MINUTES OF CONVOCATION

Friday, 25th June, 1999
9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Arnup, Backhouse, Bindman, Braithwaite, Banack, Boyd, Carey, R. Cass, Chahbar, Cherniak, Clarkson, Coffey, Copeland, Cronk, Crowe, Curtis, Diamond, E. Ducharme, T. Ducharme, Elliott, Epstein, Feinstein, Finkelstein, Furlong, Gottlieb, Hunter, Jarvis, Krishna, Lamont, Laskin, Lawrence, Legge, MacKenzie, Manes, Marrocco, Martin, Millar, Mulligan, Murphy, Murray, Ortved, Pilkington, Porter, Potter, Puccini, Robins, Ross, Ruby, Simpson, Swaye, Wardlaw, White, Wilson, Wright and Yachetti.

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The reporter was sworn.

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IN PUBLIC

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ELECTION OF TREASURER

The Secretary announced that pursuant to the provisions of By-Law 6, 1 nomination for the Office of Treasurer was received, that of Mr. Robert Armstrong. The nominators were Eleanore Cronk, Marshall Crowe, Nancy Backhouse and Clayton Ruby.

Mr. Armstrong was declared Treasurer.

Mr. Strosberg paid tribute to the Benchers and thanked the Law Society staff for their friendship and assistance including Carlos Sousa, Minh Luu, Vicky Galati, Shirley Ridley, Gina Cunha, Richard Tinsley, Marilyn McDonald Sheena Weir, Katherine Corrick, Elliot Spears, Laura Cohen, Wendy Johnson-Martin, Wendy Tysall, John Saso, Malcolm Heins, Patricia Gyulay and Michelle Strom, as well as the support received from his wife Cathy and his children.

The Treasurer thanked Mr. Strosberg for his contribution to the profession and the Law Society over the past two years.

Mr. Strosberg withdrew from Convocation.

The Treasurer welcomed the new lay Bencher Ms. Barbara Laskin to Convocation.

REPORT OF THE ACTING DIRECTOR OF EDUCATION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Acting Director of Education asks leave to report:

B. ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, June 25th, 1999:

Margo Brousseau	Bar Admission Course
Carla Kristine Cusinato	Bar Admission Course
Terence O'Duffy Doyle	Bar Admission Course
Patricia Ann MacDonald	Bar Admission Course
Paula Eleanore Alexander McGlaun	Bar Admission Course
John Phillip Thomas Middlebrook	Bar Admission Course
Debra Lynn Parkes	Bar Admission Course
Terence John Robinson	Bar Admission Course
Nicoletta Rosato	Bar Admission Course
Nicki Sharon Segal	Bar Admission Course
William Wallace Peter John Tooke	Bar Admission Course

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

B.1.4. The following candidate has completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now applies to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, June 25th, 1999:

Nenad Jeric	Province of British Columbia

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

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

Riccardo Adelino Leofanti	The State of New York - Skadden, Arps

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

ALL OF WHICH is respectfully submitted.

DATED this the 25th day of June, 1999

It was moved by Mr. Ruby, seconded by Ms. Cronk that the Report of the Acting Director of Education be adopted.

Carried

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Acting Director of Education were presented to the Treasurer and Convocation and were called to the Bar and the degree of Barrister-at-law was conferred upon each of them. They were then presented by Mr. Lamont to Justice Gerald F. Day to sign the Rolls and take the necessary oaths.

Margo Brousseau	Bar Admission Course
Charla Kristine Cusinato	Bar Admission Course
Terence O'Duffy Doyle	Bar Admission Course
Patricia Ann MacDonald	Bar Admission Course
Paula Eleanore Alexander McGlaun	Bar Admission Course
John Phillip Thomas Middlebrook	Bar Admission Course
Debra Lynn Parkes	Bar Admission Course
Terence John Robinson	Bar Admission Course
Nicoletta Rosato	Bar Admission Course
Nicki Sharon Segal	Bar Admission Course
William Wallace Peter John Tooke	Bar Admission Course
Nenad Jeric	Transfer, Province of British Columbia

TREASURER'S REMARKS

The Treasurer welcomed Ms. Marion Boyd, a former Attorney General of Ontario to Convocation.

The Treasurer listed a number of priorities to be addressed by Convocation during his term which include the regulation of Paralegals, the next phase of the Multi-Discipline Practice initiative, Legal Education, the future of the legal profession in terms of the kinds of legal services the public is going to expect, the plight of the sole practitioner and the role of the Law Society.

The Treasurer advised that Ms. Backhouse, Chair of the Admissions & Equity Committee was arranging a dinner in the Fall with the law school deans in order to form a partnership in the area of legal education.

In addition the Treasurer expressed concern about the image of the Law Society and the legal profession and hoped to improve it with the continued assistance of Benchers and staff.

DRAFT MINUTES OF CONVOCATION

The Secretary asked that the Draft Minutes of May 28th, 1999 be amended as follows:

- page 5 under the heading Report 2 of the Working Group on Multi-Discipline Partnerships - Motion to amend by Mr. Swaye should read:

  "Mr. Swaye moved an amendment that non-lawyer partners maintain the same amount of insurance coverage as is provided by LPIC to lawyer partners and any excess carried by the lawyer partners."

It was moved by Ms. Ross, seconded by Ms. Cronk that the Draft Minutes of May 28th, 1999 be adopted as amended.

Carried

THE DRAFT MINUTES AS AMENDED WERE ADOPTED

MOTIONS

Re: BY-LAW 6 [Treasurer] and By-Law 25 [Multi-Discipline Practices] - French Version

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS
made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 25, 1999

By-Law 6 [Treasurer] and By-Law 25 [Multi-Discipline Practices]

I MOVE that By-Law 6 and By-Law 25 be amended by adding to each by-law its French version as follows:

RÈGLEMENT ADMINISTRATIF N^{O} 6

LE TRÉSORIER

ÉLECTION DU TRÉSORIER

Date de l'élection
1. (1) L'élection du trésorier ou de la trésorière a lieu annuellement le jour de la réunion ordinaire du Conseil qui se tient en juin.

Premier article à l'ordre des travaux
(2) Malgré le paragraphe 6 (1) du Règlement administratif n° 8, l'élection du trésorier ou de la trésorière constitue le premier article à l'ordre des travaux de la réunion ordinaire du Conseil qui se tient en juin.

Mise en candidature
2. (1) Toute candidature à la charge de trésorier est proposée par deux conseillères ou conseillers habilités à voter au Conseil.

Mise en candidature par écrit

(2) La mise en candidature se fait par écrit et porte la signature du candidat ou de la candidate, indiquant son consentement à la mise en candidature, et celle des deux conseillères ou conseillers qui proposent la candidature.

Date de clôture des mises en candidature

(3) Sous réserve du paragraphe (4), la date de clôture des mises en candidature tombe le deuxième jeudi de mai à 17 heures.

Exception

(4) L'année où se tient l'élection des conseillers et des conseillères, en vertu de l'article 3 du Règlement administratif n° 5, la date de clôture des mises en candidature tombe le quatrième vendredi de mai à 17 heures.

Retrait d'une candidature

3. Les candidats et les candidates peuvent, avant 17 heures le vendredi précédant immédiatement le premier jour de la tenue du vote par anticipation, retirer leur candidature en remettant un avis écrit au ou à la secrétaire.

Élection sans concurrent

4. S'il n'existe qu'une seule candidature après la date limite des mises en candidature ou de retrait des candidatures, le ou la secrétaire déclare le candidat ou candidate en question élu à la charge de trésorier.

Scrutin

5. (1) Si, après la date limite du retrait des candidatures, au moins deux candidats ou candidates sont en lice, un scrutin a lieu afin d'élire le trésorier ou la trésorière.

Scrutin secret

(2) La trésorière ou le trésorier est élu au scrutin secret.

Candidature du trésorier

6. Le trésorier ou la trésorière qui se porte candidat à l'élection nomme l'un des conseillers qui assument la pr ésidence d'un comité permanent du Conseil et qui ne se portent pas candidats à l'élection et le charge d'exercer les attributions de la charge de trésorier conformément au présent règlement administratif.

Droit de vote

7. Les conseillères et conseillers habilités à voter au Conseil sont habilités à voter lors de l'élection du tr ésorier ou de la trésorière.

Annonce des candidatures

8. (1) Sous réserve du paragraphe (3), si l'élection du trésorier ou de la trésorière se fait par voie de scrutin, le ou la secrétaire annonce, au cours de la réunion ordinaire du Conseil qui se tient en mai, le nom des candidates et candidats en lice, ainsi que celui des conseillers et conseillè res qui les ont mis en candidature.

Liste des candidatures acheminée aux conseillers

(2) Sous réserve du paragraphe (3), le ou la secrétaire fait parvenir aux conseillères et conseillers habilités à voter à l'élection du trésorier ou de la trésorière, immédiatement après la réunion ordinaire du Conseil qui se tient en mai, le nom des candidats et candidates en lice.

Annonce des candidatures l'année de l'élection des conseillers

(3) L'année où se tient une élection des conseillers et conseillères, aux termes de l'article 3 du Règlement administratif n° 5, le ou la secrétaire fait parvenir aux conseillères ou conseillers habilités à voter à l 'élection du trésorier ou de la trésorière, dès la première occasion suivant la date de clôture des mises en candidature, la liste des candidats et candidates assortie du nom des conseillers et conseillères qui les ont mis en candidature.

Vote par anticipation

9. (1) Un vote par anticipation, débutant le deuxième jeudi de juin et se terminant le quatrième jeudi du même mois, a lieu afin de recueillir les voix des conseillers et des conseillères qui se trouvent dans l'impossibilité de voter le jour de l'élection du trésorier ou de la trésorière,

Méthodes de vote par anticipation

(2) Les conseillers et conseillères peuvent voter par anticipation de l'une ou l'autre des façons suivantes :

a) en se présentant au bureau du ou de la secrétaire du lundi au vendredi, entre 9 h et 17 h, pour recevoir et remplir un bulletin de vote conformément au paragraphe (3);

b) en demandant au ou à la secrétaire une trousse électorale et en la lui retournant par courrier régulier ou par tout autre moyen.

Comment remplir un bulletin de vote

(3) Les conseillers et les conseillères qui votent par anticipation remplissent le bulletin de vote selon les directives des paragraphes (4) ou (5).

Deux candidats en lice

(4) Si un maximum de deux personnes sont en lice, les conseillers et conseillères votent pour l'un des candidats en sélectionnant le nom du candidat ou de la candidate de leur choix.

Plus de deux candidats

(5) Si au moins trois personnes sont en lice, les conseillers ou conseillères indiquent leur choix par ordre de préférence à l'aide d'un chiffre indiqué à côté du nom de chaque candidat ou candidate.

Boîte de scrutin

(6) Les conseillers et les conseillères qui votent par anticipation en vertu de l'alinéa (2) a) plient leurs bulletins de vote, une fois remplis, de façon à ce que les noms des candidats et candidates ne soient pas visibles et, en présence du ou de la secrétaire, déposent les bulletins dans la boîte de scrutin.

Idem

(7) En cas de vote par anticipation en vertu de l'alinéa (2) a), le ou la secrétaire, après s'être conformé aux paragraphes 9.1 (3) et (4), retire l'enveloppe électorale de l'enveloppe-réponse et la dépose dans la boîte de scrutin.

Bulletins de vote ouverts lors de l'élection

(8) Il est interdit d'ouvrir les bulletins de vote par anticipation reçus avant le dépouillement du scrutin le jour de l'élection.

Procédures spéciales : vote par courrier

9.1 (1) Le ou la secrétaire envoie aux conseillers et conseillères qui lui en font la demande, conformément à l'alinéa 9 (2) b), une trousse électorale qui inclut un bulletin de vote, une enveloppe électorale et une enveloppe-réponse; cette dernière précise l'adresse de retour de la trousse électorale.

Idem

(2) Les conseillères et les conseillers qui décident de voter par anticipation en vertu de l'alinéa 9 (2) b)

a) remplissent, conformément au paragraphe 9 (3), le bulletin de vote qui leur a été acheminé par le ou la secr étaire;

b) après s'être conformés à l'alinéa a), déposent le bulletin dûment rempli dans l'enveloppe électorale et scellent cette dernière;

c) après s'être conformés à l'alinéa b), déposent l'enveloppe électorale dans l'enveloppe-réponse et scellent cette dernière;

d) après s'être conformés à l'alinéa c), signent l'enveloppe-réponse;

e) après s'être conformés à l'alinéa d), font parvenir au ou à la secr étaire, par courrier régulier ou par tout autre moyen, la trousse électorale qui contient le bulletin de vote, l'enveloppe électorale et l' enveloppe-réponse; le tout doit parvenir au ou à la secrétaire au plus tard le quatrième jeudi de juin à 17 heures.

Réception des enveloppes-réponses

(3) Sur réception de la trousse électorale à l'adresse indiquée, le ou la secrétaire vérifie si l'enveloppe-réponse porte la signature du conseiller ou de la conseillère à qui la trousse avait été acheminée.

Rejet de bulletins de vote

(4) La ou le secrétaire rejette la trousse électorale qu'il reçoit

a) à une adresse autre que celle indiquée;

b) qui ne porte pas la signature du conseiller ou de la conseillère à qui la trousse électorale avait été acheminée;

c) reçue après 17 heures le quatrième jeudi de juin.

Procédure de vote le jour de l'élection : premier tour de scrutin

10. (1) Le jour de l'élection, au premier tour de scrutin, tous les conseillers et conseillères habilités à voter lors de l'élection du trésorier ou de la trésorière et n'ayant pas voté par anticipation reçoivent un bulletin où apparaissent les noms des candidats et candidates en lice.

Deuxième tour de scrutin

(2) Le jour de l'élection, si la trésorière ou le trésorier n'est pas élu à la suite du dé compte des voix exprimées lors du vote par anticipation et du premier tour de scrutin, les conseillères et conseillers habilités à voter lors de l'élection et qui n'ont pas voté par anticipation participent alors au deuxième tour de scrutin et reçoivent un bulletin où apparaissent les noms des candidates et candidats encore en lice.

Application du par. (2) aux tours de scrutin subséquents

(3) Lors de l'élection du trésorier ou de la trésorière, le paragraphe (2) s'applique, avec les adaptations nécessaires, au deuxième tour de scrutin et aux tours de scrutin subséquents.

Comment remplir le bulletin

(4) Les conseillères et les conseillers ne votent que pour un seul candidat ou une seule candidate par bulletin de vote en sélectionnant le nom du candidat ou de la candidate de leur choix.

Boîte de scrutin

(5) Après avoir rempli leurs bulletins de vote, les conseillers et les conseillères les plient de façon à ce que les noms des candidates et des candidats ne soient pas visibles et, en présence du ou de la secrétaire, les déposent dans la boîte de scrutin.

Idem

(6) Si un conseiller ou une conseillère vote en vertu de l'article 10.1, le ou la secrétaire, après s'être conformé aux directives des paragraphes 10.1 (4) et (5), plie le bulletin de vote de façon à ce que les noms des candidates et candidats ne soient pas visibles et le dépose dans la boîte de scrutin.

Dépouillement

11. (1) Le jour de l'élection, après que toutes les conseillères et tous les conseillers habilités à voter à l'élection du trésorier ou de la trésorière ont voté ou refusé de voter, le ou la secrétaire, en l'absence de toutes les personnes sauf du trésorier ou de la trésorière,

a) ouvre la boîte de scrutin utilisée le jour de l'élection, en retire tous les bulletins, les ouvre et procède au décompte des voix exprimées par candidat;

b) ouvre la boîte de scrutin utilisée pour le vote par anticipation, en retire tous les bulletins et les enveloppes électorales, retire les bulletins des enveloppes électorales, les ouvre et procède au décompte des voix exprimées par candidat.

Dépouillement : vote par anticipation

(2) Si, lors du vote par anticipation, les candidats et candidates ont été classés par ordre de préférence, le ou la secré taire, lors du décompte des voix exprimées lors du vote par anticipation, conclut que le choix du conseiller ou de la conseillère s'est porté sur la candidate ou le candidat classé premier sur le bulletin de vote.

Application

(3) Le présent paragraphe s'applique au décompte des voix exprimées au premier tour de scrutin de l'élection du trésorier ou de la trésorière et, avec les adaptations nécessaires, au décompte des voix exprimées au second tour de scrutin et aux tours de scrutin subséquents jusqu'à l'élection.

Annonce des résultats : deux candidats

12. (1) Si deux noms seulement apparaissent sur les bulletins de vote, le ou la secrétaire, immédiatement après avoir procédé au d écompte de voix par candidat, annonce les résultats du scrutin au Conseil et déclare trésorier ou trésorière la personne qui a reçu le nombre le plus élevé de voix.

Annonce des résultats : au moins trois candidats

(2) Si au moins trois noms apparaissent sur les bulletins de vote et que le ou la secrétaire, après avoir procédé au décompte de voix, détermine qu'au moins un candidat ou une candidate a reçu plus de 50 pour cent des voix, il annonce les résultats du scrutin au Conseil et déclare trésorier ou trésorière la personne qui a reçu le nombre le plus élevé de voix.

Idem

(3) Si au moins trois noms apparaissent sur les bulletins de vote et que le ou la secrétaire, après avoir procédé au décompte de voix, détermine qu'aucun des candidats n'a reçu plus de 50 pour cent des voix, il en informe le Conseil et annonce la tenue d'un tour de scrutin suppl émentaire afin d'élire le trésorier ou la trésorière.

Tour de scrutin supplémentaire

(4) S'il est nécessaire de procéder à un autre tour de scrutin conformément au paragraphe (3), le ou la secrétaire annonce au Conseil le nom du candidat ou de la candidate qui a reçu le moins de voix et son nom est retiré du processus électoral.

Voix prépondérante

13. (1) Si au moins deux candidats ou candidates reçoivent un nombre égal de voix et qu'une voix supplémentaire donnerait la victoire à l'une de ces personnes, la trésorière ou le trésorier a voix prépondérante.

Idem

(2) Si au moins deux candidats ou candidates reçoivent un nombre égal de voix et qu'une voix supplémentaire permettrait à l'une ou à plusieurs de ces personnes de rester en lice pour un autre tour de scrutin, la trésorière ou le trésorier choisit au hasard la personne don't le nom sera retiré du processus électoral.

MANDAT

Entrée en fonction

14. (1) Lors de l'élection du trésorier ou de la trésorière conformément à l'article 1,

a) la conseillère ou le conseiller élu sans concurrent à la charge de trésorier entre en fonction lors de la réunion ordinaire du Conseil qui se tient en juin après l'élection;

b) la conseillère ou le conseiller élu à la charge de trésorier par voie de scrutin entre en fonction immé diatement après son élection.

Durée du mandat

(2) Sous réserve des règlements administratifs traitant de la destitution de la personne assumant la charge de trésorier, cette personne conserve son poste jusqu'à l'entrée en fonction de son successeur.

HONORAIRES

Droit du trésorier à recevoir des honoraires

15. La trésorière ou le trésorier est habilité à recevoir des honoraires du Barreau don't le montant est fixé par le Conseil.

VACANCE DE LA CHARGE DE TRÉSORIER

Vacance

16. En cas de démission, de destitution ou, pour quelque raison que ce soit, d'empêchement du trésorier ou de la trésorière au cours de son mandat, le Conseil élit, dès la première occasion, une conseillère ou un conseiller élu pour combler la vacance jusqu'à l'é lection du prochain trésorier ou de la prochaine trésorière, conformément à l'article 1.

TRÉSORIER INTÉRIMAIRE

Trésorier intérimaire

17. Si, pour quelque raison que ce soit, la trésorière ou le trésorier est temporairement incapable de remplir les attributions de sa charge, ou en cas de vacance conformément à l'article 16, la personne assumant la présidence du Comité des finances et de la vérification ou, en cas d'empêchement de sa part, la personne assumant la présidence du Comité d'admission et d'équité remplit les attributions de la charge de trésorier jusqu'à ce que se présente l'une des situations suivantes :

a) la trésorière ou le trésorier est en mesure de remplir les attributions de sa charge;

b) une trésorière ou un trésorier est élu conformément à l'article 16 ou 1.

RÈGLEMENT ADMINISTRATIF N° 25

LES CABINETS MULTIDISCIPLINAIRES

Définition : « membre »

1. (1) Pour l'application du présent règlement administratif, le terme « membre » s'entend en outre des membres réunis en sociétés en nom collectif.

Définition : «exercice du droit»

(2) Pour l'application du présent règlement administratif, l'expression « exercice du droit » s 'entend de l'offre de conseils juridiques relatifs aux lois du Canada, d'une province ou d'un territoire du Canada ou de la prestation de services juridiques.

Interdiction d'offrir les services de non-membres

2. Dans le cadre de l'exercice du droit, les membres ne doivent pas offrir à leur clientèle les services d'un non-membre, sauf conformément au présent règlement.

Prestation de services autorisés de non-membres

3. Les membres ne peuvent, dans le cadre de l'exercice du droit, offrir à leur clientèle que les services d'un non-membre qui exerce une profession ou un métier qui sert les intérêts de l'exercice du droit.

Société en nom collectif avec un non-membre

4. (1) Sous réserve des paragraphes (2) et 6 (1), les membres peuvent former une société en nom collectif ou une association sans personnalité morale avec un non-membre qui exerce une profession ou un métier qui sert les intérêts de l'exercice du droit, dans le but de leur permettre d'offrir à leur clientèle les services de la personne en question.

Idem

(2) Les membres s'abstiennent de former une société en nom collectif ou une association sans personnalité morale avec un non-membre qui exerce une profession ou un métier qui sert les intérêts de l'exercice du droit, à moins de répondre aux critères suivants :

1. Le non-membre est habilité à exercer la profession ou le métier qui sert les intérêts de l' exercice du droit.

2. Dans le cas de la formation d'une société en nom collectif commune, le non-membre est réputé de bonnes moeurs.

3. Le non-membre et le membre conviennent par écrit que le membre possède le contrôle effectif de l'exercice de la profession ou du métier du non-membre pour autant que celui-ci exerce sa profession ou son métier afin d'offrir des services aux clients et clientes de la société en nom collectif ou de l'association.

4. Le non-membre et le membre conviennent par écrit que, dans le cadre de la société en nom collectif ou de l 'association commune, le non-membre n'exerce sa profession ou son métier qu'en vue d'offrir des services aux clients et clientes de la société en nom collectif ou de l'association.

5. Le non-membre et le membre conviennent par écrit que, en dehors de la société en nom collectif ou de l'association commune, le non-membre est libre d'exercer sa profession ou son métier d'une manière indépendante et dans des locaux autres que ceux utilisés par la société ou l'association pour la conduite de ses affaires.

6. Le non-membre et le membre conviennent par écrit que, dans le cadre de l'exercice de sa profession ou de son métier et dans le contexte de la société en nom collectif ou de l'association commune, le non-membre se conforme à la Loi, aux règlements, au règlements administratifs, aux règles de pratique et de procédure, au Code de déontologie et aux politiques et directives du Barreau.

7. Dans le contexte de la formation de la société en nom collectif ou de l'association commune, le non-membre et le membre conviennent par écrit de se conformer aux règles, politiques et directives du Barreau sur les conflits d'intérêts relatifs aux relations avec les clients et clientes de la société en nom collectif qui sont également clients de la pratique indépendante du non-membre.

Interprétation : « contrôle effectif »

(3) Pour l'application du paragraphe (2), le membre détient le « contrôle effectif » de l'exercice de la profession ou du métier d'un non-membre si le membre peut, sans l'accord de cette personne, prendre les mesures nécessaires pour garantir que le membre se conforme à la Loi, aux règlements, aux règlements administratifs, aux règles de pratique et de procédure, au Code de déontologie et aux politiques et directives du Barreau.

Interprétation : « bonnes moeurs »

(4) Pour l'application du paragraphe (2), un non-membre est « de bonnes moeurs » si l'on peut raisonnablement s'attendre, d'après l'intégrité et le professionnalisme démontrés dans le cadre de l'exercice de sa profession ou de son métier et d'après sa réputation dans la communauté, à ce que le non-membre se conformera à la Loi, aux règlements, aux règlements administratifs, aux règles de pratique et de procédure, au Code de déontologie et aux politiques et directives du Barreau.

Responsabilité des actions de non-membres

5. Malgré toute entente entre un membre et un non-membre qui exerce une profession ou un métier qui sert les intérêts de l 'exercice du droit, le membre doit garantir que, dans le cadre de l'exercice de la profession ou du métier du non-membre dans le contexte de la société en nom collectif ou de l'association commune,

a) le non-membre exerce sa profession ou son métier avec un niveau approprié d'habiletés, de jugement et de comp étences;

b) le non-membre se conforme à la Loi, aux règlements, aux règlements administratifs, aux règles de pratique et de procédure, au Code de déontologie et aux politiques et directives du Barreau.

Demande en vue de former une société avec un non-membre

6. (1) Avant de former une société en nom collectif avec un non-membre qui exerce une profession ou un métier qui sert les intérêts de l'exercice du droit, les membres présentent une demande au Barreau en vue d'obtenir l'approbation de former la société.

Frais de dossier

(2) La demande prévue au paragraphe (1) est rédigée selon le Formulaire 25A et est accompagnée des frais de dossier don't le montant est fixé par le Conseil.

Contrat de société

7. Lors de la présentation de la demande visée à l'article 6, les membres déposent également au Barreau un exemplaire des parties du contrat ou des ententes qui régissent la société en nom collectif avec le non-membre qui sont exigées par le Barreau.

Étude de la demande

8. (1) Le ou la secrétaire étudie chaque demande déposée conformément à l'article 6 et approuve la création de la société entre le membre et le non-membre s'il est d'avis :

a) d'une part, que les conditions du paragraphe 4 (2) sont réunies;

b) d'autre part, que le membre a pris les dispositions nécessaires pour se conformer aux articles 5, 14, 15, 16 et 19.

Non-conformité aux exigences

(2) Le ou la secrétaire qui est d'avis que les exigences des alinéas (1) a) ou b) n'ont pas été satisfaites en avise le membre; celui-ci peut alors se conformer aux exigences ou, s'il est d'avis qu'il a répondu aux exigences, interjeter appel au comité de conseillers nommés conformément à l'article 10.

Délai d'appel

9. La ou le secrétaire est avisé par écrit de l'appel interjeté par le membre en vertu du paragraphe 8 (2) dans un délai de 30 jours suivant le jour où le ou la secrétaire a avisé le membre qu'il ne s'est pas conformé à une des exigences.

Comité des conseillers

10. (1) Le Conseil désigne un comité composé d'au moins trois conseillers ou conseillères pour étudier l'appel interjeté conformément au paragraphe 8 (2) ou 17 (2).

Durée du mandat

(2) Les conseillères ou conseillers nommés conformément au paragraphe (1) occupent leur poste jusqu'à la nomination de leurs successeurs.

Examen de l'appel : quorum

11. Trois conseillers ou conseillères qui sont membres du comité formé en vertu de l'article 10 forment quorum aux fins de l'examen de l'appel interjeté conformément au paragraphe 8 (2) ou 17 (2).

Procédure : application des règles de pratique et de procédure

12. (1) Les règles de pratique et de procédure s'appliquent, avec les adaptations nécessaires, à l' examen par le comité formé en vertu de l'article 10 d'un appel interjeté conformément au paragraphe 8 (2) comme si l'examen de l'appel constituait l'audition d'une demande déposée selon l'article 27 de la Loi.

Procédure : *Loi sur l'exercice de compétences légales*

(2) Lorsque les règles de pratique et de procédure ne couvrent pas une procédure en particulier, la *Loi sur l'exercice de compétences légales* s'applique à l'audition par le comité formé en vertu de l'article 10 d'un appel interjeté conformément au paragraphe 8 (2).

Décision du comité de conseillers

13. (1) Après avoir étudié l'appel interjeté conformément au paragraphe 8 (2), le comité formé en vertu de l'article 10

a) soit approuve, s'il est d'avis que les exigences ont été satisfaites, la création de la société en nom collectif avec le non-membre;

b) soit, s'il est d'avis que les exigences n'ont pas été satisfaites, avise le membre de ce fait et de l'impossibilité de former la société en nom collectif avec le non-membre.

Décision sans appel

(2) Toute décision rendue par le comité formé en vertu de l'article 10 dans le cadre d'un appel interjeté conformément au paragraphe 8 (2) est définitive.

Dépôt de documents : sociétés en nom collectif

14. (1) Les membres qui, en vertu du paragraphe 4 (1), se sont associés à un non-membre qui exerce une profession ou un métier qui sert les intérêts de l'exercice du droit déposent au Barreau, pour chaque année ou partie de celle-ci, un rapport sur les activités de la soci été.

Formulaire 25B

(2) Le rapport exigé au paragraphe (1) est rédigé selon le Formulaire 25B.

Dates d'échéance

(3) Le rapport exigé au paragraphe (1) est déposé au Barreau au plus tard le 31 janvier de l'année suivant immédiatement l'année entière ou partie de cette dernière pour laquelle le membre dépose un rapport.

Modifications à la société

15. (1) Les membres qui, conformément au paragraphe 4 (1), se sont associés à un non-membre qui exerce une profession ou un métier qui sert les intérêts de l'exercice du droit, avisent sans délai le ou la secrétaire des événements suivants :

a) le non-membre est renvoyé de la société;

b) le non-membre cesse ou, pour quelque raison que ce soit, est incapable d'exercer sa profession ou son métier;

c) la durée du contrat de société est échue, si l'association avait une durée fixe;

d) la société est dissoute conformément à la *Loi sur les sociétés en nom collectif*;

e) tout contrat de société a fait l'objet d'une modification.

Dissolution de la société en nom collectif

(2) Si l'un des événements mentionnés à l'alinéa (1) b), c) ou e) se produit, le ou la secrétaire peut exiger la dissolution de la société.

Modification au contrat de société

(3) Lorsqu'il avise le ou la secrétaire, conformément au paragraphe (1), qu'une modification vient changer les termes du contrat de société, le membre dépose auprès du ou de la secrétaire un exemplaire du contrat modifié.

Dissolution de la société : contravention à un règlement administratif

16. Si des membres qui, selon le paragraphe 4 (1), se sont associés à un non-membre qui exerce une profession ou un métier qui sert les intérêts de l'exercice du droit contreviennent à l'article 5, 14 ou 19, ou au paragraphe 15 (1) ou 15 (3), le ou la secrétaire peut exiger la dissolution de la société.

Avis de dissolution de société à un membre

17. (1) Le ou la secrétaire qui exige la dissolution d'une société en vertu du paragraphe 15 (2) ou de l'article 16 en avise le membre visé; sous réserve du paragraphe (2), le membre procède à la dissolution de la société.

Appel

(2) Si le ou la secrétaire exige la dissolution d'une société conformément à l'article 16, le membre visé peut interjeter appel de cette décision au comité de conseillers formé en vertu de l'article 10 dans la mesure où il croit qu'aucune contravention à l'article 5, 14 ou 19 et au paragraphe 15 (1) ou 15 (3) n'a eu lieu.

Délai d'appel

(3) La ou le secrétaire est avisé par écrit de l'appel interjeté par le membre en vertu du paragraphe (2) dans un délai de 30 jours suivant le jour où le ou la secrétaire a avisé le membre qu'il devait procéder à la dissolution de la société.

Procédure

(4) Les règles de pratique et de procédure s'appliquent, avec les adaptations nécessaires, à l'examen par le comité formé en vertu de l'article 10 d'un appel interjeté conformément au paragraphe (2) comme si l'examen constituait l'audition d'une demande déposée en vertu du paragraphe 34 (1) de la Loi.

Décision du comité des conseillers

(5) Suite à l'examen de l'appel interjeté conformément au paragraphe (2), le comité formé en vertu de l'article 10,

a) soit, s'il est d'avis qu'il n'y a eu aucune contravention à l'article 5, 14 ou 19 ou au paragraphe 15 (1) ou 15 (3), annule la décision relative à la dissolution de la société;

b) soit, s'il est d'avis qu'il y a eu contravention à l'article 5, 14 ou 19 ou au paragraphe 15 (1) ou 15 (3), prend l'une des mesures suivantes :

(i) il confirme la décision relative à la dissolution de la société;

(ii) il autorise le maintien de la société, sous réserve des modalités qu'il lui impose;

(iii) il prend toute autre mesure qu'il juge appropriée.

Décision sans appel

(6) Toute décision du comité formé en vertu de l'article 10 dans le cadre d'un appel interjeté conformément au paragraphe (2) est définitive.

Suspension

(7) La réception par le ou la secrétaire de l'avis d'appel par le membre contestant l'exigence de dissolution de société a pour effet de suspendre l'exigence de dissolution jusqu'au verdict de l'appel.

Association avec un non-membre : cabinet multidisciplinaire

18. (1) Les membres qui, en vertu du paragraphe 4 (1), se sont associés à un non-membre pour créer une association sans personnalité morale, si le non-membre exerce une profession ou un métier qui sert les intérêts de l'exercice du droit, peut faire réfé rence à l'association comme étant un cabinet multidisciplinaire.

Association avec un non-membre : cabinet ou société multidisciplinaire

(2) Les membres qui, en vertu du paragraphe 4 (1), se sont associés à un non-membre pour créer une société en nom collectif, si le non-membre exerce une profession ou un métier qui sert les intérêts de l'exercice du droit, peut faire référence à la soci été comme étant un cabinet ou une société multidisciplinaire.

Exigences relatives à l'assurance : membres

19. Les membres qui, en vertu du paragraphe 4 (1), se sont associés à un non-membre pour créer une société en nom collectif, si le non-membre exerce une profession ou un métier qui sert les intérêts de l'exercice du droit, doivent avoir une couverture d'assurance responsabilit é civile professionnelle pour le non-membre don't le montant est fixé par le Conseil.

Formulaire 25A

Demande en vue de former une société multidisciplinaire

DEMANDE EN VUE DE FORMER
UNE SOCIÉTÉ MULTIDISCIPLINAIRE

DEMANDE PRÉSENTÉE AU BARREAU

L'auteur/les auteurs de la demande don't le nom figure ci-dessous demandent l'autorisation de former une société en nom collectif avec le non-membre/les non-membres du Barreau suivants («non-membre/non-membres»).

1. L'AUTEUR DE LA DEMANDE

Nom : *(S'il s'agit de membres réunis en société en nom collectif, indiquer la raison sociale du cabinet et le nom de chaque associé/associée. Si la demande est présentée par plusieurs personnes, donner le nom de chacune d'elles.)*

Adresse : *(Indiquer l'adresse professionnelle de l'auteur de la demande ou, le cas échéant, de chaque auteur de la demande lors de la présentation de la demande. Si l'auteur ou l'un des auteurs de la demande pratique le droit à plusieurs endroits, indiquer chaque adresse.)*

Numéro de téléphone : *(Si l'auteur ou un des auteurs de la demande pratique le droit à plusieurs endroits, indiquer chaque numéro de téléphone.)*

Numéro de télécopieur: *(Si l'auteur ou un des auteurs de la demande pratique le droit à plusieurs endroits, indiquer chaque numéro de télécopieur.)*

Personne à contacter : *(S'il s'agit de membres réunis en société en nom collectif ou s'il y a plusieurs auteurs, indiquer le nom, l'adresse, les numéros de téléphone et de télécopieur de l'associ é/l'associée ou de l'auteur de la demande avec lequel le Barreau devrait communiquer et correspondre en ce qui concerne la demande.)*

Domaines de pratique : *(Indiquer les domaines du pratique de l'auteur ou des auteurs de la demande, y compris le temps consacré à chacun.)*

2. LE NON-MEMBRE

Nom(s): *(Donner le nom de chaque non-membre.)*

Profession ou métier exercé par le non-membre/les non-membres dans le cadre de la société en nom collectif formée avec l'auteur/les auteurs de la demande : *(Indiquer la profession ou le métier exerc é par chaque non-membre susmentionné.)*

Qualités requises :

Formation universitaire ou autre formation habilitant le non-membre à exercer sa profession ou son métier : *(Préciser la formation universitaire ou autre formation reçue par chaque non-membre susmentionné.)*

Nombre d'années d'exercice de la profession ou du métier :

Associations professionnelles :

(À remplir pour chaque non-membre susmentionné.)

