Appointee | Lawyer or non-lawyer[7] appointee | Number of times assigned to a hearing panel | Hearing participation (in hours)[8] |
|---|---|---|---|
| 1 | Lawyer | 3 | 13 |
| 2 | Lawyer | 1 | 7 |
| 3 | Lawyer | 0 | 0 |
| 4 | Lawyer | 0 | 0 |
| 5 | Non-lawyer | 12 | 244 |
| 6 | Non-lawyer | 10 | 151 |
| 7a | Non-lawyer | 4 | 59 |
| 7b[9] | Non-lawyer | 1 | 9 |
| 8 | Non-lawyer | 3 | 21 |
| **Totals** | | **34**<br>**lawyer appointees (4)**<br>**non-lawyer appointees (30)** | **504**<br>**lawyer appointees (20)**<br>**non-lawyer appointees (484)** |

[7] In 2009, the four lawyer appointees to the Hearing Panel were Margot Blight, Adriana Doyle, Jacques Ménard and Howard Ungerman. The five non-lawyer appointees were Andrea Alexander, Anne-Marie Doyle, Barbara Laskin, Maurice Portelance and Sarah Walker.

[8] Includes participation for continuation hearing dates.

[9] Non-lawyer appointee adjudicator 7b replaced non-lawyer appointee adjudicator 7a.

# 2010 NON BENCHER HEARING PANEL APPOINTEE ADJUDICATOR ATTENDANCE

| Appointee | Lawyer or non-lawyer[10] appointee | Number of times assigned to a hearing panel | Hearing participation (in hours) |
|---|---|---|---|
| 1 | Lawyer | 11 | 35 |
| 2 | Lawyer | 12 | 26 |
| 3 | Lawyer | 13 | 87 |
| 4 | Lawyer | 4 | 11 |
| 5 | Non-lawyer | 21 | 255 |
| 6 | Non-lawyer | 17 | 111 |
| 7 | Non-lawyer | 5 | 44 |
| 8 | Non-lawyer | 14 | 81 |
| **Totals** | | **97**<br>**lawyer appointees (40)**<br>**non-lawyer appointees (57)** | **650**<br>**lawyer appointees (159)**<br>**non-lawyer appointees (491)** |

[10] In 2010, the four lawyer appointees to the Hearing Panel were Margot Blight, Adriana Doyle, Jacques Ménard and Howard Ungerman. The four non-lawyer appointees to the Hearing Panel were Andrea Alexander, Barbara Laskin, Maurice Portelance and Sarah Walker.

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

Copy of a notice in the Ontario Reports in English and French re Invitation to Lawyers to apply for Appointment to the Law Society of Upper Canada's Hearing Panel

(Appendix 3, pages 33 – 34)

Re: Pre-Proceeding Consent Resolution Conference: Rules of Practice and Procedure

It was moved by Mr. Sandler, seconded by Mr. Gold, that the Rules of Practice and Procedure be amended to implement the pre-proceeding consent resolution conference as set out in the motion distributed under separate cover.

Carried

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE
(applicable to proceedings before the Law Society Hearing Panel)
MADE UNDER
SECTION 61.2 OF THE *LAW SOCIETY ACT*

THAT the rules of practice and procedure applicable to proceedings before the Law Society Hearing Panel, made by Convocation on February 26, 2009 and amended by Convocation on June 25, 2009 and June 29, 2010, (the "Rules") be amended as follows:

**1. The definition of "hearing" in subrule 1.02 (1) of the English version of the Rules is revoked and the following substituted:**

"hearing" does not include a consent resolution conference, a proceeding management conference or a pre-hearing conference;

**2. The definition of "audience" in subrule 1.02 (1) of the French version of the Rules is revoked and the following substituted:**

«audience» Sont exclues de la présente définition les conférences sur la résolution des causes avec consentement, les conférences de gestion de l'instance et les conférences préparatoires à l'audience.

**3. Rule 25.01 of the English version of the Rules is amended by adding the following subrule:**

**Consent resolution conference: no costs**

(4) Despite subrules (1) and (2), no costs shall be awarded against the Society or the subject of the proceeding based on,

(a) either party's refusal to participate or either party's withdrawal from participation in a consent resolution conference; or

(b) the fact that a consent resolution conference did not result in the settlement of the decision and order to be made by the Hearing Panel in the conduct proceeding or the settlement of the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding.

**4. Rule 25.01 of the French version of the Rules is amended by adding the following subrule:**

**Conférence sur la résolution de la cause avec consentement : pas de condamnation aux dépens**

(4) Malgré les paragraphes (1) et (2), ni le Barreau ni la personne visée par l'instance ne doit être condamné aux dépens pour l'un ou l'autre des motifs suivants :

a) le refus de l'une ou l'autre partie de participer à une conférence sur la résolution de la cause avec consentement ou son retrait d'une telle conférence;

b) le fait qu'une conférence sur la résolution de la cause avec consentement ne s'est pas soldée par un règlement soit quant à la décision et à l'ordonnance que le Comité d'audition doit rendre dans l'instance portant sur la conduite, soit quant à la décision qu'il doit rendre et à l'éventail des ordonnances qu'il peut rendre dans une telle instance.

**5. The English version of the Rules are further amended by adding the following Rule:**

**RULE 29**

**CONSENT RESOLUTION CONFERENCE**

**Definitions**

**29.01** In this Rule,

"consent resolution conference" means a conference between the Society and the subject of a potential proceeding, that is conducted by a consent resolution panel, held prior to the commencement of the conduct proceeding for the purposes of settling,

(a) the decision and order to be made by the Hearing Panel in the conduct proceeding; or

(b) the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding;

"consent resolution panel" means the panelist or, collectively, the panelists assigned to conduct a consent resolution conference;

"potential proceeding" means a conduct proceeding that has not been commenced;

"subject of a potential proceeding" means the person who will be the subject of a conduct proceeding once it has been commenced.

**Consent resolution conference: when shall be conducted**

**29.02** (1) The chair, or, in the absence of the chair, the vice-chair, of the Hearing Panel shall direct that a consent resolution conference be conducted if the following conditions are present:

1. The Society has obtained the authorization of the Proceedings Authorization Committee,

    i. to commence a conduct proceeding, and

    ii. to request the Hearing Panel to direct that a consent resolution conference be conducted.

2. The conduct proceeding has not been commenced.

3. The Society and the subject of the potential proceeding have agreed to,

    i. the decision and order to be made by the Hearing Panel in the conduct proceeding; or

    ii. the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding.

4. The subject of the potential proceeding has consented to participate in a consent resolution conference.

5. The Society has requested a consent resolution conference.

**Who conducts consent resolution conference**

(2) Where the chair, or, in the absence of the chair, the vice-chair, of the Hearing Panel directs that a consent resolution conference be conducted under subrule (1), the chair, or, in the absence of the chair, the vice-chair, shall assign either one or three panelists to conduct the consent resolution conference.

**Request to Tribunals Office**

**29.03** (1) The Society may request a consent resolution conference by submitting a request in writing to the Tribunals Office.

**Information re conditions**

(2) The Society shall include in its written request for a consent resolution conference sufficient information to satisfy the chair, or, in the absence of the chair, the vice-chair, of the Hearing Panel of the existence of the conditions set out in rule 29.02.

**Contact information of subject of potential proceeding**

(3) The Society shall also include in its written request for a consent resolution conference the name of the subject of the potential proceeding and her or his address for service, telephone number, fax number, if any, and e-mail address, if any.

**Notice of consent resolution conference: Society**

**29.04** Where the chair, or, in the absence of the chair, the vice-chair, of the Hearing Panel directs that a consent resolution conference be conducted, the Tribunals Office shall send to the Society and to the subject of the potential proceeding notice of the date, time and location of the consent resolution conference.

**Procedure applicable to consent resolution conference**

**29.05** (1) The practices and procedures applicable to proceedings before the Hearing Panel that are set out in Rules 2 to 20 and Rules 22 to 28 do not apply with respect to a consent resolution conference.

(2) Subject to this Rule, the practices and procedures applicable with respect to a consent resolution conference shall be determined by the consent resolution panel conducting the consent resolution conference.

**Consent resolution conference not open to public**

(3) A consent resolution conference shall be conducted in the absence of the public.

**Withdrawing participation in consent resolution conference**

**29.06** (1) At any time before or during the conduct of a consent resolution conference, the Society or the subject of the potential proceeding may withdraw from participating in the consent resolution conference.

**Notice of withdrawal**

(2) Where the Society or the subject of the potential proceeding wishes to withdraw from participating in the consent resolution conference under subrule (1), the withdrawing party shall so notify in writing the other party and the Tribunals Office.

**Settlement at consent resolution conference: commencement of conduct proceeding**

**29.07** (1) Where a consent resolution conference results in the settlement of the decision and order to be made by the Hearing Panel in the conduct proceeding or the settlement of the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding the Society shall,

(a) commence the conduct proceeding; and

(b) notify the Tribunals Office in writing of the fact and general nature of the settlement at the consent resolution conference not later than the day on which the conduct proceeding is commenced.

**Settlement at consent resolution conference: non-application of certain Rules**

(2) Where a consent resolution conference results in the settlement of the decision and order to be made by the Hearing Panel in the conduct proceeding, despite rule 1.01, the following Rules do not apply to the conduct proceeding:

1. Rule 6.

2. Rule 7.

3. Rule 8.

4. Rule 12.

5. Rule 13.

6. Rule 14.

7. Rule 16.

8. Rule 19.

9. Rule 20.

10. Rule 21.

11. Rule 22.

**No settlement at or withdrawal from consent resolution conference: subsequent hearings**

**29.08** Where a consent resolution conference does not result in the settlement of the decision and order to be made by the Hearing Panel in the conduct proceeding, or the settlement of the decision to be and a range of orders that may be made by the Hearing Panel in the conduct proceeding, or the Society or the subject of the potential proceeding withdraws from participating in the consent resolution conference under rule 29.06,

(a) no communication shall be made to any member of the Hearing Panel assigned to any hearing in the conduct proceeding with respect to any document specifically created for and any statement made at the consent resolution conference; and

(b) no member of the consent resolution panel that conducted the consent resolution conference shall be assigned to any hearing in the conduct proceeding.

**6. The French version of the Rules are further amended by adding the following Rule:**

**RÈGLE 29**

**CONFÉRENCE SUR LA RÉSOLUTION DE LA CAUSE AVEC CONSENTEMENT**

**Définitions**

**29.01** Les définitions qui suivent s'appliquent à la présente règle.

«conférence sur la résolution de la cause avec consentement» Conférence à laquelle participent le Barreau et la personne visée par une instance éventuelle, qui est présidée par une formation de résolution de la cause avec consentement et qui se tient avant l'introduction de l'instance portant sur la conduite en vue d'en arriver à un règlement :

a) soit quant à la décision et à l'ordonnance que le Comité d'audition doit rendre dans une telle instance;

b) soit quant à la décision que le Comité d'audition doit rendre et à l'éventail des ordonnances qu'il peut rendre dans une telle instance.

«formation de résolution de la cause avec consentement» Le ou, collectivement, les membres du Comité nommés à la présidence d'une conférence sur la résolution de la cause avec consentement.

«instance éventuelle» Instance portant sur la conduite qui n'a pas encore été introduite.

«personne visée par une instance éventuelle» Personne qui sera visée par une instance portant sur la conduite quand elle aura été introduite.

**Moment de la tenue d'une conférence sur la résolution de la cause avec consentement**

**29.02** (1) Le président ou la présidente ou, en son absence, le vice-président ou la vice-présidente du Comité d'audition ordonne la tenue d'une conférence sur la résolution de la cause avec consentement si les conditions suivantes sont réunies :

1. Le Barreau a obtenu du Comité d'autorisation des instances l'autorisation :

   i. d'une part, d'introduire une instance portant sur la conduite,

   ii. d'autre part, de demander au Comité d'audition d'ordonner la tenue d'une conférence sur la résolution de la cause avec consentement.

2. L'instance portant sur la conduite n'a pas été introduite.

3. Le Barreau et la personne visée par l'instance éventuelle ont convenu :

   i. soit de la décision et de l'ordonnance que le Comité d'audition doit rendre dans l'instance portant sur la conduite;

   ii. soit de la décision que le Comité d'audition doit rendre et de l'éventail des ordonnances qu'il peut rendre dans l'instance portant sur la conduite.

4. La personne visée par l'instance éventuelle a consenti à participer à une conférence sur la résolution de la cause avec consentement.

5. Le Barreau a demandé la tenue d'une conférence sur la résolution de la cause avec consentement.

**Présidence de la conférence sur la résolution de la cause avec consentement**

(2) La conférence sur la résolution de la cause avec consentement est présidée par une formation de un ou de trois membres du Comité que nomme le président ou la présidente ou, en son absence, le vice-président ou la vice-présidente du Comité d'audition lorsqu'il ou elle en ordonne la tenue en application du paragraphe (1).

**Présentation d'une demande au greffe du tribunal**

**29.03** (1) Le Barreau peut demander la tenue d'une conférence sur la résolution de la cause avec consentement en présentant une demande écrite au greffe du tribunal.

**Renseignements sur les conditions**

(2) Le Barreau donne, dans la demande écrite qu'il présente pour obtenir la tenue d'une conférence sur la résolution de la cause avec consentement, des renseignements suffisants pour convaincre le président ou la présidente ou, en son absence, le vice-président ou la vice-présidente du Comité d'audition de l'existence des conditions énoncées à la règle 29.02.

**Coordonnées de la personne visée par l'instance éventuelle**

(3) Le Barreau donne également, dans la demande écrite qu'il présente pour obtenir la tenue d'une conférence sur la résolution de la cause avec consentement, le nom de la personne visée par l'instance éventuelle de même que son adresse aux fins de signification, son numéro de téléphone ainsi que, si elle en a, son numéro de télécopieur et son adresse électronique.

**Avis de la tenue d'une conférence sur la résolution de la cause avec consentement : Barreau**

**29.04** Si le président ou la présidente ou, en son absence, le vice-président ou la vice-présidente du Comité d'audition ordonne la tenue d'une conférence sur la résolution de la cause avec consentement, le greffe du tribunal avise le Barreau et la personne visée par l'instance éventuelle des date, heure et endroit fixés pour la tenue de la conférence.

**Procédure de la conférence sur la résolution de la cause avec consentement**

**29.05** (1) Les règles de pratique et de procédure applicables aux instances tenues devant le Comité d'audition qui sont énoncées aux règles 2 à 20 et 22 à 28 ne s'appliquent pas aux conférences sur la résolution des causes avec consentement.

(2) Sous réserve de la présente règle, les règles de pratique et de procédure applicables à la conférence sur la résolution de la cause avec consentement sont fixées par la formation de résolution de la cause avec consentement qui la préside.

**Huis clos**

(3) La conférence sur la résolution de la cause avec consentement se tient à huis clos.

**Retrait de la conférence sur la résolution de la cause avec consentement**

**29.06** (1) Le Barreau ou la personne visée par l'instance éventuelle peut se retirer de la conférence sur la résolution de la cause avec consentement en tout temps avant ou pendant la conférence.

**Avis de retrait**

(2) Qu'il s'agisse du Barreau ou de la personne visée par l'instance éventuelle, la partie qui souhaite se retirer de la conférence sur la résolution de la cause avec consentement en vertu du paragraphe (1) en avise par écrit l'autre partie et le greffe du tribunal.

**Règlement lors de la conférence sur la résolution de la cause avec consentement : introduction d'une instance portant sur la conduite**

**29.07** (1) Lorsque la conférence sur la résolution de la cause avec consentement se solde par un règlement soit quant à la décision et à l'ordonnance que le Comité d'audition doit rendre dans l'instance portant sur la conduite, soit quant à la décision qu'il doit rendre et à l'éventail des ordonnances qu'il peut rendre dans une telle instance, le Barreau :

a) d'une part, introduit cette instance;

b) d'autre part, avise par écrit le greffe du tribunal de ce fait et de la teneur générale du règlement atteint lors de la conférence sur la résolution de la cause avec consentement au plus tard le jour de l'introduction de l'instance.

**Règlement lors de la conférence sur la résolution de la cause avec consentement : non-application de certaines règles**

(2) Lorsque la conférence sur la résolution de la cause avec consentement se solde par un règlement quant à la décision et à l'ordonnance que le Comité d'audition doit rendre dans l'instance portant sur la conduite, malgré la règle 1.01, les règles suivantes ne s'appliquent pas à cette instance :

1. La règle 6.

2. La règle 7.

3. La règle 8.

4. La règle 12.

5. La règle 13.

6. La règle 14.

7. La règle 16.

8. La règle 19.

9. La règle 20.

10. La règle 21.

11. La règle 22.

**Absence de règlement ou retrait lors d'une conférence sur la résolution de la cause avec consentement : audiences ultérieures**

**29.08** Si la conférence sur la résolution de la cause avec consentement ne se solde pas par un règlement soit quant à la décision et à l'ordonnance que le Comité d'audition doit rendre dans l'instance portant sur la conduite, soit quant à la décision qu'il doit rendre et à l'éventail des ordonnances qu'il peut rendre dans une telle instance, ou si le Barreau ou la partie visée par l'instance éventuelle se retire de la conférence en vertu de la règle 29.06 :

a) d'une part, rien ne doit être communiqué à aucun membre du Comité d'audition nommé à la présidence d'une audience tenue dans le cadre de l'instance portant sur la conduite de tout document créé spécifiquement ni de toute déclaration faite lors de la conférence sur la résolution de la cause avec consentement;

b) d'autre part, aucun membre de la formation de résolution de la cause avec consentement ne doit être nommé à la présidence d'une audience tenue dans le cadre de l'instance portant sur la cause.

*Item for Information*

- Two-Year Review of Appointment of Non-Bencher Adjudicator Initiative

PARALEGAL STANDING COMMITTEE REPORT

Ms. Corsetti presented the Report.

Report to Convocation
January 27, 2011

Paralegal Standing Committee

Committee Members
Cathy Corsetti, Chair
William Simpson, Vice-Chair
Marion Boyd
Robert Burd
James R. Caskey
Paul Dray
Seymour Epstein
Michelle Haigh
Glenn Hainey
Douglas Lewis
Susan McGrath
Kenneth Mitchell
Baljit Sikand

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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COMMITTEE PROCESS

1. The Committee met on January 13th, 2011. Committee members present were Cathy Corsetti (Chair), William Simpson (Vice-Chair), Marion Boyd, Robert Burd, James Caskey, Michelle Haigh, Susan McGrath and Kenneth Mitchell. Staff members in attendance were Diana Miles, Roy Thomas, Terry Knott, Jim Varro, Elliot Spears, Naomi Bussin, Sheena Weir, Sophie Galipeau and Julia Bass.

