20th September, 2007

MINUTES OF CONVOCATION

Thursday, 20th September, 2007
9:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Aitken, Anand, Backhouse, Banack, Campion, Carpenter-Gunn, Caskey, Chahbar (by telephone), Conway, Copeland, Crowe, Curtis, Dickson, Dray, Epstein, Finlayson, Furlong, Go, Gottlieb, Halajian, Hartman, Heintzman, Henderson, Krishna, Lawrence, Lawrie (by telephone), Lewis, McGrath, Millar, Minor, Murray, Pawlitza, Porter, Potter (by telephone), Pustina, Rabinovitch, Robins, Ross, Rothstein, Ruby, St. Lewis, Sandler, Schabas, Sikand, Silverstein, C. Strosberg, Swaye, Symes, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer extended condolences on behalf of Convocation to the family of Brendan O'Brien, Q.C., LSM who passed away on July 13, 2007. Mr. O'Brien was elected a bencher in 1959 and elected Treasurer in 1966. In recognition of his outstanding contributions Convocation conferred on him an Honorary Doctor of Laws degree in 1979 and awarded him the Law Society Medal in 2005. As an ex-officio bencher, Mr. O'Brien actively participated in Convocation until 2005 when he was 96 years of age.

Condolences were also extended to the family of Kenneth Jarvis, Q.C., RCA, who passed away on September 8, 2007. Two years after being called to the bar in 1956, Mr. Jarvis accepted a position as Deputy Secretary of the Law Society until 1966 when he was appointed the Law Society's Secretary, serving 21 years in that position and then served a year as Under Treasurer. Mr. Jarvis was also a nationally renowned sculptor and accomplished photographer. His sculptures and photographs are displayed throughout the Law Society. Convocation honored Mr. Jarvis by appointing him an Honorary Bencher on June 23, 1988.

The Treasurer congratulated Paul Copeland who has been chosen the 2008 recipient of the G. Arthur Martin Award, an award given annually by the Criminal Lawyers' Association for outstanding contribution to criminal justice. Mr. Copeland will receive this award on October 27.

The Treasurer reported on his activities since last Convocation.

MOTION – Canadian National Exhibition Association Appointment

It was moved by Paul Henderson, seconded by Beth Symes, that Bob Aaron be reappointed as the Law Society's representative on the Canadian National Exhibition Association.

Carried

MOTION – Committee Appointments

It was moved by Larry Banack, seconded by Mary Louise Dickson, that Jennifer Halajian be reassigned from the Access to Justice Committee to the Professional Development and Competence Committee.

That Allan Lawrence be appointed to the Access to Justice Committee.

Carried

MOTION – Appointment to Hearing Panel

It was moved by Larry Banack, seconded by Mark Sandler, that Barbara Laskin be appointed to the Hearing Panel.

Carried

DRAFT MINUTES OF CONVOCATION

The Minutes of the June 12, 2007 Special Call Convocation in Ottawa were corrected to reflect that Laurie Pawlitza introduced the Doctoral candidate, Justice Brian W. Lennox and read the citation. The draft Minutes of Convocation of June 12, as amended, June 15, 18, 19 and 28, 2007 were confirmed.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

Carried

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
ASSEMBLED IN CONVOCATION

The Director of Professional Development and Competence presents the following candidates for Call to the Bar of Ontario pursuant to By-Law 11, section 7:

(a) Transfer from another Province

The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, September 20th, 2007:

Dogan Akman	Province of Newfoundland
Alanna Patricia Brogan	Province of Nova Scotia
Mathew Clarke	Province of Newfoundland
Ryan Edward Fritsch	Province of British Columbia
Josie Lynn McKinney	Province of Nova Scotia
Jelena Novikov	Province of Alberta
Noeline Sujithra Paul	Province of British Columbia
June Lorraine Rudderham	Province of Nova Scotia
Gabriel Vikram Van Loon	Province of British Columbia

(b) Transfer from another Province

The following candidates have successfully completed the transfer examinations, filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, September 20th, 2007:

Margorie Marie-Denyse Sandrine Isabelle Gauvin	Province of Quebec
Jennifer Sarah Haccoun	Province of Quebec
Sylvie Marie Fernande Valérie L'Abbé	Province of Quebec
Joseph Maurice Conrad Jacques Monette	Province of Quebec
Dimitrios Nassios	Province of Quebec
Julien Manuel Francois Ranger-Musiol	Province of Quebec
Geneviève Marie Caroline Virginie Poirier Richard	Province of Quebec

(c) Licensing Process

Pursuant to By-Law 11, section 7(2) the following candidates have satisfied the requirements and have been excused from participating in a call day ceremony. The following candidates have successfully completed the Licensing Process, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, September 20th, 2007:

Julie Anne Patricia Hudson	Licensing Process
Karina Wanetta LaMont	Licensing Process
Shaziah Mirza	Licensing Process
Nicolas Martin Rouleau	Licensing Process
Shayne Andrew Allan Saskiw	Licensing Process
Rosalind Katherine Anne Sipos	Licensing Process
Catherine Anne Thompson	Licensing Process
Matthew William Turnell	Licensing Process

ALL OF WHICH is respectfully submitted

DATED this the 20th day of September, 2007

REPORT OF THE FINANCE COMMITTEE

Mr. Millar presented the Report.

Report to Convocation
September 20, 2007

Finance Committee

Committee Members
Derry Millar, Chair
Brad Wright, Vice-Chair
Melanie Aitken
Susan Hare
Carol Hartman
Janet Minor
Paul Schabas
Gerald Swaye

Purposes of Report: Decision and Information

Prepared by Wendy Tysall,
Chief Financial Officer – 416-947-3322

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COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on September 6, 2007. Committee members in attendance were: Derry Millar(c.), Brad Wright (vc.), Melanie Aitken, Susan Hare, Carol Hartman, Janet Minor, Paul Schabas and Gerald Swaye

2. Staff in attendance were Malcolm Heins, Wendy Tysall, Zeynep Onen, Roy Thomas, Fred Grady, Janice Laforme, Cathy Braid and Andrew Cawse.

FOR DECISION

BY-LAW FOR FINANCE COMMITTEE AND AUDIT COMMITTEE

Motion

3. The Finance Committee recommends the By-Laws, made by Convocation on May 1, 2007, be amended as follows:

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 2
[CORPORATE PROVISIONS]

1. Paragraph 1 of the section 10 of By-law 2 [Corporate Provisions] is deleted and the following substituted:

1. The chair of the Finance Committee.

1. La personne assurant la présidence du Comité des finances.

2. Section 49 of the By-Law is deleted and the following substituted:

Appointment of public accountant

49. (1) Convocation shall appoint a public accountant annually and not later than at its regular meeting in May.

Same

(2) If Convocation fails to appoint a public accountant in any year, the public accountant most recently appointed by Convocation shall be deemed to be appointed by Convocation for the year.

Assurance engagement by public accountant

(3) The public accountant shall perform an assurance engagement and provide an opinion on the annual financial statements of the Society's general fund, Compensation Fund and Errors and Omissions Insurance Fund.

Nomination d'un expert-comptable

49. (1) Chaque année, le Conseil nomme un expert-comptable au plus tard lors de sa réunion ordinaire du moi de mai.

Idem

(2) Si le Conseil ne nomme personne lors d'une année donnée, l'expert-comptable nommé en dernier par le Conseil est réputé nommé par le Conseil pour l'année.