Membre actuel de l'association professionnelle :

Nom de chaque association professionnelle don't le non-membre du Barreau est membre lors de la présentation de la demande :

Personne à contacter dans chaque association professionnelle don't le non-membre du Barreau est membre lors de la présentation de la demande (*par ex.*, adresse, numéros de téléphone et de télécopieur):

Année d'adhésion à chaque association professionnelle don't le non-membre du Barreau est membre lors de la présentation de la demande :

Les membres de ces associations professionnelles doivent-ils être «de bonnes moeurs» ? *(Donner le nom des associations professionnelles don't les membres doivent être «de bonnes moeurs».)*

Statut de membre dans chaque association professionnelle don't le non-membre du Barreau est membre lors de la présentation de la demande :

Sanctions disciplinaires prises éventuellement par chaque association professionnelle contre le non-membre du Barreau qui en est membre lors de la présentation de la demande, avec raisons à l'appui :

Ancien membre de l'association professionnelle :

Nom de chaque association professionnelle don't le non-membre du Barreau a cessé d'être membre lors de la présentation de la demande:

Personne à contacter dans chaque association professionnelle don't le non-membre du Barreau a cessé d'être membre lors de la présentation de la demande (*par ex.*, adresse, numéros de téléphone et de télécopieur) :

Période pendant laquelle le non-membre du Barreau a été membre de chaque association professionnelle, mais ne l'est plus lors de la présentation de la demande :

Raisons pour lesquelles le non-membre du Barreau a cessé d'être membre de l'association lors de la présentation de la demande :

Les membres de ces associations professionnelles doivent-ils être «de bonnes moeurs» ? *(Donner le nom des associations professionnelles don't les membres doivent être «de bonnes moeurs».)*

Sanctions disciplinaires prises éventuellement par chaque association professionnelle contre le non-membre du Barreau qui a cessé d'en être membre lors de la présentation de la demande, avec raisons à l'appui :

Exercice actuel de la profession ou du métier :

Lieu de travail : *(Indiquer le lieu - adresse et numéros de téléphone et de télécopieur - où chaque non-membre exerce présentement sa profession ou son m étier.)*

Exercice futur de la profession ou du métier:

Poursuite de ses activités professionnelles: *(Préciser si chaque non-membre continuera également d'exercer sa profession ou son métier en dehors de la société multidisciplinaire prévue.)*

Lieu de travail : *(Préciser le lieu où le non-membre continuera d'exercer sa profession ou son métier en dehors de la société multidisciplinaire prévue.)*

3. ATTESTATION DE L'AUTEUR DE LA DEMANDE QUE LE NON-MEMBRE EST DE BONNES MOEURS

J'ATTESTE/NOUS ATTESTONS que (*nom du non-membre/des non-membres*) est/sont de bonnes moeurs, pour les raisons suivantes :

1. ... .

2. ... .

Date : *(Signature de l'auteur/des auteurs de la demande)*

4. LA SOCIÉTÉ MULTIDISCIPLINAIRE PRÉVUE

Nom : *(Indiquer la raison sociale sous laquelle la société multidisciplinaire prévue exercera ses activités.)*

Adresse : *(Indiquer l'adresse à laquelle la société multidisciplinaire prévue exercera ses activités.)*

Numéro de téléphone : *(Indiquer le numéro de téléphone où la société multidisciplinaire prévue exercera ses activités.)*

Numéro de télécopieur : *(Indiquer le numéro de télécopieur où la soci été multidisciplinaire prévue exercera ses activités.)*

Nature des services offerts par le non-membre/les non-membres : *(Description détaillée de la nature des services offerts par chaque non-membre participant à la société multidisciplinaire prévue.)*

Questions don't doivent convenir l'auteur/les auteurs de la demande et le non-membre/les non-membres : *(Ne remplir cette section que si ces questions ne font pas partie du contrat de société en nom collectif.)*

Convention sur le contrôle effectif de l'exercice de la profession ou du métier du non-membre par l'auteur/les auteurs de la demande : *(Indiquer, pour chaque non-membre, si le non-membre et l'auteur/les auteurs de la demande ont convenu par écrit que l'auteur/les auteurs de la demande auront le contrôle effectif de l'exercice de la profession ou du métier du non-membre pour autant que celui-ci exerce sa profession ou son métier afin d'offrir des services aux clients de la société multidisciplinaire prévue. Joindre une copie de la convention écrite.)*

Convention sur la restriction de l'exercice de la profession ou du métier du non-membre à l'offre de services aux clients de la société multidisciplinaire prévue : *(Indiquer, pour chaque non-membre, si le non-membre et l'auteur/les auteurs de la demande ont convenu par écrit que, dans le cadre de la société en nom collectif, le non-membre n'exercera sa profession ou son métier qu'en vue d'offrir des services aux clients de la société multidisciplinaire prévue. Joindre une copie de la convention écrite.)*

Convention sur l'exercice indépendant de la profession ou du métier du non-membre en dehors de la société en nom collectif : *(Indiquer, pour chaque non-membre, si le non-membre et l'auteur/les auteurs de la demande ont convenu par écrit que, en dehors de la société multidisciplinaire prévue, le non-membre exercera sa profession ou son métier d'une manière indépendante et dans des locaux autres que ceux utilisés par la société multidisciplinaire prévue pour la conduite de ses affaires. Joindre une copie de la convention écrite.)*

Convention sur la conformité à la Loi, etc. : *(Indiquer, pour chaque non-membre, si le non-membre et l'auteur/les auteurs de la demande ont convenu par écrit que, dans le cadre de l'exercice de sa profession ou de son métier et dans le contexte de la société en nom collectif, le non-membre se conformera à la Loi, aux règlements, aux règlements administratifs, aux règles de pratique et de procédure, au Code de déontologie et aux politiques et directives du Barreau. Joindre une copie de la convention écrite.)*

Convention sur l'assujettissement aux règles, politiques et directives du Barreau sur les conflits d'intérêts : *(Indiquer, pour chaque non-membre, si le non-membre et l'auteur/les auteurs de la demande ont convenu par écrit que le non-membre sera assujetti aux règles, politiques et directives du Barreau sur les conflits d'intérêts relatifs aux relations avec les clients de la société multidisciplinaire prévue qui sont également clients de la pratique indépendante du non-membre. Joindre une copie de la convention écrite.)*

Dispositions prises par l'auteur/les auteurs de la demande en vue de respecter l'article 5 : *(Décrire les dispositions prises par l'auteur/les auteurs de la demande pour assurer le respect de l'article 5. S'il s'agit de membres réunis en société en nom collectif, donner le nom des associés qui veilleront au respect de l'article 5 par la société. Si la demande est présentée par plusieurs personnes, donner le nom des auteurs de la demande qui veilleront au respect de l'article 5 par les auteurs de la demande.)*

Dispositions prises par l'auteur/les auteurs de la demande en vue de respecter l'article 14 : *(Décrire les dispositions qui ont été prises.)*

Dispositions prises par l'auteur/les auteurs de la demande en vue de respecter l'article 15 : *(Décrire les dispositions qui ont été prises.)*

Dispositions prises par l'auteur/les auteurs de la demande en vue de respecter l'article 16 : *(Décrire les dispositions qui ont été prises.)*

Dispositions prises par l'auteur/les auteurs de la demande en vue de respecter l'article 19 : *(Décrire les dispositions qui ont été prises.)*

J'ATTESTE/NOUS ATTESTONS qu'autant que je sache/nous sachions, les renseignements fournis dans cette demande sont exacts.

Date : *(Signature de l'auteur/des auteurs de la demande)*

Formulaire 25B

Rapport de la société multidisciplinaire

RAPPORT DE LA SOCIÉTÉ MULTIDISCIPLINAIRE

ANNÉE *(PRÉCISER L'ANNÉE CIVILE)*
[OU PÉRIODE *(INDIQUER LA PÉRIODE DE RÉFÉRENCE SI CELLE-CI EST INFÉRIEURE À L'ANNÉE CIVILE)]*

1. LE CABINET

Raison sociale : *(Indiquer la raison sociale sous laquelle la société multidisciplinaire a conduit ses affaires pendant l'année (ou la période) de référence.)*

Adresse : *(Indiquer l'adresse à laquelle la société multidisciplinaire a conduit ses affaires pendant l'année (ou la période) de référence.)*

Numéro de téléphone : *(Indiquer le numéro de téléphone où la société multidisciplinaire a conduit ses affaires pendant l'année (ou la période) de référence.)*

Numéro de télécopieur: *(Indiquer le numéro de télécopieur où la soci été multidisciplinaire a conduit ses affaires pendant l'année (ou la période) de référence.)*

Dans ses communications écrites ou verbales avec l'extérieur, la société multidisciplinaire se présente-t-elle :

comme cabinet multidisciplinaire ? *(Oui ou non.)*

comme société multidisciplinaire ? *(Oui ou non.)*

Liste des communications dans le cadre desquelles la société multidisciplinaire se présente comme cabinet multidisciplinaire :

Liste des communications dans le cadre desquelles la société multidisciplinaire se présente comme société multidisciplinaire :

2. LES ASSOCIÉS AYANT QUALITÉ DE MEMBRES

Nombre d'associés ayant qualité de membres :

Nom des associés ayant qualité de membres :

3. LES ASSOCIÉS N'AYANT PAS QUALITÉ DE MEMBRES

Nombre d'associés n'ayant pas qualité de membres :

Nom des associés n'ayant pas qualité de membres :

Profession ou métier exercé par les associés n'ayant pas qualité de membres :

Nature des services offerts par les associés n'ayant pas qualité de membres :

Qualités requises des associés n'ayant pas qualité de membres :

Participation à des programmes de formation, professionnelle ou autre, tendant au renforcement des compétences : *(Indiquer, pour chaque associé/associée n'ayant pas qualité de membre, les programmes de formation auxquels l'associé/l'associée a participé pendant l'année (ou la période) de référence.)*

Associations professionnelles:

(À remplir pour chaque associé/associée n'ayant pas qualité de membre.)

Nom de chaque association professionnelle don't l'associé/l'associée était membre pendant l'année (ou la période) de référence :

Personne à contacter dans chaque association professionnelle don't l'associé/l'associée était membre pendant l'année (ou la période) de référence (*par ex.*, adresse, numéros de téléphone et de télécopieur) :

Année d'adhésion à chaque association professionnelle don't l'associé/l'associée était membre pendant l'année (ou la période) de référence :

Les membres de ces associations professionnelles don't l'associé/l'associée était membre pendant l'année (ou la période) de référence doivent-ils être «de bonnes moeurs» ? *(Donner le nom des associations professionnelles don't les membres doivent être «de bonnes moeurs».)*

Statut de membre dans chaque association professionnelle don't l'associé/l'associée était membre pendant l'année (ou la période) de référence à la fin de l'année (ou de la période) :

Sanctions disciplinaires prises éventuellement par chaque association professionnelle contre l'associé/l'associée qui en était membre pendant l'année (ou la période) de référence, avec raisons à l'appui :

Exercice de la profession ou du métier en dehors de la société multidisciplinaire :

Noms des associés n'ayant pas qualité de membres qui exercent leur profession ou leur métier en dehors de la société multidisciplinaire : *(Donner le nom de chaque associé/associée n'ayant pas qualité de membre qui, pendant l'année (ou la période) de référence, a exerc é sa profession ou son métier en dehors de la société multidisciplinaire.)*

Nature des services offerts par les associés n'ayant pas qualité de membres en dehors de la société multidisciplinaire : *(Indiquer, pour chaque associé/associée n 'ayant pas qualité de membre qui a exercé sa profession ou son métier en dehors de la société multidisciplinaire, la nature des services offerts à l'extérieur de la société pendant l'année (ou la période) de référence.)*

Lieu de travail : *(Indiquer le lieu de pratique indépendante - adresse et numéros de téléphone et de télécopieur - de chaque associé/associée n'ayant pas qualité de membre qui, pendant l'année (ou la période) de référence, a exercé sa profession ou son métier en dehors de la société multidisciplinaire.)*

4. LE RESPECT DU RÈGLEMENT ADMINISTRATIF N° 25

Dispositions prises pour veiller au respect de l'article 5 par les associés ayant qualité de membres : *(Décrire les dispositions qui ont été prises pendant l'année (ou la période) de référence. Donner le nom des associés ayant qualité de membres qui, pendant l'année (ou la période) de référence, ont veillé au respect de l'article 5 par les associés ayant qualité de membres.)*

Assurance responsabilité civile professionnelle des associés n'ayant pas qualité de membres :

(Si les associés n'ayant pas qualité de membres ne bénéficient pas d'une assurance collective, fournir les renseignements suivants à propos de chacun d'entre eux.)

Nom de la compagnie d 'assurance auprès de laquelle les associés n'ayant pas qualité de membres ont obtenu leur assurance responsabilité civile professionnelle :

Numéro de la police :

(Attestation à remplir par les associés ayant qualité de membres.)

J'ATTESTE/NOUS ATTESTONS qu'autant que je sache/nous sachions, les renseignements fournis dans ce rapport sont exacts.

Date : *(Signature de l'associé/des associés)*

.....

It was moved by Mr. Wilson, seconded by Ms. Puccini that By-Law 6 and By-Law 25 be amended by adding to each by-law its French version subject to an undertaking that they be referred to AEJFO.

Carried

Re: By-Law 27 [Failure to Complete or File Insurance Documents]

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS
made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 25, 1999

By-Law 27 [failure to complete or file insurance documents]

I MOVE that By-Law 27 [failure to complete or file insurance documents] be made as follows:

BY-LAW 27

FAILURE TO COMPLETE OR FILE INSURANCE DOCUMENTS

Definitions
1. In this By-Law,

"Society's insurance plan" has the same meaning given it in By-Law 16;

"insurance policy" means a policy for indemnity for professional liability issued in respect of a member by the insurer of the Society's insurance plan.

Period of default

2. For the purpose of clause 47 (1) (b) of the Act, the period of default for failure to complete or file with the Society, or with the insurer of the Society's insurance plan, any certificate, report or other document that a member is required to file under an insurance policy is 120 days after the day that the certificate, report or other document is required to be filed under the insurance policy.

RÈGLEMENT ADMINISTRATIF N° 27

L'OMISSION DE REMPLIR OU DE DÉPOSER LES DOCUMENTS D'ASSURANCE

Définitions

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

«régime d'assurance du Barreau» S'entend au sens du règlement administratif n° 16.

«police d'assurance» Police d'assurance responsabilité civile professionnelle délivrée pour les membres par l' assureur du régime d'assurance du Barreau.

Omission de déposer les documents : délai

2. Pour l'application de l'alinéa 47 (1) b) de la Loi, les membres sont tenus de remplir ou de déposer les certificats, rapports ou autres documents prévus par une police d'assurance auprès du Barreau ou de l'assureur du régime d'assurance du Barreau dans les 120 jours suivant la date à laquelle ces certificats, rapports ou autres documents doivent être déposés aux termes de la police d'assurance.

.....

It was moved by Mr. Wilson, seconded by Ms. Puccini that By-Law 27 be adopted and referred to AEJFO.

Carried

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IN CAMERA

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IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

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IN PUBLIC

.....

The Treasurer reported on the matters discussed in camera: (1) that a list of 5 individuals would be submitted to the Attorney General for appointment to the Board of Directors of Legal Aid Ontario, (2) his meeting with the Minister of Justice concerning funding for refugee legal services and (3) the creation of a committee to look into the development of 145 Queen.

REPORT OF THE ADMISSIONS & EQUITY COMMITTEE

Admissions & Equity Committee
June 25, 1999

Report to Convocation

Purpose of Report: Decision Making and Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions and Equity Committee ("The Committee") met on June 10, 1999. In attendance were the following members:

Nancy Backhouse	(Chair)
Heather Ross	(Vice-Chair)
Tom Carey	
Alan Lawrence	
Nora Angeles	(Lay bencher)
Sanda Rogers	(Law Dean's representative)
Guest benchers:	Ed Ducharme, Leonard Braithwaite, Judith Potter, Stephen Bindman (lay bencher)
Staff:	Bob Bernhardt, Mimi Hart, Ian Lebane, Maria Paez Victor, Kimberley Sikkonen, Charles Smith, Wendy Johnson Martin, Roman Woloszczuk

2. This report contains policy issues regarding the evaluation methodology and passing score for the Bar Admission Course, a proposal to establish an articling task force and student accommodation policies. It also contains an information item on a survey to second year law students.

I. POLICY ISSUES

EVALUATION METHODOLOGY

THE ISSUE

3. Convocation has determined what characteristics a competent lawyer must have. It has also determined that only those who have demonstrated that they are competent to practice law should be called to the bar. The staff of the Department of Education is responsible for implementing this policy. The issue that is raised is whether determination of the passing score is a policy matter or an implementation matter.

4. Prior to the adoption of Policy Governance in June 1996, Convocation approved the passing score for the BAC licensing examinations. On November 11, 1998, Convocation granted the Acting Director of Education the discretion to set the passing score for the 1998 bar admission course licensing examinations subject to the oversight of the Admissions and Equity Committee. This delegation of responsibility to staff for policy implementation was in accordance with the policy governance framework

5. Convocation is requested to consider how the passing score should be determined year by year. There are only two options:

   a. That qualified staff of the Department of Education be made responsible and accountable for implementing Convocation's educational policies based on the approved definition of the competent lawyer, including the setting of the passing score and its outcomes.
   b. To determine that Convocation should approve the passing score

BACKGROUND: DEVELOPMENT OF THE BAC PASSING SCORE

60% Passing Score

6. In 1994 and 1995, the BAC passing score was 60%. This arbitrarily determined passing score resulted in wide fluctuations for the BAC failure rate from one year to another. Furthermore, because it was hard to successfully determine the degree of difficulty of each examination, there were wide fluctuations from examination to examination.

Norm Referencing Adopted

7. After research by a subcommittee and consultation with an education expert, on June 28, 1996, Convocation approved a norm-referenced evaluation model to be used for marking the licencing examinations. This is a method widely accepted and used by many large licensing bodies that administer examinations to large numbers of students. (See Appendix A for a detailed description of this method.) Convocation approved the passing score at 1.5 standard deviations below the corrected mean.

French BAC Excepted

8. In May 1997, an advisory committee investigated the reasons why the 1996 French BAC grades were lower on average than the English grades. It concluded that the French BAC examinations should not be norm referenced because the number of French examinations was too small to be suited to norm referencing. As well, it was considered unfair to include them in the pool with the English BAC students since the examination conditions were substantially different.

9. On September 25, 1998, Convocation approved a composite evaluation method for grading the French BAC examinations. It consisted of the combined average of three passing scores: that of the English BAC examinations, a norm referenced French BAC score and a criterion based score established by evaluators. (See Appendix B for a detailed description of this method.)

Cap Placed on Norm Referenced Pass Standard

10. Questions were raised about norm referencing for the English BAC examinations because some of the passing scores were considered too high. The use of norm referencing is necessarily based on the average score of each group. Therefore, it resulted in variations in the passing score among different examinations. In 1998, for example, the passing score for some of the examinations were 66%, 71% and 75%. This contrasted with past examinations where the passing score would have been simply the arbitrarily chosen 60% for those same examinations.

11. On November 11, 1998 Convocation granted the Acting Director of Education the discretion to set the passing score for the 1998 bar admission course licensing examinations subject to the oversight of the Admissions and Equity Committee with the knowledge that the intent was to establish a cap of 65% for the English language BAC examinations norm referenced passing score. In other words, despite norm referencing, the passing score would not be allowed to go above 65%.

Aegrotat Pass Applied

12. On January 22, 1999, Convocation was informed that the Department of Education would be applying an aegrotat pass. The aegrotat pass meant that if a student failed one or two examinations, the failed scores are combined into a percentage and subtracted from a percentage of passing scores. If the result is no more than10% below the passing score, then those two examinations are considered as passed. (See Appendix C for a description of this method.) The aegrotat pass was implemented, in part, to counterbalance the absence of an appeal process at that time.

PROPOSALS FOR THE 1999 BAC, PHASE III

13. The Acting Director of Education is proposing the following changes for the 1999 Phase III BAC:

a. that the capped norm referenced passing score of 1998 be abandoned;
b. that the passing score be calculated using the borderline group method, which is a type of criterion-referenced evaluation methodology; and
c. that the aegrotat pass be abandoned.

Borderline Group Method

14. The borderline group method is one of several types of criterion referenced evaluation methods. The passing score is determined through the following steps:

a. Select the judges
b. Define adequate, inadequate, and "borderline" levels of the skills and knowledge tested.
c. Identify "borderline" test-takers.
d. Obtain the test scores of the "borderline" test takers.
e. Set the cutoff score at the median test score of the borderline group. This is the score that divides the group exactly in half, i.e., half the members above and half below. The median is used rather than the average because the median is much less affected by extremely high or extremely low scores.

15. This method is based on the idea that the passing score is the border between what is an acceptable level of demonstrated competence, and what falls below that level.

16. The main advantage of this method is that it is easy to use and to explain. The main disadvantage is that those on the borderline are usually a small percentage of all those who take examinations. The success of the method depends on the accuracy of the evaluators in identifying borderline examination papers, on how well their judgement is based on what the examination is measuring, and on the absence of significant differences among the many evaluators.

17. The borderline group method was partially used in marking the 1998 French BAC examinations. This was a useful experience in that it demonstrated that the method could be successfully applied to BAC examinations.

Angoff Method

18. The Angoff method requires evaluators to make judgments about the examination questions, not the examination answers. The evaluators examine each question and determine the probability that a borderline student would answer it correctly. For example, an evaluator can imagine a group of 100 borderline students and then determine how many of them will get the answer correct. If the answer is 60 test-takers will get it correct, .60 is the borderline student's expected score for that question. Totaling the probabilities for each question will give you the borderline student's expected score for the entire examination.

KEY QUESTION

19. The key question is whether determination of the passing score is a policy matter or an implementation matter.

THE COMMITTEE'S VIEW

20. The Committee unanimously agreed that the determination of the passing score is an implementation matter and that qualified staff of the Department of Education should be made responsible and accountable for implementing Convocation's educational policies based on the approved definition of the competent lawyer, including the setting of the passing scores and its outcomes.

REQUEST FOR CONVOCATION'S APPROVAL

21. Convocation is requested to consider how the passing score should be determined year by year. There are two options:

    a. That qualified staff of the Department of Education be made responsible and accountable for implementing Convocation's educational policies based on the approved definition of the competent lawyer, including the setting of the passing score and its outcomes.

    b. That Convocation approve the passing score

22. If Convocation is to continue to approve the passing score and evaluation methodology for the bar admission licensing examinations, Convocation is asked to set a passing score for the 1999 BAC licensing examinations using the borderline group method for essay and short answers examinations and the Angoff method for multiple-choice examinations that has been proposed by the Acting Director of Education.

ARTICLING TASK FORCE

23. On April 15, 1999, The Committee established a working group on articling. The mandate of the working group was to review the articling program to ensure that it addresses the recommendations in the *Proposals for Articling Reform Report (1990)* and the *Report of the Bar Admission Course Reform Task Force (1999).*

24. The working group requested that a task force be established in order to effectively fulfill the mandate.

THE COMMITTEE'S VIEW

25. The Committee is of the view that since articling is a crucial component of the bar admission course, a task force would be the most appropriate means to review articling and ascertain the means of enhancing it.

REQUEST FOR CONVOCATION'S APPROVAL

26. Convocation is requested to decide whether to approve or disapprove the establishment of an Articling Task Force.

27. If Convocation decides to establish an Articling Task Force, it is asked to approve the following terms and conditions:

    a. The mandate of the Articling Task Force is to review the articling program in order to improve access, equity and quality in the articling process and ensure that the recommendations regarding articling in the *Proposals for Articling Reform* (1990 and as amended) and the *Report of the Bar Admission Course Reform Task Force* (1999) are properly addressed.

    b. A draft report will be presented to Convocation by November, 1999 and a final report by April, 2000.

    c. A budget of $35,000 is recommended.

BAC STUDENT ACCOMMODATION POLICIES

THE ISSUE

28. For at least the last ten years, there has been a firm commitment at the Bar Admission Course to accommodate students' special needs as much as possible. There has been no written policy but an actual practice. However, since it has been carried out by the different Registrars on a case by case basis, it was inconsistent and the students did not know in advance what to expect. Recently, a working group of the Admissions and Equity Committee has systematically articulated the BAC accommodation policy. (See Appendix E)

29. Convocation is asked to formally approve a policy that embodies a long standing Law Society commitment to address the special needs of students.

BACKGROUND

30. During the last ten years, some BAC students required special accommodation due to a variety of special needs, disabilities and /or illnesses, or traumatic situations. The BAC application forms asked students if they had special needs that needed to be addressed.

31. The following are examples of special need situations that have been accommodated in the past:

a. Efforts were made to accommodate pregnant and lactating women, to the point that babies were allowed in class.
b. Students were allowed to write their examinations in a separate room due to conditions such as sleeping disorders, panic or stress.
c. Hearing impaired students have had special assistants.
d. Blind students were accommodated with the help of the Canadian National Institute of the Blind; when appropriate, materials were enlarged.
e. Extra time was also given to students who needed it to write examinations due to special circumstances, such as a death in the family, or a physical condition.

32. During the last two years, the need for further accommodation included students with language difficulties who were allowed extra time to write examinations. Under special circumstances, such as pregnancy or deaths, students were allowed to write examinations at a different date than the other students. The need for special accommodations increased during these last two years, from 15 students to 36 students.

33. The veracity of special needs is generally documented through physicians, psychiatrists or university officials.

KEY QUESTIONS

34. Does Convocation wish to approve a written student accommodation policy that up until now has been applied on a case by case basis at the BAC?

35. Does Convocation wish to change the direction of the student accommodation policy?

THE COMMITTEE'S VIEW

36. The Committee was of the unanimous opinion that the Law Society should clearly articulate its commitment to equity and its implication for BAC students in terms of the accommodation of differences that arise from the personal characteristics cited in the Human Rights Code.

REQUEST FOR CONVOCATION'S APPROVAL

37. Convocation is requested to approve the following student accommodation policy:

a. The requirements for the Bar Admission Course must be directly and logically connected to competence to practice law, and persons who wish to practice law in Ontario should not be effectively barred from qualifying because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance.

b. Assessing whether accommodation is required and, if so, what accommodation in each case may be appropriate is an ongoing responsibility of the staff of the Department of Education.

II INFORMATION

Survey on the Timing of the BAC Reform for Second Year Law Students

38. The Department of Education has sent a survey to second year law students in Ontario. The purpose of the survey is to obtain the students views on whether the new model of the bar admission course should be introduced in May 2000 or in May 2001. Please see Appendix D for a copy of the survey.

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

(1) Description of Norm Referencing. (Appendix A)

(2) Description of Setting the Passing Score for the French Language Examination. (Appendix B)

(3) Description of Aegrotat Pass. (Appendix C)

(4) Copy of Memorandum from Mr. Bob Bernhardt, Acting Director of Education to the Students Completing Year Two of an LL.B. in an Ontario Law School. (Appendix D)

(5) Copy of Draft #5 re: Policy and Procedures for the Accommodations of Students-at-law in the Bar Admission Course (BAC) - Department of Education. (Appendix E)

Re: BAC Passing Score and Evaluation Methodology

Ms. Backhouse presented the item re: BAC Passing Score and Evaluation Methodology for Convocation's consideration.

The Chair accepted an amendment to delete the words "including" and "and its outcomes" from paragraph 21 (a) .

It was moved by Ms. Backhouse, seconded by Mr. Millar that the recommended option set out in paragraph 21 (a) be approved as amended:

"That qualified staff of the Department of Education be made responsible and accountable for implementing Convocation's educational policies based on the approved definition of the competent lawyer by the setting of the passing score."

Carried

ROLL-CALL VOTE

Arnup	For
Backhouse	For
Banack	For
Bindman	For
Braithwaite	Against
Chahbar	For
Cherniak	Against
Clarkson	For
Coffey	For
Copeland	Abstain
Cronk	For
Crowe	Against
Curtis	For
Diamond	Abstain
E. Ducharme	For
Elliott	For
Epstein	For
Feinstein	For
Gottlieb	Against
Hunter	For
Krishna	Against
Laskin	Abstain
Legge	Against
MacKenzie	For
Manes	For
Marrocco	Against
Martin	Against
Millar	For
Mulligan	For
Ortved	Against
Pilkington	For
Porter	Against
Potter	For
Puccini	Abstain
Robins	For
Ross	For
Simpson	For
White	Against
Wilson	Against
Wright	Against

Vote 23 - 13, 4 Abstentions

Convocation took a recess at 11:15 a.m. and resumed at 11:30 a.m.

RESUMPTION OF ADMISSIONS & EQUITY COMMITTEE REPORT

Re: Proposal for an Articling Task Force

Ms. Backhouse presented the item in the Report dealing with the Proposal for an Articling Task Force.

It was moved by Ms. Curtis, seconded by Ms. Puccini that the terms of reference be amended to include the issue of whether articling should continue and whether it should continue as a mandatory program.

Carried

It was moved by Ms. Backhouse, seconded by Ms. Ross that an Articling Task Force be established headed by Mr. Carey and Ms. Ross and the mandate as amended include the following terms and conditions:

"a. The mandate of the Articling Task Force is to review the articling program in order to improve access, equity and quality in the articling process and ensure that the recommendations regarding articling in the Proposals for Articling Reform (1990 and as amended) and the Report of the Bar Admission Course Reform Task Force (1999) are properly addressed.

b. A draft report to be presented to Convocation by November 1999 and a final report by April, 2000.

c. A recommended budget of $35,000."

Carried

ELECTION OF BENCHER

WHEREAS Robert Armstrong, who was elected from the Province of Ontario "A" Region (the City of Toronto) on the basis of the votes cast by all electors, has been elected as Treasurer, to take office on June 25, 1999; and

WHEREAS upon being elected as Treasurer, Robert Armstrong became a bencher by virtue of that office and ceased to hold office as an elected bencher in accordance with subsection 25 (2) of the Law Society Act, thereby creating a vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (the City of Toronto) on the basis of the votes cast by all electors;

It was moved by Ms. Ross, seconded by Ms. Cronk that under the authority contained in By-Law 5, Todd Ducharme, having satisfied the requirements contained in subsection 50 (1), subsection 50 (2) and subsection 52 (1) of the By-Law, and having consented to the election in accordance with subsection 52 (2) of the By-Law, be elected by Convocation as bencher, to take office immediately after his election, to fill the vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (the City of Toronto) on the basis of the votes cast by all electors.

Carried

The Treasurer and Benchers welcomed Mr. Todd Ducharme to Convocation.

RESUMPTION OF THE ADMISSIONS & EQUITY COMMITTEE REPORT

Re: BAC Student Accommodation Policy

Ms. Backhouse presented the item in the Report re: BAC Student Accommodation Policy.

The Chair accepted an amendment to the recommended student accommodation policy by adding the word "opportunity" after the words "barred from" in paragraph 37 (a) on page 12 of the Report.

It was moved by Mr. Manes, seconded by Mr. Crowe that approval of the BAC Student Accommodation Policy be deferred until a paper is prepared setting out what constitutes accommodation.

Lost

ROLL-CALL VOTE

Arnup	Against
Backhouse	Against
Bindman	Against
Braithwaite	Against
Carey	Against
Chahbar	Against
Cherniak	Against
Clarkson	Against
Coffey	Against
Copeland	Against
Cronk	Against
Crowe	For
Curtis	Against
E. Ducharme	Against
T. Ducharme	Against
Elliott	Against
Epstein	Against
Feinstein	Against
Finkelstein	Against
Gottlieb	For
Hunter	Abstain
Krishna	Against
Laskin	Against
Legge	Against
MacKenzie	Against
Manes	For
Marrocco	Against
Martin	For
Millar	Against
Mulligan	Against
Murray	Against
Ortved	Against
Pilkington	Against
Porter	Against
Potter	Against
Puccini	Against
Robins	Against

Ross	Against
Simpson	Against
White	Against
Wilson	Against
Wright	Against

Vote 35 - 4, 1 Abstention

It was moved by Ms. Backhouse, seconded by Ms. Ross that the recommended student accommodation policy at paragraph 37 (a) on page 12 be adopted as amended:

"a. The requirements for the Bar Admission Course must be directly and logically connected to competence to practice law, and persons who wish to practice law in Ontario should not be effectively barred from the opportunity to qualify because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance;

Carried

It was moved by Ms. Backhouse, seconded by Ms. Ross that the staff of the Department of Education be given the responsibility of assessing whether accommodation is required and what accommodation would be appropriate.

Carried

ROLL-CALL VOTE

Arnup	For
Backhouse	For
Bindman	For
Braithwaite	For
Carey	For
Chahbar	For
Cherniak	For
Clarkson	For
Coffey	For
Copeland	For
Cronk	For
Crowe	Against
Curtis	For
E. Ducharme	For
T. Ducharme	For
Elliott	For
Epstein	For
Feinstein	For
Finkelstein	For
Gottlieb	Against
Krishna	For
Laskin	For
Legge	For
MacKenzie	For
Manes	For
Marrocco	For

Martin	For
Millar	For
Mulligan	For
Murray	For
Ortved	For
Pilkington	For
Porter	For
Potter	For
Puccini	For
Robins	For
Ross	For
Simpson	For
White	For
Wilson	For
Wright	For

Vote 32 - 2

REPORT OF THE FINANCE & AUDIT COMMITTEE

Re: Approval of Expenditure for the Establishment and Operation of the Discrimination/Harassment Ombudsperson

Mr. Krishna spoke to the item in the Report regarding the approval of the expenditure of $60,000 from the 1999 operating budget for the establishment and operation of the Discrimination/Harassment Ombudsperson.

Finance and Audit Committee
June 25, 1999

Report to Convocation

Purpose of Report: Decision Making, Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on June 10, 1999. In attendance were V. Krishna (Chair), A. Chahbar, P. Furlong, D. Murphy, C. Ruby, G. Swaye, J. Wardlaw, B. Wright.

Also attending were R. Armstrong, S. Epstein, L. Braithwaite, A. Feinstein (by phone).

Staff members in attendance were J. Saso, W. Tysall, K. Corrick, F. Grady, R. White, C. Smith, R Osborne.

1. The Committee has one matter that requires Convocation's approval:

   - The approval of $60,000 for the establishment and operations of the Discrimination/Harassment Ombudsperson for the remainder of 1999. Funding is available from the 1999 operating budget as follows: $30,000 from the ADR pilot project and $30,000 to be transferred from Benchers' new initiatives fund.

2. The attached memorandum from the Equity Advisor to the Treasurer's Equity Advisory Group indicates that operating expenses for Discrimination/Harassment Ombudsperson for the 2000 budget are estimated to be $225,000.

3. The Committee recommends that:

   - Convocation approve the expenditure of $60,000 from the 1999 operating budget for the establishment and operation of the Discrimination/Harassment Ombudsperson.

4. The Committee is reporting on the following matters:

   - the 2000 Budget process;
   - the annual membership fee structure;
   - a draft letter to the editor of the Globe and Mail, responding to a series of recent articles on the proposed new opera house.

- The Committee discussed the 2000 budget process, potential timetables and issues affecting the operations of the Law Society in 2000. The Committee will begin development of a budget proposal for Convocation with the official appointment of the Committee at June Convocation.

- The Committee discussed issues related to the annual membership fee structure. The issue was deferred pending implementation of the new membership database.

- The Committee discussed three recent articles published in the Globe and Mail on the proposed new opera house. The articles suggested the Law Society was opposed to the opera house.

  A Sub-Committee, appointed by the Finance and Audit Committee, comprised of A. Feinstein (Chair), A. Lawrence, B. Wright and J. Saso, instructed J. Saso and a consultant retained by the Law Society to attend a public meeting to obtain information on the impact of the proposed opera house development on Osgoode Hall and its surrounding gardens. The building, a designated heritage property, and its grounds are a Toronto landmark having been maintained by the Law Society for many years for the use and enjoyment of legal profession and the public alike. Consequently, the Law Society must keep abreast of any development which could adversely impact the building or property.