## FOR DECISION

### AMENDMENT TO RULE 4.04 OF THE PARALEGAL RULES

Motion

2. That Convocation approve the amendment to Rule 4.04 of the Paralegal *Rules of Conduct* shown below, to reflect the wording of the lawyers' *Rules of Professional Conduct*, on the subject of a licensee acting as both advocate and witness.

Issue

3. The Law Society has received representations to the effect that the rules for paralegals should be more closely aligned with the rules for lawyers, regarding the question of a licensee acting as both advocate and witness in the same matter.

Background

4. It is a generally recognized principle that legal advocates should not argue the law and give evidence in the same case. This principle is recognized in both the *Paralegal Rules of Conduct* and the lawyers' *Rules of Professional Conduct* - in Rule 4.04 of the Paralegal Rules and Rule 4.02 of the lawyers' *Rules*.

5. However, the wording in the *Paralegal Rules* differs slightly from that in the lawyers' Rules. The *Paralegal Rule* is as follows:

The Paralegal as Witness
4.04 (1) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, the paralegal who appears as an advocate shall not submit his or her own affidavit to the tribunal.
(2) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, a paralegal who appears as an advocate shall not testify before the tribunal unless permitted to do so by the rules of the court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.
(3) A paralegal who is to testify before a tribunal shall entrust the conduct of the case to another licensee.
(4) A paralegal shall not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge.

6. The relevant part of the Paralegal Guidelines is as follows:

The Paralegal as Witness
Rule Reference: Rule 4.04
16. As an advocate, the paralegal's role is to further the client's case within the limits of the law. The role of a witness is to give evidence of facts that may or may not assist in furthering the case of any of the parties to a proceeding. Because these roles are different, a person may not be able to carry out the functions of both advocate and witness at the same time.

17. When acting as an advocate for his or her client before a tribunal, the paralegal should not appear to be giving unsworn testimony. This is improper and may put the paralegal's own credibility in issue. A paralegal who has appeared as a witness on a matter should not act as an advocate or legal representative in any appeal of that matter.

7. The lawyers' *Rule* and accompanying Commentary are as follows:

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 court 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.

8. The main difference arises from the fact that some of the wording of the lawyers' Commentary was incorporated into the *Paralegal Rules* – this involved replacing the word "should" with the more directive word "shall." Rule 4.04 (3) requires a paralegal who testifies before a tribunal to entrust the case to another licensee, while Rule 4.04 (4) prohibits a paralegal acting as advocate in a matter from expressing personal opinions or beliefs or asserting as a fact anything that is properly subject to legal proof, cross-examination or challenge. In the lawyers' rules, these two provisions are set out in the *Commentary*.

9. At the time the *Paralegal Rules* were drafted, the Law Society had met with representatives from a number of tribunals before whom paralegals regularly appear. On the basis of those discussions, the Law Society was concerned to highlight to paralegals the general principle that one should not act as both advocate and witness. It appeared that the legal principles behind the commentary to the lawyer rules were better known to lawyers than to paralegals. For emphasis, these were made the subject of a rule rather than commentary.

10. However, paralegals often appear at tribunals where speed and efficiency are key considerations. The Law Society has received communication from two such tribunals, arguing that for the sake of efficiency, they find it acceptable for advocates to also act as witnesses in the same proceeding, within the tribunals' rules of procedure. The current wording of the paralegal rule is causing difficulty for these agencies who wish greater flexibility in their processes.

11. The Landlord and Tenant Board advises that many of their hearings involve a landlord's paralegal representative giving evidence of arrears of rent and making submissions regarding the relief claimed. The Board is of the view that it is not practical for such representatives to entrust the conduct of a matter to a third party in every case where the representative is giving evidence.

12. The Assessment Review Board ('ARB') has also previously contacted the Law Society. The Board has implemented its own rules of practice and procedure, which expressly permit a representative to act as both advocate and witness in certain circumstances. An excerpt from the ARB Rules is attached at Appendix 1.

The Committee's Deliberations

13. The Committee is of the view that the general principle that there are difficulties with a 'dual role' is valid. While acknowledging that there are risks with the practice, where tribunals can only effectively manage their case load by selectively permitting its use, the Committee recognizes that it is up to the tribunal member hearing the case to manage the hearing fairly.

14. Since it has been generally accepted that the rules for paralegals should closely parallel those for lawyers, it is recommended that Rule 4.04 and the relevant guidelines be amended to be consistent with Rule 4.02 of the lawyers' *Rules of Professional Conduct.*

15. The following are the proposed changes to the *Paralegal Rules of Conduct:*

4.04 THE PARALEGAL AS WITNESS

The Paralegal as Witness
4.04 (1) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, the paralegal who appears as an advocate shall not submit his or her own affidavit to the tribunal.

(2) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, a paralegal who appears as an advocate shall not testify before the tribunal unless permitted to do so by the rules of the court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted.

~~(3) A paralegal who is to testify before a tribunal shall entrust the conduct of the case to another licensee.~~

~~(4) A paralegal shall not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge.~~

Proposed Changes
16. The following are the proposed changes to the Paralegal Guidelines:

GUIDELINE 12: ADVOCACY …
The Paralegal as Witness
Rule Reference: Rule 4.04
16. As an advocate, the paralegal's role is to further the client's case within the limits of the law. The role of a witness is to give evidence of facts that may or may not assist in furthering the case of any of the parties to a proceeding. Because these roles are different, a person may not be able to carry out the functions of both advocate and witness at the same time.

17. Unless permitted by the tribunal, when acting as an advocate for his or her client before a tribunal, the paralegal should not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination, or challenge, or otherwise appear to be giving unsworn testimony. This is improper and may put the paralegal's own credibility in issue. ~~A paralegal who has appeared as a witness on a matter should not act as an advocate or legal representative in any appeal of that matter.~~

17.1 Unless permitted by the tribunal, the paralegal who is a necessary witness should testify and entrust the conduct of the case to another licensee. A paralegal who has appeared as a witness on a matter should not act as an advocate or legal representative in any appeal of that matter.

17.2 There are no restrictions on the advocate's right to cross-examine another licensee, however, and the paralegal who does appear as a witness should not expect to receive special treatment because of professional status.

The Committee's Deliberations

17. The Committee considered the proposed wording and recommends that it be adopted.

Appendix 1

Assessment Review Board

RULES OF PRACTICE AND PROCEDURE

(made under section 25.1 of the S*tatutory Powers Procedure Act)*

*Effective April 1, 2009*

[EXCERPT]

REPRESENTATIVES

11. Appearance in Person or by Authorized Representative

A party may attend a proceeding in person or by a representative. Representatives who are not licenced by the Law Society of Upper Canada must obtain written authorization and may be asked to provide this authorization to the Board at any time. If representation changes, the party and the representative shall immediately notify the Board and the other parties.

12. Notices of Proceedings Provided to Representatives

Any notice given to a representative is deemed to have been given to the party for whom the representative acts.

13. Witness and/or Advocate

Unless the Board orders otherwise, at any hearing event, in the direct hearing stream a party and/or a representative excluding a lawyer appearing as counsel may be both an advocate and witness. In the case managed stream no representative may be both advocate and witness unless the Board orders otherwise and the representative is not a lawyer appearing as counsel. If a representative (except a lawyer appearing as counsel) is applying to be both a witness and an advocate notice in writing must be given to the other parties at least 21 days prior to the hearing event in the case managed stream.

FOR INFORMATION

GUIDELINES RE LAW OFFICE SEARCHES

18. The Committee considered the proposed Guidelines on Law Office Searches that the Professional Regulation Committee has been considering, based on the Protocol developed by the Federation of Law Societies of Canada. (The protocol was developed

to address the difficult issues that arise where the need for a full criminal investigation, including the search for evidence, conflicts with the principle of solicitor/client privilege).

19. While the law on the privileged status of paralegal/client communications is not yet as well developed, the same issues arise in principle. The Committee was satisfied with the draft presented.

Re: Amendment to Rule 4.04 of the *Paralegal Rules of Conduct*

It was moved by Ms. Haigh, seconded by Mr. Simpson, that the amendment to Rule 4.04 of the *Paralegal Rules of Conduct* be approved as set out in paragraph 15 of the Report.

It was moved by Ms. Go, seconded by Mr. Falconer, that the motion be tabled.

Lost

The main motion was approved.

GOVERNANCE TASK FORCE REPORT

Mr. Heintzman presented the Report.

Report to Convocation
January 27, 2011

Governance Task Force – Amendments to By-Law 3

Task Force Members
Thomas Heintzman (Chair)
Vern Krishna (Vice-Chair)
Raj Anand
Larry Banack
Christopher Bredt
Glenn Hainey
Abraham Feinstein
Janet Minor
Linda Rothstein
Catherine Strosberg

Purposes of Report: Decision

Prepared by the Policy Secretariat
(Jim Varro – 416-947-3434)

GOVERNANCE TASK FORCE

AMENDMENTS TO BY-LAW 3
(BENCHERS, CONVOCATION AND COMMITTEES)

MOTION

1. That Convocation make the amendments to By-Law 3 (Benchers, Convocation and Committees) as set out in the motion at Appendix 1.

Introduction

2. On December 4, 2009, Convocation made a series of decisions to reform the governance structure of the Law Society, based on the recommendations of the Governance Task Force ("the Task Force"). On May 27, 2010, Convocation adopted amendments to By-Law 3 to implement these decisions. During that debate, a number of issues were raised that were referred back to the Task Force for consideration.

3. The Task Force met to consider these issues. This report sets out the Task Force's views and recommendations on the issues raised. With respect to four issues, described below, the Task Force is proposing amendments to By-Law 3, including remuneration for emeritus benchers.

4. Appendix 2 shows a redline version of the amendments to the By-Law.

The Issues Requiring By-Law Amendments

Issue #1 – Rights and privileges of former Treasurers who are emeritus benchers (Motion paragraphs 3, 4, 11, 12, 13 and 14)

5. Bencher Sydney Robins suggested at May 2010 Convocation that the Task Force should reexamine the role of a former Treasurer, who now becomes an emeritus bencher when service as Treasurer ends. These former Treasurers, who are honorary benchers as described in By-Law 3, do not form part of Convocation and are eligible for appointment to the Hearing or Appeal Panel or a standing or other committee.

6. Convocation's decision to make former Treasurers emeritus benchers was in the context of a series of recommendations aimed at reducing the size of Convocation's growing *ex officio* component. The recommendation also addressed the concern that former Treasurers with a vote can wield significant influence as unelected members of Convocation. Convocation agreed by a very close vote that former Treasurers should not be *ex officio* benchers but should become emeritus (honorary) benchers. These decisions led to the amendments to the *Law Society Act*, and provided for grandparenting current *ex officio* benchers and those eligible for life bencher status by 2015.

7. The Task Force reviewed the status of those who will become former Treasurers as honorary emeritus benchers in light of Mr. Robins' comment and the nearly even split in Convocation on approval of the new status for former Treasurers following the debate in December 2009. The Task Force, while affirming the soundness of its policy recommendation adopted by Convocation for the reasons outlined above, acknowledged that it may be appropriate to take a more nuanced approach to defining the ongoing rights and privileges accorded to those who have served as Treasurer. The approach favoured by the Task Force would involve former Treasurers as emeritus benchers participating in Convocation, but without voting rights. The voting right of former Treasurers was an important and consistently-expressed concern raised during the Task Force's consultations. Permitting former Treasurers to attend and participate in Convocation's proceedings as honorary emeritus benchers, but not vote, would address that concern.

8. After discussion, the consensus was that the significant contribution a Treasurer makes to the Law Society's governance and the valuable knowledge that a Treasurer can bring to Convocation, including following his or her service as Treasurer, would support according former Treasurers the rights and privileges outlined above as part of their status as emeritus benchers. In addition, the limited number of former Treasurers who may decide to remain active in Convocation will not, in the Task Force's view, cause undue concerns about the size of Convocation.

9. Accordingly, the Task Force proposes that honorary emeritus benchers who are former Treasurers be permitted to attend and participate in Convocation, without a vote.

10. For consistency, the Task Force also proposes that these former Treasurers would lose these rights and privileges for not attending Convocation on the same basis as the *ex officio* grandparented former Treasurers. This includes loss of the right to vote at committees, should the former Treasurers be appointed to them.

11. The Task Force also proposes that this provision for emeritus benchers who are former Treasurers be subject to review in five years. The Task Force considers this appropriate as a way to ensure that some measure can be taken of how this provision works in practice, whether there is any undue impact on the size or functions of Convocation and the level of engagement and participation of former Treasurers on an ongoing basis.

12. To implement this proposal, the following amendments to the relevant sections of By-Law 3 are required (new text is underlined).

[48.1]

<u>Voting rights</u>

<u>(7) An emeritus bencher may vote in committees.</u>

<u>Former Treasurers: right to participate in debate at Convocation</u>

<u>(8) An emeritus bencher under paragraph 1 of subsection 48.1 (2) may take part in a debate at Convocation.</u>

Removal of rights

(9) Despite subsections (7) and (8), an emeritus bencher under paragraph 1 of subsection 48.1 (2) who fails to attend Convocation held under section 77 four consecutive times may not vote in committees and may not take part in any debate at Convocation until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to vote in committees and the right to take part in a debate at Convocation.

DEBATE

. . . .

Who may participate in debate

98. The following persons may take part in a debate at Convocation:

1. An elected bencher.

2. A lay bencher.

3. A bencher by virtue of his or her office under paragraph 1 of subsection 12 (2) of the Act.

4. A bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act who has not lost the right to take part in a debate at Convocation.

5. A bencher by virtue of his or her office under section 14 of the Act who has not lost the right to vote in Convocation.

6. An emeritus bencher under paragraph 1 of subsection 48.1 (2) of this By-Law who has not lost the right to take part in a debate at Convocation.

~~6.~~7. The Chief Executive Officer.

~~7.~~8. Any other person with the prior permission of the Treasurer.

….

Voting rights

116. (1) Only members of a standing committee may vote at meetings of the committee.

No voting rights

(2) Despite subsection (1), a member of a standing committee who has lost the right to vote in committees under another section of this By-Law, may not vote at meetings of the committee.

Issue #2 – Resignation of Elected Bencher Prior to the End of the Bencher Term (Motion paragraphs 1 and 2)

13. At May 2010 Convocation, bencher Bob Aaron questioned whether a bencher could resign prior to the completion of 16 years service and, having not served 16 years, be eligible as a candidate in the 2011 bencher election.

14. The response from the Task Force's chair during the debate was that if the By-Law provisions were applied this way in an effort to manipulate them and defeat the purpose of the term limit, Convocation would have to address that issue in the By-Laws. Bencher Larry Eustace added that rules should be considered to prevent this from occurring.

15. The Task Force carefully considered this issue. The Task Force considers the adoption by Convocation of a term limit for benchers as an essential part of the governance reforms. The Task Force believes that attempts to find "loopholes" to avoid the application of the term limit by an elected bencher would be contrary to the policy adopted by Convocation, which as a body includes every elected bencher. As such, notwithstanding the expectation that elected benchers would observe in letter and spirit the By-Law provisions that implement the policy, the Task Force believes that the By-Law should set out with precision the intention of Convocation with respect to the operation of the term limit as applicable to the elected members of Convocation.

16. The Task Force agreed that an amendment to address this issue is appropriate. The Task Force is proposing that the By-Law provide that for the purposes of determining whether a person qualifies as a candidate in the bencher election, an elected bencher is deemed to have served either 16 or 12 years, as the case may be, even though he or she may resign prior to the end of the term in which the 12th or 16th year of service would be completed. In other words, despite a resignation, the time continues to run and the 12 or 16 years of service as an elected bencher is deemed to have been served by the end of the term (i.e. until the time the benchers elected in the election of benchers take office).

17. The following amendment (underlined) to s. 7 of the By-Law dealing with who may be a candidate in an election of benchers, which would have retroactive effect, is proposed.

Who may be candidate: election of benchers in 2011

7. (1) Every licensee is qualified to be a candidate in the election of benchers in 2011 if,

(a) on June 1, 2011, the licensee would not have held the office of elected bencher for 16 or more years; and

(b) at the time of signing a nomination form containing his or her nomination as a candidate,

(i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and

(ii) the licensee's licence is not suspended.

Who may be candidate: election of benchers after 2011

(2) Every licensee is qualified to be a candidate in an election of benchers after 2011 if,

(a) on June 1 of the year of the election of benchers, the licensee would not have held the office of elected bencher for 12 or more years; and

(b) at the time of signing a nomination form containing his or her nomination as a candidate,

(i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and

(ii) the licensee's licence is not suspended.

Deemed to have held office for the specified number of years

(3) For the purposes of subsections (1) and (2), a licensee shall be deemed to have held the office of elected bencher for the number of years specified in the applicable subsection if,

(a) the licensee was elected as a bencher in or at any time after the election of benchers immediately preceeding the election of benchers for which he or she seeks to qualify as a candidate;

(b) the licensee would have held the office of elected bencher for the number of years specified in the applicable subsection if the licensee had remained in office until the benchers elected in the next election of benchers took office; and

(c) the licensee resigned from the office of elected bencher prior to the benchers in the next election of benchers taking office.

Application of subsection (3)

(4) Subsection (3) applies to a licensee even if the licensee resigned from the office of elected bencher before the subsection came into effect.

Issue #3 – Grandparented Ex Officio Bencher and Emeritus Bencher (Former Treasurer) Rights and Privileges in Abeyance (Motion paragraphs 3, 4, 5 and 6)

18. At May 2010 Convocation, bencher Harvey Strosberg advised that there may be occasions where a grandparented Treasurer or life bencher is unable to attend Convocation for a period of time, resulting in the loss of rights and privileges under the By-Law. Mr. Strosberg suggested that there be an opportunity to request that rights and privileges be put in abeyance until such time as the bencher is able to participate.

19. The Task Force considered this a reasonable suggestion and is proposing an amendment to By-Law 3 to give the Treasurer, upon the request of the affected grandparented Treasurer or life bencher, the discretion to excuse the bencher from attending Convocation without the loss of rights or privileges. The application to the Treasurer with the request must provide good and sufficient reason for the Treasurer to excuse the bencher.

20. The Task Force is also of the view that this provision should apply to former Treasurers who are emeritus benchers, who are the subject of the proposal earlier in this report to permit their participation in Convocation and who would also be subject to the attendance requirements.

21. The proposed amendments to implement these proposals are as follows.

[s. 48.1]

Removal of rights[1]

(9) Despite subsections (7) and (8), an emeritus bencher under paragraph 1 of subsection 48.1 (2) who fails to attend Convocation held under section 77 four consecutive times may not vote in committees and may not take part in any debate at Convocation until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to vote in committees and the right to take part in a debate at Convocation.

Excused from attending Convocation

(10) On application by the emeritus bencher, where there is good and sufficient reason to do so, the Treasurer may excuse an emeritus bencher from the requirement to attend Convocation for a definite or indefinite period and, where the Treasurer has done so, while the bencher is excused from the requirement to attend Convocation, subsection (9) does not apply to the emeritus bencher.

