

MINUTES OF CONVOCATION

Thursday, 19th October, 2000
9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Arnup, Banack, Bindman, Bobesich, Braithwaite, Campion, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cherniak, Coffey, Copeland, Cronk, Crowe, Curtis, Diamond, DiGiuseppe, Divinsky, E. Ducharme, T. Ducharme, Epstein, Farquharson, Feinstein, Furlong, Gottlieb, Hunter, Jarvis, Krishna, Lalonde, Lamont, Laskin, MacKenzie, Millar, Mulligan, Murphy, Murray, Orved, Pilkington, Porter, Potter, Puccini, Ross, Ruby, Simpson, Swaye, Topp, Wardlaw, White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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DISCIPLINE

Re: George Washington Steven HARRINGTON - Oakville

Mr. Glenn Stuart appeared on behalf of the Society and Ms. Kelley McKinnon appeared as Duty Counsel. The solicitor was not present.

The matter was put over to 2:15 p.m.

REPORT OF THE DIRECTOR OF EDUCATION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Education asks leave to report:

B. _____
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, October 19th, 2000:

Laurie Anne Brett	Bar Admission Course
Daniel Franklin Guttman	Bar Admission Course
Gina Erica Hill	Bar Admission Course
Saravanamuthu Navaratnam	Bar Admission Course
Anne Nicholette Pappas	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, October 19th, 2000:

Douglas Blair Buchanan	Province of British Columbia
Christine Liao	Province of Alberta
Kimberley Jean Lewis	Province of Nova Scotia

ALL OF WHICH is respectfully submitted

DATED this the 19th day of October, 2000

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that the Report of the Director of Education be adopted.

Carried

TREASURER'S REMARKS

The Treasurer reminded Convocation about the Orientation Session for the Connecting Communities with Counsel program scheduled for October 23rd. The Treasurer congratulated the Equity & Aboriginal Issues Committee and staff on their work in organizing the program which was developed to connect individuals requiring legal assistance to pursue human rights and equality issues with lawyers interested in providing pro bono services.

The Treasurer also reminded Convocation about the silent auction being held today of artwork produced by members of the judiciary and the profession, the proceeds of which will go to the Centennial Infant Care Centre for disabled children.

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Education were presented to the Treasurer and called to the Bar and then presented by Mr. Lamont to Madam Justice Frances P. Kiteley to sign the Rolls and take the necessary oaths.

Laurie Anne Brett	Bar Admission Course
Daniel Franklin Guttman	Bar Admission Course
Gina Erica Hill	Bar Admission Course
Saravanamuthth Navaratnam	Bar Admission Course
Anne Nicholette Pappas	Bar Admission Course
Douglas Blair Buchanan	Transfer, British Columbia
Christine Liao	Transfer, Alberta
Kimberley Jean Lewis	Transfer, Nova Scotia

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IN CAMERA

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IN PUBLIC

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The Treasurer announced that Mr. John Saso had resigned his position as the Society's Chief Executive Officer effective January 6, 2001.

The Treasurer and Benchers thanked Mr. Saso for his service to the Law Society.

REPORT OF THE FINANCE & AUDIT COMMITTEE

Re: 2001 DRAFT OPERATING BUDGET

Mr. Krishna presented the Draft Operating Budget for 2001 for Convocation's approval.

(Copy of the Draft Operating Budget for 2001 in Convocation file)

It was moved by Mr. Krishna, seconded by Mr. Crowe that the membership's levy be set at \$1,782 for 2001 made up of the following components:

General Fund fee	-	\$1,193
County Law Library levy	-	\$ 210
Lawyers Fund for Client Compensation levy		\$ 379

Mr. Krishna advised that the additional \$10 added to the Library levy would be funded from other sources.

Convocation took a recess at 11:10 a.m. and resumed at 11:30 a.m.

REPORT OF THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Re: Levy for 2001 and Stop-Loss Reinsurance Coverage

Re: Amendments to the Guidelines

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

The Lawyers Fund for Client Compensation Committee
October 19, 2000

Report to Convocation

Purpose of Report: Decision Making, Information

Prepared by The Lawyers Fund for Client Compensation Department

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Lawyers Fund for Client Compensation Committee ("the Committee") met on October 5, 2000. In attendance were:

- Clayton Ruby (Chair)
- Robert Aaron (Vice Chair)
- Robert Topp (Vice Chair)
- Stephen Bindman
- Gordon Bobesich
- Ronald Cass, Q.C.
- Abdul Chahbar
- Gillian Diamond
- Gary Gottlieb
- Barbara Laskin

Staff: Craig Allen, Fred Grady, Malcolm Heins, Sara Hickling, Richard Tinsley, Wendy Tysall and Heather Werry.

2. This report contains:

- the Committee's recommendation for the 2001 levy
- the Committee's recommendation to amend the General Guidelines for the Determination of Grants from the Fund
- the Committee's information report on approval of grants under \$5,000 to beneficiaries of estates
- the Committee's information report on good character issues and consideration of a transaction levy

DECISION MAKING

I. THE LEVY FOR 2001 AND STOP-LOSS REINSURANCE COVERAGE

3. On June 23, 2000 Convocation directed that the Lawyers Fund for Client Compensation Committee review, provide policy options and report back to it on the following issues:

- a. Capping the Law Society's exposure to claims against the Fund (be it through the purchase of reinsurance or other means), while at the same time ensuring that claims by the public can be paid in a timely manner;
 - b. Recommending an appropriate surplus (uncommitted balance) for the Fund; and,
 - c. Recommending an appropriate amount for the annual levy to members that would be more consistent and stable over time.
4. Clayton Ruby, Chair, told the Committee that in the past the Fund had a large uncommitted balance and because interest rates were high, the Fund was able to maintain a healthy uncommitted balance. However, conditions have changed and large scale defalcations like the recent one by a single Ottawa member have depleted the uncommitted balance of the Fund to a level between \$8 - \$9 million. The Committee expressed concern that in the future the Fund could face a catastrophic loss arising from a single or multiple members. While preventive measures have been taken by the Society to avoid such losses, it is very difficult to eradicate dishonesty. The Fund remains volatile. There was agreement by the Committee that there must be a viable plan to protect the Fund from large scale losses which threaten the existence of the Fund.
 5. Malcolm Heins, the Director of LPIC and Craig Allen, Actuary and Vice-President of LPIC attended the meeting to present their recommendations with respect to the appropriate levy for 2001. Mr. Heins presented a proposal to the Committee that LPIC reinsure the Fund in 2001 with \$14 million of insurance coverage in excess of \$6 million for a cost of \$1.1 million per year or \$44.00 per member. This means that the Fund would be responsible for payments up to \$6 million in the year but if grant payments exceeded that amount the insurance would cover the excess payments up to a maximum of \$14 million. If grant payments exceeded \$20 million in the year the insurance coverage would be depleted. Other options would expose the Fund to risk of depletion or were less cost-effective. See chart marked Appendix "A".
 6. LPIC's analysis of the Fund indicated that the persistent claims experience (without large claims) is likely to be in the \$3 - \$3.5 million range. Including large claims, claims experience suggests that over time the average payout of the Fund will be \$4.2 million. Mr. Heins informed the Committee that LPIC's recommendation was that the figure of \$4.2 million be used as the basis of the levy for 2001.
 7. Attached at Appendix "A" is Mr. Heins' letter to the Chair setting out his 2001 levy recommendation for the Fund and a chart setting out various options for determination of the levy.
 8. The Committee was advised by Mr. Heins that he negotiated with reinsurers all over the world to try to find appropriate reinsurance for the Fund. There was some reluctance to offer insurance because the insurance industry has suffered significant losses in the past year. After reviewing the claims experience of the Fund, it was determined that coverage should begin at the \$6 million level as this was a level of payout that the Fund could reasonably expect to reach or exceed in the future. The Committee was told that LPIC's calculations showed that in 1991 and 1996, after adjusting for the lower per claimant limit then in effect, the total value of claims reported in those years would have exceeded the \$6 million level. Attached as Appendix "B" is a copy of a spreadsheet prepared by LPIC which shows the yearly value of claims reported, adjusted to reflect the current \$100,000 per claimant limit.

9. Mr. Heins told the Committee that the reinsurance option provides a measure of stability to the Fund so that in the event of a large scale defalcation, members of the profession are not faced with a huge levy increase in order to meet the needs of the Fund. He indicated that in his view the fiscally prudent option for 2001 is to purchase reinsurance protection at the \$6 million level. He stressed that without a significant uncommitted balance (and at \$8 to \$9 million we do not have one at the moment) or alternate method to protect against large losses the Committee and the Society is vulnerable to criticism that it has not managed its financial affairs properly. He pointed out that the \$6 million dollar level of reinsurance coverage can be renegotiated and the cost of the premium may vary in future years depending on the claims experience of the Fund. If the claims experience is favourable and the Fund retains a greater uncommitted balance than expected the cost of coverage will go down. Conversely, if there is a large scale defalcation, it will trigger the protection of the insurance for that year but it may mean that future coverage cannot be obtained or that the cost is prohibitive. Plus, reinsurance cannot be relied upon except in the very near future while the uncommitted balance is built to a more satisfactory level.
10. The Committee discussed other options designed to protect the Fund from large scale defalcations and to ensure a stable and consistent levy over time. One option that was discussed was to levy the \$44.00 that was proposed for the reinsurance option and to use this to build the balance of the Fund. However the problem with this option is that it does not serve the purpose of reinsurance and leaves the Fund vulnerable to catastrophic loss which will necessitate a huge levy increase if it should occur. But the Committee was not satisfied to rely on reinsurance forever. The uncommitted balance of the Fund remains inadequate to deal with the Fund's volatility.
11. Gary Gottlieb indicated that in his view the reason for examining the reinsurance option is to protect the Fund over the long term, to provide stability and to avoid going to the membership for huge levy increases as a response to large scale defalcations. He indicated that he supported Mr. Heins' reinsurance proposal because it provides an appropriate level of protection for the Fund. He indicated that he would favour "Option C" as presented by Mr. Heins which would result in a total levy of \$419.00 per member for 2001 because it provides the maximum amount of "cushion" for the Fund.
12. Robert Topp also supported the reinsurance proposal presented by LPIC and stressed that the misappropriation in the Ottawa situation could have been much larger putting the Fund in serious jeopardy. He indicated that in his view the downside of accepting the reinsurance proposal was small because if there is favourable claims experience in the future the terms of the reinsurance can be renegotiated which will result in lower rates. He indicated that it was preferable to choose "Option B" as presented by Mr. Heins which assumes a \$5 million dollar basis for the levy rather than \$4.2 million as in "Option A". This would result in a total levy of \$379.00 and would slowly start to restore the Fund's uncommitted balance and move us away from total reliance on reinsurance. The Committee agreed with Mr. Topp.
13. Although claims to the Fund are cyclical and depend to some extent on the state of the economy, it is extremely difficult to predict when there will be a major defalcation or multiple defalcations that would result in catastrophic loss. The Committee discussed whether reinsurance protection should be triggered at a higher level, and whether the levy should still be set at \$379.00 so that the additional revenue generated (\$33.00 per member for example) could be used to build up the balance of the Fund. However, it was the Committee's opinion that insuring at a level over \$6 million (for example \$10 million as shown in the chart in Appendix "A") did not provide adequate protection for the Fund given the analysis presented by LPIC and that the risk was unacceptable.
14. Attached as Appendices "C" and "D" are materials showing:
 - a. a graph of the Fund levy, 1980 - 2000
 - b. a graph of the Fund's uncommitted balance history, 1994 - 2000

The Committee's Recommendation

15. It was the consensus of the Committee that LPIC's proposal concerning reinsurance and its recommendation with respect to the levy for 2001 be followed. Therefore the Committee recommends that the total levy for 2001 be \$379.00, the particulars of which are set out in Appendix "A", Option B.

Decision for Convocation

16. Convocation must decide whether:
- a. to accept the Committee's recommendation as set out in paragraph 16 above;
 - b. to accept the Committee's recommendation with amendments Convocation deems appropriate;
 - c. to decide upon other options to be articulated by Convocation.

II. AMENDMENTS TO THE GUIDELINES

17. Staff presented an amendment of guideline 1(c) of the General Guidelines for the Determination of Grants to clarify when losses in connection with a trust related to a member's law practice will be compensated. Staff also presented a new draft guideline which reflects the current policy of Convocation to allow beneficiaries of estates to make claims on their own account, each with a separate per claimant limit. The need for the amended guidelines arose because of confusion in the interpretation of existing guidelines and a need to clearly reflect Fund policy.

Guideline 1(c) - Trust Claims

18. The Committee considered the 1989 Appeal Decision, *Re: Morris Orzech, Report of Referee Kapoor*, which found that the language in guideline 1(c) was confusing and consequently that the guideline had not always been applied in a consistent fashion. The Committee agreed with the finding in *Orzech* that the guideline should be interpreted to mean that a solicitor and client relationship is not necessarily required when the loss is in connection with a trust related to the member's law practice where the member is or was a trustee.

Claims by Beneficiaries

19. The Committee was advised that since 1990 it has been the policy of the Fund to allow beneficiaries to make separate claims to the Fund, each with individual per claimant limits, despite a lack of solicitor and client relationship with the member. Although the change was adopted by Convocation in October 1990, the recommendation specified that none of the existing guidelines were to be changed. The Chief Financial Officer of the Society, Wendy Tysall expressed her view that the policy allowing beneficiaries to make separate claims to the Fund should be reflected in the guidelines so that payments will appear to be in accordance with approved policies. The Committee agreed that the policy allowing beneficiaries to make separate claims to the Fund should be reflected in the guidelines.

The Committee's Recommendation

20. It is the recommendation of the Lawyers Fund for Client Compensation that the following amendments be made to the Guidelines for the Determination of Grants from the Fund:
- a. The current guideline 1(c) will finish after the words "in connection with such member's law practice".
 - b. It is proposed that a new guideline # 2 be added as follows:

Notwithstanding the requirements of guideline 1(a) a solicitor and client relationship between the claimant and the member is not required,

(a) when it can be shown that the claimant relied on the member and the loss was in consequence of dishonesty by the member in connection with any trust related to the member's law practice where the member is or was a trustee; or

(b) when the claimant is a beneficiary of an estate of a deceased person whose personal representative has a solicitor and client relationship with the member. Beneficiaries of an estate will be allowed to make claims to the Fund on their own account and separate per claimant limits will apply to each individual claim.

Decision for Convocation

21. Convocation must decide whether:
 - a. to accept the Committee's recommendation as set out in paragraphs 22 and 23 above;
 - b. to accept the Committee's recommendation with amendments Convocation deems appropriate;
 - c. to decide upon other options to be articulated by Convocation.

INFORMATION

III. APPROVAL TO PAY GRANTS TO BENEFICIARIES UNDER \$5,000.00

22. The Committee was advised that on May 14, 1998 the Lawyers Fund Committee recommended that staff lawyers be appointed as staff referees for the purpose of paying grants, with the agreement of the claimant, up to \$5000.00. This recommendation was adopted by Convocation on May 29, 1998. As a result, Review Committee approval of grants from the Fund under the amount of \$5,000.00 was no longer required.
23. The May 14, 1998 report did not address whether Committee approval must be obtained when the total claim of an estate is over \$5,000 but individual grants to each beneficiary are under \$5,000.
24. The Chief Financial Officer of the Society, Wendy Tysall indicated that in her view, the Review Committee should review all claims by estates which exceed \$5,000 in total, although the individual claims of the beneficiaries are each under \$5,000.
25. The Committee was of the view that no change should be made to the present policy which they understood to allow staff to make multiple grants up to \$5,000.00 without Review Committee approval. The Committee felt that the CFO can exercise her discretion to refer any staff grant to the Review Committee if she thinks this is an appropriate course of action.

IV. LAW FIRM INVOLVEMENT IN VENTURE CAPITAL FUND

26. Gary Gottlieb expressed concern about the involvement of the law firm, Goodman & Carr with a venture capital fund. An article in the September 11, 2000 Globe & Mail reported on the arrangement between the law firm and the venture capital fund. The article indicated that the Law Society was consulted and approved the arrangement between the firm and the fund but the article was in error concerning the position of the Law Society.

27. Richard Tinsley, Secretary of the Society advised that steps were being taken by the Society to correct the erroneous press reports that the Law Society had approved the arrangement.
28. The Committee was told that the Advisory Services department of the Law Society was examining the issue of IPO's and taking shares for fees and that the Goodman and Carr arrangement would be considered in a report expected to be ready next month. In the circumstances the Committee felt that consideration of this issue should be deferred until the report from Law Society staff was completed.

V. SCREENING PROSPECTIVE MEMBERS FOR GOOD CHARACTER

29. In a letter dated September 22, 2000, Gary Gottlieb responded to correspondence between the Chair and a member, Daved Muttart. The letter raised issues as to what measures are taken by the Society to screen prospective members for good character and Mr. Gottlieb asked that these measures be discussed.
30. The Committee considered materials provided by the Education and Investigation departments setting out the screening provisions for student applicants to the Bar Admission course. There was a general discussion of the adequacy of the current procedures and the criteria used to assess good character. It was the general consensus of the Committee that issues relating to the good character requirements should be addressed by the Admissions Committee rather than the Lawyers Fund for Client Compensation Committee.

VI. TRANSACTION LEVY

31. Mr. Gottlieb also raised the issue of whether a transaction levy similar to the real estate transaction levy or the civil litigation levy could be used by the Fund as a means of raising money for the Fund.
32. There was a discussion of whether the Fund had the authority to impose this sort of levy and whether it was an appropriate means of raising revenue. The view was expressed by some Committee members that if a transaction levy is charged out as a disbursement to clients it is, in effect, asking the public to pay for a member's dishonesty and this would be inappropriate. There was also discussion of whether the imposition of this kind of levy would disproportionately affect some members of the profession while typically the Fund is contributed to by all members regardless of their area of practice. The Committee took no action following this discussion.

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

- (1) Copy of a letter from Mr. Malcolm L. Heins, President & CEO of LPIC to Mr. Clayton Ruby dated September 14, 2000 re: Compensation Fund with attachment.
(Appendix A, pages 13 - 15)
- (2) Copy of a spreadsheet prepared by LPIC re: yearly value of claims reported.
(Appendix B, page 16)
- (3) Copy of graph re: Lawyers Fund for Client Compensation Levy History, 1980 - 2000.
(Appendix C, page 17)
- (4) Copy of graph re: Lawyers Fund for Client Compensation Uncommitted Balance History, 1993 - 2000.
(Appendix D, page 18)

A copy of 2 coloured graphs were distributed to Convocation re: Lawyers Fund for Client Compensation Uncommitted Balance and Total Assets 1990 - 2000 (Revised) and Lawyers Fund Client Compensation Investment Income History 1990 - 2000.

It was moved by Mr. Ruby, seconded by Mr. Aaron that the Report be adopted.

A debate followed.

The Lawyers Fund for Client Compensation Committee Report was adopted as part of the motion regarding the budget.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:50 P.M.

The Treasurer and Benchers had as their guests for luncheon, The Hon. David G. Humphrey his son David and daughter Mary.

CONVOCATION RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Aaron, Arnup, Banack, Bindman, Bobesich, Braithwaite, Campion, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cherniak, Coffey, Copeland, Cronk, Crowe, Curtis, Diamond, DiGiuseppe, E. Ducharme, T. Ducharme, Epstein, Feinstein, Gottlieb, Hunter, Krishna, Lalonde, Laskin, Lawrence, MacKenzie, Millar, Mulligan, Murphy, Murray, Ortved, Pilkington, Potter, Puccini, Ross, Ruby, Simpson, Swaye, Topp, Wardlaw, White, Wilson and Wright.

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IN PUBLIC

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RESUMPTION OF THE DEBATE ON THE 2001 DRAFT OPERATING BUDGET

It was moved by Mr. T. Ducharme, seconded by Mr. Hunter that the Bar Admission Course tuition be capped at the present level and the membership fee be increased by \$28 to provide for a bursary fund.

Lost

ROLL-CALL VOTE

Aaron	Against
Arnup	For
Banack	Against
Bindman	Against
Bobesich	Against
Braithwaite	For
Campion	For
Carey	Against
Cherniak	For

Coffey	For
Copeland	For
Cronk	For
Crowe	Against
Curtis	For
Diamond	For
DiGiuseppe	For
E. Ducharme	Against
T. Ducharme	For
Feinstein	For
Gottlieb	Against
Hunter	For
Krishna	Against
Lalonde	For
Laskin	For
MacKenzie	For
Millar	Against
Mulligan	For
Pilkington	Against
Potter	Against
Puccini	Against
Ross	For
Simpson	Against
Swaye	Against
Topp	Against
White	Against
Wilson	Against
Wright	Against

Vote: 19 - Against, 18 - For

It was moved by Ms. Laskin, seconded by Mr. Bindman that a sizable amount be earmarked out of the reserve to be spent to significantly upgrade public communications later in the year.

Mr. Bindman moved an amendment to the motion as follows: that an amount not to exceed \$250,000 be earmarked out of the reserve to be spent to upgrade public communications later in the year.

The amendment was accepted by Ms. Laskin.

Mr. Bindman moved a further amendment: that an amount not to exceed \$250,000 be allocated to upgrade public communications later in the year.

Ms. Laskin accepted the amendment.

The motion as amended was adopted.

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It was moved by Mr. Simpson, seconded by Mr. Carey that for 2001 the Compensation Fund not be reinsured but the \$1.1million premium be applied to build the Compensation Fund reserve.

Lost

ROLL-CALL VOTE

Aaron	Against
Arnup	Against
Banack	Against
Bindman	Against
Bobesich	Against
Braithwaite	Against
Campion	Against
Carey	For
Cherniak	Against
Coffey	Against
Copeland	Against
Cronk	Against
Crowe	Against
Curtis	Against
Diamond	Against
DiGiuseppe	Against
E. Ducharme	Against
T. Ducharme	For
Feinstein	Against
Gottlieb	Against
Hunter	Against
Krishna	Against
Lalonde	Against
Laskin	Against
MacKenzie	Against
Millar	Against
Mulligan	Against
Pilkington	Against
Potter	Against

Puccini	Against
Ross	Against
Simpson	For
Swaye	Against
Topp	Against
White	Against
Wilson	Against
Wright	Against

Vote: 34 - Against, 3 - For

It was moved by Mr. T. Ducharme, seconded by Mr. Hunter that the Bar Admission Course tuition be capped at the current level and the membership levy be increased by \$18 and that the bursary fund be eliminated.

Lost

ROLL-CALL VOTE

Aaron	Against
Arnup	Abstain
Banack	Against
Bindman	For
Bobesich	Against
Braithwaite	For
Campion	For
Carey	Against
Cherniak	Against
Coffey	For
Copeland	Against
Cronk	Against
Crowe	Against
Curtis	Abstain
Diamond	Abstain
DiGiuseppe	For
E. Ducharme	Against
T. Ducharme	For
Feinstein	Against
Gottlieb	Against
Hunter	For
Krishna	Against
Lalonde	For
Laskin	For
MacKenzie	Against
Millar	Against
Mulligan	Against
Pilkington	Against
Potter	Against
Puccini	Against
Ross	Against
Simpson	Against

Swaye	Against
Topp	Against
White	Against
Wilson	Against
Wright	Against

Vote: 25 - Against, 9 - For, 3 Abstentions

The Krishna/Crowe motion that the membership fee for 2001 be set at \$1,782 which included the Lawyers Fund for Client Compensation Committee Report was voted on and adopted.

The Treasurer thanked the Chair of Finance, Mr. Krishna, Mr. Saso, Chief Executive Officer and Wendy Tysall, Chief Financial Officer for all their hard work and asked that Ms. Tysall convey his appreciation to the finance staff.

MOTION - APPOINTMENTS

It was moved by Mr. Campion, seconded by Mr. Coffey that Larry Banack, Helene Puccini and Judith Potter be appointed to the CBAO Council for 2000/2001 and that Daniel Murphy be appointed as the Law Society's representative on the CBAO National Council for 2000/2001.

Carried

Convocation took a brief recess at 4:35 p.m.

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THE GRIFFITHS REPORT

Mr. MacKenzie presented Mr. Justice Griffiths Report for approval by Convocation.

THE LAW SOCIETY OF UPPER CANADA

In the Matter of: the Complaints, Investigations
& Discipline Processes of The Law Society

REPORT TO CONVOCATION

The Mandate

I was appointed on July 10th, 2000, to review the Society's complaints, investigation and discipline process with a view to making recommendations where appropriate for the improvement of such processes. In conducting this review, I was directed to have particular reference to the Baker¹ case to ensure that any deficiencies identified in the Report of the Discipline Panel in that case have been effectively addressed.

The Basis for a Stay of Disciplinary Proceedings

In the Baker case, the Committee came to the conclusion that a combination of unreasonable pre-charge and post-charge delay in the investigation and prosecution of the solicitor resulted in serious prejudice to the solicitor's ability to make full answer and defence and accordingly a stay of the complaints against the solicitor was granted.

In its decision, the Committee referred to a body of law holding that unjustified delay in the investigation and prosecution of disciplinary cases against professionals may offend the rules of natural justice. The Supreme Court of Canada has held that Section 11 of The Canadian Charter of Rights and Freedoms is inapplicable to disciplinary matters of a regulatory nature that do not have true penal consequences.²

It is less clear whether Section 7 of the Charter applies to regulatory proceedings. However the issue may be moot to the extent that the application of the rules of natural justice lead to the same result as the application of the Charter provisions, by imposing on a regulatory body the duty to proceed with reasonable dispatch once it becomes aware of possible misconduct.

While a regulatory body has a duty to proceed with reasonable dispatch, Convocation will appreciate that granting a stay in a Discipline matter, thereby terminating the prosecution is an extraordinary remedy that should be sparingly granted. Generally speaking, a stay of proceedings would only be appropriate where the delay was lengthy, without justification as far as the Society was concerned, and likely to cause prejudice to the Member's ability to provide a full answer and defence.

The Particular Problems Identified in Baker

The complaints against Baker contained a total of eight particulars, including three particulars of alleged incidents of professional misconduct relating to events occurring in 1987 and 1988 and five particulars of alleged conduct unbecoming a solicitor, relating to events alleged to have occurred between March 1988 and January 1992. These

¹ *Thomas Bruce Baker*, Decision of Discipline Committee, March 30th, 2000

² *R. v Wigglesworth*, [1987] 2 S.C.R. 541 and see: *MacKenzie Professional Responsibility in Discipline*, pp. 26-27, *the primary purpose of S. 11 of the Charter is to ensure that a person charged with a criminal offence is informed of the offence and is tried without unreasonable delay. S. 7 of the Charter guarantees that no one will be deprived of life, liberty and security except in accordance with principles of fundamental justice.*

particulars and complaints were generally classified into three categories: the Rosbrook Estate allegations, involving events in 1988, the Inspector Jackson complaints, involving events occurring in 1989 and Drs. Mele and Forder complaints, involving events occurring in 1987.

The Pre-Charge Delay as Found by the Committee

The Committee found that the Society was first notified of the Rosbrook complaints on October 16th, 1989 but no complaint was sworn by the Society until February 20th, 1995.

The Rosbrook investigation was handled internally by the Society for about 11 months when outside counsel was retained to investigate. The Committee found that virtually nothing was done in regard to the Rosbrook matter from September 19th, 1990 to January 16th, 1992. On the basis of the investigation that followed, between January 1992 and November 19th, 1992, the Committee found that the Society had all the information that it needed regarding the Inspector Jackson complaints but no attempt was made to get the solicitor's response to these complaints until December 1994 or January 1995, almost two years after Inspector Jackson had died.

Counsel retained by the Society to both conduct the investigation and prosecute, reported to the Law Society with respect to all three sets of complaints in April of 1994 but as the Committee found, the report was not accepted and new counsel was retained to start a fresh investigation. The Committee found that the retainer of new counsel was obviously a cause for additional delay and resulted in a waste of 3 ½ years of "uncertainty" for the solicitor facing the charges.

There was a further delay from May 1994 until August 1994 when no investigation was carried out. The investigation was completed finally on February 20th, 1995, when a Complaint was sworn containing the eight particulars.

The Post-Charge Delay as Found by the Committee

On February 23rd, 1995, the Complaint was served on the solicitor with an indication that the Society was "prepared to make disclosure." The Society relegated the case to the "standard track" for hearing under para. 3 of the Law Society Rules of Procedure then applicable, which required that the hearing take place within four months of service of the complaint. Some five years later, no hearing had been commenced.

What followed as the Committee found, was a pattern of steadfast resistance by counsel for the Law Society to making full disclosure to the solicitor in accordance with the undisputed obligation of the Society to make full and timely disclosure. After some significant delay an initial disclosure was made, followed by some 19 supplemental disclosures over a period of several months.

Counsel for the solicitor complained that the list of documents over which the Society claimed privileged contained many startling examples of an extremely aggressive approach to non-disclosure as well as employing highly "creative" types of privilege to resist disclosure. It was pointed out that the Society had claimed privilege based not only on the usual solicitor's work product privilege, but also it had claimed privilege on the basis of other doctrines such as public interest immunity, and privilege held by third parties.