  At the public meeting, the Law Society sought answers to the following questions:

- How would the tower's shadow affect the Osgoode Hall gardens?
- How would the tower's shadow affect the build-up of snow on the roof of Osgoode Hall?
- How would the tower's shadow affect the interior lighting of Osgoode Hall and in particular its Great Library?
- How would the project affect traffic patterns along York St., Queen St., and University Ave.?
- Was an extension of the underground path to Osgoode Hall being considered as part of the project?

Law Society representatives attended the meeting at the request of the city's zoning officials to inform themselves about the project's impact and made no negative comments respecting the opera house. In fact, the Law Society supports the opera house concept as a welcome addition to Toronto's civic and cultural life.

The public meeting was most informative and the Law Society expressed its appreciation to the City and Cadillac Fairview for their co-operation in forwarding impact studies of the proposal, as per our request, for further study by our consultants.

- The Committee discussed the structural concerns about the Bencher area and authorized the Chief Financial Officer to proceed immediately with an architectural review of the area.

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

(1) Copy of a Memorandum from Mr. Charles Smith, Equity Advisor to the Treasurer's Equity Advisory Group dated May 31st, 1999 re: The Discrimination/Harassment Ombudsperson. (Pages 23 - 33)

(2) Copy of the Discrimination/Harassment Ombudsperson Summary of 1999 Budget Estimates and Summary of 2000 Budget Estimates.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

The Treasurer and Benchers had as their guests for luncheon The Hon. James Flaherty, Attorney General of Ontario, Ms. Andromache Karakatsanis, Deputy Minister, Stephen Rotstein, Special Assistant to the Attorney General, The Hon. Charles L. Dubin, Lorne Morphy, the Treasurer's wife Erica Armstrong and their sons Andrew, Christoper and David.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Backhouse, Bindman, Boyd, R. Cass, Chahbar, Cherniak, Clarkson, Coffey, Copeland, Cronk, Crowe, Curtis, E. Ducharme, T. Ducharme, Epstein, Elliott, Feinstein, Finkelstein, Gottlieb, Laskin, MacKenzie, Manes, Marrocco, Millar, Mulligan, Ortved, Porter, Potter, Puccini, Ross, Simpson, White, Wilson and Wright.

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IN PUBLIC

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REPORT OF THE TREASURER'S EQUITY ADVISORY GROUP

Ms. Backhouse presented the Report and recommendations for the implementation of the Discrimination/Harassment Ombudsperson and operating budget of $60,000.

TREASURER'S EQUITY ADVISORY GROUP

REPORT TO CONVOCATION
June 25, 1999

At its meeting on Thursday, June 10, 1999, the Treasurer's Equity Advisor Group (TEAG) endorsed and recommended on to Convocation the following reports from the Equity Advisor:

1) Report to Convocation on the Law Society of Upper Canada Discrimination and Harassment Ombudsperson; and

2) Report to Convocation on the Law Society of Upper Canada Response to the Canadian Bar Association Report "Racial Equity in the Canadian Legal Profession".

In addition, TEAG received an information report from the Equity Advisor entitled "Law Society of Upper Canada: Development of Equity and Diversity Plans - Discussion Document."

Law Society of Upper Canada Discrimination and Harassment Ombudsperson:

Submitted under separate cover, this report provides background information and options for consideration to establish the LSUC Discrimination/Harassment Ombudsperson. The recommended option will establish the Ombudsperson as both a service deliverer and coordinator of services. This will enable the Ombudsperson to respond directly to complainants as well as enlist the support of other skilled individuals to provide service when required, eg., when the Ombudsperson is unavailable or would otherwise have to travel to meet with a complainant.

The latter option is seen as both cost-effective and with the capacity to respond in a timely manner to complainants. It will also ensure that the skills required for this service are available across the Province, thereby, enlisting support from all regions and enabling service delivery at a local level.

In terms of financial implications, this report has been reviewed by the Finance and Audit Committee which is recommending budget approval by Convocation.

Law Society of Upper Canada Response to Canadian Bar Association " Racial Equality in the Canadian Legal Profession":

Submitted under separate cover, this report summarizes the final output of the CBA Working Group on Racial Equality which was established in 1995 to prepare a report with recommendations for the CBA's consideration. To be presented to the CBA's annual meeting in Edmonton this August, the report is divided into two parts: (i) the Working Group's report and recommendations; and (ii) a report with recommendations prepared by Professor Joanne St. Lewis, co-chair of the Working Group.

Both reports address several key elements of the legal profession - law school, bar admissions courses, articling and employment, the circumstances of Aboriginal peoples, access to justice and prospects for change. Each set of recommendations are aimed at the enabling the CBA to take action to eradicate racism in the legal profession and to promote racial equality. In this context, there are a number of recommendations directed to law societies across the country.

Having reviewed the CBA report, this submission to Convocation recommends endorsing the CBA report in principle and responds to the specific CBA recommendations addressing law societies.

Law Society of Upper Canada: Development of Equity and Diversity Plans - Discussion Document:

Submitted for information, this report identifies the process being implemented by all LSUC departments in compliance with the Bicentennial Report on Equity Issues in the Legal Profession nd Executive Limitations entitled "Bencher-Staff Relations: Delegation to the Chief Executive Officer", particularly respecting the Ends Policy "Discrimination, Equity & Diversity in the Legal Profession".

The report provides background information on each department and lists the challenges they fact in integrating equity and diversity into their line of business. The report also provides a matrix analysis identifying those matters which departments have in common. In addition, a process for the development of equity and diversity plans is provided outlining the steps necessary to bring forward fully developed plans for Convocation consideration as part of the year 2000 budget.

In terms of process, the report identifies the need for both internal and external consultations, i.e., with all LSUC staff and with members of the profession as well as the public. These consultations will be initiated over the summer and members of Convocation are invited to attend. Further, education and training on how to develop equity plans will be initiated over the summer as well.

In terms of specific plans, it is anticipated that a multi-year planning and budgeting process will be presented to Convocation. This will contain recommendations on both accountability mechanisms and time frames for evaluation.

Report on the Establishment of the
Law Society of Upper Canada
Discrimination/Harassment Ombudsperson

Report to Convocation

Table of Contents

Equity Initiatives

MEMORANDUM

To: Treasurer's Equity Advisory Group Date: May 31, 1999

From: Charles Smith
Equity Advisor

Re: The Discrimination/Harassment Ombudsperson

Introduction:

1. In October, 1998, The Law Society of Upper Canada approved the establishment of a Discrimination/Harassment Ombudsperson to provide services aimed at enabling and supporting individuals who perceive they have been discriminated against or harassed by a member of the legal profession. The grounds of discrimination and harassment are defined and enumerated within the LSUC's current Rules of Professional Conduct, Rules 27 and 28, addressing 'Sexual Harassment' and 'Non-Discrimination'.

2. Supported by the LSUC's Practice Advisory Services, the recruitment process for the Ombudsperson was initiated by the Equity Advisor in December, 1998 and a subcommittee of the Treasurer's Equity Advisory Group (TEAG) was struck to support the Equity Advisor in selecting this position.

Background:

3. The recommendation to establish the Discrimination/Harassment Ombudsperson was included in the Report on the Alternative Dispute Resolution (ADR) Program. Put forward to the LSUC by the Advocate Society, the Ombudsperson's proposal within the ADR report provided both an initial definition of the Discrimination/Harassment Ombudsperson and information on such programs in other law societies, notably British Columbia and Nova Scotia. In essence, the proposal called for the establishment of an "... ombudsperson ... to ensure that members of the public and members of the legal profession who experience harassment or discrimination either in the workplace or as a result of contact with lawyers ... have access to the assistance of a knowledgeable resource person who can offer information and advice ..."

4. With these elements as starting points, the Equity Advisor and TEAG initiated activities to recruit the Discrimination/Harassment Ombudsperson. An advertisement for the position was placed in the national daily media, the Ontario Reports and circulated to approximately 2,000 community-based agencies dealing with the issues affecting Francophones, women, people with disabilities, racialized communities, lesbians, gays, bisexuals, transgenders, immigrants, refugees and Aboriginal peoples. In addition, a detailed call for proposals was randomly circulated to 300 lawyers who have experience in employment law, particularly in human rights, mediation and arbitration.

5. In response, 86 submission were received and short-listed using the criteria established by the Equity Advisor in consultation with the TEAG subcommittee. From the 86 submissions, 10 proposals were selected for interviews which took place during the week of May 31.

6. Several reports on the selection process have been submitted to TEAG and, when appropriate, to Convocation as well as the Task Force on the Rules of Professional Conduct. These reports include:

- Selection of Discrimination/Harassment Ombudsperson, December 14, 1999;
- Recruitment of Discrimination/Harassment Ombudsperson, February 1 and 25, 1999;
- Selection of Discrimination/Harassment Ombudsperson, May 12, 1999

Scope of Services:

7. As a follow-up to the initial points addressed in the Advocate's Society proposal, several areas have been defined and clarified by the Equity Advisor in reports to TEAG and to Convocation. In particular, one report (source) has addressed the need to change the Rules of Professional Conduct in order to enable the Discrimination. Harassment Ombudsperson to provide confidentiality in working with a complainant. In essence, this will ensure that the Ombudsperson cannot be called to testify in any LSUC proceedings without the written agreement of the complainant. Presented to the Task Force on the Rules of Professional Conduct, the appropriate Rule has been redrafted (Section 6.01 (3) p. 83) and now reads: "The (Law) Society also recognizes that communications with the ombudsperson appointed to assist in resolving complaints of discrimination or harassment against lawyers must generally remain confidential. Therefore, the ombudsperson will not be called by the Society or by any investigative committee to testify at any conduct, capacity or competence hearing without the consent of the person from whom the information was received. Notwithstanding the above, a lawyer serving as ombudsperson has an ethical obligation to report to the Society upon learning that a lawyer is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice."

8. The report to TEAG of February 1, 1999 discusses the potential sources of complaints which the Ombudsperson can legitimately address. This report notes that it is important for the Ombudsperson to be able to take complaints from anyone who has interaction with a LSUC member. In this context, the Ombudsperson can support complainants who are consumers of legal services and staff in law offices as well as other lawyers and articling students. This was originally stated in the proposal adopted by Convocation and included in the ADR report.

9. Clarifying the scope of service is integral to keeping policy consistency with the Ombudsperson's proposal adopted by Convocation and the Rules of Professional Conduct as they now stand, particularly Rules 27 and 28. This approach also anticipates passage of the proposed amendments to the Rules of Professional Conduct which provide a critical commentary on the Rule for Non-Discrimination (Section 5.04, pp. 77-81).

10. The implication this has for both advertising the availability of the Ombudsperson's services and resulting case load thereby need appropriate consideration in establishing this program.

Policy and Program Issues:

11. The Ombudsperson has been established essentially as a 'safe counsel', i.e., an office where individuals who believe they have been either discriminated against or harassed by a lawyer can take their concerns and receive advice on how to address them. In this context, the Ombudsperson is not empowered to mediate, investigate or educate members of the profession regarding matters brought to his/her attention. Rather, the Ombudsperson is set-up to:

- support complainants to disclose allegations of discrimination or harassment;
- enable such complainants to take direct action to resolve their complaints;
- 'coach' complainants who take action to resolve their complaints; and
- provide semi-annual and annual reports to the LSUC through the Equity Advisor.

12. To do this, it is anticipated that the Ombudsperson will provide support counselling to complainants. The Ombudsperson, therefore, assumes the role of an active listener, encouraging complainants to discuss sensitive matters, identifying options for action by the complainant and 'coaching' the complainant to take such action. The semi-annual reports will provide statistical data on caseload and trends, anonymous anecdotal information and specific recommendations for the LSUC to consider in order to address harassment and discrimination within the legal profession.

13. Based on this, there are a number of policy and program issues which require consideration in establishing the Discrimination/Harassment Ombudsperson. These relate to:

a) Public Education. The establishment of the Ombudsperson in Ontario will require educating LSUC members, articling students, staff in law offices and consumers of legal service about its role, functions, the grounds under which the Ombudsperson can act and the range of consequences which can result from the discharge of the Ombudsperson's services;

b) Mediation or Investigation. Given the mandate of the Ombudsperson, it is essential that s/he have contemporary knowledge regarding programs and services that a complainant can go to in order to take action on discrimination/harassment complaints. These can include civil actions, lodging human rights complaints or having a matter mediated through the ADR program;

c) Discipline. The Ombudsperson will need to know the particulars regarding LSUC's disciplinary procedures, particularly related to sexual harassment and discrimination; and

d) Education of Respondent(s) and Respondent(s) Firms. In the event a complainant supported by the Ombudsperson proceeds through a course of action which, following deliberation, is substantiated by either the courts, a human rights investigator/tribunal or a LSUC disciplinary hearing, there may arise the opportunity for providing education and training to both the respondent and the respondent's firm.

14. Based on the Ombudsperson's mandate, there is clearly a need for working relations between the LSUC and the Ombudsperson. This is particularly required because the items enumerated above fall outside the Ombudsperson's mandate and must be assumed if the program is going to succeed. While operating at arm's length, the Ombudsperson initiative is the responsibility of the LSUC and forms an integral part of the LSUC's equity initiatives as well as regulatory function. It is therefore incumbent on the LSUC to assume responsibility for these items and to initiate appropriate actions in consultation with the Ombudsperson. This leadership should continue to be coordinated by the Equity Advisor and supported by staff in the Regulatory Division.

Initiating the Ombudsperson Program:

15. In preparing to initiate the Ombudsperson's program, there are a number of program options which require consideration. These are:

a) Option #1: A stand alone model. This will establish the Ombudsperson as a stand alone entity required to respond to all calls for service delivery across Ontario. The benefits of this model are that there will be consistency in service delivery and few issues regarding confidentiality since all information will be in one office. The deficiencies of this model are that the Ombudsperson may need to travel considerable distances and a number of times, thereby, limiting her/his ability to provide immediate response to a complainant and incurring significant travel expenses. It is also possible that a stand alone office can receive a high volume of complaints and be unable to respond to all immediately, thereby, creating a waiting period for response and a backlogged system;

b) Option #2: A service delivery and coordination model. This will establish the Ombudsperson both as a service deliverer and coordinator. In this context, the Ombudsperson will deliver direct services within the geographic area in which s/he is located and, after having developed and trained a roster of skilled individuals, the Ombudsperson will contract others to handle complaints for which s/he would have to travel. The benefits of this approach are that it reduces travel expenses considerably, ensures the set of skills required to deliver the service are in plentiful supply and cuts down on the response time to a complainant. The deficiencies of this model are that issues regarding confidentiality need to be dealt with and communication between the Ombudsperson and contracted support may not always be immediate.

16. In reviewing these two options, the latter is preferred since its benefits are cost-effective and desirable in terms of providing immediate response to complainants and, further, since its deficiencies can be managed through learning and adapting the experiences of similar services, eg., the Ombudsman of Ontario or the Ontario Human Rights Commission. Examination of these offices can also provide insight into the use of technology to both coordinate services and ensure confidentiality. Issues regarding confidentiality can also be addressed by the Ombudsperson directly in handling the primary intake for any complaint. This would require the Ombudsperson to identify to a complainant the option of having some one geographically closer handle the matter. Any such referral may be done only with the consent of the complainant.

17. The preferred model for the Discrimination/Harassment Ombudsperson's program is similar to the LSUC ADR program. In this context, the Ombudsperson will act both as a service provider and coordinator for service delivery across Ontario. To do this, the Ombudsperson will develop a roster of individuals to deliver services across the province. This will involve recruiting and training these individuals to assume this responsibility.

18. Based on this model, it is anticipated that the process to announce the availability of the Ombudsperson's services will begin during the summer. To facilitate this, the Equity Advisor will meet with the selected Ombudsperson to develop plans for program start-up. As discussed above, the program requires leadership from the LSUC since it is essential that the LSUC publicize the program and promote it within the profession and within the broader community. It is also essential that the LSUC make its own staff aware of the availability of the service and its implications for other LSUC program in the regulatory area, either ADR or disciplinary.

19. In terms of promotional activities, it is anticipated that the LSUC will:

- prepare promotional materials (e.g. brochures, media releases, fax and Internet notices);
- take out ads in the daily and community media to advise of the availability of the services;
- convene information sessions in each of the nine provincial districts and in all Bar Admission Course locations to announce the program. It is anticipated that this be done with Benchers from each area;
- initiate a mail-out to all members of the profession regarding the Ombudsperson's services and related information on discrimination and harassment; and
- request that all law offices keep information brochures about the Ombudsperson available for consumers of legal services to review.

20. Regarding relationships with LSUC functions, the Equity Advisor will convene meetings between the selected Ombudsperson and LSUC staff in the regulatory area to ensure accurate transmission of information and procedures relating to ADR or discipline actions.

21. In terms of providing opportunities for education of members of the legal profession on equity and diversity issues, the Equity Advisor will submit a proposal on how to approach this later in this year.

Assessment and Evaluation:

22. Since the Ombudsperson has been established as a pilot program, the issue of assessment and evaluation is essential to determining its effectiveness and ongoing relevance to eliminating harassment and discrimination within the legal profession. To begin the process of assessment and evaluation, the Equity Advisor will discuss its importance with the selected Ombudsperson and determine the essential requirements for starting up the services, announcing them and receiving clients. Based on these three components, assessment and evaluation criteria will be submitted to Convocation through TEAG in the fall of this year.

23. The assessment and evaluation criteria will essentially anticipate and set-out to weigh the success of establishing the Ombudsperson's services. This will likely focus on establishing and delivering promotional activities, office administration and limited service delivery. In this context, the first year's evaluation will measure both the initial delivery of services as well as the commitment of LSUC in supporting this function, particularly since LSUC will be responsible for leading the promotional activities and supporting the office set-up.

24. In addition, the Ombudsperson is required to submit a semi-annual and annual report to LSUC through the Equity Advisor. These will be provided to the appropriate standing committees and Convocation for consideration.

Budget Requirements:

25. In setting up the Discrimination/Harassment Ombudsperson's function, it is essential to aim to provide effective services province-wide and to ensure equitable access for potential users, i.e., lawyers, articling students, consumers of legal services and staff of law firms.

To properly establish these services, several aspects of the program require financial resources. These are listed below along with budget estimates:

a) Office set-up. This will require establishing a 1-800 phone number, voice mail, TTY, fax, photo-copier, computer(s), mailing address, Internet and e-mail capacity. It is assumed that these are one-time only costs which may require maintenance from time-to-time. Budget estimate $10,000.00;

b) Publicity. This will require preparation of brochures, mailings, news releases, advertisements in daily and local media and travel expenses. It is assumed that much of these costs will be up-front and supplementary efforts required to ensure ongoing notification of these services. Travel expenses will allow for the Ombudsperson and the Equity Advisor to promote the program throughout the province. Budget estimate $50,000.00;

c) Training. It is anticipated that the Ombudsperson's services will need to be available across the province. To provide for this, either the Ombudsperson will need to incur travel expenses to respond to complaints outside of her/his office location or the Ombuds program can engage skilled individuals in each region to assist the Ombudsperson in responding to complainants. The latter option is both cost-effective and has the potential to provide immediate response to complainants who are not located in the same area as the Ombudsperson's office. To put this into place, the Ombudsperson will need to identify available skills from across Ontario as well as recruit and train them. This will require advertising, curriculum design and travel expenses. Budget estimate $40,000;

d) Coordination of Service and Fees for Service. The Ombudsperson will both deliver services directly as well as coordinate the delivery of services by a roster of skilled individuals across Ontario who are capable of providing support to the Ombudsperson. This will require fees for the Ombudsperson as well as nominal fees for individuals retained to support the Ombudsperson. In examining the cost for direct service delivery, a review has been conducted of costs incurred by the Ombudspersons' in British Columbia and Alberta on a case-by-case basis. In this context, the budget estimate for LSUC is $125,000;

26. Based on the above budgetary requirements, it is estimated that the program budget for a full year's operation will be $225,000.00. In terms of the remainder of 1999, the amount of $60,000.00 is required to facilitate program start-up. Fifty per cent of these funds are already available in the Project 200 funds for the establishment of the ADR program, therefore, an additional $30,000.00 are needed for this year. The full amount of $225,000.00 for a year's service delivery will be included in the year 2000 budget.

Recommendations:

27. To continue the development of the Ombudsperson's program, the following recommendations are put forward:

1) that the Discrimination/Harassment Ombudsperson be established as both a service delivery and coordination office described above in Option #2;
2) that the budget proposed for the Discrimination/Harassment Ombudsperson be approved and added as a program item in the Equity Initiatives Department;
3) that the assessment and evaluation criteria be based on this report and the approved model for service delivery and coordination; and
4) that the chair of the Treasurer's Equity Advisory Group and one other bencher be named as Convocation's link to the Ombudsperson's program. In consultation with the Equity Advisor, these individuals would provide support to the program, participating in its promotion, responding to issues that may arise from time to time and participating in the program's assessment and evaluation.

Conclusion:

28. In adopting the proposal for the Discrimination/Harassment Ombudsperson, Convocation indicated in a concrete way its commitment to the recommendations of the Bicentennial Report on Equity Issues in the Legal Profession. As an arm's length service with a clear connection to the LSUC, the Discrimination/Harassment Ombudsperson is a critical adjunct to the recently established position of Equity Advisor and, as set-out in this report, will assist the LSUC in its efforts to promote equity and diversity as well as eliminate discrimination and harassment in the legal profession.

29. The proposed model described in this report clarifies the program details and financial requirements to set-up and operate the Discrimination/Harassment Ombudsperson. It also identifies how this position will interact with the LUC through the Equity Advisor and provides opportunities for benchers, particularly the chair of the Treasurer's Equity Advisory Group, to play a role in the formation of the Ambitious office, its service delivery mechanisms and the development of evaluation criteria.

30. As required, reports on the stages of development of this program will be submitted to TEAM and, if necessary, to Convocation.

Charles Smith

APPENDIX A re: DISCRIMINATION/HARASSMENT OMBUDSPERSON
(see Report in Convocation file)

APPENDIX B

December 14, 1998

SELECTION OF DISCRIMINATION/HARASSMENT OMBUDSPERSON

INTRODUCTION:

In October, 1998, Convocation adopted the Report of the ADR (Alternative Dispute Resolution) Design Team. Amongst several initiatives recommended in this report, one addressed establishing the position of a Discrimination/Harassment Ombudsperson. This position is to act as a multi-purpose resource for dealing with harassment and discrimination issues relating to the legal profession.

The relevant pages from the ADR report are attached for your review.

DECISION-MAKING:

The ADR report points to a number of advantages to retaining the proposed Ombudsperson and research is provided on the experiences of other law societies. The report does not, however, establish selection criteria and a recruitment process for this position. Nor, in my opinion, does it adequately address this position's obligations to the Law Society of Upper Canada for the disposition of matters handled. For example, is the Ombudsperson required to provide an annual report to the Equity Advisor, the Treasurer's Equity Advisory Group and/or Convocation? Does this position need to inform the aforementioned of firms, individuals who are repeat 'offenders'? How does this position support 'victims' of discrimination and harassment? Why should this area be treated differently than other areas of the Rules of Professional Conduct?

These questions, and likely others as well, should be addressed in order to make this position both operational and effective. In this context, I recommend that the Treasurer's Equity Advisory Group set up a subcommittee to:

1) establish terms of reference and a job description for the Ombudsperson and report on such to Convocation;
2) establish a selection process to recruit the Ombudsperson; and
3) establish a communications strategy to inform the profession of the role and function of the Ombudsperson as well as the selected candidate.

APPENDIX C

Equity Initiatives

MEMORANDUM

To: Treasurer's Equity Advisory Group Date: February 25, 1999

From: Charles Smith
Equity Advisor

Re: Recruitment of Discrimination/Harassment Ombudsman

Introduction:

1. At the February 11, 1999 TEAM meeting, the attached report on the above was provided for consideration. There was overall approval to the recommended strategy and outline for recruitment of the Discrimination/Harassment; however, there was significant concern regarding the implications of the Rules of Professional Conduct (Rule 13: Responsibility to the Profession Generally). Some members felt that the obligations of this Rule will have an adverse impact on those who may need the support services of the Ombudsperson.

2. In response to these concerns, staff agreed to seek advice from the British Columbia Ombudsperson, review Rule 13 and then report back to TEAM at its next meeting. In addition, D. Elliot and N. Gupta agreed to join the subcommittee with J. Keene and K. Morris to work with staff in the recruitment process.

Policy Issue:

3. The Law Society of British Columbia established an Ombudsperson in 1995. A free service, this office confidentially assists anyone in a BC law firm who asks for help in resolving a complaint of discrimination or harassment against a lawyer. The Ombudsperson's role is to help people solve their problems, provide them with information about options to do so and, when requested, provide mediation services.

4. In terms of confidentiality, the Ombudsperson has no authority to investigate complaints and, therefore, does not make contact with either the alleged harasser or with the Law Society of British Columbia without the express permission of the complainant. The Benchers of the Law Society of British Columbia have recently passed a new rule that provides that:

- communication with the Ombudsperson is confidential and must remain so;
- the Ombudsperson must maintain confidentiality of all matters;
- the Ombudsperson cannot be compelled to give evidence in a discipline hearing; and
- no records produced by, under the direction of or in the possession of the Ombudsperson can be admitted in evidence or disclosed under discipline procedure rules.

The appropriate Rules from the Law Society of British Columbia are attached.

5. In reviewing Rule 13, careful consideration has been given to the Commentary 1A which states: "Often instances of improper misconduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society of Upper Canada supports the Ontario Bar Assistance Program (OBAP), LINK and other support groups in their commitment to the provision of counselling on a confidential basis. Therefore, lawyers acting in the capacity for OBAP and other support groups will not be called by the Law Society or by any investigation committee to testify at any discipline or competency hearing without the consent of the lawyer from whom the information is received."

6. Clearly supportive of the approach taken by the British Columbia Law Society, Section 1A appears to be the policy framework which may be used to provide the Ombudsperson with a degree of confidentiality supportive of unimpeded client disclosure. However, it must be noted that the aforementioned Commentary was adopted for purposes specific to OBAP and LINK, and that while the Ombudsperson was discussed at the time this Commentary to Rule 13 was amended, this position was not included in the Commentary.

7. Given the current process to revise the Rules of Professional Conduct, I recommend that TEAM refer this matter for consideration to the Task Force that is currently revising the Rules of Professional Conduct, chaired by Gavin McKenzie and Derry Miller, and encourage them to include the Ombudsperson within the terms of Commentary Section 1A to Rule 13.

Conclusion:

8. The policy issue regarding confidentiality and the Ombudsperson's services can be addressed by the Task Force on Revisions to the Rules of Professional Conduct. Further, these points will need to be reflected in recruitment process both in terms of shortlisting and subsequent interviews. The call for proposals for the Discrimination/Harassment Ombudsperson are also attached.

Charles Smith

February 1, 1999

Introduction:

1. At its meeting on January 6, 1999, the Treasurer's Equity Advisory Group (TEAM) received a report from the Equity Advisor regarding the recruitment and selection of a Discrimination/Harassment Ombudsperson. This position was established by Convocation in the October, 1998 as part of the Alternative Dispute Resolution Program (ADD) which is now being piloted by the LUC.

2. In response to recommendations of the Equity Advisor, TEAM established a subcommittee to draft selection criteria and propose a recruitment process for this position. The subcommittee consisted of Judith Keene, Helene Bruce Puccini, Kimberley Morris, Felecia Smith and Charles Smith. The subcommittee met on Tuesday, January 26, 1999 and developed the following report for consideration by TEAM.

Background:

3. In reviewing its mandate, the subcommittee established three main areas for the development of proposals for TEAM. These areas are: (1) selection criteria, including responsibilities, for the Discrimination/Harassment Ombudsperson; (2) a recruitment process for this position; (3) the reporting requirements and relationships for the position; and (4) informing the public and the profession about the availability of and access to the service.

4. These areas were seen as essential to the effective operation of the Ombudsperson as they define the job to be done, the scope of responsibilities/obligations of the position and the LUC, the promotion of the Ombudsperson, and, the reporting relationships for the Ombudsperson and LUC staff. Each of these are described below.

Selection Criteria:

5. It is proposed that the Ombudsperson be responsible for dealing with persons who bring forward allegations regarding violations of Convocation Rules of Professional Conduct 27 and 28. The purpose of the Ombudsperson is to provide a point of reference for lawyers, students, staff in law offices and service consumers regarding complaints on these matters. The position is established as 'safe counsel', someone to whom a complainant can convey concerns and seek guidance on ways to respond to alleged violations Rules 27 and 28 or the Ontario Human Rights Code.

6. In performing an intake and referral function, the Ombudsperson will strive to maintain confidentiality in dealing with complainants. However, the Ombudsperson, particularly if a lawyer, must respect Rule 13 "Responsibility to the Profession Generally". The Ombudsperson may also be subpoenaed if a matter proceeds to a Human Rights Tribunal or is pursued in the courts. Further, the Ombudsperson is required to provide semi-annual and annual reports to the LUC providing both anecdotal information and aggregate data on complaints received and how they were handled. In addition, based on anecdotal and aggregate data, the Ombudsperson will be obligated to make recommendations to the LUC on the types of policies, programs and services required to promote non-discrimination within the legal profession.

7. In this context, the Ombudsperson must be:

- knowledgeable of equality rights legislation, particularly the Ontario Human Rights Code, as well as the LUC Rules of Professional Conduct, particularly rules 27 and 28;
- knowledgeable of various conflict resolution techniques including mediation, complaints investigations and legal actions through the courts;
- knowledgeable of the LUC ADD program and processes;
- knowledgeable of diverse equity-seeking communities and the issues they face in dealing with the legal profession;
- aware of and have contacts with resources, individual or institutional, for referral purposes in dealing with complainants for either mediation or formal complaints;
- able to analyse anecdotal and aggregate data to identify trends, if any, and to make recommendations on these to the LUC;
- sensitive to particularly vulnerable individuals and groups;
- able to provide services to complainants throughout the Province of Ontario.

Recruitment Process:

8. The LUC will initiate and carry-out recruiting for this position. The recruitment campaign will be coordinated by the Equity Advisor and will include posting notices to the profession through the LUC Web-Site, the Gazette, the Ontario Reports and to the general public through daily as well as community media and community networks, including legal aid clinics, advocacy and human rights organizations and so on.

9. The recruitment process will begin the week of February 15, 1999 and the final date for submission of resumes for the position will be Friday, March 5, 1999. The TEAM subcommittee will assist in shortlisting, interviewing and recommending selection for this position. It is anticipated that the Ombudsperson will be in place during April, 1999.

Reporting Requirements:

10. In responding to the "Bicentennial Report on Equity Issues in the Legal Profession", the LUC established the position of Equity Advisor as part of the Society's senior management team and directly responsible for promoting equity and diversity within the legal profession. There is some overlap between the Equity Advisor's responsibilities and mandate and the recently established Ombudsperson position which has been set-up on a contractual basis and is focussed solely on supporting complainants alleging violations of Rules 27 and 28 or the OHRC.

11. There is no doubt that the Ombudsperson position is an integral component to the LUC's concerns about equity and diversity within the legal profession. As such, given the close relationship in terms of program and function, the Ombudsperson will report to the LUC's Equity Advisor who, in turn, will report to the TEAM as well as the Professional Regulation Committee and the Professional, and the Professional Development and Competence Committee. Such reports will provide anecdotal information and aggregate data and provide recommendations on promoting non-discrimination within the legal profession. This will ensure: consistency in programming by both the Equity Advisor and the Ombudsperson; a voice within senior management, through the Equity Advisor, for the issues brought forward by the Ombudsperson; opportunities to develop short- and long-term responses on promoting equity and diversity in the legal profession; a reporting relationship for the Ombudsperson, through the Equity Advisor, to appropriate committees of Convocation. This arrangement is similar to those in BC and Nova Scotia where there is both an Ombudsperson on contract and an Equity Advisor.

12. In receiving reports from the Ombudsperson, the Equity Advisor will consult with LUC Practice Advisory staff to ensure an appropriate response to such reports are integrated into the functions of LUC. Consultation and program development with appropriate LUC staff will also take place to address issues brought forward by the Ombudsperson that require policy and/or program development by Practice Advisory, the regulatory area, complaints and so on.

Promotion of the Position:

13. Once selected, the Ombudsperson will be promoted along with the following resources and materials addressing the LUC's commitment to equity and diversity:

- the model policies addressing flexible work arrangement, workplace harassment and sexual harassment;
- reissuing of Benchers' Bulletins on Rules 27 and 28;
- the "Bicentennial Report on Equity Issues in the Legal Profession";
- the activities and contact points for the TEAM as well as the Equity Advisor.

14. Correspondence making the profession aware of these resources will be sent out in April, 1999 and correlating information will be placed on the LUC Web-Site, circulated to students and posted in both the Gazette and the Ontario Reports.

15. Depending on the success on this approach, additional promotional activities may be undertaken.

APPENDIX D

Equity Initiatives

MEMORANDUM

To: Treasurer's Equity Advisory Group Date: May 12, 1999

From: Charles Smith
Equity Advisor

Re: Selection of Discrimination/Harassment Ombudsperson

Introduction:

1. As a follow-up to the discussions with TEAM, a process has been implemented to select the Discrimination/Harassment Ombudsperson. At the same time, amendments to the Rules of Professional Conduct have been included by the Rules Task Force in their efforts to revise the Rules for approval by Convocation.

Selection Process:

2. In response to ads placed in the Globe and Mail, the Ontario Reports and circulated to over 2,000 community agencies as well as a call for proposals sent to a randomly selected list of lawyers practicing in human rights and employment-related law, 86 applications have been received. To facilitate the short-listing of proposals, the Ombudsperson Subcommittee (Judith Keene, Helene Puccini, Kimberly Morris, Neena Gupta, Charles Smith, Felecia Smith and Fred Bartley) developed evaluation criteria to measure the strength of each proposal in terms of Knowledge, Sensitivity/Empathy and Options.

3) These areas were established by the Subcommittee as the most essential to the Ombudsperson's services. Each submission has been evaluated against criteria delineated as follows:

a. Knowledge of equality legislation (eg., Ontario Human Rights Code), the Rules of Professional Conduct, Aboriginal and equity-seeking communities and issues they face in dealing with the legal profession and of resources available to enable assist complainants alleging discrimination and harassment;
b. Experience in identifying trends and making recommendations about policies, programs and services to promote non-discrimination;
c. Awareness of appropriate options for complainants to pursue and sensitivity to particularly vulnerable individuals and groups;
d. Ability to assist complainants to develop skills and confidence to take action to resolve complaint;
e. Experience in providing services on a one-to-one basis; and
f. Proposal of a plan to promote access to the Ombudsperson's services.

4. Once established, the applications were reviewed by three Subcommittee members and recommendations made to the Subcommittee on the shortlist for interviews. Interviews are now scheduled to take place during the week of May 24 and will involve a panel process with clearly identified questions and weighting. It is anticipated that the interview results will be available for the June 12 TEAM meeting and an announcement made at the June 24 Convocation meeting.

Rules Revision:

5. In addition to the selection process, TEAM's submission to the Rules Task Force has been adopted and included in the revised Rules of Professional Conduct under the newly-drafted Section 6.01(3). The revised section now states: "The (Law) Society also recognizes that communications with the ombudsperson appointed to assist in resolving complaints of discrimination or harassment against lawyers must generally remain confidential. Therefore, the ombudsperson will not be called by the Society or by any investigative committee to testify at any conduct, capacity or competence hearing without the consent of the person from whom the information was received. Notwithstanding the above, a lawyer serving as ombudsperson has an ethical obligation to report to the Society upon learning that a lawyer is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice." (P.83)

6. As discussed at TEAM on April 22, the revised Rules have been released to the profession for consultation (See Attached Notice) and will return to Convocation for decision-making in the fall.

Charles Smith

APPENDIX E

LAW SOCIETY OF UPPER CANADA

DISCRIMINATION/HARASSMENT OMBUDSPERSON
Request For Proposals

PURPOSE AND OBJECTIVES:

Purpose

The purpose of the ombudsperson is to ensure that members of the public and members of the legal profession who experience harassment or discrimination either in their workplace or as a result of contact with members have access to a knowledgeable resource person who can offer information and advice, and, if all parties are willing, act to resolve the complaint in an informal way. The ombudsperson is not intended to replace, and does not replace, other avenues of resource. One of the important functions of the ombudsperson is to inform anyone who has experienced harassment or discrimination of the legal options available to him or her. Among other options, a person can file a formal complaint with the Law Society at anytime. The role of ombudsperson is not that of legal counsel. He or she will not provide an opinion on the merits of a case, but act as a supportive advisor who will explore a range of options with the complainant.