Mission de certification par l'expert-comptable

(3) L'expert-comptable fournit une mission de certification et un avis sur les états financiers annuels du Fonds d'administration générale du Barreau, du Fonds d'indemnisation et du Fonds d'assurance responsabilité civile professionnelle.

BY-LAW 3
[BENCHERS, CONVOCATION AND COMMITTEES]

3. Section 73 of By-Law 3 [Benchers, Convocation and Committees] is amended by deleting "Finance and Audit Committee" / "Comité des finances et de la vérification" and substituting "Finance Committee" / "Comité des finances".

4. Section 108 of the By-Law is deleted and the following substituted:

108. The following standing committees are hereby established:

1. Finance Committee.

2. Audit Committee.

3. Government and Public Affairs Committee.

4. Access to Justice Committee.

5. Litigation Committee.

6. Professional Development and Competence Committee.

7. Professional Regulation Committee.

8. Equity and Aboriginal Issues Committee.

9. Emerging Issues Committee.

10. Inter-Jurisdictional Mobility Committee.

11. Tribunals Committee.

108. Sont constitués les comités permanents suivants :

1. Le Comité des finances.

2. Le Comité de la vérification.

3. Le Comité chargé des relations avec le gouvernement et des affaires publiques.

4. Le Comité sur l'accès à la justice.

5. Le Comité du contentieux.

6. Le Comité du perfectionnement professionnel.

7. Le Comité de réglementation de la profession.

8. Le Comité sur l'équité et les affaires autochtones.

9. Le Comité sur les nouveaux enjeux.

10. Le Comité sur la mobilité interjuridictionnelle.

11. Le Comité des tribunaux.

4. The heading immediately preceding section 117 and sections 117 and 118 of the By-Law are deleted and the following substituted:

FINANCE COMMITTEE

Mandate

117. The mandate of the Finance Committee is,

(a) to review the plans and projections of all the annual budgets of the Society, including the Compensation Fund, or any special or extraordinary budgets required for the purpose of the Society, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item;

(b) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation;

(c) to develop for Convocation’s approval policy options on financial matters; and

(c) to make recommendations to Convocation on financial relationships between the Society and other entities.

COMITÉ DES FINANCES

Mandat

117. Le Comité des finances a le mandat suivant :

a) examiner les plans et projections budgétaires annuels du Barreau, ainsi que les budgets de dépenses spéciales ou extraordinaires requis pour les besoins du Barreau, en particulier ce qui concerne le Fonds d'indemnisation, conseiller le Conseil en la matière et recommander l'approbation du budget annuel ou de tout poste budgétaire spécial ou extraordinaire;

b) examiner les plans proposés pour les dépenses survenant au cours de l'exercice qui ne figurent pas dans le budget annuel ou tout autre budget approuvé par le Conseil pour l'exercice, conseiller le Conseil en la matière et recommander l'approbation de telles dépenses par le Conseil;

c) élaborer des options stratégiques sur les questions financières pour l'approbation du Conseil;

d) faire des recommandations au Conseil sur la relation financière entre le Barreau et les autres entités.

AUDIT COMMITTEE

Mandate

118. The mandate of the Audit Committee is,

(a) to receive and review interim and annual financial statements for the Society, the Compensation Fund, the Lawyers' Professional Indemnity Company, the Errors and Omissions Insurance Fund and LibraryCo Inc.;

(b) to review the integrity and effectiveness of the financial operations, systems of internal control and reporting mechanisms of the Society;

(c) to recommend a public accountant for appointment by Convocation as required under section 49 of By-Law 2 [Corporate Provisions] and to deal with any matters ancillary to the appointment of the public accountant; and

(d) to recommend approval to Convocation of the annual financial statements of the Society's general fund, Compensation Fund and Errors and Omissions Insurance Fund.

Administrator of pension plan

118.1. (1) The Audit Committee shall be the administrator of and shall administer the registered pension plan for the employees of the Society.

Powers

(2) The performance of any duty, or the exercise of any power, by the Audit Committee under any Act relevant to its role described in subsection (1) is not subject to the approval of Convocation.

COMITÉ DE LA VÉRIFICATION

Mandat

118. Le Comité de la vérification a le mandat suivant :

a) recevoir et examiner les états financiers provisoires et annuels du Barreau, du Fonds d'indemnisation, de la Lawyers' Professional Indemnity Company, du Fonds d'assurance responsabilité civile professionnelle et de LibraryCo Inc.;

b) examiner l'intégrité et l'efficacité des opérations financières, des mécanismes de contrôle interne et de la présentation de l'information financière du Barreau;

c) recommander au Conseil la nomination d'un expert-comptable tel que requis par l'article 49 du règlement administratif no 2 [Dispositions générales] et traiter toute question associée à la nomination d'un expert-comptable;

d) recommander au Conseil l'approbation des états financiers annuels du Fonds d'administration générale du Barreau, du Fonds d'indemnisation et du Fonds d'assurance responsabilité civile professionnelle.

Administrateur de régime de pension

118.1. (1) Le Comité de la vérification administre le régime de pension des employés du Barreau.

Pouvoirs

(2) L'exercice de toute tâche ou tout pouvoir par le Comité de la vérification aux termes d'une loi applicable à son rôle décrit au paragraphe (1) n'est pas soumis à l'approbation du Conseil.

Background to By-Law Changes

4. The Committee has reviewed and approved the draft by-law changes. The draft by-law changes have also been reviewed and approved by the Audit Committee, and the recommendations for all the changes have been consolidated into the above motion.

5. The by-law changes were initiated by Convocation's approval of new mandates for the Audit Committee and Finance Committee.

6. The background to the changes and the Audit Committee Mandate and Finance Committee Mandate is set out below, along with relevant extracts from the existing by-laws. The new committee mandates, approved by Convocation, were used to draft the proposed by-laws.

7. On March 27, 2007, Convocation approved the recommendations included in the Second Report of the Governance Task Force relating to the responsibilities of a Finance Committee and an Audit Committee. Specifically:

RECOMMENDATION 2
That Convocation establish a standing committee called the Audit Committee which shall replace and include the mandate of the existing Audit Sub-Committee of the Finance and Audit Committee and such other matters as Convocation may direct.

RECOMMENDATION 3
That Convocation replace the existing Finance and Audit Committee with a Finance Committee whose mandate will be to continue the functions of the present Finance and Audit Committee that are not assigned to the Audit Sub-Committee, including the following:

a) to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item;

b) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation; and

c) to undertake such other responsibilities of a financial nature assigned to the Finance Committee by Convocation.

8. Since the above recommendations were approved, the Finance & Audit Committee and the Audit Sub-Committee (with our auditors and the Chair and Vice-Chairs of the Finance & Audit Committee) met to discuss their respective mandates and the allocation of responsibilities between the two committees. The adopted philosophy was the mandates of the two committees should clearly articulate the role each of the committees is to play in the governance structure of the Society. The mandates should ensure that no duplication of effort or responsibility exists and that no gaps in financial management exist.

9. Prior deliberations of the two committees concluded that, in broad terms, the Audit Committee should fulfill an oversight role assessing the application of policy and the Finance Committee should be a policy recommending committee, charged with the responsibility of formulating and recommending annual budgets and reviewing and recommending in-year program plans not included in the annual budget.