In its Reasons, the Committee made particular reference to the delay occasioned by the "disclosure" issue. At p. 77, it found as follows:

"3. There were an astonishing number of postponements and adjournments, some arbitrarily imposed and others, as we see it, made necessary by the Society's refusal, reluctance or inability to provide full disclosure and also by the Society's irregular delivery of some nineteen bundles of disclosure material after April 3, 1995, when the solicitor's counsel had been told that he now had final disclosure.

4. The Law Society's unprecedented decision to seek Judicial Review of the Discipline Panel's Decision of January 26th, 1996, a Decision apparently made without the approval of Convocation.
5. The reluctance, indeed, the unwillingness of the Law Society to comply with either the decision of the Panel of January 26th, 1996 or the Order of Mr. Justice Saunders released on September 10th, 1996.
6. The continuing reluctance or unwillingness of the Law Society to comply with disclosure requirements, including the requirements imposed upon it by the Panel on November 27th, 1996.
7. The Law Society's claim of a "public interest privilege" over the Greenspan and Lockwood Reports for the first time on March 24th, 1997, some two years after the disclosure debate first began."

In concluding its Reasons, the Committee summarized the principal reasons for finding that the delay was unacceptable as follows:

"In the pre-charge period of some five years there can be little doubt that the Law Society's investigation took far too long and for no apparent, good reason.

In the post-charge period it was largely the Law Society's resistance to the solicitor's legitimate pursuit of full disclosure which caused the delay. One need only look to the Panel's decision in January of 1996 and the decision of Mr. Justice Saunders in September of 1996 and the Law Society's actions which followed in order to reach this conclusion. What was referred to by both counsel as "the saga of the lists" continued right up to the commencement of this motion."

I have concluded from my review of the present Investigatory and discipline processes of the Society that a Baker situation is not likely to reoccur. At the outset, I want to address two particular matters that concerned the Committee in Baker, namely: (1) the delay occasioned by outside counsel, retained by the Society, investigating and prosecuting the complaints; and (2) the problem of disclosure.

The Retainer of Outside Counsel

In Baker, the Committee was critical of the delay occasioned both in the investigation and prosecution of the case by outside counsel. I have not reviewed the entire Baker file but have confined myself to the Reasons of the Committee. It was apparent, however, that Baker was a complex case that would have involved extensive and time-consuming investigation. When outside counsel are retained, one can expect that competent counsel will be busy counsel and outside counsel may not approach the matters with the same sense of urgency as staff counsel.

The practice at the time of Baker was to retain outside counsel to both investigate and if necessary prosecute the complaint. Outside counsel retained would investigate and make recommendations to the Chair of Discipline as to whether or not to prosecute. If the Chair then authorized prosecution, the same counsel would continue in the role of prosecutor. As I understand it, one of the difficulties in the Baker case was that counsel's work product included statements of fact and opinion both so inextricably intertwined as to make separation for disclosure difficult.

In the past four years, the Society has had a firm policy that outside counsel would be retained only in exceptional cases either to investigate or prosecute a matter but not to do both.

At present, there are no outside counsel retained on purely investigation matters but where counsel is so employed, he or she is instructed to deliver a two-section report to the Proceedings Authorization Committee containing:

1. the facts of the investigation;
2. the opinion of counsel as to whether to prosecute.

It is only the latter over which privilege is claimed.

Throughout the nineties with the increase in the number of staff counsel in Discipline and the expansion of the Audit and Investigation Department, there has been less reliance on outside counsel.

Outside counsel must be retained with respect to any matter that concerns the conduct, competence or capacity of a Benchler or employee of the Society.³ On other matters however, except where there are conflicts or a need for special expertise, outside counsel are rarely retained under the current practice. At present, there are some five or six cases in which outside counsel has been retained to prosecute. In each case, a staff lawyer from Discipline has been assigned to the file as well to work with outside counsel not only for the purpose of giving staff counsel the opportunity to work with more experienced counsel but also to provide outside counsel with a resource in dealing with the internal regulatory process of the Law Society.

On May 29th, 1998, Convocation approved Guidelines for the Retention and Oversight of Outside Counsel. Pursuant to these guidelines, outside counsel must enter into a prescribed agreement for the rendering of the legal services, requiring among other things, that counsel report to the Secretary of the Society within thirty days of being retained, with an initial assessment of the matter, setting out a proposed course of action. Thereafter, counsel is required to report to the Secretary on a quarterly basis, unless otherwise agreed to by the Secretary in writing and more frequently as circumstances require. Hourly rates that may be charged by outside counsel are fixed.⁴

Conclusions

The policy of the Society is sound, that outside counsel should be rarely retained on investigation and only occasionally to prosecute in situations where there is an actual or perceived conflict, or a matter requiring special expertise or an emergency situation where the workload of the Discipline staff prevents them from undertaking the prosecution with reasonable dispatch.

The system of assigning a staff lawyer from Discipline to work with outside counsel and the requirements imposed on outside counsel by agreement in my view, safeguard against any unreasonable delay such as that occasioned in Baker.

The Issue of Disclosure

Prior Rules of Practice and Procedure of the Society mention disclosure in passing but do not define what it should include. For example, Rule 16(a) of the 1992 Rules, Rule 2.01(2)a of the 1997 Rules and the January 23rd, 1998 version of the Rules simply provide that "Society's counsel is prepared to make disclosure" or words to that effect. Rule 6 of the current Rules of Practice and Procedure effective as of June 2000 spell out in some detail the requirements of disclosure as follows:

³ Section 49.5, *Law Society Act*, R.S.O. 1990, c. L.8

⁴ Senior Counsel - 12 years or more: \$200-250.00 per hour; Counsel 6-12 years: \$175.00 per hour; Counsel 3-6 years: \$120.00 per hour; Less than 3 years: \$90.00 per hour; Law Clerks/Students: \$50.00 per hour

“Obligations of the Society

6.01 (1) The Society shall make such disclosure as is required by law and without limiting the generality of this requirement, the Society shall provide a person subject to a proceeding with, at least ten days before the hearing,

- (a) a copy of any document upon which it intends to rely and the opportunity to examine any other document;
 - (b) a summary of the oral evidence of all witnesses; and
 - (c) the list of witnesses which the Society intends to call.
- (2) Subject to rule 6.05, evidence against a person subject to a proceeding is not admissible unless disclosure of that evidence has been made at least ten days before the hearing.”

In interpreting the words in the above Rule, “as is required by law”, the Society has for some time applied the standard of disclosure articulated by *Stinchcombe*⁵. The policy of the Society now is to disclose all of the “fruits of the investigation” regardless of whether the documents or information points to the guilt or innocence of the solicitor charged. The obligation is considered to be a continuing one and if new information or documents come to light then they are promptly disclosed and provided to the Member or his counsel at the earliest reasonable date. Discipline Counsel are guided by the dicta of Mr. Justice Trafford in a Discipline case against an Ophthalmic Dispenser, as follows:

“The importance of full disclosure to the fairness of the disciplinary proceedings before the Board cannot be overstated. Although the standards of pre-trial disclosure in criminal matters would generally be higher than in administrative matters (See *Biscotti et al v Ontario Securities Commission*, supra), tribunals should disclose all information relevant to the conduct of the case, whether it be damaging to or supportive of a respondent’s position, in a timely manner unless it is privileged as a matter of law. Minimally, this should include copies of all witness statements and notes of the Investigators. The disclosure should be made by counsel to the Board after a diligent review of the course of the investigation. Where information is withheld on the basis of its irrelevance or a claim of legal privilege, counsel should facilitate a review of these decision, if necessary. The absence of a request for disclosure, whether it be for additional disclosure or otherwise, is of no significance. The obligation to make disclosure is a continuing one. The Board has a positive obligation to ensure the fairness of its own processes. The failure to make proper disclosure impacts significantly on the appearances of justice and the fairness of the hearing itself. Seldom will relief not be granted for a failure to make proper disclosure.”⁶

I have reviewed certain files, chosen at random, and it is my view that there is not likely to be either a disclosure issue or an issue on the claim of privilege of the nature raised in Baker. The issues of privilege should no longer be as complex as asserted in Baker. Simply stated, the policy of the Society now is to claim privilege with respect to the contents of the Authorization Memo (about which I will have more to say later) and with respect to some expert reports and any legal opinions obtained from outside counsel.

⁵ *R. v Stinchcombe*, [1991] 3 S.C.R. 326

⁶ *Markandey v Ontario (Board of Ophthalmic Dispensers)*, [1994] O.J. 484 at p. 20

Conclusion on Disclosure

The clear direction provided by Rule 6 and the present policy of Discipline counsel, ensures that protracted proceedings on the nature and extent of privilege are not likely to occur.

Complaints, Investigation and Discipline

I propose now to examine in some detail three phases of investigation and prosecution of complaints, including the role and function of the following:

1. Advisory & Compliance Services;
2. Investigations Department;
3. Discipline Department.

I do not propose to review the relatively recent appeal process, a process which in my view, is unlikely to raise problems.

1. The Advisory & Compliance Services Department

Mr. Scott Kerr, called to the Bar in 1984, has been Manager of the Advisory & Compliance Services Department since 1999. Prior to that, he was Manager of the Complaints Department from 1987/88 and worked on Project 200 from 1997 until 1999. He has been generous with his time and has provided me with much useful background material on the operation of his Department. I have been impressed with his competence in the management of the Department.

For the purpose of this Report, there are two main divisions, namely:

1. The Complaints Section of the Client Service Centre; and
2. The Resolution & Compliance Division ("R & C").

The Compliance Service Centre

All complaints against a Member are made in writing to this Centre. Before a fairly recent reorganization, complaints against Members were dealt with by a staff of some 20 people. Individual staff members were assigned on a rotational basis to deal with incoming complaints. This approach proved to be most unsatisfactory in that unacceptable delays in responding to the Complainants developed.

Early in 2000, the function was re-organized. Under Scott Kerr's management, there are now ten staff Members in the Compliance Service Centre who handle all incoming complaints. The staff includes a manager, two solicitors and five service representatives, attached is Schedule "1" showing the general outline of the staff. (Tab #1)

The newly formed smaller staff unit has been more efficient in responding to complaints and the long delays, previously complained of are being eliminated.

The Process of Dealing with Complaints by the Client Service Centre

The complaint must be in writing. A "Helpform" is available to assist Complainants outline their complaint if they wish. The complaint is acknowledged by letter from the Centre and is logged on a tracking system. If more information is required, the Complainant will be contacted.

Once all the information needed has been obtained from the Complainant, a file is opened and entered on the complaints database and the complaint is evaluated to determine whether it discloses any issues falling within the Society's mandate. If not, then a letter is sent to the Complainant explaining why the complaint falls outside the mandate. For example, a complaint about excessive fees would be returned with a recommendation that the Complainant apply to the Assessment Office. When the complaint is evaluated, and it appears that a serious conduct, capacity of competence issue is raised against a Member, then the complaint is transferred forthwith to the Investigations Department.

If the complaint falls within the Society's mandate, then it is determined whether the "Member Driven" approach is warranted and then in that respect, Client Service Centre staff will consult with staff from the Resolution & Compliance Division and Investigations Department to determine whether this approach is appropriate. If this approach is determined to be appropriate, staff in one of the other departments will then receive the complaint.

If the Member-Driven approach is not warranted, the file is referred to the R&C.

The Member-Driven Approach

The Member-Driven approach simply means that all complaints relating to the particular Member shall be handled by one department from inception to conclusion. This approach was developed in response to co-ordination difficulties encountered when a number of issues involving a particular Member were proceeding at the same time. For example, issues involving Audits, Complaints, Trusteeships and professional misconduct. In the past, the Society would have numerous staff in as many as four different departments dealing with the one Member at the same time. The purpose of the Member-Driven approach is to have one department deal with the matter, handling all complaints against the Member, thus minimizing co-ordination problems and leading to the development of a single comprehensive "strategy" for all the issues. As I shall point out later, the Investigations Department are of the view that this approach results in that department being overly burdened with relatively minor complaints that interfere with the investigation of more meritorious and serious discipline matters.

Additional Files to be transferred to the Department of Investigation

I have recently been advised that the R & C Department is reviewing the inventory of complaints files to identify all files that meet the test of a transfer to the Investigations Department under the Member-Driven Approach. An early preliminary estimate is that 65 to 70 files may be transferred to the Investigations Department in the near future. It is the complaint of Investigations that these service driven complaints interfere with the ability of the Department to deal with the more serious Discipline matters on a timely basis. I will have more to say about that later.

The Function of Resolution & Compliance (R & C)

The R & C staff under the direction of Scott Kerr has 14 staff Members, including a Team Leader, two solicitors serving as Compliance Counsel, 8 clerks serving as R & C Officers and 3 office administrators. The attached Schedule "2" shows an outline of the staff. (Tab #2)

The mandate of the R & C staff is to resolve if possible all complaints that do not raise issues of misconduct or competence that might warrant formal discipline or competence proceedings.

All files referred to R & C go to the Team Leader, Audrey Cado. She reviews the file and assigns it to one of ten people, either a Counsel or an Officer, depending on the nature of the complaint and whether any one of the group has had prior experience with the particular Member involved.

The approach usually taken by Counsel or Officers, is to apply ADR techniques. The ADR techniques are of a limited nature, restricted in most cases to "persuasive" negotiation and on rare occasions to mediation.

Application of the ADR Process

In 1999, the Society initiated an ADR Pilot Project⁷ the purpose of which was to more formally and broadly evaluate the potential effectiveness of negotiation and mediation processes. Although the project includes R&C investigations and discipline cases as well, by far the heaviest volume of matters dealt with through ADR have come from R&C. Most of the staff Members of R&C have taken courses in ADR.

Before the ADR process had been utilized as part of complaint screening, the complaints were handled largely by endless correspondence. The written Complaint was sent out to the Member with a request for his or her response within a certain period of time. The response from the Member was then sent to the Complainant. If the Complainant had further comments, this would be passed on to the Member and so on.

The application of ADR techniques, has changed and streamlined the process. Now, attempts are made to resolve many Complaints over the telephone, without relying so heavily on an exchange of correspondence. Armed with the Complaint, the staff member will usually telephone the solicitor involved and then fax a copy of the Complaint to him. A staff member will then endeavour to resolve the Complaint as quickly and expeditiously as possible.

The majority of the Complaints handled are service related, such as failing to report on real estate or mortgage transactions; failure to keep the client advised of the progress of a matter; failure to fulfil undertakings; refusing to release the Members file until fees have been paid; and, finally, failing to pay expert or third parties fees such as doctors or other expert witnesses.

Currently, about 40% of all Complaints referred to R&C have been resolved through ADR techniques, that is about 500 complaints per year.

If the matter is successfully resolved, the file is closed. If a complaint cannot be resolved, a detailed reporting letter is prepared and sent to the Complainant and Member. The Complainant will be advised of his or her right to have the matter reviewed by a Lay Benchler sitting as Complaints Review Commissioner.

The assessment of the ADR approach is still ongoing. I understand that hard data is not currently available with which to fully evaluate the impact of ADR. Some of the statistical data maintained by R & C with respect to its overall caseload would suggest that some positive results have been obtained from its application. About 40% of all R&C complaints are successfully resolved and this speaks well of the approach. This represents a significant increase over the figures which preceded the introduction of ADR where the success rate never exceeded 20%. As well, I am advised that an analysis of time dockets in R & C reveal that 33% less staff time was spent on successfully resolving files as compared to the previous approach where a more formal procedure was used.

Statistics of Complaints During the Period July 1, 1999 to June 2000

Number of Complaint Files Opened by Client Service Centre: 3,251
Number of Complaints Referred to Investigations by CSC to Investigations: 358
Number of Files Screened Out by CSC as involving matters outside the jurisdiction of the Law Society: 813
Number of Complaints Referred to R & C: 279
Number of Complaints Resolved by R & C: 560 (the majority by ADR)
Number of R & C Complaints closed: 722
Number of R & C Complaints escalated to Investigations Dept: 81

⁷ Law Society ADR System Design Team Report, Sept. 1998 – the Committee recommended extensive use of ADR tools, negotiation & mediation to resolve issues arising from public complaints, accounting deficiencies, practice reviews and discipline

The last item relates to complaints escalated to Investigation. A matter will be escalated from R & C to Investigations when during the course of dealing with a complaint, R & C determines that issues have surfaced which fall within the mandate of Investigations (i.e. that the Member's conduct appears to warrant disciplinary action). Investigations deal with all matters likely to result in a Discipline Hearing. R & C will retain files where it is believed that the Member's conduct may warrant a "lesser" form of discipline such as an Invitation to Attend or a Letter of Advice. R & C will also recommend "diversion" options to the PAC, (i.e. matters where an alternative remedy to Discipline usually supported by Members undertaking are proposed).

Conclusion

I have not spent a lot of time in examining the Advisory & Compliance Service process as it relates to the Discipline process. With the establishment of a special unit in the Client Service Centre to screen complaints, there appears to be very little lapse time in providing responses to the Complainants. The Advisory & Compliance Service Dept. seems to be functioning reasonably well and I see little potential for any problems affecting the Discipline process.

2. The Investigations Department

The Investigations Department is under the management of James N. Yakimovich, CGA who has held this position since 1990. Mr. Yakimovich has been very co-operative, generous with his time, and has supplied me with copious useful material and information on the operation of his department. He has impressed me as being very competent. He also introduced me to two of his senior team leaders, Lisa Osak and Herschell Gross, both solicitors who provided me with some additional helpful information.

The Investigations Department conducts all discipline related investigations which may arise from complaints from the public, from Members and from any other sources where misconduct is indicated. The present Department was formed on July 1st, 1999 by consolidating the investigation area of the former Audit & Investigations Department, which conducted field based discipline-streamed investigations and performed Trusteeship interventions, and the former Complaints Department Discipline Investigations Unit which primarily conducted correspondence-driven investigations.

The Department has six multi-disciplinary teams, five of which are based at Osgoode Hall and the sixth in Ottawa. Attached as Schedule "3" is a July 2000 organizational chart. (Tab #3)

The Investigations Department Procedures and Processing of Complaints

Steps Taken to Initiate Investigation

1. A complaint is received which may come from a variety of sources including direct communication from the Client Service Centre, R & C Department, the Spot Audit Department, the Discipline Department, the Faculty of Education or the media.
2. An Administrative Assistant opens a holding file under the Duty Team Leader's name, assigns a Holding File Number and prepares an Investigation Instruction Sheet to be included in the file along with the Complaint materials.
3. The Holding File is forwarded to the Duty Team Leader for review and assignment. (Duty Team Leaders rotate on a monthly basis.) The Leader reviews the Holding file and checks the various screens on the AS400 (the Law Society's database).

4. The Duty Team Leader makes a determination as to whether the file raises a Discipline related matter and whether there is any emergency (i.e. if any money is missing from the trust account.) If the file does not appear to warrant a Discipline Investigation, a memo is prepared indicating why the file is not appropriate for Investigation and the file is then transferred to Resolutions & Compliance or returned to the Client Service Centre. The Holding File is then closed.

5. The Duty Team Leader checks the AS400 to determine if there is an open file investigation against the Member and if so the new file is transferred to the Team which already has carriage of that open investigation. If there is no open investigation, the Duty Team Leader assigns the file to a Team depending upon the individual Investigator case loads. The Team Leader receiving the file completes an Investigation Instruction Form which may be used as a basis for obtaining Section 49.2 or Section 49.3 Authorization from the Secretary.⁸ The ultimate authority for granting the Authorization rests, of course, with the Secretary.

6. An Administrative Assistant then using Investigation Instruction Forms prepares a Memorandum to the Secretary of The Law Society for the appropriate Authorization under Section 49.2 or 49.3. This Memorandum is reviewed and approved by the Manager of the Investigations Department and is then forwarded to the Secretary who reviews and signs the necessary authorization. If the matter is one of emergency, then oral instructions may be obtained from the Secretary but this is always followed up by obtaining an Authorization in writing later. The investigation may then begin.

The Codina Matter⁹

On March 24th, 2000, a majority of Convocation set aside the decision of the Discipline Committee, dated June 22nd, 1999 recommending certain sanctions against the solicitor. The issue raised was whether the Secretary had complied with the duty imposed on him by Section 9(1) of Reg. 708 under The Law Society Act. That regulation provided that where information came to the notice of the Society that indicated that a Member may have been guilty of professional misconduct or conduct unbecoming a barrister and solicitor, the Secretary "shall make such preliminary investigation of the matter as he or she considers proper, and where in his or her opinion there are reasonable grounds for so doing, shall refer the matter promptly to the Committee or the chair or vice-chair for future directions."

The majority of Convocation found that it was apparent that the Secretary did not perform the obligations imposed on him by S. 9(1) in the most obvious way, that is, by authoring a written communication to the chair or vice-chair of Discipline. In the absence of any evidence being led before Convocation that the Secretary had complied with S. 9(1) by some means, even if he had not "authored" the authorization memoranda, the majority of Convocation concluded that the Society lacked jurisdiction to proceed with the complaints because of the failure to comply with the mandatory conditions of S. 9(1).

Regulation #708 is no longer in force and has no application to current discipline proceedings. Under current practice, the Authorization Memorandum is signed by the Secretary. The Memorandum is clearly stamped with the Secretary's signature so that a Codina problem is not likely to arise under current practice.

⁸ Section 49.2 and 49.3 of *The Law Society Act*

⁹ *Angelina Marie Codina*

Decisions Made and Steps Taken after Authorization

1. Once the Authorization is received from the Secretary, an active file is created and the AS400 is updated and the file is forwarded to an Investigator. The Investigator and Team Leader must determine whether there is evidence of professional misconduct, incompetence or incapacity and whether the case is an appropriate one to employ Alternative Dispute Resolution techniques (ADR). If the case is appropriate for ADR, then the Authorization of the Proceedings Authorization Committee¹⁰ (PAC) must be obtained before using this approach.

I should note that the Investigations Department regards its primary responsibility to be the investigation of Discipline related matters and also accepts as its responsibility the investigation into issues of incapacity of incompetence. Incapacity issues will generally turn up as incidental to Discipline, as for example, where the investigation reveals that the Member is suffering from an illness or a substance abuse problem that may explain his misconduct. Incompetency cases are more likely to turn up and dealt with by R & C although when the facts of an investigation point to incompetence, Investigations recognize their responsibility to pursue this issue.

2. If there is no evidence of misconduct, incompetence or incapacity, a decision is made to close the file by Closing Memorandum. The Investigator prepares a Closing Memorandum which is reviewed by the Team Leader, who may not agree with the decision and may direct that further investigation be carried out.

3. The Investigator may also be required to determine whether Co-Signing Controls are required on the Member's Trust Account or whether the Trusteeship/Freeze Order is appropriate under the circumstances.

Steps Taken on the Completion of the Investigation

1. When the investigation is completed, the Investigator will prepare an Authorization Memorandum, a counsel brief and all disclosure material. These documents are reviewed by the Team Leader. After Team Leader approval, the final version of the Authorization Memorandum is forwarded to the Manager of Investigations for a final "quality control" review. If the Manager is satisfied with the contents, the Authorization Memorandum is forwarded to the Secretary for his review.

2. The Secretary will then review the Authorization Memorandum and if he is satisfied with the contents, it will be submitted for consideration by PAC at its next meeting.

3. An Administrative Assistant prepares the PAC agenda and chart of the matters to be considered at the PAC meeting and forwards a copy of the documentation to PAC Members and certain Law Society staff.

4. The PAC meeting is held and PAC may authorize¹¹ among other things, the following:

1. Provide for an informal resolution of the matter.
2. Direct a misconduct, incapacity or incompetent hearing application returnable before a Hearing Panel.
3. Invite the Member to attend before a panel of Benchers to receive advice concerning his or her conduct or his or her professional competence.
4. Send a Letter of Advice to the Member concerning his or her conduct or his or her professional competence.
5. Direct that further investigation be carried out.

¹⁰ Committee established pursuant to Section 49.20 of *The Law Society Amendment Act*

¹¹ Section 9 By-Law #21 as amended – (whose provisions apply to both Members and students)

6. Authorize an application for an Interlocutory Order suspending the rights and privileges of a Member, restricting the manner in which he or she may practice law.
7. An admission hearing to be held into good character.
8. Close the file.
9. Any other action considered appropriate.

If PAC authorizes a Letter of Advice, the Investigator drafts the letter which is reviewed by the Team Leader and then sent to the Chair or Vice-Chair of PAC in draft form, for approval and then sent to the Member. The Chair or Vice-Chair sometimes prepares the letter directly or varies the letter prior to approval. The Complainant is advised that a Letter of Advice was sent to the Member.

If PAC authorizes an Invitation to Attend, the Investigator prepares the appropriate Memorandum which is submitted to the Team Leader for review and then on approval for distribution to the Benchers who will be conducting the Invitation to Attend and a copy is sent to the Member. Under current practice, Members of PAC who authorize the invitation to attend will also conduct the hearing on the attendance. The Administrative Assistant co-ordinates the date and time for the Invitation to Attend with the Benchers, the Member and the Investigation Counsel on the Team.

If PAC authorizes that the file be closed, the Investigator advises the Member and the Complainant of PAC's decision and the file is closed.

If PAC directs further investigation be conducted, the file is returned to the Investigator to conduct the required investigation.

If PAC directs that a Conduct Application be issued, then the Authorization Memorandum, Counsel Brief and Disclosure materials are assembled, photocopied and forwarded to Discipline within two weeks of PAC's decision. Copies of the materials are also forwarded to the Secretary and the Manager of the Compensation Fund.

Comment

When I initially reviewed all of the steps taken and the extensive paperwork involved in the process of initiating an investigation and carrying it to PAC, it struck me that the checks and counter-checks observed were somewhat overwhelming. Mr. Yakimovich assured me, however, that in his view these steps were necessary to ensure rigid control over the process and to make certain that every phase of the proceeding is duly recorded in the system. By having the extensive system of checks and counter-checks now employed any duplication of effort is avoided. Before, this system of control was imposed, there were instances where Investigators arrive at a Member's office only to find that someone from another department was there carrying out a different investigation.

Involvement of the Discipline Department

Senior Counsel of Discipline, Ms. Lesley Cameron generally attends the meetings of PAC as do Scott Kerr, Richard Tinsley and James Yakimovich. In general, the attendance of staff has kept to a minimum. I understand that most of the meetings of PAC are conducted by teleconference with the Benchers involved. The staff attending do not participate in the decisions of PAC¹². Minutes of the PAC meeting are prepared by a Member of the Investigations Department and copies of these Minutes are then sent to the Discipline Department. Senior Counsel in Discipline, then assigns the case to a particular Counsel having regard to the nature and difficulty of the file and each counsel's workload. Senior Counsel maintains a file list indicating the matters assigned to each counsel and this list is updated monthly.

¹² See Section 7 of By-Law #21

The Forwarding of the Necessary Material to the Discipline Department

Once PAC has authorized a Conduct Application, the Investigator is required to forward a complete Counsel Brief and disclosure materials to Discipline. The Secretary of the Society has directed that this material be forwarded to Discipline Counsel within two weeks of the Authorization by PAC. It is in this respect that a problem has developed.

Delay in Providing Material to Discipline

The Discipline Department is assigned carriage of a file following the authorization of a Conduct, Capacity or Competence Hearing by PAC. Discipline however will not issue and serve the Conduct Application on the Member until Discipline has received all supporting material to support the Complaints approved under the Authorization Memorandum. That is, Discipline will not take the next step to institute the actual Discipline proceedings, by serving the Notice of Application, until Discipline has received a complete Counsel Brief with all necessary supporting documents and the necessary disclosure materials.

As pointed out above, under current practice it is required by the Secretary, that all supporting material to support the allegations against the Member be provided to Discipline within two weeks of the Authorization by PAC. This is a reasonable goal but regrettably it is not always met. This failure in my view creates a potential problem.

There are two areas where such supporting material may be lacking:

The basic or prime materials necessary to support the investigation findings and which would serve as evidence in support of the prosecution of the offences as authorized.

Where some supporting material has been provided but Discipline considers the investigation incomplete and requests further investigation be carried out. In this case, a notice is sent to the Investigator detailing the additional information required.

Situations Where Investigation Does Not Provide Supporting Material

In a few cases, the Investigator may have referred the matter to PAC with a recommendation that a "Letter of Advice or Invitation to Attend" be issued. In those situations it is not the usual practice to include supporting material or a Counsel Brief because the Investigator assumes that if PAC accepts the recommendation, there will be no Discipline prosecution and therefore disclosure material is not necessary. On occasion, however, PAC may not accept the recommendation and will nevertheless authorize a Conduct Application and the Investigator must then begin to prepare the disclosure material which is not likely to be ready within the two week period.

Additional Controls Recently Imposed

With respect to those cases where Discipline requires supplementary investigation, there has been a problem in the past in that the requests for such additional investigation would be sent directly to the responsible Investigator but the Investigator's Team Leader would be unaware of the request and therefore not in a position to follow up and exercise some monitoring or control process over the Investigator to see that the supplementary investigation was carried out. This deficiency has recently been corrected in that Mr. Yakimovich has seen fit to amend the monthly team reporting practice to include reporting on outstanding Discipline counsel requests, which would document any requests made of the Investigator. This additional control should result in a faster follow-up on the requests of Discipline for the additional investigation.