Objectives

The ombudsperson will provide support and assistance to members of the public, members of the legal profession, students and staff who are experiencing harassment and/or discrimination as a result of their involvement with member(s) of the legal profession. These services will be provided free of charge and on a confidential basis, subject to the remarks below.

KEY RESPONSIBILITIES

The ombudsperson will perform intake and referral function and will strive to maintain confidentiality in dealing with complaints. However, if the ombudsperson is a lawyer, they will be bound by Rule 13 Commentary 1 of the *Rules of Professional Conduct.* The ombudsperson may be subpoenaed to testify if the matter proceeds to a Human Rights hearing or is pursued by way of civil or criminal proceedings.

The responsibilities of the ombudsperson will generally include the following:

- knowledge of and familiarity with equality rights legislation, particularly the Ontario Human Rights Code, and the Law Society of Upper Canada *Rules of Professional Conduct*, particularly Rule 27 and Rule 28;
- knowledge of diverse equity-seeking communities and the issues they face in dealing with the legal profession;
- an ability and awareness of other resources, both individual or institutional, to whom referrals could be made;
- an ability to analyse anecdotal and aggregate data, to identify trends and make recommendations to the Law Society about policies, programs and services required to promote non-discrimination within the legal profession;
- sensitivity to particularly vulnerable individuals and groups;
- an ability to provide services to individuals throughout the province;
- familiarity with the Law Society of Upper Canada's Alternative Dispute Resolution program and processes;

- provision of semi-annual reports to the Law Society providing both anecdotal information and aggregate data about complaints. Reports will detail the general nature of the complaints, but will not, in any way, divulge the identity of the complainant.

KEY SKILLS:

Listening: A caller may simply wish to speak with the ombudsperson for support. The ombudsperson may affirm the feelings of the individual but should be an impartial person with respect to the facts of a situation. In many cases, "being heard" is all that a caller wants. Listening and being gently questioned may help put a problem into perspective. It may help a person to deal with rage or grief or uncertainty or fear. It may help people deal with stress so they can take the time that they need to figure out what is happening to them. Listening impartially is a special skill and requires constant thought and discipline.

Providing and Receiving Information: The ombudsperson will provide information on a one-to-one basis. A caller may not know, for example, what information or which records are, by law, available to him or her. The ombudsperson might provide a copy of a policy or obtain clarification of the meaning of a policy so a complainant under stress need not search for such information. The ombudsperson may be able to provide, or help to find, information that resolves a problem in one or two contacts. Further, a person who perceives discrimination or unethical behaviour may be able to circulate information through an ombudsperson in a way that protects the observer.

Developing Options: A primary concern of the ombudsperson will be to ensure that options are generated and that the complainant's view of options are explored and appropriately rephrased and identified. Often people come to an ombudsperson believing that they have no options or not particularly good ones. The ombudsperson can often help frame or reframe the issues, identify or develop new and different perspectives, and describe additional, responsible and effective paths which the complainant may choose. Through discussion, support and role-playing, a complainant may develop the skills and self-confidence to work on an issue without third party intervention.

Referral: Oftentimes complainants need more than one helping resource; in effect, they need a helping network. Some need the assistance of a person such as a social worker or an "accompanying person" who can act as an advocate. While the "accompanying person" may be the ombudsperson, sometimes the ambitious practitioner is not the best person to help but knows who would be more appropriate. The ombudsperson should understand other resources which are available to people with problems, should be able to refer complainants to others, and should be able to work with others on behalf of a complainant when given permission to do so.

REMUNERATION

The ombudsperson will operate at arms-length from the Law Society and will be paid on a fee for service basis. Disbursement costs including travel, accommodation and long distance phone charges, will be reimbursed.

APPENDIX F RE: SHORT-LISTING CRITERIA
(see Report in Convocation file)

APPENDIX G

Equity Initiatives

MEMORANDUM

To: TEAM Subcommittee on Discrimination/Harassment Ombudsperson

Date: May 21, 1999

From: Charles Smith
Equity Advisor

Re: Draft Interview Questions for Interviews

Please review the attached interview schedule. As we discussed when we last met, the purpose of the interviews is to ascertain how well the candidates respond to both case scenarios and the establishment of administrative procedures which include reporting requirements and relations with the LUC.

I would appreciate receiving your responses by no later than Wednesday, May 26th.

Thanks.

Charles

(Copy of Draft - Ombudsperson Interview Questions in Convocation file)

25th June, 1999

REPORT TO CONVOCATION

LAW SOCIETY OF UPPER CANADA RESPONSE TO CANADIAN BAR ASSOCIATION'S "RACIAL EQUALITY AND THE CANADIAN LEGAL PROFESSION

Prepared by the Equity Initiatives Department

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LAW SOCIETY OF UPPER CANADA RESPONSE TO CANADIAN BAR ASSOCIATION'S "RACIAL EQUALITY AND THE CANADIAN LEGAL PROFESSION

Prepared by the Equity Initiatives Department

Introduction:

1. In February, 1999, the Canadian Bar Association (CBA) released its report with recommendations on "Racial Equality in the Canadian Legal Profession". Initiated in 1995 as a direct response to recommendation 13.3 of the CBA's report on Gender Equality (Touchstones for Change: Equality, Diversity and Accountability), this report addresses issues faced by "racialized communities", i.e., Aboriginal peoples and people of colour, in their efforts to participate in the legal profession in Canada and to receive justice in the Canadian legal system. A detailing of challenges, barriers and opportunities for change, the report provides a unique look into the issues of racial discrimination in terms of entry to and activity within the practice of law, and various models promoting racial equality within the legal profession. It also makes recommendations on how the CBA can take effective action in a planned, coordinated and cohesive manner to promote racial equality in the legal profession.

2. Essentially, the report is broken into three parts:

a) the report of the CBA Working Group on Racial Equality in the Legal Profession co-chaired by Benjamin Trevino, Q.C. and Professor Joanne St. Lewis;

b) a report by Professor St. Lewis entitled "Virtual Justice: Systemic Racism and the Canadian Legal Profession; and

c) a bibliography of critical race theory articles.

The first two reports are part of the CBA's "Racial Equality in the Canadian Legal Profession"; the bibliography is available as a separate document.

3. Together, the two reports and bibliography provide an opportunity for the Law Society of Upper Canada (LSUC) to reaffirm its commitment to equity and diversity as adopted in the Bicentennial Report on Equity Issues in the Legal Profession and to encourage the CBA to adopt its report and to move ahead on its implementation.

Racial Equality in the Canadian Legal Profession:

4. The CBA report is divided into two parts which address the same issues. These are:

4. the history of racial discrimination in the Canadian legal profession;
- law school as the first step to entry into the profession;
- articling requirements and bar admission courses;
- employment barriers and discrimination within the practice of law;
- equity in judicial appointments and access to justice;
- the unique relationship of Aboriginal peoples; and
- actions incumbent on the CBA to promote racial equality in the legal profession.

5. The CBA Working Group report has stated its intention of being brief and moving through limited content on each section in order to proceed to its recommendations. Professor St. Lewis' report provides a more critical approach, underlining and calling on the presentations made to the Working Group and providing her own point of view in support of concerns received during the consultations.

The following provides a brief synopsis of each report.

The Working Group Report:

6. This report begins with the statement: "Canadian laws define discrimination and make it illegal, but we, as a society, have not been successful at obeying these laws and eliminating discrimination. Clearly, the challenge is for the individual members of our society and for institutions and organizations in which we work to put the legal principles into practice" (p.1). It then defines 'systemic discrimination and individual acts of racism' to introduce the scope of its concerns in terms of institutional policies and programs as well as individual behaviour. In this context, it refers to adverse impact, discriminatory outcomes that are unintended and individual acts of prejudice, harassment and discrimination.

7. The report also points out: "When individual accounts of racist acts and racial prejudice cannot be told publicly because the risks to the individuals are too great, we begin to appreciate the depth and impact of discrimination in our profession" (p.2). The report then notes its concerns in the categories identified above.

- History of racism in the legal profession. Concerns about the past are summarised in highlighting discrimination faced by: Delos Davis and Bora Laskin who faced difficulties in getting articling positions; Chinese, Japanese, South Asian and Aboriginal peoples in British Columbia who were prohibited from becoming members of the Law Society until the late 1940s; and the provisions of the Indian Act which, until 1951, forced Aboriginal peoples to choose between their Indian status and pursuing a legal education.

- Law School as entry to the profession. The process of considering and entering law school is identified along with barriers faced by racialized students, including: racist jokes and stereotyping in student newspapers; racist comments by students; the small number of racialized students in law schools and role models or teachers who understand the experience of racism; the financial hardship imposed by attending law school; and the absence of faculty from racialized communities. Addressing these barriers, several positive models were identified, including: summer programs to support high school students interested in law; outreach programs inviting racialized students who write the LSAT to apply to law school; admissions' policies that look beyond LSATs and grade point averages; changes to course curricula to eliminate racist or sexist materials and so on.

- Articling and Bar Admission Courses. The requirement to article is critical in being called to the bar. The report notes: "It is readily apparent that any discrimination that exists in the way students get articling positions, in the work they are given during articles, in the evaluation of their articles and in how Bar Admission Courses are structured can have a serious impact on students from racialized communities" (p. 11). Several examples of barriers are identified, including: bias in interviewing and hiring for articles; negative perceptions by articling principles about the quality of students from racialized communities leading to either refusal to hire or restricting the work of such students; students forced to work for free or for minimum wage; and fears by racialized students to complain about discrimination in the articling experience. (The report points out that in 1996 the LSUC found that of 133 students still looking for articles, 43.9% were from racialized communities even though these students comprised only 17% of the graduating class.)

In terms of the Bar Admission Courses, several barriers are identified, including: exam-based evaluations failing to consider different learning styles or different ways of demonstrating knowledge and ability; in testing for the practical application of law, students with poor articling experiences are at a disadvantage; little to no reflection of racialized communities in course materials; and inappropriate assessment of foreign-trained lawyers seeking to practice in Canada. Several models are identified addressing some of these concerns, including: providing 'career days' for firms to attract articling students; law societies and schools finding articling assignments for those who do not have one; and establishing equitable hiring practices.

- Employment barriers. The Working Group starts this section of its report in stating: "The brick wall blocking people from racialized communities from senior positions in law firms, corporations and government became shockingly apparent to the Working Group" (p.17). It further notes: "...to the extent to which the decision to leave law is linked to systemic discrimination which continues to exist in the profession, the issue needs to be addressed" (p.17). Examples of barriers faced by lawyers from racialized communities are provided to underscore the aforementioned points, including: the barriers to attaining articles influences one's ability to attain employment. (The Nova Scotia Barristers' Society noted in 1995 that 70% of white males were hired back after their articles, only 28.9% of white women were hired back and no students from racialized communities were hired back); the apparent lack of advertising for employment by law firms leaving recruitment largely to word-of-mouth and networking; the influence of bias and stereotyping in terms of the type of work lawyers from racialized communities wish to undertake and the belief that such lawyers will not interact well with clients. Several models are identified addressing these concerns, including: employment equity practices; harassment and accommodation policies; advertisements for employment and internal reviews of recruitment policies to ensure they do not pose barriers to racialized communities.

- The judiciary and access to justice. This section of the report discusses the influence of the judiciary, particularly judges, on how law is interpreted and applied. The importance of both having judges from racialized communities as well as ones who understand the impact of racism on society are reviewed. The procedures for appointment of judges are identified and barriers faced by racialized communities also discussed, including: lack of information on the percentage of judges from racialized communities; a number of inquiry and commission reports (eg., "Royal Commission on the Donald Marshall, Jr., Prosecution", 1989, and "The Final Report of the Commission on Systemic Racism in the Ontario Criminal Justice System", 1995) documenting problems with racism in the justice system, including decisions about keeping an accused in custody, courtroom dynamics and sentencing decisions.

- Aboriginal peoples. A separate section on Aboriginal peoples is provided to highlight the need for specific action to address the concerns of this community. While many of the issues faced by Aboriginal peoples are similar to those of other racialized groups, there are a number of issues that are particular to Aboriginal peoples that need to be viewed separately, including: the law school curriculum and Bar Admission Courses tend to perpetuate an adversarial approach and do not recognize this as a barrier to students with different values' system; the lack of progress made since the 1988 CBA report "Aboriginal Rights in Canada: An Agenda for Action" which, in regards to the legal profession, called for increased education of lawyers and the public on Aboriginal issues and increased participation by Aboriginal peoples in the justice system. A few models have been identified addressing some of these issues, including: providing courses and seminars on Aboriginal law issues in law school and Bar Admission Courses; providing credits for law courses completed by Aboriginal students in pre-law programmes; and having law societies track the success of Aboriginal graduates.

- Access to the courts. In this section, the Report focusses on the importance of legal aid and court interpreters to promote and ensure access to the courts for low-income racialized groups. The Report notes the "... deterioration in legal aid funding across the country (as having) a disproportionate impact on many people from racialized communities as they represent a disproportionate number of people living below the poverty line" (p.31). Particular reference is made to immigration and refugee claimants who are also predominantly from racialized communities. Issues relating to access to counsel and court interpreters are identified as barriers these communities face. Models for action were presented to the Working Group by legal clinics specializing in service delivery to racialized communities.

- The CBA's responsibilities. This section of the Report discusses the importance of the CBA taking a leadership role in addressing the concerns documented by the Working Group. The Report points out several barriers imposed by the CBA impacting on racialized lawyers, including membership fees and the structures for participation. The Report notes the model of the American Bar Association which has a Commission on Minorities managed by a director with several staff members.

Professor St. Lewis Report:

8. Entitled "Virtual Justice: Systemic Racism and the Canadian Legal Profession" Professor St. Lewis' report concurs with many of the issues raised by the Working Group. There are, however, significant differences in her approach. This is evident in her style and in her openness regarding the challenging issues brought forth in the consultations which she believes essential to raise.

9. Examples of stylistic differences and their substantive implications are immediately evident beginning with concerns about the title of the Working Group report: "One of the prominent criticisms to be levelled at the Working Group concerned our titular mandate of 'Racial Equality'. Racial equality as a term can itself mask the pernicious impact of *racism*. The Canadian Bar Association intended to temper the emotional impact and apparent negative response which is attached to the term racism by searching for more neutral terminology. In that sense, the title was intended to increase the comfort of those who would participate in our work" (p.59).

10. Shortly after this, she writes: "We conclude that the legal profession is effectively segregated. It is segregated because the absence of certain communities is not strictly the result of individual choice, inclination or community self-selection. Entire sectors of the profession, such as the vast majority of large firms, licensing bodies, associations and law school academy lack proportional representation from racialized communities or anything close to it" (p.60).

11. Professor Lewis then retraces the subject areas examined by the Working Group. The following summarises the substantive differences revealed in her work:

- Law Schools. This section of the report provides a more in-depth analysis of the areas which pose barriers and need attention. In particular, concerns regarding lack of data linking the applicant pool with the successful candidate pool is noted. "This makes the task of unmasking systemic patterns of exclusion even more difficult. This means subtle or direct discrimination in the admissions process can be hidden within current procedures. There is no public accountability for admissions results" (p.60). In terms of admissions criteria for law schools, Professor St. Lewis also notes: "There is strong resistance within the legal community to what are seen as 'special measures'. There is a presumption that the difference in criteria is actually a lowering of 'objective' standards" (p.60).

- First Nations/Aboriginal Peoples. This section focusses on the constitutional and historical location of Aboriginal peoples in Canada as being unique and a critical part of Canada's 'tri-juridical nature'. It points out the particular constitutional relationship between the federal government and Aboriginal peoples which distinguishes their situation from that of other racialized groups. It further identifies the distrust Aboriginal peoples have for the justice system and Canadian law as being incapable of treating them fairly particularly since "(t)he legal system has played an active role in the destruction, denial or limitation of First Nations cultural practices. The operations of the criminal justice system, whether intentional or not, have resulted in significant over-incarceration rates of First Nations peoples. This is coupled with their almost total invisibility at the most senior levels of policy-making and decision-making in the administration of justice. First Nations peoples also labour under a historical and contemporary myth that their legal and educational systems are less sophisticated than the Canadian systems" (p.69).

- The Practice of Law. Addressing barriers to employment and education for admission to the bar, this section highlights the importance of demonstrative action to eradicate employment barriers facing peoples from racialized groups. "History shows that in the face of blatant racism, legislative action had to be taken to permit entry into the practice of law by individual lawyers from racialized communities" (p.73). In terms of bar admission courses, the concerns of students are underscored and the impact of the educational and articling environment highlighted. In terms of responsibilities for law societies, Professor St. Lewis focusses attention on the importance of having anti-discrimination rules in codes of professional conduct. However, she also notes the relatively few complaints made under these rules and points out that most rules: do not define discrimination; fail to establish a duty as opposed to a 'responsibility' to respect human rights values; have no adequate enforcement mechanism; rely on lawyer self-monitoring; fail to address lawyers as employers; and provide piecemeal adaptation of human rights code or Charter language.

- The Justice System. This section raises issues regarding the application of equality analysis in decision-making and vigourous application of the Charter of Rights and Freedoms in legal arguments and jurisprudence. The absence of data to support allegations of systemic inequalities and the lack of Canadian-based critical race theory are noted. Further, the need for judges to understand the social context of litigants is underlined and the importance of using the Charter as something more than discretionary in the formulation of legal opinion and court decisions. In addition, Professor St. Lewis acknowledges that "(t)he judiciary has demonstrated the strongest commitment to education on social context of any sector of the legal profession. Social context education focusses on how neutral application of legal concepts can produce inequality. The National Judicial Institute's social context program includes staffing and an advisory committee which includes racialized judges and academics to assist in the development of its curriculum" (p.84).

- Professional Associations and Defining Justice into the Millennium. The development of legal associations amongst racialized lawyers is identified as a challenge to the relevance of the CBA to these individuals and groups. A number of issues have been raised by racialized lawyers regarding barriers to participation in the CBA, including: policy issues of concern are not addressed as well as under-representation in decision-making and a sense of discomfort with the CBA. In terms of the future, Professor St. Lewis writes: "Systemic racism, like other forms of systemic discrimination, is the most pernicious problem facing racialized communities. Individuals in institutions often make decisions without ever considering the underlying values and consequences of actions which are seen as 'every day common sense' ...

"The legal decision-makers and individuals who participated in our consultations were united in their commitment to ensure that racism is eliminated from their organization. Their efforts were hampered by the lack of coordinated effort across the sectors in the legal profession to target the fundamental structures which reinforce racist practice. They were also limited by a lack of adequate financial resources."

Professor St. Lewis then concludes: "As lawyers we must become radical. Radical in the sense of going back to our roots. The root of the law is justice. It demands that we no longer tolerate or remain passive in the face of racism" (p.91).

Analysis of the Report:

12. The two reports are cogent commentaries on the issues of racial equality and racism within the Canadian legal system. As integral parts of each other, they blend well; where one report focusses on the challenges to promote equality, the other provides an indictment of the legal system and puts forward the challenge that any attempt to promote racial equality must be done within the context of both understanding the depth of racism within Canadian society and the legal system and, thereby, taking action to eliminate it.

13. Unfortunately, both reports are not presented in this way and the CBA will need to reconcile these documents at its annual meeting in Edmonton in August. In terms of the Law Society, there are a number of issues that should be considered in presenting its response to the CBA. These relate to:

A. Critical race theory analysis and scholarly approach. Defined as "...suggest(ing) a complex strategy to use to eliminate racial discrimination in law and in society" (p.vi), both reports discuss the importance of this matter, but neither provides a literature review which may have been helpful in placing this essential concept within an appropriate context. Active reference and use of the work of Patricia Williams, Derrick Bell, Richard Delgado, Sherene H. Raczak, Toni Williams and other others would likely have been helpful in describing the social context giving rise to racism and the struggles for racial equality within law and society. This could have served to underscore the critical commentary provided by Professor St. Lewis and strengthened the arguments of the Working Group. It also could have served to educate the reader regarding the depth of racism within the legal profession, its causes and the importance of substantive strategies to eliminate it.

B. Focus on demographic data and its importance. Both reports provide very little demographic data to support their arguments. While both are aware of its importance, there is no consistent approach to either its reference or use. Professor St. Lewis is clearer in her referencing and recommendations on the use of demographic data; the Working Group is rather silent about this and makes little mention of it in its recommendations. Demographic data is critical to comparing the relative status of groups involved in a common activity. In developing strategies to eliminate discrimination and promote equality, such data provides benchmarks to compare defined groups. Without it, it is difficult to know whether groups are being treated equally.

C. Coordination of recommendations and strategic actions. Neither report discusses their stylistic or substantive differences nor the importance of distilling any differences in their recommendations in order to coordinate them and develop a common plan for action. Further, while Professor St. Lewis' report provides 'strategic steps' to guide her recommendations, the Working Group report does not. This presents a challenge to the CBA to identify how it will make decisions on these two reports. Which recommendations will it adopt? How will it adopt an action plan? Unfortunately, both reports are not helpful in this regard.

D. Identifying sources for model activities. Several models are identified, particularly in the Working Group report; however, source information is not provided. Such information would be useful so that the history, background and implementation strategies employed by these models can be shared. This is a critical matter for those involved in developing and implementing equity initiatives, eg., the ability to connect to sources for information-sharing and ongoing dialogue. It is also integral to facilitating a network of concerned equity practitioners and a critical mass of individuals who can share with and learn from each other, thereby, advancing the state of policy and program implementation.

E. Compiling up-to-date information on issues under consideration. A number of the references and sources cited in each report date back a few years and neither report appears to provide current information on activities aimed at addressing racism within the legal profession. For example, while information is used on LSUC articling experiences in 1996, there is no reference to the recent LSUC Bar Admission Reform nor the literature review conducted by the LSUC Equity Initiatives Department on equity in legal education. Further, there is no information on the strategies employed by the LSUC to address the articling issues raised in both reports; nor is there any reference to the LSUC's review of the Rules of Professional Conduct and establishment of the Discrimination/Harassment Ombudsperson. While it is always difficult to incorporate new developments in reports that have been in the making for a number of years, these shortcomings, on the one hand, challenge the credibility of the report but, simultaneously, point to the need for some type of national clearing house to share up-to-date information on initiatives to promote equity and diversity in the legal profession.

F. Reference to human rights law, the Charter of Rights and Freedoms (Equality Sections) and Law Society Discrimination/Harassment Ombudspersons. It is interesting that both reports do not point out challenges within equality law to many of the practices discussed as problematic or discriminatory. For example, in the area of articling, both reports seem to indicate that the crux of the dilemma rests with law firms in not providing equitable opportunities; neither report discusses this as a law society requirement and the attendant issues of liability to law societies for imposing a requirement which is not accessed equally. Further, neither report discusses the potential use of human rights legislation or complaints processes to address discrimination in employment or access to law schools. There is also little reference to the mandate and functions of Discrimination/Harassment Ombudspersons established by law societies in British Columbia, Nova Scotia, Alberta and Ontario. These are critical shortcomings since some key tools are not identified which law schools, law societies and racialized individuals/communities can use to fight discrimination and promote racial equality.

14. Despite these shortcomings, both reports provide an important and timely array of arguments and recommendations essential to addressing racism and racial equality in the Canadian legal profession. As such, it is incumbent on the CBA to acknowledge their importance and to develop a strategy to reconcile, coordinate and implement the recommendations of both reports. It is also incumbent on the LSUC to identify how it can cooperate with the CBA in this activity.

Recommendations for LSUC:

15. Both reports have recommendations for consideration and action by the CBA when it meets in Edmonton this August. These recommendations address the CBA, federal and provincial governments, the judiciary, local bar associations and lawyer associations, law schools and law societies. The Working Group puts forward 40 recommendations and Professor St. Lewis puts forward 37. While each report has a number of recommendations on the same subject, there is no substantive contradiction between them. In terms of Convocation's consideration, a response has been developed to address those matters that relating directly to law societies. These recommendations are detailed below.

Working Group Report:

A) Model Policies for Articling Interviews. In supporting Recommendation 5, the LSUC should forward to the CBA its guidelines for conducting articling interviews which are published annually in the Ontario Reports and provide commentary on human rights issues in such contexts. Further, the LSUC should inform the CBA regarding its proposed approach to address the articling requirement resulting from Convocation's adoption of the Bar Admission Course Reform and its recommendations addressing further study on articling.

B) Evaluating Competence. In supporting Recommendation 6, the LSUC should forward to the CBA and to the Federation of Law Societies both its definition of competence as well as key work of the Competence Task Force.

C) Complaints Regarding Lawyers and Equality Issues. In supporting Recommendation 8, the LSUC should forward to the CBA information on the establishment of the Discrimination/Harassment Ombudsperson program. The LSUC should also encourage the CBA to work in tandem with all law societies, particularly those that have instituted discrimination/harassment programs (eg., British Columbia, Alberta, Nova Scotia, Ontario), to further develop strategies on this sensitive matter.

D) Workplace Equity Policies. In supporting Recommendation 8, the LSUC should provide to the CBA its model policies on workplace equity and flexible workplaces adopted by Convocation. The LSUC should also forward the Bicentennial Report on Equity Issues in the Legal Profession as well as the "Law Society of Upper Canada: Development of Equity and Diversity Plans Discussion Document".

E) Data on Law Firms with Equity Policies. In supporting Recommendations 10 and 11, the LSUC should provide information on its and LPIC's contract compliance program and, further, request ongoing information with the CBA on those firms which have established equity policies. This may prove useful to both LSUC and LPIC contract compliance programs as well as provide information on model firms which can be acknowledged and emulated for their implementation of equity initiatives.

F) Education and Training for Law Firms. In supporting Recommendation 14, the LSUC should encourage collaboration between the CBA and the LSUC Equity Advisor on this matter. The Equity Advisor has already begun a process to develop an approach for such a program and such efforts can be augmented with cooperation by the CBA.

G) Aboriginal Issues in Bar Admission Courses. In supporting Recommendation 25, the LSUC should provide information to the CBA on course modifications which have taken place to ensure inclusion of Aboriginal issues in such areas as real estate, tax law and constitutional law. Further, the CBA should be referred to the recommendations included in the Bar Admission Reform report and recommendations addressing Aboriginal students.

H) Dialogue with Racialized Communities. In supporting Recommendation 26, the LSUC should forward information to the CBA on the specialized legal aid services established in Ontario to address concerns of Aboriginal and racialized communities (eg., the African Canadian Legal Clinic, the Metro Toronto Chinese and Southeast Asian Legal Clinic). Further, the LSUC should refer this recommendation to the Legal Aid Ontario for its comment, particularly respecting service provision to refugee claimants.

I) Establishing Court Interpreters. In supporting Recommendation 29, the LSUC should inform the CBA that the LSUC Equity Advisor is prepared to participate in any such proceedings.

J) Continuing Legal Education. In considering Recommendation 38, the LSUC should request that the CBA formally consult with law societies on coordinating development and delivery of CLE programs on human rights and anti-discrimination legislation and policies.

Professor St. Lewis' Report:

A) Law societies working with racialized lawyers. In supporting Recommendation 11, LSUC should forward to the CBA the implementation plans for the recently adopted Bar Admission Reform process which includes specific consultations with Aboriginal and equity-seeking lawyers, students and communities in the implementation of the Bar Ad reforms. In addition, the "Equity in Bar Admission Course Reform: A Review of the Literature" prepared by the Equity Initiatives Department should be provided to the CBA for its reference and use. In terms of publicizing equity initiatives, this is now being coordinated by the LSUC Equity Initiatives Department and the LSUC should indicate its interest in participating in any effort by the CBA to conduct longitudinal studies of Aboriginal and equity group law students and their journey into the legal profession.

B) Codes of Professional Conduct and Model Employment Policies. In supporting Recommendations 13 and 14, LSUC should provide to the CBA and the Federation of Law Societies the current revisions of its Rules of Professional Conduct, particularly the revised Rule on Non-Discrimination which has been redrafted to include clarification on grounds of discrimination and opportunities for positive action to address discrimination and its effects. The LSUC should also forward its model policies on workplace flexibility, and, equity policies for law firms.

C) Participation of Equity-Seeking Lawyers in Decision-Making. In supporting Recommendation 19, the LSUC should refer the CBA to the appropriate Recommendation in the Bicentennial Report on Equity Issues in the Legal Profession (Recommendation #7, p.30). LSUC should also forward the Terms of Reference for the Treasurer's Equity Advisory Group which was adopted by Convocation in January, 1999.

D) Equality Complaints and Legal Aid. In considering Recommendation 20, the LSUC should refer this matter to the Legal Aid Ontario with a request for information on how this matter can be addressed.

E) Dialogue with Human Rights Commissions. In supporting Recommendation 21, the LSUC should inform the CBA that it has initiated a dialogue process with key staff in the Ontario Human Rights Commission. This is being facilitated by Equity Advisor and includes such topics as the establishment of the Discrimination/Harassment Ombudsperson, outreach programs, articling and establishment of workplace equity policies and programs.

F) Cutbacks to Legal Aid. In considering Recommendation 22, the LSUC should refer this to the Legal Aid Ontario and encourage their participation in any proposed study undertaken by the CBA. This will ensure issues related to the current developments in Ontario are included in the scope of any national study on cutbacks to legal aid and their impacts on racialized communities.

G) Development of Clients Rights Document. In supporting Recommendation 25, the LSUC should refer the CBA to its process in developing the Discrimination/Harassment Ombudsperson program and how such a service will be promoted across Ontario.

H) Public Awareness Campaign on Equity in the Legal Profession. In supporting Recommendation 30, the LSUC should provide to the CBA its report on "Public Education Activities to Promote Equity and Diversity in the Legal Profession" adopted by Convocation in January, 1999. The LSUC should also indicate its interest in working jointly with the CBA and its local affiliates in developing and implementing such initiatives in Ontario.

I) Annual Conference on Equity Initiatives in the Legal Profession. In supporting Recommendation 31, the LSUC should indicate its interest in being part of any such annual gathering and that all law societies should be invited to participate.

J) CBA Implementation Committee. In supporting Recommendation 34, the LSUC should indicate its interest in having both the Chair of the Treasurer's Equity Advisory Group and the Equity Advisor as being part of this committee. This will allow LSUC opportunities to provide and receive information on current developments in equity and diversity within the legal profession at a national level. Such an opportunity can be very useful in setting standards for the profession at a national and local level.

16. Regarding those recommendations which do not have a direct bearing on the LSUC, its is recommended that Convocation indicate its interest in receiving information on their status as well as updates on those recommendations which are adopted for implementation by the CBA. This will ensure that information on the development of equity and diversity initiatives by the other bodies named in the recommendations of both reports is available to the LSUC for its reference, enabling the LSUC to be contemporary in its approach to equity implementation and to be knowledgeable about how other organizations within the legal profession are responding to equity and diversity issues. This may also be useful to direct services provided by LSUC, eg., education and regulatory, as a number of the bodies named in the CBA recommendations have either direct or indirect impacts on LSUC policies, programs and services.

Conclusion:

17. The CBA Working Group report on "Racial Equality in the Canadian Legal Profession" is both a timely and critical document. As more and more Aboriginal peoples and people of colour enter the profession of law, it is incumbent on governing bodies within the legal profession to ensure that these communities are welcome and that there are no artificial barriers to their entry and success within all levels of the profession. This principle was recognized by Convocation when it adopted the Bicentennial Report and has led to the LSUC taking a series of actions aimed at both identifying barriers to the practice of law facing Aboriginal and equity-seeking groups and eliminating them.

18. Based on the activities of the LSUC, it is recommended that Convocation endorse in principle the CBA report and forward this report, with accompanying materials, to the CBA for consideration at its annual meeting in Edmonton this August. It is also recommended that this report be forwarded to the Federation of Law Societies, the National Committee on Accreditation and to the Legal Aid Ontario requesting that they consider and respond to those recommendations which address them.

Charles Smith

APPENDIX "A"

Racial Equality in the Canadian Legal Profession
Presented to the Council of the Canadian Bar Association
February 1999
By the Working Group on Racial Equality in the Legal Profession

The Challenge of Racial Equality: Putting Principles into Practice
The Report of the Working Group on Racial Equality in the Legal Profession

Summary of Recommendations

Recommendation 1
We recommend that the Canadian Bar Association host a meeting with law school deans, from both civil and common law faculties, and with members of associations representing law students and lawyers from racialized communities to:

- develop and encourage the implementation of programs that would eliminate the systemic discrimination which deters students from racialized communities from applying to and getting into law schools; and
- create a national system for tracking the access of students from racialized communities to law schools.

Recommendation 2
We recommend that law school Deans require the editors of the law school student newspaper to review their editorial policies and practices to ensure that they conform to the requirements of provincial/territorial human rights legislation. The editorial policy should include a process for appropriately handling complaints of racist or discriminatory content in the newspaper.

Recommendation 3
We recommend that the Canadian Bar Association request that the members offer to the mentor students in law schools, where appropriate. The CBA could recognize the contribution of mentors at its Annual Conference and through its publications.

Recommendation 4
We recommend that the Canadian Bar Association conduct a fundraising campaign to raise money for bursaries and scholarships for:

- students entering and in law school who are disadvantaged because of discrimination; and
- graduate students studying issues of race and cultural difference and the law.

Recommendation 5
We recommend that the Canadian Bar Association develop and distribute a model policy for articling interviews, which includes:

- strategies for ensuring all students are given a fair chance to compete for available positions;
- a list of types of questions that are unacceptable to ask during interviews; and
- suggestions for ways to prevent racial bias from infiltrating the interview and hiring process and from affecting the articling experience.

Recommendation 6
We recommend that the Federation of Law Societies identify the qualities required of a lawyer going into the practice in the new millennium and the criteria that should be used to evaluate competence with a view the eliminating the systemic discrimination that persists in the current Bar Admission system.

Recommendation 7
We recommend that the Federation of Law Societies review standards for admitting people with non-Canadian experience and training to the practice of law, with a view to eliminating systemic discrimination from the process and to identifying ways in which CBA members can assist with the accreditation process (for example, through mentoring programs or extended articling programs).

Recommendation 8
We recommend that the Canadian Bar Association's racial equality specialist (see Recommendation 31) set up a system so that law students. Lawyers and associations of law students or lawyers can confidentially raise concerns about any lawyers or law firms that are not respecting the principles of racial equality in their hiring practices. The racial equality specialist will seek discreet and appropriate ways to remedy the situation.

Recommendation 9
We recommend that, if they do not already have a policy in place, the Canadian Bar Association, all the law societies and le Bureau du Québec, and all Justice Departments and all law firms adopt a workplace equity policy, including equitable hiring policies, and that they actively recruit and hire lawyers from racialized communities when they are positions to be filled.

Recommendation 10
We recommend that the Canadian Bar Association compile and publish a list of all law firms of more than 10 associates who have answered a CBA questionnaire and identified that they have an employment equity policy in place and provided evidence of an on-going commitment to ensuring that the policy is put into practice.

Recommendation 11
We recommend that the Canadian Bar Association compile and publish a list of all law firms of more than 10 associates who have answered a CBA questionnaire and identified that they have an appropriate system in place for responding to concerns about racial discrimination received from clients, support staff, summer students, articling students, associate lawyers and partners.

Recommendation 12
We recommend that all Justice Departments adopt a program of contract compliance whereby only those law firms which have demonstrated a commitment to equity through appropriate hiring, retention and promotion policies and practices would be granted government contracts.

Recommendation 13
We recommend that the Canadian Bar Association meet with federal, provincial and territorial Justice department officials to discuss the mechanisms that will be used to monitor the degree of compliance with these employment equity policies.

Recommendation 14
We recommend that the Canadian Bar Association's racial equality specialist (see Recommendation 31) prepare an equity awareness training course to offer to law firms across the country. This training course would support the development of employment equity and harassment policies to address, among other matters, recruitment, retention and promotion issues and would challenge senior managers to remove the barriers that block the advancement of lawyers from racialized communities.