…

[1] New subsection (9) also appears on page 4.

Excused from attending Convocation

48.4 (1) On application by the bencher, where there is good and sufficient reason to do so, the Treasurer may excuse a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) of the Act, a bencher by virtue of his or her office under paragraph 2 of subsection 12 (2) of the Act or a bencher by virtue of his or her under section 14 of the Act from the requirement to attend Convocation for a definite or indefinite period.

Effect of being excused from attending Convocation

(2) Where the Treasurer has, under subsection (1), excused a bencher from the requirement to attend Convocation, while the bencher is excused from the requirement to attend Convocation, subsection 48.2 (2), or subsection 48.3 (2), as the case may be, does not apply to the bencher.

Issue #4 - Remuneration for Emeritus Benchers (Motion paragraphs 7 through 10)

22. The Task Force concluded that it would be appropriate to remunerate emeritus benchers for committee or Hearing or Appeal Panel work at the same rate as elected benchers, but with no 26 day deductible period.

23. If the above proposal respecting attendance and participation in Convocation for former Treasurers who are emeritus benchers is approved, those former Treasurers would also qualify for remuneration.

24. Expenses of emeritus benchers would also be paid.

25. Amendments to the bencher remuneration and disbursements sections of the By-Law to implement this proposal are as follows:

[s. 50]

Entitlement

(1.1) Subject to subsection (2), every emeritus bencher is entitled to receive from the Society remuneration,

(a) for each half day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time; and

(b) for each full day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time.

...

DISBURSEMENTS

Disbursements

52. Every bencher, every emeritus bencher and every person who is elected as a member of the Paralegal Standing Committee is entitled to be reimbursed by the Society for reasonable expenses incurred by him or her in the performance of his or her duties for or on behalf of the Society.

The Issues That Do Not Require Changes

26. The Task Force also reviewed the following issues which were raised at the May 2010 Convocation, and concluded that no changes were required, for the reasons set out below.

27. Bencher Bob Aaron questioned the effect of the loss of rights and privileges of a grandparented *ex officio* bencher because of non-attendance at Convocation on positions on external boards through appointments made by Convocation. The Task Force's view is that although the person has lost rights and privileges, this does not affect the status of being a bencher, and from the Law Society's perspective, would not affect such appointments. The boards or organizations may have their own rules or protocols that may apply.

28. Bencher Harvey Strosberg suggested that *ex officio* grandparented former Treasurers who have lost rights and privileges for non-attendance should have the right to participate in the debate at Convocation during their reinstatement period. By-Law 3, paragraph 98. 5. provides that such benchers cannot participate in Convocation. The Task Force concluded that this issue is addressed by subsection 75(3) of the By-Law[2] , which provides that the Treasurer has the discretion to waive compliance with the procedural rules. Accordingly, the Treasurer has the authority to permit former Treasurers to participate, notwithstanding paragraph 98. 5.

29. Bencher Sydney Robins said that it is unfair to a Treasurer elected in the third year of the last term (of four years) not to be able to serve the standard two years as Treasurer, because of the 12 year term limit. The Task Force concluded that the issue is addressed in the *Law Society Act*[3] , which makes a Treasurer, at the time of his or her election, an

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[2] **Convocation conducted in accordance with Part**

75. (1) Subject to subsection (2), Convocation shall be conducted in accordance with this Part.

**Waiving compliance, *etc.***

(2) The Treasurer may waive compliance with any requirement, alter any requirement and abridge or extend any time period mentioned in this Part in respect of Convocation.

[3] 25. (1) The benchers shall annually, at such time as the benchers may fix, elect an elected bencher as Treasurer. 1998, c. 21, s. 13.

**Bencher by virtue of office**

(2) The Treasurer is a bencher by virtue of that office and ceases to hold office as an elected bencher. 1998, c. 21, s. 1

*ex officio* bencher. As such, the elected bencher term "clock" stops running. If a bencher is elected at the end of the third year as Treasurer, that year he or she serves as Treasurer (running to the end of the term) does not count in the 12 years. In the next election, the person could run (and, as was the case before the amendments, would have to run if he or she wished to be elected Treasurer again) and be elected.

30. Bencher Beth Symes raised an issue about grandparented *ex officio* benchers' loss of the right to attend and/or vote in Convocation. She advised that these may be deemed termination or removal provisions, and that parallel provisions in collective agreements have been found to violate human rights legislation, particularly in the case of disability. Her view was that no one would agree that a disabled bencher who fails to attend four meetings should "cease to be a member" or be "automatically deemed terminated". The Task Force considered the implications of Ms. Symes' views, and was not persuaded that this would in fact be the case. The bencher who loses rights and privileges is still a bencher, and is not removed from Convocation or terminated as a member of Convocation. Moreover, the proposal under Issue #3 above, for the request to have rights and privileges placed in abeyance, should address any difficulties experienced by a bencher because of a disability that would prevent attendance at Convocation.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 3
[BENCHERS, CONVOCATION AND COMMITTEES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 27, 2011

MOVED BY

SECONDED BY

THAT By-Law 3 [Benchers, Convocation and Committees], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, September 20, 2007, November 22, 2007, June 26, 2008, April 30, 2009, September 24, 2009, February 25, 2010, May 27, 2010, October 28, 2010 and November 27, 2011, be further amended as follows:

1. Section 7 of the English version of the By-Law is amended by adding the following subsections:

Deemed to have held office for the specified number of years

(3) For the purposes of subsections (1) and (2), a licensee shall be deemed to have held the office of elected bencher for the number of years specified in the applicable subsection if,

(a) the licensee was elected as a bencher in or at any time after the election of benchers immediately preceeding the election of benchers for which he or she seeks to qualify as a candidate;

(b) the licensee would have held the office of elected bencher for the number of years specified in the applicable subsection if the licensee had remained in office until the benchers elected in the next election of benchers took office; and

(c) the licensee resigned from the office of elected bencher prior to the benchers in the next election of benchers taking office.

Application of subsection (3)

(4) Subsection (3) applies to a licensee even if the licensee resigned from the office of elected bencher before the subsection came into effect.

2. Section 7 of the French version of the By-Law is amended by adding the following subsections:

Réputé avoir occupé ses fonctions pendant un nombre d'années déterminé

(3) Pour l'application des paragraphes (1) et (2), les titulaires de permis qui remplissent les conditions suivantes sont réputés avoir occupé la charge de conseiller élu pendant le nombre d'années précisé au paragraphe applicable :

a) ils ont été élus conseillers lors de l'élection des conseillers qui précède celle pour laquelle ils posent leur candidature ou après cette élection;

b) ils auraient occupé la charge de conseiller élu pendant le nombre d'années précisé au paragraphe applicable s'ils étaient restés en poste jusqu'à l'entrée en fonction des conseillères et conseillers élus lors de l'élection suivante au Conseil;

c) ils ont démissionné de leur charge de conseiller élu avant l'entrée en fonction des conseillères et conseillers élus lors de l'élection suivante au Conseil.

Application du paragraphe (3)

(4) Le paragraphe (3) s'applique aux titulaires de permis même s'ils démissionnent de leur charge de conseiller élu avant son entrée en vigueur.

3. Section 48.1 of the English version of the By-Law is amended by added the following subsections:

Voting rights

(7) An emeritus bencher may vote in committees.

Former Treasurers: right to participate in debate at Convocation

(8) An emeritus bencher under paragraph 1 of subsection 48.1 (2) may take part in a debate at Convocation.

Removal of rights

(9) Despite subsections (7) and (8), an emeritus bencher under paragraph 1 of subsection 48.1 (2) who fails to attend Convocation held under section 77 four consecutive times may not vote in committees and may not take part in any debate at Convocation until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to vote in committees and the right to take part in a debate at Convocation.

Excused from attending Convocation

(10) On application by the emeritus bencher, where there is good and sufficient reason to do so, the Treasurer may excuse an emeritus bencher from the requirement to attend Convocation for a definite or indefinite period and, where the Treasurer has done so, while the bencher is excused from the requirement to attend Convocation, subsection (9) does not apply to the emeritus bencher.

4. Section 48.1 of the French version of the By-Law is amended by added the following subsections:

Droit de vote

(7) Les conseillères et les conseillers émérites peuvent voter aux comités.

Anciens trésoriers : droit de participer aux débats du Conseil

(8) Les conseillères et les conseillers émérites visés à la disposition 1 du paragraphe 48.1 (2) peuvent participer aux débats lors des réunions du Conseil.

Retrait des droits

(9) Malgré les paragraphes (7) et (8), la conseillère ou le conseiller émérite visé à la disposition 1 du paragraphe 48.1 (2) qui n'assiste pas à quatre réunions consécutives du Conseil tenues en application de l'article 77 ne peut voter aux comités ni participer aux débats lors des réunions du Conseil tant qu'il ou elle n'a pas assisté à trois réunions sur cinq réunions consécutives du Conseil tenues en application de l'article 77 après qu'il ou elle a perdu le droit de vote et de participation.

Permission de ne pas assister aux réunions du Conseil

(10) Sur demande et pour des raisons justes et suffisantes, la trésorière ou le trésorier peut dispenser une conseillère ou un conseiller émérite de l'obligation d'assister aux réunions du Conseil pendant une période déterminée ou indéterminée, auquel cas le paragraphe (9) ne s'applique pas à cette conseillère ou à ce conseiller.

5. Section 48.4 of the English version of the By-Law is amended by adding the following subsections:

Excused from attending Convocation

48.4 (1) On application by the bencher, where there is good and sufficient reason to do so, the Treasurer may excuse a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) of the Act, a bencher by virtue of his or her office under paragraph 2 of subsection 12 (2) of the Act or a bencher by virtue of his or her under section 14 of the Act from the requirement to attend Convocation for a definite or indefinite period.

Effect of being excused from attending Convocation

(2) Where the Treasurer has, under subsecton (1), excused a bencher from the requirement to attend Convocation, while the bencher is excused from the requirement to attend Convocation, subsection 48.2 (2), or subsection 48.3 (2), as the case may be, does not apply to the bencher.

6. Section 48.4 of the French version of the By-Law is amended by adding the following subsections:

Permission de ne pas assister aux réunions du Conseil

48.4 (1) Sur demande et pour des raisons justes et suffisantes, la trésorière ou le trésorier peut dispenser une conseillère ou un conseiller d'office visé à la disposition 3 du paragraphe 12 (1) de la Loi, une conseillère ou un conseiller d'office visé à la disposition 2 du paragraphe 12 (2) de la Loi ou une conseillère ou un conseiller d'office visé à l'article 14 de la Loi de l'obligation d'assister aux réunions du Conseil pendant une période déterminée ou indéterminée.

Effet de la dispense de réunion

(2) Si, en application du paragraphe (1), la trésorière ou le trésorier a dispensé une conseillère ou un conseiller de l'obligation d'assister aux réunions du Conseil, le paragraphe 48.2 (2) ou 48.3 (2), selon le cas, ne s'applique pas à cette conseillère ou à ce conseiller.

7. Section 50 of the English version of the By-Law is amended by adding the following subsection:

Entitlement

(1.1) Subject to subsection (2), every emeritus bencher is entitled to receive from the Society remuneration,

(a) for each half day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time; and

(b) for each full day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time.

8. Section 50 of the French version of the By-Law is amended by adding the following subsection:

Rémunération

(1.1) Sous réserve du paragraphe (2), la conseillère ou le conseiller émérite est habilité à recevoir une rémunération du Barreau

a) à l'égard de chaque demi-journée de travail accompli pour le compte du Barreau dans une année de rémunération, dont le montant est précisé au besoin par le Conseil;

b) à l'égard de chaque journée entière de travail accompli pour le compte du Barreau dans une année de rémunération, dont le montant est précisé au besoin par le Conseil.

9. Section 52 of the English version of the By-Law is amended by adding ", every emeritus bencher" after "bencher".

10. Section 52 of the French version of the By-Law is amended by adding ", les conseillers et les conseillères émérites" after "conseillères".

11. Section 98 of the English version of the By-Law is amended by renumbering paragraphs 6 and 7 paragraphs 7 and 8 and by adding the following paragraph:

6. An emeritus bencher under paragraph 1 of subsection 48.1 (2) of this By-Law who has not lost the right to take part in a debate at Convocation.

12. Section 98 of the French version of the By-Law is amended by renumbering paragraphs 6 and 7 paragraphs 7 and 8 and by adding the following paragraph:

6. Les conseillers et les conseillères émérites visés à la disposition 1 du paragraphe 48.1 (2) du présent règlement administratif qui n'ont pas perdu le droit de participer aux débats lors des réunions du Conseil.

13. Section 116 of the English version of the By-Law is revoked and the following substituted:

Voting rights

116. (1) Only members of a standing committee may vote at meetings of the committee.

No voting rights

(2) Despite subsection (1), a member of a standing committee who has lost the right to vote in committees under another section of this By-Law may not vote at meetings of the committee.

14. Section 116 of the French version of the By-Law is revoked and the following substituted:

Droit de vote

116. (1) Seuls les membres des comités permanents ont le droit de voter aux réunions des comités.

Aucun droit de vote

(2) Malgré le paragraphe (1), le membre d'un comité permanent qui a perdu le droit de vote aux comités en application d'un autre article du présent règlement administratif ne peut pas voter aux réunions du comité.

APPENDIX 2

BY-LAW 3

Made: May 1, 2007
Amended: June 28, 2007
September 20, 2007
November 22, 2007
June 26, 2008
April 30, 2009
September 24, 2009
September 24, 2009 (editorial changes)
February 25, 2010
May 27, 2010
June 8, 2010 (editorial changes)
October 28, 2010
November 9, 2010 (editorial changes)
November 25, 2010

BENCHERS, CONVOCATION AND COMMITTEES

PART I

BENCHERS

ELECTION OF BENCHERS LICENSED TO PRACTISE LAW

. . . .

CANDIDATES

Who may be candidate: election of benchers in 2011

7. (1) Every licensee is qualified to be a candidate in the election of benchers in 2011 if,

(a) on June 1, 2011, the licensee would not have held the office of elected bencher for 16 or more years; and

(b) at the time of signing a nomination form containing his or her nomination as a candidate,

(i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and

(ii) the licensee's licence is not suspended.

Who may be candidate: election of benchers after 2011

(2) Every licensee is qualified to be a candidate in an election of benchers after 2011 if,

(a) on June 1 of the year of the election of benchers, the licensee would not have held the office of elected bencher for 12 or more years; and

(b) at the time of signing a nomination form containing his or her nomination as a candidate,

(i) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario, and

(ii) the licensee's licence is not suspended.

Deemed to have held office for the specified number of years

(3) For the purposes of subsections (1) and (2), a licensee shall be deemed to have held the office of elected bencher for the number of years specified in the applicable subsection if,

(a) the licensee was elected as a bencher in or at any time after the election of benchers immediately preceeding the election of benchers for which he or she seeks to qualify as a candidate;

(b) the licensee would have held the office of elected bencher for the number of years specified in the applicable subsection if the licensee had remained in office until the benchers elected in the next election of benchers took office; and

(c) the licensee resigned from the office of elected bencher prior to the benchers in the next election of benchers taking office.

Application of subsection (3)

(4) Subsection (3) applies to a licensee even if the licensee resigned from the office of elected bencher before the subsection came into effect.

. . . .

PART II

HONORARY BENCHERS

. . . .

Emeritus benchers

48.1 (1) There shall be a class of honorary benchers known as emeritus benchers.

Who are emeritus benchers

(2) The following, if and while they are licensees, are emeritus benchers:

1. Every person who has held the office of Treasurer.

2. Every person who has held the office of elected bencher for at least 12 years.

Benchers by virtue of office not emeritus benchers

(3) Despite subsection (2), any person who is a bencher by virtue of office is not an emeritus bencher.

Licence in abeyance

(4) Subsection (2) does not apply to a person whose licence is in abeyance under section 31 of the Act.

If elected bencher is eligible to become emeritus bencher

(5) An elected bencher who becomes qualified as an emeritus bencher under paragraph 2 of subsection (2) continues in office as an elected bencher despite the qualification.

Eligibility for appointment

(6) An emeritus bencher is eligible to be appointed,

(a) to the Hearing Panel under clause 49.21 (3) (b) of the Act;

(b) to the Appeal Panel under clause 49.29 (3) (b) of the Act; and

(c) to a standing or other committee.

Voting rights

(7) An emeritus bencher may vote in committees.

Former Treasurers : right to participate in debate at Convocation

(8) An emeritus bencher under paragraph 1 of subsection 48.1 (2) may take part in a debate at Convocation.

Removal of rights

(9) Despite subsections (7) and (8), an emeritus bencher under paragraph 1 of subsection 48.1 (2) who fails to attend Convocation held under section 77 four consecutive times may not vote in committees and may not take part in any debate at Convocation until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to vote in committees and the right to take part in a debate at Convocation.

Excused from attending Convocation

(10) On application by the emeritus bencher, where there is good and sufficient reason to do so, the Treasurer may excuse an emeritus bencher from the requirement to attend Convocation for a definite or indefinite period and, where the Treasurer has done so, while the bencher is excused from the requirement to attend Convocation, subsection (9) does not apply to the emeritus bencher.

## PART II.1

## BENCHERS BY VIRTUE OF OFFICE

Former Treasurers: voting

48.2 (1) Benchers by virtue of their office under section 14 of the Act may vote in Convocation and in committees.

Removal of voting rights

(2) Despite subsection (1), a bencher by virtue of his or her office under section 14 of the Act who fails to attend Convocation held under section 77 four consecutive times may not vote in Convocation or in committees until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to vote in Convocation and in committees.

Other benchers by virtue of office: right to participate in debate at Convocation

48.3 (1) Benchers by virtue their office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act may take part in a debate at Convocation

Removal of right to participate in debate at Convocation

(2) Despite subsection (1), a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act who fails to attend Convocation held under section 77 four consecutive times may not take part in any debate at Convocation until after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she loses the right to take part in a debate at Convocation.

Excused from attending Convocation

48.4 (1) On application by the bencher, where there is good and sufficient reason to do so, the Treasurer may excuse a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) of the Act, a bencher by virtue of his or her office under paragraph 2 of subsection 12 (2) of the Act or a bencher by virtue of his or her under section 14 of the Act from the requirement to attend Convocation for a definite or indefinite period.

Effect of being excused from attending Convocation

(2) Where the Treasurer has, under subsecton (1), excused a bencher from the requirement to attend Convocation, while the bencher is excused from the requirement to attend Convocation, subsection 48.2 (2), or subsection 48.3 (2), as the case may be, does not apply to the bencher.