10. The mandate of the Audit Committee, approved by Convocation in June 2007 is set out below.

AUDIT COMMITTEE MANDATE

PURPOSE OF THE COMMITTEE

1) The purpose of the Audit Committee (the “Committee”) of the Law Society of Upper Canada (the “Law Society”) is to act on behalf of Convocation in the oversight of the:

- integrity of the Law Society’s financial statements and its financial reporting process;
- risk management and internal control systems, and
- independence and performance of the Law Society’s independent auditor;

2) The Committee shall also perform any other activities consistent with this Mandate and the Law Society's by-laws or as Convocation deems necessary or appropriate.

3) The Committee's role is one of oversight. Management is responsible for preparing the Law Society's financial statements and the independent auditor is responsible for auditing those financial statements. Management is responsible for the fair presentation of the information set forth in the financial statements in accordance with generally accepted accounting principles ("GAAP"). Management is also responsible for establishing and maintaining appropriate accounting and financial reporting principles and policies, a strong system of internal controls, and procedures designed to assure compliance with accounting standards and all applicable laws and regulations.

4) The independent auditor's responsibility is to express an opinion, based on its audit, whether the financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Law Society in accordance with GAAP.

5) The Committee shall make recommendations for the appointment, compensation and oversight of the work of the external auditor (including the resolution of any disagreements between management and the external auditor regarding financial reporting) to Convocation. The external auditor shall report directly to the Committee.

AUTHORITY AND RESPONSIBILITIES

6) Minutes of meetings shall be kept, approved and maintained in the Chief Financial Officer's Office. In performing its oversight responsibilities, the Committee shall:

<u>Financial Reporting:</u>

- Review and discuss the interim and annual financial statements with management. The Committee has oversight responsibility for the General Fund and Compensation Fund. The Committee will also receive and review the interim and annual financial statements of Lawyers Professional Indemnity Company, the Errors and Omissions Insurance Fund, LibraryCo Inc., the Law Society Pension Fund and any other subsidiary or related statements relevant to the Committee;

- Review with management the adequacy and effectiveness of the Law Society's accounting, information and financial controls systems and the integrity of its financial reporting processes;

- Oversee the selection of accounting policies used in the preparation of the financial statements, including consideration of all relevant alternatives;

- Review other financial information e.g. the annual report, for consistency with the audited financial statements;
- Maintain an effective communications policy, including disclosure of the Audit Committee's mandate.

Audit Activities:

- Review with the external auditor and management the annual audit plan, including the overall scope of the audit and the areas of identified risk;
- Monitor the independence of the external auditor by reviewing all relationships between the auditor and the Law Society;
- Review with management and the external auditor the annual audited financial statements and related note disclosures;
- Review with the external auditor the results of the audit and determine if there were any difficulties or disputes with management, any significant changes in the audit plan, any significant changes in accounting policies and any management estimates that required significant judgment;
- Review with the external auditor any internal control weaknesses, and if appropriate, determine whether effective steps have been taken by management to overcome them;
- Recommend approval of the audited financial statements to Convocation;
- Recommend the appointment of the external auditor to Convocation;
- The Committee shall meet 'in camera' with the external auditor without members of management present at least once a year at the post-audit meeting.

Pension Fund:

The Audit Committee shall have administrative oversight duties for the registered pension plan for the employees of the Society.

Risk Management and Internal Control Systems:

- Review and assess the Law Society's financial risk management policies and processes;
- Have a clear understanding of the risks of fraud and error in the entity and review management's response to those risks;
- Oversee management's establishment of an adequate system of internal controls and risk management systems to mitigate the financial risks facing the Law Society and to ensure a strong internal control environment exists;
- Consider the potential risk of management's override of controls or other inappropriate influence over the financial reporting process;
- Enquire into the condition of the books and records and the adequacy of resources committed to the accounting function and internal controls;
- Review the Law Society's procedures established for the receipt, retention and treatment of complaints regarding accounting, financial disclosure, internal controls or auditing matters. The Law Society's policy in this respect is contained in the Business Conduct Policy. Law Society employees having knowledge of any matter which in their judgment might affect adversely the Society's reputation or operations shall bring such knowledge promptly to the attention of a senior manager, or the Chief Executive Officer, or the Treasurer or the Chair of the Finance Committee or Chair of the Audit Committee who shall notify each other of such information at the appropriate time.
- Conduct or authorize investigations into any matters that the Committee believes is within the scope of its responsibilities.
- Monitor the litigation risks faced by the Society including the recognition of contingent or other liabilities.
- Receive reports on bencher remuneration and expenses.

MEMBERSHIP REQUIREMENTS

7) Members of the Audit Committee should be able to maintain an independent mind, and be financially literate, particularly in the area of not-for-profits and fund accounting. Members of the Audit Committee should educate themselves through bencher orientation and with the assistance of management, auditors and third party sources, concerning the knowledge and skills required to fulfill the committee's mandate.

8) Members of the Audit Committee should not also be members of the Finance Committee.

11. The mandate of the Finance Committee, approved by Convocation in June 2007 is set out below.

FINANCE COMMITTEE MANDATE

The purpose of the Finance Committee is:

a) To review the plans and projections of the annual budget of the Society, including the Compensation Fund and the Paralegal Fund, or any special or extraordinary budget required for the purpose of the Society, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item.

b) To review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.

c) To undertake such other responsibilities of a financial nature assigned to the Finance Committee by Convocation. The Committee will review and make recommendations to Convocation on issues such as:

- policies such as the Law Society's investment policies and policies on bencher remuneration, counsel fees and the allocation of overheads
- J.S. Denison Fund grants and other programs
- banking resolutions and similar agreements
- financial relationships with entities such as the Law Foundation of Ontario, CDLPA, the Federation of Law Societies, Pro Bono Law Ontario, LibraryCo Inc., Lawyers Professional Indemnity Company and the Errors & Omissions Insurance Fund
- commercial projects such as the member directory.

The Chair of the Finance Committee shall perform the duties of the Treasurer if the elected Treasurer is unable to perform the functions of the office.

12. Extracts from current by-laws

Current paragraph 1 of the section 10 of By-law 2 [Corporate Provisions]

Presiding bencher

10. The Treasurer shall preside at each meeting, but if the Treasurer for any reason is unable to preside at a meeting, one of the following benchers shall preside, in the following order of precedence:

1. The chair of the Finance and Audit Committee.

2. The chair of the Professional Development and Competence Committee.

3. A bencher selected from among and by the benchers present at the meeting.

Current Section 49 of By-law 2 [Corporate Provisions]

AUDIT

Accounts to be examined and certified by public accountant

49. (1) The accounts and transactions of the Society shall be examined and certified annually by a public accountant to be appointed by Convocation annually and not later than at its regular meeting in May.

Same

(2) If Convocation fails to appoint a public accountant in any year, the accounts and transactions of the Society shall be examined and certified in that year by the public accountant most recently appointed by Convocation under subsection (1).

Current Section 117 of By-Law 3 [Benchers, Convocation and Committees]

FINANCE AND AUDIT COMMITTEE

Mandate

117. The mandate of the Finance and Audit Committee is,

(e) to receive and review interim and annual financial statements for the Society, the Lawyers' Professional Indemnity Company;

(f) to review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Society;

(g) to recommend the appointment of the public accountant and to review the proposed audit scope, audit fees and the results of the audit;

(d) to review the plans and projections of the annual budget of the Society, including the Compensation Fund, or any special or extraordinary budget required for the purpose of the Society, including the Compensation Fund, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item; and

(e) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.