Recommendation 15
We recommend that all Justice Departments recognize the need for representation of people from racialized communities in decision-making and policy-making roles.

Recommendation 16
We recommend that the Canadian Judicial Council and its provincial equivalents enhance their systems of responding to complaints about judges who are perceived as showing racial bias or discourtesy or unfairness to lawyers , clients, witnesses, court workers, and members of the public from racialized communities, and that Chief Justices and Chief Judges, who have not already done so, establish a protocol for responding to such complaints.

The Basic elements of the complaints system would include:

- discussing the complaint with the judge concerned;
- bringing the complaint to the attention of the Chief Justice or Chief Judge;
- monitoring complaints over time and, when there is a pattern of alleged offensive conduct, having a procedure for taking further action;
- keeping the complainant informed about the handling of the complaint; and
- communicating the existence of this system to all members of the Bar and to all users of the judicial system.

Recommendation 17
We recommend that the National Judicial Institute's and provincial court judge's social context education programs include materials and resource people with a critical race theory analysis. These programs should also promote a greater understanding and awareness of the experiences of Aboriginal people as they relate to legal issues involving the courts.

Recommendation 18
We recommend that the federal and provincial Attorneys General, in consultation with lawyers from racialized communities and community justice advocates, develop a complaints process for members of the public who have concerns about how they were treated by people in the court process and justice system.

Recommendation 19
We recommend that the federal and provincial Attorneys General implement a comprehensive training program for Crown Attorneys which would focus on incorporating a critical race theory perspective into all aspects of their work, including their exercise of discretion and the impact of their current approaches to legal argument.

Recommendation 20
We recommend that any disclosure of information about which cases will be heard by specific judges must be made available to all interested parties.

Recommendation 21
We recommend that the federal and provincial Attorneys General keep statistics to identify the number of federally and provincially-appointed judges who are from racialized communities.

Recommendation 22
We recommend that each law faculty immediately establish, fund and support an Aboriginal Advisory Committee to design, implement and monitor curriculum changes to ensure compulsory courses include analysis from an Aboriginal perspective. The Committee should also promote compulsory law school community awareness programming concerning Aboriginal matters. An Aboriginal Advisory Committee should include representatives from Aboriginal faculty, students, lawyers and community organizations.

Recommendation 23
We recommend that law faculties, particularly those with a significant number of Aboriginal students or those located in a region with significant Aboriginal population, develop employment equity strategies for hiring Aboriginal professors to tenure-track positions. These strategies should also seek to eliminate discriminatory barriers in the hiring process for contract, part-time and sessional lecturers.

Recommendation 24
We recommend that the Canadian Council of Law Deans establish an Aboriginal advisory committee with representatives from the Indigenous Bar Association, the CBA Aboriginal Law Section, the Native Law Centre and the Indigenous law students association to:

- conduct on-going evaluations of pre-law programs for Aboriginal students;
- promote the recognition of pre-law programs among law faculties; and
- expand pre-law programs to other areas of the country so that they are more readily accessible to Aboriginal students.

Recommendation 25
We recommend that the law societies work with the Indigenous Bar Association and the CBA Aboriginal Law Section to examine the content of Bar Admission Course materials from an Aboriginal perspective and to recommend how to eliminate systemic discrimination in Bar Admission Course materials and examinations.

Recommendation 26
We recommend that the Canadian Bar Association take a leadership role, working with its Branches, with the law societies and with the federal, provincial and territorial governments to initiate a dialogue with representatives from racialized communities and lawyers representing clients from racialized communities to:

- develop a strategic plan for the creation of specialized legal aid services to better serve the community; and
- define an appropriate legal aid program for refugee claimants.

Recommendation 27
We recommend that the federal government change its agreements with the provinces and territories to increase funding levels for criminal and civil legal aid and expand coverage in order to:

- improve access to justice for vulnerable peoples, including people from racialized communities;
- support the increased development of specialty legal clinics to serve specific community needs; and
- establish a fair, non-discriminatory system of legal aid for refugee claimants.

Recommendation 28
We recommend that the Aboriginal Court worker program be expanded to ensure that all Aboriginal people have access to cultural language interpreters when they are interacting with the civil or criminal justice system as a plaintiff, defendant, complainant, accused or witness.

Recommendation 29
We recommend that the Federal Department of Justice organize a consultation with interested parties, including, where appropriate, law societies, provincial and territorial department of the Attorney General, Ministries of Education, lawyers from racialized communities, community justice advocates working with clients from racialized communities and workers in community-based interpretation services to:

- develop guidelines on basic training for all court interpreters;
- consider the need for an interpretation certification program; and
- establish a protocol to protect the confidentiality of communications with an interpreter.

Recommendation 30
We recommend that the Canadian Bar Association, in consultation with lawyers from specialty clinics serving racialized communities, representatives from associations of lawyers from racialized communities, academics and other interested parties, develop a research methodology to assess, from a critical race theory perspective, the positions taken by the federal and provincial Attorneys General in cases involving people from racialized communities.

Recommendation 31
We recommend that the Canadian Bar Association create a full-time position of racial equality specialist to advise the CBA and its members on all matters relating to the elimination of racial discrimination in the legal process, including ways to gather relevant statistics, to measure law firm compliance with employment equity policies, and to monitor the implementation of the recommendations in this Report. This position is to be established for a minimum of 10 years and is to be staffed by a lawyer who has training in equity issues. The position should report to the Executive Director.

Recommendation 32
We recommend that the Canadian Bar Association, at the national and Branch levels, make every effort to remove the particular barriers that impede the participation of members from racialized communities in its committees and structures.

Recommendation 33
We recommend that the Canadian Bar Association, in consultation with law students and lawyers from racialized communities, develop a recruitment strategy and explore changes to its fee structure to attract more members from racialized communities. Changes to the fee structure could include fee reduction incentives and fee scales that recognize fees paid to other associations serving lawyers from racialized communities.

Recommendation 34
We recommend that the Canadian Bar Association Standing Committee on Equity be clearly mandated to pronounce the implementation of recommendations approved by CBA members and to monitor the implementation of recommendations made by Royal Commissions, inquiries and task forces that concern racial equality in the legal community. In its regular report to the membership, the Committee should strive to increase member awareness of these recommendations and the progress with respect to their implementation.

Recommendation 35
We recommend that the Canadian Bar Association cooperate and exchange information with the Indigenous Bar Association, the South Asian Lawyers Association, the African Canadian Legal Clinic and other associations which bring together lawyers from racialized communities.

Recommendation 36
We recommend that the Canadian Bar Association Standing Committee on Equality be mandated to assist with the development of the agenda for the Annual Conference and the Mid-Winter meetings to maximize the inclusion of equality perspectives at the meetings and to increase the participation of lawyers and law students from racialized communities.

Recommendation 37
We recommend that a status report on the elimination of racial discrimination within the legal profession be presented at every Annual Conference, orally and in writing.

Recommendation 38
We recommend that the Canadian Bar Association continue to expand the scope of its continuing legal education programs to include more courses on human rights law and anti-discrimination policies and attitudes.

Recommendation 39
We recommend that the Canadian Bar Association develop a critical race theory framework which its sections and committees can use to analyze issues from an equality perspective and ensure that their recommendations reflect anti-discrimination principles.

Recommendation 40
We recommend that the Canadian Bar Association demonstrate its commitment to racial equality in the legal profession by ensuring that persons in voluntary and staff leadership positions in the Canadian Bar Association participate in training courses that address the issues of discrimination and harassment in all areas of profession conduct, following Canadian Bar Association Resolution 96-05-M.

APPENDIX "B"

Virtual Justice:
Systemic Racism and the Canadian Legal Profession
A Report by Joanne St. Lewis
Co-chair of the Working Group on Racial Equality in the Legal Profession

Summary of Recommendations

It is recommended:

R1
That the Canadian Access to Legal Education Group (CALEG) be given lead responsibility to work in cooperation with the Council of Law Deans to develop:

- model criteria, guidelines for the establishment and monitoring of equity initiatives in Canadian law schools;
- a national review of equality measures and attitudes towards equality in Canadian law schools (to be undertaken every two years to monitor progress towards the elimination of racism in law schools).

R2
That the Canadian Association of Law Teachers (CALT) conduct a follow-up to its report *Creating the Pathways...Widening the Circle* with a particular focus on issues of curriculum, pedagogy and the law school environment. This report to be forwarded to the Council of Law Deans for discussion and appropriate action.

R3
That all law schools require mandatory participation in their law school legal aid program.

R4
That the Canadian Council of Law Deans establish a model ani-discrimination policy focused on law school environment issues, and that a committee comprised of both faculty and students be available to assist law schools in the mediation of internal conflicts or to provide counseling and support on a confidential basis to faculty or students. Law schools that have already established internal complaints procedures should include information regarding this body in all their communications.

R5
That the First Nations legal issues be included as a mandatory component of the law school undergraduate curriculum of every student prior to graduation. Development of the materials should be done in cooperation with the Indigenous Bar Association (IBA)

R6
That law schools provide annual reports to the CBA on faculty composition and retention from racialized communities for inclusion in it Annual Report.

R7
That the Indigenous Bar Association and the Department of Justice establish a committee with representatives from the Indigenous Bar Association, First Nations governments, and First Nations legal scholars to conduct a feasibility study, and design and establish a First Nations law school.

R8
That the federal and provincial Ministers of Justice and Attorneys-General fund and develop roundtables to meet quarterly with the Indigenous Bar Association to discuss the range of justice issues facing First Nations communities.

R9
That the Department of Justice take lead responsibility for establishing a strategic planning committee with representatives from other government departments, First Nations governments and the Indigenous Bar Association to develop a comprehensive funding protocol for community-focused First Nations law firms.

R10
That the Canadian Bar Association and the Indigenous Bar Association explore sharing resources and expertise through their annual assemblies/meetings. This would provide an opportunity for increased contact and identification of issues of mutual interest.

R11
That each law society work together with law schools and racialized lawyer associations (or members) in its jurisdiction to develop and establish permanent equity in practice committees. These committees would consult, coordinate and develop policies on issues related to entry into the profession. To fulfill their mandate, they would:

- identify the requisite skills and abilities required for admission to the Bar;
- undertake a curricular and pedagogical review of the Bar Admissions Courses to ensure that they combine the development of professional skills with service to a diverse community;
- publicize successful equality initiatives undertaken by law firms within their jurisdiction;
- conduct a longitudal study of students from equality-seeking communities to determine patterns of participation in the profession from law schools, to obtaining articles, to Bar Admissions examinations, to practice and longevity in the profession;
- facilitate the exchange of information on equality issues between law schools, law firms and individual lawyers.

R12
That the federal and provincial Attorneys-General jointly develop a scholarship and bursary fund for students from equity-seeking communities in three distinct areas: law school, non-funded Bar Admissions Courses and graduate programs. Every effort should be made to encourage the participation of the private bar but their failure to contribute should not preclude the establishment of the fund.

R13
That the Federation of Law Societies undertake a review of the Codes of Professional Conduct to ensure that members of the profession are subject to equal standards and remedies regardless of jurisdiction. This review should be undertaken in conjunction with representatives of human rights commissions so that positive measures such as training and education have an equal presence with remedial/punitive actions.

R14
That the Federation of Law Societies develop model employment guidelines for its members regarding the interviewing, hiring and retention process. These guidelines would then be incorporated by reference in the Codes of Professional Conduct.

R15
That the provincial and federal Attorneys-General work together with the private bar and law schools to establish consistent criteria for the monitoring of work-force and education participation of members of equality-seeking communities in their institutions.

R16
That the provincial and federal Attorneys-General prepare annual reports on the workforce participation of persons from equity-seeking communities which would be forwarded to the CBA for publication in its annual *Progress Towards Equality Report.*

R17
That the federal Department of Justice provide a list of the successful recipients of work under its contract compliance guidelines to the CBA for publication. Provincial Attorneys-General who have not yet done so should institute a contract compliance policy for the allocation of its legal work consistent with the demographics for their jurisdictions. Every effort should be made to contract directly with or ensure adequate representation of First Nations lawyers and lawyers from racialized communities in areas which directly relate to their communities.

R18
That corporate counsel meet regularly with racialized lawyer associations to discuss how equality issues can be encouraged and implemented through their leadership role as important clients of private law firms.

R19
That law societies take steps to eliminate barriers to the participation of members of equality-seeking communities as benchers and encourage their participation at all levels of their organizations.

R20
That provincial legal aid programs establish a process where client concerns regarding equality issues in the provision of services could be addressed.

R21
That law societies work together with local human rights commissions to develop programs for identification of systemic barriers within law firms and strategies for removal.

R22
That the Canadian Bar Association coordinate an immediate review of funding cutbacks in provincial legal aid programs by a committee comprised of provincial legal aid program representatives, legal aid lawyers and representatives from racialized communities to examine whether they have a disproportional impact on racialized communities. The results of this review could form the basis of a Court Challenges application.

R23
That the Canadian Bar Association together, with specialty clinics serving racialized communities and racialized lawyers, their associations and academics, develop a research protocol and, conduct a critical equality analysis of the federal and provincial legal departments role in cases involving equality and the advancement of the *Canadian Charter of Rights and Freedoms.*

R24
That the CBA together with provincial licensing bodies in cooperation with major financial institutions develop a funding strategy to assist lawyers from socio-economically disadvantaged backgrounds to establish legal practices.

R25
That law societies develop a client rights document which would inform clients of their rights and methods of seeking redress should they have any concerns regarding the quality or context of the service or advice they have received from a lawyer.

R26
That the federal government examine its judicial appointments process and develop a strategic plan to increase the representation of First Nations and racialized judges at the appellate level (Court of Appeal, Federal Court of Appeal and Supreme Court of Canada).

R27
That each province establish a committee under the auspices of the Attorney-General comprised of Crown Attorneys, policy analysts, representatives from the community justice organizations and lawyers from equality-seeking communities, to review its Crown Policy Manual in order to eliminate barriers to equality and advance service to diverse communities.

R28
That the Canadian Judicial Council establish a non-judge advocate or ombudsman to facilitate/assist in the mediation of concerns expressed by lawyers or members of the public regarding issues of discrimination by judges. The advocate would provide an annual report to the Council for its consideration.

R29
That the Privy Council Office and its provincial equivalents create an administrative tribunal training program which would provide orientation on basic law and education on social context and the Charter for its appointees at regular intervals during their tenure in office. The model of the National Judicial Institute social context education program should be considered for the development of a permanent training institute for members of Boards and Agencies and the expansion of provincial judges training programs.

R30
That the CBA take leadership role in the formation of a committee as part of the Vision Relevance work which would focus on the development of a public awareness campaign for the profession and the general public on its commitment to equality and the development of a diverse profession. This committee would also undertake to develop tools and provide support to local bar associations, law societies and law schools who find their equality initiatives subject to attacks based on stereotypes and misinformation. Participation in this committee would be invited from law schools, law societies, local bars and racialized professional lawyer associations.

R31
That, as part of its Annual Conference, the CBA sponsor an annual symposium funded by the Department of Justice, Heritage Canada, and the provincial Attorneys-General, to focus on issues and strategies that arise for the profession in serving a diverse clientele, and which would bring together lawyers, scholars and community justice advocates to share ideas, develop strategies and support initiatives on a national basis.

R32
That the CBA develop a consultation protocol which would enable cooperative work with associations serving racialized lawyers and their communities in the development of policy documents, briefs and interventions in cases to ensure that an equality perspective is incorporated.

R33
That the Department of Justice and the provincial Attorneys-General establish Cabinet Committee on Equality issues which would meet regularly with racialized lawyers and representatives of racialized communities on justice issues.

R34
That the CBA maintain administrative oversight of an implementation committee whose membership should consist of representatives of the diverse stakeholders implicated in the Working Group on Racial Equality Report. Consideration should be given to extending invitations to: members of the Working Group on Racial Equality; CBA branches and committees; law societies; racialized lawyers; First Nations lawyers; racialized law students; law firms; legal academics; and law deans. The committee should have twice yearly in-person meetings. Funding for its effective operation should be provided by the Department of Justice, Heritage Canada and the provincial Attorneys-General.

R35
That the CBA publish an annual *Progress Towards Equality Report* which would be comprised of the annual reports identified in the recommendations contained in this report and such other matters identified by the implementation committee.

R36
That the implementation committee would identify outstanding research areas such as (a) matters requiring empirical studies (B) issue papers to facilitate discussion (c) case studies for training (d) models for environmental scan of legal profession's attitudes and (e) major research projects. This would be included in the annual *Progress Towards Equality Report.*

R37
That the CBA undertake to conduct a critical analysis of Statistics Canada data on the legal profession every five years and make it publicly available to all interested parties in the annual *Progress Towards Equality Report.*

TAB "2"

RACIAL EQUALITY IN THE CANADIAN LEGAL PROFESSION - THE WORKING GROUP REPORT
VIRTUAL JUSTICE: SYSTEMIC RACISM AND THE CANADIAN LEGAL PROFESSION - PROFESSOR ST. LEWIS REPORT

(See Report in Convocation file)

TAB "3"

CRITICAL RACE THEORY BIBLIOGRAPHY by Jewel Amoah

(See Report in Convocation file)

LAW SOCIETY OF UPPER CANADA:
DEVELOPMENT OF EQUITY AND DIVERSITY PLANS

A DISCUSSION DOCUMENT

VISION STATEMENT

The Province of Ontario is made up of people from diverse communities, including Francophones, Aboriginal peoples and equity-seeking groups, i.e., women, people with disabilities, ethnocultural and racial minorities, immigrants and refugees, lesbians, gays, bisexuals, transgenders and people with low incomes as well as people with different religious customs, beliefs and faiths.

Given the diversity of the population of Ontario, the Law Society of Upper Canada will recognize the dignity and worth of all people through the treatment of its members, its employees and the community-at-large. This will be done by ensuring inclusion and equity within the Law Society's policies, decision-making, provision of services, employment conditions, contracting of goods and services as well as public and community relations.

The Law Society of Upper Canada recognizes and respects the autonomy of Aboriginal peoples and their inherent right to self-determination and self-government.

The Law Society also recognizes that there are barriers imposed by harassment, discrimination and disadvantage faced by Francophones, Aboriginal peoples and equity-seeking communities within society and within the legal profession.

The Law Society of Upper Canada acknowledges its role and responsibility as the governor of the legal profession in the public interest and its capacities as a policy-maker, resource to the public and the profession, regulator, educator and employer. In this context, the Law Society of Upper Canada will strive to create an environment of equality within the legal profession for all people regardless of their race, creed, age, language, nationality, place of origin, ethnic origin, Aboriginal status, disability, gender, sexual orientation, gender identity, political affiliation and socio-economic status.

The Law Society of Upper Canada will implement positive changes within its workplace and within the legal profession to achieve equality of outcomes for Francophones, Aboriginal peoples and equity-seeking groups with the aim of ensuring that its workplace and the profession are free from harassment and discrimination.

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Introduction:

In response to the recommendations of the Bicentennial Report on Equity Issues in the Legal Profession, the Law Society of Upper Canada (LSUC) is undertaking to integrate equity and diversity initiatives into its day-to-day operations. This requires each LSUC department to ensure that equity and diversity are integral to their operations and that each department has undertaken a thorough assessment of its policies, programs, services and resources (human and financial) to do so. Further, this assessment needs to be done in a planned and coordinated manner enabling departments to identify corporate as well as department specific issues, challenges and needs.

This Discussion Document is the first step in such an effort. It provides information on each of the LSUC departments, their roles/mandates, a brief history of the equity and diversity initiatives they have undertaken, the future challenges they face and the resources needed to effectively integrate equity and diversity into their day-to-day operations.

Background:

In 1997, Convocation unanimously adopted the Bicentennial Report on Equity Issues in the Legal Profession. This report summarized the number of initiatives and challenges undertaken by the LSUC to address equity and diversity within the legal profession. It put forward sixteen recommendations addressing policy development, advancement of equity and diversity policies, governance, regulation and employment/contracting for legal services.

The report also provided a framework for implementing these recommendations. It called for a systems-wide effort to be led by the Chief Executive Officer and supported/facilitated by the Equity Advisor. These requirements have now been included in the LSUC "Policy Governance Manual" as part of the Executive Limitations entitled "Bencher-Staff Relations: Delegation to the Chief Executive Officer."

Purpose:

To begin the process of coordinating a systems-wide effort by the LSUC, this Discussion Document has been prepared to provide opportunities for dialogue on the development of equity and diversity initiatives by the LSUC. It performs an initial equity audit of all LSUC departments, identifies equity initiatives implemented to date and the equity and diversity challenges now facing the LSUC and each of its departments. It also provides an opportunity to receive input from Convocation, all LSUC staff as well as Francophone, Aboriginal and equity-seeking groups concerned about equality in the legal profession. This input will be useful in the development of LSUC equity and diversity plans to be submitted to Convocation for approval in November, 1999.

Process Required:

To facilitate the dialogue identified above, effort will be needed at three levels: (1) within the LSUC; (2) by Convocation; and (3) by Francophone, Aboriginal and equity-seeking groups. To initiate this, it is essential that:

1) staff in each department review this Document and discuss it all levels involving senior, management and frontline staff. Timeframe: May through September;

2) the LSUC Senior Management Team and Management Team meet to:

   - review a matrix analysis of submissions received;
   - begin developing a critical analysis of the challenges identified by each department; and
   - initiate education/training to develop equity and diversity plans, including processes for implementing the LSUC Workplace Harassment Policy, considering options for employment equity as well as contract compliance. Timeframe: May/June;

3) internal equity and diversity plan education/training is developed and implemented for LSUC staff. Timeframe: June through August;

4) consultations are convened with Benchers, Francophone, Aboriginal and equity-seeking groups to review and comment on departmental submissions on equity and diversity challenges. Timeframe: July and August;

5) the drafting of equity and diversity plans by each department and corporately is completed. Timeframe: August-September;

6) a special meeting is held with Information Services Department to consider technology supports required for equity and diversity plans. Timeframe: September;

7) a second phase of internal and external consultations is held. Timeframe: October;

8) the final drafting of plans for submission with budget is done. Timeframe: October-November.

This consultation will provide opportunities for developing internal support throughout the LSUC for equity implementation while, simultaneously, building partnerships with interested stakeholders and Convocation in this process. It will ensure that the LSUC has developed equity and diversity plans for implementation in a planned and coordinated manner and that an audit of all programs and services has either been conducted or will be in the foreseeable future. It will also ensure that critical and timely issues are identified for plan development and that appropriate resources are built into the annual budget process.

It is recommended that equity and diversity plans cover a 2-3 year timeframe and that an evaluation be conducted following the completion of such implementation. Progress reports on implementation will be submitted annually and periodic reports on timely issues or key policy development, i.e., contract compliance or employment equity, will be submitted to Convocation as required.

Matrix Analysis:

At this stage in LSUC's development of equity and diversity initiatives, most departments have submitted information regarding their history, mandate, current and future equity challenges, and budgetary implications of these challenges.

These have been reviewed and form the basis of this matrix analysis which identifies common challenges departments have included in their submissions. These common areas are listed below.

Internal Issues:

- Employment: Human Resources, Regulatory, Equity, Customer Services;
- Training, education and staff development: Human Resources, Education, Regulatory, Equity, Customer Services;
- Performance management: Human Resources, Regulatory;
- Workplace accommodation: Customer Services, Human Resources, Facilities;

External Issues:

- Communications: Human Resources, Libraries, Regulatory, Customer Services, Education, Lawyer's Fund for Client Compensation, Equity;
- Purchasing: Finance, Equity;
- Working with external stakeholders: Human Resources, Education, Regulatory, Equity;
- Educating the profession: Education, Equity.

These issues present opportunities for cross-departmental collaboration. The challenge is to identify the priority issues and to develop a team approach to address them. They can then be included in the LSUC's Equity and Diversity Plans as corporate initiatives.

HUMAN RESOURCES DEPARTMENT

Overview:

The daily operations of Human Resources is to provide support to all LSUC employees through a consultative model and deliver "people processes" that include Staffing and Recruitment, Performance Management and Development, Employees Relations, Compensation and Recognition, Retention, Separation and Rebuilding. Human Resources is a key partner in the implementation of organizational and operational changes while remaining respectful of and responsive to employees.

Recent History:

1988) Job Evaluation introduced
1992) Pay Equity adjustments commenced

- Pay Equity plan posted
- Sexual Harassment Policy introduced
- Employment Equity Consultation Group established

1996) New position of Director of Human Resources created, staffed and a member of Senior Management reporting to the CEO

1997) Built a HR Department with seasoned HR professionals experienced in all facets of HR including equity and diversity;

Began working with the Treasurer's Equity Advisory Group;

Participated in the selection of a consultant to provide services to the Law Society and LPIC in the development of a Equity Contract Compliance program;

1998) To ensure compliance with Executive Limitation 1.4, the Law Society's Harassment Policy was revised to include workplace harassment;

Partnered with the Treasurer's Equity Advisory Group and successfully filled the new position of Equity Advisor, a key senior management position, and facilitator of the Bicentennial Report's recommendations;

Began redesigning HR practices in the areas of performance management, staffing and recruiting, compensation, training and development with a view to ensuring equity is an inclusive component and that counter systemic discrimination;

Job descriptions include cultural sensitivity as a must-have skill and as such cultural sensitivity is requisite as part of job interviews;

1999) Pension Plan amended to recognize same sex spouses;

HR is working closely with Equity Initiatives Department to fill their staffing requirements;

HR is a member of the Law Society's internal Equity Steering Team that will oversee the implementation of the process for developing Equity and Diversity plans within all areas of the organization.

Equity Challenges:

In responding to the implementation of equity and diversity within the LSUC, the Human Resources Department has identified challenges in the following areas:

a) Employee Relations:

- Until recently the employee population has been homogeneous. This is changing through recruitment both for replacement and for P200 associated positions.
- Current employees need to be made aware of cultural differences and how they can affect interactions between staff.
- New employees need an orientation to the organization's position with regards to equity and diversity and ground rules around appropriate behaviors.
- Managers need to understand that the concept of authority, and different cultures' responses, varies and how to deal with these styles in the areas of coaching, mentoring, constructive feedback and discipline.
- Issues around accommodation for religious and cultural needs require attention.

b) Recruiting:

- Need sensitivity training for employees who interview on hiring teams.
- Need to ensure that postings, interview questions and testing materials are based on bona fide requirements for the position and are bias free.
- Ensure that hiring decisions are based on qualifications and eliminate the halo effect as much as possible.
- Ensure that the recruitment policy, selection and evaluation tools are neutral.
- Make a concerted effort to recruit through a variety of diversity sensitive media.

c) Compensation:

- LSUC has just redesigned its job evaluation plan and it is not anticipated that diversity and equity issues will arise out of this area.
- Depending on time and funding availability, a consultant could review the job descriptions and evaluation plan to ensure that they are neutral; however, it is expected that our current consultant should do this as part of the job evaluation and redesign.

d) Training and Development:

- Provide sensitivity training in all areas of employment and make sure that new and current employees are aware of LSUC's commitment. Make sure that training vehicles that we use respond to a variety of learning needs.

e) Performance Management:

- Again a sensitivity issue around feedback and coaching. Some cultures are team oriented and others are not. Staff need to understand how to deal with the issue.

f) Change Management/Communications:

- Ensure that the internal messages and the way we communicate are sensitive to all groups of employees.

g) Workplace Harassment:

- Recruit advisors and train them. Also train managers and educate staff. Implement the policy. An expert should undertake to do this.
- Decide if the make up of the advisors has to mirror the different groups as best as possible keeping in mind that LSUC will want to attract the best qualified individuals for the role.
- In general it seems that most of our needs are around awareness of diversity and equity once candidates are hired and to be sensitive to the hiring process.
- Currently, the major barriers that we have are time, human resources and funding. With P200 Human Resources is stretched to the limit to produce the results committed to. We do not have an in house trainer on site (with or with out equity background). Outsourcing would require additional funds to source and provide the training. Selection of appropriate vendors should be in consultation with the Equity Advisor.
- This same issue applies to a comprehensive review of our policies to enure neutrality.

h) Other Issues:

- Bench mark our policies against other organizations that are industry leaders in attaining equity and diversity in the workforce. (Flex time, part-time, education);
- Identify equity seeking groups that LSUC need representation in given areas of the Law Society;
- Work with equity seeking groups to identify and develop strategies to increase representation of equity seeking groups through development of external workforce and internal workforce. (Career Pathing, Professional Development, Speaking at schools, community centres, Recruitment/ advertising Strategies, development of view of LSUC as a "preferred?" employer: market salaries, fair selection processes, learning potential, development opportunities, more proactive than just open to cultural/physical accommodations);
- Train HR in maintaining ongoing relationships with equity seeking groups and include in responsibilities;
- Increase awareness of employees of issues and what the issues translate into on a day-to-day basis. Then train on those day to day processes - recruitment, interviewing, selection, performance management, development;

- Ensure HR presence in processes to ensure skill transfer;
- Increase awareness of types of jobs, career paths and equity and diversity initiatives at the Law Society through Internet;
- Identify if there is something in the types of jobs or the communications of jobs which do not appeal to equity seek groups and see how that could be addressed;
- Support Intern Programs (short and long term). Open up / develop a program for summer student employment to ensure skill development and recruitment strategies fit with equity and diversity plans;
- Develop mentoring/coaching skills and encourage employees to use them in the community;
- Identify developmental positions for certain competencies;
- Develop LSUC HR role in building community relationships.

FINANCE/FACILITIES/LIBRARY DEPARTMENTS

History and Mandate

The Finance Department provides financial and accounting services to the Law Society and supports the Finance and Audit Committee. The department is currently headed by the Chief Financial Officer and has additional responsibilities for the Great Library and facilities. The present structure divides responsibilities of the department into the following broad categories each with a separate mandate.

Financial Policy and Planning

The mandate of financial policy and planning includes the coordination, development and monitoring of the annual operating budget for the Law Society; financial policy development, oversight of the Society's central purchasing and the management of treasury services. Additionally, financial policy and planning provides support to the Finance and Audit Committee and internal financial reports for management.

Financial Operations

The financial operations function maintains control over cash receipts and disbursements of the Society ensuring all members of the Society are properly billed according to their current membership status, that all liabilities of the Society are paid as they come due and that all employees of the Society are compensated correctly according to the terms of their employment with the Law Society. Additionally, financial operations coordinates the annual external audit of the Law Society and produces the annual financial report.

The Great Library

The Great Library as we now know it, was built between 1857 and 1860. The mission of the Great Library is to meet the legal research and information needs of Law Society members by providing access to publications, documents and services necessary to the practice of law. Its materials do not circulate outside the building and are intended for the use in the library or court rooms only.

Facilities

Facilities maintain the physical plant and associated property of the Law Society. This includes not only Osgoode Hall but also property owned in the City of Ottawa and a rental location in the City of London. Facilities manages and operates the catering function of the Law Society including the dining room, cafeteria facilities in Osgoode Hall and coordinates the use of Law Society facilities for special functions hosted by the Law Society or members of the public interested in using the facilities of the Law Society.

Equity Challenges

1) Budget Development

- Ensure adequate funding for all departmental equity initiatives is provided in the annual operating budget of the Law Society.
- Build equity issues, and the need to address these issues, into the annual budget process.

2) Membership

- Develop annual fee structure that meets the fiscal requirements of the Law Society and addresses the concerns of equity seeking groups.

3) Purchasing

- Develop and implement purchasing policy and procedures that ensure equal opportunity of access to potential suppliers of goods and services to the Law Society.

4) Facilities

- Identify accessibility issues and ensure all LSUC sites and facilities are accessible to people with disabilities.

5) Libraries

- Ensure equal access to, and provision of, library services to all users of the Great Library.
- This will present specific challenges to service individuals who might be sight impaired as an example.

6) Organizational Culture

- Foster an organizational culture that encourages identification and action on equity issues.

DEPARTMENT OF EDUCATION

- Recent History:

Date	Activity	Significance
May, 1997	Bicentennial Report on Equity Issues	Identified equity concerns with respect to the BAC, CLE, and Articling.
Jan., 1998	Exam time is extended by one hour to 3.5 hours per exam. (Initially this only applied to the supplemental exams. In Sept. of 1998 it was extended to all exams.)	The undue time pressure associated with the examinations was judged to relate more strongly to exam writing skills than knowledge of law, and members of under represented groups appeared to be over represented among those who were not 'exam savvy'.
Feb., 1998	Student success centre conceptualized, and a manager was contracted.	
Feb., 1998	Consultations with Aboriginal groups were initiated.	
May, 1998	Task Force on the French BAC Report	Identifies systemic problems with the manner in which the students who take the BAC in French are evaluated as compared to the students who do the program in English.
June, 1998	Task Force on Examination Performance	Documents the difficulties being experienced by a number of the members of under represented groups, and makes recommendations for improvements.
Aug., 1998	Pilot orientation program for aboriginal students.	Self-identified aboriginal students were offered a pilot orientation program to assist them with adapting to the study and examination patterns within the BAC. (The students reported that the orientation was very useful.)

Date	Activity	Significance
Aug., 1998	New BAC material developed in the field of Aboriginal Law	Provided an important element of the BAC which had been absent.
Sept., 1998	Mandatory attendance is removed from Phase Three.	This reportedly has made a very significant difference in the ability of students with significant external pressures (e.g. monetary, children, aging parents, ill partners) to successfully complete the BAC.
Sept., 1998	Student Success Centres open in each of the BAC locations.	These centres provide a range of student supports to assist students in adapting to the BAC requirements.
Sept., 1998	Tutoring is put in place to assist students who experience failure in the examinations.	This one-on-one tutoring is proving very successful in helping students who are having difficulty in a specific area of law.
Sept., 1998.	Distance education pilot is initiated in Thunder Bay.	Students were able to successfully complete the BAC within their own community.
Sept., 1998	Students were permitted to examine their failed examinations and compare them to the answer guide.	Allowed students to learn from their errors.
Sept., 1998	Students are permitted to carry credits from one Phase Three to the next for a period of up to three years.	Allows students with demanding personal circumstances to complete the BAC on a part-time basis.
Sept., 1998	New evaluation system is approved for grading the students taking the BAC in French.	Removed the systemic bias present in the norm referencing.
Oct., 1998	Pre-exam review sessions initiated.	Completion and review of practice exams in small group tutorials with BAC instructors.
Nov., 1998	The approach to determining the passing standard for the BAC in English is modified to eliminate the absolute reliance on norm referencing.	Eliminated a problem identified in the Task Force on Examination Performance report.

Date	Activity	Significance
Nov., 1998	As part of BAC reform a survey is done of individuals called to the Bar over the last 5 years.	Survey collected data on "considerations relating to . . . physical, social or cultural needs".
Nov., 1998	Implementation of Aboriginal Law day	Substantial involvement of Aboriginal instructors in the delivery.
Jan., 1999.	As part of the Bar Admission Course Reform Process special consultations are held with members of equity seeking groups and aboriginals.	
Mar. 1999.	A new model of the Bar Admission Course is approved.	The new model provides for much of the flexibility in accessing the learning that had been identified as being of particular importance to members of equity seeking groups.
May, 1999	Sensitivity training included in the Phase One training for BAC instructors.	

2) Assess Current Challenges

Ongoing challenges relate to:

- challenges faced by members of under represented groups in securing good articling positions;
- developing reference and seminar materials for use within the BAC which include the voices and faces of members of under represented groups;
- developing reference and seminar materials for use within CLE which include the voices and faces of members of under represented groups;
- offer greater numbers of CLE seminars which increase the profession's understanding of diversity/equity issues;
- ongoing training of Education staff (internal) and the BAC instructors (external) with respect to sensitivity and diversity issues;
- implement the elements of the new model of the BAC which will alleviate many of the concerns and systemic biases that are being experienced by members of under represented groups.

3) Forecast future challenges

The current challenges identified in the previous paragraph will require ongoing work for a number of years in order to achieve the improvements being sought.

4) Budget Impact

Most of the activities identified above can be accommodated within the normal budgets within the Department of Education. If a major initiative is launched with respect to educating the profession with respect to more equitable approaches to articling placement, this could require a budget of up to $30,000.

5) Corporate Matters

The primary corporate matters relate to changing attitudes within the profession at large. This requires a solid team approach and will involve the development of consensus on the future vision of equity and diversity initiatives amongst the LSUC departments.