The Delay in Providing Supporting Material to Discipline, A Serious Problem

The delay in providing the supporting material to Discipline to support the prosecution may well be the source of a problem. The Member is advised that a Complaint against him has been authorized but he or she must then wait for the service of the formal Notice of Application and supporting disclosure material. That material will not be served on the Member until Discipline is satisfied that the investigation is complete. Delay in proceeding after the Authorization has been granted may well be difficult to justify and could provide fertile grounds for an application for a stay of the proceedings, particularly where the delay has resulted in any prejudice to the Member.

Later when I describe the work of Discipline, I will be referring to a chart of the current cases where PAC has authorized misconduct charges against a Member but Notice of Applications have not yet been issued or served on the Member. (p. 47) I repeat that in my view, this has the potential to create serious problems.

Later I will discuss and have a recommendation as to whether it would be appropriate to have a more thorough vetting of the investigation material before it is submitted by Investigation to PAC for Authorization.

It is hardly necessary for me to make this a recommendation but the message must be conveyed to the Investigators that completing the investigation where Authorization has been granted must take first priority and should be given the most immediate attention of the particular Investigator and his or her Team.

Reasons for Delay in Completing the Investigation

As I shall point out later, there are always a backlog of cases under investigation. The delay in completing the investigation may be due to a number of factors including the following:

1. The complexity of the cases;
2. The number of complainants per case;
3. The effect of Project 200;
4. The Member-Driven Approach
5. The experience of the Investigation Staff;
6. The case loads.

The Complexity of the Investigations

Over the past year, the Investigations Department has conducted an unusually high number of large scale complex investigations. The Toronto based teams have responded to a series of mortgage frauds facilitated by different lawyers involving millions of dollars and hundreds of properties. The fairly recently established Ottawa investigation team (4 Investigators, of which only 1 with Law Society experience) has been called upon to investigate three unrelated high profile large misappropriation cases which were uncovered in quick sequence.

The Number of Complainants Per Case

Although the investigation will generally involve the alleged misconduct of one solicitor, it would appear from the files that typically each investigation may involve a number of clients. For example, in a single Eastern Ontario investigation involving one solicitor, the case investigation involved over 94 clients who were affected by the solicitor's misconduct.

The Investigation Department did a detailed case inventory in March of this year and it was determined that each single investigation case had an average of 4 client matters attached to it. Applying this result to the August 31st, 2000 inventory of 242 Member investigation cases, would suggest that as many as 968 clients or complaints may have to be investigated.

As well, the Department had carriage of 63 non-member investigations of persons alleged to have been involved in unauthorized practice.

From the few files I have randomly reviewed, it would appear that in a typical investigation, there is much work to be carried out including a comprehensive review of the relevant client files, title searches, examination of law firm financial records, interviews with the solicitor and each client/complainant affected. The evidence is then assembled and I am advised that once a matter has been Authorized for prosecution, the investigators involvement may continue as a witness.

The Effect of Project 200

1. The Law Society re-organization plan – Project 200 initiated and carried out in 1998 – 1999, caused a loss of Investigators and staff project work teams, and this loss affected the ability of the investigative staff to complete their assignments. In the re-organization, some good and experienced staff Members were lost when their positions were vacated and those positions still have not been filled. For example, two seasoned investigation auditors and two seasoned examiners were lost and have not been replaced. The work of these auditors had to be assigned to a new Investigator who was unfamiliar with the cases and the additional assignments had to be absorbed into the Investigator's case work load. Similar staff departures took place in the Complaints Department. I am advised that a significant problem which has led to delays on many files is the lack of accountability from some Complaints Department Investigators who accepted a package and left the Society under the re-organization. These Investigators have shown no interest in providing any assistance with respect to the files that had formerly been under their control. I do not know whether it was a condition of the package given to those who retired from the Society but with respect to any future terminations, I would strongly urge that it be made a condition of the termination that the retired staff member provide co-operation over files under his or her control for a reasonable length of time. I should mention as well that during the Project 200 transition period, re-hiring was only by way of contract positions and I am advised that attracting qualified applicants to fill contract positions has been very difficult.

2. Prior to the re-organization under Project 200, there was a Complaints Department and an Audit & Investigation Department. The old Complaints Department had very heavy file loads involving the entire spectrum of discipline matters from simple to fairly complex issues including allegations of professional misconduct or conduct unbecoming. The Complaints Department, however, had a paper driven approach, that is, a complaint would come in but the Department would not conduct interviews of the Complainant or witnesses or the Member but rather simply would write to the Member asking for a response and then in turn would send the Member's response to the Complainant and so on. This was quite an unsatisfactory approach. The old Audit & Investigation Department did conduct interviews but had few lawyers devoted to investigation of potential disciplinary matters. Rather, the Investigators were mostly auditors or bookkeepers more experienced in financial transactions than in the legal aspects of a law practice. Nevertheless, I have been told that the quality of the investigative product from the old Audits & Investigations Department was superior to that of the Complaints Department.

Under Project 200, the Investigations Department was consolidated in July 1999 to include the investigations of the former Audit & Investigations Department and former Complaints Department, Discipline Investigation Unit. With the amalgamation, the newly formed Investigations Department inherited 1209 files from the former Complaints Department. As well, the new department assumed 450 Trusteeship files, and about 1000 Member inquiry files.

Completing the additional work created by the 1200 new files has been a major diversion for the Department during the past year. To respond to the residual workload which was for the most part unanticipated from the former Trustee area, a Trustee Wind-Up Team was established as part of the Investigations Department to do work in this area.

The Problems Created by Project 200 are Resolving

Many of the problems created by the Project 200 have been resolved or will shortly be resolved as follows:

1. As of June 30th, 2000 the Investigation Department has completed and closed all of the 1209 non-discipline stream cases assumed by it from the Discipline Investigation Unit of the former Complaints Department.
2. Two investigation staff assigned to the Trustee Wind-Up Team will return, it is anticipated to Investigation work in early 2001.
3. It is anticipated that most vacant positions in the Investigation Department will be filled by the end of 2000.

The Problems Created by the Member-Driven Approach

I have earlier discussed the "Member-Driven Approach" adopted by Convocation as part of the Project 200 re-organization. This concept requires that all matters relating to a Member both of a service related and discipline nature, be assigned to one department from beginning to end. This means that if a complaint has a discipline component, it is referred to the Investigations Department, even though for the most part, the issues complained of are "service" issues, such as the failure to return telephone calls, to report to the client or the failure to keep the client informed as to the progress of a matter. The object of the approach is to avoid bifurcating the process where a Discipline streamed investigation also involves complaints related to service issues. However, the transfer of non-Discipline related matters to the Investigations Department diverts the Investigators focus from true disciplinary matters and he or she is required to spend time on problems requiring a remedial approach. The Member Driven approach, I understand, is a significant factor in detracting from the ability of the Investigators to complete the more complex Discipline cases in a timely way.

Examples of the Problems

I was given a few examples of the problems created by the Member-Driven approach, of which the following are illustrative; with respect to Member C, the investigation officer was given four discipline investigations in 1999 and 2000 including failing to account, breach of Undertakings and Unprofessional Conduct. In addition however as a result of the "Member-Driven Approach" the Investigator was given an additional 29 complaints against "C" which were all service related matters and not related to Discipline.

In 1998 and 1999, the investigation officer had two Discipline investigations regarding Member "B", namely practice under suspension and failing to account. As a result of the Member-Driven Approach, 8 additional complaints were added and assigned to the inventory. All of these complaints involved failing to report to a client, failing to respond to telephone calls, all imposed an additional burden on the Investigator of a time-consuming nature.

The Investigator was given a single assignment in October 1999 to investigate the Member for failure to account for trust funds but shortly thereafter received 9 existing complaints from R & C all service related.

The above examples have been given to me by staff as illustrative of the problems that deflect the Investigators from giving their prime attention to the more serious Discipline matters. As I shall point out later, I do not believe that these service related matters should be removed from Investigations, because they do touch upon the competence of the Member, something within the mandate of Investigations.

Recommendations Regarding The Member-Driven Approach

From the point of view of Investigations, the Member-Driven Approach requiring Investigators to accept the "failing to" Complaints, i.e. the failing to report, to comply with undertakings etc. affects the ability of the staff to concentrate on the more serious misconduct matters. There are two possible solutions to this problem:

1. First, as proposed by Investigations that the less serious “failing to” matters remain to be investigated and resolved by R & C.
2. Provide the Investigation Department with additional staff ideally one to be attached to each Investigation Team to co-operate with that Team in the main investigation but to handle exclusively the less serious service related matters.

Scott Kerr as Manager of R & C is opposed to the first solution, that is that the matters remain in his Department. There is no doubt that if this solution was adopted the primary objective of Member-Driven Approach would be defeated, avoiding duplication with investigators from two or more departments attempting to speak to the same complainants and witnesses. In my opinion, the most reasonable solution (although not the most economical one) is to increase the Investigation staff by adding additional staff members to deal exclusively with service related complaints. As I have already indicated, I believe these complaints should remain under the jurisdiction of Investigations, because they for the most part relate to the competence of the Member.

In his report to the Strategic Planning Committee, Scott Kerr suggested the addition of two members to the Investigation Staff. In my view, this would be a minimum.

The Experience of the Staff

There is genuine concern about the experience of the Investigators comprising the six teams of which five are based at Osgoode Hall and the sixth in Ottawa. In my view, any Investigator who has not had the benefit of experiencing the full cycle of a case investigation including acting as a witness on the prosecution may be characterized as “inexperienced.” The following chart suggests that 60% of the present staff are inexperienced and have not carried on an investigation through to hearing.

Job Title	No. of Positions	Experienced	Inexperienced
Manager	1	1	
Team Leader	6	3	3
Investigation Counsel	10	1	9
Investigation Auditor	6	2	4
Investigation Officer (Paraprofessional)	10	6	4
General Investigator	2	1	1
TOTALS:	35	14 (40%)	21 (60%)

Shortage of Staff

At present, there a shortage on the Investigation Teams of qualified forensic auditors. Although there are two budget approved positions for Investigation Auditors, these positions remain unfulfilled and I am advised that efforts to date to fill these positions have been unsuccessful, although the hiring attempts continue. The shortage of auditors has contributed to a disproportionate number of case assignments to the auditors currently on staff.

When I commenced my investigations, there were two positions open for investigative counsel, i.e. solicitors. These positions have just been filled in September.

The Long Term Goal to Reduce Average Time to Complete the Investigation

For several years the former Audit & Investigations Department was guided by what was commonly referred to as the "One year completion rule." This rule provided that once a matter was authorized to be investigated by the Secretary or the Chair of the Discipline Committee, under former regulation 709, that investigation should be completed within one year and the matter referred to the Proceedings Authorization Committee.

As part of the Society's restructuring under Project 200, I understand that a performance goal for the Investigations Department was established and that is that 95% of investigations be concluded within four months of intake by 2002.

I have serious doubts as to whether it is realistic to target four months as a goal for the majority of the cases to be completed. Equally important to the timeliness of the investigation is the quality of the investigation. I am concerned that if the time to complete the investigation is unreasonably short, this may lead to Investigators cutting corners and producing a less than thorough investigation in order to achieve the prescribed time limit.

As of August 31st, 2000, the staff had 242 Member cases and 63 unauthorized practice investigations for a total of 305 investigations spread over 28 investigators. I understand that several of the investigations fall into the "complex" or "large scale" category. The Investigations Department has conducted an analysis in which it is concluded that an investigator can annually complete about five cases that range in complexity between "average" and "complex". On that basis, the current staff level of 28 investigators could reasonably be expected to complete somewhere between 140 and 180 cases over a one year period.

Having regard to the present volume of cases and the number of cases which the staff has undertaken to investigate in the past year, it is unrealistic to expect the staff to complete 95% of these investigations within four months.

In my view, a more realistic target would be to expect that the majority of cases be investigated within ten months.

The Case Load

At Schedule "4" (Tab #4) is a bar chart prepared by Investigation that depicts the work load of the Investigation Staff during the period from June 1998 to August 31st, 2000. The chart reflects only Member investigations. In addition, the staff investigate unauthorized practice cases involving non-members.

The chart indicates that as of August 31st, there are 242 Member cases under investigation. I understand that in addition there are 63 unauthorized practice investigations for a total of 305 investigations spread over 28 investigators. Thus the average number of cases assigned to each investigator is 11 cases per individual. I regard this as a very heavy case load.

The bar chart refers to "uncommenced cases". I understand that these are cases that have been assigned to the investigators but they have not yet initiated the investigation. There are 60 such cases in connection with the 242 total member cases as of August 31st, 2000.

It is inevitable with the case loads carried by each investigator that a new assignment will not reasonably get his or her attention immediately and hence each investigator will always carry a portfolio of investigations not yet initiated, either because the investigation has just been assigned or for all the reasons that I have outlined, the work load of that particular investigator simply precludes early commencement of the assignment. My information however is that if the investigation involves a serious misconduct such as misappropriation of trust funds that the matter gets the immediate attention of the investigator.

I did not obtain statistics as to how long other cases not involving serious misconduct may remain in the “uncommenced category”. Obviously, this may vary from time to time with the priority being given in order of the seriousness of the cases assigned.

If one looks at the colour chart, Schedule “4”, it is apparent that the uncommenced cases first began to accumulate in late January 2000 at about the time the Investigations Department was given the additional responsibilities under Project 200, to which I have referred earlier. As well, one reason for the accumulation of uncommenced cases in the past year, is that Investigations has been working hard to reduce those cases under investigation for more than one year. At January 12th, 2000 there were 145 cases under investigation for more than one year, whereas at the end of August 2000, this number had been reduced to 18.

Cases Taking More Than One Year

I have asked the Investigations Department to provide me with a list of the current cases where the investigation has exceeded one year. I have arbitrarily chosen this time period, on the assumption that any case under investigation for more than one year could potentially create problems, unless the Society can satisfactorily explain and justify the delay. The chart shows for example that as of August 31st, there were 18 cases under investigation that have been held by the investigator for more than a year. At my request, the Investigations Department has provided me with a breakdown of those cases and an explanation for the delay.

Attached as Schedule “5” are eight pages covering those cases on which the investigation has extended for more than one year with the reasons for the delay and the current status. (Tab #5) The Member and the Investigator are each identified by initials only.

Not only have these cases been more than one year in Investigation but many have been significantly more than one year. Three of the cases go back almost three years. Under the heading “Current Status” it is apparent that the staff investigator involved is conscious of the problem and in each case there is an indication that the investigation will be completed for a PAC meeting within the next few months and not later than the year end.

Conclusion

The 18 cases that have been under investigation for more than a year and some for as much as three years are obviously cause for concern. It should be noted that these cases do not include the additional cases to which reference will be made later where Authorization has been granted by PAC but Notice of Application has not yet been issued. The reasons for delay in each case appear reasonable and in view of the undertaking of the staff to have these investigations completed for an early PAC meeting, I see no reason to take any other steps.

I would recommend that the Manager of Investigation review the status of these cases at the end of November 2000 and report on the status to the Chair of the Professional Regulation Committee.

Training the Investigators

There is a strong consensus of opinion that the inexperience of the present staff is a major factor resulting in delay. The analysis I set out earlier shows that 60% of the staff in Investigations are not experienced in Discipline related investigations. The reorganization which took place under Project 200 resulting a significant reduction in a number of staff experienced in the Society Investigations has left the department with a very small number of experienced investigators. The obvious answer to this problem is that steps must be taken to train and improve the competence of the investigators.

There are a number of ways to produce additional training and experience to the Investigators.

1. Training Seminars:

On June 2nd, 2000 the Investigation staff were given a half-day training seminar under the direction of Discipline Counsel. Discipline Counsel made presentations on issues of importance including such matters as: Duty of Fairness; Identifying Professional Misconduct; Conduct Unbecoming; Standard of Proof and Evidentiary Issues; Technique of Interviewing Witnesses and Disclosure. The proceedings were videotaped for use by new staff. The Discipline Counsel also provided written material supporting its presentation.

This session was highly successful but it also must be remembered that it placed a heavy burden on Discipline Counsel to prepare for and present the session.

Nevertheless, I would strongly recommend that such sessions be continued on a regular basis to be held at least twice yearly. To reduce the burden on the Discipline staff, fewer Members of Discipline should be involved with more outside participants as teachers.

With respect to the use of outside participants, I have in mind the following as possibilities to obtain outside instructors:

- Senior Counsel experienced in prosecution and investigation;
- Police Officers to assist on matters of investigation;
- Experienced Investigators who have left the Law Society.

2. Post-Hearing Meeting with the Investigator

A recent practice has developed in which following a Discipline Hearing, Discipline Counsel meet with the Investigation Team responsible for the particular investigation and conduct a post-mortem on the proceedings. At the session both the strengths and shortcomings of the investigation or matters that arose during the hearing may be examined. In my view, this is a most effective method of training the Investigation staff and it should be continued on a monthly basis as a regular feature. It would seem appropriate to document or prepare memoranda of these sessions to be passed on and shared with the entire Investigation staff.

3. The Early Involvement of Discipline Counsel

While on occasion, Discipline Counsel may be contacted about the issues in an investigation file, I understand that this is an exception rather than a rule and counsel rarely have an involvement in the process until it reaches the Discipline stage.

I understand and accept the soundness of the Society's policy that for the most part, Discipline should not be directing the investigation and that the investigation and disciplinary functions should be kept separate. If Discipline Counsel are too deeply involved at an early stage, then problems may arise as follows:

- An allegation of apprehension of bias because of the prosecutor's involvement at the Investigatory level;
- Possible prohibition against counsel acting as counsel and witness in the same case; and
- Where counsel is involved at an early stage the principles respecting solicitor and client privilege on disclosure may lead to a waiver of the privilege.

However, the policy that Discipline Counsel not be involved at all in the investigative role should be revised and changed so as to encourage investigators to seek advice from counsel at an early stage where such advice is reasonably necessary. This is not a novel or new recommendation, it has been previously suggested¹³ by the Professional Regulation Committee. The Committee stressed however that the role of Discipline Counsel should be strictly limited to that of advisor to the Investigatory Teams. I understand that examples of questions arising during the investigation stage where the consultation with Discipline Counsel would be important may include the following:

- (a) appropriate remedial options; for example should an early offer of resolution be made where the Member indicates the desire to agree to terms consistent with the likely result at Discipline, eg. suspension, resignation, supervision of practice?
- (b) does the evidence support an application for an interim suspension?
- (c) should the Investigator proceed to investigate where criminal charges are outstanding or await disposition by the criminal court?
- (d) evidentiary questions, witness statements, (willsays) etc.
- (e) the nature and sufficiency of disclosure;
- (f) the consideration of any experience counsel may have had with the lawyer on the Discipline side to date and its effect on a prospective prosecution;
- (g) drafting of allegations for the formal complaint.

There are other problems for the Investigators that commonly arise. In my view, the Investigator should understand that he or she is at liberty, within reason, to consult Discipline Counsel and Discipline Counsel should be ready to respond, within reason, at an early stage in the investigation to assist in the resolution of legal problems.

4. The Availability of the Decisions of Discipline Panels and Convocation

The Decisions of Discipline Panels and Convocation and any resolutions that have been passed relating to Discipline matters are not now available for effective use by the investigative staff. I would recommend that those Decisions and resolutions be made available either in book form or as computer data for convenient access by Investigators on a monthly basis.

5. Other Training Initiatives that have been Planned or are in Existence under the Direction of Mr. Yakimovich

In-House Training of Legal Practice Areas

Although the investigating staff is largely inexperienced, there are a few highly experienced people, for example, Rosemarie Abrecht who has many years experience in estate work before recently joining the Law Society as an Investigation Officer. She has made a successful presentation to the staff which was videotaped and available to all staff.

An Investigator with extensive experience in the area of real estate and mortgages has given a one-day presentation which was also videotaped for use by the staff.

Manager and Team Leader Training

The Society's Human Resources Department in the next few months proposes a course of training in leadership and managerial skills for the Investigation Department.

¹³ Report to Convocation of Professional Regulation Committee, Sept. 10, 1998 at pp. 20-24

Training & Interviewing Techniques

A former instructor with the Police College, has provided a full day of training and comprehensive materials relating to a whole range of investigative subjects.

Training & Sexual Misconduct Investigations

This type of investigation requires particular skills and sensitivities and in recognition of this the Team Leaders of the Department have been planning the formation of a specialized unit from the staff to undergo focussed training in this particular area. The proposal for this training and budget has been prepared.

Legal Accounting Training

It is important that the investigation staff understand the basic accounting principles and practices of a law firm. The course of legal accounting and training offered by the Bar Admission Course has been made available to those who are interested. I recognize that it is difficult for the Investigations staff to find time to take this course at present but in time when resources permit, in my view, attendance at this course should be mandatory. The Spot Audit Program Manager of the Society has offered to have investigative staff accompany him on Spot Audits to become familiar with the procedure. Several Investigators have taken advantage of this opportunity. A former Auditor with the Law Society, Bill Edwards, has agreed to be available on a contract basis to provide general consulting to current staff on audit issues and he has also agreed to provide a comprehensive manual containing guidelines for investigations relative to the audit of financial records.

6. My General Conclusions

The inexperience of the present staff has contributed to the problems of timely delivery of material and to the quality of the material delivered. Under the foregoing fairly extensive scheme of training and education, the staff and the quality of their work product should improve. The passage of time alone should result in the staff becoming more efficient provided the staff can be persuaded to remain in the employment of the Society. I understand there has been a significant staff turnover in Investigations and that because of the salary limitations there is a real risk that once a staff Member has become an experienced Investigator, he or she may be lured to a more lucrative paying position such as with the Ontario Securities Commission. While I have not examined the scale of salaries or discussed salaries with staff in particular, the salary scale must be reviewed to determine whether the present investigative staff is being offered a salary on a competitive basis with other comparable institutions. In short, if the Society wants to keep the staff, it is obvious that they must be paid comparable salaries.

3. The Discipline Department

Ms. Lesley Cameron, called to the Bar in 1987 has been Senior Counsel to Discipline since 1997. Much of her time on a day to day basis has been spent in supervision and consultation with her Discipline Counsel. In addition, she is involved in the administrative work, some policy and committee work and of course, she has carried some prosecutions. I have spent some time with her and received much useful information and material on the operation of her Department. She impressed me as a competent and able administrator. I have also spent time with and obtained additional useful information from two other Members of Discipline, namely: Catherine Braid, called to the Bar in 1994 and Glenn Stuart, called to the Bar in 1992.

Loss of Two Key Personnel

A significant blow to Discipline has been the loss by resignation of two key personnel. Lesley Cameron has resigned effective November 30th, 2000, although she has agreed to continue on certain major files assigned to her. Glenn Stuart, the second most experienced member of Discipline has resigned, effective September 29th, 2000 and he too has agreed to complete after his resignation some of the matters on which he has been working.

Glenn Stuart has carried a heavy file load with cases of above average complexity, including some sexual impropriety cases. It is apparent that the remaining counsel in Discipline, cannot reasonably absorb all of Mr. Stuart's files if they are to give service to their present case loads. It would appear that the only solution to the departure of Mr. Stuart is to engage outside counsel to take over the majority of these files. I understand that serious consideration is being given to this possible solution.

Staff

The Discipline Department had a staff of five permanent lawyers and one under contract to December 31st, 2000. On August 21st, 2000, a second vacant contract position has been filled. The attached Organization Schedule "6" is an organizational chart of the Department. (Tab #6)

Functions

Counsel in Discipline represent the Law Society in hearings before Law Society Hearing Panels, Appeal Panels and on Judicial Review Applications and Appeals to the Court from Orders of Law Society Hearings and Appeal Panels. In general, the Department has carriage of the following:

1. Conduct Applications in which the Law Society alleges that the Member is guilty of professional misconduct or conduct unbecoming a barrister and solicitor;
2. Capacity Applications in which the Law Society alleges that the Member is not capable of meeting his or her obligations as a Member by reason of physical or mental illness, other infirmity, addiction to or excessive use of alcohol or drugs;
3. Admission Hearings to determine whether a student Member or a non-Member is of good character, given the requirement of good character set out in Section 27 of the Law Society Act;
4. Re-Admission Hearings to determine whether persons whose Membership in the Law Society was previously terminated in discipline proceedings should be readmitted to Membership in the Law Society; and Reinstatement hearings to determine whether Members whose rights and privileges have been suspended by discipline proceedings should be permitted to return of the practice of law.

The majority of the Department's time and resources is devoted to the carriage of Conduct Hearings.

Time Limits for Prosecution

The time limit for prosecution of Disciplinary matters referred to by the Hearing Panel in Baker, that is that the hearing of the Complaint against the Member take place within four months of the date of the Complaint was contained in the Rules of Procedure for the Discipline Process adopted by Convocation on October 23rd, 1992, which Rules were in effect until April 25th, 1997. Rules 1 to 15 provide for the allocating of a Discipline Complaint into one of three tracks, namely: Fast Track, Standard Track and Complex Track. The allocating of complaints to "various tracks" I understand was not a success and that feature and the time limit for prosecution has been left out of the Rules of Practice and Procedures as amended since April 25th, 1997.

In my view, it is inappropriate to legislate a specific time limit for the prosecution of a Complaint. Such time limits may only provide useful material to support an application for a stay. The four months applicable in Baker was totally impractical. To have a time limit imposed, simply puts additional pressure on the Discipline Counsel which may result in a case being presented that has not been thoroughly investigated and prepared.

The Procedure After Authorization

Following the Authorization of a Conduct or Capacity Hearing by PAC, Lesley Cameron will assign the file to Discipline Counsel. Once Discipline Counsel has received the file and is satisfied that all necessary supporting material has been provided by Investigation, he or she will draft the particulars of the Complaint to be inserted in a Conduct Application. An Administrative Assistant then prepares the appropriate package for service upon the Member. The Application is served on the Member returnable on the first return date before the Hearings Management Tribunal for the purpose of setting a Proceed Date.

The Hearings Management Tribunal

This Tribunal which sits every second Monday is presided over by a single Member.¹⁴

The Material Service on the Member

The package served on the Member advising him or her of the Discipline allegations will generally contain the following:

1. Notice of Application;
2. The current Rules of Practice and Procedure;
3. Disclosure Material;
4. Probably a draft of an Agreed Statement of Facts.

The package will not always include disclosure. Sometimes the Members are advised that the Society is ready to make disclosure and are requested to contact Discipline Counsel to arrange for receipt of disclosure. It is the practice of Discipline counsel to endeavour to work towards obtaining an agreed statement of fact and in more than 50% of the cases, this is achieved.

Following service of the Conduct Application upon the Member, Discipline Counsel will contact the Complainant and any other witnesses to arrange for their attendance at the hearing.

With respect to the hearing, any matter which is not expected to take more than one day is put on an ordinary two day hearing list. Matters anticipated to take longer than two days are scheduled for special hearing days. Recently the number of special hearing days has increased relative to the number of ordinary hearing days. Lesley Cameron is of the view that this change reflects the fact that hearings are becoming more complex.

¹⁴ At present, Ms. Carole Curtis, the Tribunal grants dates for hearing readily, either on consent without the appearance of the Member or his counsel or by the Member in person or by teleconference.

Status of Current Files

The following is a breakdown of current files of the Discipline Department, the aging by date of authorization as of September 14th, 2000.

AGED BREAKDOWN OF CURRENT FILES DISCIPLINE DEPARTMENT (as at September 14, 2000)		
	No. of Matters/Applications	No. of Members/Applicants
Total Conduct Applications Issued but Hearing not Completed	57	47
Issued before September 14, 1998 (more than 2 years since issuance)	14	10

The above breakdown of current files refers only to files that are in the active mode, that is, pursuant to a PAC Authorization, a Notice of Application has been issued and served on the Member.

I asked the Discipline staff to provide me with a list of those cases where the matter has been more than two years in prosecution. The attached Schedule "7" (Tab #7) lists the ten cases identifying the Member by number only. In the third column, the heading "Comment on History" provides an explanation generally for the delay in each of the ten cases. The explanation in my view offers some reasonable justification for the delay by the Society. In summary, the reasons offered are:

1. A questionable medical condition of the Member to proceed;
2. Adjournments pending final appeal resolution of a criminal conviction;
3. Complaint stayed at the request of the Member and with the approval of the Hearing Panel to avoid prejudice in civil proceedings against the Member;
4. Several adjournments sought and granted to Member.

While delay in prosecutions should never be approved or sanctioned, the explanation for the delay in each of the ten cases appears to be reasonable without attaching any particular fault to the Society.

Matters Authorized By PAC But On Which Notice of Application Has Not Yet Been Issued

The chart setting out a breakdown of current files in Discipline does not include cases where there has been an Authorization by PAC, but Notice of Application has not been issued or served on the Member. There are a disturbingly large number of those cases. Attached as Schedule "8" (Tab #8) is a list of 34 cases where Authorization to Proceed against the Member has been obtained from PAC but the issue of a Notice of Application has been held in abeyance by Discipline.

The list of 34 cases has been broken into 3 categories:

- (1) Matters authorized by PAC before May 31st, 2000 (12);
- (2) Matters authorized by PAC before February 29th, 2000 (6);
- (3) Matters authorized by PAC before August 31st, 1999 (16).