## PART III

## BENCHERS: ADMINISTRATION

### REMUNERATION

Interpretation

49. (1) In this section and in sections 50 and 51,

"elected bencher" does not include a person who becomes a bencher under subsection 16 (6) of the Act;

"full day" means a total of more than 3 hours in a period of 24 hours;

"half day" means a total of not more than 3 hours in a period of 24 hours;

"payee" means a person who is entitled to receive remuneration from the Society under section 50;

"remuneration year" means,

(a) in the case of a payee other than an elected bencher licensed to provide legal services in Ontario and a person who is elected as a member of the Paralegal Standing Committee, as applicable,

(i) the period beginning on the day, in one calendar year, on which Convocation has its first regular meeting after an election of benchers licensed to practise law in Ontario as barristers and solicitors and ending, in the following calendar year, on May 31,
(ii) the twelve-month period beginning on June 1 in one calendar year and ending on May 31 in the following calendar year, and
(iii) the period beginning on June 1 in one calendar year and ending, in the following calendar year, on the day before the day on which Convocation has its first regular meeting after an election of benchers licensed to practise law in Ontario as barristers and solicitors, and

(b) in the case of a payee who is an elected bencher licensed to provide legal services in Ontario or a person who is elected as a member of the Paralegal Standing Committee, as applicable,

(i) the period beginning on the day, in one calendar year, on which the Paralegal Standing Committee has its first regular meeting after an election to the Committee of five persons licensed to provide legal services in Ontario and ending, in the following calendar year, on May 31,
(ii) the twelve-month period beginning on June 1 in one calendar year and ending on May 31 in the following calendar year, and
(iii) the period beginning on June 1 in one calendar year and ending, in the following calendar year, on the day before the day on which the Paralegal Standing Committee has its first regular meeting after an election to the Committee of five persons licensed to provide legal services in Ontario;

"work" means any of the following activities and includes reasonable time traveling to or from the activity:

1. Attending a Convocation,
2. Attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is a member,
3. Attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is not a member, at the request of the chair of the committee,
4. Attending an information session organized by the Society exclusively for all or any group of payees,
5. Attending a program of education or training required by the Society for payees as such,
6. Hearing a hearing before the Hearing Panel or Appeal Panel,
7. Preparing reasons for a decision or order of the Hearing Panel or Appeal Panel,
8. Conducting a pre-hearing conference in a proceeding before the Hearing Panel,
9. Performing activities, as a chair or vice-chair of the Hearing Panel or Appeal Panel, that are integral to the office of chair or vice-chair of the Hearing Panel or Appeal Panel,

10. Performing activities, as a member of the Hearing Panel or Appeal Panel, that relate to the management of a proceeding before the Hearing Panel or Appeal Panel,
11. Performing activities, as a person appointed by Convocation for the purpose of making orders under sections 46, 47, 47.1, 48 and 49 of the Act, that are integral to the role of that person under sections 46, 47, 47.1, 48 and 49 of the Act,
12. Attending a meeting, other than a Convocation or a meeting of a standing or other committee, at the direction of the Treasurer or Convocation,
13. Performing activities as a director of an organization, to which position the payee was appointed, or nominated for appointment, by Convocation, provided that the performing of the activities would entitle any other director of the organization to be remunerated by the organization for performing the activities.

Interpretation: person elected as member of the Paralegal Standing Committee

(2) In this by-law, a person who is appointed under subsection 25.2 (2) of the Act is not a person who is elected as a member of the Paralegal Standing Committee.

Entitlement

50. (1) Subject to subsection (2), every elected bencher, every bencher who holds office under subsection 12 (1) of the Act, every bencher who holds office under subsection 12 (2) of the Act, every bencher who holds office under section 14 of the Act and every person who is elected as a member of the Paralegal Standing Committee is entitled to receive from the Society remuneration,

(a) for each half day of work performed for the Society in a remuneration year, after the first 26 half or full days of work performed for the Society in that remuneration year, in an amount determined by Convocation from time to time; and

(b) for each full day of work performed for the Society in a remuneration year, after the first 26 half or full days of work performed for the Society in that remuneration year, in an amount determined by Convocation from time to time.

Entitlement

(1.1) Subject to subsection (2), every emeritus bencher is entitled to receive from the Society remuneration,

(a) for each half day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time; and

(b) for each full day of work performed for the Society in a remuneration year, in an amount determined by Convocation from time to time.

Limits on remuneration: performing activities as director of another organization

(2) A payee is not entitled to receive from the Society remuneration for performing activities as a director of an organization if the payee is remunerated, directly or indirectly, by the organization for performing the activities.

Claiming remuneration

51. (1) Subject to subsection (2), a payee may claim remuneration by submitting to the Society a claim for remuneration in a form provided by the Society.

Same

(2) A payee shall,

(a) claim remuneration for work performed for the Society within a reasonable period of time after the payee has performed the work; and

(b) claim all remuneration in respect of a remuneration year by not later than six months after the end of the remuneration year.

Payment of remuneration to payee

(3) Remuneration to which a payee is entitled shall be paid by the Society,

(a) within a reasonable period of time after the payee submits a claim for remuneration; and

(b) within the calendar year in which the payee submits a claim for remuneration.

Same

(4) Remuneration shall be paid to the individual payee claiming the remuneration or, at the direction of the individual payee, to the firm of which the payee is a partner or employee or to the professional corporation of which the payee is a shareholder or employee.

DISBURSEMENTS

Disbursements

52. Every bencher, every emeritus bencher and every person who is elected as a member of the Paralegal Standing Committee is entitled to be reimbursed by the Society for reasonable expenses incurred by him or her in the performance of his or her duties for or on behalf of the Society.

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PART V

CONVOCATION

. . . .

DEBATE

. . . .

Who may participate in debate

98. The following persons may take part in a debate at Convocation:

1. An elected bencher.

2. A lay bencher.

3. A bencher by virtue of his or her office under paragraph 1 of subsection 12 (2) of the Act.

4. A bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act who has not lost the right to take part in a debate at Convocation.

5. A bencher by virtue of his or her office under section 14 of the Act who has not lost the right to vote in Convocation.

6. An emeritus bencher under paragraph 1 of subsection 48.1 (2) of this By-Law who has not lost the right to take part in a debate at Convocation.

~~6~~ 7. The Chief Executive Officer.

~~7~~ 8. Any other person with the prior permission of the Treasurer.

. . . .

PART VI

COMMITTEES

GENERAL

. . . .

STANDING COMMITTEES

. . . .

Composition

109. (1) Each standing committee shall consist of at least six persons appointed by Convocation.

Benchers

(2) Each standing committee shall include at least five benchers.

Appointment of persons to standing committees

(3) Convocation may appoint persons to a standing committee at any time.

Treasurer's recommendations for appointment

(4) The Treasurer shall recommend to Convocation all persons for appointment to standing committees.

Treasurer

110. The Treasurer is a member of every standing committee.

Term of office

111. Subject to section 112, a person appointed to a standing committee under section 109 shall hold office until his or her successor is appointed.

Removal from standing committee by Convocation

112. (1) Convocation may remove from a standing committee any member of the committee who fails to attend three consecutive meetings of the committee.

Automatic removal from standing committee

(2) A member of a standing committee who is a bencher by virtue of his or her office under paragraph 3 of subsection 12 (1) or paragraph 2 of subsection 12 (2) of the Act ceases to be a member of the committee immediately after he or she fails to attend Convocation held under section 77 four consecutive times.

Automatic reinstatement to standing committee

(3) A person who ceased to be a member of a standing committee under subsection (2) is reinstated as a member of the committee immediately after he or she attends three of any five consecutive times Convocation is held under section 77 after he or she ceases to be a member of the committee.

Chairs and vice-chairs

113. (1) For each standing committee, Convocation shall appoint,

(a) one bencher, who is a member of the standing committee, as chair of the standing committee; and

(b) one or more benchers, who are members of the standing committee, as vice-chairs of the standing committee.

Term of office

(2) Subject to subsection (3), the chair and vice-chairs of a standing committee hold office until their successors are appointed.

Appointment at pleasure

(3) The chair and vice-chairs of a standing committee hold office at the pleasure of Convocation.

Vacancy

(4) If the chair or a vice-chair of a standing committee for any reason is unable to act, the Treasurer may appoint another member of the standing committee as the chair or a vice-chair and, subject to subsection (3), that member shall hold office as chair or vice-chair until his or her successor is appointed.

Appointment under subs. (4) subject to ratification

(5) The appointment of a member of a standing committee as the chair or a vice-chair of the committee under subsection (4) is subject to ratification by Convocation at its first regular meeting following the appointment.

Quorum

114. (1) Four members of a standing committee who are benchers constitute a quorum for the purposes of the transaction of business.

Meetings by telephone conference call, etc.

(2) Any meeting of a standing committee may be conducted by means of such telephone, electronic or other communication facilities as permit all person participating in the meeting to communicate with each other instantaneously and simultaneously.

Right to attend meeting

115. (1) Subject to subsection (2), no person other than a member of a standing committee may attend a meeting of the committee.

Same

(2) The following persons who are not members of a standing committee may attend a meeting of the committee:

1. A bencher who is entitled to vote in Convocation or who may take part in a debate at Convocation.

2. An officer or employee of the Society.

3. Any person not mentioned in paragraph 1 or 2 with the permission of the chair of the committee.

Voting rights

116. (1) Only members of a standing committee may vote at meetings of the committee.

No voting rights

(2) Despite subsection (1), a member of a standing committee who has lost the right to vote in committees under another section of this By-Law, may not vote at meetings of the committee.

. . . .

Re: Amendments to By-Law 3

It was moved by Mr. Heintzman, seconded by Mr. Bredt, that the amendments to By-Law 3 (Benchers, Convocation and Committees) as set out in the motion at Appendix 1 be approved.

Carried

*REPORT FOR INFORMATION*

AUDIT COMMITTEE REPORT

Mr. Bredt presented the LAWPRO Financial Statements for the nine months ended September 30, 2010 and the LibraryCo Inc. Financial Statements for the nine months ended September 30, 2010.

Report to Convocation
January 27, 2011

Audit Committee

Committee Members
Chris Bredt (Chair)
Susan Elliott
Seymour Epstein
Glenn Hainey
Vern Krishna
Doug Lewis
Jack Rabinovitch
Heather Ross
William Simpson

Purpose of Report: Information

Prepared by the Finance Department
Wendy Tysall, CFO, 416-947-3322

## COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on January 12, 2011. Committee members in attendance were Chris Bredt (c), Susan Elliott (teleconference), Glenn Hainey, Vern Krishna, Doug Lewis, Jack Rabinovitch and Heather Ross.

2. Also in attendance were Kathleen Waters and Steve Jorgensen from LAWPRO.

3. Law Society staff attending were Wendy Tysall, Brenda Albuquerque-Boutilier, Michael Elliott and Andrew Cawse.

## FOR INFORMATION

### LAWPRO - FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2010

4. Convocation is requested to receive LAWPRO's financial statements for the third quarter of 2010 for information.

FOR INFORMATION

LIBRARYCO INC. - FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2010

5. Convocation is requested to receive LibraryCo's financial statements for the third quarter of 2010 for information.

KEY POINT SUMMARY
Statement of Revenues and Expenses – LibraryCo only
Comparison of Actual to Budget

The overall excess of expenses over revenues (line 18) for the quarter was $54,709 compared to a budgeted loss of $124,368. The variance is primarily a result of lower actual expenditures compared to budgeted amounts in other-head office expenses and other law libraries expenses. Grants and capital and special needs grants exceed budget and are discussed along with other variances below. The budget for 2010 included a transfer of $295,000 from the General Fund to finance 2010 operations, so on current trends the full amount of this funding will not be required.

Revenues

1. Law Society grant (line 1) is the lawyer-based fee that is transferred to Library Co. This transfer includes amounts for central administration and quarterly transfers to the 48 libraries. The actual grant from the Law Society was $5.2 million for the quarter and matched budgeted amounts for the period.
2. The Law Foundation of Ontario grant (line 2) was provided to LibraryCo to match the purchase of electronic resources. A variance occurred as the originally budgeted Westlaw Canada resource was not purchased and LFO funding was reduced accordingly.

Expenses

3. Salaries and administration expense (line 5) includes salaries, benefits and costs per the Administrative Services Agreement with the Law Society.
4. Professional fees (line 6) are predominantly the accrual for the annual audit and smaller amounts for consulting, and counsel fees.
5. Contingency (line 7) - There is no expense charged against contingency.
6. Other expenses (line 8) are lower than budget for the period by $39,897 primarily because of decreased costs for board of directors' expenses, printing and stationery, publications, web expenses, and miscellaneous expenses.
7. Electronic products and services (line 10) expenditures of $819,630 are lower than budget as the Westlaw Canada resource was not purchased as noted in the grant revenue from the LFO above. There are no further expenses to be incurred.
8. Group benefits and insurance (line 11) represent health, dental, long term disability and other benefits for the county library employees. It also includes the general commercial insurance for the county libraries.

9. Other – law libraries (line 12) include expenses related to staff and travel, COLAL and CDLPA Library Committee meetings, COLAL continuing education and bulk purchases of publications for the library system. Expenses for the year are $33,036 lower than budget primarily as there was less staff travel, publications purchased and continuing education.
10. Law Libraries – grants (line 14) of $4,359,789 is $10,975 more than budget due to supplementary grants of $10,000, $7,500, $5,325 and $2,150 paid to Middlesex, Halton, Peterborough and Lincoln respectively. These additional amounts were approved by the Board. Offsetting those amounts was a $14,000 repayment of 2009 surplus by Oxford.
11. Capital and special needs grants (line 15) are provided to help the libraries replace aging furniture and equipment, perform library renovations and relocations, and pay for unbudgeted expenditures. These expenditures do not follow a pattern. Grants were paid to five libraries and totalled $51,336. This results in negative variance of $15,336 for the year to date and already exceeds the annual budget by $2,336.

Balance Sheet - LibraryCo only

12. Cash and short-term investments of $1.7 million are lower than 2009 as the 2009 balance included the fourth quarter grant amount which was advanced to LibraryCo on September 28, 2009, resulting in the deferred revenue balance in 2009.
13. Prepaid Expenses consists of insurance amounts paid in advance for commercial insurance for the county libraries and directors and officers insurance for LibraryCo. Commercial insurance for the libraries had a 22% increase for the April 30, 2010 renewal because of rate and coverage increases, while directors and officers insurance remained the same.
14. Accounts payable and accrued liabilities (line 5) consist of amounts payable for goods and services and amounts due to the Law Society for payroll and administrative services,
15. Deferred revenue is nil as the fourth quarter grant amount was not received until after September 30. In 2009 the fourth quarter grant amount was received on September 28, 2009 and consequently a deferred revenue balance was created,

Statement of Changes in Fund Balances – LibraryCo

16. The General fund balance at September 30, 2010 was $763,926 compared to $683,037 at the same time in 2009.

17. The Reserve fund at December 31, 2009 was $885,389, unchanged from last year.

Schedule of Revenues and Expenses - LibraryCo and County Law Libraries
Comparison of 2010 to 2009 Actuals Year-to-Date

18. The Law Society grant (line 1) was $5.2 million compared to $5.6 million the previous year in line with the reduced member fee in the approved budget.

19. The Law Foundation of Ontario Grant (line 2) of $819,630 increased by $129,780 from the 2009 period in line with the related expense. The increase resulted from a change in the toolkit of legal electronic resources.

20. Other income (line 3) of $301,788 noted under the Law Libraries column represents income from local recoveries such as members' dues, photocopying, faxing, printing, and fees charged for specific research services.

21. Salaries and administration expenses (line 5) of $467,535 at the LibraryCo level are $32,870 higher than the previous year due to increases in salaries and benefits, a part time position which started last June, and administration costs. Salaries and administration at the Law Libraries were $148,751 higher due to furniture purchases and moving expenses for Durham of $33,000 as well as salary increases.

22. Electronic products and services (line 9) of $819,630 are $129,780 higher than in 2009 because the toolkit of legal electronic resources was modified.

23. Collections (line 10) of $1,727,838 has declined slightly (2009 - $1,776,494) due to cost saving measures such as annual updates of some collections materials.

24. Group benefits (line 11) of $226,282 are $24,748 higher than in 2009 in line with premium increases in September of last year.

25. Law Library grants (line 15) are $79,691 higher than the previous year in line with the general increase of 2% in the 2010 grant amounts.

Other Items of Note

26. Total payables and accrued liabilities at 48 Law libraries amounted to approximately $756,792. This represents an average balance of $15,767 (2009 - $13,000).

27. All 48 law libraries were able to submit their financial information for inclusion in this report with 88% submitting before the deadline.

## FOR INFORMATION

## OTHER COMMITTEE WORK

Internal Control Tool for the Audit Committee

6. Part of the Committee's mandate under By-law 3 is to "review the integrity and effectiveness of the financial operations, systems of internal control and reporting mechanisms of the Society".

7. To assist the Committee in understanding and fulfilling the mandate to review the integrity and effectiveness of the systems of internal control, the Committee used a tool for Audit Committees to assess internal controls.

8. The Committee was satisfied with the results of the internal control assessment. A change in the whistleblowing-type provisions of the Society's Business Conduct Policy was requested to include reporting to the Audit Committee. A copy of the current Business Conduct Policy is attached.

Review of Discipline Order Receivables

9. The Committee reviewed the status and process around amounts receivable from members from cost awards, fines, restitution orders awarded by hearing panels. The review of receivables also included the repayment of amounts paid by the Compensation Fund.

10. The total of receivables from lawyers and paralegals in the Discipline Order Receivable accounts as at October 31, 2010 is $5,010,000.

11. If there is little probability of collecting an amount, a provision is set up against the individual receivable account, effectively reducing the receivable balance to zero or to the amount likely to be collected. This provision is made for any receivable where the member is not entitled to provide legal services (i.e. the member is under some form of suspension or has had their license revoked). These amounts provided for as bad debts are not written off but continue to be monitored until collected or confirmed as uncollectable. The total provision for doubtful Discipline Order Receivable accounts at October 31, 2010 is $4,503,000, resulting in a net receivable balance of $507,000.

12. There are 211 lawyers, ex-lawyers and paralegals on the receivables list.

13. Payments totaling $314,000 have been received in the first 10 months of 2010.

14. The Committee will continue to review the matter at the next meeting.

LAW SOCIETY OF UPPER CANADA

BUSINESS CONDUCT POLICY

Effective November 1, 2007

ORGANIZATIONAL AND EMPLOYEE INTEGRITY

1. COMPLIANCE WITH LAWS

The Law Society's reputation for integrity is one of its most valued assets and essential to the fulfilment of its mission of governing the profession and protecting the public interest. It is imperative that honesty and fair dealing characterize all our activities both with the public and the profession. Personal integrity demonstrates soundness of moral principle and good character especially in relationship to truth and fair dealing, uprightness, honesty and sincerity. To ensure that this basic policy is followed fully, the Law Society strives at all times to be in complete compliance with all applicable laws and regulations and internal policies. If any Law Society employee should have reason to be concerned at any time that the Law Society is not operating in complete compliance with applicable laws and regulations or established policies, the employee should immediately report the concern to a manager, or if preferred to any of the following, the Chief Executive Officer, the Treasurer, the Chair of the Finance Committee or the Chair of the Audit Committee. Any employee who does report such concerns shall be fully protected against recrimination.