6) Assistance Required

- Support in altering attitudes within the profession as they impact upon articling and placement.
- The identification of individuals and resources who/which would be of assistance in improving the inclusivity of our materials and seminar topics.

REGULATORY DIVISION

1) History

With the restructuring of the regulatory division brought about by Project 200, the area will be completely new. Its mandate is an amalgam but also an expansion to capture services not previously captured by any Law Society operation. Also, all the staff occupying the various positions in the new Advisory and Compliance Services department (ACS) are yet to be hired.

The new mandate and the "clean slate" recruitment of staff resources both represent significant opportunities and challenges in terms of developing an action plan.

The department's mandate is essentially twofold:

- to provide timely and accurate information to lawyers, both in response to specific inquiries but also pro-actively by identifying issues requiring widespread dissemination to the profession; and
- to ensure lawyer compliance with a number of ethical and other regulatory requirements via remedial means and through the use of more informal dispute resolution techniques designed to ensure participation and cooperation.

The department will be divided into teams, each of which will responsible for part of its overall mandate. The teams will be:

a) Advisory Services - providing ethical and practice advice to lawyers;

b) Resolution and Compliance - resolving minor complaints and assisting lawyers with practice windups, bankruptcies and the compliance with filing obligations;

c) Spot and Focused Audits - ensuring widespread compliance with trust accounting and related filing requirements;

d) Administrative Compliance Processes - processing and review and lawyer filings, assisting lawyers with voluntary resignations and requests for fee exemptions.

The various teams will be phased-in over the next few months with the department likely to be fully operational by the summer.

2) Current Challenges

As we continue with preparations for the new department, a number of issues that need to be addressed. Generally, the objectives of an equity and diversity action plan for ACS should include:

a) The recruitment of a staff complement that reflects the diversity of the legal profession and the general public; and

b) Design and delivery of services and other related functions in a way that maximizes accessibility and impact.

With these objectives in mind, some of the challenges in the near term include:

- improving on a very low level of understanding within the organization about equity and diversity initiatives and an almost complete lack of experience with implementing them;
- ensuring that hiring practices capture equity and diversity imperatives;
- reconciling these imperatives with the "Employee First" hiring policy being used to staff the new positions;
- reconciling these imperatives with the staffing requirements of the department. One example of this is the need of the Advisory Services team for lawyers with extensive private practice experience;
- addressing the reactive nature of the organization that has limited the impact of demographic changes and increased consumer expectations on the services provided and the way in which they are provided;
- finding ways to diversify our approach to meet the needs of a diverse audience while continuing to adhere to our principal mandate to ensure that the public is served by honest and competent lawyers.

3) Future Challenges:

- the pace of change and the corresponding need to monitor changes and continue to refine services to reflect needs;
- the need to develop and maintain strategic relationships with organizations and individuals that can assist the department to meet and, if necessary, re-shape its mandate;
- the need to design and implement systems that will ensure adherence to and continue the development of the department's equity and diversity action plan.

4) Budget Impact

The department needs to raise its profile, particularly within the legal profession. A better understanding of the challenges created by increased diversity in the profession is needed if the department is going to be able to set priorities and deploy its resources in a way that has the greatest positive impact. This will require extensive consultation, both at the outset and on a continuing basis.

5) Corporate Matters

- There will be a need for consistency and coordination as the Society's various operations develop plans which reflect their unique needs - identifying the common elements in a "model plan" might be helpful in this regard;
- Assuming that equity and diversity action plans are to become an integral part of every department's operations and will be built into performance management systems, increasing awareness at all staff levels is critical if these plans are going to have any degree of impact.

- Assistance Required
- To address employment equity and the upcoming hiring process - advice about how to eliminate any unfair or unnecessary barriers to employment opportunities within the department;
- In the longer term, to define elements of an employment equity segment to the department's action plan;
- To develop initiatives that will elevate the profile of the department and improve access to the services it offers with equity seeking groups, including those within the profession;
- To identify stakeholder groups and develop strategic alliances with other potential providers of similar services.

LAWYERS FUND FOR CLIENT COMPENSATION

History

The Lawyers Fund for Client Compensation was established in 1953 to assist clients who have suffered a financial loss due to their lawyers' dishonesty. Each member of the Law Society contributes annually to the Fund through their annual fees. Clients may make application for a grant from the Fund if they have lost money or property because of their lawyers' conduct. While many of our claims relate to the misappropriation of trust funds, the most common form of application concerns the loss of funds placed with a lawyer for investment purposes.

Up until about six years ago, the Fund employed 2 lawyers and two support staff. We now have five lawyers on staff with one support person. Of the six employees, we have 4 women and two men.
A further department initiative has been to offer our services to Ontario's French speaking population. All of our materials were translated into French and one of the new staff lawyers is bilingual. However, many of the older materials have been replaced and the new ones have not been translated. There has been very little incentive to do this due to the lack of demand for these materials. In the last five years, there have only been one or two occasions where French materials were requested or used.

If the Law Society wishes to deny a claim to the Fund and the claimant wishes a review of that decision, he or she may request their claim be referred to what we call a Referee hearing. These are administrative hearings where the claimants present their evidence, call witnesses, etc. The Law Society does the same and the Referee writes a report to the trustees of the Fund and recommends whether or not a grant should be paid.

In 1994 we determined that our slate of Referees was not representative of the population at large. We advertised for new Referees and were particularly interested in receiving applications from women and minority individuals. Seven new Referees, from diverse backgrounds, were appointed as a result of this process. As Referees are one of the only Law Society representatives claimants ever see, we felt the Referees should be more representative of the people who would appear before them.

Current/Future Challenges

Claimants who speak neither French nor English are one of our current/future challenges, although, much like the demand from French speaking people, this has not been a major issue. Even if the claimants themselves do not speak one of the official languages, they are often represented by counsel in the process who do. If the claimant is unrepresented, he or she often enlists the services of a friend to assist them in the process. If a hearing is held for such claims and the claimant is required to testify, the Law Society will cover the costs of supplying an interpreter.

A few years ago, Law Society staff were polled as to the languages they spoke. This identified that a number of LSUC staff are conversant in more than one language. Having access to a list of volunteer interpreters could be invaluable in certain situations.

Budget Impact

The cost of compiling a list of volunteer interpreters would be minimal. If we decide to interpret all our materials into French or other languages, there are cost implications. There used to be a line item in the Fund's budget for French translation ($2,000.00) but it has not been used in several years.

Corporate Matters

Translation of materials into other languages needs to be examined as there has not been the demand for them. If Law Society materials are to be made available in other languages, this is a decision that should be made on a corporate level. A consistent policy Society wide is needed rather than a piecemeal approach department by department.

POLICY SECRETARIAT

History

The Policy Secretariat has existed since October 1996. Its primary function is to support the work of committees, working groups and Task Forces by preparing committee agendas and reports to Convocation, drafting policy papers for the committees and Convocation, and providing policy input within the organization.

From October 1996 until November 1998, the Policy Secretariat played the main organizational role with respect to equity. This is because much of the work being done in that period was through the Admissions and Equity Committee and the Treasurer's Equity Advisory Group. Also Policy Secretariat coordinated the Treasurer's reception for gay and lesbian lawyers, which took place in June 1998 and our staff is also one of the advisers for the Law Society's updated harassment policy.

Policy Secretariat also sought, during this period, to create a paper record of much of the equity work that occurred during this period.

Current/Future Challenges

The Policy Secretariat is in the somewhat unique position of not having the type of operational role that the other departments have. It does have a significant role to play in the development of policy options for Convocation. To a large extent, then, the challenge for Policy Secretariat, both currently and in the future, is to assist the development of policy in a manner that is consistent with the Law Society's equity and diversity mandate.

The Policy Secretariat follows a particular approach in preparing its policy reports and agendas. Reports provide background to issues, policy options, and an analysis of the pros and cons of each and, where applicable, budget consequences of choices. Although the Policy Secretariat is aware of and tries to reflect equity and diversity issues in reports, there are two challenges. The first is probably best described as one of consistency. It is probably fair to say that we do not always ask ourselves directly whether there is an equity-related consideration that has (or has not) been reflected in the policy being put forward.

If consistency is to occur it probably requires at least four steps.

1) Development of questions that can be asked consistently in the preparation of each report. At least at the outset I would suggest these questions would be:

- Is the issue under discussion one that is reflected in the recommendations of the *Bicentennial Report* or additional policies adopted by Convocation?

- Is the issue under discussion one for which there is an executive limitation?

- Is the issue under discussion one for which there is a model policy?

2) Policy Secretariat being kept informed of initiatives being investigated and pursued by the Treasurer's Equity Advisory Group.

3) Policy Secretariat being kept informed of the equity-related activities of the other departments.

4) Policy Secretariat being kept informed of any expansion in the initiatives reflected in the *Bicentennial Report.*

The Secretariat can certainly do its best to pursue this consistency, but it is important to note that the second challenge will have some impact on our consistency. There may be situations in which the policy direction from committees and Convocation causes us to deviate from our usual approach. While we can make a point of raising equity issues, it is not Policy Secretariat's role to choose the policy direction of committees and Convocation.

Budget Impact

It is not anticipated that there would be a significant budgetary impact of these steps to Policy Secretariat.

Assistance Required

- The most important assistance is for Policy Secretariat to be kept in the information loop with respect to equity and diversity developments within the Society.

- If there are minutes from TEAG meetings they should be forwarded to the Policy Secretariat as a matter of course, so that we can be aware of any activities that are relevant to Committees.

- If there are equity initiatives being undertaken by other departments or by your department Policy Secretariat should be informed.

- If there is an annual plan of action this would also assist in alerting the Policy Secretariat to any issues that should be addressed in the committee reports.

- A systematic exchange of information among departments would also assist.

CUSTOMER SERVICE CENTRE

History of the Customer Service Centre

A transformation initiative, spurred on by a number of emerging trends, was launched by the CEO in September 1996. This initiative led to the development of Project 200. One of the objectives of this project was to address the need to provide quality service to members, the public and all other customers. In order to fulfill this mandate, it was decided to establish a Customer Service Centre (CSC).

In Phase One, the CSC would serve as a focal point for the intake of Regulatory, Membership and General enquiries. This model envisages the CSC serving as a "one stop" Service Centre, enabling customers to receive quick and easy access to information, service and programs, effective June 28, 1999. Phase two would encompass the transfer of the Reception and Education enquiries. The CSC is set up to maximize customer satisfaction by listening to the voice of the customer and communicating customer issues throughout the organization. This process is performed simultaneously with a drive towards continuous improvement initiatives which will help to ensure service is delivered in a cost efficient manner.

The department's business plans are focused on seven specific areas:

- Employees
- Customers
- Financial
- Continuous Improvement
- Technology
- Innovation
- Customer Service Advocacy

An integrated approach implemented for each area will ensure that the framework is established to begin the journey to ensure delivery of quality service.

Challenges

As the CSC opens, a number of challenges need to be addressed. Some challenges are pre-existing, while other will arise only after launch. Ongoing needs assessment will be required.

1) Service in Language of Customer's Choice

French & other common languages in the province of Ontario:
A) AT&T Language Line Services provide access to interpreters on a fee per use service
B) Brochures describing the services of the LSUC/CSC distributed all over the province
C) Forms used in the provision of LSUC/CSC services need to be translated
D) Forms/business cards, etc. could be available in braille

2) Access to Services

TDD communication for the hearing impaired.

3) Signage

Signs should be easily legible, bi/multi-lingual, and located in areas that are easily seen. Signs could also be prepared in braille.

4) Recruitment of Staff

Every effort has been made to recruit staff through a variety of avenues. Future recruitment will continue to be done to reflect the diversity of the legal profession and the general public.

4) Training for Staff

A) Sensitivity training (including persons with disabilities)
B) Other related training

5) Facilities for Persons with Disabilities

Wheelchair access to service counter and interview rooms.

Budget Impact

As the first point of contact, the CSC has a responsibility to ensure that our Customer Service Representatives (CSR's) are able to provide both written and verbal response to all our customers, keeping in mind the diverse nature of our customer base. In order to fulfil its mandate, the CSC will require the assistance of the Equity and Diversity department on an ongoing basis.

The CSC will require annual funding to develop and maintain programs to ensure the equitable provision of services to LSUC customers, as well as to carry out new initiatives that present themselves after launch.

Costs may include, but are not limited to:

- interpretation services
- translation services
- printing of forms/brochures
- distribution of forms/brochures
- training for staff
- advertising/agency fees for recruiting of staff
- facility upgrades
- survey/focus groups

EQUITY INITIATIVES DEPARTMENT

History:

As a follow-up to the Bicentennial Report on Equity Issues in the Legal Profession, the Equity Initiatives Department was created in the fall of 1998. The Department's mandate is primarily to facilitate implementation of the Bicentennial Report's recommendations. The Department's goals and objectives are to:

9) promote equity and diversity within the legal profession by improving awareness of the issues, needs and concerns of equity-seeking groups;

10) enable each LSUC department to develop coordinated, integrated equity and diversity activities and plans; and

11) enable Aboriginal, Francophone and equity-seeking groups to participate actively in LSUC's businesses, operations and services.

Since its establishment, the Department has:

a) provided secretariat and policy support to the Treasurer's Equity Advisory Group;

b) contributed to the Bar Admission Course Reform and Revisions of the Rules of Professional Conduct through development of position papers and convening consultations;

c) coordinated public education activities to engage members of equity-seeking groups in activities to promote equity and diversity in the legal profession;

d) sponsored seminars, workshops and conferences on various equity and diversity issues;

e) facilitated the selection of the Discrimination/Harassment Ombudsperson; and

f) worked with LSUC Departments in developing initiatives aimed at integrating equity and diversity in all aspects of LSUC business.

Current Challenges:

To continue implementing its mandate, the Equity Initiatives Department faces the following challenges:

- supporting LSUC departments in the development of equity and diversity plans. This will involve providing education and training, facilitating consultations with Benchers and Francophone, Aboriginal and equity-seeking groups;
- developing a common understanding with Convocation and its committees on equity and diversity issues. This will involve providing orientation and educational opportunities for Bencher participation;
- enabling Francophone, Aboriginal and equity-seeking groups to participate in the process of developing LSUC's equity and diversity plans. This will involve convening consultations with these communities to discuss their interests and concerns; and
- providing educational opportunities for those interested in equity and diversity in the legal profession. This will involve assessing the degree of education on equity and diversity issues required within the legal profession and establishing strategies to address identified needs.

Future Challenges:

To facilitate ongoing implementation of equity initiatives within the legal profession, the Equity Initiatives Department will face the following challenges:

- providing educational opportunities on equity and diversity issues within the LSUC and within the profession;
- supporting Francophone, Aboriginal and equity-seeking groups in their efforts to raise equity and diversity issues to Convocation and its standing committees;
- addressing issues of discrimination and harassment within the legal profession;
- enabling Francophone, Aboriginal and equity-seeking groups in their efforts to address equity and diversity issues within the legal profession and the broader community.

Budget Impact:

It is anticipated that the Equity Initiatives Department will need to address the challenges identified above in two phases:

a) the first phase is discussed in the "Current Challenges" and primarily deals with providing support to LSUC departments and Convocation in developing and implementing equity initiatives; and

b) the second phase is discussed in the "Future Challenges" which focus more particularly on providing support in the external environment.

In terms of budgetary implications, the Equity Initiatives Department will require resource support to address the above in an incremental manner, phased in over a two-to-three year period.

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It was moved by Mr. Wright, seconded by Mr. Wilson that the matter be tabled until September 1999.

Lost

An amendment was accepted by the Chair that the Ombudsperson not spend time training throughout the province until experience has been gained.

It was moved by Ms. Backhouse, seconded by Ms. Ross that the recommendations for the development of the Ombudsman program set out on page 10, paragraph 27 and a budget of $60,000 be adopted as amended.

1) that the Discrimination/Harassment Ombudsperson be established as both a service delivery and coordination office described in Option #2 (page 6 of the Report);

2) that the budget proposed for the Discrimination/Harassment Ombudsperson be approved and added as a program item in the Equity Initiatives Department;

3) that the assessment and evaluation criteria be based on this report and the approved model for service delivery and coordination; and

4) that the chair of the Treasurer's Equity Advisory Group and one other bencher be named as Convocation's link to the Ombudsperson's program. In Consultation with the Equity Advisor, these individuals would provide support to the program, participating in its promotion, responding to issues that may arise from time to time and participating in the program's assessment and evaluation.

Carried

The item re: Law Society of Upper Canada Response to Canadian Bar Association "Racial Equality in the Canadian Legal Profession was deferred.

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Review of Circumstances Respecting the Vacating of Discipline Records

Mr. MacKenzie presented the item dealing with the vacating of discipline records.

Professional Regulation Committee
June 10, 1999

Report to Convocation

Purpose of Report: Decision and Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on June 10, 1999. In attendance were:

Gavin MacKenzie (Acting Chair)

Niels Ortved (Vice-Chairs)
Robert Topp

Stephen Bindman
Adrienne Clarkson
Andrew Coffey
Marshall Crowe
Gillian Diamond
Edward Ducharme
Todd Ducharme
Gary Gottlieb
Julian Porter

Staff: Janet Brooks, Lesley Cameron, Vivian Kanargelidis, Felecia Smith, Elliot Spears, Glenn Stuart, Richard Tinsley, Jim Varro, and Jim Yakimovich.

2. This report contains the Committee's

- policy reports on:
  - publication of pre-1986 *in camera* discipline proceedings and sealing of discipline records;
  - whether there are any circumstances where discipline records should be vacated; and
- information reports on:
  - review of the suggestion for the office of member's advisor or ombudsman; and
  - issues related to members' representations before the summary revocation bencher.

I. POLICY

PUBLICATION OF PRE-1986 *IN CAMERA* DISCIPLINE PROCEEDINGS AND SEALING OF DISCIPLINE RECORDS

A. INTRODUCTION

3. At the April 30 and May 28, 1999 sessions of Convocation, directives on *in camera* proceedings and amendments to the Rules of Practice and Procedure (Rule 3) respecting the ability to vary, set aside or suspend *in camera* and non-publication orders were adopted, respectively. These initiatives arose from a report prepared by a working group of the Committee[1] on a number of issues relating to proceedings at the Law Society in the absence of the public, or *in camera* proceedings.

4. When the Committee's report was presented on April 30, it indicated that two issues had been deferred, pending legal research and historical review. The issues related to:

- publication of results of hearings held *in camera* prior to February 1986; and
- the sealing of records of discipline or conduct hearings.

5. The Committee has completed its review of these issues and the following report includes the Committee's proposals on the issues for Convocation's consideration.

B. BACKGROUND

In Camera Reports Prior to February 1986

6. As a general rule, discipline or conduct proceedings under the *Law Society Act* are to be heard in public. Prior to February 1, 1999, that is, before the *Law Society Act* was amended by the *Law Society Amendment Act*, 1998, the authority for public proceedings was pursuant to s. 9 of the 1971 statute, the *Statutory Powers Procedure Act* ("*SPPA*"), absent a specific order to the contrary. Pursuant to s. 32 of the *SPPA*, this provision overrode s. 33(4) of the *Law Society Act* which directed that hearings be closed to the public. However, until February 27, 1986, the Law Society closed its discipline hearings to the public, and the present concern was that this may have been based on a mistaken application of s. 33(4) of the *Law Society Act*.[2]

7. Prior to February 1, 1999, a Discipline Committee could make an order under s. 9(1) of the *SPPA* to hold a particular hearing in the absence of the public where it was satisfied in that case that

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[1] Niels Ortved assisted by discipline counsel Glenn Stuart.

[2] On February 27, 1986, Convocation adopted a report of the Discipline Policy Committee which relayed a legal opinion provided to the Law Society indicating that hearings should be held in public unless an order was made by the hearing panel under s. 9 of the *SPPA*. Convocation as of that date directed that hearings would be held in public except where there was an order under s. 9 of the *SPPA*.

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.[3]

8. The concern that the conduct of a hearing in public, or the public disclosure of the fact that a Complaint had been issued against a solicitor, would be damaging to a solicitor's reputation was the basis for the provision in s. 33(4) of the *Law Society Act* that hearings be closed to the public. This concern, however, did not in itself satisfy the requirement in s. 9(1).

9. Extenuating circumstances are required to justify an order under s. 9(1) of the *SPPA* to have all or part of a hearing in the absence of the public. Where certain evidence is received *in camera*, all references to that evidence in the report and decision of the Discipline Committee are considered to also be *in camera*.

10. To date, reports from all hearings prior to February 27, 1986 other than those which were expressly conducted in public, are reports arising from an *in camera* proceeding, and are accordingly not available to the public.

11. The question the Committee considered was whether the Law Society should revisit its position that the results of reprimands in Committee during the period from 1971 to 1986 were not public and now treat those results as public, or whether the Society is estopped from treating the fact of these reprimands now as public information given the possible reliance on that position by the members reprimanded during that period.

Sealing of Discipline Records

12. Convocation has sealed parts of its record on discipline matters on at least three occasions in the past. There was no discussion in any of those cases as to the jurisdiction to make such an order. Other than established first principles, the Committee's working group was unable to locate other jurisprudence which may assist in this regard, but at the direction of the Committee, the working group further reviewed the recent jurisprudence[4] which has arisen in relation to sealing orders being made by the courts pursuant to s. 137 of the *Courts of Justice Act*.

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[3] As of February 1, 1999, the *Law Society Act* gives Convocation the authority to make rules of practice and procedure. Under Rule 3 of those rules, all hearings (except capacity and professional competence hearings) are open to the public, but a party to a proceeding may apply to have all or part of a hearing held *in camera,* on grounds similar to those set out in the *SPPA*.

[4] In particular, the working group was referred to three decisions of Farley, J.: *Knight v. KPMG LLP,* [1999] O.J. No. 1219 (Ont. Ct. (Gen. Div.)); *Kanda Tsushin Kogyo Co. v. Coveley,* [1998] O.J. No. 1412 (Ont. Ct. (Gen. Div.)); and, *Dodd v. Cossar*, [1998] O.J. 335 (Ont. Ct. (Gen. Div.)).

13. The Committee noted that there is nothing in either the *Law Society Act,* the *SPPA*, the regulations, by-laws or the Rules of Practice and Procedure which authorizes any statutory tribunal under the *Law Society Act* to make an order sealing any portion of the record. The courts have strictly interpreted the existing statutory provisions[5] where attempts have been made to exclude the public from all or part of an otherwise public hearing.

14. Consequently, there currently appears to be no jurisdiction to make an order sealing a report or any portion of the record.

15. The questions the Committee considered were, based on the conclusion that the Society has no jurisdiction to seal reports or records, whether:

- it would be appropriate to pursue statutory amendment so as to create this jurisdiction; and
- the jurisprudence which has developed in relation to a court's jurisdiction to seal portions of the court's record affects how this jurisdictional question of the Law Society's tribunals to seal all or part of its records is answered.

C. POLICY DISCUSSION

Issue: Whether the Law Society should revisit its position that the results of reprimands in Committee during the period from 1971 to 1986 were not public and now treat those results as public, or whether the Society is estopped from treating the fact of these reprimands now as public information given the possible reliance on that position by the members reprimanded during that period.

16. If Convocation were to conclude that the results of reprimands in Committee in the period noted above should be treated as public, the Committee acknowledged that this decision would diverge from existing policy pursuant to which these results were treated as non-public, but would parallel the position taken in relation to the results of matters concluded by reprimands in Convocation, suspensions and terminations during the same period.

17. Arguably, because of the Law Society's mandate to protect the public interest, and inform the public as to both the status and the discipline histories of its members, there is a much stronger need for the Law Society to have the *results* of its discipline proceedings (which would include the disposition and the particulars of the Complaint) available to the public than is the case with the *details* of those proceedings.

18. This view flows from the same analysis and policy considerations underlying Convocation's earlier decision to disclose synopses of proceedings considered by Convocation prior to 1986 (when the matters were considered *in camera*). That decision has ensured that the *results* of matters which were disposed of in Convocation, rather than Committee, were available publicly. To date, however, a distinction has been drawn between these matters and matters which resulted in reprimands in Committee, prior to 1986, in that the *results* of the latter cases have been treated as remaining *in camera*.

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[5] In *Canadian Newspapers Company Ltd.. v. Law Society of Upper Canada* [1986] O.J. No. 1384, the Court considered the issue of the Law Society's jurisdiction to ban publication of public discipline proceedings and found that there was no such jurisdiction.

19. The Committee also acknowledged that a decision to publish these *in camera* results would have two practical consequences. First, reprimands in Committee prior to 1986 would be included in the public portion of any subsequent discipline proceedings involving the member, rather than being segregated to an *in camera* portion. Second, information regarding these reprimands would be available to the public when inquiring about a member.

20. The Committee, however, considered the crucial issue of the reliance that reprimanded members may have placed on the non-public nature of the process in making decisions regarding the resolution of complaints prior to 1986.

21. The relevant statutory provisions indicate that, although the presumption under the applicable provision of the *SPPA* is that hearings shall be public, this presumption can be replaced where the parties and the tribunal consent[6]. The Committee was of the view that this analysis could be applied to support the *in camera* handling of these matters prior to February 1986. After this date, Law Society proceedings were held in public absent exceptional circumstances.

22. Consequently, it is the Committee's view that the conduct of hearings *in camera* for matters resulting in reprimands in Committee was within the jurisdiction of the Discipline Committee. The remaining question is whether it follows that the *result* of the hearing is not public simply because the hearing was conducted *in camera*.

23. Applying the analysis by which the results of matters determined in Convocation during this period were made public, arguably the results of these matters should also be public; that is, if the public mandate of the Law Society required both publication and the maintenance of a public record for matters decided in Convocation, that same mandate must require, at least, the maintenance of a public record for Committee matters, even allowing for the lesser relative severity of the sanction.

24. In a similar vein, there may be a question as to whether the actual policy adopted by Convocation was to not *publish* the results of reprimands in Committee, rather than not to make them available to the public.[7] This question clearly impacts on both the correctness of the application of the policy and the reasonableness of any expectation by a member.

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[6] Section 9(1) establishes the presumption in favour of public hearings; s. 4(1) permits the waiver of any procedural requirement of that Act with the consent of the parties and the tribunal.

[7] The policy of Convocation not to publish Reprimands in Committee, which was adopted on December 14, 1970, reads as follows:

Publication of Disciplinary Action

Publication should always be made of disbarments and suspensions.

The name of the solicitor should be published in the minutes of Convocation in the Ontario Reports in all cases of reprimand in Convocation. It should not be decided by Convocation in each case. If this policy is to be altered Convocation should decide it for all cases. It is very difficult to be consistent if publication in each case is decided separately. Reprimands in Committee should not be published.

25. However, given that the matters have been treated as non-public information for many years now, the Committee believes that it would be unfair to reverse that position, absent a clear lack of jurisdiction, at the present time without a clear and pressing reason. The Committee acknowledged that the cases in question represent, in effect, an historical artifact of continually diminishing size. The proposed resolution maintains the historical position, with an exception (which has also *de facto* existed historically) in cases where a member is again involved in the discipline process.

26. Accordingly, the Committee proposes that, in general, the results of reprimands in Committee prior to February 1986 should be treated as non-public information, absent the consent of the member, and subject to the following caveat. The results of reprimands in Committee (which includes the fact of the reprimand and the nature of the established misconduct) prior to 1986 should be available to be introduced before a Hearing Panel, or Appeal Panel, as evidence in relation to penalty in subsequent conduct applications involving the same member. The results, at that time, should still be treated as being *in camera*, absent the consent of the member or an order of the Panel. This conclusion permits reprimands in Committee prior to 1986 to be identified, albeit *in camera*, in any subsequent discipline proceedings involving the member, but would not permit such information regarding these reprimands to be available to the public when inquiring about a member.

Issue: Based on the conclusion that the Society has no jurisdiction to seal reports or records, whether:

- *it would be appropriate to pursue statutory amendment so as to create this jurisdiction; and*
- *the jurisprudence which has developed in relation to a court's jurisdiction to seal portions of the court's record affects how this jurisdictional question of the Law Society's tribunals to seal all or part of its records is answered.*

27. The Committee discussed whether, following a suggestion in the *Canadian Newspapers* decision, the jurisdictional deficiency with respect to sealing reports or records could be remedied by an amendment to the procedural rules.

28. The Committee felt that any such authority included in the rules would be narrowly construed and its exercise could only be justified where no lesser restriction would be adequate. It was the Committee's view that the sealing of an entire report could never be justified as being necessary. It acknowledged that there may be cases where the sealing of portions of the evidence could be argued, but it remains unclear as to why such an extreme order would be necessary, bearing in mind that Rule 3 of the Rules of Practice and Procedure envisions that such matters can be adequately protected by conducting a hearing in the absence of the public.

29. The Committee considered information arising from the working group's review of the jurisprudence, which also included jurisprudence relating to a court's jurisdiction to seal the record of proceedings before it. Two alternative bases for this jurisdiction could be advanced: the inherent jurisdiction of the court, and the statutory authority under the *Courts of Justice Act*[8]. The Committee, however, determined that neither basis could be applied to confer "sealing" authority upon the Law Society (which is governed by the *Law Society Act* and the *SPPA*). The differences in the wording of the *Courts of Justice Act* (which uses the terms "confidential" and "sealed") and the *SPPA* (which only refers to excluding the public) affirm the conclusion that the Law Society lacks jurisdiction to "seal" a record, even though it may hold a hearing in the absence of the public.

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[8] Section 137(2)

30. The Committee is of the view that the Law Society neither has, nor should it seek to acquire, the jurisdiction to make sealing orders. The determinative point remains that the Law Society's tribunals only have the jurisdiction conveyed by statute, and the power to seal the record is not so conveyed.

31. The Committee believes it merits repetition that all of the jurisprudence, including Supreme Court authority, involving issues of public access to the records of both courts and tribunals, emphasizes that there is a strong presumption in favour of public proceedings, which is only usurped in exceptional circumstances, and then only to the extent necessary to protect the privacy interests in issue. In this vein, the Law Society's processes should present the least possible encroachment on public access to proceedings. Sealing, rather than the fully adequate protection of conducting an appropriate proceeding *in camera,* cannot be justified against this principle, even if statutory authority existed.

32. Accordingly, the Committee proposes that, given that neither Convocation or the Discipline Committee had, nor the Hearing Panel or Appeal Panel have, the jurisdiction to order the sealing of any portion of the record of proceedings before it, the procedural rules of the discipline process, or the governing legislation, should not be amended to permit the sealing of any portion of the record of Law Society proceedings.

33. With respect to those cases to date in which the records or reports have been sealed by Convocation, the Committee proposes that Convocation deem these matters to have been dealt with *in camera.* It is the Committee's view that as this is a procedural and not a substantive issue, Convocation today may exercise this authority without reconvening the particular group of benchers in Convocation that ordered the reports or records sealed. As the sealing orders were made by Convocation without jurisdiction, arguably Convocation could not be seized in a matter to do something which it had no jurisdiction to do.

D. DECISION FOR CONVOCATION

34. Convocation is requested to decide whether to:

a. Adopt the proposals of the Committee, namely, that

i. in general, the results of reprimands in Committee prior to February 1986 should be treated as non-public information, subject to the following caveat. The results of reprimands in Committee (which includes the fact of the reprimand and the nature of the established misconduct) prior to 1986 should be available to be introduced *in camera* (unless the member consents to their being received in public) before a Hearing Panel, or Appeal Panel, as evidence in relation to penalty in subsequent conduct applications involving the same member;

ii. given that neither Convocation or the Discipline Committee had, nor the Hearing Panel or Appeal Panel have, the jurisdiction to order the sealing of any portion of the record of proceedings before it, the procedural rules of the discipline process, or the governing legislation, should not be amended to permit the sealing of any portion of the record of Law Society proceedings;

iii. with respect to those cases to date in which the records or reports have been sealed by Convocation, Convocation should deem these matters to have been dealt with *in camera*; or

b. Determine other policy positions as Convocation deems appropriate.

REVIEW OF CIRCUMSTANCES RESPECTING THE VACATING OF DISCIPLINE RECORDS

A. INTRODUCTION

35. Recent interest has been expressed by some members of the profession in the issue of whether discipline records should continue to exist and be available to the public indefinitely. This, together with the fact that the issue was independently suggested for review by two Committee vice-chairs, has prompted the Committee's current review of this issue.

36. The Committee reviewed a discussion paper prepared by a working group of the Committee[9] on issues relating to discipline or conduct records and the competing policy considerations on possible limits on a record's existence. While the focus of this paper was on conduct issues, the Committee acknowledged that similar issues may arise with respect to competence or capacity orders that are a matter of public record.

37. This report includes the Committee's proposal that Convocation consider whether a policy should be instituted that in certain circumstances, discipline or conduct records may be vacated.

B. BACKGROUND

The Law Society's "Record"

38. At present, a discipline record of a member, through the documents which evidence the occurrence of a member's discipline by the Law Society, exists forever. This is the case even when a member, for example, is readmitted after disbarment.

39. There are no provisions in any of the governing legislation, regulations or by-laws directly dealing with the contents of a member's Law Society record.[10] The current practice is to maintain in the member's file a record of any public discipline (now called conduct) proceedings, and within the Discipline Department itself, the findings of professional misconduct or conduct unbecoming and the penalties imposed. Presumably, this will now include any competence or capacity orders to the extent that they are public.

Uses of the Record

40. The Law Society routinely answers requests from a variety of people (complainants, potential clients, other lawyers, the media, etc.) about the discipline history of members.[11]

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[9]Gavin MacKenzie, assisted by Lesley Cameron and Jim Varro.

[10]The amended *Law Society Act* refers to a member's record, but only in the context of reviews of the professional conduct or competence of benchers and Law Society employees, where the person conducting the review may access "all information in the records of the Society respecting the bencher or employee..." (s. 49.7) . The Complaints Resolution Commissioner is accorded the same access with respect to member or student member complaints (s. 49.15(3)).

[11]Without the waiver of the member, past or current complaints which have not led to formal discipline proceedings are never disclosed, as they are matters of confidence between the Law Society and the member.

41. The Society discloses any discipline record that resulted from a public hearing, and any public result of an *in camera* hearing. It also discloses any pending public conduct hearing once the conduct application has been served on the member or 10 days after mailing of the application by registered mail, whichever is earlier. Records of invitations to attend ("ITAs") are not disclosed in response to requests for discipline records. Complaints or applications that have been dismissed are not disclosed in response to requests for members' discipline records. For example, if a caller asks whether a lawyer has a discipline record and a dismissal is the only matter noted, the answer is "no". If the caller, however, asks about the disposition of a specific formal complaint, he or she will be informed that the complaint or application was dismissed.

42. Specific requests for information are received from the Judicial Appointments Office, when members apply or are chosen for judicial appointments. Prior to the Society receiving the request, the member waives confidentiality with respect to information from the Society about his or her complaints and discipline record. Currently, the Society discloses all complaints (current or past), ITAs, and all discipline (present and past, including dismissals).

43. Another type of specific request is received from members who are requesting occasional appearance certificates in other Canadian jurisdictions. A member completes an application which, to be complete, requires him or her to waive confidentiality for current complaints (a waiver is required on every file) and any current or past public discipline, including formal complaints or applications (but not invitations to attend) that have been issued, even if they have been dismissed at a hearing. The latter information is captured because the question is "has this person been the subject of formal discipline?".

Records in Other Jurisdictions

Alberta

44. In sections 39 and 40 of the Rules made under Alberta's *Law Society Act*, the members' roll of the Society and the student register are described. For members, the roll includes "a brief description of any finding...of guilt of conduct deserving of sanction, of conduct unbecoming a barrister and solicitor or of a professional misdemeanor". For students, there is a similar provision for "any finding of guilt of conduct deserving sanction...". No reference is made to the time period for which this information is to be maintained on the roll.

Federation of Law Societies

45. The Inter-Provincial Practice Protocol of the Federation discusses the use made of a discipline record of a member of a provincial law society in the section on temporary mobility of lawyers within Canada. Ontario is a signatory to the protocol.