The 34 Cases Raise Serious Cause for Concern

All of the 34 cases raise cause for concern but obviously of greatest concern are those cases listed in the third column where Authorization was granted more than a year ago but Notice of Application has not yet been issued or served.

Investigations are still ongoing in a relatively small number of the 16 cases authorized by PAC before August 31st, 1999, but the delay in many cases should not be attributed solely to incomplete investigation. There are other explanations offered; Discipline staff are still involved in review; Discipline considers a further application should be made to PAC for directions; Discipline is endeavouring to get the Member to commit to an agreement statement of fact.

A number of these cases have been handled by the two senior counsel whom I have indicated earlier are retiring and in those situations the cases should be sent to outside counsel to process as quickly as possible.

Conclusion

The 34 cases require urgent and early attention. The problem of looking after these cases is exacerbated by the departure of senior counsel and one of the most experienced counsel in Discipline. I can do no more than alert Convocation to the potential problems posed in these cases.

One Solution – Defer Authorization Until The Investigation Material Is Complete

In my view, it is an embarrassment to have Authorizations granted when Discipline considers the supporting material is not complete enough to proceed with the Application. Some solution should be sought.

I understand that a few years ago, the practice was to have individual Discipline counsel review the material prepared by Investigations and to assist in the preparation of the Authorization Memorandum to be submitted to PAC. The obvious advantage of this approach is that Discipline Counsel could then insist on completion of the supporting material before requesting Authorization to proceed.

The problem with the solution of having individual Discipline Counsel review the file is that the present staff simply do not have the time to carry out this vetting process. Moreover, there is the risk that by becoming so involved, Discipline counsel may be perceived as directing the prosecution, a perception which the Society wishes to avoid.

One suggested solution which I regard as sound and would recommend is that a new staff member be added to Investigations whose sole function would be to review the investigation material and prepare the Authorization Application. This person should ideally be someone experienced in Discipline matters. I recognize that it may not be easy to locate and hire such a person but in my view it is imperative that this position be established if the Society is to avoid the problem of having a significant number of cases authorized for prosecution but on which the investigation has not been completed.

Reporting

At present, the Managers of Advisory & Compliance and Investigation report monthly to the Secretary of the Society. Senior Counsel in Discipline report quarterly. The Secretary will convey the substance of the reports to the Professional Regulation Committee.

In my view, it would be more appropriate if the Managers of the Investigations Department and Senior Counsel of Discipline reported monthly directly to the Chair of the Regulation Committee.

I do not wish to imply that the present practice of reporting to the Secretary is inappropriate or should be discontinued. I do feel however that notice should be given more directly to the Chair of Professional Regulation on a timely basis of any problems that may exist in either department.

The reporting by Investigations and Discipline need not be detailed but it should emphasize:

1. The case load, and aging of the case load on misconduct, incapacity and incompetence cases;
2. Cases either under investigation or in Discipline which have the potential to create a problem unless remedial steps are taken.

The Backlog of Cases in Discipline

Quite apart from those files to which I have made reference where Authorization has been granted by PAC but the investigation has not yet been completed, Discipline has a definite backlog of files which are in the prosecution mode. There are a number of explanations for the backlog.

1. As mentioned earlier, the investigative work product because of the inexperience of the investigation staff (due in part to the transition issues and the addition of many new staff) is not of a quality that prosecuting counsel should reasonably expect. As a result, a lot of time is spent by Discipline Counsel working with the Investigators to upgrade and improve the quality of the investigation including identifying problems in the investigation, sending the matter for further investigation and generally assisting the Investigator to produce an appropriate work product. The time spent by Discipline Counsel working with Investigators to upgrade and improve the quality of the investigation obviously results in significant delay.

2. The workload of each Discipline Counsel has increased in the past four years. Counsel report that in addition to the increase in volume of the work, the cases have become more complex and longer. Convocation should appreciate that the end product presented to the Hearing Committee by counsel for Discipline, may appear much less complicated than when it first reached Discipline. Frequently, Discipline Counsel will be involved in a time-consuming effort to reduce and simplify the issues and to produce an acceptable agreed statement of facts.

3. In the past three years, the Discipline Department has had a significant reduction in its permanent and contract counsel. In 1998, the Department had 8 permanent and 3 contract Counsel; in 1999 – 9 permanent and 3 contract; but in 2000 – 6 permanent and only 1 contract Counsel.

I understand as well there is a high turnover of the more experienced Discipline Counsel because of the salary cap (something which I believe is about to change). In the past two and a half years, Discipline has lost three experienced Discipline Counsel on long maternity leaves for overlapping periods of time.

4. Project 200 also created a problem with the departure of support staff and Law Clerks from Discipline as a result of the uncertainty about the security of their positions under the re-organization or because better opportunities arose out of the re-organization.

5. Another factor is the busy schedules of Benchers who have been appointed to hear the Discipline cases. Long hearings frequently are interrupted and put off for several months at a time.

6. Frequent adjournments are common at the request of the Member, readily granted by the Hearing Committees.

Recommendations

1. The delay in providing the complete investigation to support the prosecution permeates the whole Discipline process. I have earlier proposed solutions to increase the efficiency and competence of the investigation staff and in my view, this is a matter of high priority.

2. An obvious solution with respect to the backlog in Discipline is to provide a favourable and early response to Discipline's request for more Discipline counsel with appropriate back-up staff. Lesley Cameron advises me that the ideal complement to ensure a reasonable degree of efficiency would be nine permanent counsel plus one contract counsel.

3. Discipline Counsel advise that adjournments are readily granted by the Hearing Committees of Benchers. The willingness to readily grant many adjournments, reflects a recent and new attitude on the part of Benchers to grant adjournments even on those cases which have been fixed to proceed "peremptorily". Obviously, these frequent adjournments add to the workload of Discipline Counsel and are a source of considerable inconvenience not only to counsel who arrive prepared to proceed but to the Complainants and witnesses.

It is my memory, that in the not too distant past, a Member would get one adjournment as of right, a second adjournment with some difficulty but rarely a third except in the most extreme cases.

Convocation should give consideration as to whether the present policy of readily granting adjournments is in the best interests of the public and the administration of justice. In my view, a more rigid and less flexible attitude towards adjournments is warranted.

Summary of Report, Recommendations and Conclusions

The following is a summary of my principal recommendations and conclusions with reference to the pages in the Report.

General

1. Outside counsel are currently rarely retained in matters of Investigations and only occasionally to Prosecute. As a matter of policy, outside counsel should only be retained where there is conflict, or a matter requiring special expertise, or the workload of the staff Discipline Counsel requires that they be given some outside assistance with a prosecution. (p.7)
2. The clear direction provided by Rule 6 and the present policy of Discipline Counsel, ensures that protracted proceedings on the nature and extent of privilege are not likely to occur.(p.10)

The Advisory & Complaints Service Department

3. With the establishment of a special unit in the Client Service Centre to screen complaints, there appears to be very little lapse time in providing responses to the Complainants. The Advisory & Service Department seems to be functioning reasonably well and I see little potential for any problems in that Department affecting the Discipline process. (p. 16)

The Investigation Department

4. The present practice of having the Authorization to investigate under Section 49.2 or 49.3 of the Act, prepared in the form of a Memorandum clearly stamped and signed by the Secretary, eliminates the likelihood of a challenge to the Authority of the nature raised in Codina. (p.19)
5. The recent change in practice requiring that the Investigation Team Leader report to the Manager of Investigations on any outstanding requests from Discipline for additional investigation, should provide some control to ensure that the requests are followed up. (p.25)

6. There is the potential for serious problems to develop with Discipline cases in those situations where PAC has authorized a prosecution against a Member but Discipline Counsel have declined to issue a Notice of Application until Investigations has provided all necessary material to support the charges. I have made the obvious recommendation that in circumstances where Authorization has been granted by PAC, that the Investigators must give high priority to the completion of the investigation to support the charges. (pp. 25-26)
7. One has to accept the fact that there is a significant backlog of cases under investigation. The delay in completing cases generally can be attributed to a number of factors including complexity, the number of complainants, the effect of Project 200, the Member-Driven Approach, the case loads and experience of the investigation staff. (p.26)
8. Project 200 in particular had a serious disruptive effect on Investigations in causing a loss of seasoned staff and through the process of amalgamating Investigations with other departments. All of this has resulted in a substantial increase in the workload of Investigations. Happily, I can report that some of the problems created by Project 200 have been resolved and others will resolve in the course of the next few months. (p.29) The workload of the staff, however, will remain high, with each Investigator carrying a large number of bases.
9. The Member-Driven Approach which has resulted in Investigations being saddled with the investigation of many service related problems has seriously affected the ability of the Investigators to deal with the more serious Discipline cases in a timely fashion. I have recommended the addition of staff, ideally six new members with one assigned to each Investigation Team. Scott Kerr in his report to which I have made reference, suggested two additional staff members and this would be minimal. (pp. 31-32)
10. One of the major factors contributing to delay is the fact that 60% of the present investigation staff is inexperienced. (pp. 32-33) I have recommended a number of programs for the training of the investigation staff to increase their competence. The fact is however that the present investigative staff is inadequate both in numbers and in experience to cope with a case load ranging from 140 to 180 cases per year.
11. I have recommended a closer liaison between the Investigators and the Discipline Department wherein the Investigator should understand that he or she is at liberty within reason to consult with Discipline Counsel and Discipline Counsel should be ready to respond, within reason, at an earlier stage in the investigation to assist in the resolution of legal problems. (pp. 38-39)
12. Following a Discipline Hearing, Discipline Counsel should meet with the Investigation Team responsible for the particular investigation and conduct a post-mortem on the proceedings and this should be continued on a monthly basis as a regular feature.
13. The decisions of Discipline Panels and Convocation and any resolutions that have been passed relative to Discipline matters should be made available to Investigations on a monthly basis. (p. 40)
14. The long term goal of Project 200 to have 95% of all investigations complete within four months of intake is unrealistic. A more realistic goal would be ten months with some increase in staff and improvement in competence. (pp. 33-34)
15. There are 18 cases in Investigations (not including those in which Authorization has been granted but the investigation incomplete) where the investigation has been ongoing for more than a year. I recommended that these cases be reviewed and a status report submitted to the Chair of The Professional Regulation Committee at the end of November 2000. (pp. 35-36)

The Discipline Department

16. One immediate and pressing problem is to replace the two senior members of Discipline who have just resigned. Their workload will probably have to be assigned to outside counsel. (p. 43)
17. I have recommended against a time limit for prosecution of Discipline on the basis that such a time limit would only place additional pressure on Discipline staff and may well provide grounds for an Application for Stay. (p.45)
18. As of September 14th, 2000, Discipline had a total of 47 cases in which Notice of Application had been served and the cases in the prosecution process. Of those, 10 cases are more than two years old. Based on my review of those cases, I have concluded that the delay in each instance is justifiable. (p.48)
19. As of August 31st, 2000 there were 34 cases under the wing of Discipline on which Authorization had been granted by PAC but Notice of Application had been held in abeyance. Those cases cause me concern, particularly the 16 that have been in abeyance for more than one year. In my recommendations I can only stress the importance of resolving these cases as soon as possible. A number of these cases were under the control of senior counsel who recently retired and these cases must be sent to outside counsel to process. (pp. 47-49)
20. To alleviate to some extent the problem involved in the delay of issuing the Notice of Application, following Authorization by PAC, I have recommended that a new staff member be added to Investigations, a lawyer whose sole function would be to vet the Discipline material and to prepare the Authorization for submission to PAC with a view to having the supporting investigation material available when the matter is submitted to PAC for authorization. (pp.49-50)
21. In my view, it is important that the Chair of The Professional Regulation Committee be advised at an early date of any problem in Investigations & Discipline. I have therefore recommended that the Manager of Investigations and Senior Counsel in Discipline report monthly to the Chair advising of the workload of each department and outlining any cases that may give rise to a particular problem. (p.50)
22. Convocation should recognize that a major reason for the delay in prosecution of current cases has been the frequent adjournments readily granted by Hearing Committees. I recommend that Convocation give consideration as to whether the present policy of readily granting adjournments is in the best interest of the public and the administration of justice. I recommend a more rigid and less flexible attitude towards adjournments. (p.53)
23. The obvious solution with respect to the backlog in Discipline is to provide a favourable and early response to Discipline's request for more permanent Discipline Counsel with appropriate back-up staff. In my view, the suggestion of Lesley Cameron that Discipline requires nine permanent counsel and one contract counsel to provide the competent service expected is sound. (p. 53)

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED AT TORONTO, THIS 25th DAY OF SEPTEMBER, 2000.

THE HON. W. DAVID GRIFFITHS, Q.C. LL.D.

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

- (1) Copy of Schedule "1", staff members of the Compliance Service Centre. (Tab 1)
- (2) Copy of Schedule "2", staff members of Resolution & Compliance. (Tab 2)
- (3) Copy of Schedule "3", July 2000 organizational chart of the Investigations Department. (Tab 3)
- (4) Copy of Schedule "4" re: Graph - Member Case Investigations - Investigations Department - June 1998 to August. 2000. (Tab 4)
- (5) Copy of Schedule "5", staff members of the Discipline Department. (Tab 5)

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IN CAMERA

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IN CAMERA Content Has Been Removed

IN PUBLIC

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It was moved by Mr. MacKenzie, seconded by Ms. Ross that the Report be adopted and the recommendations implemented.

Carried

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Amendments to the Member's Annual Report

Mr. MacKenzie presented the item dealing with the Amendments to the Member's Annual Report for approval by Convocation.

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on October 5, 2000. In attendance were:

Gavin MacKenzie (Chair)

Larry Banack (Vice-Chairs)
Heather Ross

Carole Curtis
Patrick Furlong
Gary Gottlieb
Ross Murray
Robert Topp

Staff: Janet Brooks, Margot Devlin, Charles Smith, Elliot Spears, Richard Tinsley, Jim Varro and Jim Yakimovich.

2. This report contains the Committee’s policy reports on:

- amendments to By-Law 21 respecting the function of the Proceedings Authorization Committee in disclosure of information to law enforcement authorities,
- amendments to the Member’s Annual Report,

and an information report on regulatory file management and caseload statistics from January to September, 2000.

I. POLICY

AMENDMENTS TO BY-LAW 21 RESPECTING THE FUNCTION OF THE PROCEEDINGS
AUTHORIZATION COMMITTEE IN DISCLOSURE OF INFORMATION TO LAW ENFORCEMENT
AUTHORITIES

A. INTRODUCTION AND BACKGROUND

3. At the request of the chair of the Committee, following discussion at a meeting of the Proceedings Authorization Committee (“PAC”), the Committee considered whether PAC should be the entity to review and determine requests for Society disclosure of information to law enforcement authorities.

4. As a result of the February 1999 amendments, the *Law Society Act* (“the Act”) in section 49.13¹ provides for
-

¹The provisions of sections 49.12 and 49.13 read as follows:

Confidentiality

- 49.12 (1) A benchler, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part.

Exceptions

- (2) Subsection (1) does not prohibit,
- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
 - (b) disclosure required in connection with a proceeding under this Act;
 - (c) disclosure of information that is a matter of public record;
 - (d) disclosure by a person to his or her counsel; or
 - (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

Testimony

- (3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1).

Disclosure to public authorities

- 49.13 (1) The Society may apply to the Ontario Court (General Division) for an order authorizing the disclosure to a public authority of any information that a benchler, officer, employee, agent or representative of the Society would otherwise be prohibited from disclosing under section 49.12.

Restrictions

- (2) The court shall not make an order under this section if the information sought to be disclosed came to the knowledge of the Society as a result of,
- (a) the making of an oral or written statement by a person in the course of the audit, investigation, review, search, seizure or proceeding that may tend to criminate the person or establish the person's liability to civil proceedings;
 - (b) the making of an oral or written statement disclosing matters that the court determines to be subject to solicitor-client privilege; or
 - (c) the examination of a document that the court determines to be subject to solicitor-client privilege.

Documents and other things

a scheme for disclosure of information to such authorities, described as a “public authority”. In brief, the Society must apply to the court for an order for disclosure, and the court may make an order, subject to certain restrictions defined in subsection 49.13(2).

5. Prior to February 1999, the Act was silent on disclosure of information to public authorities. The practice, however, was to refer matters of this nature to the then Discipline Authorization Committee, which would determine the matter pursuant to a policy approved by Convocation in 1993 (please see Appendix 1). The 1993 policy affirmed a policy that had previously been adopted by Convocation in 1989.
6. The PAC by-law (By-Law 21, attached at Appendix 2) does not specifically provide for this function for the PAC. The question for the Committee was, given the process provided in the Act, whether PAC or some other entity or individual was the appropriate body to which requests for disclosure, emanating either from within or outside of the Law Society, should be referred for determination of the application to the court.

B. THE COMMITTEE'S VIEWS

7. The Committee concluded in its discussions on this issue in September and October that the PAC would be the appropriate entity for determining when an application should be made to the courts for disclosure of information to a public authority, for the following reasons:
 - the PAC, since the amendments to the Act, has assumed responsibility for review of these matters and has gained some familiarity in dealing with the issues that arise in these circumstances;
 - the PAC is an entity similar to the Discipline Authorization Committee, to which was entrusted review of these matters; using that committee for this review process worked well and achieved what the policy described above was designed to achieve;
 - having a committee of benchers, essentially a group of individuals, is preferable to having one bencher, for example, the chair of the PAC, or the Secretary, make decisions in this respect.

Amendments to By-Law 21

8. As noted above, By-Law 21 - Proceedings Authorization Committee, does not provide for the function of determining whether an application should be made to the court for disclosure of information to public authorities. Accordingly, if the Committee's proposal is accepted by Convocation, amendments will be required to By-Law 21 to establish the decision making authority of the PAC for this purpose, and to set out a process for determining when an application should be made to the court.
9. Amendments to the by-law reflecting the above are included in a motion appearing in the next portion of this section of the report. The process in new section 14.1 of the by-law includes:

-
- (3) An order under this section that authorizes the disclosure of information may also authorize the delivery of documents or other things that are in the Society's possession and that relate to the information.

No appeal

- (4) An order of the court on an application under this section is not subject to appeal.

- a quorum requirement for a decision which is that otherwise applicable to the PAC;
- factors to be considered when making a determination for an application, which have been taken from the 1993 policy on disclosure of information to the police.

C. DECISION FOR CONVOCATION

10. Convocation is requested to:

- a. Approve the Committee's proposal that the Proceedings Authorization Committee ("PAC") perform the function of determining whether information should be disclosed to a public authority under section 49.13 of the Act, or make such other determination in this respect as Convocation deems appropriate;
- b. If approving the above, make the required amendments to By-Law 21. The following motion sets out the proposed amendments to the by-law:

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 21
[PROCEEDINGS AUTHORIZATION COMMITTEE]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 19, 2000

MOVED BY

SECONDED BY

THAT By-Law 21 made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, March 26, 1999 and May 28, 1999 be further amended as follows:

1. Section 4 of the By-Law is revoked and the following substituted:

Function of Committee

4. It is the function of the Committee,

- (a) to review all matters referred to it in accordance with this By-Law or any other by-law and, in respect of each matter, to determine whether any action mentioned in subsection 9 (1) should be taken; and
- (b) to determine, in any given case, whether the Society should apply to the Superior Court of Justice for an order under section 49.13 of the Act.

2. The By-Law is amended by adding immediately preceding section 5 the heading "REVIEW OF MATTERS REFERRED TO COMMITTEE".

3. The By-Law is amended by adding the following:

APPLICATION FOR DISCLOSURE ORDER

Application by secretary

14.1 (1) On application by the Secretary, the Committee shall determine whether the Society should apply to the Superior Court of Justice for an order under section 49.13 of the Act.

Quorum of Committee

(2) Any two members of the Committee constitute a quorum for the purposes of making the determination under subsection (1).

Factors to be considered

(3) In making the determination under subsection (1), the Committee shall give primary consideration to the extent to which disclosure of information is necessary in order to protect the public and further the administration of justice.

Application of certain sections

(4) Sections 6, 7, 11, 12 and 13 apply, with necessary modifications, to the making of a determination under subsection (1).

4. The French version of the By-Law is revoked.

AMENDMENTS TO THE MEMBER'S ANNUAL REPORT

A. NATURE OF THE CHANGES

11. Regulatory staff responsible for the Member's Annual Report (MAR) requested that the Committee review and approve for Convocation's consideration amendments to the MAR for the filing year 2000.
12. The proposed changes are described in detail in a chart appearing at Appendix 3 prepared for the Committee by Margot Devlin, Team Leader, Administrative Compliance Processes,
13. The Committee reviewed the explanations for the proposed amendments and agreed that they should be made.
14. Two versions of the amended MAR appear in this report. The version at Appendix 3 following the chart highlights the changes in shaded text for the year 2000 filing based on the changes described in the chart. The version attached to the motion at the end of this section of the report is the form of the MAR to be prescribed by Convocation under By-Law 17 - Filing Requirements as Form 17A (with date references removed).

Consideration of the Request of Professor Gillian Hadfield, Faculty of Law, University of Toronto

15. The Committee also reviewed the request of Professor Gillian Hadfield of the Faculty of Law, University of Toronto that an additional question be included in the MAR for 2000. Professor Hadfield's memorandum, received by the Committee on October 5, explaining the nature and purpose of the question she requested be included in the MAR is attached at Appendix 4.
16. Professor Hadfield's request is in the context of an research project, independent of the Law Society, that she has undertaken using data from the Law Society's demographic database. As part of that project, she wishes to analyze the patterns of practice of lawyers in Ontario. The question would allow data to be collected on the extent to which different categories of clients, such as individuals, corporations or government, receive legal services in Ontario. The memorandum includes four options for the question she requests be added to the MAR.
17. To assist the Committee in its discussions on this issue, Ms. Devlin provided information that outlined the impact that the addition of the question would have on the MAR, including production and staff resource issues and anticipated member response, based on her and her staff's experience with the form over the past few years. The issues included the following:

- whether the information to be obtained through Ms. Hadfield's question should appear on a form that is mandatory and used for regulatory purposes in the context of the Society's governance mandate, and
- whether this type of information is necessary for any of the governance functions of the Society.

18. The considerations discussed by the Committee included the following:

- while Professor Hadfield suggests in her memorandum that the information obtained through the question would be of use to the Lawyers' Professional Indemnity Company ("LPIC"), information received by Ms. Devlin from LPIC is to the effect that the information would not be useful to LPIC. LPIC's additional comments were that
 - i. members, who have likely not tracked this type of information in their practices, may be put to considerable effort in attempting to answer the question, especially in the case of options 1 or 2 in the memorandum, and
 - ii. the question may prompt inquiries from members for clarification on the meaning of the question, which will impact on the Society's resources;
- the Society included a question in the 1997 form on billable hours and hours and weeks of work, which spawned numerous complaints from members about the intrusive nature of the question and the difficulty in answering it, as a result of which the question was dropped from the 1998 form;
- options 1 or 2 for the question, as set out in Professor Hadfield's memorandum, would increase the size of the form and cost a minimum of an additional \$8000, with recurring costs yearly if this data were continuously collected; and
- definitions of some of the terms used in and a sufficiently comprehensive explanation of the new question would be required in the accompanying guide to the MAR, all of which may prompt additional calls and inquiries to the Society, thus raising a human resources issue.

19. Some Committee members were of the view that a question based on Professor Hadfield's option 3 would be workable as a inclusion in the MAR, and of use to the Society, for the following reasons:

- obtaining this information would assist in informing the Society on the public that lawyers serve, which is directly connected to the public interest governance mandate;
- using option 3 would be a less involved process for members in answering the question and would avoid some of the production and related costs that options 1 or 2 would create for an expanded MAR;
- information received by the Committee was that Professor Hadfield had received a grant for her project which could be used to offset the costs incurred by the Society in adding the question to the form; and
- the results of the study would be shared with the Society.

20. The Committee determined that three options were available to it:

- i. decide that the question (in any form) should not be included in the MAR;
- ii. decide that the question should be included, and use option 3 with such clarifying language as the addition of the word "approximately" at the beginning of the question; or
- iii. defer the issue and revisit it for further discussion for next year's MAR.

21. The Committee was of the view that the question should be included in the MAR only if the information obtained through it was of use to the Society in its governance role. After considerable discussion on the issue, and noting that there was a difference of opinion on whether the information would in fact be useful, a majority of Committee members decided that the question should not be included in the MAR. Accordingly, the Committee is not proposing that the MAR include the question of Professor Hadfield in any form.

B. DECISION FOR CONVOCATION

22. Convocation is requested to approve the amendments to the MAR as proposed by the Committee and prescribe the form of the MAR attached to the following motion:

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 17
[FILING REQUIREMENTS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 19, 2000

MOVED BY

SECONDED BY

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

II. INFORMATION

STATISTICAL REPORT ON COMPLAINTS, INVESTIGATIONS AND DISCIPLINE

23. The Secretary, Richard Tinsley, reported to the Committee on file/caseload management in the Resolution and Compliance, Investigations and Discipline Departments. Information forming the basis of his statistical report appears at Appendix 5.
24. The next quarterly report of this nature will be provided through the Committee to Convocation in January 2001.

APPENDIX 1

1993 POLICY OF CONVOCATION ON
DISCLOSURE OF INFORMATION TO POLICE

APPENDIX 2

BY-LAW 21

Made: January 28, 1999

Amended:

February 19, 1999

March 26, 1999

May 28, 1999

PROCEEDINGS AUTHORIZATION COMMITTEE

Definitions

1. In this By-Law,

“Committee” means the Proceedings Authorization Committee;

“outside counsel” means a person appointed under section 49.53 of the Act to represent the Society in any proceeding under Part II of the Act before the Hearing Panel, the Appeal Panel or a court that concerns a bencher or employee of the Society;

“outside investigator” means a person appointed under subsection 49.5 (2) of the Act to conduct an investigation of the conduct or capacity of a bencher or employee of the Society.

“outside reviewer” means a person appointed under subsection 49.6 (2) of the Act to conduct a review of a bencher’s practice.

Establishment of Proceedings Authorization Committee

2. (1) There is hereby established a committee to be known in English as the Proceedings Authorization Committee and in French as Comité d’autorisation.

Composition

(2) The Committee shall consist of four benchers appointed by Convocation.

Chairs and vice-chairs of certain standing committees

(3) The Committee must include,

(a) the chair or a vice-chair of the Professional Regulation Committee; and

(b) the chair or a vice-chair of the Professional Development and Competence Committee.

Restrictions on appointments

(4) A bencher who holds office under paragraph 1 or 2 of subsection 12 (1), or under paragraph 1 of subsection 12 (2), of the Act may not be appointed to the Committee.

Term of office

(5) Subject to subsection (6), a bencher appointed to the Committee shall hold office for a term of one year and is eligible for reappointment.

Appointment at pleasure

(6) A bencher appointed to the Committee holds office as a member of the Committee at the pleasure of Convocation.

Chair

3. (1) Convocation shall appoint one member of the Committee who is an elected bencher as chair of the Committee.

Term of office

(2) Subject to subsection (3), the chair holds office for a term of one year and is eligible for reappointment.

Appointment at pleasure

- (3) The chair holds office at the pleasure of Convocation.

Function of Committee

4. The Committee shall review all matters referred to it in accordance with this By-Law or any other by-law and, in respect of each matter, shall determine whether any action mentioned in subsection 9 (1) should be taken.

Review of matters: quorum of Committee

5. (1) Two members of the Committee constitute a quorum for the purposes of reviewing a matter and taking action in respect of the matter.

Temporary members

(2) If no two members of the Committee are able to constitute a quorum because three or more members of the Committee are unable for any reason to act, subject to subsection (3), the chair of the Committee may appoint one or more benchers as temporary members of the Committee for the purposes of constituting a quorum, and the temporary members shall be deemed, for the purposes of subsection (1), to be members of the Committee.

Ineligible benchers

(3) The chair shall not appoint as a temporary member of the Committee a bencher who holds office under paragraph 1 or 2 of subsection 12 (1), or under paragraph 1 of subsection 12 (2), of the Act.

Review by telephone conference call, etc.

6. The Committee may meet to review a matter by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously.

No right to participate

7. (1) Subject to subsection (2), no person may participate in the review of a matter by the Committee.

Participation at request of Committee

(2) For the purposes of answering any questions that the Committee might have about a matter referred to it or about actions that may be taken by the Committee with respect to a matter referred to it, the Committee may require one or more of the following persons to participate in a review of a matter:

1. A person who has referred a matter to it.
2. An officer, employee, agent or representative of the Society who is or was involved in an audit, investigation, review, search or seizure relating to a matter.

Referral by Secretary, outside investigator, outside reviewer

8. (1) Subject to subsection (2), during or after an audit, investigation or review, the Secretary, an outside investigator or an outside reviewer, as the case may be, may refer to the Committee a matter respecting the conduct of a member, group of members or student member, the capacity of a member or student member or the professional competence of a member for one or more of the following purposes:

1. Obtaining directions with respect to the conduct of an audit, investigation or review.
2. Obtaining approval or directions for the informal resolution of the matter.
3. Obtaining authorization for the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.

4. Obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether,
 - i. a member or student member has contravened section 33 of the Act,
 - ii. a member or student member is or has been incapacitated, or
 - iii. a member is failing or has failed to meet standards of professional competence.