Administrator of pension plan

118 (1) The Finance and Audit Committee shall be the administrator of and shall administer the registered pension plan for the employees of the Society.

Powers

(2) The performance of any duty, or the exercise of any power, by the Finance and Audit Committee under any Act relevant to its role described in subsection (1) is not subject to the approval of Convocation.

FOR INFORMATION

LICENSEE FEE CATEGORIES FOR PARALEGALS

32. The Finance Committee reviewed draft fee categories for paralegals which are recommended to Convocation by the Paralegal Committee in their Report to Convocation for September 2007. No changes were suggested.

Introduction

33. Part of the mandate of the Finance Committee is to review and make recommendations to Convocation on policies of a financial nature. With the licensing of the first paralegals scheduled for May 2008, paralegal licensees will require a structure for annual fees. The Committee reviewed proposals on the structure of fee categories for paralegals. This has been done in conjunction with the Paralegal Committee. The Paralegal Committee reviewed the draft proposal on fee categories at their meeting on August 23, 2007 and approved the recommended fee categories for paralegals as being consistent with the fee categories for lawyers. The Motion on fee categories for paralegals is contained in the Paralegal Committee's Report to Convocation.

Fee Levels

34. This discussion does not address the financial implications of different options, particularly as the eventual number of paralegals is uncertain. However, in considering the reasons for a particular fee structure, the financial context should also be considered. A large factor in financial considerations is the small number of paralegals at this stage of regulatory developments. It is likely there will be between 700 and 1,000 paralegal members in 2008.

35. As a guide to materiality, if there are 700 full fee paying equivalent paralegals, and they hypothetically pay the 2007 general membership fee for lawyers ($1,102), then total annual fee revenues from paralegals would total $771,400 or 1.3% of the Law Society's operating budget (at this time it is intended that paralegals will have their own operating fund with its own budget).

36. For 2007 the lawyer's annual fee comprises:

General membership fee	$1,102
Compensation Fund	$200
Paralegals will either contribute to a Compensation Fund or obtain insurance coverage for fraud.	
County Law Libraries	$224
Paralegal access to the libraries has not been determined yet.	
Capital Allocation Fund	$75
TOTAL	$1,601

37. The potential makeup of a paralegal annual fee is likely to be very similar to the components of the lawyer's annual fee, but we do not have reliable, quantifiable information yet. An additional factor for paralegals will be the repayment of set-up expenses. The approved paralegal set-up budget deficit of $1.5 million and any deficits carried forward from initial paralegal operating budgets need to be repaid.

Basis

38. Fee categories are an issue because of the need to reconcile the financial needs of the Law Society (fees are the largest revenue source) with the objectives of a fee structure that is not financially onerous, and is equitable for licensees, particularly those with exceptional needs.

39. Fees can be based on three policy options, which are expanded upon later in this memorandum:

- Fees could be based on the use of Law Society programs and services by the licensee.
- Fees could be based upon the financial ability of the licensee to pay. However, this option is not pursued as it requires licensee information which we do not have and do not intend to collect due to confidentiality and other considerations.
- Fees are a concomitant cost of professional status.

Other Factors

40. There are no statutory requirements on how the fee burden is allocated. The Role Statement of the Law Society and budgetary or strategic plans provide little definition to the issue.

41. As the Law Society is a self-funded organization, affected stakeholders are primarily the two types of licensees, with changes in revenue impacting services offered to licensees and the public. There have no been developments in obtaining financing from the province for the initial period of paralegal regulation. There has been no polling of stakeholders on this issue.

42. The core Law Society resources required in the regulation of paralegals are similar to lawyers although there are undecided issues on trust accounts (may reduce paralegal disciplinary issues), paralegal eligibility for a compensation fund (and therefore the requirement for a compensation fund levy) and their access to county law libraries (and therefore their contribution to a county library levy).

Suggested Fee Categories for Paralegals

43. By-Law 4 currently describes the classes of license to practice law (L1 and L2) and the class of licences to provide legal services (P1). For reasons set out in the "Factors in Determining a Fee Structure" and "Comparison of Options" section of this memo we are recommending a fee structure for paralegals similar to that for lawyer licencees detailed in the "Existing Fee Categories" section for comparison. Suggested fee categories for paralegals are set out below.

44. Pay 100% of the P1 annual fee

a) Licensees as practitioners or employees who provide legal services (engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person, further clarified in Section 1(5)(6)(7) of the Law Society Act ("the Act")) shall pay 100% of the P1 annual fee. Therefore this category includes anybody working and providing licensed legal services.

45. Pay 50% of the P1 annual fee

A paralegal licensee who is working but does not provide legal services pays fifty percent of the P1 annual fee. Therefore this category includes anybody working but not providing licensed legal services.

46. Pay 25% of the P1 annual fee
The following licensees shall pay twenty-five percent of the P1 annual fee if they are not providing legal services:

- A licensee who does not engage in any remunerative work.
- A licensee who is in full-time attendance at a university, college or designated educational institution.
- A licensee who is on a maternity, paternity or adoption leave.

47. Possible exemptions for paralegals to pay the P1 annual fee could be age (say over 65 and not providing legal services) or incapacity. There could also be a provision that paralegal licensees may have their licenses placed in abeyance under certain situations such as being a full-time member of the Ontario Municipal Board.

Existing Fee Categories

48. Previous work on fee categories for lawyers has indicated that any amendment to their fee structure would result in a decrease for some and an increase for other lawyers as the total revenue "pie" remains the same but is collected differently. The merits of any contemplated changes have not been sufficient to outweigh this problem. Since the Bicentennial Report on Equity Issues in the Legal Profession in 1997, the issue of fee categories has been discussed at least four times in Committee and Convocation as part of budget deliberations and specific reports. There has been no appetite to implement changes in the fee structure.

49. The existing classes which determine fee levels for lawyers are set out below:

50. Pay 100% of the L1 / L2 annual fee (comprises 80% of fee paying members)

Licensees who practise law, whether they do so in Ontario or in some other part of the world, including law teachers who practise, or federal, provincial and municipal government, corporate lawyers and other licensees who provide legal advice, opinions, or services with respect to the laws of Ontario or Canada.

51. Pay 50% of the L1 / L2 annual fee (comprises 12% of fee paying members)

A licensee who does not practise law, including a licensee employed in education, in government or in a corporation in a position where he or she is not required to practise law, shall pay fifty percent of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee.

52. Pay 25% of the L1 / L2 annual fee (comprises 8% of fee paying members)

The following licensees shall pay twenty-five percent of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee:

- A licensee who does not engage in any remunerative work and does not practise law.
- A licensee who is in full-time attendance at a university, college or designated educational institution within the meaning of the Income Tax Act (Canada) and does not practise law.
- A licensee who is on a maternity, paternity or adoption leave and does not practise law.

53. Exemptions from the annual fee

The exemptions from requirement for lawyers to pay the annual fee are set out below.

Over sixty-five years of age

A licensee who is over sixty-five years of age and practises law only as described in subsection 3 (2) of By-Law 4 [Licensing] may apply for an exemption from payment of an annual fee.

Incapacity

A licensee who is incapacitated within the meaning of the Act may apply to the Society for an exemption from payment of an annual fee.