46. As a requirement for the lawyer's practice in a province, the lawyer "shall have no discipline record in any jurisdiction in which the lawyer is or was a member and no criminal record". There is some discretion on the part of the Secretary, recognized among signatories to the protocol, to allow lawyers from outside Ontario to practice in Ontario even with a discipline history, and the same would apply outside of Ontario for Ontario lawyers. It was recommended at a meeting of the Federation in August 1995 that the host jurisdiction be entitled to rely on the home jurisdiction to advise whether or not a particular lawyer meets the criteria set out in the protocol.

American Bar Association ("ABA")

47. The ABA Model Rules of Lawyer Disciplinary Enforcement, as promulgated by the Standing Committee on Professional Discipline, state as follows:

> Disciplinary counsel shall maintain or have ready access to current information relating to all lawyers subject to the jurisdiction of the board including:
>
> ...
>
> (j) nature, date, and place of any discipline imposed and any reinstatements in any other jurisdiction.

48. In the section of the same rules on procedure for disciplinary proceedings, in Rule 16 entitled Access to Disciplinary Information, the ABA states:

> The board shall transmit notice of all public discipline imposed against a lawyer, transfers to or from disability inactive status, and reinstatements to the National Lawyer Regulatory Data Bank maintained by the American Bar Association.

49. The rationale in the commentary following the rule states that "Once a finding of probable cause has been made [leading to formal disciplinary charges], there is no longer a danger that the allegations against the respondent are frivolous. The need to protect the integrity of the disciplinary process in the eyes of the public requires that at this point further proceedings be open to the public." And further, "exchange of public information between agencies contributes to more effective enforcement. It is absurd for one agency to struggle with a substantive or procedural problem completely unaware that the same problem has been faced and resolved by an agency in another state."

50. The National Lawyer Regulatory Data Bank is operated by the ABA's Center for Professional Responsibility. The description of the service provided by the Data Bank includes the following:

> Through the voluntary co-operation of state and federal courts in forwarding orders of public disciplinary action to the Data Bank, the ABA has been able to offer a valuable service to the profession and the public. The Data Bank not only provides ready access to information concerning sanctions imposed on individual lawyers but also offers a means of gathering national statistics on disciplinary cases. The service is particularly helpful to disciplinary authorities and bar admissions agencies in that it provides a means of identifying instances where reciprocal discipline is warranted and where out-of-state disciplinary action should be taken into account in considering admissions applications.

The Example of the Criminal Justice System

51. The Committee reviewed processes within the criminal justice system which, while not entirely analogous to the regulatory scheme of a self-governing profession, provide insight into the issue.

52. The issuance of pardons is the method by which criminal records in effect are removed after a period of time. According to the *Criminal Records Act* R.S.C. 1990, c. 12, a grant of pardon for an indictable offence may be made if the National Parole Board is satisfied that the applicant, for the five years following the end of a sentence, period of parole or payment of a fine, is of good conduct and has not been convicted of a federal offence. For summary convictions, the period is three years. There is provision for inquiries to be made of the applicant and for the Board to receive oral or written representations by or on behalf of the applicant.

53. A pardon is evidence of the fact that the Board after making proper inquiries was satisfied that the applicant was of good behavior and that the conviction in respect of which the pardon is granted should no longer reflect adversely on his or her character. A pardon vacates the conviction in respect of which it was granted.

54. A pardon may be revoked by the Board if certain events occur (*e.g.,* the person is convicted of a subsequent summary conviction offence or is no longer of good conduct). In such cases, the person is given the opportunity to make oral or written representations to the Board after the Board serves notice of the proposal to revoke. A pardon ceases to have effect if the person is convicted of an indictable offence under federal law or regulation.

C. POLICY DISCUSSION

The Primary Issue and Key Questions

55. As a matter of public policy, the government in the context of the criminal justice system has decided that individuals should have the ability to seek and obtain a pardon. For a self-regulating profession such as law, the Committee believes that the overarching question is whether a similar process would be consistent with the mandate of the Law Society to govern the profession in the public interest. The Committee, acknowledging the working group's deliberations in this respect, considered five key questions, each discussed below.

a. Are there any circumstances in which discipline records should be vacated?

56. The Committee identified three constituencies in relation to this question. They are the public, the profession generally, and the individual member whose record is the subject of interest.

The Public

57. As professionals and members of the Law Society, lawyers are granted the privilege of practicing as barristers and solicitors. By their membership, lawyers are subject to the authority of the regulator and must accede to its jurisdiction or otherwise risk the loss of the privileges afforded by the membership. Part of that authority includes the right to impose disciplinary sanctions against members within the appropriate process. This is a key responsibility of those professions that have been granted the right of self-regulation by the government.

58. The Royal Commission Inquiry into Civil Rights of 1968 (the McRuer Report) commented on the rationale behind self-governing professions and the public interest, as follows:

> The granting of self-government is a delegation of legislative and judicial functions and can only be justified as a safeguard to the public interest. The power is not conferred to give or reinforce a professional or occupational status.
> ...
> The traditional justification for giving powers of self-regulation to any body is that the members of the body are best qualified to ensure that proper standards of competence and ethics are set and maintained. There is clear public interest in the creation and observance of such standards. This public interest may have been well serviced by the respective bodies which have brought to their task an awareness of their responsibility to the public they serve, but there is a real risk that the power may be exercised in the interests of the profession or occupation rather than in that of the public. This risk requires adequate safeguards to ensure that injury to the public interests does not arise.

59. The public is entitled to expect that a self-governing profession will exercise its authority and design its processes to consistently protect the public interest. Lawyers' discipline records generally are treated as public information for the following reasons:

i. to ensure the transparency of the process so that the public has the ability to judge the manner in which the profession is exercising its governance mandate, and

ii. to allow the public to make informed choices in selecting legal representation, all in aid of engendering public confidence in the exercise of governance of the profession by the profession.

60. If not all information about a member's discipline record is public because the Society has imposed a limit on the availability of information, arguably the public may question why the information is not available and, depending on the reasons, may conclude that the Society has given precedence to the interest of the particular lawyer, or the profession, over the public interest in knowing what exists on a member's discipline record or how the regulator has responded to issues about a member.

61. On the other hand, reasonable and well-informed members of the public would probably accept that there may be circumstances in which a minor infraction committed early in a member's career "should no longer reflect adversely on his or her character" (in the words of the *Criminal Records Act*), for the same reasons that in such circumstances a criminal record should no longer do so.

The Profession

62. The Committee considered that, like the public, the profession has an interest in ensuring that the governance mandate of the profession is appropriately and responsibly exercised. From this perspective, the profession may view the transparency of the process and the public availability of information flowing from it, without limitation, as a necessary feature of the regulator's responsibility.

63. The profession may also wish unrestricted access to discipline records for its own purposes, for example, in making decisions about hirings or referrals.

64. The profession, however, is sensitive at the same time to the need to avoid unfair consequences to individual members. The question is whether a balance should be struck between the desirability of unrestricted access to discipline records and the potentially disproportionate consequences to members with discipline records of unrestricted access to those records, for example, where the offence was minor and the lawyer has never engaged in similar conduct since. The ultimate question is what is required to maintain the public's confidence in self-regulation.

The Individual Member

65. The Committee believes that many disciplined members would welcome the opportunity to "clear" their record of discipline dispositions if the opportunity were available. For most members, the stigma attached to a disciplinary record creates a sense of personal and professional embarrassment. It may also affect their ability to attract clients, obtain employment or form other relationships.

66. As members of the Society, lawyers are held to a collective standard of conduct that will be enforced by the Society if necessary, and most lawyers accept this aspect of professional responsibility. In a broader sense, an individual's membership in the Law Society places him or her in a privileged position, and as such, lawyers are subject to a discrete standard, apart from the general public, and should be prepared to accept as a function of membership the entire scope of regulation, including the public nature of discipline and the fact that information related to that process is permanently maintained.

67. In this respect, the analogy between the process available to convicted offenders to receive pardons in the criminal justice system and a process that would permit lawyers to apply to have their discipline records vacated, may break down. Facilitating pardons is, in part, in aid of rehabilitation in the broad public realm. Vacating a discipline record for lawyers would apply in a context in which the need for accountability is more acute because of the unique trust relationship the public enjoys with lawyers. One could argue that this need for accountability should supersede even the most deserving rehabilitative efforts.

68. Vacating information on the record may also impinge on processes for readmission after disbarment or permission to resign. Readmission hearings are generally held in public. The question is whether the information once removed from the record for public purposes may be relied on by the Society.

69. In some cases to "pardon" a member in respect of a disciplinary offence would present only a negligible risk to the public interest, a risk that may well be outweighed by the potentially unfair consequences to the member of maintaining a public record of the offence indefinitely.

70. For example, a lawyer reprimanded in committee since and for years after the event may carry on an exemplary practice, indicating effective rehabilitation, that he or she is not a threat to the integrity of the profession or the public interest and that by his or her standard of practice, the lawyer has gained the respect and confidence of clients and, perhaps, any prospective clients who may not be aware of the discipline history. A prospective or current client or other information seeker may consider the lawyer's discipline record in context and may not give it undue weight in these circumstances. Nevertheless, the continuation of the lawyer's discipline record and the effect that knowledge of it may have on prospective clients and other lawyers may be disproportionate to the offence.

71. The Committee considered that an incidental benefit of implementing a system that would allow for "pardons" in appropriate cases may be that lawyers will be encouraged to discuss reasonable dispositions of matters at the pre-hearing stage if they appreciate that a discipline record that may result from an admission of guilt or negotiated settlement will not necessarily be on the public record permanently.

b. Are there types of misconduct in respect of which it would be inappropriate to vacate a discipline record? If so, what are they?

72. Views were expressed at Committee that a case by case analysis would be required. A lawyer who has been found guilty of minor misconduct on one occasion may have been involved in a series of discipline cases that evidence a pattern of conduct that would be incompatible with a "pardon". Serious misconduct that has resulted in a lengthy suspension may also be inconsistent with vacating the record. The nature of the misconduct should be a key factor in every case, regardless of the penalty. Reprimands in committee have been imposed for fairly serious misconduct, such as borrowing from clients, in some cases.

73. Cases in which conduct orders impose continuing restrictions or conditions on practice may also be inappropriate candidates for orders vacating a discipline record. The proper avenue for relief in such cases may be an application to vary the order of the hearing panel or appeal panel that imposed the restrictions or conditions. The Society may wish to impose a time restriction on when an application to vacate a discipline record may be brought, just as applications for pardons under the *Criminal Records Act* may not be brought until five years have expired after the applicant's sentence has been served (three years for offences prosecuted by summary conviction.) The time period could be defined to run from the date any conditions or restrictions are removed.

74. It was also suggested that a risk analysis would be in order for every case. Is there a risk that the public interest may be affected to its detriment by vacating the record? Is there a risk that the integrity of the regulatory mandate of the Society will be adversely affected? Is there a risk that the reputation of the profession generally will be tainted if the record is vacated?

c. *Should vacating a record ever be automatic after a certain period of time?*
d. *If not, what period of time should pass before consideration is given to vacating the record?*

75. It was suggested that, if a case by case analysis of a lawyer's record is necessary as a standard feature in a process to address the vacating of records, it would not be a responsible exercise of authority for the Society to automatically vacate a lawyer's record within a specified time after the occurrence of the discipline.

76. The next question becomes what length of time should run before consideration is given to vacating a record. As noted above, the *Criminal Records Act* requires a conviction-free period of five years after the end of a sentence for indictable offences (three years for summary convictions). It was suggested that a similar period would be appropriate for lawyers for certain offences, but that other factors may have to be considered, including complaints made within the period and the type of activity in which the member was engaged after the sanction was imposed.

e. *Should an application process be required?*

77. If the Law Society were to determine that it is appropriate that discipline records be vacated in some cases, some members of the Committee believed that an application process should be devised.

78. A process not unlike that for obtaining a pardon for a criminal conviction was suggested as a model. In that process, an individual must satisfy the National Parole Board that he or she is of good conduct. The process also permits inquiries to be made of the applicant and an opportunity for the applicant to be heard if the Board proposes to refuse to grant a pardon.

79. If the Law Society were to adopt a similar process, the reasoning is that it would not only provide the applicant with an opportunity to provide any information he or she felt appropriate to the application, but would give the Society a framework in which to consider these requests, and the ability to set reasonable standards and thresholds.

80. It was also suggested that it would be appropriate to consider circumstances in which a vacated record may be reinstated, for example, where a member is found guilty of subsequent misconduct that illustrates that he or she is not truly rehabilitated.

Jurisdiction to Clear Information from Records

81. The Committee noted that nothing in the *Law Society Act* or any subordinate legislation or rules makes reference to any matters concerning the discipline records of members, except as noted earlier in this report. As such, there may be a question about the ability of the Law Society to vacate records under the current legislative scheme. The *Law Society Act* does not explicitly permit records to be vacated.

82. Proceedings of administrative tribunals are generally governed by the *Statutory Powers Procedures Act ("SPPA")*, which states that such proceedings, unless ordered to be *in camera*, are public. This presumably would also apply to the results of any hearing, which may be reflected as a public matter in a discipline record.

83. The *Law Society Act* permits Convocation to make procedural rules which oust, in effect, the application of the *SPPA*. Law Society proceedings, out of which such records are created, at least from February 1, 1999 onwards, are governed by the Rules of Practice and Procedure, which state that all proceedings, unless otherwise held *in camera*, are public. This would also apply to the results of the proceedings and presumably any record reflecting the results.

84. The rules theoretically could provide for a procedure by which records could be vacated, but the rules only apply to a "proceeding". Unless the process for vacating the record were a proceeding, the rules could not apply. However, the *Law Society Act* sets out all proceedings to which the Rules apply, and currently, as noted above, it does not include anything connected with vacating a record.

85. By-law making authority in the *Act* may be a vehicle through which a discipline or conduct record review process could be established. Section 62(0.1) gives Convocation by-law making authority "relating to the affairs of the Society", and the power to make by-laws governing members and student members and prescribing their rights and privileges.

Summary of the Committee's Views

86. There was significant discussion in Committee on the threshold question of whether to permit the vacating of records and the benefits and the risks involved in doing so. In addition to the above discussion of the "pros and cons", Committee members raised additional points both in support of and against a process for vacating discipline records.

87. The following points were made in support of exploring a process to vacate discipline or conduct records:

a. such a process would recognize rehabilitative efforts of members;
b. a disciplinary record may have a disproportionate effect on a lawyer's reputation and livelihood, as for example where a potential client decides not to retain a lawyer because of a finding of professional misconduct for a minor infraction many years earlier;
c. apart from a small percentage of members who are truly dishonest and unscrupulous, many members who are before the Society's hearing panels are suffering from personal problems which influenced the conduct and to whom some consideration should be given through this type of process;
d. many of the arguments against establishing such a process could be made with equal force with regard to the pardon process established by the *Criminal Records Act*, yet that process has been in place for many years and appears to work effectively;
e. vacating of the record could be made conditional, for example, in circumstances where a lawyer becomes the subject of another finding of misconduct;
f. some types of serious misconduct could if necessary be excluded from the realm of what may be considered for removal from a record;
g. time clarifies matters for an individual, and it is possible to protect the public interest and permit a disciplined lawyer to lay claim to the assertion that he or she, notwithstanding the past discipline, is of good character, such as to warrant vacating the discipline record.

88. Concerns about pursuing an initiative to vacate records included the following:

a. there is a distinction that must be made between those convicted of criminal offences (using the pardon scheme as an example) and members of the Law Society, who have assumed a public trust and by their conduct, have breached it; to say that past conduct can be vitiated may not serve the public interest;
b. a criminal pardon is not certification to the world by the federal government that the individual pardoned is of good character, whereas vacating a disciplinary record can be expected to indicate that the Law Society is confident that the lawyer can with integrity serve the public through the provision of legal services;

c. the Society in effect regulates a monopoly, and on the premise that the Society knows best how to exercise its governance mandate, great caution must be exercised in changing the fact of a record denoting a disciplinary issue with a member;
d. vacating a disciplinary record will have the effect of undermining the public's confidence in the Society, in that the public will sense that they are not receiving all of the information to which they are entitled;
e. if an offence is minor, the public will assess that and consider it against the lawyer's current circumstances in context;
f. the purported loss of clients because of a disciplinary record is not of significant impact on the profession;
g. if a process were devised, it could be expensive to administer.

89. The Committee acknowledged that if the key question of whether to permit discipline records to be vacated in any circumstances is answered in the affirmative, the Law Society will be required to carefully map out what type of process should be designed for reviewing these requests. Public interest considerations should be a primary focus, as should the integrity of the profession, and fairness to members whose reputation and livelihood may be unfairly affected if their discipline records remain public permanently.

90. The Committee ultimately decided that, for the purposes of reporting to Convocation, it would:

- provide its views on the issue;
- not recommend a particular course of action or offer a model for a particular scheme or process, but place before Convocation the policy question:

  > Are there are any circumstances in which a discipline or conduct record should be vacated after some period of time?

- if the answer is yes, seek Convocation's approval to design a model for Convocation's further review.

D. DECISION FOR CONVOCATION

91. Convocation is asked to decide whether there are any circumstances in which a discipline or conduct record should be vacated after some period of time.

If the answer is yes, the Committee seeks the direction of Convocation for the purposes of designing a process to implement this policy decision.

II. INFORMATION

SUGGESTED OFFICE OF MEMBERS' ADVISOR OR OMBUDSMAN

92. The Committee received a oral report from Janet Brooks, who, with other Law Society staff, attended a meeting with representatives of the Advocates Society, where continuation of the one year pilot project for *pro bono* duty counsel at conduct hearings[12] and a possible expansion of that program to a full counsel model for conduct hearings were discussed.

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[12] In March 1998, the Advocates Society agreed to provide *pro bono* duty counsel to members before discipline or hearing panels on a one year pilot project basis. The Advocates Society compiled its own roster of its members, who were available on hearing days at the Law Society.

93. The report was received in conjunction with the Committee's ongoing review of a suggestion raised at Convocation's discussion prior to adoption of the Rules of Practice and Procedure in January 1999 that an office be created to advise members involved in the Law Society's discipline process. Because the Advocates Society's program provided a measure of assistance, and the issue of an expanded model was to be discussed, the discussions at the meeting described above were germane to the member advisor issue.

94. While the Advocates Society's board, according to information received from Ms. Brooks, will be reviewing the suggested expanded model in September, in the interim, it has agreed to continue with the duty counsel program at conduct hearings.

95. The advisor issue will be discussed again at Committee and ultimately at Convocation when information is received about the Advocates Society's further deliberations.

GUIDELINE RESPECTING MEMBERS' REPRESENTATIONS BEFORE THE SUMMARY REVOCATION BENCHER

96. The Committee is continuing with its review of an issue arising from Convocation's discussion prior to adoption of the Rules of Practice and Procedure respecting the process relating to the summary revocation of members following a 12 month administrative suspension.

97. To date, Convocation has adopted guidelines for staff on two matters, relating generally to what is to be brought forward to the summary revocation bencher.[13] A third issue relates to the types of representations members may make before the summary revocation bencher in circumstances which may lead to a summary revocation order.

98. The Committee reviewed material prepared by staff on certain procedural issues and directed further research on the range of processes that may be applied in the context of seeking a summary revocation order.

99. The matter will be reviewed by the Committee again in the fall once staff report on the results of the further research.

.....

A roll-call vote was taken on the question - Are there any circumstances in which a discipline or conduct record should be vacated after some period of time?

Convocation answered in the affirmative 21 to 1.

ROLL-CALL VOTE

Bindman	For
Clarkson	For

[13]The two staff guidelines are: 1) revocation of membership should not be sought by staff for failure to pay fees or levies where a member provides satisfactory information of financial or other serious hardship, 2) If the member subject to a summary revocation order makes representations to staff, these should be placed before the summary revocation bencher.

Cronk	For
Crowe	For
Curtis	Against
E. Ducharme	For
T. Ducharme	For
Elliott	For
Epstein	For
Gottlieb	For
Laskin	For
MacKenzie	For
Marrocco	For
Millar	For
Mulligan	For
Ortved	For
Potter	For
Puccini	For
Ross	For
Simpson	For
Wilson	For
Wright	For

Re: Publication of Pre-1986 In Camera Discipline Proceedings and Sealing of Discipline Records

Mr. Ortved presented the items on Publication of Pre-1986 In Camera Discipline Proceedings and the sealing of Discipline records.

It was moved by Mr. Bindman, seconded by Ms. Clarkson that the matter be tabled.

Lost

It was moved by Mr. Ortved, seconded by Mr. Marrocco that proposals (a) (i), (ii) and (iii) under paragraph 34 on page 11 of the Report, be adopted.

"i. in general, the results of reprimands in Committee prior to February 1986 should be treated as non-public information, subject to the following caveat. The results of reprimands in Committee (which includes the fact of the reprimand and the nature of the established misconduct) prior to 1986 should be available to be introduced in camera (unless the member consents to their being received in public) before a Hearing Panel, or Appeal Panel, as evidence in relation to penalty in subsequent conduct applications involving the same member;

ii. given that neither Convocation or the Discipline Committee had, nor the Hearing Panel or Appeal Panel have, the jurisdiction to order the sealing of any portion of the record of proceedings before it, the procedural rules of the discipline process, or the governing legislation, should not be amended to permit the sealing of any portion of the record of Law Society proceedings.

iii. with respect to those cases to date in which the records or reports have been sealed by Convocation, Convocation should deem these matters to have been dealt with in camera."

Carried

APPROVAL OF COMMITTEES

The following changes were made to the composition of committees as set out in the memorandum circulated to the Benchers:

- Malcolm Heins added to Government Relations & Public Affairs Committee
- Donald Lamont added to Finance and Audit Committee
- Adrienne Clarkson's name removed from Professional Development and Competence and added to Professional Regulation Committee

THE LAW SOCIETY OF UPPER CANADA

MEMORANDUM

TO: ALL BENCHERS

FROM: Robert P. Armstrong June 24, 1999

I propose to put the following names before Convocation on Friday, June 25, 1999:

ADMISSIONS AND EQUITY

Chair Nancy Backhouse
Vice-Chair Edward Ducharme
Vice-Chair Derry Millar

Leonard Braithwaite
Thomas Carey
Paul Copeland
Marshall Crowe
Gillian Diamond
George Hunter
Vern Krishna
Don Lamont
Barbara Laskin
Rob Martin
Helene Puccini
Donald White

FINANCE AND AUDIT

Chair	Vern Krishna
Vice-Chair	Marshall Crowe
Vice-Chair	Gerald Swaye
	Ronald Cass
	Abdul Chahbar
	Susan Elliott
	Seymour Epstein
	Gordon Farquharson
	Abraham Feinstein
	Patrick Furlong
	Don Lamont
	Dan Murphy
	Helene Puccini
	Clayton Ruby
	James Wardlaw
	Donald White
	Richmond Wilson
	Brad Wright

GOV'T RELATIONS & PUBLIC AFFAIRS

Chair	Frank Marrocco
Vice-Chair	Richmond Wilson
	Bob Aaron
	Leonard Braithwaite
	Tom Carey
	Adrienne Clarkson
	Andrew Coffey
	Paul Copeland
	Abdul Chahbar
	Malcolm Heins
	Allan Lawrence
	Rob Martin
	Julian Porter
	Bill Simpson

LAWYERS FUND FOR CLIENT COMPENSATION

Chair	Clayton Ruby
Vice-Chair	Bob Aaron
Vice-Chair	Bob Topp
	Nancy Backhouse
	Stephen Bindman
	Gordon Bobesich
	Ron Cass
	Abdul Chahbar
	Gillian Diamond
	Gary Gottlieb

LEGAL AID COMMITTEE

Chair	Derry Millar
	Tom Carey
	Adrienne Clarkson
	Paul Copeland
	Dino DiGiuseppe
	Edward Ducharme
	Todd Ducharme
	Rob Martin
	Judith Potter

LITIGATION COMMITTEE

Co-Chair	Neil Finkelstein
Co-Chair	Niels Ortved
	Larry Banack
	Kim Carpenter-Gunn
	Pat Furlong
	Julian Porter
	Gerry Swaye

PROCEEDINGS AUTHORIZATION COMMITTEE

Chair	Eleanore Cronk
Vice-Chair	Gavin MacKenzie
	Neil Finkelstein
	Niels Ortved

PROFESSIONAL REGULATION

Chair	Gavin MacKenzie
Vice-Chair	Larry Banack
Vice-Chair	Neil Finkelstein
Vice-Chair	Niels Ortved
Vice-Chair	Heather Ross
	Gord Bobesich
	AndrewCoffey
	Adrienne Clarkson
	Carole Curtis
	Todd Ducharme
	Gary Gottlieb
	Laura Legge
	Ross Murray
	Julian Porter
	Robert Topp

PROFESSIONAL DEVELOPMENT AND COMPETENCE

Chair	Eleanore Cronk
Vice-Chair	Earl Cherniak
Vice-Chair	Ronald Manes
	Stephen Bindman
	Kim Carpenter-Gunn
	Dino DiGiuseppe
	Seymour Epstein
	Greg Mulligan
	Marilyn Pilkington
	Judith Potter
	William Simpson
	James Wardlaw

LAW FOUNDATION

Chair	Ronald Manes
	Vern Krishna
	Brad Wright

MULTI DISCIPLINARY PRACTICE TASK FORCE

Chair	Earl Cherniak
	Larry Banack
	Kim Carpenter-Gunn
	George Hunter
	Niels Ortved
	David Ward

PARALEGAL TASK FORCE

Chair	Richmond Wilson
Vice-Chair	Allan Lawrence
	Gillian Diamond
	Todd Ducharme
	George Hunter
	Laura Legge
	Frank Marrocco
	Greg Mulligan
	Brad Wright

TECHNOLOGY TASK FORCE

Chair	Larry Banack
	Carole Curtis
	Edward Ducharme
	Abraham Feinstein
	James Wardlaw

TREASURER'S EQUITY ADVISORY GROUP

Co-Chair	Helene Puccini
Co-Chair	Heather Ross
	Nancy Backhouse
	Abdul Chabhar
	Judith Potter

LONG RANGE PLANNING STEERING COMMITTEE

Co-Chair Gavin MacKenzie
Co-Chair Ronald Manes

Nancy Backhouse
Eleanore Cronk
Abraham Feinstein
Vern Krishna
Frank Marrocco
Derry Millar
Marilyn Pilkington

It was moved by Ms. Cronk, seconded by Mr. Bindman that the composition of the Committees as amended be approved and that Gavin MacKenzie be appointed Summary Disposition Bencher.

Carried

REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Re: Implementation of Requalification Policy

Mr. Wilson presented the item in the Report dealing with the Implementation of Requalification Policy.

Professional Development & Competence Committee
June 25, 1999

Report to Convocation

Purpose of Report: Decision Making
Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on June 10, 1999. Committee members in attendance were Rich Wilson (Vice-Chair), Kim Carpenter-Gunn, Ron Cass, Helene Puccini, and Susan Elliott. Newly-elected benchers in attendance were Earl Cherniak, Dino DiGiuseppe, Greg Mulligan, Marilyn Pilkington, Judith Potter, William Simpson, and Donald White. Newly-appointed lay benchers in attendance were Stephen Bindman, Adrienne Clarkson, Andrew Coffey, and Gillian Diamond. Staff in attendance were Bob Bernhardt, Janet Brooks, Larry Habdavny, Scott Kerr, Janine Miller, Mark Pujolas, Elliott Spears, Sophia Sperdakos, Richard Tinsley, Paul Truster, and former staff member Sue McCaffrey.

2. The Committee is reporting on the following matters:

For Decision

- Implementation of Requalification Policy
- Policy issues related to practice review provisions of the *Law Society Act*
- Publications in CLE

For Information

- Appointment of Practice Reviewers

FOR DECISION

IMPLEMENTATION OF REQUALIFICATION PROGRAM

Background

1. In March 1994 Convocation approved a policy requiring lawyers to requalify if they have "not made substantial use of their legal skills on a regular basis" for five years or more and wish to engage in the private practice of law. The policy applies only to those who seek to return to private practice. A member who, after an absence of five years or more obtains employment as a government lawyer or in-house counsel will not be required to requalify provided he or she remains in such employment for at least one year. The policy is not retroactive. According to the 1994 policy, the earliest point in time from which members would have to meet requalification requirements was July 1999. On April 30, 1999 Convocation extended that date to January 1, 2000. The 1994 report is provided at Appendix 1.

2. To implement the policy Convocation initiated three steps:

   i) it required members to provide annual information on their qualification status form beginning in July 1994;
   ii) it included provisions in the proposed amendments to the *Law Society Act*, requiring members to requalify; and
   iii) it established a staff committee to develop the requalification requirements.

3. Pursuant to the 1994 report, the requalification policy was to be reviewed after three years had elapsed from the implementation date.

4. Each member of the Law Society is required to provide the Society with information concerning "qualification status". Currently the Membership Information Form (MIF) contains the following question:

   *Did you make substantial use of your legal skills on a regular basis in your current work during the period January 1, 19** to December 31, 19*\?*
   ❑ yes
   ❑ no
   If answered "yes" please ensure that you indicate in what capacity(ies) in the profile sections above.

5. Members coming within the detailed profile sections are deemed to be making substantial use of their legal skills on a regular basis. Members not fitting within any of the enumerated categories in the profile sections either

   a) indicate that they are not making substantial use of their legal skills on a regular basis; or
   b) provide an explanation of how they make substantial use of their legal skills on a regular basis in the work in which they are engaged.

Through the qualification status section the Law Society monitors which members of the profession are making substantial use of their legal skills on a regular basis such that their law-related competencies are being maintained. The report of the Subcommittee studying requalification indicated that the requalification policy is one means by which to monitor lawyers' ability to provide competent legal services.

6. Among the amendments to the *Law Society Act* is a section relating to requalification. Section 49.1 provides that:

> *(1) 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.*
>
> *(2) An order shall not be made under subsection (1) more than 12 months after the end of the continuous period of time during which the member did not make substantial use of legal skills on a regular basis.*
>
> *(3) The Secretary may certify that a member who is the subject of an order under subsection (1) has met the requalification requirements specified by the by-laws, and the order thereupon ceases to have effect, subject to such terms and conditions authorized by the by-laws as may be imposed by the Secretary.*
>
> *(4) If the Secretary refuses to certify that a member has met the requalification requirements or imposes terms and conditions under subsection (3), the member may apply to the Hearing Panel for a determination of whether requalification requirements have been met or of whether the terms and conditions are appropriate.*
>
> *(5) The parties to an application under subsection (4) are the applicant, the Society and any other person added as a party by the Hearing Panel.*
>
> *(6) The Hearing Panel shall,*
> *(a) if it determines that the requalification requirements have been met, order that the order made under subsection (1) cease to have effect, subject to such terms and conditions authorized by the by-laws as may be imposed by the Panel; or*
> *(b) if it determines that the requalification requirements have not been met, order that the order made under subsection (1) continue in effect.*

7. Preliminary work on the implementation scheme was done by a staff committee in 1996. Meetings were held with the former Women in the Legal Profession Committee and the former Professional Standards Committee in 1996. The focus of discussions was on a number of issues that needed clarification in order to implement the policy. In particular it was noted that in creating the policy Convocation did not set the criteria upon which to assess the work members do.

8. Building on the work of the staff committee an implementation working group, consisting of Mary Eberts, Harriet Sachs, staff member Sophia Sperdakos and former staff members Susan Binnie and Sue McCaffrey developed a partial implementation scheme that was approved by the Professional Development and Competence Committee in May 1998. The report was not presented to Convocation at that time.[1]

Issues Relating to the Implementation of the Requalification Policy

9. In considering what is necessary to implement the provisions of section 49.1 it has become clear that there are outstanding policy matters that must be determined before January 1, 2000 when the legislative provisions become operative so that members will know what steps they will have to meet should they decide to return to private practice on or after that date.

10. Convocation's 1994 policy was fairly general in its outline of the requirement. The legislative provisions require the development of an administrative structure to accompany the requalification requirement. This is being done on an ongoing basis and includes,

a) the process by which members' annual reporting of their status is recorded so that the Law Society can determine expeditiously whether they are making substantial use of their legal skills on a regular basis;
b) the criteria that are to be used to make that determination;
c) the specific requirements members must meet to satisfy the requalification requirements;
d) the steps for an appeal from an unfavourable decision of the Law Society on that issue; and
e) the impact of the requalification policy on members who have been administratively suspended for five years or more.

The Nature of the Requirement

11. Convocation's 1994 report states:
...the policy requires that each member be assessed on an individual basis. The requalification requirements will be designed to address the needs of the individual member in a manner that is consistent with the needs of the public. At most, a requalifying member would be required to enrol in, and satisfactorily complete, the Bar Admission Course...the sub-committee proposes the following range of possibilities for either the pre-emptive regime, or in order to requalify.

- *dependent upon the member's prior history, no requirements*
- *attendance at Continuing Legal Education programs, specified as to number and areas of law, and subject to availability and expense, given the member's place of residence and economic circumstances*
- *the development of "refresher" courses (subject to a cost analysis)*
- *volunteer employment at a shelter or legal clinic*
- *writing some or all of the Bar Admission Course examinations (or their equivalent)*
- *attendance at some or all of the Bar Admission courses, particularly given their emphasis on practice skills, and again recognizing availability to the member and economic impact*
- *practising under supervision for a specified period of time*

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[1]The scheme was reviewed by the Admissions and Equity Committee and the Treasurer's Equity Advisory Group both of which groups were satisfied that the implementation scheme addressed equity concerns. The amendments to the *Law Society Act,* which contain the requalification provisions, were not proclaimed in force until February 1999.

- *practising in a mentor relationship*
- *restricting practice to certain area(s) of law*

12. In 1998, the implementation working group presented the Committee with an analysis that provided for a self-study course and CLE requirement that all those required to requalify would undertake regardless of their practice experience prior to the period away from practice. The course was to be designed to re-acquaint the member with ethical, regulatory, and practice management issues that are of particular relevance to those returning to private practice, akin to the start-up workshop that is offered to lawyers who are planning to open their own practice.

13. The approach would not reflect the personalized assessment of members' needs, and the gaps in each requalifying member's experience that may specifically require filling. Thus, under the proposal Convocation's policy perspective that, based on individual circumstances, some members would be required to take minimal steps to requalify and others might have to do bar admission examinations, gave way to a one-program-fits-all approach.

14. In re-examining this approach the Committee is of the view that this deviates substantially from the policy adopted by Convocation. The Committee confirms that the individual approach is preferable and that a specific range of requirements should be developed for approval by Convocation and to be specified in a by-law.[2] This approach best meets the public interest and can be designed so as not to raise unreasonable barriers to members seeking to return to private practice.

15. Staff will develop a range of options for what requirements members in certain situations would have to meet,[3] and guidelines for how it will be determined what members in certain categories must do. In the fall, staff will provide a proposal to the Committee for discussion and Convocation's approval. In creating the range of options staff will pay particular attention to the equity concerns raised in the 1994 report and in the reports of the staff committee and implementation working group that the policy not have a disproportionate impact on women. This will include the development of the pre-emptive regime that might be followed by a member who wishes to take steps, while out of active practice, to avoid having to requalify upon return, as was envisioned in the 1994 policy.

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[2] An individualized approach left entirely to the Secretary to determine is not possible under the legislation because the requalification provision provides that the requirements to be applied by the Secretary are to be those specified in the by-law. Convocation passes by-laws and cannot delegate that responsibility to the Secretary.

[3] The most likely range of options will include

CLE (the amount to be determined by the Secretary)
self-study course, with or without formal assessment
some bar admission examinations
all bar admission examinations
being mandatorily mentored upon return to practice
practising under supervision
practice restricted to a particular type of law

Request to Convocation

16. This report raises three issues, which Convocation is requested to consider at this time:

a) Does Convocation agree that the criteria and approach set out in paragraphs 24(a)-(b) and 25 be applied to determine whether a member is making substantial use of legal skills on a regular basis?

b) Does Convocation agree with the Committee recommendation in paragraph 24(c) that where members are working as legal secretaries or paralegals/law clerks they are to be considered **not** to be making substantial use of legal skills on a regular basis, with no right of appeal?

c) Since the requalification provisions in the legislation are also applicable to members who have been administratively suspended for five years or more or permanently retired or incapacitated for five years or more, does Convocation agree that these members will be required to meet the requalification requirements, not those earlier policies designed before there was a general requalification requirement.