Restrictions on referrals by Secretary, outside investigator

(2) The Secretary, or an outside investigator, shall not refer to the Committee a matter respecting the conduct of a member or student member if the matter is a complaint that has been referred to the Complaints Resolution Commissioner for resolution or review and the Complaints Resolution Commissioner has not yet disposed of the matter.

Referral by elected benchers

(2.1) Subject to subsection (2.2), an elected benchers appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may refer to the Committee a matter respecting the professional competence of the member for the purpose of obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether the member is failing or has failed to meet standards of professional competence.

Restrictions on referrals by elected benchers

(2.2) An elected benchers appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not refer to the Committee a matter respecting the professional competence of the member except after the benchers has,

- (a) met with the member and the Secretary, as required under sections 11 and 12 of By-Law 24, in accordance with sections 13 and 14 of By-Law 24; and
- (b) refused to make an order under subsection 42 (7) of the Act.

Recommendations for action

(3) A person who refers a matter to the Committee may recommend actions to be taken by the Committee in respect of the matter, and, in making his or her recommendations, the person is not restricted to recommending the actions mentioned in paragraphs 1 to 5 of subsection 9 (1).

Review of matters

9. (1) After reviewing a matter, the Committee may determine that no action should be taken in respect of the matter or, subject to subsections (2) to (4), the Committee may take one or more of the following actions:

1. Approve, or give directions for, the informal resolution of the matter.
2. Authorize the Society to apply to the Hearing Panel for a determination of whether,
 - i. a member or student member has contravened section 33 of the Act,
 - ii. a member or student is or has been incapacitated, or
 - iii. a member is failing or has failed to meet standards of professional competence.
3. Invite a member or student member to attend before a panel of benchers to receive advice concerning his or her conduct.

- 3.1 Invite a member to attend before a panel of benchers to receive advice concerning his or her professional competence.
4. Send to a member or student member a letter of advice concerning his or her conduct.
 - 4.1 Send to a member a letter of advice concerning his or her professional competence.
5. Authorize the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law.
6. Any other action that the Committee considers appropriate.

Restriction on authorization of conduct proceedings

(2) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member or student member has contravened section 33 of the Act unless the Committee is satisfied that there are reasonable grounds for believing that the member or student member has contravened section 33 of the Act.

Restriction on authorization of capacity proceedings

(3) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member or student member is or has been incapacitated unless the Committee is satisfied that there are reasonable grounds for believing that the member or student member is or has been incapacitated.

Restriction on authorization of professional competence proceedings

(4) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a member is failing or has failed to meet standards of professional competence unless the Committee is satisfied that there are reasonable grounds for believing that the member is failing or has failed to meet standards of professional competence.

Appointment of representative

10. (1) Where the Committee authorizes the Society to apply to the Hearing Panel for a determination of whether a member or student member is or has been incapacitated, the Committee may appoint another member to represent the member or student member in proceedings under Part II of the Act before the Hearing Panel, the Appeal Panel or a court if the Committee is satisfied that,

- (a) the member or student member is unable to participate in the proceedings or is unable to instruct counsel to do so;
- (b) the member or student member is not represented by counsel; and
- (c) the member or student member does not have a guardian, an attorney or a similar person who has authority to represent the member or student member in the proceedings.

Costs

(2) The costs resulting from an appointment under subsection (1) shall be paid for by the Society.

Decision in writing

11. The Committee shall record in writing its decision on every matter referred to it.

Notice

12. The Committee shall give to the Secretary notice of its decision on every matter referred to it.

Reasons

13. The Committee is not required to provide at any time to any person its reasons for a decision.

Withdrawal of application to Hearing Panel

14. (1) If the Committee authorizes the Society to apply to the Hearing Panel for a determination mentioned in paragraph 2 of subsection 9 (1) but the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, the Society shall not withdraw its application to the Hearing Panel unless the Committee has first authorized the withdrawal.

Request for withdrawal: procedure

(2) A request to the Committee to withdraw an application to the Hearing Panel shall be made by the Secretary or an outside counsel, as the case may be, and sections 5, 6, 7, 11, 12 and 13 apply, with necessary modifications, to the Committee's consideration of the request.

Commencement

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

APPENDIX 3

INFORMATION ON AMENDMENTS TO THE 2000 MEMBER'S ANNUAL REPORT
AND
AMENDED MEMBER'S ANNUAL REPORT

Location on Form	Explanation	Is the change New or is it Clarification?
Page 2 - Professional Profile	Many members indicated that the original question read like a double negative. The original question has been set out as statements to avoid confusion.	Clarification
Page 2 - Section C - question 2 (a)	Wording has been added to clarify that it is trust property with which the Society is concerned.	Clarification
Page 3 - Activity Profile	To better enable requalification staff to determine which members are considered to be included in the "deemed" categories of Subsection 5(1) of By-Law 28, the question of jurisdiction has been added.	Clarification
Page 8 - Section F - Qualification Status	The question on requalification has been redrafted to provide clarification. No substantive changes have been made.	Clarification
Page 8 - Sections G - J - Private Practice Information	When the forms were combined last year, some members who were in private practice outside of Ontario were confused by the trust property section. We have clarified this by indicating that these sections pertain to those members in Ontario only.	Clarification
Page 9 - Section I - Member Information	<p>The title has been changed from Firm Information to Member Information. The Joint filing option applies in this Form to the Financial Section only.</p> <p>The questions in the Member Section "I" pertain to each member in private practice on an individual basis. A number of the reporting members in firms indicated that they preferred to have the lawyers in their firm respond on an individual basis to the professional conduct question section of the form and as the responses to these questions are the basis for some of the selection processes, we have removed the joint filing option from this section. This will ensure proper tracking in the database of the responses per member to these questions and will ensure that all members answer the questions in regard to borrowing from clients, holding trust or estate property, and whether or not they exercise a power of attorney or act on private mortgages.</p>	NEW

Location on Form	Explanation	Is the change New or is it Clarification?
<p>Page 9, Section I - Question 2</p>	<p>These new sections are recommended as additions to Question 2. They will give us a more complete profile of members holding client and estate accounts.</p> <ul style="list-style-type: none"> b. Total number of client and estate accounts on which you exercised signing authority at December 31, 2000. c. Total \$ value at December 31, 2000 of all client and estate accounts referred to in b. d. Were books and records maintained in accordance with By-Law 18 for all client and/or estate accounts referred to in a.? <p>The purpose of these new questions is to allow comparison of the results of the individual lawyers in a firm with the totals reported by the filing member for the firm in question 9. The Spot Audit Unit has found that members have been confused about the inclusion of estate accounts and property in their bookkeeping records. These additional questions should indicate whether there are trust/estate accounts over which members have signing authority which should be included in the firm information at question 9. If members respond affirmatively but there is nothing noted in question 9, a follow up program will be undertaken to ensure that the records are maintained and kept centrally in the firm.</p>	<p>New</p>
<p>Page 12 - Section "J" - Question 9</p>	<p>It is recommended that the following questions be added to the reconciliation question for clarification purposes. While members were required to report on these issues in last year's filing, there was confusion noted by staff answering the members' questions. The following is for clarification only.</p> <p>During the period covered by this report (calendar year 2000) did your records disclose either of the following:</p> <ul style="list-style-type: none"> overdrawn client trust ledger accounts (yes/no) outstanding trust account deposits (yes/no) <p>If "yes" to either of the above, attach a schedule identifying client reference, amount(s) involved, date(s) of occurrence(s), explanation for occurrence(s), date(s) of correction(s).</p>	<p>Clarification</p>

Location on Form	Explanation	Is the change New or is it Clarification?
Page 12 - Section J - Question 10 - Inactive trust monies	<p>This new section of Question 10 is recommended:</p> <p style="padding-left: 40px;">c) The total number of these dormant client trust account balances at December 31, 2000 was:</p> <p>The Spot Audit Unit have found from experience that when the number of inactive accounts is brought to the Member's attention, they will make enquiries and provide their staff with instructions for trust account maintenance; therefore, the MAR can operate as a teaching tool.</p>	New
Page 12, Section "J" - Question 11	<p>This is a new question. Section 59.6 of the <i>Law Society Act</i> permits members to make applications to pay unclaimed trust monies to the Law Society if approved by the Secretary. The Law Society is currently working towards the implementation of this process. To further the project, the new question will gather necessary information permitting decisions to be made as to the cost in terms of resources of accepting these monies. It will also assist members in identifying monies which they may wish to transfer to the Law Society.</p> <p style="padding-left: 40px;">11a) Were there any client trust account balances at December 31, 2000 that have been unclaimed for two years or more which you are unable to disburse?</p> <p style="padding-left: 40px;">b) Total number of unclaimed client trust account balances</p> <p style="padding-left: 40px;">c) Total amount of unclaimed client trust account balances</p>	New

APPENDIX 4

MEMORANDUM OF PROFESSOR GILLIAN HADFIELD

APPENDIX 5

FILE MANAGEMENT AND CASELOAD STATISTICS FOR RESOLUTION AND COMPLIANCE, INVESTIGATIONS AND DISCIPLINE TO SEPTEMBER 2000

THE LAW SOCIETY OF UPPER CANADA STATISTICS OF THE DISCIPLINE DEPARTMENT FOR THE PERIOD JANUARY 1 TO SEPTEMBER 30, 2000		
NUMBER OF MATTERS AUTHORIZED AND REFERRED TO DISCIPLINE DEPARTMENT FOR HEARING (ie. Conduct hearings, Admission, Capacity, etc)	59	
NUMBER OF MATTERS AUTHORIZED AND NOT PROCEEDED WITH	1	
NUMBER OF CONDUCT PROCEEDINGS (Notices of Application) ISSUED	45	
NUMBER OF CAPACITY PROCEEDINGS (Notices of Application) ISSUED	0	
NUMBER OF ADMISSION PROCEEDINGS (Notices of Application) ISSUED	2	
NUMBER OF REINSTATEMENT PROCEEDINGS (Notices of Hearing) ISSUED	1	
TOTAL NUMBER OF CONDUCT PROCEEDINGS HEARD AND DISPOSED OF BY HEARING PANELS AND CONVOCATION	NO. OF COMPLAINTS/NOTICES OF APPLICATION	NO. OF MEMBERS OR APPLICANTS
	82	60

THE LAW SOCIETY OF UPPER CANADA STATISTICS OF THE DISCIPLINE DEPARTMENT FOR THE PERIOD JANUARY 1 TO SEPTEMBER 30, 2000		
NUMBER OF CONDUCT PROCEEDINGS (Discipline Complaints and Notices of Application) HEARD AND DISPOSED OF BY HEARING PANELS (i to xv below):	68	56
ii WITHDRAWN	5	5
ii WITHDRAWN/DISMISSED AND CONVERTED TO AN INVITATION TO ATTEND	1	1
ii INVITATIONS TO ATTEND	0	0
	NO. OF COMPLAINTS/NOTICES OF APPLICATION	NO. OF MEMBERS OR APPLICANTS
ii DISCIPLINE COMPLAINTS/ NOTICES OF APPLICATION NOT ESTABLISHED / DISMISSED	0	0
ii FINDING OF PROFESSIONAL MISCONDUCT WITH CONDITIONS, NO PENALTY IMPOSED	1	1
ii ADMONITIONS	13	11
ii REPRIMANDS	8	8
ii INTERIM SUSPENSIONS	0	0
ii SUSPENSIONS	23	15
ii PERMISSION TO RESIGN	0	0
ii DISBARMENTS	7	5
ii ADMISSION APPLICATIONS	5	5
ii SECTION 30(3) - READMISSION APPLICATIONS	4	4

THE LAW SOCIETY OF UPPER CANADA STATISTICS OF THE DISCIPLINE DEPARTMENT FOR THE PERIOD JANUARY 1 TO SEPTEMBER 30, 2000			
ii	SECTION 49.42 (4) - READMISSION APPLICATIONS	0	0
ii	REINSTATEMENT APPLICATIONS	0	0
ii	SECTION 38 - CAPACITY PROCEEDINGS	1	1
	ORDERS FOR COSTS	22	17
	ORDERS FOR FINES	0	0
	NUMBER OF DISCIPLINE COMPLAINTS HEARD AND DISPOSED OF BY CONVOCAION (i to xv below):	14	4
ii	DISCIPLINE COMPLAINTS NOT ESTABLISHED/DISMISSED/FINDING OF COMMITTEE SET ASIDE	4	1
		NO. OF COMPLAINTS/NOTICES OF APPLICATION	NO. OF MEMBERS OR APPLICANTS
ii	WITHDRAWN/DISMISSED AND CONVERTED TO AN INVITATION TO ATTEND	0	0
ii	MATTERS SENT BACK TO COMMITTEE	0	0
ii	REPRIMANDS IN COMMITTEE BY CONVOCAION	0	0
ii	REPRIMANDS IN CONVOCAION	0	0
ii	INTERIM SUSPENSIONS	0	0
ii	SUSPENSIONS	5	1
ii	PERMISSION TO RESIGN	3	1
ii	DISBARMENTS	2	1
ii	READMISSION APPLICATIONS	0	0

THE LAW SOCIETY OF UPPER CANADA STATISTICS OF THE DISCIPLINE DEPARTMENT FOR THE PERIOD JANUARY 1 TO SEPTEMBER 30, 2000			
ii	ADMISSION APPLICATIONS	0	0
ii	REINSTATEMENT APPLICATIONS	0	0
ii	APPLICATION TO VARY ORDER OF CONVOCATION	0	0
ii	SECTION 38 - CAPACITY PROCEEDINGS	0	0
	ORDERS FOR COSTS	0	0
	NUMBER OF DIVISIONAL COURT AND COURT OF APPEAL MATTERS DISPOSED OF	0	2

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

- (1) Copy of the prescribed form of the Member’s Annual Report for the filing year 2000. (pages 11 - 21)
- (2) Copy of a letter from S. Casey Hill to Mr. Harvey Strosberg dated May 11, 1993 re: Discipline Policy Committee - Relating to Society Passing Information to the Police (pages 24 - 28)
- (3) Copy of the Member’s Annual Report which highlights changes. (pages 38 - 50)
- (4) Copy of Proposal for Enrichment of Data Collection on LSUC Members’ Annual Form 2000. (pages 52 -54)
- (5) Copy of a memorandum from Mr. Scott Kerr to Mr. Richard Tinsley dated September 27, 2000 re: Resolution & Compliance Complaints Process Statistics together with a graph entitled Member Case Investigations - Investigations Department - January to September 2000. (pages 56 - 58)
- (6) Copy of a chart re: Statistics of the Discipline Department for the period January 1 to September 30, 2000.

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the Member’s Annual Report in the form set out at pages 11 through 21 be adopted for the coming year.

Carried

The policy item dealing with the Amendments to By-Law 21 was deferred.

REPORTS FOR INFORMATION

CEO’s Biannual Report - January - June 2000

CEO’s Biannual Report
January - June 2000

- I. General overview of developments, initiatives and accomplishments
- II. Compliance with Executive Limitations

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CHIEF EXECUTIVE OFFICER'S
 BIENNIAL REPORT TO CONVOCATION
 JANUARY 1, 2000 TO JUNE 30, 2000

◆ General Summary

The information contained in this report summarizes departmental activities, initiatives and results for Law Society operations during the first and second quarters of 2000 -- January 1 to June 30. As well, it provides a summary of Management's compliance with the Executive Limitations prescribed by Convocation.

This Biannual Report is normally provided to Convocation at the end of September. As Convocation met earlier in the month, a complete report was not then available.

The following highlights a number of the organization's accomplishments during the past six months. More details of these accomplishments can be found in the body of this report.

Client Service Centre

The department has handled 288,788 contacts from members and the general public in the past six months. Of those, 113,224 were for the Lawyer Referral Service, 64,941 to Main Reception, 55,019 to General Membership Inquiry and 55,604 were complaints related calls. Average response times to calls ranged from 4.4 seconds to 3.2 minutes.

Regulatory Operations

The number of complaints handled exclusively by telephone has increased to 38%. Measurements indicate it takes 33% less time to resolve complaints when telephone resolution processes are used.

As of June 30, 2000, the Investigations Department completed and closed all of the 1,209 non-discipline complaints that it assumed during reorganization last year. Further, six investigations teams have been assembled, five in Toronto, and one in Ottawa to serve the Francophone community. The team approach was adopted to deal with cases faster and more completely.

Policy Secretariat

Policy staff continued to provide support to benchers in issues such as the new Rules of Professional Conduct, strategic planning, developing competence models and multi-disciplinary practices.

Finance and Administration

In a five-week period at the beginning of the year, staff processed receipts totalling \$23 million of the \$37 million billed. This means that 62% of the membership took advantage of the early payment discount of \$50.00 – a significant improvement over the 54% in 1999.

An active cash management program has resulted in a 5.2% rate of return for the General Fund. The average Canadian Money Market Fund had an average rate of return of 3.9% for the year ended December 31, 1999.

Information Systems

The department successfully installed Symposium telephone software to help the Client Service Centre track exactly what happens to the thousands of calls that come into the centre each week.

Preparation for the launch of the Law Society Information System (LSIS) is entering its final stages, where data is loaded from the old systems onto the new one. IS has moved information regarding more than 38,000 member files and 8,000 firms onto the new system.

A rather lengthy and detailed report of the activities of Information Systems is included which provides an overview of the achievements of this department in the first six months of 2000.

Human Resources

The department has recently completed:

- a major review of all jobs
- a rewrite of job descriptions
- the roll out of the organization's new compensation system, aimed at attracting and maintaining a workforce of talented and experienced professionals who can help set and monitor quality standards for Ontario's legal profession.

Education

Among the department's achievements, for the first time ever, the Bar Admission Course (BAC) has offered Phase One in each Ontario city that has a law school. Articling has improved advertising and processing principal applications to develop a greater number of articling positions outside of Toronto, London and Ottawa. An example of how the department is using new technology to its advantage, Family Law precedents from the BAC have been placed on CD-ROM and made available to the profession through Continuing Legal Education (CLE) publication sales.

The Education portion of the CEO's report is lengthy. A great number of new initiatives and performance enhancements are detailed for information in this report.

Great Library

Staff handled 39,500 requests in the first half of this year. There were more than 39,000 visits to the library in that time.

Equity Initiatives Department

Work is underway on 14 of 16 recommendations in the *Bicentennial Report on Equity Issues in the Legal Profession*. The department continues to provide support to all members and departments on advancing equity initiatives.

Public Affairs

The department finalized its Strategic Communications Framework and began work on some of its first-year objectives, including conducting a member communication survey, revamping the *Ontario Lawyers Gazette*, developing an employee communications survey and enhancing ELF, the Law Society's intranet system.

CLIENT SERVICE CENTRE

Overview

A complaint to the Law Society, in the vast majority of cases, reaches this department first. The Centre is also the initial point of contact for public and member inquiries. It provides an integrated, one-stop approach designed to streamline services to the public and members, determine immediate responses to basic questions and refer queries directly to other departments when more complex answers are required.

Performance

In the period between August and December 1999, the Client Service Centre received 160,866 queries or contacts. During the first six months of 2000, the Client Service Centre's staff handled 288,788 contacts from members (17%) and the general public (83%). These queries were made by telephone (88%), the mail (7%), e-mail (less than 1%), fax (4%) and personal attendance (less than 1%).

Nature of the calls

Lawyer Referral Service (LRS)

The greatest number of the calls made to the Lawyer Referral Service (26%) were those requesting names of lawyers dealing with family/estate law. Requests for civil litigation lawyers comprised about 20% of calls received and a further 10% of callers asked about labour/employment lawyers. The remaining inquires were for referrals to lawyers in other areas of practice, questions about Legal Aid and paralegals, as well as, general information.

General Membership Inquiries (GMI)

Of the queries made to the General Membership section of the Centre, 36% were inquiries concerning members such as date of call information, phone numbers and addresses of lawyers. A further 21% were calls placed by financial institutions asking for member information. The remaining 43% of the queries of GMI were related to address, status changes, suspensions and fees.

Complaints

The majority of the queries (45%) made to the Complaints' reception line were those regarding the Society's complaints process. Calls requiring transfer to other departments totalled 15%, while 11% were inquiries regarding complaints already filed. Other subject areas were: complaints concerning the conduct of a member, issues regarding fee disputes or calls which should be directed to other sections of the CSC.

Main reception

This section of the Centre directs calls to their appropriate destination within the Law Society. Those routed to General Membership Inquiry (GMI) comprised 24% of the calls received, with another 17% being transferred to the Lawyer Referral Service. Other queries, with no formal classification, included inbound calls for transfer to other departments and internal calls for transfer to other extensions.

Initiatives

In keeping with the Law Society's strategy to operate within an environment of continuous improvement, the Client Service Centre has, in the first six months of this year, strove to improve the quality of the service it provides. In November 1999, the Centre conducted an employee improvement survey. CSC staff identified the following areas as areas that they felt should be target for improvement:

- sharing information in a timely manner throughout the organization
- professionalism and dedication
- consistency in training
- tolerance in the work environment
- understanding the roles of others

In response to the results of the survey, a number of solutions were identified and acted upon by employees, management and the organization at large in the first and second quarters of 2000. These initiatives included the following:

- inviting subject matter experts from other functions within the organization to morning information meetings
- the development of a training package for new General Membership Inquiry (GMI) employees
- the development of an LRS training module
- cross training initiatives within the call centre and membership services functions
- the presentation of a telephone skills course to the CSC by Entretel Inc. which covered a variety of training courses for the staff of the CSC ranging in topics from how to handle people with tact and skill to critical and creative thinking
- Warren Shepell employee assistance seminars
- lunchtime viewing of customer service improvement videos.

In March 2000, focus groups were asked to reassess improvement priorities in light of the changes initiated by the CSC and suggest new solutions. The primary issue identified by the group, at that time, was the need for communication improvement. Some of the solutions that are presently being explored by the Centre are:

- call monitoring to enable regular feedback for continuous improvement of the Client Service Representatives
- production bench marking in Membership Services which has allowed a better inventory control in our complaints' intake process.

In addition to the initiatives undertaken as a result of the employee satisfaction survey, the Centre has also implemented technological changes in its bid to improve the quality of the service that it provides. The introduction of the Symposium Call Centre Software has now improved the reporting flexibility in the Centre. The software is a Nortel Networks product that integrates seamlessly with the existing telephone system. The benefits of this new system include:

- improved data capture allowing for the retention of historical data, as well as, the collection of a greater variety of statistical information
- quicker response times which allow managers to react quickly and efficiently to fluctuations in call types
- a flexible platform that will allow for future enhancements such as Integrated Voice Response and Computer Telephone Integration.

The following charts illustrate the progress achieved by the Client Service Centre as a direct result of the initiatives and technological improvements it has implemented in the first, second and third quarters of 2000. It reflects the calls received by the Centre and the percentage of those calls handled on first contact.

First Quarter Summary

Services	January		February		March		Cumulative Total	
	Received	Answered	Received	Answered	Received	Answered	Received	Answered
LRS	15440	57%	18478	60%	20447	64%	54365	60%
GMI	9620	59%	9804	67%	13210	69%	32634	65%
Complaints	2773	72%	3286	65%	3591	65%	9650	67%
Reception	9177	92%	9349	91%	10324	93%	28850	92%
Total	37010	67%	40917	69%	47572	72%	125499	71%

Second Quarter Summary

Services	April		May		June		Cumulative Total	
	Received	Answered	Received	Answered	Received	Answered	Received	Answered
LRS	16081	68%	18938	65%	16631	67%	106015	64%
GMI	10649	63%	8961	76%	6116	92%	58360	69%
Complaints	3120	73%	3056	86%	2345	89%	18171	74%
Reception	8613	92%	11381	90%	12750	89%	61594	91%
Total	38463	72%	42336	75%	37842	80%	244140	73%

Third Quarter Summary

Services	July		August		September		Cumulative Total	
	Received	Answered	Received	Answered	Received	Answered	Received	Answered
LRS	14214	67%	17092	80%	12739	80%	150060	67%
GMI	5218	94%	5345	92%	5048	85%	73971	74%
Complaints	1963	94%	2091	94%	2018	90%	24243	79%
Reception	14225	86%	10486	91%	9553	91%	95858	90%
Total	35620	80%	35014	86%	29358	85%	344132	76%

Plans for the Future

Plans for the remaining six months of this year include the following:

- the introduction of a 1-900 number for the Lawyer Referral Service
- the implementation of the Law Society Information System (LSIS)
- the administration of another employee improvement survey
- the implementation of a bar coding initiative for member files that will improve processes and ensure security
- the implementation of document management

REGULATORY OPERATIONS

Advisory and Compliance Services (ACS)

Overview

Advisory and Compliance Services' responsibilities include:

- providing guidance and advice in response to member inquiries
- resolving complaints that would not usually lead to further discipline action
- ensuring compliance with orders and undertakings
- ensuring administrative compliance with a number of statutory requirements, such as re-qualification
- initiating spot and focused audits to ensure practices operate properly.

Performance

Resolution & Compliance

The Resolution & Compliance office deals with complaints that do not lead to disciplinary action, using alternative dispute resolution to resolve issues. On January 1, 2000, Resolution & Compliance had 1,505 active complaint files. From January to June 2000, an additional 313 new files were opened and 886 complaint files were closed leaving a total of 932 active files.

The number of complaints handled exclusively by telephone has increased to 38%. Our measurements indicate that complaints take 33% less time to resolve when telephone resolution processes are used.

Advisory Services

Advisory Services provides ethical and practice information to members. Of the inquiries received by Advisory Services, 98% are telephone calls, about 1% are from walk-ins, less than 1% are received via the web site or e-mail. On average, Advisory Services receives 125-150 calls per week. Advisory

Services usually responds to calls within hours, or at the most 24 hours. If the caller indicates that the call is urgent, the department responds immediately.

Nature of calls

Advisory Services receives a broad range of calls on almost every legal topic. The top five areas of inquiry are:

- conflicts
- privilege and confidentiality
- firm name and advertising
- practice arrangements
- *Law Society Act* and regulations.

Other Accomplishments

Advisory Services is playing a key role in the roll-out of the new Rules of Professional Conduct to ensure that members know the effective date, what is expected of them and what resources are available to them. A new annotated service is being piloted on the Law Society's web site to assist members seeking assistance in interpreting the rules.

Spot & Focused Audit

The intention of the Spot & Focused Audit Program is to promote the highest record-keeping standards and provide for early detection of potential problems. Each year, the program completes about 1,400 spot audits, which allows the Law Society to audit each firm in the province once every five years.

So far this year, about 600 spot audits have been conducted. More focused audits are being conducted where members are handling private mortgages or have control of estate assets.

A cost-recovery process is being implemented that will enable the Law Society to defray some costs incurred when additional staff time is required to resolve serious accounting deficiencies disclosed as a result of an audit.

Also, a telephone service has been established that helps members to comply with accounting requirements. The program handles about 100 calls per month.

Plans for the next six months

Over the next six months, ACS plans to complete the following:

- the testing and implementing the Law Society Information System
- the expansion of the existing mentor list and the creation of a member advisory group to help identify emerging issues

- participation in the roll-out of the new rules of professional conduct
- improvements to e-filing procedures in connection with Members Annual Report
- starting to audit newly-formed law practices
- implementation of an option for members to retain a public accountant to conduct the spot audit.

INVESTIGATIONS

Overview

The Investigations Department was formed on July 1, 1999, by merging the Discipline Investigation Unit, a component of the former Complaints department, and the former Audit and Investigation Department. The reasons for the merger were to streamline processes and cut down on the time it takes to conduct investigations. In the past, complaints that lead to disciplinary action were handled by two departments, Complaints and Audit, resulting in duplication and confusion. The new department is taking a multi-disciplinary team approach, to conduct more comprehensive and faster investigations. The Department plans to cut the amount of time it takes to conduct investigation by at least 50% with the new approach. On June 30, 2000, the Department reached its goal of establishing six investigations teams, five in Toronto and one in Ottawa to serve the Francophone community.

Complaints leading to investigation include the following: possible misuse of client funds, serious breaches of the rules of professional conduct, potential conflict of interest and allegations of sexual misconduct.

Performance

The department's first priority was to eliminate its backlog of cases. Great strides have been made to clear old cases in the past six months, particularly in non-discipline streamed cases. As of June 30, 2000, the Investigations Department completed and closed all of the 1,209 non-discipline complaints that it assumed last year.

There are 19 remaining discipline-streamed cases that exceed one year in age. That is down from 145 old cases in January and 63 cases in April. The last 19 are expected to be completed in the early fall of 2000.

For the six-month period, ended June 30, 2000, 77 discipline-streamed cases were completed and referred to the Proceedings Authorization Committee (PAC). Of those, 46 cases were more than one year old. This represents 55% of the matters referred to PAC.

Another priority for the department was to assemble six investigation teams by the end of June 2000. That goal has been achieved, with five teams working at Osgoode Hall in Toronto and one fully bilingual team working in Ottawa to serve the Francophone community. The multi-disciplinary team approach was adopted to deal with cases in a faster and more complete manner. Teams consist of team leaders, investigative counsels, auditors and investigation officers. The objective is to ensure that cases are managed by one group of staff, from start to completion. This eliminates duplication of effort, the possibility of lost files and simplifies tracking the progress of cases.