Practising law for fifty years

A licensee who has practised law in Ontario for a period of fifty years is exempt from payment of the annual fee.

Licensees in Abeyance

Pursuant to the Law Society Act, licensees may have their licenses placed in abeyance under certain situations such as appointments as judges. While their license is in abeyance, they are exempt from the payment of the annual fee and from filing the Annual Report.

Factors in Determining a Fee Structure

54. A list of the licensee orientated factors that should be considered in determining a fee structure is summarized below.

- Whether the licensee is in active practice.
- Whether the licensee is experiencing financial constraints. The financial constraint factor simplifies the inclusion of a number of related factors such as:
  - long or short term disability,
  - insufficient revenues from practice or alternate career,
  - being a new paralegal,
  - looking after dependants,
  - part time practice or employment,
- The probable potential trend of increasing license fees.
- The required financing of the financial deficit incurred in setting up the paralegal regulatory structure.
- Fees as a barrier to individuals applying for a license, or remaining as licensees, particularly from equity seeking groups. The Law Society is committed to the achievement of equity and diversity among licensees.
- Whether the licensee is acting as a paralegal, but not in private practice, such as an educator.
- Whether the licensee has an alternate career, and is not a practicing paralegal.
- Whether the licensee is outside the province
- Whether the licensee is paying registration or license fees elsewhere.

Comparison of Options

55. Fees Based on the Use of Law Society Programs and Services by the Licensee
This option prevailed when Convocation set the current three categories of membership / licenses in 1988. This option follows the philosophy of licensee user payments. Those in private practice are the primary subject of regulatory programs, and are primary users

of competence programs. In 2006, the regulatory and professional development areas comprise 83% of operating expenses. Those licensees practicing law who are partners, associates, employees or sole practitioners in the private practice of law make up three quarters of the total employed licensees so there is some logic to licensees in the private practice category paying for these costs of the Law Society. This percentage is expected to be even higher for paralegals.

At this stage it is difficult to forecast or establish types or sub-groups of paralegal practice which may use more or less of the Law Society's resources.

The use of this option as a basis for a fee category does not account for the problems experienced by low income earners in the practicing category. Licensees may experience low incomes in this category either because of low practice revenues or because of personal circumstances such as family leave. The fee structure should not be a barrier to applying for, or maintaining, a license.

56. Fees Based on a Licensee's Level of Income

As noted this option is not being pursued because we do not have any authority to collect income data. In addition there are such problems as determining measurement criteria, qualifying levels of income, and maintaining the data.

57. Fees based on being a Licensee of the Profession.

This option follows the philosophy that all licensees are responsible to fund the operations of the governing body, and would result in a single fee category. The Law Society's primary mandate is an obligation to the public, and it can be argued that all paralegal licensees should share that obligation equally. Programs funded by license fees maintain the integrity and reputation of the paralegal profession, of which the licensee seeks to be a part. Under this option, licensees have equal rights and therefore should have equal responsibilities in maintaining the profession.

While this option has the benefit of simplification, it ignores the circumstances of individual licensees and also does not account for the unequal use of services by licensees.

<u>Fee Category Alternatives</u>

58. Individual Financial Assistance

If a universal fee structure such as the third option above is used, individual licensee's financial situations could be accommodated on a case-by-case basis. Under exceptional circumstances such as unemployment, education, medical grounds, humanitarian / community / religious service, licensees may experience financial hardship, and submit a request for fee relief. This would require an administrative and approval infrastructure which is not currently in place.

59. Associate License

In theory, licensees who meet certain geographic or career or income criteria, could be given the option of applying for an associate license, which would provide lower services and responsibilities and therefore lower licence fees.

However, there would be significant practical problems in differentiating licensees and services, and this results in a disenfranchised licensee category.
Initial numbers of paralegal licensees are expected to be small, and breaking this small base into sub-groups does not appear to be optimal

60. Voluntary License
Some regulatory organizations permit voluntary licensees with the difference being that non-licensees pay full commercial rates when using Law Society services. This will be difficult to cost and implement for paralegals and is more appropriately used by organizations who have a dual role (unlike the Law Society) of protecting the public (like the Law Society) and servicing licensees (like the OBA) and therefore have an expanded revenue base. The collection of fees for services such as a regulatory hearing will not be practical.

61. User Fees
The Law Society governs in the public interest, which suggests the public might pay directly for the services of the Law Society through user fees. This change in revenue source represents such a radical departure from the current revenue structure that it would require a significant policy shift in all areas.

CONCLUSION

62. A fee structure for paralegals similar to the existing structure for lawyers appears appropriate. This provides licensees with a fee structure generally appropriate to their individual circumstances. It will also be consistent from a policy and administration viewpoint allowing the servicing of licensees to be both more efficient and less subject to error from the use of multiple categories.

FOR INFORMATION

2008 BUDGET OVERVIEW AND OPERATIONAL REVIEWS

63. The mandate of the Finance Committee was approved by Convocation in June 2007 and one of the purposes of the Finance Committee is:

> "To review the plans and projections of the annual budget of the Society, including the Compensation Fund and the Paralegal Fund, or any special or extraordinary budget required for the purpose of the Society, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item."

64. According to Section 50 of By-Law 2 "The annual budget shall be presented to Convocation for final approval not later than November 30 each year." The 2008 draft budget will be presented to all benchers for preliminary discussion in a Committee of the Whole on September 20, 2007 and the Finance Committee and Convocation for approval at the regularly scheduled meetings in October.

Budget Overview

65. Throughout the summer months the Senior Management Team has been developing a budget that is intended to address the priorities of Convocation, as they currently exist. This process began with a planning session in early July that identified, at a high level, the issues and challenges facing the Law Society for 2008.

66. A draft budget has been prepared and reviewed by the CEO with the Treasurer and the Chair of Finance. This draft budget will be the focus of a Committee of the Whole meeting on the afternoon of September 20, 2007 when all benchers will be invited to provide input to the budget. Consistent with the budget process approved by Convocation, the feedback from this Committee of the Whole will be considered in the draft budget presented to the Finance Committee in October when the Committee will be asked to recommend the draft budget to Convocation for approval.

Budget Process

67. This section sets out the structure and timetable for the 2008 budget process approved by Convocation in May 2007 to assist Committee members in understanding the process. The underlying philosophy of the budget process is to ensure that stakeholders have an opportunity to provide full and adequate input.

68. A comprehensive system of program reviews linked to the budget has been in place since 2002 and the 2007 program reviews for the 2008 budget are part of this agenda

69. The rotational review of activities has the benefits of:

- Allowing a more meaningful and focused analysis of revenues and expenditures relating to program activities under review
- Increasing discipline in budget development
- Limiting resistance as the onerous and exhaustive examination of costs is not imposed every year in the absence of changing circumstances
- Reducing the length of the budget process
- Increasing bencher understanding of a number of specific activities each year.
- Increasing the accountability of management for the programs underlying the financial information contained in the annual budget.

70. A history of operational reviews since Convocation approved the process in 2002 is set out below.

2002 Client Service Centre, Lawyers Fund for Client Compensation and Great Library
2003 Professional Development & Competence and Communications
2004 Professional Regulation and Policy & Legal Affairs
2005 Compensation Fund and the Customer Service Centre
2006 Professional Development & Competence and Information Systems
2007 Professional Regulation and Communications

71. The operational reviews for Professional Regulation and Communications were presented to the Committee by Ms Zeynep Onen and Mr. Roy Thomas, directors of the respective departments.