## 2. PAYMENTS OF LAW SOCIETY FUNDS

All payment for goods and services and all compensation payments shall be made only after being properly authorized in accordance with approved policies and procedures. A request for authorization to make any payment that is not covered by an established policy or procedure must be specifically approved by the Chief Executive Officer.

## 3. GIFTS AND HOSPITALITY

Law Society employees shall not give gifts to customers or suppliers, other than items of nominal value, or provide them with hospitality other than such hospitality as is appropriate in a normal business relationship.

No Law Society employee shall give any service or thing of value to any public official, nor to any employee or representative of any entity for any reason related to the Law Society's business or with the intent to influence that person's official acts.

No Law Society employee shall accept any benefit from, or have any association, agreement or understanding with a supplier of goods or services that would result in, or give the appearance of, that supplier being favoured or given preference over others.

Law Society staff and any of their family members shall not accept from a supplier any gift, other than items of nominal value, or any hospitality, which is not appropriate to the business relationship. In no circumstances is a payment of money to be accepted.

## 4. CONFLICTS OF INTEREST AND DUTIES

Law Society employees shall not be in a position of having any undisclosed or avoidable conflict between their duties and responsibilities as employees of the Law Society and their personal interests.

The employee shall have no conflicts of interest between the duty to act in the best interest of the Law Society and duties owed to any other activity or organization with which the employee is involved. If, for example, a Law Society employee serves on the board of directors of a charitable organization, the employee must withdraw from any meeting or other situation in which a specific transaction between the Law Society and charitable organization is or might be involved.

No Law Society employee shall undertake on behalf of the Law Society any business relationship with another entity, that is related in any way to the employee, on terms less favourable to the Law Society than are available from a similar business relationship with an unrelated third party.

## 5. CONFIDENTIAL INFORMATION

Confidential information is any information concerning the Law Society that a person obtains during the course of employment with the Law Society. Examples include information about specific complaints or discipline charges against a licensee; details of the licensee's Errors and Omissions record and information relating to the financial affairs or condition of the Law Society that has not been made available generally to the public.

All such information is confidential and Law Society employees may neither use inside information for financial gain nor in any way or for any reason make it available to others.

Because of the nature of the Law Society's role, employees should be especially sensitive to the need for this rule. It would be unethical and in some instances illegal to use information regarding a licensee for any purpose whatsoever, other than the purpose for which it was made available to the Law Society.

6. REPORTING TO MANAGEMENT AND AUDITORS

Law Society employees having knowledge of any matter which in their judgement might affect adversely the Society's reputation or operations shall bring such knowledge promptly to the attention of a senior manager, the Chief Executive Officer, the Treasurer, the Chair of the Finance Committee or the Chair of the Audit Committee. There shall be no concealment of such knowledge even in circumstances where it might be felt by the employee that concealment or less than complete candour would be in the best interests of the Law Society or its management.

Similarly, there shall be no concealment of information from any auditors of the Law Society.

7. PROPER ACCOUNTING

In all accounting and related records, the financial position of each operating entity within the Law Society and the results of its operations shall be accurately recorded and fairly presented, all in accordance with generally accepted accounting principles.

8. DEALING WITH SUPPLIERS

The Law Society shall at all times deal fairly, ethically and in good faith with all suppliers. Every supplier representative shall be given a prompt and courteous hearing and a fair and equal opportunity to seek Law Society business. All major purchases of goods and services shall be made on the basis of competitive quotations, giving due consideration to all relevant factors including service, quality and delivery. A minor purchase may be approved without seeking competitive quotations if there is sufficient purchasing experience and pricing information available to satisfy senior management that the purchase is being made competitively.

With regard to companies and individuals that supply goods or services to the Law Society, employees of the Society:

(1) shall not serve the supplier in any way;

(2) shall not have a financial interest in the supplier that could weaken the employee's loyalty to the Law Society;

(3) shall not ask for special treatment when purchasing goods or services for personal use.

In all dealings with suppliers, employees shall avoid any activity or interest that could in any way impair the integrity of the Law Society.

CONCLUSION

In conclusion, the Business Conduct Policy Statement is intended to serve only as a general guide toward compliance with the Law Society's standards of business conduct.
In any case where an employee requires more specific guidance the employee should ask his or her manager for clarification and direction.

It shall be the responsibility of all managers to ensure compliance throughout the Law Society with the standards of conduct imposed by this Business Conduct Policy Statement. Each shall be responsible for the appropriate distribution of the Business Conduct Policy Statement, for dissemination of the guidelines and for ensuring that they are fully understood and followed.

Each member of senior management is responsible for reporting annually to the Chief Executive Officer that all employees within their departments have read or re-read the Business Conduct Policy Statement and confirmed compliance with its requirements.

Employee Declaration:

I have read the Business Conduct policy as adopted by Convocation and confirm that I have and will continue to comply with its requirements.

_____
Employee Name (printed)

_____ _____
Employee Signature Date

Attached to the original Report in Convocation, copies of:

(1) Copy of the Lawyers' Professional Indemnity Company Report to the Audit Committee of the Law Society of Upper Canada dated November 25, 2010.

(pages 4 – 17)

(2) Copy of LibraryCo Inc. Financial Statements for the Nine Months Ended September 30, 2010.

(pages 22 – 25)

PROFESSIONAL REGULATION COMMITTEE REPORT

The Treasurer advised that the matter respecting the Guidelines for Law Office Searches was deferred.

ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Boyd and Mr. Simpson presented the Report.

Report to Convocation
January 27, 2011

Access to Justice Committee

Access to Justice Committee
Marion Boyd, Co-Chair
William Simpson, Co-Chair
Bonnie Tough, Vice-Chair
Paul Dray
Mary Louise Dickson
Larry Eustace
Carl Fleck
Avvy Go
Michelle Haigh
Susan McGrath
Jack Rabinovitch
Catherine Strosberg

Purpose of Report: Decision

Prepared by the Equity Initiatives Department
(Marisha Roman, Aboriginal Initiatives Counsel - 416-947-3989)

COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on December 10, 2010. Committee members Marion Boyd (Co-Chair), William Simpson (Co-Chair), Bonnie Tough (Vice-Chair), Paul Dray, Lawrence Eustace, Carl Fleck, Michelle Haigh, Susan McGrath, Jack Rabinovitch and Catherine Strosberg participated. Staff members Malcolm Heins, Marisha Roman, Josée Bouchard, Julia Bass, Sheena Weir and Denise McCourtie attended. Lynn Burns, Executive Director of Pro Bono Law Ontario, and Jeffrey Leon, Chair of the Board of Directors of Pro Bono Law Ontario, attended as guests to make a presentation.

FOR DECISION

PRO BONO LAW ONTARIO (PBLO) REQUEST FOR LAW SOCIETY FUNDING FOR THE PBLO AT SICKKIDS PROGRAM

MOTION

2. That Convocation consider and, if appropriate approve, PBLO's request for funding for the PBLO at SickKids program in the amount of $90,000 for the period of February 28, 2011 to December 31, 2011.

PBLO - BACKGROUND

3. PBLO is a charitable organization with a mandate to promote access to justice in Ontario by creating and promoting opportunities for lawyers to provide pro bono legal services to persons of limited means. It accomplishes this goal by brokering relationships between public service providers (legal clinics and community-based organizations) and the private bar (law firms and law associations). PBLO seeks out these opportunities and develops collaborative *pro bono* projects.

4. The organization is governed by a Board of Directors consisting of fourteen volunteers and is chaired by Jeffrey Leon, partner at Bennett Jones LLP. Lynn Burns is the Executive Director. PBLO has a staff of seven.

5. The Law Society has supported PBLO since its inception, both in-kind and financially. The Law Society provides administrative support for PBLO as well as an annual rent subsidy in the amount of $50,000 for the PBLO offices. The Law Society has also partnered with PBLO in projects and initiatives, including the Ontario Civil Legal Needs Project, to which PBLO contributed $75,000.

6. Historically, in addition to the Law Society's support, PBLO has received core funding from the Law Foundation of Ontario (LFO) and Legal Aid Ontario (LAO). According to PBLO, LAO core funding will be reduced from approximately $250,000 in 2010 to $100,000 in 2011. LFO provides core funding to PBLO of approximately $800,000. LFO's cut in funding to PBLO in 2011 comes in the form of the discontinuation of funding for the PBLO at SickKids program.

7. According to PBLO, the agency is facing a shortfall in 2011 of between $100,000 and $200,000 in core funding. In response to the changes in its financial position, the board of PBLO struck a Fundraising Committee in 2010. The LFO has provided financial support to PBLO for the development of a fundraising strategy. PBLO's intention is to pursue corporate sponsorships, financial support from the legal profession and other types of revenue.

8. Further information about PBLO's mandate and programs can be accessed through the website at http://www.pblo.org/.

THE PBLO AT SICKKIDS PROGRAM - BACKGROUND

9. The PBLO at SickKids program was created as a 2-year pilot project by PBLO and launched on January 1, 2009. Based on a successful program model from Boston, Medical-Legal Partnerships, the SickKids' program delivers free legal services to low-income families whose children receive treatment at The Hospital for Sick Children ("SickKids Hospital").

10. The program enables the integration of legal advocacy into clinical practice. It provides legal resources to families and also supports clinicians who provide services to families with children seeking treatment at the hospital. The governing principle is that legal issues affecting families during the time when a child is seeking medical treatment can have an adverse effect on the child's health as well as impact a family's capacity to manage the child's care. According to PBLO, the program served 624 families from its launch in January 2009 until December 31, 2010.

11. The program has one staff person, a Triage Lawyer, who works as part of a patient's care team with the SickKids Hospital medical and social work staff. The Triage Lawyer assesses the legal needs of the child-patient and the patient's family, provides brief legal services for accepted clients and refers clients to the *pro bono* legal partners where appropriate. The Triage Lawyer has remained the same throughout the pilot period of the project.

12. The program partners are SickKids Hospital and law firms McMillan LLP and Torkin Manes LLP. Both provide in-kind support. SickKids provides support equal in value to approximately $17,700, consisting of office space and equipment within its Department of Social Work as well as services related to the promotion of the program. Lawyers for McMillan and Torkin Manes provide their legal services *pro bono* for clients referred by the program's Triage Lawyer.

13. The 2011 budget for the project's funding request is set out below:

| | |
|---|---|
| Salaries and benefits for the Triage Lawyer | |
| (includes Law Society fees) | 80,482 |
| Insurance – professional indemnification | 2,625 |
| Triage Lawyer – professional development | 1,000 |
| Misc. program expenses | 5,893 |
| TOTAL EXPENSES | 90,000 |

14. Through the pilot project period, the Law Foundation of Ontario (LFO) has been the sole funder for the program. The SickKids Hospital, Torkin Manes and McMillan plan to continue to support and participate in the program by providing space and equipment and legal resources.

15. An independent interim evaluation conducted by the Dalla Lana School of Public Health at the University of Toronto in 2010 showed that the program has reach outside Toronto with 43% of families served coming from outside the city. The report also concluded that the PBLO at SickKids program has shown the following key results:

a. Improvement of clinicians' ability to treat patients and support their families;
b. Provision of easy-to-access legal services for overwhelmed parents and care-givers; and
c. Enabling of families to better understand their legal rights and address their legal problems.

16. The LFO program funding for PBLO at SickKids will expire on February 28, 2011. PBLO is seeking $90,000 in funding from the Law Society to cover the salary and related costs of the program's Triage Lawyer for the period of February 28, 2011 to December 31, 2011. PBLO's application is provided at Appendices 1 through 4 and includes the project proposal (in the form of a Letter of Intent dated November 16, 2010), project budget, the program's 12-month progress report as of January 2010, and a draft Executive Summary of the Phase I Formative Evaluation Report, for the period of March 2009 to June 2010.

LAW SOCIETY'S ACCESS TO JUSTICE MANDATE

17. As part of the Law Society's implementation of its access to justice mandate, Convocation approved the Access to Justice Committee's proposed "Guidelines for Assessing Requests for Sponsorship for External Access to Justice Initiatives and Events" (the "Guidelines") at its May 27, 2010 meeting. These Guidelines, attached at Appendix 5, provide direction for the Committee as it considers applications for financial support from external organizations and formulates its recommendations to Convocation. The Committee applied these guidelines at its December 10, 2010 meeting as it considered PBLO's request for financial support for the PBLO at SickKids program.

18. In the Committee's view, the PBLO at SickKids program satisfies the criteria set out in the Guidelines. Specifically, PBLO is a charitable organization with a mandate to promote access to justice by developing programs for lawyers in Ontario to provide pro bono legal services for the benefit of lower income Ontarians; programs which, in turn, have a positive impact on the Law Society as a regulator for the legal professions and the professions as a whole.

THE ACCESS TO JUSTICE COMMITTEE'S DECISION

19. The Committee considered the funding request using the Guidelines and also discussed the request with Ms. Burns and Mr. Leon at its December 10 meeting. The members of the Committee were assured by PBLO that this request is only for interim funding to provide PBLO time to implement its fundraising strategy and pursue sustainable core and program funding. To that end, in 2011, PBLO will also pursue completion of an outcome evaluation of the program by the Dalla Lana School of Public Health at the University of Toronto to follow up the formative evaluation undertaken already completed. A program evaluation could provide an assessment of how the program model, implemented through the PBLO at SickKids pilot project, could be applied in other centres around Ontario.

20. The members of the Committee expressed their support for the program and its affinity for the Law Society's own access to justice mandate. They concluded that Law Society support for the project will have a positive reputational effect, establishing in the public's eye that access to justice is what the Law Society encourages and also actively supports. The members of the Committee unanimously voted to support the program in principle with the stipulation that the request for funding is a stand-alone request for $90,000 for the period of February 28, 2011 to December 31, 2011 and is not tied to any future requests for funding by PBLO.

21. The Committee referred the funding application to the Finance Committee to consider and, if appropriate, also recommend the request for funding to Convocation. The Finance Committee considered the request at its meeting on January 13, 2011 and voted against recommending the request to Convocation.

22. The members of the Access to Justice Committee request that Convocation consider the PBLO at SickKids program funding proposal and, if appropriate, approve the funding request.

Appendix 1

LETTER OF INTENT
To Be Granted Funds
by The Law Society of Upper Canada
for
PBLO at SickKids

November 16, 2010

Summary

Pro Bono Law Ontario (PBLO) and The Hospital for Sick Children (SickKids) are pleased to submit this grant application in an effort to take our highly successful pilot program and establish it as an ongoing core project in partnership with the hospital. The PBLO at SickKids Project was created as a two-year pilot project with the goal of addressing the legal issues that affect childhood health. For example, an asthmatic child living in a mouldy apartment may benefit if a landlord can be compelled to improve living conditions. Or parents who need to take time off work to care for a severely ill child may require legal assistance to enforce their employment rights. The PBLO at SickKids operates via a highly effective model of being embedded at the hospital in the service of low-income patients, families and the clinicians who treat them. An independent evaluation conduct by the Dalla Lana School of public health has shown that the project is already achieving the following key results:

1) Improving clinicians' ability to treat patients and support their families
2) Providing easy-to-access legal services for overwhelmed parents and care givers
3) Enabling families to better understand their legal rights and address their legal problems

Between officially launching on January 1, 2009 and September 30, 2010 the Project has assisted 540 clients. Hospital partners, both clinicians and the Executive, have fully endorsed the program and are committed to identifying funding to enable its establishment as a hospital program operated by PBLO. This commitment affirms the experience of the wider Medical-Legal Partnership network, of which PBLO at SickKids is the first and only Canadian member, that 'legal care' is a vital component of clinical practice in the treatment of low-income populations.

Since seed funding for this project will expire on February 28, 2011, PBLO is seeking $90,000 from the Law Society of Upper Canada in 2011 in order to sustain the project until more stable core funding can be secured for this important project.

Proposed Activities

The program partners—SickKids, PBLO and law firm partners—will maintain the existing structure, which comprises the Triage Lawyer who delivers/oversees three principal components: *training for clinicians in advocacy and legal issue spotting; legal assistance (including pro bono) to low-income patients/families; and systemic advocacy.* It should be noted that the SickKids Project is a highly cost-effective program. It succeeds thanks to a high degree of good will and collaboration among program partners, a modest infrastructure, and a Triage Lawyer who both coordinates and delivers legal services.

Phase II will additionally encompass the second stage of the SickKids Project outcome evaluation. Building upon program evaluation activities conducted during Phase I—including data collection and analysis by Dr. Suzanne Jackson at the Dalla Lana School of Public Health—Phase II will focus on outcome evaluation of Phase I program results.

Reason for/Benefits of Proposed Activities

As demonstrated, the Project has exceeded anticipated results with respect to volume of cases and overall response by the clinical and legal sectors. While Phase I has been a pilot project, program partners view the Project's continuation as a priority and acknowledge it has already made an impact on the treatment and care of some of SickKids' most disadvantaged children and families.

PBLO at SickKids offers many benefits to the legal profession in Ontario. It provides members of the private bar an unparalleled opportunity to connect with vulnerable families through pro bono assistance. Consistent with the Law Society's commitment to access to justice, the program is an excellent vehicle for the incubation of best practices in law and healthcare. Furthermore, it is a very high-profile collaboration between an international leader in child health and the principal delivery agents of legal services for low-income Ontarians. As such, it has the potential to achieve vastly improved living conditions for vulnerable children and families which can arguably lead to a more just Ontario.

Likewise, the program benefits hospital clinicians by providing legal solutions for persistent problems that impact the health of their most disadvantaged patients. It brings the law into healthcare in an instructive way. For example, it allows medical professionals the opportunity to enhance their appreciation of the social determinants of health—the non-medical factors that

impact their patients and the legal remedies that can improve conditions so that clinical interventions may be maximized. The program also gives social workers—whose professional lens is the social and emotional—an indispensable tool that allows them to spend less time pursuing bureaucratic solutions and more time helping patients and families cope with illness.

There are clear benefits of continuing to document the success of the Project through evaluation. The second stage of the plan implemented in Phase I comprises an outcome evaluation and the potential for groundbreaking clinical and legal research. It presents important opportunities for in-depth exploration and dissemination of the strengths and benefits of the medical-legal model, of interest not only to the Project's partners and supporters, but to health and legal practitioners in Ontario and Canada who are committed to improving the health outcomes of low-income, marginalized and vulnerable populations.