New case investigation files' intake indicates that the case volumes are excessive when compared to investigation resources. Alternative work strategies are being developed to ensure that we maximize our productivity.

Plans for the next six months

For the last half of the year, Investigations plans to:

- eliminate all cases older than one year
- continue providing substantive issues training and work experience to inexperienced staff; (at the beginning of the year, as a result of departures and new hires, almost 55% of staff had little or no experience with discipline streamed investigations)
- provide teamwork training to investigations team staff
- bring the staffing levels up to approved budget considerations
- complete process redesign.

DISCIPLINE

Overview

Discipline is responsible for prosecuting lawyers referred to the department by the Proceedings Authorization Committee. Disciplinary action may relate to the following:

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

Current disciplinary sanctions may include a reprimand, suspension, permission to resign and disbarment.

In the first half of 2000, there were 51 matters authorized and referred to the Discipline Department, as compared to 84 in 1999 and 119 in 1998. This substantial decrease in the number of files authorized for disciplinary action in the first half of 2000 may be a function of organizational change in the Law Society. At this point, it is difficult to assess whether it is reflective of transitional issues or a more permanent change.

Performance

The following chart summarizes the number of matters disposed of by Hearing Panels and Discipline Convocations in the first half of 2000 and compares it with the first half of both 1999 and 1998. There is a decrease in the total number of matters going both to Hearing Panels and to Discipline Convocations.

Statistics for the Discipline Department			
	January 1 to June 30, 2000	January 1 to June 30, 1999	January 1 to June 30, 1998
Number of matters/members or applicants disposed of by hearing panels	49/41	77/62	64/65
Number of matters/members or applicants disposed of by Discipline Convocations	14/4	41/32	89/70
Total number of matters/members or applicants disposed of by hearing panels and Discipline Convocations	63/45	118/94	153/135

The decrease in the numbers of matters going to Convocation is a result of the amendments to the *Law Society Act*. Orders of the Hearing Panel are final in all hearings which began after February 1, 1999.

Although there has been a decrease in the number of matters disposed of by Hearing Panels relative to the past two years, the number of hearing days in the first half of 2000 has not decreased from 1999. This supports the department's sense that there is a trend for increasingly contested and complex hearings.

New Initiatives

In June of 2000, the Discipline Department provided a one half-day training session to the Investigations Department. Members of these two departments are also meeting on a monthly basis to debrief completed files. For five days, some members of the Discipline Department attended a process design workshop in which the Discipline Department procedures were examined and staff were trained in process design.

POLICY SECRETARIAT

Overview

The Policy Secretariat was established in September 1996 to provide Convocation, its committees, task forces and working groups with dedicated staff resources to assist in policy development. Policy advisors act as secretaries to the Admissions Committee, Professional Regulation Committee and Professional Development and Competence Committee. Priorities for the first six months of the year have been as follows:

- strategic planning
- planning a symposium on the future of the legal profession
- consulting with membership on the implementation approach for the competence mandate
- preparing a report on Multi-Disciplinary Practices (MDPs) to be presented to Convocation in the fall
- developing and presenting the new Rules Of Professional Conduct

Performance

Strategic Planning

On May 26, 2000, Convocation approved the overall strategic direction proposed by the Strategic Planning Committee, to have the Law Society focus its future direction and resources on its complaints, discipline, audit, investigation, competence, and communication functions. Convocation directed the committee to report back with options for implementing the plan, including detailed information on the costs and consequences of each option. The Committee met over the summer to develop an implementation plan for the strategic plan to be presented to Convocation in the fall.

A One-Day Symposium

Plans are proceeding on the symposium, entitled Tradition and Tomorrow: A Celebration of the Legal Profession, which will be held at the Sheraton Centre on November 30, 2000. Six speakers are already confirmed. The first announcement about the symposium appeared in the May/June issue of the Ontario Lawyers Gazette. Over the summer, we approached sponsors and asked various legal organizations to encourage their members to attend the symposium.

Multi-Disciplinary Practices (MDP)-Captive Law Firms

The fact-finding phase of the task force's work has ended, and it is now proceeding to the policy discussion level. Issues are being isolated and framed, and a full-day meeting took place on July 11, to discuss how the Society should respond as a regulator to the affiliated firm phenomenon. It is anticipated that a report will be presented in the fall of 2000.

Rules of Professional Conduct

Following adoption of the new rules on June 22, 2000, continuous work is being done in anticipation of the effective date for the rules of November 1, 2000. This work has included:

- the final formatting for the published version of rules
- the publication and distribution of the rules to all members
- French translation
- updates to the Society's web site; August 16, 2000
- decisions on appropriate CLE and other communications/information initiatives for the profession on the new rules.

Status Report on the Competence Consultation Process

The document entitled *Implementing the Law Society's Competence Mandate: A Consultation Document* was mailed to members in May 2000. Members were encouraged to complete a survey concerning their views on a number of competence-related issues, including which of the possible competence models described in the document they prefer.

The Law Society received approximately 2,400 completed surveys. The information, including member's written comments, is currently being tabulated and analysed. Reports will be available in the late summer.

Nine regional consultation meetings are being held in September and October for members to provide input on the issues raised in the consultation document and raise questions. Benchers from the Professional Development and Competence Committee will attend the meetings, as will the regional bencher for each region and other interested benchers. There will also be focus groups with members and representatives of the public interest, to delve further into the issues. These are also taking place in September and October.

A number of legal organizations have been requested to provide written submissions on the consultation document by September 8, 2000. A report will be presented to Convocation in November or December 2000 on the consultation process, its findings and a proposal for possible next steps.

Courthouse Task Force Update

In November 1999, Convocation appointed a task force to examine the state of courthouse facilities in Ontario, with a particular emphasis on space and security issues. The Task Force is composed of benchers, and representatives from the Advocates Society, Canadian Bar Association -- Ontario, County and District Law Presidents' Association, Criminal Lawyers Association, Crown Attorneys Association, Family Lawyers Association, Metro Toronto Lawyers Association and Ontario Legal Aid.

The task force is gathering detailed information about the state of our courthouses, through a comprehensive survey, with the assistance of County and District Law Associations. The task force will report to Convocation in the fall, with a comprehensive report detailing the state of courthouses across the province. It hopes to be able to identify communities in greatest need and have a dialogue with the government on courthouse issues.

FINANCE AND ADMINISTRATION

Overview

The Finance department continues to make significant improvements in the way it operates. On an annual basis, the financial operations of the Law Society are subjected to independent review by the accounting firm of Arthur Andersen. Both auditors and staff work together to ensure the integrity of the financial systems and internal controls. This year Arthur Andersen released its annual report on March 6, 2000. The Law Society received a clean audit report.

Performance

Annual Fee Billing and Collection

Between the mail-out of members' fees on December 17, 1999 and January 31, 2000, the staff of the Finance department processed receipts totalling \$23,000,000 of the \$37,000,000 billed. Sixty-two percent of the membership took advantage of the early payment discount of \$50.00 – a significant improvement over the 54% payment rate in 1999.

The collection of annual fees is broken down to processing \$150,000 daily in credit card payments, \$600,000 daily in lock box payments and manual processing of 80 to 100 lump sum payment cheques from large firms, which are sent by courier to the offices. These payments generally contain one cheque for several hundred thousand dollars and cover 100 to 500 lawyers' fees.

For 2000, 2,200 members took advantage of the preauthorized payment plan, a modest increase of 150 members over the previous year. However, Finance staff processed 750 accounts by the deadline of January 14, because 300 chose to drop off the plan and 450 chose to join. The net payment received per month from members on this plan is \$305,000. During this period, Finance staff also handled up to 350 inquiry calls per week.

The billing process is actually the first step in the suspension process, in which the Finance Department plays an important role. This year a total of 231 members were suspended due to non-payment of annual fees, compared to 118 last year.

Purchasing, Accounts Payable & Payroll

In the first six months of this year, more than 1,600 purchase orders were issued. More than 6,000 cheques have been issued to satisfy these obligations. Systems are in place to meet suppliers' payment terms, a payment that satisfies all policy and procedure practices can be made within one week of the paperwork reaching Accounts Payable. In total, approximately 24,000 invoices are processed in each year.

Payroll is produced on a two-week cycle with adherence to strict deadlines. To the end of June, 4,600 direct deposits have been made to satisfy the payroll obligations. Payroll manages employee records which are accessed more than 12,000 times per year. Besides this, it handles payments related to severances and terminations.

Government auditors inspect our records on a periodic basis to ensure compliance and propriety. Recent audits by government auditors of the Employer Health Tax remittances and calculations turned up no discrepancies.

General Accounting

Two staff accountants maintain accounting records by preparing and making ready for posting 180 journal entries per month. Every balance sheet account is analysed and reconciled on a scheduled basis, and on a monthly basis, departments are provided their financial data.

The Law Society maintains eight bank accounts for various purposes and each is reconciled on a daily basis through access to the accounts at the Bank of Montreal. This is a marked change from 1995, when auditors reported that reconciliations of the bank account were many months in arrears.

The planning process for the financial year end, statement preparation and external audit also rests with general accounting. The entire process takes most of the first quarter to complete, culminating in the annual report, adopted by Convocation in April, and presented to the membership at the Annual General Meeting in May.

General accounting also administers operations of the Law Society Foundation. Ninety thousand dollars in donations for the Lawyers Feed the Hungry program was collected, as a result of the highly successful member check off box program on the annual fee notice. Administering spending for the program is one of this area's key functions as the program expands.

Investments

The Financial Planning department actively manages both the short-term portfolio of the Society's General Fund, and the short and long-term portfolios of the Lawyers Fund for Client Compensation.

The combined portfolios of the General Fund and Compensation Fund exceeded \$50 million. The average portfolio balance of the General Fund portfolio was almost \$22.8 million, with a turnover time of approximate 43 days. The Compensation Fund short-term portfolio had an average balance of \$8.3 million, with an approximate 70 day turnover time. The Compensation Fund long-term portfolio maintains a constant \$13.5 million balance.

An active cash management program has resulted in investment income of more than \$600,000 for the first six months of the year in the General Fund with a rate of return of 5.2%. It is forecasted that more than \$1 million will be earned by year-end. The average Canadian Money Market Fund had an average rate of return of 3.9% for the year ended December 31, 1999 (source - The Globe and Mail Report on Mutual Funds).

The Compensation Fund has in total, earned more than \$630,000 in investment income, and it is forecasted that it will exceed its budget of \$1.2 million by year-end.

The General Fund portfolio has so far had 313 investment purchase transactions at an average value of more than \$370,000 and a total dollar volume of \$116,545,000. The Compensation Fund's short-term portfolio has so far had 105 investment purchase transactions at an average value of \$267,000 and a total dollar volume of \$28,040,600. In the Compensation Fund's long-term portfolio, three bond purchases have been made so far with an average transaction value of \$667,000 and an average maturity of 4.9 years.

Maintaining a sound financial position is key to maintaining Law Society programs and services central to our mandate and it allows us to keep membership fees at reasonable levels.

Facilities

In the first six months of 2000, the following major projects were completed:

Osgoode Hall

3rd Floor Renovations: Renovations were completed on the southeast wing to house Public Affairs and Equity staff in one area. This work included constructing new office space and meeting space, as well as, upgrading the heating, ventilation and air conditioning (HVAC) systems.

5th Floor: Additional office space was created on the fifth floor to accommodate staffing changes in the Mediation unit of the Regulatory Department and the relocation of the Form Services unit.

Historic Fence Repair: Damage caused by a car accident was completed at a cost of approximately \$130,000.00. These costs will be recovered through insurance.

Ottawa: Design and construction was completed on the third floor of the Ottawa premises to provide additional seminar space for the Education Department and expanded office space for Investigations.

393 University Avenue: Design and construction was completed to leased property on the 5th floor at 393 University Avenue. This enabled the move of the Lawyer Referral Service, the Client Service Call Centre, Spot & Focussed Audit, Lawyers Fund for Client Compensation and Investigations storage to this site.

Capital Fund: The projects listed above have been funded by the Osgoode Hall Capital Fund, established in 1999, to ensure adequate funding exists for the ongoing maintenance of the Society's physical plant. The Osgoode Hall Capital Fund had a balance of \$1.8 million at the end of 1999 and is maintained by an annual levy of \$50.00 per member.

The fund balance at the end of June is approximately \$2.0 million. This balance will be significantly reduced over the balance of the year as projects identified in the 2000 Capital and Technology Budget are completed over the next six months.

LAWYERS FUND FOR CLIENT COMPENSATION

Performance

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

CLAIMS	DECEMBER 31, 1999	JUNE 30, 2000	INCREASE FOR SIX MONTH PERIOD
Gross Amount of Outstanding Claims	\$16,901,806	\$22,183,088	\$5,281,282
“At Limits” Amount of Outstanding Claims	\$8,912,318	\$12,622,211	\$3,709,893

The following chart shows the number and value of new claims received during the same six-month period in 1999 and 2000.

CLAIMS	NO. OF CLAIMS	GROSS TOTAL AMOUNT OF CLAIMS	TOTAL AMOUNT OF CLAIMS WITH LIMITS APPLIED
New Claims Received Jan. 1, 1999 to June 30, 1999	110	\$6,146,651	\$4,269,767
New Claims Received Jan. 1, 2000 to June 30, 2000	194	\$8,677,614	\$6,246,002

The following chart shows the number and amount of grants paid during the same six-month period in 1999 and 2000.

CLAIMS PAID	NO. OF CLAIMS PAID	AMOUNT PAID
Grants Paid Jan. 1, 1999 to June 30, 1999	101	\$3,433,646.00
Grants Paid Jan. 1, 2000 to June 30, 2000	51	\$791,305.00*

* The amount of claims paid in the first six months of 2000 is low but it is anticipated that by year end the amount of grants paid will be approximately \$4,000,000.00 due to a large defalcation in the Ottawa area.

INFORMATION SYSTEMS

Overview

The Information Systems (IS) department manages all of the Law Society’s technological requirements, including:

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

Information Systems plans, procures and assists in developing programs and technical applications best suited to the needs of users at the Law Society.

The development of a much needed new infrastructure, our major task, has been complicated and difficult because of the very poor condition of the existing infrastructure. Fixing what was in place has been far more complex than creating a new working system from scratch.

The vast majority of work that needed to be done has been invisible. We have been establishing the solid foundations that will serve the Law Society for many years to come.

In 1998, Information Systems at the Law Society were in an abysmal state. Good technological solutions were either non-existent or dying, as indicated below.

Issues and Challenges

Local Area Network

The old network was made up of hundreds of cable runs that made their way back to three points. Most returned to the "AS/400 Room" which was on the first floor of the south side of the building. Some ran back to a second floor machine room, and a few ran to the library.

When a new workstation was needed a cable was run from the location of the new PC to one of these three points. When a cable could not reach the entire distance, a hub was inserted and the cable was extended.

As an analogy, imagine a house where all the electricity is supplied by extension cords that run back to the main hydro panel. Where one extension cord won't reach, you simply attach a second or third to make it all the way. Extension cords with several plug receptacles would add flexibility to the routes used to provide power.

The fact that the network ran at all is still a mystery. Hubs were daisy chained, eight levels deep in some locations.

Wide Area Network

Data communication between London, Ottawa and Toronto was supported by three low speed connections to the Internet. All communication between London, Ottawa and Toronto flowed as clear text over the Internet. Because the network was unsecured, almost anyone could have reviewed all the mail distributed between the offices.

Web access was not supported at any workstation. Interoffice email was possible, but email to external sites was awkward. It was impossible to mail or receive attachments from locations outside the Law Society.

Datapac, a service that was popular in the late eighties provided access to the educational systems for computer assisted learning. This was supported by twenty-four individual dial-up lines. Interestingly, eight were not connected to anything, but they generated a monthly charge from Bell Canada.

Virus scanning was non-existent. One virus could have erased or destroyed all of the data the Law Society owned. Virus scanning software had been purchased but for some mysterious reason, it was not installed on the network.

Telephone Services

All Private Branch eXchange - telephone switch (PBX) programs and scripts were undocumented. During the summer of 1998, a power failure caused PBX to fail. It was an unfortunate circumstance as there was no one on staff who knew how to change the auto attendant message.

No systematic measurement of telephone services was possible because of the very complex topology of the network. Callers in some areas were unable to access the switch and were regularly experiencing blockage rates of up to 80%.

Security

Security was based on an obsolete firewall system that was supposed to stop all traffic from entering the secure area of our systems. Unfortunately, all of the Society's educational administration was located outside the firewall. Hackers could have easily accessed the system and changed data. This was the same information that is uploaded into the AS/400 as the basis for future membership records.

Passwords regularly remained active after staff had left. It was often impossible to change profiles that had been assigned to functions rather than people. This problem will not be completely corrected until the AS/400 system is decommissioned. Disgruntled staff can easily log in and delete whatever information to which they had previous access.

Disaster Avoidance

Regular backups were taken on the AS/400 system. Unfortunately, backups were not taken on the Application servers or the mail systems because they were too fragmented. This means that one server failure could have permanently eliminated all of the electronic, word processed pages of data created by the Policy Secretariat or the Discipline Department

Servers

Servers are the workhorses of any information system. They store and provide the data to the PCs that staff use at their desks to do their day-to-day tasks. The AS/400 was well managed. This, however, was not the case for all other servers. Application and mail servers were a disparate collection of unacceptable Intel-based servers and PCs. During 1998, at least one of these servers experienced a failure almost every Monday. The servers in Education were the worst. They are still in operation, but scheduled for replacement in October.

There was no test environment, so all changes were done in a live environment, without the benefit of pretesting. This was the cause of endless failures and difficulties.

PCs

Approximately 90% of the Society's PCs were obsolete.

Software

Applications on the AS/400 had been developed, for the most part, by two contract programmers. They had provided the Society with virtually no documentation for its programs on the AS/400. Undocumented procedures running on the AS/400 today, call programs from libraries according to routines remain a mystery. This problem will not be resolved until the AS/400 is decommissioned. Clean up of libraries' data is impossible and changes to old user profiles cannot be completed until the system is decommissioned, as their uses are not known.

Program development was not strategically planned. Development meant simply responding to the needs articulated by each department. As a result, programs on the AS/400 duplicate functions, data and cause errors. There are more than thirty different databases of information that will remain in place until the new systems go live later this year.

Service

There was no systematic delivery of service. There were separate phone numbers for AS/400, telephone and PC systems. Help was provided on a first come, first serve basis.

Staff

A large number of staff in Information Systems did not have the necessary skills to complete the duties assigned to them.

The Solutions

Over the past 24 months significant progress has been made. The recently introduced systems will provide a solid foundation for the needs of the Society for the foreseeable future. The benefits have been obvious, but often not readily obvious to the organization.

Local Area Networks

The old system was characterized by very long and expensive cable runs. This resulted in:

- bandwidth bottlenecks
- inflexible deployment
- lost cable runs
- expensive moves/adds/changes.

To resolve these problems, six strategically placed wiring closets have been established which are serviced by a very high speed fibre optic cable link called a network backbone. Each closet contains switching equipment to connect the cable runs. Information Systems is proud to have been awarded IBDN (Integrated Business Digital Network) accreditation this year.

Wide Area Network

Reconfiguration of the systems continue, in order to ensure security and improved performance. The most active wide area network application is email, which has grown rapidly. The Law Society now processes several thousand email messages per day. Attachments have become so heavily used that they now occupy a significant portion of the server storage space.

Virus scanning is now, for the first time, constantly performed on all servers. Information Systems is very proud that they have not had any serious virus incidents to date, while many other major corporations have had serious disruptions throughout 1999 and 2000.

The data and voice network services between London, Ottawa and Toronto will be converted to a private system by the end of this year. This will eliminate concerns about the privacy of information exchanged.

The Society's connection to the Internet has been increased tenfold to meet the needs of applications, such as the electronic filing managed from the Regulatory Division.

Telephone Services

Insufficient service was frustrating the public and staff alike. Insufficient long distance lines, 1-800 lines and local lines resulted in frequent busy and fast busy signals. In addition, the provider was delivering poor service.

The software and hardware of PBX (Private Branch eXchange), the telephone system, has been upgraded. Weekly statistics now more accurately depict how the systems are used. Blockage rates are down dramatically, to less than an average of 25% from 80% in 1998 and they are improving every month.

Processes and procedures on the PBX have been documented. While the configuration remains more complex than it should be, plans are underway to make further improvements.

Security

All root level passwords have been changed and dormant accounts on all systems have been eliminated, wherever possible.

A secure architecture has been designed. Hardware and software upgrades for the firewall have been ordered and installation is in progress.

Disaster Avoidance

All major servers at the Toronto location now have back up.

Servers

Servers for the new Law Society Information System (LSIS) have been purchased and installed. These servers will replace the AS/400 system when LSIS goes live. Three inexpensive, powerful machines were purchased. Their combined cost was less than the yearly lease charges on the AS/400 system, so the Society can expect to save costs in future years.

The disc arrays for all production servers now, for the first time, use reliable disc technology which reduces the possibility of data loss.

The consolidation of the Novell servers has just been completed. This has been an extremely challenging process because they were heavily utilized. Fewer, more powerful and more dependable servers are now being used for application and mail. A test environment has been established so that upgrades and patches can be tested before they are applied in production.

While there is still significant work to be done in regard to servers, there has been marked improvement in server reliability.

PC Workstations and Printers

During 1999, 70% of the Society's workstations were replaced. This year, a further 20% of workstations have been replaced and upgraded memory has been installed in several still serviceable machines. By November, the remaining ten percent of the workstations will be equipped with 64 megs of memory and a Pentium 75 processor. This marks a significant change from the systems in place in 1998.

Three different types of printers were extensively tested and their relative values evaluated. Direct negotiations with the manufacturer resulted in pricing significantly below the best possible reseller rates. The process of replacing the worst 25% of existing printers is now underway.

Software

The Law Society Information System project has been addressing the transformation of the AS/400 COBOL programs into fully documented Oracle based procedures and applications for the Client Service Centre, Accounts Receivable and Regulatory areas of the Law Society.

Unfortunately, there is no option but to maintain the systems to carry out day-to-day operations until the new systems are ready. It has been necessary to do extensive maintenance on the AS/400 programs for the annual billing cycle and the Law Society's Annual Report data collection and processing.

Service

A help desk has been established and is now staffed. Software called Track-It has been installed and is being used by Information Systems to track all service requests. This software allows help desk staff to log calls, track their status, follow up on complaints and to analyse the type of calls that are received. The help desk currently receives between twenty and forty calls per day, on average. This number can increase to as many as sixty calls on busy days.

Staff

Staff with the necessary skills have been added in two phases. The first replacements were added during the summer of 1998. Of the original group of seventeen, four staff with the requisite skills remain. A highly competent staff is now in place.

Y2K

The transition to year 2000 seemed uneventful for the Law Society. This was due, largely, to the significant effort that went into planning and upgrading the legacy programs. This project was made more difficult because of the lack of documentation. Some minor problems surfaced in early 2000, but these were quickly corrected.

393 University

The Law Society established new office space at 393 University Avenue. It was a major undertaking to establish a second Toronto location. Approximately 50 people are located there. Information Systems established voice and data services to support this location. Establishing a branch location is normally a significant departmental task. However, because the Law Society decided to move the Lawyer Referral Service (the busiest part of the call centre) the task took on much larger proportions and significance.

A fibre connection between Osgoode Hall and 393 University facilitated the establishment of a remote shelf on the Society's PBX. This technology can be managed from the Osgoode offices and has prevented the hiring of additional staff to support this location. The fibre connection was also used to extend the computer network with data services that are as fast as those in Osgoode Hall.

The LRS manages well over 4000 calls per week. To date there have been almost no service disruptions.

Symposium

Symposium is a type of software that allows staff to monitor the number and type of calls coming through our telephone systems. It also allows for the effective allocation of those calls to the least busy, or most skilled operator.

Up until 2000, the Law Society had nothing but very rudimentary technical tools with which to monitor the number and type (long distance, 1-800, etc.) of calls coming through our switchboard. As a result of this, the Law Society was often delivering poor service without realizing it. Spot checks indicated that as many as 80% of the callers were receiving busy signals when they called some functional areas. This could be a serious and a strategic problem if, for example, a high percentage of the complaint calls were not answered.

As a result of the implementation of this software, the Client Service Centre is able to assign resources to areas that need attention. It is also able to measure the effectiveness of service that it is delivering. It is now possible to ascertain with certainty how many calls are being answered.

Wide Area Network

The Law Society has offices in three locations. Currently data service is provided through the Internet leaving the quality of service at the mercy of the volumes and traffic on the open Internet. Additionally, security of the data transmission has been of significant concern. The redesign of our wide area network has been completed. October will see the conclusion of the implementation of a private network between London, Ottawa and Toronto. This will provide reliable email service, eliminate the need for long distance calling between those offices and ensure the security of the data transmissions.

Novell Replacement

The Law Society uses Novell to provide mail, applications and user services to each desktop PC. Novell is known as a reliable and easy to manage service. This has not been the experience of the Law Society.

This year we concluded the negotiation of a master licence agreement. The process of upgrading all Novell server software to a single standard is now nearing completion. To do this, the client software on more than 400 PCs now in service has been upgraded. The conclusion of this project will significantly improve the dependability of our applications and mail services.

Convocation Room

Convocation Room has been refitted to reflect a boardroom that has proven state of the art technology. It now has the capacity to send and receive information from the Internet, or the Law Society's private network. Computer-aided presentations can be made. Telephone and video conferencing is now an integrated service and clumsy equipment has been replaced with technology appropriate to a modern boardroom.

Webcast to University of Windsor

In September, a process was initiated that allows the distribution of lectures from the Society's Education Department to the University of Windsor over the Internet. The lecture in Toronto is saved on a server in a compressed format. When the lecture is complete it is transferred to the University of Windsor where students review the contents on the same day.

This has made it possible for the Education Department to deliver its lectures to students in Windsor on the same day, eliminating the advantage Osgoode Hall students would have because of additional time to prepare for tests and exams following pertinent lectures.

International Webcast for Bar Ad Students

In a related project, approximately ten students who are taking the Bar Admission program from various locations around the world are able to view the daily lectures over the web. The number of students able to take advantage of this offering has been limited, due to bandwidth limitations, however, the Society is currently negotiating with Bar-eX to provide a redistribution service that would allow the extension of this service.

This service has allowed the Education Department to eliminate the need to courier tape duplicates of the lectures to these distance learners. It has also provided these students with the same levelling of the playing field as experienced by learners at the University of Windsor.

Virtual Classrooms

The development of five virtual classrooms has recently been completed. These are facilities that allow students at London and Ottawa to interact with teachers in Toronto. These facilities have been used to allow teachers, at all locations, to meet "virtually," by sending voice and video images over the telephone system, to discuss the lesson of the day.

In September, the Education Department started point-casting important lectures to all its locations at the same time. For example, the remarks of the Treasurer to the Phase Three Bar Admission students were seen simultaneously at all three locations of the Law Society. Investigations' staff have also used these facilities for departmental meetings and are very pleased with the results.

Email for Bar Ad Students

All students have been provided with e-mail accounts to increase the speed and consistency of communication. This project was initiated in the spring, but was not able to be seriously tested until Phase 3 students returned. It has been undertaken in cooperation with Bar-eX. An additional benefit, will be that students will now be able to access their marks over the net rather than travel into city centres to obtain them or wait for them in the mail.

LSIS (The Oracle Solution)

The Law Society Information System is within 60 days of launch. This has been a major undertaking that has occupied a major part of staff attention for the better part of 18 months.

PKI/Juricert

The Law Society is now negotiating with Juricert to develop an electronic signature authentication strategy. This work should conclude this year. The Society's membership should ensure maximum flexibility for lawyers to authenticate their status and identity anywhere within Canada.

This project will ensure that the Law Society asserts its status in an e-commerce society.

1-900 Service

This new service has been put in place to support the Lawyer Referral Service. This has meant reconfiguring existing telephone lines and telephone services. Its positive impact on the configuration of the PBX has been helpful.

HUMAN RESOURCES

Overview

The Law Society is a labour intensive operation and approximately 60% or 20 million dollars of our budget is spent on staff. Human Resources plays a key role in the management of this critical resource.

The Human Resources Department provides services to the Law Society through recruitment and selection, compensation, performance management, employee relations, training and de-hiring. Additionally, it takes a leadership role in the areas of change management and organizational development. In this capacity, Human Resources' staff work closely with its internal clients to identify how many and what types of employees the organization needs now and into the future, and how these employees will be recruited, developed and retained given the organization's business plans, goals and priorities.

Performance

The Human Resources Department has recently completed:

- a major review of all jobs
- a rewrite of job descriptions
- the development of a new job evaluation system
- an in-depth market salary survey
- the roll-out of the new compensation program, aimed at attracting and maintaining a workforce of talented experienced professional and making the Law Society a leading employer in the regulatory environment
- in depth employee training.

On an ongoing basis, Human Resources supports the organization's performance management and goal setting activities, by providing training, setting benchmarks, and helping incorporate results into daily operations. For example, to support organizational restructuring that took place during 1999, work process design, project management and team training is being implemented. An outcome of this training is to improve current work processes and to transfer new skills to staff.