Budget Process Changes for 2008

72. Circumstances have arisen which differentiate the 2008 budget process from recent years. These include the Bencher election, the adoption of recommendations contained in the Governance Task Force report establishing a Priority Planning Committee and the regulation of paralegals.

73. As part of the recommendations approved by Convocation in March 2007 with respect to planning and prioritizing matters for Convocation's policy agenda, Convocation approved "a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term." This is scheduled for September 24 and 25, 2007 and, as this is very close to the final budget deliberations in October, the retreat may have a limited impact on the 2008 budget. Changes in priorities and policy direction developed at this bencher retreat will have to wait until the 2009 budget or be implemented in 2008 with supplementary budget adjustments approved by Convocation in 2008.

74. The formation of a Priority Planning Committee was approved by Convocation in March 2007. The mandate of the Priority Planning Committee is to:

a) recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation,
b) periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future, and
c) report annually to Convocation on the status of Convocation's priorities.

75. On a practical level, the mandate is aimed at Convocation getting ahead of budget planning and determining priorities in advance of the budget. Once this happens, any new initiatives that arise can be assessed against the priorities. The result of the Priority Planning Committee's work, would be reported to Convocation for approval.

76. The timing of the bencher retreat in the fall and the Priority Planning Committee process means the 2008 budget must be prepared in advance of these deliberations which are therefore directed at the balance of the bencher term. Typically, Convocation adopts the annual budget at its October meeting (under the By-Laws the budget must be approved by Convocation prior to the end of November).

Paralegal Budget

77. A start up budget for paralegals was approved by Convocation. A very preliminary draft of the 2008 paralegal operating budget has previously been reviewed by the Paralegal Standing Committee and the Finance and Audit Committee.

78. The number of paralegal licensees is one of the key factors in the budget and at this stage it is difficult to accurately predict the eventual number of licensed paralegals. Licensing will commence in 2008. Approximately 1,200 people have downloaded the application material to date. It is planned, that a paralegal operating budget be submitted to the Finance Committee and Convocation for approval in January 2008.

2008 Budget Timetable

DATE (2007)	PROCESS
May	The Senior Management Team (SMT) commenced the budget process by considering individual and collective budget assumptions, variables and objectives. This review also included how the proposed 2008 budget fits into longer-term plans for the organization and departments. The Finance and Audit Committee and Convocation approved a process for preparing the 2008 budget that included Standing Committee endorsement of operational reviews. Bencher's comments on the program reviews and budget process were invited and did not prompt any significant changes.
July August	The components reviewed and approved above were compiled into an operating budget for the Law Society. Facilities and Information Systems compiled a capital budget with the assistance of user departments. Further assessments of LibraryCo operations.
September	Operational reviews for selected departments are presented to the Finance Committee and any other benchers who wish to attend. The Finance Committee reports results of the program reviews to Convocation and program review material is available to all benchers. Bencher's comments on the program reviews and budget process are invited. Opportunity for Convocation to convey policy objectives and budget priorities to the Finance Committee. LibraryCo submits preliminary submissions on 2007 activities and 2008 projections to the Finance Committee at this time. 2008 budget requests from external organizations such as CDLPA received by this time. Benchers meet as a Committee of the Whole on September 20 to discuss budget assumptions and directions prior to final drafting.
October	A draft organizational operating and capital budget for 2008 is presented to the Finance Committee and Convocation for approval.

Re: Amendments to By-Laws 2 and 3

It was moved by Mr. Millar, seconded by Ms. Symes, that the By-Laws made by Convocation on May 1, 2007, be amended as follows:

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 2
[CORPORATE PROVISIONS]

1. Paragraph 1 of the section 10 of By-law 2 [Corporate Provisions] is deleted and the following substituted:

1. The chair of the Finance Committee.

1. La personne assurant la présidence du Comité des finances.

2. Section 49 of the By-Law is deleted and the following substituted:

Appointment of public accountant

49. (1) Convocation shall appoint a public accountant annually and not later than at its regular meeting in May.

Same

(2) If Convocation fails to appoint a public accountant in any year, the public accountant most recently appointed by Convocation shall be deemed to be appointed by Convocation for the year.

Assurance engagement by public accountant

(3) The public accountant shall perform an assurance engagement and provide an opinion on the annual financial statements of the Society's general fund, Compensation Fund and Errors and Omissions Insurance Fund.

Nomination d'un expert-comptable

49. (1) Chaque année, le Conseil nomme un expert-comptable au plus tard lors de sa réunion ordinaire du moi de mai.

Idem

(2) Si le Conseil ne nomme personne lors d'une année donnée, l'expert-comptable nommé en dernier par le Conseil est réputé nommé par le Conseil pour l'année.

Mission de certification par l'expert-comptable

(3) L'expert-comptable fournit une mission de certification et un avis sur les états financiers annuels du Fonds d'administration générale du Barreau, du Fonds d'indemnisation et du Fonds d'assurance responsabilité civile professionnelle.

BY-LAW 3
[BENCHERS, CONVOCATION AND COMMITTEES]

3. Section 73 of By-Law 3 [Benchers, Convocation and Committees] is amended by deleting “Finance and Audit Committee” / “Comité des finances et de la vérification” and substituting “Finance Committee” / “Comité des finances”.

4. Section 108 of the By-Law is deleted and the following substituted:

108. The following standing committees are hereby established:

1. Finance Committee.

2. Audit Committee.

3. Government and Public Affairs Committee.

4. Access to Justice Committee.

5. Litigation Committee.

6. Professional Development and Competence Committee.

7. Professional Regulation Committee.

8. Equity and Aboriginal Issues Committee.

9. Emerging Issues Committee.

10. Inter-Jurisdictional Mobility Committee.

11. Tribunals Committee.

108. Sont constitués les comités permanents suivants :

1. Le Comité des finances.

2. Le Comité de la vérification.

3. Le Comité chargé des relations avec le gouvernement et des affaires publiques.

4. Le Comité sur l'accès à la justice.

5. Le Comité du contentieux.

6. Le Comité du perfectionnement professionnel.

7. Le Comité de réglementation de la profession.

8. Le Comité sur l'équité et les affaires autochtones.

9. Le Comité sur les nouveaux enjeux.

10. Le Comité sur la mobilité interjuridictionnelle.

11. Le Comité des tribunaux.

5. The heading immediately preceding section 117 and sections 117 and 118 of the By-Law are deleted and the following substituted:

FINANCE COMMITTEE

Mandate

117. The mandate of the Finance Committee is,

(a) to review the plans and projections of all the annual budgets of the Society, including the Compensation Fund, or any special or extraordinary budgets required for the purpose of the Society, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item;

(b) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation;

(c) to develop for Convocation's approval policy options on financial matters; and

(d) to make recommendations to Convocation on financial relationships between the Society and other entities.

COMITÉ DES FINANCES

Mandat

117. Le Comité des finances a le mandat suivant :

a) examiner les plans et projections budgétaires annuels du Barreau, ainsi que les budgets de dépenses spéciales ou extraordinaires requis pour les besoins du Barreau, en particulier ce qui concerne le Fonds d'indemnisation, conseiller le Conseil en la matière et recommander l'approbation du budget annuel ou de tout poste budgétaire spécial ou extraordinaire;

b) examiner les plans proposés pour les dépenses survenant au cours de l'exercice qui ne figurent pas dans le budget annuel ou tout autre budget approuvé par le Conseil pour l'exercice, conseiller le Conseil en la matière et recommander l'approbation de telles dépenses par le Conseil;

c) élaborer des options stratégiques sur les questions financières pour l'approbation du Conseil;

d) faire des recommandations au Conseil sur la relation financière entre le Barreau et les autres entités.