Appendix 2

PRO BONO LAW
ONTARIO

| PBLO at SickKids 2011 Budget | 2011 | NOTES |
|---|---|---|
| Income | | |
| Law Society of Upper Canada | 90,000.00 | Rent, telephone, etc. provided in-kind by SickKids |
| | | Program management, office supplies,etc. provided by PBLO |
| TOTAL INCOME: | 90,000.00 | |
| Expenses: | | |
| Salaries and benefits | 80,482.00 | |
| Insurance - professional indemnification | 2,625.00 | |
| Triage Lawyer professional development | 1,000.00 | |
| Misc. program expenses | 5,893.00 | |
| TOTAL EXPENSES | 90,000.00 | |

Appendix 3

PBLO at SickKids

12-Month Progress Report

January, 2010

Summary

As the first year of this granting period comes to an end, we are delighted to report that the PBLO at SickKids (PBLO at Sickkids) has proven to be a successful initiative of great value to SickKids Hospital and the patients and families they serve. The program has surpassed our expectations by nearly every measure, including the number of legal consultations provided, the level of acceptance by hospital staff and administration and the degree of interest in the program on the part of the legal profession.

This report reviews the primary elements of the program proposal, as well as the work plan (Appendix A), and compares them to year-one activities and results. It provides commentary on our successes, our challenges and our plans for year two. It also describes and accounts for variances from the proposed activities or their implementation.

Year-One Activities and Results

*Early Development*

Program activities began on schedule, in January 2009, with the hiring of the Triage Lawyer and the establishment of administrative systems. Program partners were consulted on referral procedures, and protocols aimed at facilitating services (for example, with Legal Aid) were developed. Evaluation protocols began development in February, including the design of data collection tools and the staffing of the Evaluation Committee.

*Triage Lawyer (TL)*

The Triage Lawyer (Lee Ann Chapman) began her employment on March 2, slightly later than anticipated, in order to complete her previous work assignment. From March to May 1 Lee Ann was located at the office of PBLO while space at the hospital was secured. During this time she attended the annual National Medical-Legal Partnership conference, in Cleveland where she received a full orientation in the medical-legal model. We were very pleased when space became available in the department of Social Work—the best possible location in everyone's opinion. The program goals are most naturally aligned with those of Social Work, and social workers had already demonstrated a high level of enthusiasm for the program. (See Section 3b for more details on the role of the TL.)

*Results Per Proposed Activities*

As outlined in our funding proposal, PBLO at SickKids comprises the following core components:

- *Advocacy and legal issue spotting (training) for clinicians*
- *Direct legal assistance to low-income patients/families*
- *Systemic advocacy*

Year-one activities rolled out largely as designed and expected. However, as with any new program, we occasionally had to adjust our expectations and address unanticipated challenges.

*Advocacy and legal issue spotting (training) for clinicians*

Thanks to the hospital's inter-disciplinary clinical approach, as well as strong leadership from the program's clinical 'champions' (Director of Social Work and Director of Social Pediatrics), SickKids clinical staff were highly receptive to PBLO at Sickkids's arrival. Program introduction presentations to various clinical groups began once Lee Ann was located on-site. Word quickly spread, and each presentation generated a subsequent request. These presentations involved the Triage Lawyer as well as the Project Director (Wendy) as it was important to the hospital executive, legal department and risk management group that we establish PBLO at Sickkids as a program of Pro Bono Law Ontario and not the hospital. (See 'Challenges' below.)

Legal advocacy training sessions for clinicians began in May and have continued, with the Triage Lawyer conducting up to four sessions in one month. Training sessions focus on spotting legal issues both germane to distinct clinical contexts and common to low-income patients/families. 2009 sessions included presentations to the following clinical groups, in some cases in the format of 'rounds' or 'grand rounds' (the most prestigious academic hospital learning forum):

- Social Work Department
- Paediatric Residents Rounds
- SCAN team (Suspected Child Abuse and Neglect)
- Interlink Nursing Staff
- Teachers in the hospital's 'Section 23' school (education program for in-patients)
- Clinical Directors
- Adolescent Medicine Rounds
- Social Work Grand Rounds, all hospital staff invited
- Combined Rounds with Risk Management, all staff invited
- Registered Nursing Counsel

In addition to advocacy training for clinicians, the Triage Lawyer also presented to the hospital administration on a number of occasions. Presentations to the following groups greatly enhanced the program's profile among key hospital decision-makers and helped create the conditions for optimal service delivery:

- Hospital Executive
- Communications & Public Affairs
- Patient Representative's Office
- Hospital Interpreters

*Direct legal assistance to low-income patients/families*

One of the guiding principles of PBLO at Sickkids is legal service delivery that is flexible and responsive to the needs of patients and families. As stated in our proposal to the Law Foundation, "When a legal issue is identified, clinicians will contact the Triage Lawyer who will consult with each to determine the best course of action." The proposed 'best course' included referrals to pro bono lawyers or Legal Aid or legal clinics.

However, early in 2009 it became clear that the Triage Lawyer would also be required to provide legal information, legal advice and brief services. Whereas her role in case coordination and referral to pro bono, legal aid and other outside legal resources remains constant, there is also considerable demand for brief legal assistance. Prior to the program, numerous small but necessary requests for legal assistance would be referred out to paid Notaries or other outside resources. Social workers were unable to attend to any of these issues directly nor within timeframes that reflected the urgency felt by patients and families.

Ted McNeill, Director of Social Work and Child Life and one of PBLO at Sickkids's clinical Champions says, "Having a lawyer on site for low-income families has been very beneficial. Staff have been very enthusiastic about the increased accessibility and timeliness of consultations for families. Many situations may require only a brief consultation and do not need to be referred to an external pro bono lawyer which would likely be more time consuming and inefficient. For example, the on-site lawyer can now serve as a Notary to authorize travel documents for patients and families that would have required far more time to arrange, and staff often want to have a brief consultation about a family to determine if there are legal issues at play."

The following case examples illustrate the services provided by the Triage Lawyer:

- A child was able to take advantage of the Children's Wish Foundation's offer of travel to Disneyworld after the Triage Lawyer signed a travel document verifying her single mother's sole-custody status.

- The mother of a child in intensive care required the Triage Lawyer's help writing and notarizing letters of invitation to the Canadian Embassy in Saudi Arabia in order to get the child's father to Canada as soon as possible.

- The Triage Lawyer assisted an adolescent mother who had not registered her child's birth, by completing and notarizing a delayed registration form. Without this form, her baby could not access OHIP when she required hospitalization.

- An out-of-town family needed help to bring an emergency application in order to get custody of, and provide consent for, their niece who had been abandoned by her drug-addicted mother and required medical treatment at SickKids.

- A mother arrived at hospital with her children having been cut off Social Assistance (welfare) due to an administrative error. She had applied to sponsor her child through Citizenship and Immigration Canada (CIC), but the paperwork had not been properly processed. She had no money or food at home. The Triage Lawyer called CIC, got proof of documentation, then contacted Ontario Works. The mother's benefits were reinstated immediately.

Program partners agreed that the Triage Lawyer should provide these brief services, in keeping with the program's core principles. In each of the above examples it would defy logic to refer such requests to outside service providers when an appropriate, timely solution is available through the Triage Lawyer. The issues are well within her capacity; they would take much longer to be resolved if referred out; and they would not be the best use of our pro bono partners' time and resources.

Case Consultations

One of the strengths of the medical-legal model is its inclusion of legal advocacy within the clinical framework. SickKids clinicians and Executive have already demonstrated acceptance of the program by referring patients and family members. Clinicians also request legal consultations from the Triage Lawyer on behalf of patients/family members who, for several reasons, are unable to meet directly with the Triage Lawyer:

- They may be unable to leave the hospital room and cannot receive the lawyer in their hospital room (for example, in a critical care situation);
- They may already have had multiple clinical consults on a given day, and adding another is considered intrusive and unnecessary;
- The legal question may be easily answered and communicated through the clinician;
- They have already left the hospital setting and have communicated the legal query through their clinician.

Results presented below include both types of case consultation (i.e. those with *patients/families* directly and those *with clinicians on patients'/families' behalf)*. (Note: consultations with clinicians based on hypothetical or theoretical cases are not tracked and do not appear among reported case numbers.)

*Client Profile and Legal Needs*

Patients and families who seek services from PBLO at Sickkids by and large resemble low-income Ontarians served by Legal Aid and other similar services. They depend on Social Assistance or disability benefits (ODSP), or work at low-wage employment. They live in subsidized and/or sub-standard housing. They experience domestic violence, have no legal immigration status and are in debt.

However, as SickKids patients and families they face the additional burdens that come with chronic illness and health crises: they are more likely to face eviction or have their benefits cancelled for having missed an administrative deadline; they more often miss school because teachers will not operate their life-sustaining equipment; they are more likely to lose a job because work shifts coincide with treatment appointments; they more often experience family breakdown; they are more likely to request emergency 'Humanitarian and Compassionate' assistance in response to a deportation order; and they are far more likely to face healthcare debt because treatment is required before OHIP can be accessed.

Appendix B is a chart summarizing all legal issues referred to the program from May through December, 2009. As noted in the chart, the number of case consultations is greater than the number of clients. Although clinicians typically refer patients/families for one legal issue only, some people disclose additional legal issues to the Triage Lawyer.

Data Tracking

Case consultations are tracked by the Triage Lawyer. Monthly summaries of case data are prepared by Kate Bjerring, a volunteer second-year law student at the Faculty of Law, University of Toronto. Kate has volunteered with PBLO at Sickkids since she was first awarded a Donner Fellowship in 2008. Throughout her first and second years Kate has come to the hospital one to two days per month to transfer case notes onto a chart.

Non-identifying case numbers are assigned to each case consultation. Once final approval is received from the SickKids and University of Toronto Ethics Boards, we will begin using data collection forms designed by the Evaluator (Dalla Lana School of Public Health) to track non-identifying data such as legal issue type, referring clinician, family composition and actions taken by the Triage Lawyer. (Data collected up to that point will be transferred to these forms for analysis by the Evaluator.)

Results

Case consultation results for 2009 are as follows:

- Total case consultations: 229
  - Total clients: 209

- Of 209 clients, 75 individuals met with the Triage Lawyer; 154 were served through consultations with clinicians

- Actions taken by the Triage Lawyer for 229 consultations:

  - 44 referred to Legal Aid, legal clinic, family court duty counsel, government lawyer (e.g. Office of Children's Lawyer) or paid service for over-income clients
  - 12 referred to pro bono lawyers**
  - 173 received information, advice or brief services from the Triage Lawyer (includes referrals within SickKids to Risk Management or Patient Representatives)

Terms:

- Case consultations = legal issues
- Clients = patients, family members

- Pro bono partners report that each case involves between 37 and 55 (average = 46) pro bono hours; 12 cases therefore equals approximately 552 pro bono hours
- Value of PB time on systemic advocacy panel

Pro Bono Assistance

The number of referrals for pro bono assistance must be seen in context. As described above, a core principle of PBLO at Sickkids is to provide clients with the most appropriate and timely service available. Most clients referred to the program experience legal issues that fall under the umbrella of 'poverty law', in which Legal Aid and the community legal clinics are specialized.

However, law firms provide pro bono services on matters that fall outside of this realm and offer the best solutions on matters within their respective areas of expertise, such as employment, wills and estates, civil litigation, consent and capacity, insurance, tax matters and occupational health and safety. Pro bono lawyers are able to bring to bear considerable resources and time to these matters, as demonstrated by the average number of hours per pro bono case. As such, they expect to receive case referrals on matters that best reflect what they have to offer.

Moreover, pro bono lawyers have contributed time in other important PBLO at Sickkids activities, including:

- Participating on the Systemic Issues Working Group (see below), which includes drafting documents, cataloguing/prioritizing advocacy issues, determining strategies and reporting to the hospital executive on systemic issues
- Drafting the MOU between PBLO and the founding law firm partners
- Participating on the hiring committee of the Triage Lawyer
- Program promotional activities among colleagues at each firm

The following matters were among those referred to pro bono lawyers in 2009:

- An adolescent with a chronic illness learned her parents, both deceased, had left her a sum of money in their will. The executor of the will, who lives in the United States, was refusing to provide the young woman with any money.

- A father of 5, one of whom is being treated at SickKids for a chronic illness, was required to take time off work in order to accompany his child to treatment sessions. To make ends meet the father took out a loan from a private company, which put a lien on his vehicle and demanded that he sign a contract stating he owed the company more than the actual loan. The company then seized the vehicle, which the father needed to take the child to hospital as they live outside of Toronto.

- A mother received pre-approval from the Ministry of Health to take her child for treatment to a prominent hospital in the United States. The Ministry covered all expenses pertaining to the trip. Once at the hospital she learned her child would need a pre-test before the treatment could begin, costing $500US. She contacted the Ministry several times to verify they would cover the cost of this test, but was unable to obtain consent. She went ahead with the pre-test assuming the Ministry would cover this expense as it had covered all others to that point. However, when she returned to Ontario, she was told she would not be reimbursed the $500.

- Father came to Canada as a permanent resident but was subject to the 3-month wait period before accessing OHIP. One week prior to the completion of this period his daughter required emergency surgery and a week's stay at SickKids. The surgeon and doctors waived their fees knowing the family would be unable to pay. However, the $13,000 incurred for the hospital stay would have to be covered through the father's insurance plan. The insurance company denied him coverage for the hospital stay on the grounds that SickKids did not meet the insurer's guidelines as a legally operated medical institution.

- A father whose child had died in hospital was fired because he would not work overtime on the Saturday he was to attend a bereavement session with his wife.

- A child with complex learning and physical needs was denied special education services at school.

- Parents of a child in a coma faced an end-of-life decision before the Consent and Capacity Board.

The legal resolutions of some matters taken on by pro bono lawyers have the potential to impact large populations. The best example is that of the Desbiens family—the family featured in the video shown at the launch of the program. Michael Friedman of McMillan successfully appealed the decision of the Canada Revenue Agency to deny the Desbiens' reimbursement for travel expenses incurred while staying with their newborn daughter who was admitted to hospital with a life-threatening heart condition. Michael went the extra step to ensure the decision could be used by families in similar circumstances by creating a fact sheet for use by SickKids families and their social workers who wish to access the decision.

Although the client profile is expected to remain constant in 2010, we are aiming to elicit an increase in referrals to the program on matters that require pro bono legal assistance. There is already strong awareness among hospital clinicians of the program and its services with respect to the most pressing and obvious legal matters. There is now an opportunity for training sessions to emphasize legal issues that fall within the purview of our pro bono partners and which, as we've seen, are vitally important for the health and well-being of children and families.

Referral & Intake

Patients/families must be referred to PBLO at Sickkids by a SickKids clinician. Clinicians typically contact the Triage Lawyer by email, telephone or in-person visit. The Triage Lawyer's location in the Social Work department easily lends itself to drop-ins from clients and clinicians alike. The majority of referrals to date have come from social workers. However, advocacy training has increasingly led to referrals from doctors, nurses and allied health professionals.

At the recommendation of one pediatric resident, referral forms have been designed for PBLO at Sickkids based on existing hospital referral forms for on-site clinics. In year 2 they will be strategically placed alongside referral forms for services like blood labs or the eye clinic. Use of this referral form by clinicians will be a strong indicator of the extent to which legal services in general, and PBLO at Sickkids in particular, are viewed as integral to the clinical framework.

Financial eligibility for PBLO at Sickkids services follows the financial guidelines established for LawHelp Ontario and adopted by PBLO's other programs. Client income must be within 200% of the Court Fee Waiver guidelines (see at http://www.lawhelpontario.org/visit/item.1491-Law_Help_Ontario_at_Superior_Court ). Fewer than 5 clients in 2009 were considered ineligible due to income criteria.

The Triage Lawyer completes an intake form for each legal issue (case consultation) presented by a client. Consultations with clinicians on behalf of clients are followed by an invitation to the send client to the Triage Lawyer, an offer to meet with the client (in a hospital room) or an email or telephone exchange with the clinician, depending on the nature and timeframe of the issue. Consent forms are signed to protect information sharing between the Triage Lawyer and clinicians or outside parties.

Systemic Advocacy

The third core component of the PBLO at SickKids is systemic advocacy. Common to all medical-legal partnerships, systemic advocacy is the way for clinicians and lawyers to collaborate on issues that have an impact for multiple patients/families or whole populations. SickKids has cautiously embraced this component of the program; the hospital welcomes PBLO at Sickkids's contribution to its own efforts to identify a suitable advocacy profile.

One of the most exciting developments in 2009 was the creation of the Systemic Issues Working Group. Led by the Triage Lawyer, this group comprises lawyers from the founding law firms (Torkin Manes and McMillan); healthcare lawyers outside of the program who expressed an interest in volunteering; hospital social workers, including the Director of Social Work; pediatric residents; and law students. Issues brought to the group are seen to have wide-reaching implications, occur commonly among patients and lack an obvious means of resolution. They include:

- The gap between the Ontario Drug Plan funding coverage of an elemental formula that 'G Tube' children need, and the price their parents are able to pay (the group wrote a letter to the Ministry of Health and Long-Term Care);

- At the request of the Ministry of Children and Youth Services, the group wrote a submission on the five-year review of the Child and Family Services Act, highlighting the gap in services for 16 and 17-year-olds;

- The group is discussing possible steps regarding the lack of coverage for some assisted devices needed by children with disabilities;

- Dozens of systemic issues brought forward by clinicians and other professionals at SickKids are being catalogued for further discussion and possible action.

Successes, Surprises and Challenges

In addition to the large volume of case activity and the degree to which the hospital demonstrated its support for the program, several other points are worth noting:

- PBLO and SickKids Hospital signed a Memorandum of Understanding. Megan Evans, Director of Legal Services said, "It is, in my view, the underpinning of a successful program. To ensure success of the program and to maintain its integrity, we needed to establish clear guidance on conflicts and risk management. The work we have done at coming up with the schedule of the contract is one of our biggest successes to date."

- The hospital is working to translate PBLO at Sickkids documents into other languages (not anticipated in our proposal).

- The hospital increased its in-kind contribution to the program by determining not to charge the program for rent or internet and phone coverage, thus lowering the budget by $6000

- Following an internal reorganization, the Centre for Health Promotion was subsumed within the Dalla Lana School of Public Health at University of Toronto; although this resulted in a delay in the implementation of evaluation activities, the school decided to cut the evaluation budget by half, leaving its total cost for the evaluation at $19,500. The impact of these developments on the project budget is discussed in the final section of this report.

- Offers from lawyers and law students to volunteer, to accept pro bono cases, or to participate in any way have continually flowed since the program began; thanks to these offers we have expanded our areas of pro bono expertise and added to our Systemic Issues Working Group.

- Interest from Professor Maureen McTeer (Health Law, University of Ottawa) led to a presentation to her class and the placement of a second year intern who helped PBLO prepare the first draft of the project MOU.

- Legal Aid has been an outstanding supporter of PBLO at Sickkids, with area offices expediting services for critical matters and providing the Triage Lawyer with access to vital resources.

- Our formal launch brought positive attention and a great deal of press—local, provincial and national--to the program as well as to the Law Foundation. All media interviews acknowledged the LFO's role in supporting this unique pilot.