17. In the fall, Convocation will be asked to consider the details of the requirement members will have to meet upon seeking to return to private practice.

Assessing Whether a Member is Making Substantial Use of Legal Skills on a Regular Basis

18. In its 1994 policy Convocation specified categories of members who would automatically be deemed to be making substantial use of their legal skills on a regular basis:

private practice in Ontario
private practice in another jurisdiction
in-house counsel (organization/corporation)
clinic lawyer
MP or MPP
government lawyer
policy analysis or legislative drafting
member of administrative tribunal
arbitrator, mediator, conciliator
legal teaching and/or legal writing
legal research staff

19. In the early years of annual reporting it became clear that many members were doing work analogous to the work enumerated in the policy, and that for administrative ease the description of functions that would satisfy the requirement to make substantial use of legal skills on a regular basis should be expanded to reduce the numbers of people who were compelled to complete the "other" category on the form. Appendix 2 contains the "Activity Profiles" section from the 1998 MIF. This approach is in keeping with Convocation's view that

> *The increasing diversity of the legal profession, and the impact of that diversity upon the practice of law, suggest that the traditional concept of private practice in a law firm should not be the sole basis upon which the Law Society assesses its members' competence....The focus of the requalification policy is therefore upon the substantial use of legal skills, regardless of the setting in which those skills are being used, or the title given to the member in that setting.*

20. The implementation working group concluded that the policy would be applied as follows:
If a member

i) comes within the profiles described in the requalification by-law (taken from those contained in the MIF); or
ii) does work that can be properly analogized to work within those profiles; or
iii) the member's work, though not within (i) or (ii), requires the member to make substantial use of legal skills on a regular basis;
the member will not be required to requalify.

21. In determining whether members whose work does not come within (i) or (ii) above make substantial use of their legal skills on a regular basis a number of points were considered. These included

1. the wide scope of job categories whose participants are deemed to be making substantial use of their legal skills;
2. the use in some of the categories of narrow specialized legal skills (eg. legal researcher);
3. Convocation's view that each member should be individually assessed; and
4. the specific language used in the phrase "making substantial use of their legal skills on a regular basis".

23. The requalification policy will undoubtedly undergo refinement and revision as it is implemented. The Committee is conscious of the fact that to assist in the determination of when a member is making substantial use of legal skills on a regular basis it is important to articulate a number of considerations that are relevant to the issue. It is also important to recognize the need to review these considerations after a period of time to assess their appropriateness.

24. In assessing and determining whether a member is making substantial use of legal skills on a regular basis the Committee recommends that the considerations, set out below, should be applied to that determination.

a) A lawyer who makes substantial use of legal skills would, *ordinarily*, on a regular basis:

- engage in legal research or analysis and problem solving;
- employ communication skills (oral and written);
- organize and manage legal work;
- in varying degrees depending upon the work, recognize and resolve ethical issues; and
- remain current in all substantive areas of law that are relevant to the lawyer's work.

Convocation approved a definition of competence in November 1997. The extent to which a lawyer applies the components of the competent lawyer set out in the definition should also be considered in assessing whether he or she is making substantial use of legal skills on a regular basis. The definition is set out in Appendix 3.

In the Committee's view it should not be expected that a member must satisfy every component discussed here, but rather that these components describe the legal skills that are relevant to the issue to be decided. They form the underpinning to the examination of whether a member is making substantial use of legal skills on a regular basis.

b) In the Committee's view use of legal skills must comprise a significant and regular component of the member's job. In the course of the work the member must be required to make substantial use of legal skills on a regular basis. Regular use of skills means the use should be predictable, habitual, and constant, not casual or intermittent. Based on the Committee's earlier expressed views on the likely criteria to be applied, staff have given members in the following jobs the preliminary advice that they would, in all likelihood, be obliged to meet requalification requirements, should they return to private practice:

> *movie producer; police officer; human resource manager; real estate developer; journalist; financial consultant; marriage counsellor; lobbyist; securities and investment counsellor/analyst/banker/broker; insurance broker; mortgage broker; probation/parole officer; financial consultant; chartered accountant; trade mark agent; legal translator[4]; legal secretary, paralegal or law clerk, real estate conveyancer or title searcher.*

Some of the lawyers in these jobs have indicated that they use legal skills such as negotiation, drafting, writing, and advocacy as well as their knowledge of substantive law in various ways and in varying degrees in their jobs. Yet, it has seemed incongruous to accept that because a member may do some writing, interviewing, and some advocacy in his or her employment, use of these skills, generically, would be sufficient to meet the test of making substantial use of legal skills on a regular basis. The use of skills as an adjunct to or enhancer of one's non-legal work does not constitute making substantial use of legal skills on a regular basis.

In a memorandum prepared in 1996 the staff committee noted that in determining that members in the types of jobs listed above would be required to requalify it was because:

> *Although, for example, a movie producer who is a lawyer may use certain skills such as negotiation and contract drafting, and a marriage counsellor may be able to analyse client issues more advantageously because of having learned legal analytical skills or family law, their work does not require them to make substantial use of their legal skills on a regular basis.*

This approach is reflected in the criterion set out here.

c) The Committee is further of the view that where members are working as legal secretaries or paralegals/law clerks they should be considered not to be making substantial use of legal skills on a regular basis, with no right of appeal. The Committee specifically considered these two categories and articulated its views that in all circumstances these members should be required to meet requalification requirements.[5]

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[4]The Admissions & Equity Committee has recently granted the application of an applicant for a waiver of the articling requirement who is a lawyer from another jurisdiction outside Canada and has been working as a legal translator in Canada, provided the applicant complete the professional responsibility component of Phase I of the BAC, complete the professional responsibility examination that articling students write, and be mentored for 1 year.

[5]If accepted this would be included in by-laws and would not be subject to appeal.

25. Subject to the view expressed in paragraph 24(c), the initial determination by the Secretary of whether a member is making substantial use of legal skills on a regular basis would be subject to appeal by the member.This ensures that members have a forum for registering their disagreement with an assessment. Further, if as the policy unfolds it becomes apparent that some of the criteria are in need of revision this can be done by Convocation amending the by-law.

26. Convocation is requested to consider whether it agrees that the criteria and approach set out in paragraphs 24 (a) -(b) and 25, be applied to determine whether a members is making substantial use of legal skills on a regular basis.

27. Convocation is further requested to consider whether it agrees with the Committee recommendation in paragraph 24(c) that where members are working as legal secretaries or paralegals/law clerks they are to be considered *not* to be making substantial use of legal skills on a regular basis, with no right of appeal.

Scope of Applicability of Requalification Requirement

28. Pre-dating the requalification policy, the Law Society has implemented a number of policies over the years to deal with the return to practice of certain members. These policies developed somewhat piecemeal as the particular need arose. Members who have been administratively suspended for non-payment of fees for five years or more as well as resigned members who wish to re-apply for membership had since 1986 and 1987 respectively been obliged to re-write the bar admission course examinations or such number of them as has been directed.

29. The 1994 report on requalification, approved by Convocation, stated that the requalification policy would not apply to administratively suspended members. The view appears to have been that having "severed" their ties to the Society, these members should meet different requirements for return than other members.

30. As the requalification requirement has developed, as the Law Society has articulated a pro-active approach to competence, and as the Society has developed its commitment to policies that reflect a concern for equity issues, questions have arisen about the requirements relating to administratively suspended members who seek to return to active status after an absence of five years or more.

31. To address these questions a staff group has focused on considering the impact that the requalification requirement and the language of the amended *Law Society Act* have on a variety of policies currently being applied at the Law Society with respect to reinstatement, return from retirement and permanent disability, and readmission.

32. Analysing the language of the legislation and new procedures in place arising out of the legislation staff has identified the following considerations, with which the Committee agrees:

    a. Since members who are administratively suspended are still "members" under the *Law Society Act* and since section 49.1 relating to requalification refers to "members", such members are subject to the requalification requirements, whatever they may be,[6] not the earlier 1986 policy.

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[6]This approach is also in keeping with the Society's emphasis on competence. It is arguable that in requiring those who have been administratively suspended to meet more onerous requirements than those who are not making substantial use of their legal skills, but have not been suspended the Society mixes two separate issues. The first is an issue related to fees and status. The second is an issue related to addressing the competence of members who have not been using their legal skills for a specified period of time. The Law Society has provisions relating to what back fees or re-admission fees a member must pay to be reinstated or readmitted. These are separate from competence requirements and are not otherwise affected by the requalification program. There is, however, a difference in the

b. The Society permits members who are permanently retired or permanently disabled to apply to be excused the obligation to pay fees. This provision is contained in the by-law related to fees, but over the past years, when such members have sought to return to practice there has been an inconsistent approach as to what, if anything, they should have to do as a prerequisite to returning. Some have been required to provide medical information, others have been required to provide an undertaking limiting their practices to certain substantive areas or to specified practice arrangements. Others have simply returned to practice and begun paying the appropriate fee. The requirements have not been based on the length of the retirement or incapacity.

For the reasons discussed above, since these lawyers continue to be "members" they too are subject to the requalification program. If there is a concern about these members' capacity, the Society should apply under the capacity provisions of the legislation for any additional terms it seeks to impose upon a return to practice.

c. The final category is made up of those members who have resigned their membership, either voluntarily or with Convocation's permission following a disciplinary proceeding. Pursuant to a 1987 policy those members who have resigned voluntarily, not through discipline, were obliged to write the bar admission course examinations or such number of them as was required by the Law Society.

As of February 1999, pursuant to the *Law Society Act*, those seeking readmission to the Society, regardless of the circumstances surrounding the resignation, are required to apply to the Hearing Panel for a determination of their application and any conditions to be met for readmission. The Hearing Panel's discretion is not to be fettered in making such decision, although it is possible that guidelines may be developed to inform the Panel's deliberations.[7] The policy formerly in place concerning the re-writing of Bar Admission examinations is no longer to be considered the only approach to follow. The Hearing Panel could be told of the existence of the requalification policy so as to be informed on the range of possible options available to it in determining what conditions a re-applying member would have to meet, but it is clear that the requalification policy would not automatically apply to these applicants as they are not "members" at the time of their application.

33. Since the requalification provisions in the legislation are also applicable to members who have been administratively suspended for five years or more or permanently retired or incapacitated for five years or more, does Convocation agree that these members will be required to meet the requalification requirements, not those earlier policies designed before there was a general requalification requirement.

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course fee to be charged. Administratively suspended members who currently are required to rewrite the bar admission examinations as a prerequisite to returning to practice pay a fee of $2,000. Members required to requalify may pay nothing depending upon the requirement. One of the principles underlying the requalification policy is that the program should not be designed in such a way as to be a barrier to re-entry. There must be a concern that those required to do the bar admission course or examinations in order to return to practice face exactly such a barrier.

[7]Some months ago the PD&C Committee discussed, in a preliminary fashion, the use of guidelines to assist Hearing Panels in their consideration of competence-related matters. It was the committee's view that this would be an appropriate approach. At Convocation on April 30, 1999 a different, unfavourable, view was taken with respect to the development of guidelines for Hearing Panels. The Committee may want to consider the guideline issue in further depth in the coming months as it affects matters of relevance to PD&C.

POLICY ISSUES RELATED TO PRACTICE REVIEW PROVISIONS OF THE *LAW SOCIETY ACT*

Summary of the Issues

1. Prior to the passage of amendments to the *Law Society Act*, the Law Society did not have legislative authority to require members to participate in its Practice Review Program (PRP). The program had been initiated in 1988 on a voluntary basis in an effort to assist members, whose professional competence was in issue, to improve their performance.

2. The program was seen as a remedial alternative to dealing with the member through the discipline process. Members who participated voluntarily in the program were given assurances of what was referred to as "confidentiality". The Professional Standards Committee policy of March 1995 assured members that their participation in the PRP and information disclosed as a result of that participation would be kept confidential. Reviewer and staff reports and member responses thereto were not to be released to other departments of the Law Society, except to a discipline committee in order to permit more insight into a member's background for disposition purposes, and subject to the mandatory reporting parameters of Rule 13, Commentary 1 of the *Rules of Professional Conduct.*

3. The exception to this voluntary participation was that a member could be ordered to participate in the PRP Discipline Convocation or could give an undertaking to participate as part of the settlement of a discipline proceeding. The confidentiality policy did not apply in such cases.

4. As a result of the amendments to the *Law Society Act*, proclaimed in February 1999, significant changes have been made to the manner in which the Law Society can regulate the competence of members. One of the important changes to the process is that the Law Society has authority to conduct a review of a member's practice, in accordance with by-laws, for the purpose of determining if the member is meeting standards of professional competence. See Appendix 4 for the relevant provisions.

5. A review may only be conducted if the Chair or Vice-chair of the Professional Development and Competence Committee 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", or the member is required by an order under section 35[8] to co-operate in a review, or the member consents.

6. In the process of redesigning the Law Society's regulatory processes (P200), one area of emphasis has been on the need to expand the remedial approach to regulation. This approach has been endorsed in the recommendations of the Competence Task Force, which were approved by Convocation on April 30, 1999. Practice review is one example of a program with such a remedial focus. An issue has arisen, however, concerning what, at a policy and operational level, should be done to incorporate that remedial emphasis into regulatory operations and within the context of the new legislation.

7. In particular, issues have been raised concerning the protection of information obtained through practice reviews, the appropriate operational structure of the practice review component under P200, and the impact of the mandatory scheme on those currently in PRP voluntarily.

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[8]Order made upon determination that the member has engaged in professional misconduct or conduct unbecoming a barrister and solicitor.

8. The Committee has considered the following issues for Convocation's decision:

Issue 1 To what extent, if any, should information obtained about members in practice reviews be subject to access, disclosure, or use for purposes other than the professional competence provisions of the Law Society Act?

Issue 2 What steps should be taken to preserve, at an operational level, the remedial focus of practice reviews?

History

9. In 1988, Convocation adopted the report of the Special Committee on Competence (1986) and the operation of the PRP began. It was developed because discipline sanctions were often considered inadequate to deal with incompetence. The PRP focus was to enhance the competence of lawyers. Success was to be measured both in terms of implementation of recommendations and the degree by which complaints and/or LPIC claims were reduced. Care was taken to distinguish the PRP from conduct-related regulatory activities such as audit and discipline.

10. Potential candidates were invited to participate in the PRP on the assurance that their participation would be kept confidential and the content of reviews, with the exception of mandatory reporting as set out in Rule 13, Commentary 1 of the *Rules of Professional Conduct*, would not be disclosed to or used by other regulatory departments.[9] Those "confidentiality" provisions were established in part because the Law Society concluded that members would only co-operate if some assurance was given that their participation would not lead to possible disciplinary action. They were also established to encourage members to agree to participate.

11. Prior to agreeing to participate, members received an initial letter outlining aspects of the program, such as how a member was authorized, how a reviewer would be chosen, and what appearing before a review panel involved. Reviewers were chosen from private practitioners who practised in a similar area of law, with a similar size of practice, in a different geographical region. The initial letter explained: "In order to maintain the highest level of confidentiality, all reasonable efforts are made to select the reviewer from a different geographic area of the province."

12. As the PRP has operated, and as practice reviews will operate, there are usually two levels of review. The first is done by an external practice or peer reviewer. Subsequent reviews are conducted by Law Society staff. The initial practice review by a peer practitioner takes a full day to complete. Recommendations made by the reviewer will depend to a certain extent on the reviewer's experience in conducting practice reviews and on how comprehensively the reviewer incorporates office and management systems within his or her own practice.

13. Since the initial review is usually done by a peer external practitioner, rather than by Law Society staff, the member is likely to feel less hostile and be more receptive to advice because it comes from a practising colleague. Often a member will relax when he or she realizes that the reviewer is assisting with solid advice about procedures that can easily be incorporated into the practice. This approach will continue under the practice review provisions of the *Law Society Act*.

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[9]The exception to this is that members ordered into the PRP by a discipline order or undertaking did not volunteer and had no assurance of confidentiality.

14. When a Law Society staff person becomes involved in follow-up reviews, it is not merely to ensure that the reviewer's recommendations have been implemented, but also to look at the various office systems in greater detail and make further recommendations. Depending upon a member's management skills, it might not make sense to make sophisticated recommendations until the member has completed implementing basic recommendations. Thus, the recommendations may change from time to time. As well, certain recommendations may take longer to incorporate than others. It is usual for staff to attend at a member's office for a minimum of three follow-up reviews and on occasion as often as ten times to ensure that the member has incorporated the recommendations into his or her daily practice routine. The process of building up trust with the member so that he or she begins to see the process as remedial, not punitive, can be a lengthy one. Most successful participants go through denial, resistance, mistrust, trust, procrastination, motivation to change and then action. [10]

Remedial Initiatives

15. Convocation adopted the recommendations contained in the Competence Task Force Final Report dated April 30, 1999. The Report's recommendations state in part:

> 3. Because it is likely that the same staff counsel will represent the Society in conduct, capacity, and competence hearings, it is particularly important that the different approaches behind each of the schemes within the legislation be visible in the processes that are developed and followed. This discipline perspective must not overshadow the more remedial perspective envisioned by the competence scheme.
>
> 11. It is essential that members understand the difference between practice reviews, consent competence orders, and competence hearings, and between the competence stream and the discipline stream of the Society's regulatory functions.
>
> 12. The distinction between the competence and discipline streams must also be clear at an operational level so that members can trust the information they receive from the Law Society .

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[10] Two hundred and fifty lawyers were authorized to participate in the PRP between 1995-1999. There continue to be 145 active files. One hundred and five files have been closed for the following reasons:

Successful Completion	48
No longer practising	33
Unwilling to participate	6
Unwilling to co-operate	7
Participation no longer necessary	6
Nothing further can be done	4
Authorization withdrawn - inappropriate	1

Redesign Policy of Regulatory Operations

16. The redesign of the Law Society's regulatory function speaks in terms of developing a broader based remedial approach to matters and redefines the role of practice review by making it one of "a range of remedial solutions." To facilitate this, the redesign recommended that information regarding any member from any remedial initiative be shared with other regulatory staff and evaluated as part of an ongoing process to ensure that the Law Society's selected approach for dealing with a member continues to be appropriate. This broad-based remedial approach reflects the Competence Task Force recommendations as well.

17. As originally conceived by the P200 redesign, information from a review might be admissible in conduct and competence proceedings. If this approach were followed it would reverse the policy adopted by the former Professional Standards Committee of March 1995.

Policy Perspective

Issue 1

To what extent, if any, should information obtained about members in practice reviews be subject to access, disclosure, or use for purposes other than the professional competence provisions of the Law Society Act?

18. As a general rule it is important to the Law Society's ability to operate effectively, efficiently, and in the public interest that information obtained in one branch of the operation be available to other branches of the operation.

19. Within that general rule, however, it may be possible and indeed essential to create some exceptions in order to advance remedial objectives whose long term goal is to reduce the incidence of incompetence among members of the profession.

20. The history of PRP and remedial efforts in general illustrates the importance of trust by the participant that the program's objectives are transparent. The belief that there may be a hidden agenda to what is offered as a remedial initiative may result in the member's refusal to reveal the scope of issues and causes that are interfering with his or her competent performance. The staff who have worked in the voluntary PRP cannot overestimate the importance of trust to the success of efforts with any individual member.

21. The guarantee to participants that information learned in PRP would be confidential and would not be used for conduct purposes or proceedings, subject to the requirements of Rule 13, Commentary 1, appears to have been generally accepted as an appropriate approach. No concern has been raised within the organization that this guarantee has interfered with the Law Society's ability to protect the public.

22. Having considered the issue, the Committee is of the view that the protection of information obtained solely in the course of practice reviews should continue to be offered under the legislative provisions, in order to provide members with the necessary assurances that the practice review process is not an indirect route to a conduct proceeding.

23. The Committee did discuss whether, within such a policy of protection, there should be some exception to allow for "access to" and "use of" information from practice reviews for the limited purpose of assisting the member by fashioning a remedy that focuses on remedial and negotiated resolutions wherever possible to avoid proceedings against the member.

24. The rationale for such an exception stems from the fact that the regulatory redesign, the legislative amendments, and the recommendations of the Competence Task Force are all directed at pursuing a regulatory approach that, wherever possible in the public interest, resolves regulatory issues through negotiation and remedial solutions. If there is an absolute prohibition against exchange of information between practice reviews and other branches of the organization there may well be situations in which information obtained in a practice review that could shed light on the underlying causes of a new complaint made against the member cannot be revealed to help fashion a remedy to a new complaint. The member will potentially be subject to two or more Law Society "proceedings" or interventions that run parallel to one another, a result that the regulatory redesign was intended to avoid.

25. The Committee has reached the conclusion, however, that while there may be concern that this kind of protection has the potential to preclude the Law Society from accessing some information that might be relevant to a conduct proceeding, or from fashioning an all encompassing solution to issues involving one member, these concerns must be balanced against the importance of fostering the development of remedial processes and the integrity of the competence provisions. The Committee has concluded that, at least initially, it is important to protect information so as to foster the most positive perception among the members whose practices will be reviewed. The hope is that, in this way, the long term goal of remedying incompetent practice can be advanced.

26. The Committee is further of the view that the balance tips in favour of providing the protection by the following additional considerations and policy decisions that allow the Society to meet its mandate to govern in the public interest.

a) the use of information obtained in a practice review is always available for the purposes of the competence provisions of the Act, including where necessary a competence proceeding;
b) those practice reviews that come about as a result of an order made under section 35, or undertaking given by the member in a proceeding under section 35, are exempt from the policy for protection of information;
c) the protection of the information continues to be subject to the mandatory disclosure provisions under Rule 13, Commentary 1; and
d) the flow of information from complaints, discipline, audit, or other sources to the competence stream continues.

27. Finally, the Committee is of the view that there should be a review of the policy after 18-24 months to consider any evidence of difficulties raised by the protection of information policy.

28. The Committee therefore recommends that:

> *on the basis of the considerations set out in paragraphs 26 and 27*, a policy be adopted that provides that under no circumstances, save and except where Rule 13, Commentary 1 is applicable, or where an order to participate in practice review is made against a member or an undertaking to participate in practice review is given by the member under section 35 of the *Law Society Act*, will any information obtained solely in the course of, or as a result of, a practice review be disclosed, accessed, or used, either directly or indirectly, to initiate or further a conduct proceeding or be admissible as evidence in a conduct proceeding.

Issue 2

What steps should be taken to preserve, at an operational level, the remedial focus of the practice reviews?

29. As originally conceived by the P200 regulatory redesign, practice reviews would be operationally located within the Investigations Unit of the Law Society. In assessing the needs of the practice review scheme and accepting the critical importance of the remedial focus of the program and the need to engender trust in participants, staff has made efforts to consider how best these goals can be furthered at the operational level.

30. Given that the Investigations Unit's primary job is to investigate member conduct as a possible precursor to formal complaints being laid and conduct proceedings commenced against the member, it is unlikely that associating practice reviews with this unit will engender the trust essential to success.

31. Having considered the staff recommendation with respect to the operational structure, the Committee agrees and recommends that the following policies should be adopted:
There should be

a) a separate structure and separate staff resources dedicated to practice review;
b) a physical location that promotes the separateness of practice reviews from investigative approaches;
c) appropriate staff training throughout the organization to ensure understanding of the remedial nature of practice reviews; and
d) an effective communications strategy that will enhance members' belief in and trust of practice reviews.

32. Essentially this policy continues the organizational approach previously followed in the PRP. It does not entail a new approach, rather it confirms the organization's commitment to remedial strategies. The policy does not entail new or additional resources, but rather a shifting of resource allocation.

Members Currently Participating in Practice Review

33. Transition provisions of the *Law Society Act* provide that members at certain stages of the voluntary PRP are, upon the passage of the amendments to the Act, deemed to be at various points in the mandatory scheme. Appendix 4 contains the transition provisions. This means that members who entered the program voluntarily are, by legislative provision, now participating in a mandatory scheme with potentially different consequences. There are approximately 145 such members.

34. The Committee expressed the view that because these members have been parachuted into a mandatory program from a voluntary one, staff should encourage the completion of the member's participation in as cooperative an approach as is reasonably possible.

Request to Convocation

35. Convocation is requested to consider the recommendations set out in paragraphs 28 and 31 and, if appropriate, to approve them.

PUBLICATIONS IN CLE

1. The outgoing Treasurer has raised an issue with respect to the scope and role of publications in the operations of the Law Society's CLE department.

2. A copy of a report on CLE publications has been provided to the Committee and is set out at Appendix 5. The Society has received submissions from other legal publishers and, in one case, an author of a book published elsewhere. The submissions raise policy questions as to the proper scope of publications in the Law Society's CLE mandate and about the manner in which authors and, presumably speakers, are chosen. The Committee will review the submissions over the coming months and report to Convocation in the fall.

3. The Committee is of the view and recommends that, in the interim, the Law Society's CLE department should proceed with its publications and honour the commitments arising therefrom.

4. Convocation is requested to approve the approach set out in paragraphs 2 and 3.

FOR INFORMATION

APPOINTMENT OF PRACTICE REVIEWERS

5. Pursuant to section 4 of By-law 24 the Professional Development and Competence Committee, "shall appoint one or more persons to conduct reviews of members' practices under section 42 of the Act".

6. Under the former Practice Review Program (PRP) external peer reviewers and staff from the professional standards department conducted reviews. External practice reviewers and staff will continue to conduct reviews under the provisions of the *Law Society Act.*

7. At its meeting on June 10, 1999 the Committee appointed the persons named in Appendix 6 to conduct reviews of members' practices pursuant to section 42 of the Act. Each of those appointed was a reviewer under the former PRP.

Appendix 1: Requalification Policy, 1994

Appendix 2: Activity Profiles

Appendix 3: Definition Of the Competent Lawyer

(Approved by Convocation on November 27, 1997)

A competent lawyer has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client. These include:

i. knowing general legal principles and procedures, and the substantive law and procedure for the areas of law in which the lawyer practices;
ii. investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate course(s) of action;
iii. implementing the chosen course of action through the application of appropriate skills including:

(a) legal research,
(b) analysis,
(c) application of the law to the relevant facts,
(d) writing, and drafting,
(e) negotiation,
(f) alternative dispute resolution,
(g) advocacy, and
(h) problem solving ability

as each matter requires;

iv. communicating in a timely and effective manner at all stages of the matter;
v. performing all functions conscientiously, diligently, and in a timely and cost effective manner;
vi. applying intellectual capacity, judgment, and deliberation to all functions;
vii. complying in letter and in spirit with the Rules of Professional Conduct;
viii. recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
ix. managing one's practice effectively;
x. pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
xi. adapting to changing professional requirements, standards, techniques, and practices.

Appendix 4: Sections 42 and 49.4 of the *Law Society Act*

(Practice Reviews)

42. (1) The Society may conduct a review of a member's practice in accordance with the by-laws for the purpose of determining if the member is meeting standards of professional competence.

(2) A review may be conducted under this section only if:
(a) the review is required under section 49.4;
(b) the member is required by an order under section 35 to co-operate in a review under this section; or
(c) the member consents.

(3) On completion of the review, the Secretary may make recommendations to the member.
(4) The Secretary may include the recommendations in a proposal for an order.
(5) A proposal for an order may include orders like those mentioned in section 44 and any other order that the Secretary considers appropriate.

(6) If the Secretary makes a proposal for an order to the member and the member accepts the proposal within the time prescribed by the by-laws, the Secretary shall notify the chair or vice-chair of the standing committee of Convocation responsible for professional competence and the chair or vice-chair shall appoint an elected bencher to review the proposal.

(7) The bencher who reviews the proposal may make an order giving effect to the proposal if he or she is of the opinion that it is appropriate to do so.

(8) The bencher may include modifications to the proposal in an order under subsection (7) if the member and the Secretary consent in writing to the modification.

(9) Subsections (4) to (8) do not apply if the member si required by an order under section 35[11] to co-operate in a review of the member's practice under this section and implement the recommendations made by the Secretary.

49.4 (1) Subject to section 49.6,[12] the chair or a vice-chair of the standing committee of Convocation responsible for professional competence shall direct that a review of a members' practice be conducted under section 42 if the circumstances prescribed by the by-laws exist.

Transition: practice reviews

36. (1) If, before this Act comes into force, a review of a member's practice was commenced by the Law Society under the Society's Practice Review Programme, the review shall be deemed to have been required under section 49.4 of the Act, as enacted by this Act.

(2) Subject to subsection (4), if, before this Act comes into force, a review of a member's practice was conducted by the Law Society under the Society's Practice Review Programme and recommendations were made to the member as a result of the review, the recommendations shall be deemed to constitute the terms of a proposal for an order made by the Secretary of the law Society under subsection 42(4) of the Act, as enacted by this Act.

(3) If, before this Act comes into force, a review of a member's practice was conducted by the Law Society under the Society's Practice Review Programme, recommendations were made to the member as a result of the review and the member refused to accept the recommendations, the member shall be deemed to have refused to accept a proposal for an order made by the Secretary of the Law Society under subsection 42(4) of the Act, as enacted by this Act.

(4) If, before this Act comes into force, a review of a member's practice was conducted by the Law Society under the Society's Practice Review Programme, recommendations were made to the member as a result of the review and the member accepted the recommendations, the recommendations shall be deemed to constitute the terms of an order made by a bencher of the law Society under subsection 42(7) of the Act, as enacted by this Act.

Appendix 5: Report on CLE Publications

Appendix 6: Practice Reviewers

STAFF
Mark Pujolas
Larry Hadbavny
Lorne Giacomelli
Rosemary Shoreman

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[11]Section 35 refers to an order of the Hearing Panel determining that a member or student member has engaged in professional misconduct or conduct unbecoming a barrister or solicitor.

[12]Section 49.6 provides that the Treasurer shall exercise the authority of the chair or vice-chair of the committee responsible for professional competence under section 49.4 in respect of any matter that concerns the professional competence of a bencher.

REVIEWERS
Nancy Allison
Donald A. Archi
Ronald A. Balinsky
Glenda Bishop
John Carrel, Q.C.
Mark Castle
Thomas Dart
Ross Davis
C.A. Dizenbach
Tilton Donihee
David Edwards
Linda Fowler
Michelle Fuerst
John G. Goodwin
James D. Higginson
Roger Howson
D.E. Jacklin
Jennifer Jenkins
Stanley J. Kershman
J. Robert Kelly, Q.C.
Paul Kiteley
F.W. Knight, Q.C.
Frederick Lee
J.D. Linton
James Little, Q.C.
David L. Lovell
J.W. Makins
Wendy Malcolm
A.T. Marshall, Q.C.
R. Kim McCartney
Glenna McClelland
Ronald McClelland
Roderick McDowell
E.J. McGrath
M. James O'Grady, Q.C.
J. Richard Ottewell
Donovan Pavey
Norman B. Pickell
John Reble
Peter J. Remillard
Frank Ricci
Craig Robson
Luigi Savone
W. Graydon Sheppard
E. Bruce Solomon
Francis Steffler
B.P. Stelmach
William W. Stutz
Robert Thompson, Q.C.
Donald Thomson
Norman Tomas

Thomas W. Troughton
Anne Trousdale
Peter Trousdale
Douglas Turner, Q.C.
Thomas C. Uren
Victor Vandergust
R. Bruce Waite, Q.C.
Paul Webber, Q.C.
Beverly Wexler
Roland Willis, Q.C.
Daniel L. Winbaum
Richard Woolfrey
Milton Zwicker

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

(1)	Copy of Requalification Policy.	(Appendix I)
(2)	Copy of the Activity Profiles section from the 1998 MIF.	(Appendix 2)
(3)	Copy of the June 1999 Report on CLE Publications.	(Appendix 5)

It was moved by Mr. Wilson, seconded by Ms. Elliott that the criteria and approach set out in paragraph 24 (a) and (b) and paragraph 25 on pages 10 - 13 of the Report be applied to determine whether a member is making substantial use of legal skills on a regular basis and further that where members are working as legal secretaries or paralegals/lawclerks that they be considered not to be making substantial use of legal skills on a regular basis with no right of appeal as set out in paragraph 24(c) on pages 12 - 13.

Carried

It was moved by Mr. Wilson, seconded by Ms. Elliott that members who have been administratively suspended for five years or more or permanently retired or incapacitated for five years or more be required to meet the requalification requirements and not those earlier policies designed before there was a general requalification requirement.

Carried

Re: Publications in CLE

It was moved by Mr. Wilson, seconded by Mr. Millar that the current policy of the CLE department with respect to publications should continue as is and that the issue will be reviewed by the Professional Development and Competence Committee, which will report back to Convocation in the Fall.

Carried

The item respecting Policy issues related to Practice Review Provisions of the Law Society Act was deferred.

ORDERS

The following Orders were filed:

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Gerald Bernie Yasskin, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 26th day of March, 1999, in the presence of Counsel for the Society, the Solicitor being in attendance, though not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Gerald Bernie Yasskin be reprimanded, and that he pay costs of the Law Society in the amount of $500, payable within sixty days of the date of this order.

DATED this 29th day of April, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Larry George Frolick, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 18th day of December, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance, though not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Larry George Frolick be granted permission to resign his membership in the said Society, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 29th day of April, 19999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF William Ernest Duce, of the City of Burlington, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 25th day of March, 1999, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that William Ernest Duce be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 29th day of April, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

REASONS OF CONVOCATION

The Reasons of Convocation in the matter of Byron Douglas Loney were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Byron Douglas Loney of the Town of Barry's Bay, a barrister and solicitor

REASONS OF CONVOCATION

Georgette Gagnon - counsel for
the Law Society of Upper Canada

Not Represented - counsel for the Solicitor

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act;

AND IN THE MATTER OF Byron Douglas Loney of the Town of Barry's Bay, a barrister and solicitor

REASONS OF CONVOCATION
February 22, 1996

Convocation considered the Discipline Committee Report and Decision in the above-noted matter and with respect disagreed with both the Reasons for finding of professional misconduct and the recommendation as to penalty and the reason for that recommendation. However, Convocation did agree that the particulars of professional misconduct as set out in paragraphs 2(a), (b), (c) and (d) of the Decision of the Discipline Committee were substantiated by the facts.

Convocation does not share the Committee's views "that if the misappropriated amount of $1,195.00 could not be substantiated by a view of member's accounting records and the submitting of a bill that no other rational conclusion could be drawn except that there had in fact been a misappropriation". It is noted that the Committee took this position very reluctantly and considered same in their recommendation as to penalty and their reasons therefor.

Convocation finds an error in principle in the Committee's decision that a misappropriation can be the conclusion where there is no explanation. This is especially so where there has been no finding by the Committee of fraudulent intent or proof of personal gain by the solicitor. Indeed, Convocation was advised that no client has complained of money missing, but that the short falls had been discovered through a Society spot audit.

Convocation is as disturbed as the Committee was by the failure of the solicitor to account or to at least explain. It was noted that the solicitor did not attend Convocation, although duly advised. No explanation is forthcoming and it is surprising that the solicitor has not replaced the small amounts of money unaccounted for. The possibility that the solicitor may be demonstrating his ungovernability is clear. Although there is a strong suspicion of misappropriation, there is insufficient evidence to conclude same. But it is clear the solicitor was acting inappropriately in his billing procedures when he failed to maintain proper books and records. The great concern is that the solicitor failed to maintain sufficient balances on deposit and transferred improperly from trust to general. This behaviour heralds disorganization and is not a far cry from incompetence. This, of course, leads to the compromise of the public interest.

There is clearly professional misconduct and to protect the public the solicitor must be required to comply with Law Society rules and general accounting principles. The recommendation of Convocation is designed for that purpose and to bring home personally to the solicitor his obligations in this regard.

Convocation has decided the penalty will be that the solicitor be suspended for a period of 12 months and indefinitely thereafter until he fulfilled the following conditions:

1. Brought his records into good standing;
2. Repaid any monies owing to clients;
3. Paid the Law Society's costs in the amount of $4,000.

Convocation further orders that upon return to practice the solicitor practice under the supervision of another solicitor for a period of 2 years, that the solicitor not operate a trust account for a period of 3 years and that he enrol in the Practice Review Programme and implement any recommendations made.

"Tamara Stomp"

CONVOCATION ROSE AT 4:55 P.M.

Confirmed in Convocation this 29 day of October, 1999.

Treasurer