AUDIT COMMITTEE

Mandate

118. The mandate of the Audit Committee is,

(a) to receive and review interim and annual financial statements for the Society, the Compensation Fund, the Lawyers' Professional Indemnity Company, the Errors and Omissions Insurance Fund and LibraryCo Inc.;

(b) to review the integrity and effectiveness of the financial operations, systems of internal control and reporting mechanisms of the Society;

(c) to recommend a public accountant for appointment by Convocation as required under section 49 of By-Law 2 [Corporate Provisions] and to deal with any matters ancillary to the appointment of the public accountant; and

(d) to recommend approval to Convocation of the annual financial statements of the Society's general fund, Compensation Fund and Errors and Omissions Insurance Fund.

Administrator of pension plan

118.1. (1) The Audit Committee shall be the administrator of and shall administer the registered pension plan for the employees of the Society.

Powers

(2) The performance of any duty, or the exercise of any power, by the Audit Committee under any Act relevant to its role described in subsection (1) is not subject to the approval of Convocation.

COMITÉ DE LA VÉRIFICATION

Mandat

118. Le Comité de la vérification a le mandat suivant :

a) recevoir et examiner les états financiers provisoires et annuels du Barreau, du Fonds d'indemnisation, de la Lawyers' Professional Indemnity Company, du Fonds d'assurance responsabilité civile professionnelle et de LibraryCo Inc.;

b) examiner l'intégrité et l'efficacité des opérations financières, des mécanismes de contrôle interne et de la présentation de l'information financière du Barreau;

c) recommander au Conseil la nomination d'un expert-comptable tel que requis par l'article 49 du règlement administratif no 2 [Dispositions générales] et traiter toute question associée à la nomination d'un expert-comptable;

d) recommander au Conseil l'approbation des états financiers annuels du Fonds d'administration générale du Barreau, du Fonds d'indemnisation et du Fonds d'assurance responsabilité civile professionnelle.

Administrateur de régime de pension

118.1. (1) Le Comité de la vérification administre le régime de pension des employés du Barreau.

Pouvoirs

(2) L'exercice de toute tâche ou tout pouvoir par le Comité de la vérification aux termes d'une loi applicable à son rôle décrit au paragraphe (1) n'est pas soumis à l'approbation du Conseil.

Carried

Re: J. S. Denison Fund Grant Applications (in camera)

It was moved by Mr. Millar, seconded by Mr. Wright, that the grant applications set out in the Finance Committee Report in camera be approved.

Carried

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Items for Information

- Licensee Fee Categories for Paralegals
- 2008 Budget and Operational Reviews
- 2008 Budget Overview and Timetable

LAWPRO REPORT

Ms. Carpenter-Gunn presented the Report.

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SECTION PAGE

LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")
REPORT TO CONVOCATION – SEPTEMBER, 2007

BACKGROUND

1. The Law Society governs the legal profession in the public interest. One of the ways it discharges its responsibilities is through the mandatory requirement it places on practising lawyers to obtain professional liability insurance coverage. This coverage is provided by LAWPRO, a provincially licensed insurer that is owned by the Law Society.

2. The coverage that the mandatory LAWPRO program provides is considered to be both in the best interests of the public and in the best interests of Ontario lawyers – in that the public has reasonable assurance that an insurance policy backstops errors committed by lawyers in practice, and lawyers have assurance that they have financial protection that is customized to their practice needs.

3. In recent years, about 2,800 insurance claims are open at any one time. The gross value of these open claims was estimated at $332 million as at December 31, 2006. Overall, the insurance program manages about 85% of the assets of the Law Society.

4. Each September since 1995, LAWPRO's Board of Directors has reported changes to the Law Society's professional liability insurance program to Convocation for the following calendar year. The timing of this report is necessitated by the logistics of renewing in excess of 21,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.

5. This report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy direction where necessary. Financial information on LAWPRO and the program is provided to Convocation throughout the year.

6. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report (Task Force Report). The mandate and principles of operation were to be as follows:

- that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;

- that LAWPRO be operated in a commercially reasonable manner;
- that LAWPRO move to a system where the cost of insurance reflects the risk of claims; and
- that claims be resolved fairly and expeditiously; however, this was not to be a system of "no-fault" compensation and there would be certain circumstances where coverage was denied.

For 2008, we have conducted our annual review of the program to re-validate the approach and rating structure in relation to these Task Force recommendations.

7. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed program for 2008 continues to operate on these principles. This report deals solely with the mandatory professional liability program. Optional programs such as TitlePLUS®, and the Excess professional liability insurance program are operated on an expected break-even or better basis.

2008 PROGRAM SUMMARY

8. The following summarizes the 2008 professional liability insurance program, as provided for in this report.

Premium pricing for 2008

(i) The base premium is decreased by $300 to $2,300 per lawyer for 2008, from the $2,600 per lawyer charged in 2007 (paragraph 69(a)).

(ii) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at $22.5 million for the purposes of establishing the base premium for 2008 and other budgetary purposes (paragraph 69(b)).

(iii) $8.3 million (approximately $400 per insured lawyer) is expected to be drawn from the Premium Stabilization Fund built up in previous years (a $26.5 million balance is forecast as at December 31, 2007) and applied to the 2008 insurance premium (paragraph 69(c)).

(iv) To the extent that levies [noted in (ii) above] collected in 2008 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the Premium Stabilization Fund (paragraph 69(d)).

(v) 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2008, subject to reinsurance protecting the program from aggregated losses (paragraph 73).

CHANGES TO THE INSURANCE PROGRAM FOR 2008

Real estate coverage:

(vi) The Ontario government is in the process of implementing significant changes to real estate practice arising from the passage of Bill 152. One of the initiatives to improve the

integrity of the system will involve tightening the rules governing registration of documents in the Land Titles system. The most significant changes involve the registration of transfers. Only lawyers will be able to register transfers and, with very few exceptions, registration of a transfer will involve two lawyers -- one for the transferor and one for the transferee.

(vii) Any lawyer intending to practise real estate law in Ontario will be required to purchase coverage that would provide specific protection for the registration of fraudulent instruments under the *Land Titles Act.*

(viii) The Law Society would restrict the eligibility to apply for and purchase this coverage, to limit the cost of providing this coverage. The following categories will be excluded:

- Persons who are in bankruptcy;
- Persons who have been convicted or disciplined in connection with real estate fraud; and
- Those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practising real estate, or an undertaking not to practise real estate.

Any lawyer intending to practise real estate will be required to purchase this coverage.

(ix) LAWPRO will provide this new real estate practice coverage at a cost of $500 per real estate lawyer for the year. Lawyers who cease or commence practising real estate law part way through the year will be eligible for a *pro rata* premium adjustment, subject to a 60-day minimum premium and only one such premium adjustment for the year (paragraph 29).

Protection Against Misappropriations During Mobility:
(x) LAWPRO will continue to work with the Law Society to identify and provide the appropriate level of mobile uniform protection contemplated by the Federation of Law Societies for Ontario lawyers exercising their mobility rights within Canada (paragraph 41).