- Finally, in the words of Dr. Lee Ford-Jones, Director of Social Pediatrics and Physician Champion for PBLO at Sickkids:

- It is extremely impressive how you have engaged our outstanding Pediatric Residents through involvement at all levels. This Program is discussed with each of the Medical Students in Social Pediatrics. The very helpful assistance being provided by the PBLO AT SICKKIDS lawyer and willingness to discuss the program is hugely appreciated.

- At a meeting in Ottawa at the Children's Hospital of Eastern Ontario (CHEO) in January, I was specifically asked by the Pediatrician Chair/Head of Pediatric Infectious Diseases to comment on the program as she had heard what a great program it is! Anything that is capturing staff and residents in another city is fabulous affirmation.

- I don't think that there is any question that PBLO at Sickkids has "given legs" to the Social Determinants of Health, elevating and amplifying the level of discussion that previously occurred.

There were also some challenges to be overcome in 2009:

- According to Megan Evans: "Many in the hospital were weary of lawyers and, to be effective, this program required a shift in mentality to see a lawyer as part of the health care team. Administrative and communications systems were not set up to give an outsider the same access as a hospital employee."

- Identifying appropriate legal resources for immigration and family law proved especially challenging for families who did not qualify for Legal Aid as matters in these areas are not typically covered on a pro bono basis.

- The consultation volume was at times challenging for the Triage Lawyer given the absence of administrative support.

Sustainability Report

The primary goal of 2010 is program sustainability. It is our intention to have PBLO at Sickkids embedded as a program of SickKids as of 2011, and there are strong indicators that the hospital is supportive of this goal. To this end, a fundraising schedule has been set and consultation with relevant foundations (such as those focused on children and health, as well as government and the legal sector) has begun. The SickKids hospital foundation has been approached and a formal presentation is scheduled for March. However, it remains the case that the foundation is unlikely to fund the entire operating cost given its prior commitments to facility expansion and other capital projects.

In the likelihood of a collaborative funding model, PBLO and SickKids welcome the continued involvement of the LFO as a partner in the embedding of the program at the hospital. We believe the LFO's leadership and early investment in the program have already been rewarded with strong results, popular recognition and praise from multiple sectors. As such, we look forward to continued collaboration in 2010.

Appendix 4

PBLO AT SICK KIDS EVALUATION

PRO BONO LAW ONTARIO, HOSPITAL FOR SICK CHILDREN AND
DALLA LANA SCHOOL OF PUBLIC HEALTH

EXECUTIVE SUMMARY
(DRAFT – January 14, 2011)

PBLO at Sick Kids is a pilot project and the first medical-legal partnership of this kind to be established in Canada. (Medical-Legal Partnerships were first established in the United States in 1993.) PBLO at Sick Kids requires clinicians at the hospital to identify issues in low-income families that affect the health of the child or the family's capacity to manage a sick child's care, and that may require a legal intervention. It involves the presence of PBLO's Triage Lawyer on-site who can advise on an appropriate course of action, including referrals to pro bono and legal

aid lawyers. The program began in March 2009, with an official launch in November 2009.

A formative evaluation was conducted to ascertain how the program works in a Canadian context, what can be done to improve the program, to collect preliminary information about the impacts on the family and Sick Kids staff, and to develop future evaluation procedures.

The evaluation procedures were developed by the team at the Dalla Lana School of Public Health, University of Toronto in consultation with an Evaluation Advisory Committee established for PBLO at Sick Kids by Pro Bono Law Ontario and including clinicians from Sick Kids. Four main methods were used for the evaluation: an analysis of 119 initial client consultations; analysis of pro bono lawyer and client telephone interviews regarding 19 clients; interviews with 7 Sick Kids employees; and telephone interviews with 15 pro bono lawyers who received referrals during the evaluation period.

*Limitations*

PBLO at Sick Kids was in the formative stage of development. Thus the design focused on the processes used, what happened, what could be improved, and the satisfaction levels of the staff, lawyers and clients involved. These are all process evaluation measures. Some intermediate impacts in terms of the resolution of legal issues, the perspectives of staff about the observable changes in the families they worked with, and some information from the families about how this affected them were reviewed. However, an assessment of the ultimate impact of the program on the health of the children involved is beyond the scope of this evaluation. This is appropriate and consistent with a formative evaluation. The impact information is preliminary rather than definitive. There are other limitations in terms of the methods and confidentiality provisions that are discussed in the report.

*Analysis of Case Intake Data*

All case intake data from March 2009 to June 2010 were transferred from the Triage Lawyer's notes onto Triage Lawyer Intake forms and given a non-identifying case ID number. Clients received services from the Triage Lawyer in one of two ways: through a consultation between the Triage Lawyer and the referring clinician, on the client's behalf; and through an in-person meeting between the client and the Triage Lawyer. This evaluation only analyzes data pertaining to those clients who were seen in-person by the Triage Lawyer.

119 clients were seen in-person by the Triage Lawyer. For these clients, there were 157 legal cases. (Several clients had more than 1 legal case.) These data showed that over 50% of the clients were based in the City of Toronto (64 of the 119 clients) and of those 72% or 46 clients lived in known high poverty areas.

The top 5 issues -- Family (incl. Divorce; Custody/access; Child support; domestic violence), Immigration/Refugee, Education (including accommodation if school related), Income Security (includes Social Assistance, death benefits) and Employment -- demonstrate the key role that family legal issues and education play in the lives of children at Sick Kids as well as a key characteristic of Toronto as an immigration hub. Of the 157 cases that were initially presented to the PBLO Triage lawyer, most of them (57%) were addressed by her at the hospital. The rest of the cases (41%) were referred to outside legal services, both pro bono and legal aid.

There was a range of departments (23) across the hospital that referred clients to the Triage Lawyer. Cardiology was at the top of the list, followed by Adolescent Medicine. Social Workers provided the most referrals (77%) followed by nurses (6%) and physicians and teachers (1.6%) (unknown 15%, N=119 clients). There were 17 different types of legal issues addressed by the project.

*Client-Specific Follow-up Interviews*

There were 19 clients who both personally consulted the Triage Lawyer and were referred to pro bono lawyers. Follow-up telephone interviews were conducted with 15 pro bono lawyers (PBL) and 10 of the clients in order to get these two perspectives on the same client cases. For the 12 issues presented by these 10 clients, approximately 33% were reported as resolved by both the clients and the PBL. Hospital staff who referred clients to the Triage Lawyer were asked about these 10 clients as well as all other clients they referred to PBLO at Sick Kids to add a third perspective. For all of the issues observed by hospital staff, 56% were reported as resolved. Changes that were observed in the families and reported by the Sick Kids staff in these follow-up interviews were corroborated by the 10 client interviews.

There were four main impacts of the PBLO at SickKids program on 80 families observed by Sick Kids staff:

- Staff said that families got the resources and help they needed (51/80, 64%).
  - Clients said they were glad someone was advocating for their children.
- Staff reported that family members were relieved, calmed, and felt at ease after discussions with the Triage Lawyer. (29/80, 36%)
  - Clients also reported relief and less stress which enabled them to focus on caring for their child or dealing with their grief.
- Staff reported that their patient's families were more confident, had a sense of direction, took action themselves and had hope for the future as a result of consultations via PBLO at Sick Kids. (12/80, 15%)
  - Clients also reported increased confidence and a sense of hope.
- Staff reported that their families were very satisfied or happy with the services they received through PBLO at Sick Kids even if they did not act on the advice. (5/80, 6%)
  - Clients also reported that they were highly satisfied with TL and most said they did not follow-up with pro bono referrals because were happy with the advice given by the Triage Lawyer.

All 41 Sick Kids staff interviewed said nothing should be done to improve the program. However, one said s/he should have referred to the Triage Lawyer sooner, and another mentioned it would be helpful if social workers were included in the Triage Lawyer client case-taking. Of the 10 clients interviewed some concerns were raised that are typical of a pilot project. One client commented about the length of time taken for the Triage Lawyer to return a call. Some concerns were expressed about the process of transferring files by the pro bono lawyers within their firm. One client also asked whether it was possible to contact the Triage Lawyer directly rather than going through the Social Worker. One person suggested the project and Triage Lawyer's presence should be publicized to patients directly.

*In-Depth Interviews with SickKids Staff*

The 7 Sick Kids staff selected for in-person interviews were 4 Social Workers, 2 Pediatricians, 1 Nurse, and 1 Quality Assurance Manager, all of whom had provided referrals to PBLO at SickKids (with the exception of the Quality Assurance Manager). The information drawn from these interviews presents factors that are believed to contribute to the success of PBLO at Sick Kids (such as the characteristics of the Triage Lawyer and the knowledge of staff about the project), the impacts on staff, and areas for program improvement.

The main features of a successful Triage Lawyer, according to SickKids staff, are that she is available by being on site and having an open door, educating staff about legal issues, and considered a good communicator by keeping staff informed, raising her visibility, and promoting the program. The Triage Lawyer's proactive information sessions with hospital teams were seen as positive and instigated referrals to PBLO at Sick Kids. Her knowledge of how the hospital system works and her connections with others in the legal system were important assets. These may be qualities that are required for the successful replication of this program in other hospitals.

Staff pointed out that when social issues surface during interactions with their patient's families, their awareness of the appropriateness of legal consultations contributes to the success of the program. Social Workers especially valued their close relationship with the Triage Lawyer and how she supported their work, was available for consultations, and referred their patients for legal help when necessary. Education about the program for a variety of staff was recommended, which shows that knowledge is a key factor in the program's success. All staff interviewed already knew about and referred families to PBLO at SickKids. They each saw themselves as conduits into the project but saw others as less knowledgeable about the program.

The SickKids staff talked about how PBLO at SickKids helped them learn a lot about the issues and the actions to take, saved them time and increased their advocacy practice. Being able to take clients to the Triage Lawyer was empowering for the clients and the staff. The attitude of some staff towards lawyers changed from being negative to positive. When asked what could be improved in the program, most staff talked about how much they loved working with the Triage Lawyer and that there was not much to change. However, on further probing, they identified a need to educate Sick Kids staff further about project, to expand the program, to educate patients about PBLO at Sick Kids and to re-evaluate the income cut-off for pro bono referral.

*In Depth Interviews with Pro Bono Lawyers*

All 15 pro bono lawyers who received referrals from PBLO at Sick Kids during the evaluation period were interviewed by telephone. The pro bono lawyers said that the opportunities they got through PBLO at SickKids were challenging, interesting and very meaningful for the clients. Slightly more than half said that the Triage Lawyer did a very good to excellent job of facilitating their involvement. They appreciated that in most cases, clients were very well prepared for meeting with them with the relevant documents in hand. Approximately half of the pro bono lawyers had their eyes opened in terms of the interconnected issues faced by the families they saw. The other half said they did not see the connections or they did not learn anything new.

The pro bono lawyers identified success as the successful resolution of the cases, helping a client have realistic expectations, and letting the client know they were heard and that someone cared enough to help. There was only one who felt there was little they could do. There was a very high level of satisfaction among the pro bono lawyers about the quality of the experience that was offered through PBLO at SickKids.

In terms of areas for improvement, they identified some client issues that are difficult to change (e.g. losing interest or having unrealistic expectations), and some areas that need to function well that have already been addressed (e.g. preparation for the client's first meeting, and assistance with language issues). Some suggestions for improvement include ensuring that all hospital staff be aware of PBLO at SickKids so that they can be helpful when the PBL calls and so that they can refer clients early before it is too late to do something, and to create a disbursement fund that could be available to families in PBLO at SickKids for items like hiring expert witnesses.

Appendix 5

GUIDELINES FOR ASSESSING REQUESTS FOR SPONSORSHIP OF EXTERNAL ACCESS TO JUSTICE INITIATIVES AND EVENTS

Decisions on the sponsorship of external access to justice initiatives and events will be guided by the criteria outlined below and will be subject to budget implications and the recognition of the limited role of the Law Society in funding outside organizations. To ensure that such initiatives and events sponsored by the Law Society are consistent with its mandate and duty the following criteria will be applied:

a. The initiative or event is hosted by a non-profit or charitable association or organization;
b. The goal of the initiative or event is consistent with the mandate of the Law Society, to regulate lawyers and paralegals in the public interest, and its duty to facilitate access to justice for the people of Ontario;
c. The implementation of the initiative or event has a positive impact on the Law Society's ability to carry out its mandate as a regulator with a strong commitment to the promotion of access to justice as well as equality and diversity in the legal and paralegal professions and within the Law Society.

Passed by Convocation, May 27, 2010.

Re: Pro Bono Law Ontario (PBLO) Request for Law Society Support for PBLO SickKids Program

It was moved by Ms. Boyd, seconded by Mr. Simpson, that Convocation consider and, if appropriate approve, PBLO's request for funding for the PBLO at SickKids program in the amount of $90,000 for the period of February 28, 2011 to December 31, 2011.

It was moved by Mr. Banack, seconded by Mr. Silverstein, that the motion be amended to include the following conditions:

(a) that PBLO undertake and fund a rigorous third party evaluation of the SickKids Program during 2011; and

(b) that PBLO partner with the Law Society in the design, implementation and analysis of the evaluation.

Lost

It was moved by Ms. McGrath that the motion be amended to include the conditions in the Banack/Silverstein amendment with the words "and fund" deleted.

The Treasurer ruled the motion out of order.

The main motion was approved.

ROLL-CALL VOTE

| | | | |
|---|---|---|---|
| Anand | Abstain | Heintzman | For |
| Banack | Against | Hunter | For |
| Boyd | For | Krishna | For |
| Braithwaite | For | Lewis | Against |
| Bredt | For | MacKenzie | For |
| Campion | For | McGrath | For |
| Caskey | For | Marmur | For |
| Conway | For | Minor | Abstain |
| Crowe | Against | Potter | For |
| Dickson | For | Pustina | For |
| Dray | For | Rabinovitch | For |
| Epstein | For | Richer | For |
| Eustace | For | Robins | For |
| Falconer | For | Ross | For |
| Fleck | For | Sandler | For |
| Go | For | Sikand | For |
| Gold | For | Silverstein | Against |
| Gottlieb | For | Simpson | For |
| Haigh | For | C. Strosberg | For |
| Hainey | For | H. Strosberg | For |
| Halajian | For | Swaye | For |
| Hartman | For | Symes | For |
| | | Wright | Against |

Vote: 38 For; 5 Against; 2 Abstentions

Convocation adjourned and reconvened as a Committee of the Whole in camera.

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EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITE SUR L'EQUITE ET LES AFFAIRES AUTOCHTONES REPORT (in camera)

Ms. Minor presented the Report.

Report to Convocation
January 27, 2011

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones

Committee Members
Janet Minor, Chair
Raj Anand, Vice-Chair
Constance Backhouse
Paul Copeland
Avvy Go
Susan Hare
Thomas Heintzman
Dow Marmur

Judith Potter
Heather Ross
Mark Sandler
Paul Schabas
Baljit Sikand
Beth Symes

Purposes of Report: Decision and Information

Prepared by the Equity Initiatives Department
(Josée Bouchard – 416-947-3984)

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Appointment of Alternate Discrimination and Harassment Counsel *(in Camera)*.....TAB A

Human Rights Monitoring Group Report – Request for Law Society Interventions (*in Camera)*.....TAB B

For Information.....TAB C

Equity Public Education Series Calendar (2011)

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Equity Committee) met on January 12, 2011. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Avvy Go, Judith Potter, Heather Ross, Baljit Sikand and Beth Symes participated. Connie Reeve, Co-Chair of the Return to Practice Working Group, also participated. Staff members Josée Bouchard, Susan Tonkin, Aneesa Walji and Mark Andrew Wells attended.

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FOR INFORMATION

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES
2011

BLACK HISTORY MONTH
February 8, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

INTERNATIONAL WOMEN'S DAY
March 1, 2011 (date changed)
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

RULE OF LAW SERIES
March 29, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

HOLOCAUST MEMORIAL DAY
April 27, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

ASIAN AND SOUTH ASIAN HERITAGE MONTH
May 24, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

ACCESS AWARENESS - DISABILITY ISSUES AND LAW FORUM
June 8, 2011
Lamont Learning Centre (4:00 p.m. – 8:00 p.m.)

NATIONAL ABORIGINAL DAY
June 16, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

PRIDE WEEK
June 23, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

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PROFESSIONAL REGULATION COMMITTEE REPORT

Re: Guidelines for Law Office Searches

Mr. Hainey addressed the deferral of the matter respecting Guidelines for Law Office Searches to February 2011 Convocation.

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Report to Convocation
January 27, 2011

Professional Regulation Committee

Committee Members
Glenn Hainey (Chair)
Carl Fleck (Vice-Chair)
Julian Falconer
Patrick Furlong
Avvy Go
Michelle Haigh
Gavin MacKenzie
Ross Murray
Julian Porter
Judith Potter
Susan A. Richer
Sydney Robins
Baljit Sikand
William Simpson
Roger Yachetti

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
(Sophie Galipeau – 416-947-3458)

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For Decision

Guidelines for Law Office Searches…… TAB A

In Camera Item …….. TAB B

COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on January 13, 2011. In attendance were Glenn Hainey (Chair), Patrick Furlong, Avvy Go, Michelle Haigh, Ross Murray, Judith Potter, Susan A. Richer, Sydney Robins and William Simpson. Staff attending were Naomi Bussin, Terry Knott, Janice LaForme, Katie Rook, Jim Varro, Sheena Weir and Sophie Galipeau.

GUIDELINES FOR LAW OFFICE SEARCHES

Motion

2. That Convocation approve the Guidelines for Law Office Searches, for use by Ontario Lawyers. The Guidelines and Summary will be distributed as a separate document to Convocation.

Introduction and Background

3. In February 2007, Convocation approved in principle the Federation of Law Societies of Canada's Draft "Protocol on Law Office Searches" for purposes of consultation with relevant stakeholders on procedures in respect of such searches. The Federation's Protocol appears at Appendix 1.

4. The Federation's Protocol was prepared following the September 2002 decision of the Supreme Court of Canada in *R. v. Lavallee*,[1] in which the Court struck down s. 488.1 of the *Criminal Code* as unconstitutional. This section dealt with the procedures police officers were to follow in the execution of a search warrant on a lawyer's office.

[1] *Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink,* [2202] 3 S.C.R. 209.

5. The Federation's Protocol was intended for a lawyer's use when faced with a law office search. The Protocol is based on the principles articulated in *R. v. Lavallee* and the practical direction provided in the 2003 decision of the Ontario Superior Court of Justice in *R. v. Rosenfeld*.[2]

6. The other Canadian law societies rely on the Protocol as the document that governs law office searches. The Protocol has been generally accepted by the respective Ministries of the Attorney General and law enforcement officials in these provinces and territories. Judicial notice of the Federation's Protocol appeared in an Alberta Queen's Bench decision, where the judge addressed the issue relating to a search of a lawyer's office and commented on the process that included the Federation's Protocol.[3]

7. In 2007, the experience in Ontario was different. The processes outlined in *R. v. Lavallee* and reflected in the Federation's Protocol were applied unevenly. Since the Supreme Court of Canada decision in *R. v. Lavallee* the Law Society has been involved in several proceedings to protect solicitor-client privilege. The Law Society needed to challenge, in Court, the positions sought to be taken by law enforcement officials that varied from the appropriate application of the principles set out by the Supreme Court of Canada for law office searches.