To support the Law Society's commitment to provide a workplace free of discrimination, in early 2000, training workshops were held for advisors and all managerial and supervisory staff. As well, information sessions were conducted on the policy for all employees.

In the coming months, a comprehensive employee work guide will be introduced. This will be used to augment the orientation program provided to staff. Also, the refinement of the Law Society's recruitment and selection policy and practices, and a review of the performance management program are on the agenda for the latter half of the year.

EDUCATION

Overview

The Education Department continues to drive toward better regional coverage, integrated programs, improved quality, and lower cost while striving to maintain and enhance the quality of its offerings. Over the past six months this has been demonstrated through a variety of initiatives:

- the Bar Admission Course (BAC), for the first time ever, has offered Phase One of the BAC in each Ontario city that has a university law school
- Continuing Legal Education (CLE) has delivered a small practice series across the province
- articling has improved its advertising and processing of principal applications to develop a greater number of articling positions outside of Toronto, London and Ottawa
- Specialist Certification has reviewed its processing of applications, as well as, the requirements for specialization, to increase opportunities for specialists practising outside of the major centres
- The Family Law precedents from the Bar Admission Course have been placed on CD-ROM and made available to the profession through CLE publication sales
- final arrangements are being completed so that BAC lectures and seminars can be distributed to remote centres, or even individual students, via the Internet.

- The Department of Education has lowered the cost of delivering the BAC, so that rather than requiring support of \$94 per member, as indicated in the approved budget for 1999, the actual support, as indicated in the audited financial statements was \$52 per member. In fact, the direct costs budgeted for delivering the Bar Admission Course for 2000, are lower than the comparable figure for 1992 (\$5,873,200 in 2000 as versus \$5,894,390 for 1992, with 1200 students anticipated in both years).
- Continuing Legal Education has maintained its fee structure for some years, and it has used the funds available from reduction in costs to support greater activity outside of Toronto.
- major curriculum development is underway for the new Skills Phase to be implemented in May 2001. This work is being completed through close cooperation between the BAC faculty and the practising bar. When implemented the new model will allow students to be called to the bar five months sooner than under the current model.

CONTINUING LEGAL EDUCATION

Performance

	Q1+Q2, 1999	Q1+Q2, 2000	Change
No. of Live Programs	38	55	+45%
No. of Video Replays	23	51	+122%
No. of Registrants	3850	4896	+27%
Program Revenue (Gross)	\$881,039	\$980,270	+11.3%
Publications Revenue	\$236,242	\$168,035	-29%
Bursaries	142	127	-10.6%

Demand for Law Society CLE continues to be strong. The distribution of the number of registrants per Toronto program in the first six months of 2000 (excluding small group workshops with fixed maximum registrations) is as follows:

Programs with 0-50 registrants	5%	of total programs
Programs with 50-99 registrants	31.5%	" "
Programs with 100-149 registrations	18%	" "
Programs with 150-299 registrants	31.5%	" "
Programs with 300+ registrants	14%	" "

SPECIALIST CERTIFICATION

Performance

Administrative enhancements in processing applications, introduced in the fourth quarter of 1999, and increased member participation, have generated a 66% increase in first-half revenues for Specialist Certification. Revenues are \$70,300 compared with \$42,200 for the same period in 1999. Revenues for the period July 1 to December 31, 1999 were \$80,200.

A new application procedure, approved by the Certification Working Group in June for implementation in early fall, is expected to cut the processing time substantially, to three months or less. A proposal for Convocation to delegate the approval of applications to the working group will be brought before the PD&C Committee in the fall and, if ultimately adopted, the change could further reduce the approval time for new applications.

	January - June 2000	January - June 1999
New applications received	26	n/a
Specialists certified	14	4
Specialists re-certified	52	24
Applicants rejected	3	0
Applications in process (new and recertification)	106	66
Requests for application packages	255	96
Requests for information on specialists	189	74

Number of specialists by area:

SPECIALTY AREA	June 30, 2000	June 30, 1999
Bankruptcy & insolvency law	12	11
Civil litigation	337	334
Construction law (introduced May 2000)	0	n/a
Criminal law	94	101
Environmental law	18	18
Family law	56	55
Immigration law	20	17
Intellectual property law	20	20
Labour law	32	28
Workplace safety & insurance law	6	6
TOTAL	595	590

Trends

The program appears to have benefitted from the publicity generated by the Law Society's competence initiative, and by Convocation's January decision to recognize construction law as a specialty area. Civil litigation has seen 78 application requests; construction - 67; intellectual property - 28, family - 27; and criminal - 23. Members have also frequently inquired about designating other areas for specialist certification, including wills, trusts and estates, dispute resolution, international business and business law.

ARTICLING AND PLACEMENT

Performance

The articling experience is evaluated by both principals and students at the midterm point and by students at the end of term. Year-end evaluations are generally filed by August 31 of the year when articles are completed. Since the last report to the Chief Executive Officer, additional midterm evaluations for the 1999-2000 term have been received. In all, 1006 student midterm evaluations were received from approximately 1200 students for the 1999-2000 articling term (compared to 988 received from approximately the same number the previous year). As in previous years, 99% of respondents rated their experience positively, while 1% considered their articling experience unsatisfactory. Follow-up efforts with the students providing unsatisfactory ratings resulted in improvements for the duration of their articling term.

In the first six months of 2000, articling staff have approved approximately 1400 principals for the 2000/2001 articling term (of which 207 were new applications). This number is down from the approximately 2000 approved principals at the same time for the 1999-2000 articling term because of a new streamlined administrative process. The new process involves renewals only for principals who apply for renewal, whereas the previous process automatically assumed all principals of a previous year were seeking approval.

Articling Placement

At the end of June, approximately 12.3% of Year 2000 Phase 1 students had not yet secured an articling position, (compared to 16% in 1999). For the past nine years, by December 31 of the year in which the students' articles should commence, only 1% to 3% of students were still actively seeking articles.

Category	% of Category Unplaced in 2000	% of Category Unplaced in 1999
Total Phase 1 students	12.3	16
Visible Minorities	19.8	25.6
Students with Disabilities	26.7	20
Aboriginals	17.6	53.3

Graduate Placement

The graduate placement service lists positions suitable for recent graduates and lawyers with experience at the bar. In the first six months of 2000, the service listed 284 positions (versus 250 in 1999).

Web Site Development

Articling & Placement staff made available 20 information memoranda and all forms relating to the 1999-2000 and 2000-2001 year on the Law Society's web site. All of these items (34 to date) were coded by staff and appears at <http://www.lsuc.on.ca/services/phase2/Articling.shtml>.

Articling Length Research

Staff developed a discussion paper examining different options for the length of articles and the corresponding impacts. Also, members provided their input, through a written survey on the length of articles. The Admissions Committee will consider the information in their review of the length of articles in September and make a recommendation to Convocation.

Bar Admission Course

Performance

Call to the Bar:

Total called to the Bar in January to June 30, 2000: 1,192 (1,136 same period in 1999)
 Total called to the Bar in 1999: 1,181
 Total called to the Bar in 1998: 1,230
 Total called to the Bar in 1997: 1,150

Male/Female Breakdown:

CALLS:	1999 (January to June)			2000 (January to June)		
	Females	Males	Total	Females	Males	Total
BAC	578	520	1098	571	575	1146
Transfer	17	21	38	17	29	46
Total	595	541	1136	588	604	1192

Phase One enrolment:

Number enrolled (2000): 1,201
 Number enrolled (1999): 1,195
 Number enrolled (1998): 1,182
 Number enrolled (1997): 1,107

Phase Three enrolment:

Projected registrations for 2000: 1,205
 Registrations in 1999: 1,185 (25 part-time)
 Registrations in 1998: 1,148
 Registrations in 1997: 1,143

Trends

During the first six months of 2000, the number of students called to the Bar and in Phase One enrolment increased slightly. A similar trend is being forecast for Phase Three enrolment.

Since introducing the distance education, self-directed learning option for Phase Three in 1998, 95% of students who selected this option were called to the Bar. Of the 19 students who participated -- nine in Thunder Bay, three in New York, one each in Johnstown (Pennsylvania), Cambridge (England), Montreal, Sudbury, Timmins, North Bay, and Peterborough -- only one is still required to complete Phase Three.

New Initiatives

Phase One of the Bar Admission Course was delivered for the first time in Windsor and Kingston. With the assistance and cooperation of the law schools at the University of Windsor and Queen's University, Phase One was delivered to 86 students (44 students in Kingston and 42 in Windsor) in May. Local practitioners provided the instruction and assessed the students for competency in performing required course skills. This initiative provided valuable experience to the Department of Education for academic delivery, administrative services and overall operational issues as it prepares to implement the new BAC model in five locations commencing May 2001.

As part of the continued move toward alternative course delivery, BAC and Information Systems staff have been working to establish means for delivering the BAC through video conferencing and web casting. Thanks to the special technology enhancement funding from the Law Foundation of Ontario to the Law Society, the initiative to develop and establish these alternate modes for delivery is well underway. The web casting technology will be piloted this fall when Phase Three is offered at the University of Windsor Law School. The Windsor courses will be offered on the same days as they are offered at the three regular BAC locations - London, Ottawa and Toronto with same-day delivery of Toronto lectures via the Internet.

In addition, video conferencing will be used to coordinate meetings with Toronto and other BAC locations, as well as, in the delivery of some course lectures.

This June, the Department of Education, with the assistance of Information Systems and with funding from the technology-enhanced learning grant from the Law Foundation of Ontario, was able to negotiate and establish e-mail account privileges for all BAC students. The first launch of this new service via BAR-eX, occurred in June when all Phase One, June session students in Toronto, London and Ottawa were given access to the new e-mail service. The service permits the BAC faculty, staff and administration to communicate directly with students via BAR-eX. Conversely, students can forward email to the BAC administration.

During July and August, the service was expanded to include the remaining students from the May Session of Phase One and all of the students planning to take Phase Three in fall 2000. In the future, all students who apply to the Bar Admission Course will be given BAR-eX email accounts.

Last fall's purchase of the PET (Performance Evaluation Technology) system has been an effective, efficient and cost-saving tool for examination evaluation and grades processing. Previously, approximately \$100,000 per year had been spent on an external provider for this service. Acquiring PET has permitted the BAC staff to bring examinations processing in-house. This has resulted in faster turnaround times for marking, remarking, posting examination results, processing examination appeals and issuing overall grade results after each exam period. In the fall, the BAC faculty will be further trained on the exam development, exam question analysis, and reporting capabilities.

STUDENT SUCCESS CENTRE

Performance

Prior to and during the supplemental exams, students were provided with a number of different accommodations, including invigilation services for distance learners, note taking, computers with adaptive technology, extra time for writing the examinations, tape-recording (Dictaphone) of exam answers, court reporting of answers, height adjustable desks, Obus Form chairs, supervised breaks, tutoring and videotaped lectures.

During the January 2000 supplemental examination period, 105 students received one or more of the services listed. Student performance on the January exams resulted in an overall success rate of 79%. The March/April supplemental examination period resulted in a 50% success rate for the 22 students who were provided accommodations.

Financial Assistance

Financial assistance was distributed to Bar Admission Course Phase One students in 2000 from the following programs and resources:

- the Ontario Student Assistance Program (OSAP) provided 198 students with \$242,359.00
- the Equity Bursary program provided 22 students of the 30 applications with \$21,146.00
- the Law Society Loan program provided assistance to eight students totalling \$7,251.20
- the Bank of Montreal Loans program provided assistance to 19 students, amount unknown.

Based upon the students' financial information, as provided in their applications, there is a trend toward higher student indebtedness. When students applied to the various financial assistance programs offered through the Bar Admission Course and the Ontario Student Assistance Program in Phase One, they indicated indebtedness ranging from \$50,000 to \$150,000.

Program Comparisons - Phase One

Financial Assistance Program	Number of Students		Total Amount Distributed	
	2000	1999	2000	1999
OSAP	198	176	\$242,359.00	\$193,600.00
Equity Bursary	22	2	\$21,146.00	\$2,025.60
Law Society Loan	8	13	\$7,251.20	\$15,317.40
Bank of Montreal	19	19	Unknown	Unknown
Total Distributed (excludes Bank of Montreal)	228	191	\$270,756.20	\$210,943.00

The Financial Assistance area has submitted a request to the Ontario Student Awards Branch of the Ministry of Education and Training, seeking approval for OSAP eligibility for students choosing any of the patterns within the new model of the BAC.

GREAT LIBRARY

Performance

	2000 1 st and 2 nd Quarter	1999 1 st and 2 nd Quarter
Number of requests for reference/research assistance	39,500	39,800
Number of patron visits	39,200	39,100
Number of copies made through the custom copying service	39,418	40,616
Number of copies made on self-serve copiers	292,211	344,946

Trends

The number of photocopies made on library copiers continues to decline. This is a trend seen in many libraries and is attributed to the increasing desktop availability of electronic materials in law firms.

However, members' demands for professional library assistance to help pinpoint and retrieve specific legal information, whether through the Internet, online databases or in paper, remain high. The economics of law practice does not allow the average practitioner time to keep up to date with developments in legal research techniques and resources.

BAR-eX

The Great Library, in cooperation with BAR-eX Communications Inc., initiated a unique web-based current awareness service for Ontario lawyers at the beginning of this year. The BAR-eX web site was unveiled on January 27, 2000 at the Canadian Bar Association - Ontario (CBAO's) Annual Institute.

Content for the site's current awareness is provided exclusively by the Great Library's professional staff. A wide variety of paper and electronic sources are routinely reviewed. Digests of relevant material are prepared for five practice areas (Civil Litigation, Corporate/Commercial, Family Law, Law and Technology and Real Property), along with items of general interest to the legal community. New content is provided on a weekly basis. The Great Library has submitted more than three hundred new digests since the inception of this service. Feedback from the profession has been very positive.

Great Library Web Site

Developing the Great Library's web site as an electronic vehicle to enhance members' awareness of and access to the Great Library's collection and services, continued in the first six months of the year. The web site, compiled by library staff, provides up-to-date information about legal research resources. The latest initiative, *What's New in Law* is a digest service intended to help keep members informed of recent legal developments and to highlight legal information of interest to the profession.

County Libraries

Phase III: Funding for a new system to deliver library services to Ontario county lawyers was passed in Convocation in June 2000. Work has begun on setting up the new nonprofit corporation, as well as, a shareholder's agreement. Letters have been sent to County and District Law Presidents Association (CDLPA), Metro Toronto Law Association (MTLA), Ontario Courthouse Librarians Association (OCLA) and Canadian Bar Association - Ontario (CBA-O), asking them to nominate their representatives to the Board. Advertisements were placed requesting interested, qualified people to submit their names for the remaining positions on the Board of Directors, and the search for a Managing Officer for the new corporation has begun.

EQUITY INITIATIVES DEPARTMENT

Overview

The goal of the Equity Initiatives Department is to assist the Law Society in implementing the *Bicentennial Report on Equity Issues in the Legal Profession*, as unanimously adopted by Convocation in 1997. It also exists to support the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones.

The department's objectives include:

- the preparation of reports and the implementation of education and awareness activities that will assist Convocation with issues concerning Aboriginal, Francophone and equity-seeking groups ensuring equity and diversity initiatives are integrated into operations of LSUC departments
- enabling the Law Society to reflect the diversity of Aboriginal, Francophone and equity-seeking groups with its own operations.

Performance

Work has commenced on fourteen of sixteen recommendations in the *Bicentennial Report on Equity Issues in the Legal Profession*.

The following involves some of the policy initiatives undertaken by the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones supported by the Equity Initiatives Department.

- allegations of differential treatment in discipline decision-making and a review of complaints
- the implementation of the Law Society's French Language Services Policy
- a mentoring program for communities under represented in the legal profession
- the Law Society Accommodations Policy
- Equity and Diversity in the Bar Admission course reform implementation.

The department has also:

- provided education and training on equity issues to staff of the Education department and to faculty instructors
- supported promotion and public education of the Discrimination and Harassment Counsel Program
- developed systems for handling internal management of workplace harassment and discrimination issues

- participated in and made presentations to conferences and seminars coordinated by the Human Rights Commission and the University of Ottawa - Faculty of Law
- conducted workshops to facilitate the development of protocols to promote the use of pro bono legal services for individuals with equality rights cases
- developed model policies and conducted research on Best Practices on Equality and Diversity in the legal profession
- prepared education and training programs on harassment issues for law firms
 - provided policy advice and administrative support to the Equity and Advisory Group (TEAG), Roti io' Te-Kier (Aboriginal Advisory Group) and Connecting Communities with Counsel (CCWC)

Since January, the Equity Initiatives Department has undertaken various public education activities and is planning additional initiatives for the remainder of the year. These public education activities provide opportunities for members of the profession to learn about Aboriginal francophone and equity issues. They include events initiated and coordinated on behalf of the Law Society and those coordinated by other organizations in which the Law Society participated as a sponsor. The activities provide a forum for members of the profession to participate actively in Law Society functions. It is also a vehicle to inform members of the services and support that the Law Society provides. The following table outlines those activities.

Law Society Event	Law Society as Co-Sponsor
<p style="text-align: center;">February 2000</p> <p>Black History Month -Human Rights Through Art (100 guests)</p> <p>Black History Month - A discussion of law in practice and law as a profession (150 high school students)</p>	<p style="text-align: center;">January 2000</p> <p>CBA-O Sexual Orientation and Gender Identity Committee's CLE Conference (60 guests)</p>
<p style="text-align: center;">March 2000</p> <p>Feminist Legal Analysis Conference on the Millennium Challenge to Feminism (70 attended)</p> <p>International Women's Day Seminar Series 2000 (75 attended)</p> <p>International Women's Day Launch</p>	<p style="text-align: center;">February 2000</p> <p>CBA-O Equal Opportunity and Visible Minority Women's committee, Black History Month (60 guests)</p> <p>University of Windsor - Black Law Student's Association of Canada 9th Annual Conference (100 attended)</p>

Law Society Event	Law Society as Co-Sponsor
<p>March 2000</p> <p>The African Canadian Legal Clinic's Preparatory Conference on <i>Eliminating Racism: Linking Local and Global Strategies</i></p>	<p>February 2000</p> <p>Canadian Association of Black Lawyers Celebrating Black Judges in Canada Gala Dinner (400 attended)</p>
<p>June 2000</p> <p>Archbishop Desmond Tutu Honorary Doctor of Laws Ceremony (125 guests)</p> <p>Pride Day Reception (300 attended)</p> <p>National Aboriginal Day Lecture and Reception (80 attended)</p>	<p>March 2000</p> <p>University of Windsor 7th Annual Aboriginal Moot</p> <p>CBA-O Feminist Legal Analysis Conference on the Millennium Challenge to Feminism (70 attended)</p>
	<p>May 2000</p> <p>CBA-O Sexual Orientation and Gender Identity Committee's Seminar on mentoring law students.</p> <p>The Alternatives to the Use of Lethal Force by Police Conference with the Urban Alliance on Race Relations</p>

Current and Future Initiatives

The department is also working to support:

- the development of pro bono services re: Access Ontario
- Aboriginal students in Bar Admission courses and Aboriginal Lawyers in the profession
- education and training on equity issues for members of the legal profession
- the implementation of discrimination and harassment procedures for Law Society staff
- contract compliance for Law Society providers of goods and services
- the availability of demographic profiles of members of the legal profession
- the development of a model policy on same sex benefits for law firms
- equity and diversity in the Law Society's Communications Policy
- equity and diversity orientation for Benchers.

PUBLIC AFFAIRS

Overview

The Public Affairs Department provides communications and government relations advice, support and tools to help the Law Society achieve its strategic goals. Staff provide a full-range of services to all departments, Convocation and its committees, senior management and staff. The department takes a holistic approach to all projects, ensuring that clients needs are met, while at the same time contributing to the Law Society's strategic goals.

Services include:

- strategic communications planning (internal and external)
- communications advice, training, support
- issues management
- media relations
- government relations
- stakeholder management (includes member communications)
- French language services
- graphic design
- web management services

During the first six months of 2000, the department has focussed on two key areas. The first was the determination and setting of the strategic communications direction for the Law Society. The second was supporting departments as they implemented new plans and structures developed during the P200 initiative. Among the department's priorities were providing communications and government relations advice, planning and support for projects such as:

- revamping the Rules of Professional Conduct
- implementing a new competence mandate
- reviewing the practice of paralegals in Ontario
- strategic planning
- examining the state of courthouse facilities in Ontario with particular regard to space and security issues.

Performance

Government Relations

Staff help to build and maintain effective working relationships with all levels of government – federal, provincial and regional/municipal on issues of importance to the Law Society and its membership. The first half of 2000 was a busy time with staff extensively involved in the following issues:

- regulation of paralegals
- contingency fees
- refugee and immigration initiatives
- the inclusion of legal services in the General Agreement on Trade in Services

Communications

The department developed a Strategic Communications Framework that lays the foundation for Law Society communications for the next few years. In the first year (2000), our focus is on member communications and internal communications. The following outlines our achievements in these areas from January to June, 2000:

Member Communications

- conducted a member communication survey from which the information from members was used to enhance the Gazette
- developed a strategy for member outreach (to be implemented in the fall)
- redesigned the Ontario Lawyers Gazette and revised the editorial direction
- branded a portion of the Ontario Reports for member communications
- worked with program areas to enhance communication to members.

Internal Communications

- developed an Employee Communication Strategy, including how to provide more useful and timely information to posting news highlights on our ELF intranet site
- improved the flow of communications to employees through ELF
- created the *Public Affairs Update*, a newsletter designed to keep the Government and Public Affairs Committee apprised of Law Society achievements and projects
- created a Critical Issues Protocol.

Public Communications

- selected a firm to undertake public opinion research into attitudes and perceptions of the Law Society which will provide the basis upon which to develop a Public Communications Program.

External Communications: Media Calls

There were approximately 309 incoming media calls during the period from January 19 to June 30. The following is a breakdown of subjects of incoming media calls:

Discipline calls	119
Re: Ken Murray	26
Paralegals	20
Convocation	21
Courthouses	11
Other	112

Among discipline calls, two cases in particular generated a large number of calls throughout the six-month period: Windsor lawyer Donald Tait, and Ottawa lawyer William McInenly.

The bulk of calls on the subject of Ken Murray came within the month of June, most within a two week period. Earlier calls on the subject of Ken Murray are generally included within the discipline category. Other subjects not listed that received a higher volume of calls were pertaining to prepaid legal fees, the Lawyers Fund for Client Compensation and general lawyer inquiries.

Releases, Alerts and Announcements

Fourteen releases, alerts or announcements were distributed to media in the first six months of 2000. Items were distributed to the media through Canada News Wire and target media were contacted directly. The following is a list of items sent out:

- June 30 – Discipline release
- June 20 – Law Society cosponsors roundtable event as part of Pride Week
- June 16 – Pride Week (alert)
- June 15 – Archbishop Tutu awarded doctorate of Laws
- June 14 – Archbishop Tutu (alert)
- June 9 – Archbishop Tutu (alert)

May 18 – Discipline release
April 6 – Discipline release
March 24 – Law Society framework for paralegals
March 6 – Law Society cosponsors women in law seminars
March 3 – Women in Law (alert)
Feb. 29 – Discipline release
Feb. 23 – Toronto Call to the Bar (Honorary degrees to Rabbi W. Gunther Plaut and Mr. Justice Frank Iacobucci)
Feb. 16 – Ottawa Call to Bar (Honorary degree to Chief Justice Beverley McLachlin)

Plans for the next six months

During the second half of 2000, the department will continue to strive to achieve its first year goals set in the Strategic Communications Framework. Plans include implementing the internal communications plan, revitalizing the Law Society's web site and developing a public communications program.

II. COMPLIANCE WITH EXECUTIVE LIMITATIONS

As part of Convocation's adoption of the Policy Governance Model a series of Executive Limitations were instituted to constrain the CEO in the exercise of his operational duties. The following outlines the exceptions to those limitations for the period January - June 2000.

Budgeting

All in compliance except:

Unless otherwise directed by Convocation, the Chief Executive Officer shall not allow operating expenses to deviate from the budget in any significant way (Governance Policies IV, A, 1, a).

- It is anticipated that the budget for Counsel Fees will be exceeded by \$350,000 and that the budget for Benchers expenses will be exceeded by \$150,000. It has been proposed that these over budget amounts will be carried forward to the 2001 budget to eliminate any impact on the results for 2000.

Asset Administration and Acquisition of Services

All in compliance except:

Unless otherwise directed by Convocation, the Chief Executive Officer shall not contract for any service that does not comply with the Law Society's policy on retaining services (Governance Policies IV, B, 1, f).

- Twenty-six contracts ranging in value from \$11,000 to \$57,673 and one contract with a value of \$108,250 were awarded without adherence to purchasing policy. In all cases, however, these amounts were included in the approved budget.

The CFO and Finance department staff held discussions with the respective department senior managers to reinforce the necessity for compliance with the executive limitations. The CEO will reinforce the requirement for full compliance at future Senior Management meetings. In all cases, written explanations were received from the violating departments (payment was withheld until the purchases were brought into compliance).

Financial Conditions

All in compliance except:

Unless otherwise directed by Convocation, the Chief Executive Officer shall not allow tax payments or other government ordered payments and filing to be overdue or inaccurately filed (Governance Policies IV, C, 1, a).

- The Canadian Customs and Revenue Agency (CCRA) has taken the position that members who take advantage of the early payment discount on their annual fees should remit GST based on the amount of the fee before discount. Consequently, CCRA is asking the Law Society to remit GST on the fee levied before discount. CCRA is taking this position in their efforts to prevent GST tax leakage. We are vigorously rejecting the claim of the CCRA and have retained counsel. At this point, a compromise has been reached, which will see the Law Society issuing credit notes and a GST filing explanation to all members who took advantage of the discount during the years of 1999 and 2000. At issue is, approximately, \$100,000 pertaining to 1999 and 2000.

Equity & Aboriginal Issues Committee Report

Equity and Aboriginal Issues Committee/
Comite sur l'equite et les affaires autochtones
October 19, 2000

Report to Convocation

Purpose of Report: Information

Prepared by the Equity Initiatives Department

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TERMS OF REFERENCE/COMMITTEE PROCESS

The Equity and Aboriginal Issues Committee met on Thursday, October 5, 2000, 1:30 - 4:30 p.m. in the Equity Board Room. In attendance were:

Paul Copeland (Chair)
Judith Potter (Vice-Chair)
George Hunter (Vice-Chair)
Leonard Braithwaite
Marshall Crowe
Stephen Bindman
Barbara Laskin
Todd Ducharme
Janet Stewart (non-bencher)
Susan Opler (non-bencher)
Jeff Hewitt (co-chair Roti io' ta'-kier)

Staff: Charles Smith, Rachel Osborne, Josée Bouchard, Geneva Yee, Jim Varro

The following reports are submitted to Convocation for information purposes.

- 1) CONNECTING COMMUNITIES WITH COUNSEL
- 2) IMPLEMENTATION OF FRENCH LANGUAGE POLICY

CONNECTING COMMUNITIES WITH COUNSEL

This report provides an update on the development of this program. Information on the grant request to the Federal government to support the program had been submitted to Committee as information in January, 2000. The project aims to provide pro bono legal assistance to individuals in need who are not eligible for legal aid and wish to engage legal counsel to address human rights/equality issues, e.g., workplace discrimination, hate crimes. The CCWC has now received a grant for \$160,000.00 from the Multiculturalism Sector, Department of Heritage. The grant is a contribution to a three year action plan approved by the Treasurer and supported by the former Treasurer's Equity Advisory Group (now Equity Advisory Group).

Currently, the CCWC is recruiting a project coordinator and preparing orientation sessions for lawyers and representatives of community agencies interested in participating in the program. Also, an ad to recruit lawyers will soon appear in the *Ontario Reports* and a training program for lawyers and community agencies is scheduled for later this year.

CONNECTING COMMUNITIES WITH COUNSEL PROJECT (CCWC)

Introduction:

1. At the May 19, 1999 meeting of the Treasurer's Equity Advisory Group (TEAG), Amanda Hotrum and Erica Lawson of the Anti-Racism Action Centre (ARAC) discussed their organization's need for pro bono legal assistance to help individuals who had experienced racially-motivated hate violence. TEAG offered its support and suggested that an ad be placed in the *Ontario Reports*, and that a roster of lawyers who are interested in doing pro bono work be developed. Since that initial meeting with TEAG and ARAC, the pro bono initiative has grown into a broader initiative involving a number of community groups.

2. The *Connecting Communities With Counsel (CCWC)* project has developed as a result of the efforts of a number of community agencies working in partnership with the Law Society to connect individuals requiring pro bono legal assistance to pursue human rights and equality issues with lawyers interesting in providing pro bono services. The CCWC is a community-based initiative which is directed by a steering committee representing 14 community agencies and LSUC Equity Initiatives Department staff. The CCWC project has received a three-year funding grant from Heritage Canada in the amount of \$160,000 and the Law Society is serving as trustee for the CCWC project.

Current CCWC Activities:

3. The CCWC Steering Committee, with the assistance of the Equity Initiatives Department, is currently organizing outreach activities to the legal profession to provide the opportunity to participate in the CCWC project. An Orientation Session is being organized to take place on Monday October 23, 2000 which will bring together lawyers and community agencies to learn about the CCWC project specifically, and more generally, the increasing need for legal assistance from a number of communities dealing with human rights and equality issues, and the importance of pro bono work to the legal profession as a whole. A panel of speakers, which will include both lawyers and community activists, will speak to these issues, and the October 23rd Orientation Session will provide an opportunity for lawyers and community agencies to connect and explore working relationships.

4. Following the Orientation Session in October, the CCWC Steering Committee is also organizing an Education and Training Session which will be attended by the lawyers and community agencies participating in the CCWC project. This session will provide lawyers with the opportunity to learn about the social and political issues facing specific communities as well as their specific legal assistance needs. Additionally, the Education and Training Session will provide community agencies with an understanding of legal terms and procedures and how to best assist pro bono lawyers working with their agency.

5. Once the Orientation Session and the Education and Training Session are held at the Law Society in Toronto, the CCWC Steering Committee will coordinate holding these sessions in other locations in the province as there are community agencies across Ontario that are participating in the CCWC project.

6. As part of the funding received from Heritage Canada, monies have been allocated to hire a Project Coordinator who will be responsible for administrative and policy support, organizational development of the initiative, preparing further funding grant applications, and coordination and execution of promotional and education activities. The position is a two-year, part-time contract (3 days per week) and recruitment and hiring efforts are currently being undertaken to have a project coordinator in place by November .

7. The CCWC Steering Committee has approved an action plan for their activities which identifies the various actions to be undertaken and the timelines associated with each activity. (See TAB A)

History of the CCWC Initiative:

8. The Equity Initiatives Department met with ARAC and the 519 Church Street Community Centre in July 1999 to discuss the development of an advertisement for the *Ontario Reports* which would highlight the increase in hate-motivated violence and the pro bono legal assistance needed by each community group. ARAC had invited the 519 Church Street Community Centre to become involved in this initiative since it offers support and assistance to victims of hate-motivated violence based primarily on sexual orientation and gender orientation. The Equity Initiatives Department worked with the two community groups and developed an advertisement which ran in the *Ontario Reports* during the month of August. A copy of the ad is attached to this report. (See TAB B)

9. During a follow-up meeting concerning the *Ontario Reports*' advertisement, ARAC and the 519 Church Street Community Centre discussed the need for pro bono legal assistance amongst a number of community organizations. Both groups agreed that, in addition to the legal assistance required by victims of hate-motivated violence, community groups also lack adequate legal assistance in dealing with other equity issues including employment rights, immigration, housing, and policing. ARAC and the 519 Church Street Community Centre asked if the Law Society could coordinate an initiative to assess community groups' legal assistance needs and organize lawyers interested in providing pro bono legal services.

10. The Equity Advisor contacted the Department of Canadian Heritage who expressed an interest in funding this project of coordinating community groups from across the province with lawyers who are willing to offer pro bono services for equity issues. Nora Angeles, former lay bencher and community worker, became involved in this initiative and assumed the responsibility of developing the grant proposal.

11. In late July 1999, the Equity Initiatives Department met with five community organizations, invited by ARAC and the 519 Church Street Community Centre, to discuss their legal assistance needs. During that meeting, the community groups identified the service gaps between Ontario Legal Aid and the actual needs of the various community organizations, including the increased narrowing of Legal Aid eligibility, lawyers' unfamiliarity with community issues (eg issues relevant to new immigrants), and Legal Aid lawyers being overloaded.

12. The Equity Initiatives Department discussed with the community groups how to best proceed and it was decided that a needs assessment survey should be distributed to a large number of community groups across the province in order to assess the service gaps in legal assistance. Working together, the Equity Initiatives Department and the five community groups developed a brief needs assessment survey which was faxed to 250 community organizations across the province. The results of the needs assessment survey, compiled by the Equity Initiatives Department, were discussed during a September 29th meeting with a number of community groups who had responded to the needs assessment survey as well with Pro Bono Students of Canada and the CBAO Volunteer Lawyer Referral Service.

13. The needs assessment survey was sent to 180 community organizations across the province working on equity and social justice issues. A total of 53 responses were received; 23 surveys were from community organizations within Toronto, and 30 from outside of Toronto. The survey asked the respondent to identify which communities their organization serves, the services they provide, the volume of clients requiring pro bono legal assistance, and the areas of law where pro bono legal assistance is needed. The needs assessment survey results indicated a urgent need and high demand for pro bono legal services. In total, the 53 community organizations indicated that they have approximately 3,500 clients each year that are in need of pro bono legal assistance. The survey indicated that pro bono services are most needed in the area of administrative/social welfare law, and labour and employment law. A copy of the needs assessment survey results is attached to this report. (See TAB C).

14. The Equity Initiatives Department met with representatives from the Canadian Bar Association - Ontario's Volunteer Lawyer Referral Service and Pro Bono Students Canada on September 30th to discuss coordinating efforts on the connecting communities with counsel initiative. The outcomes of the Pro Bono Ontario Initiative Summit which was held in the Spring 1999 were also discussed, and possible connections to that initiative were explored.

15. On October 12, a meeting was held between the Steering Committee of community groups (ARAC; 519 Church Street Community Centre; Chinese Canadian National Council) and a number of pro bono lawyers who had responded to the August *Ontario Reports*' ad. The purpose of the meeting was to solicit advice from the lawyers how to best connect community groups with pro bono lawyers. The results of this discussion, coupled with the survey results and the ongoing dialogue with participating community organizations, informed the funding grant proposal which was submitted to the Department of Canadian Heritage in late October. The grant proposal requested funding to establish a coordinating body which would, in addition to promoting the initiative and recruiting interested lawyers, provide the service of matching community groups with appropriate pro bono lawyers. This coordinating body would match pro bono lawyers from across the province with local community groups in need of pro bono legal assistance for equity issues.

16. In discussions with the Equity Initiatives Department, the Steering Committee of community groups raised the concern that, given the time necessary to establish the coordinating body, the needs of those community organizations requiring immediate legal assistance would not be addressed. The Steering Committee requested that a second ad be developed for the *Ontario Reports* which would appeal to interested lawyers to contact directly the community organizations who have immediate needs. A letter was sent to the 53 community groups who had responded to the needs assessment survey asking them to indicate whether they had immediate pro bono legal assistance needs and whether they wished to be named in a list of community groups for pro bono lawyers to contact directly. Of the 53 participating community groups, 21 responded that they have immediate legal assistance needs and wished to be contacted directly until the coordinating matching body is established. An ad has been drafted for publication the *Ontario Reports*.

17. The Steering Committee discussed the need for participating community groups to have orientation material to enable them to engage in an informed and effective manner with lawyers who may contact them. An orientation package for the community organizations was developed by the Steering Committee and an orientation session was held on January 27th, 2000. Bencher Heather Ross participated in the orientation session.

18. In addition to the ad for the *Ontario Reports*, an article for the *Lawyers' Gazette* was drafted by Philip Tsui of the CCNC and approved by the rest of the Steering Committee. The article describes the "Connecting Communities with Counsel" initiative and invites lawyers interested in offering pro bono legal services to contact ARAC or The 519 Church Street Community Centre. The *Gazette* article is ready for publication and will appear in an issue of the *Gazette* closer to the date of the Orientation Session.

PRO BONO NEEDS ASSESSMENT SURVEY RESULTS

As of Monday, September 20th, a total of 53 surveys were completed; 23 were from community organizations located in Toronto, and 30 were from community organizations outside of Metro Toronto.

Numbers in squared brackets represent the ranking of responses within each question; numbers in rounded brackets which appear after percentages represent the total number of responses in each category; and numbers which do not appear in brackets also represent the total number of responses in each category.

1) Which communities do you serve?

	TOTAL	TORONTO	OUTSIDE TORONTO
[3] Visible Minorities	74% (39)	91% (21)	60% (18)
[6] Recent Immigrants	68% (36)	91% (21)	50% (15)
[1] Low-Income Families	85% (45)	78% (18)	90% (27)
[4] Immigrants	72% (38)	87% (20)	60% (18)
[7] Refugees	62% (33)	78% (18)	50% (15)
[2] Women Single Parents	83% (44)	91% (21)	77% (23)
[10] Gay Lesbian Bisexual	43% (23)	52% (12)	37% (11)
[5] Women - violence	70% (37)	87% (20)	57% (17)
[8] People - domestic violence	60% (32)	78% (18)	47% (14)
[9] People-violence/hate crime	49% (26)	61% (14)	40% (12)

2) Which of the following services do you provide?

	TOTAL	TORONTO	OUTSIDE TORONTO
[6] Settlement	42% (22)	11	11
[3] Legal	53% (28)	9	19
[4] Counseling	47% (25)	16	9
[2] Education	60% (32)	16	16
[7] Employment	21% (11)	6	5
[8] Health	21% (7)	6	1
[1] Advocacy	66% (35)	16	19
[5] Community Development	45% (24)	10	14

Other: conflict mediation; group homes; research; policy development; ESL; support groups; shelter; resumes; cross-cultural training

3) When your clients approach you for legal assistance, do you provide:

	TOTAL	TORONTO	OUTSIDE TORONTO
[3] determining nature of case	36	16	20
[11] prep. civil or criminal case	17	6	11
[9] filing documents	21	9	12
[4] accessing legal aid	35	14	21
[7] preparing documents	27	8	19
[10] Referral to pro bono lawyer	19	10	9
[2] Referral to legal clinic	39	22	17
[5] Referral to other agencies	34	14	20
[1] Information	41	16	25
[6] Advice re immigration etc	29	18	11
[8] Legal representation	25	7	18

Other: accompany to appointment; advocacy; court support; translation/interpretation; income maintenance

4) On a yearly basis, how many clients do you have that require legal assistance?

	TOTAL	TORONTO	OUTSIDE TORONTO
1 -25	5	2	3
26-50	5	3	2
51-75	1	0	1
76-100	6	3	3
more than 100	35	15	20

5) What legal services are you unable to provide to your clients?

	TOTAL	TORONTO	OUTSIDE TORONTO
[6] determining nature of case	28% (15)	8	7
[1] prep. civil or criminal case	58% (31)	17	14
[3] filing documents	49% (26)	15	11
[7] accessing legal aid	19% (10)	7	3
[5] preparing documents	42% (22)	11	11
[4] Referral to pro bono lawyer	45% (24)	30% (7)	57% (17)
[9] Referral to legal clinic	11% (6)	5	1
[10]Referral to other agencies	4% (2)	2	0
[8] Information	17% (9)	6	3
[4] Advice re immigration etc	45% (24)	9	15
[2] Legal representation	53% (28)	16	12
Other: test cases			

6) If pro bono services were available, how many of your clients would you refer to pro bono lawyers on a yearly basis?

	TOTAL	TORONTO	OUTSIDE TORONTO
1-25	36% (19)	9	10
26-50	13% (7)	0	7
51-75	13% (7)	3	4
76-100	8% (4)	2	2
more than 100	26% (14)	8	6

7 In what areas of law could you use pro bono legal assistance?

	TOTAL	TORONTO	OUTSIDE TORONTO
Administrative/Social Welfare:			
[1] Cnd Immigration: Refugee	72% (38)	17	21
[7] Employment Standards	38% (20)	8	12
[4] Housing	43% (23)	13	10
[2] Human Rights	49% (26)	11	15
[5] Mental Health	42% (22)	10	12
[11]Municipal Law	17% (9)	3	6
[8] Pensions	34% (18)	6	12
[3] Police Complaints	45% (24)	10	14
[4] Residential Tenancy	43% (23)	13	10
[2] Social Assistance	49% (26)	16	10
[9] Unemployment Insurance	32% (17)	10	7
[6] Welfare	40% (21)	11	10
[7] Workers' Compensation	38% (20)	8	10
[10]Ability & Access	19% (10)	4	6
Business Law:			
[1] Charitable Status/Corps	34% (18)	6	12
[3] Commercial Tenancy	19% (10)	2	8
[4] Debt collection	9% (5)	3	2
[2] Director's Duties	26% (14)	2	12
[4] Incorporation	9% (5)	4	1
Labour & Employment Law:			
[5] Employment Contracts	32% (17)	5	12
[6] Employment Equity	28% (15)	4	11
[3] Employment Standards	36% (19)	6	13
[2] Human Rights-Workplace	45% (24)	11	13
[4] Occupational Health&Safety	34% (18)	6	12
[3] Pensions	36% (19)	5	14
[7] Unemployment Insurance	26% (14)	6	8
[3] Workers' Compensation	36% (19)	8	11
[1] Wrongful Dismissal	64% (34)	11	23
Civil Litigation:			
[8] Advocacy-Admin Tribunals	25% (13)	7	6
[10]Commercial Tenancy	19% (10)	2	8
[9] Debt Collections	21% (11)	4	7
[2] Human Rights	42% (22)	12	11
[3] Insurance Litigation	38% (20)	5	15
[7] Mental Health	26% (14)	7	7
[11]Aboriginal Law	13% (7)	1	6
[6] Residential Tenancy	28% (15)	8	7
[3] Slander & Libel	34% (18)	5	13
[4] Workers' Compensation	36% (19)	8	11
[1] Wrongful Dismissal	58% (31)	11	20

Aboriginal Law	13% (7)	0	7
Real Estate	13% (7)	2	5
Tax Law	13% (7)	2	5
Constitutional Law	9% (5)	0	5
Criminal Law	40% (21)	10	11
Mediation/ADR	28% (15)	5	10

IMPLEMENTATION OF FRENCH LANGUAGE POLICY

The Law Society adopted its French Language Services Policy in 1989. The policy was to be implemented across the organization and resources were added to the Communications and Public Affairs Department to facilitate this. Since the establishment of the Equity Initiatives Department, coordination of policy implementation has been included as part of the Equity and Diversity Action Plan implementation.

The enclosed report indicates progress on this matter and identifies actions required to ensure compliance on Convocation's policy directive. It must be noted, however, that a corporate approach on the translation of documents into French has not been established; nor have the associated costs been estimated.

Staff will report back to Committee on the development of a corporate approach to this matter, including an estimate of appropriate costs for translation of documents deemed essential for distribution in French.

IMPLEMENTATION OF THE LAW SOCIETY'S FRENCH LANGUAGE SERVICES POLICY

Introduction:

1. In 1989, Convocation adopted a French Language Services (FLS) Policy (Appendix "A"). The policy was to be implemented across the Law Society and resources were added to the Communications and Public Affairs Department to ensure quality translation and interpretation services were available in-house for this purpose.
2. Since the establishment of the Equity Initiatives Department, the coordination of the FLS policy has become one of the priorities of this Department. Included as part of the Corporate Equity and Diversity Action Plans, this involves working with AJEFO, the Communications and Public Affairs Department as well as all Law Society departments to ensure an appropriate implementation of the FLS policy.
3. A significant part of the FLS policy implementation concerns the capacity of the Law Society to respond to phone and over-the-counter inquiries as well as to provide the Bar Admissions Course and conduct investigatory, audit and discipline proceedings in French. This report provides an update on these matters and informs on a strategy to ensure all Law Society systems have an appropriate capacity to engage the French-speaking bar and public in Ontario.

The Law Society's Organizational Capacity:

4. Currently, the Law Society employs numerous staff who are fluent in English and French (Appendix "B"). Some of these staff are required to be bilingual because of their job function; others are not but can be called upon to assist communication if required. The positions that have a bilingual designation have been reviewed by the Human Resources Department and the line service department, eg., Client Services, which have determined the need for the position to be bilingual in order for the department to provide an effective service. Staff recruited to these positions are informed of this in the recruitment process and are both interviewed and tested to assess their capacity to fulfill the requirements of the position. Other staff are not tested as they are not required to provide services in French.

Issues Requiring Attention:

5. Given the Law Society's capacity to provide services in French, it is critical to ensure that service transfers and referrals are handled appropriately so that there is a seamless connection between first contact and subsequent service delivery. For example, if a French caller speaks to staff in Client Services Department, can that staff successfully transfer the caller to a bilingual staff person in the appropriate department?

6. The other issue is the capacity of the Law Society to provide written communications in French. Currently, a number of key documents are in French and English, eg., the Ontario Gazette, Law Society By-Laws, summaries of the *Bicentennial Report on Equity Issues in the Legal Profession* and other equity and diversity documents. While these documents are available in English and French, it is unclear to Law Society departments as to when a document should be translated, how such a document will be made available to the French-speaking bar and public, and how the costs for such translations will be covered. The Law Society's French Language Policy is clear regarding proactive intent but provides no guidelines for implementation. This has resulted in an uneven approach to policy implementation since it is not clear on how this should be done; nor are there funds designated corporately or within departments to ensure translation of documents.

Action Required:

7. To address the issues noted above, action is needed on two fronts:

- a) ensuring the Law Society has a system of French language service that is as seamless as possible. This will require ongoing departmental dialogue, updating on positions and attention to real and perceived gaps in service capacity; and
- b) ensuring the Law Society's departments and Convocation have clear guidelines regarding the translation of documents into French. This will require the development and approval by Convocation of such guidelines and any associated costs.

9. To develop strategies on these matters, a working group of Law Society staff with representatives of AJEFO has been struck. The Law Society staff will include representation from key departments, eg., Communications and Public Affairs, Client Services, Advisory and Compliance Services, Investigations, Education and Human Resources. This working group will report to the Committee in the Fall, 2000 on these two matters, including an assessment of financial support required to ensure translation of essential documents into French.

Professional Development and Competence Committee

Professional Development & Competence Committee
October 19, 2000

Report to Convocation

Purpose of Report: Decision Making
 Information

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

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on October 5, 2000. Committee members in attendance were Eleanore Cronk (Chair), Earl Cherniak (Vice-Chair), Stephen Bindman, Ron Cass, Dino DiGiuseppe, Greg Mulligan, Marilyn Pilkington, Judith Potter, and Bill Simpson. Staff in attendance were Janet Brooks, Lorne Giacomelli, Janine Miller, Felecia Smith, Sophia Sperdakos, and Ursula Stojanowicz.
2. The Committee is reporting on the following matters:

For Information

- Funding for Intermediate Phase of Canlii Virtual Law Library Project
- Outline of Current Processes in Practice Review
- Acceptance of Undertakings Not to Practice as an Alternative to Seeking Prohibition Orders in Requalification Matters
- Implementing the Phase III Report on Delivery of Services to County Law Libraries - an Update
- Report on Specialist Certification Matters Finalized by the Working Group of the Committee on October 5, 2000 and Approved in Committee on October 5, 2000

FOR INFORMATION

FUNDING FOR INTERMEDIATE PHASE OF CANLII - VIRTUAL LAW LIBRARY PROJECT

1. The Professional Development and Competence Committee was provided with a demonstration of the Canlii Virtual Law Library project, which is currently in development. Convocation was previously provided with this demonstration on September 21, 2000.
2. The project is entering its intermediate phase of development for which funding is sought.
3. Having considered the project and the uses to which Canlii can be put to enhance members' ability to maintain and improve their competence, the committee is of the view that Canlii is a worthwhile project whose development should continue to be supported by the Law Society.
4. The Committee unanimously supports the Canlii project and recommends that Convocation approve, as part of its budgetary process for 2001, funding in the amount of \$8 per member, for the intermediate phase of the project for the period that ends December 31, 2001.

OUTLINE OF CURRENT PROCESSES IN PRACTICE REVIEW

1. Section 42 of the *Law Society Act* provides that the Law Society may conduct a review of a member's practice, in accordance with the by-laws, for the purpose of determining whether a member is meeting standards of professional competence. By-law 24 provides, in section 5(1) that,

On the request of the Secretary, the chair or vice-chair of the Professional Development and Competence Committee shall direct that a review of a member's practice be conducted if the chair or the vice-chair to whom the Secretary has made the request is satisfied that there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence.

2. A number of processes have been put in place to enhance the practice review process. An outline of these processes is set out at Appendix A.

REQUALIFICATION PROGRAM: UNDERTAKINGS NOT TO PRACTICE

1. On September 21, 2000 Convocation determined that part of the requalification program should be placed in abeyance pending further study of the issues and in light of the competence initiative. This was subject to two exceptions:
 - a) Those members who have answered "no" or who answer "no" in the future with respect to their qualification status for a continuous period of five years or more, thereby acknowledging that they have not made substantial use of their legal skills on a regular basis, should continue to be subject to the current requalification requirements should they wish to engage in private practice; and
 - b) Those members who fall within section 5(2) of By-law 28, namely legal secretaries, paralegals, and law clerks, should continue to be subject to the current requalification requirements should they wish to engage in private practice.
2. Section 49.1 of the *Law Society Act* provides that,

an elected bencher appointed for the purpose by Convocation may make an order prohibiting a member from engaging in the private practice of law if it has been determined in accordance with the by-laws that the member has not made substantial use of legal skills on a regular basis for such continuous period of time as is specified by the by-laws.
3. There is no requirement set out in By-law 28 (Requalification) that the Society *must* seek a prohibition order. As such the Society has discretion whether to seek such an order.
4. Concerns have been raised by some members subject to the requalification requirements that the imposition of a prohibition order, by its very language, could create a negative impression about their status and competence. The Law Society has considered whether there is an alternate approach it could use to seeking a prohibition order, which would have substantially the same result as a prohibition order.
5. In a number of circumstances the Law Society accepts undertaking from members that they will not engage in certain kinds of activities. Accordingly, the Law Society may choose, in appropriate circumstances, not to seek a prohibition order where a member gives an undertaking not to engage in private practice without first successfully completing requalification requirements and complying with any conditions the Secretary may impose in accordance with By-law 28. Such an undertaking would have the same result as a prohibition order.¹

IMPLEMENTING THE PHASE III REPORT ON DELIVERY OF SERVICES TO COUNTY LAW LIBRARIES - AN UPDATE

1. On September 21, 2000 Convocation approved Dino DiGiuseppe as the Law Society's nominee to the Board of "LibraryCo." The CDLPA nominee to the Board is Michael Hennessy.

¹There is a difference in the method of enforcement of a prohibition order and an undertaking. If a member breaches a prohibition order, the Society can move under section 45 of the *Law Society Act* for an order suspending the member. It is not necessary for the Society to request authorization of a conduct application from the Proceedings Authorization Committee. If a member breaches an undertaking not to engage in the private practice of law, authorization of a conduct application would be required.

2. A number of steps are currently being undertaken in the process of implementing the Phase III report on the delivery of law library services to the counties. These include, but are not limited to,
 - a) selecting the balance of the board;
 - b) determining a name for the new organization;
 - c) incorporating the new organization;
 - d) developing the by-laws and unanimous shareholders' agreement; and
 - e) dealing with budget-related items.
3. It is anticipated that there will be a status report on these and other issues to Convocation in November, 2000.

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON OCTOBER 5, 2000 AND APPROVED IN COMMITTEE ON OCTOBER 5, 2000

1. The Committee is pleased to report final approval of the following lawyers' applications for certification, on the basis of the review and recommendation of the Certification Working Group.

Criminal Law: Paul Burstein (of Toronto)

Intellectual Property Law: John Kevin Carton (of Ottawa)
Elizabeth G. Elliott (of Ottawa)

2. The Committee is pleased to report final approval of the following lawyers' applications for recertification, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation: Donald S. Affleck (of Toronto)
Ronald E. Dimock (of Toronto)
D. Bruce Garrow (of Toronto)
Barbara L. Grossman (of Toronto)
Bruce M. Haines (of Toronto)
Barbara L. Legate (of London)
Michael T. J. McGoey (of Toronto)
Daniel I. Reisler (of Toronto)

Criminal Law: J. Douglas Crane (of Toronto)
Brian Heller (of Toronto)
Raymond J. Houlahan (of St. Catharines)

Immigration Law: Guidy Mamann (of Toronto)

3. The Committee is also please to announce that Stephen Bindman has been added to the Certification Working Group as the lay benchner to replace Seymour Epstein.

APPENDIX A: Practice Review Status Report

1. Caseload Information (January - September 2000)

Active Files (Jan. 2000).....109

Files Closed (Jan.- Sept. 2000).....60

Reason

Remedial Program Completed.....29

Change in Member Practising Status... ..5

Unwilling to participate..... .5

Lack of Progress/Low Risk..... 11

Disbarred..... 3

Not yet determined.....7

New Files Opened33

Source

Discipline.....10

Investigations.....4

Resolution & Compliance.....5

Complaints Review.....9

Audit.....3

Database Search.....2

Active Files (October 2000).....82

Current Status of Active Files

Pre-Authorization.....21

Initial Assessment.....7

Review Ongoing.....36

Remedial Agreement Being Monitored..18

Proposal Order Being Monitored.....0

Competence Hearing Authorized.....0

Competence Hearing Commenced.....0

2. Recent Developments

1. Process Redesign

A comprehensive assessment and overhaul of the practice review process was completed during the summer. The redesign was motivated by the need to:

- adapt processes to reflect the requirements of a statutorily-mandated program, and;
- define the objectives of the current program and establish the performance criteria with which to measure its effectiveness.

A number of critical success factors were identified, which influenced the direction of the process redesign:

Practice Review - Critical Success Factors:

- compliance with legislative scheme, administrative fairness and Law Society Upper Canada policy;
- cost efficiency - ability to do “cost/benefit analysis” on cases;
- time efficiency
 - ▶ cycle time - start to finish of review process;
 - ▶ duration between key process steps;
 - ▶ duration to complete remedial activities;
- ability to measure impact of remedial activities - a program that
 1. reduces complaints;
 2. encourages better quality of service to clients;
 3. will benefit the member;
- strike a balance between public/member interest;
- remedial objectives of practice review understood and accepted by members;
- avoid abuse of program (lack of cooperation, progress);
- where possible, effective integration with other regulatory processes (e.g. through monitoring, collaboration, member-driven approach).

A number of changes were made to the process to bring it into closer alignment with the critical success factors, including:

Initial Assessment

Once a practice review is authorized, the matter will be assigned to a staff lawyer who will meet with the member prior to any review, outline general program objectives and discuss the likely priorities of the review.

Remedial Agreements

Structured agreements using standard terms and required completion dates will clearly define what remedial actions the member must perform in order to successfully complete the program.

Completion Certificates

The successful completion of a practice review will be documented, with all of the completed remedial actions acknowledged.

An implementation plan and timetable is currently being developed. Specific changes will be phased in during the course of the implementation process.

2. Reviewer Training

Most practice reviews are conducted by private practitioners selected from a roster maintained by the Society. As a result of legislative changes that make participation in the program mandatory and provide for a competence hearing process, it has been necessary to provide enhanced and more standardized training to the reviewers. A consolidated training and reference manual has been developed. In June, a group of the more experienced reviewers served as both consultants and a pilot test group for the new training materials. Based on their feedback, the materials have been revised and a training session for all reviewers is scheduled for November.

3. Member-Driven Approach

Efforts to coordinate practice review with other regulatory activities, particularly the resolution of minor complaints, are being pursued in situations where the member’s involvement in practice review is not confidential (e.g. “ordered in” by the hearing Panel in a conduct proceeding) or where the member consents to this collaborative approach. This has resulted in the speedy resolution of outstanding complaints, assisted in the prioritization of remedial activities in practice review, and reduced the amount of time members spend dealing with Law Society issues.

4. Reinstatements

In cases where it is a condition of re-admission that a member participate in practice review, the responsibility for coordinating and ensuring compliance with all reinstatement conditions has been assumed by Practice Review staff.

Year 2001 Priorities

1. Complete implementation of process redesign.
2. Set qualitative (i.e. effectiveness) and quantitative (i.e. efficiency) performance criteria supported by Oracle database.
3. Strengthen practice review roster.
4. Integrate practice review into any new elements of the Competence Model ultimately approved by Convocation.
5. Pursue development of policies on cost issues related to practice review.

3

NOTICE OF MOTION Re: Proposed New Organization OBA

The following motion will be moved on Thursday, October 19th to be placed on the Agenda for Convocation on November 29th, 2000. The motion is moved by Gerald Swaye, Q.C. and seconded by Ross Murray, Q.C.

BE IT RESOLVED THAT the Law Society of Upper Canada collect the membership fees for Ontario Bar Association (OBA) as part of the practice fee commencing January 1, 2002 subject to the following conditions:

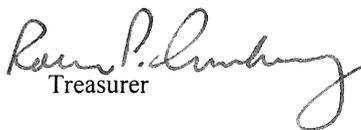
1. That the Law Society conduct a referendum of the legal profession in Ontario on their support for the creation of Ontario Bar Association (OBA) based on universal contribution, such referendum to be held on or before November 1, 2001.
2. That the Law Society agrees to conduct the referendum vote and tabulate the results to satisfy all members that the vote has been underwritten and conducted in an impartial manner.
3. That a simple majority of the members of the profession who vote in the referendum support the creation of Ontario Bar Association (OBA) based on universal contribution.

ITEMS NOT REACHED

Multi-Disciplinary Task Force Report
Request of the Merger Committee of CBAO, CDLPA and MTLA
Draft Minutes of Convocation (September 21st and 22nd, 2000)

CONVOCATION ROSE AT 5:30 P.M.

Confirmed in Convocation this 29th day of November, 2000.


Treasurer