8. Because of these issues and with a view to ensuring a consistent approach that is in keeping with the common law, the Committee determined that the Law Society needed to address with the Ministry of the Attorney General and any other relevant stakeholder issues relating to the application and observance of the Federation's Protocol.

9. The Committee reviewed the Federation's Protocol in 2007 and recommended to Convocation that it be approved in principle for the purpose of consultation. In February 2007, Convocation approved the Federation's Protocol in principle as the working document for the purposes of its consultation with the Ministry of the Attorney General and other legal and law enforcement organizations.

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[2] *R. v. Law Office of Simon Rosenfeld,* (2003), 108 C.R.R. (2d) 165, which involved the search of the office of an accused lawyer. The Law Society intervened in the case, addressing the issue of its involvement in the process. The Court made an order in respect of the process that follows the seizure in the first instance to notify potential clients regarding the issue of privilege. This involves the appointment by the Court of a referee who will review the seized documents and, in conjunction with the affidavit to be produced by the respondent lawyer, identify the clients who are to receive notice of a hearing to establish the process for determining the issue of solicitor-client privilege respecting the documents.

[3] *R. v. Tarrabain, O'Byrne & Company*, 2006 ABQB 14. The Court said:
In furtherance of this object, Mr. Lepp, the Director of Special Prosecutions for the Province of Alberta, contacted the Law Society of Alberta to seek advice. He did so because this was the first time in his experience that a member of the Law Society was a potential target of the investigation being undertaken. In the past, Mr. Lepp had been involved in many searches of law offices where a client of the firm was the target of the investigation. *A protocol with the Law Society covered this situation.* Because this was a unique occurrence, he felt that the Law Society should be consulted. He wanted to ensure compliance with *Lavallee*. Any advice that the Law Society could provide, because of the important role it plays in the regulation of the profession in the Province, was welcome. (emphasis added)

The Consultation Process

10. Following the approval by Convocation in February 2007, a new document, the Guidelines for Law Office Searches, was prepared. The Guidelines incorporated much of the content of the Federation's Protocol in a more accessible document for lawyers and law enforcement personnel. The document was prepared in anticipation of the consultation that Convocation authorized.

11. In the spring of 2008, prior to completion of the draft, Law Society staff discussed the Federation's Protocol with representatives of the Ministry of the Attorney General and received their comments.

12. A draft of the Guidelines for the purpose of the more formal consultation was completed by the summer of 2008.

13. The first phase of consultation occurred in the late summer and fall of 2008. Forty-one legal and law enforcement organizations were invited to review and offer comment on the draft 2008 Guidelines. Twenty of these organizations participated and provided comment and feedback, either in writing or through meetings at the Law Society. The legal and law enforcement organizations invited to participate and those that participated appear at Appendix 2.

14. The majority of the phase one participants saw value in having law office search guidelines. However, it became apparent during the consultation that there was a need to reconsider the content of the draft 2008 Guidelines, based on consistent feedback from the participants about the nature of the document. The consultation was interrupted at this point to revise the document based on the information received to that point.

15. David W. Stratas, now Justice David W. Stratas, contributed to this revision prior to his appointment to the Federal Court of Appeal. Lindsay MacDonald, a Vancouver lawyer and former counsel to the Law Society of Alberta, also contributed to the development of the Guidelines. Mr. MacDonald was a member of the Federation committee that drafted the Federation's Protocol and appeared as counsel for the Law Society of Alberta in *R. v. Lavallee.*

16. The revision of the Guidelines was completed in April 2010. As directed by the Committee, on May 10, 2010, the redrafted Guidelines were circulated to the twenty legal and law enforcement organizations who had participated in the first phase of consultation with an invitation to provide comment.

17. As part of this second phase of consultation, the redrafted Guidelines were sent, with an invitation to provide comment, to the Ministry of the Attorney General, the Department of Justice, the Public Prosecutions Services Canada, the Ontario Crown Attorneys' Association, the Federal/Provincial/ Territorial Heads of Prosecution and the Federation of Law Societies. These legal organizations were not part of the first phase of consultation. This second phase of consultation took place in the late spring and summer of 2010.

18. Eighteen legal and law enforcement organizations of those invited to participate in the second phase of consultation provided written comment and feedback to the Law Society. The legal and law enforcement organizations invited to participate in the second phase of consultation and those that participated appear at Appendix 3.

Overview of the Guidelines

19. The Guidelines for Law Office Searches and Summary are the product of the consultation process undertaken by the Law Society and consideration by the Committee of the feedback received from respondents.

20. The Guidelines begin with a summary setting out the various steps, in a checklist format, that a lawyer should take when facing a search warrant for a law office search. The substance of the Guidelines follows this summary and in some detail addressed electronic and paper searches. The document ends with an appendix setting out the guidelines expressed by Justice Arbour in *R. v. Lavallee.*

21. The section of the Guidelines on their purpose and scope includes a statement that members of the public and law enforcement personnel are invited to read and use the Guidelines. In time, an online version will be available on the Law Society's website.

22. The Guidelines cover the matters that require attention when a law office is the subject of a search warrant, including:

    a. Determining the validity of the warrant;
    b. Asserting solicitor-client privilege;
    c. Determining the need for a referee;
    d. Determining the need for a forensic computer examiner; and
    e. Post-search procedures.

Comment and Feedback Received from Phase Two Participants

23. The majority of the legal and law enforcement organizations that participated in the consultation process continue to see value in having law office search guidelines available to assist lawyers.

24. The comment and feedback about the redrafted Guidelines from the legal and law enforcement organizations that participated in the second phase of consultation are included in a separate document that is available to Convocation.[4]

[4] Based on permission of the respondents.

Recent Case Involving a Law Office Search

25. As a recent example of the Court's treatment of solicitor-client privilege arising from the search of a lawyer's office, attached at Appendix 4 is the decision of the Superior Court of Justice in *Attorney General v. Law Society*, 2010 ONSC 2150 (April 20, 2010). In this case, the Law society responded in an application to unseal and access seized computers and computer devices pursuant to a search warrant on the law office of Bradley Sloan, who was charged with possession of child pornography.

26. In following the guidelines based on the *R. v. Lavallee* decision, the Court appointed an independent Referee (for the purposes outlined in the Guidelines in this report), and an independent Computer Forensic Examiner to oversee the extraction, secure storage, examination and organization of computer files/images that related to the charges against Mr. Sloan.

APPENDIX 1

Protocol on Law Office Searches

A Proposed Draft Protocol to address searches and seizures of documents from law offices

As at October 15, 2004

Scope

This protocol applies to all searches and seizures and statutory demands for the production of documents or materials of, at or from a law office, whether by way of search warrant or production order or letter of demand or notice of requirement to produce from the Canadian Revenue Agency, or other agency.

This protocol applies to cases where:

1. the lawyer whose office will be searched is a target of the investigation or
2. the documents are not precisely named in the Warrant to Search or
3. the lawyer is not present at the time the Warrant to Search is executed to produce the documents.

For the purpose of this Protocol,
"document" means any paper, parchment or other material on which is recorded or marked anything that is capable of being read or understood by a person, computer system or other device, and includes a credit card, but does not include trade marks or articles of commerce or inscriptions on stone or metal or other like materials;

"law office" means any place where privileged materials may reasonably be expected to be located;

"referee" means a lawyer, independent of the Crown and the lawyer whose law office is the target of the search, who has been appointed by the Court or, in Quebec, by the Barreau du Québec or the Chambre des notaires du Québec as directed by the judge authorizing the Warrant, to perform the obligations listed in this protocol.

Preamble

1. Since the decision in *Lavallee, Rackel & Heintz v. Canada (Attorney General)* (2002) 216 D.L.R. (4th) 257 (S.C.C.)[5] , there has been no section of the *Criminal Code* governing the activities of persons executing warrants to search a law office and what happens to documents that are seized under the authority of the warrant to search. The Lavallee decision points out that client names' may be privileged and the *Maranda v. Richer* 2003 SCC 67 decision says that lawyers' statements of account and payment details may be privileged.

2. It is desirable in the public interest for the Federation of Law Societies ("Federation") and the Federal Department of Justice to agree on a protocol relating to searches and seizures of lawyers' files which will put in place sufficient protection for solicitor-client privilege.

3. In *R. v. Law Office of Simon Rosenfeld* [2003] O.J. No. 834 (Ont. Sup. Ct. Justice)[6] , Nordheimer J. stated that it was the Court's responsibility to protect solicitor-client privilege and not that of the Law Society and that the Crown should bear any costs associated with searches and seizures. He concluded that the way to protect the privilege was to appoint a referee to review the seized documents.

Procedure

4. Where a Warrant to Search authorizes the search of a law office, the following procedure shall be observed:

    a. In each Province and Territory, the local law society and the Federal and Provincial or Territorial Attorneys General will jointly develop a roster of lawyers who have agreed to act as referees in that jurisdiction. If agreement on the roster in a jurisdiction cannot be reached, the law society shall, at the request of the Court, propose the names of at least three appropriate individuals for the court's consideration.

    b. Before executing a Warrant to Search a law office, the prosecuting authority shall apply to the superior court for the appointment of an independent referee to
        i. search for and seize the documents as required by the Warrant,
        ii. maintain the continuity and the confidentiality of the documents,
        iii. examine the documents in accordance with the procedures established in the Protocol.

[5] The Lavallee decision is available at : http://www.canlii.org/ca/cas/scc/2002/2002scc61.html

[6] The Rosenfeld decision is available at : http://www.canlii.org/on/cas/onsc/2003/2003onsc10974.html

c. Before attending at the law office named in the Warrant to Search, the Peace Officer in charge of executing the Warrant shall advise the local law society of the existence of the Warrant to Search a law office and the time and date of the search, in order that the (local law society) may designate a representative to be available to attend at the search on its behalf, if it sees fit to do so.

d. The Peace Officer in charge of executing the Warrant to Search shall make every effort to contact the lawyer whose law office is named in the Warrant to Search at the time of the execution of the warrant, and shall advise the lawyer that he or she may immediately contact the local law society for guidance regarding the lawyer's obligations resulting from the execution of the Warrant to Search.

e. No acts authorized by the Warrant to Search shall take place until procedures 4(a) through 4(d) are followed and until the referee has had an opportunity to attend the law office, save and except that the Peace Officer in charge of executing the warrant may, with reasonable notice to a representative of the (local law society) of the intention to do so, enter the law office only in order to permit the Peace Officer to secure the premises of the search to prevent the removal of any articles from those premises.

f. All documents seized pursuant to the Warrant to Search shall be placed by the referee in packages, sealed, initialed, and marked for identification.

g. Upon completion of the execution of the Warrant to Search, the Peace Officer executing the Warrant and the referee shall deliver the seized documents into the custody of the Court.

h. Every effort must be made to contact all clients of the lawyer whose solicitor-client privilege may be affected by the Warrant to Search at the time of the execution of the Warrant. Where such notification cannot be made, the referee will recommend to the court the proper process for notifying all clients whose solicitor-client privilege may be affected by the Warrant to Search, which may include a recommendation that advertisements be placed in the relevant media if the referee is of the view that such a step is necessary.

i. The referee shall notify all clients who can be identified of the process that will be followed respecting the documents so that those clients may participate in that process for the purpose of protecting their privilege over the documents.

j. The referee shall report to a judge of the superior court the efforts made to contact all potential privilege holders, who will then be given a reasonable opportunity to assert a claim of privilege over the seized documents and, if that claim is contested, to have the issue decided by a judge of the court in an expeditious manner.

k. If notification of potential privilege holders is not possible, the referee shall examine the seized documents to determine whether a claim of privilege should be asserted, and will be given a reasonable opportunity to do so.

l. All fees and disbursements of the referee shall be borne by the Attorney General.

m. The Attorney General may make submissions to a judge of the court on the issue of privilege, but shall not be permitted to inspect the seized documents.

n. Where the sealed documents are determined by the Court not to be privileged, they shall be released to the peace officer(s) and used in the normal course of the investigation, subject to any direction by the court.

o. Where the seized documents are determined by the Court to be privileged, they shall be returned to a person designated by the Court.

APPENDIX 2

PHASE ONE CONSULTATION

Phase One Participants

1. Advocates' Society
2. County and District Law Presidents' Association
3. Criminal Lawyers Association
4. Di Luca, Joe
5. Durham Regional Police Service
6. Halton Regional Police Service
7. LawPRO
8. Law Society of Alberta
9. Law Society of British Columbia
10. London Police Service
11. Metropolitan Toronto Police Service
12. Niagara Regional Police Service
13. Ontario Bar Association
14. Ontario Provincial Police
15. Peel Regional Police Service
16. Royal Canadian Mounted Police
17. Toronto Lawyers Association
18. Treaty Three Tribal Police Service
19. Windsor Police Service
20. York Regional Police Service

Organizations Invited but did not Participate

1. Akwesane Mohawk Police
2. Anishinabek Police Service
3. Barrie Police Service
4. First Nations Chiefs of Police Association
5. Greater Sudbury Police Service
6. Hamilton Police Service
7. Kingston Police Force

8. Lac Seul Police Service
9. Mnijikaning Police Service
10. Nishnawbe-Aski Police Service
11. Ontario Association of Chiefs of Police
12. Ottawa Police Service
13. Sarnia Police Service
14. Sault Ste. Marie Police Service
15. Six Nations Police Service
16. Thunder Bay Police Service
17. United Chiefs & Council of Manitoulin Anishnaabe Police Service
18. Walpole Island Police Service
19. Waterloo Regional Police Service
20. Wikwemikong Tribal Police Service
21. Tyendinaga Mohawk Police

APPENDIX 3

PHASE TWO CONSULTATION

Phase Two Participants

1. Advocates' Society
2. County and District Law Presidents' Association
3. Criminal Lawyers Association
4. Department of Justice
5. Federal/Provincial/ Territorial Heads of Prosecution*
6. Halton Regional Police Service
7. LawPRO
8. London Police Service
9. Ministry of the Attorney General
10. New Brunswick Office of Public Prosecutions
11. Niagara Regional Police Service
12. Ontario Bar Association
13. Public Prosecution Service of Canada*
14. Royal Canadian Mounted Police – Headquarters - Ottawa
15. Royal Canadian Mounted Police – The Province of Ontario
16. Toronto Lawyers Association
17. Treaty Three Tribal Police Service
18. Windsor Police Service

Organizations Invited but did not Participate

1. Durham Regional Police Service **
2. Federation of Law Societies
3. Law Society of Alberta **
4. Law Society of British Columbia **
5. Metropolitan Toronto Police Service **
6. Ontario Crown Attorneys' Association

7. Ontario Provincial Police **
8. Peel Regional Police Service **
9. York Regional Police Service **

* Mr. Brian Saunders prepared a joint response in his capacity as Director of Public Prosecution Services of Canada and as permanent Co-Chair of the Federal/Provincial/Territorial Heads of Prosecution

**These organizations participated in the first phase of the consultation process

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FINANCE COMMITTEE REPORT

Ms. Hartman presented the Report.

Report to Convocation
January 27, 2011

Finance Committee

COMMITTEE MEMBERS
Carol Hartman, Chair
Linda Rothstein, Vice-Chair
Raj Anand
Larry Banack
Marshall Crowe
Paul Dray
Larry Eustace
Carl Fleck
Susan Hare
Janet Minor
Ross Murray
Judith Potter
Paul Schabas
Catherine Strosberg
Gerald Swaye
Brad Wright

Purpose of Report: Decision and Information

Prepared by the Finance Department
Wendy Tysall, Chief Financial Officer, 416-947-3322

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For Decision

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For Information

Pro Bono Law Ontario (PBLO) Request for Law Society Support for the PBLO at Sick Kids Program .....Tab B

COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on January 13, 2011. The Committee members met via teleconference and in attendance were: Carol Hartman, Chair, Linda Rothstein, Vice-Chair, Raj Anand (teleconference), Larry Banack, Marshall Crowe, Larry Eustace (teleconference), Janet Minor, Ross Murray, Judith Potter, Paul Schabas, Catherine Strosberg, Gerald Swaye and Brad Wright (teleconference). Bencher Marion Boyd also attended.

2. Lynn Burns, Executive Director, ProBono Law Ontario was also in attendance.

3. Staff in attendance: Malcolm Heins, Wendy Tysall, Fred Grady, Josee Bouchard, Marisha Roman and Andrew Cawse.

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FOR INFORMATION

PRO BONO LAW ONTARIO REQUEST FOR LAW SOCIETY FUNDING
FOR THE PBLO AT SICKKIDS PROGRAM

11. The Committee voted not to recommend Convocation approve Pro Bono Law Ontario's ("PBLO") request for Law Society funding in the amount of $90,000 for the PBLO at SickKids Program in 2011.

12. Part of the mandate of the Finance Committee is "to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation".

13. In December 2010, the Access to Justice Committee approved PBLO's request in principle that the Law Society fund the PBLO at SickKids Program. This requires a contribution of $90,000 and this funding had not been included in the 2011 budget, approved by Convocation in November.

14. The Law Society currently provides annual funding of $50,000 to PBLO as well as in-kind support such as payroll processing.

15. The PBLO at SickKids Project was created as a pilot project. Program funding was provided by the Law Foundation of Ontario (LFO) but will expire on February 28, 2011. PBLO is seeking $90,000 in funding from the Law Society to cover the salary and related costs of the program's Triage Lawyer until more stable core funding can be secured, but funding in future years is still unknown.

16. According to the PBLO there are no other sources of funding for this program. The Hospital for Sick Children provides only resources in kind. PBLO itself is entering a new funding phase with its historic funders, the LFO and Legal Aid, reducing their support, a reflection of their own economic circumstances. PBLO is drafting a fund raising plan with the objective of attracting corporate sponsorships and other types of revenue.

17. The Access to Justice Committee envisaged funding for this project to be sourced from the Law Society's contingency provision included in the budget of $225,000. This would leave $135,000 in the contingency provision for the rest of 2011.

18. While the Finance Committee acknowledged the merits of the program, it had a number of concerns about the request for funding, including the fact that a large portion of the contingency provision would be used so early in the year.

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*REPORTS FOR INFORMATION*

Finance Committee Report
- Pro Bono law Ontario (PBLO) Request for Law Society Support for PBLO SickKids Program

Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report
- Public Education Series Calendar

CONVOCATION ROSE AT 1:40 P.M.

Confirmed in Convocation this 24th day of February, 2011

Treasurer