CLE Premium Credit:
(xi) The Continuing Legal Education Premium Credit will be continued for the 2009 program, with a $50 premium credit per program, subject to a $100 per lawyer maximum amount, to be applied for pre-approved legal and other educational courses taken and successfully completed by lawyers between September 16, 2007, and September 15, 2008, for which the lawyer has successfully completed the online CLE Declaration Form (paragraph 95).

(xii) Subject to the changes identified earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2007 will remain unchanged for the 2008 insurance program (paragraph 81).

Errors & Omissions Insurance Fund
(xiii) The investment income of the Errors & Omissions Insurance Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2008 (paragraph 11).

Conclusion

(xiv) The LAWPRO Board considers the proposed program changes to be appropriate and consistent with its mandate. The LAWPRO Board offers this program of insurance for 2008 and asks for Convocation's acceptance of this Report at the September Convocation so that the 2008 insurance program can be implemented by January 1, 2008.

PART 1 – THE ERRORS & OMISSIONS INSURANCE FUND

9. LAWPRO manages the Errors & Omissions Insurance Fund ("Fund") of the Law Society of Upper Canada ("Law Society"), which is currently in run-off mode. (The Fund was responsible for the insurance program prior to 1990, and for a group deductible of up to $250,000 per claim prior to 1995).

10. As of June 30, 2007, the Fund had outstanding claims liabilities of $3.0 million. The number of open files for 1994 and prior years stood at 24. Since there are sufficient assets in the Fund to fully meet the outstanding liabilities, the LAWPRO Board is again satisfied that the investment income generated by the Fund is surplus to the needs of the Fund and can be used by the Law Society for its general purposes. It is expected that $3.5 million of investment income would be transferred during the 2008 year.

11. Accordingly, investment income of the Errors & Omissions Insurance Fund which is surplus to the obligations of the Fund will be made available to the Law Society during 2008.

PART 2 – CHANGES TO THE INSURANCE PROGRAM FOR 2008

12. The current program structure, as well as policy limits, coverage and available options, appear to generally meet the needs and practice realities of the profession for 2008. In developing the 2008 program, LAWPRO has considered the changing environment in which lawyers practise and comments received from the profession during the previous year.

13. Accordingly, with the exception of changes affecting the real estate bar, relatively few modifications in the structure of the program, and in the form and substance of the policy, are contemplated for 2008. Some minor refinements in policy wording may be made to clarify or better ensure underwriting intention.

Changes Affecting Real Estate Practitioners

14. In October 2006, the Ontario government announced a two-phase program of reform that will reshape residential real estate practice. The first phase was reflected in the government's *Consumer Protection and Service Modernization Act* ("Bill 152") which among other things:

- Increased the ability of the Ministry of Government Services (Ministry) to suspend and/or revoke electronic registration credentials;
- Clarified the effect of registration of fraudulent instruments;
- Made the Land Transfer Assurance Fund ("LTAF") a fund of first resort for compensation in the event of a fraudulent instrument; and
- Clarified that title insurers cannot seek reimbursement from the LTAF.

15. The second phase includes further revisions to the electronic registration account eligibility and processes, and other initiatives to protect the public. The Law Society has been in active discussions with the Ministry concerning this phase.

16. In this regard, the government is proposing a range of fraud-prevention and consumer protection measures, including:

- Restricting access to the Land Titles system, such that only lawyers can register transfers;
- Requiring that the registration of a transfer involve two lawyers—a lawyer for the transferor and a lawyer for the transferee, with very few exceptions;
- Ensuring faster payments to innocent homeowners and purchasers from the LTAF; and
- Establishing standards of due diligence for lenders and others applying the LTAF.

17. The Ministry has developed a new set of criteria for those who wish to register documents through the electronic land registry system. The criteria are based on three standards that are important in developing an effective strategy against fraud: Identity, financial solvency and appropriate qualifications. In applying these criteria, the Ministry has determined that the registration of transfers of titles will be restricted to lawyers. By restricting the ability to register transfers to lawyers, who are part of a self-governing body with a legislative framework that deals with integrity and practice standards for its members, the Ministry can further secure the electronic land registry system and isolate one of the main types of documents involved in title fraud, thereby providing consumers with additional protection.

18. The financial solvency criteria would be satisfied, for lawyers, by the existence of a new insurance coverage for fraud in the LAWPRO policy in the event that a lawyer acts fraudulently in completing a registration.

(a) Insurance coverage details

19. The new coverage would provide specific protection for the registration of fraudulent instruments under the *Land Titles Act*. This particular coverage would:

- Only apply to the registration of fraudulent instruments under the Land Titles Act, and not to other circumstances involving fraud;
- Apply regardless of whether there was a retainer between the wronged party and the fraudulent lawyer;
- Not apply to claims for which title insurance would apply; and
- Be subject to a sub-limit of $250,000 per claim and $1 million in aggregate.

20. The Law Society would restrict the eligibility to apply for and purchase this coverage, to limit the cost of providing this coverage. The following categories will be excluded:

- Persons who are in bankruptcy;
- Persons who have been convicted or disciplined in connection with real estate fraud; and
- Those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practising real estate, or an undertaking not to practise real estate.

Any lawyer intending to practise real estate will be required to purchase this coverage.

21. "Real estate law" would be a broadly defined term that is not limited to specific types of transactions, such as transfers or charges. Rather, the term would be defined as follows:

> "REAL ESTATE LAW means the practice of the law of Canada, its provinces and territories, that concerns:
>
> (i) the registration of any instrument under the *LAND TITLES ACT;* and/or
>
> (ii) the actual or contemplated transfer, charging, insuring, or otherwise affecting, an estate, right or interest in land;

and may include, without limitation, any one or more of the following services by a solicitor: the receipt of instructions, preparation of documents, searches and/or the providing of one or more opinions or certificates with respect to the title, transfer or charge, and/or with respect to the issuance of any title insurance policy."

22. For all practising real estate lawyers, the government will require confirmation of the existence of this additional real estate insurance coverage on an automated basis as transfers are processed through the land registry system. Lawyers who wish to be exempt from the requirement to pay insurance because they have a single employer and only engage in the practice of law for and on behalf of the employer (that is, no services are rendered to third parties), will need to make separate arrangements with the government to satisfy their insurance requirements before electronic registry system access will be enabled for transfers.

(b) Pricing of this additional coverage

23. Fraud exposures have historically been excluded from coverage under the program, and then separately underwritten and paid for. The added exposure for this expanded coverage is such that an additional premium would need to be charged[1] . This exposure relates exclusively to the real estate bar. So, consistent with the principles of risk-rating, the cost of this added exposure should be carried by the real estate bar.

24. It is anticipated that about 6,000 of the approximately 21,000 lawyers in practice will require this coverage.

25. As this is a new coverage, there is limited historical insurance data to rely on in developing the pricing. Many, if not most of the claims that would be compensated under this coverage, would not have been otherwise paid by the insurance program or Lawyers Fund for Client Compensation. The LTAF has traditionally had 10 fraud claims per year, but only ever acted as a fund of last resort, significantly limiting the exposure of the Fund to claims. Responding to the new role of the LTAF as a fund of first resort, the LAWPRO insurance coverage does not require that other avenues of claims recovery first be exhausted.

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[1] The new coverage goes beyond the required Innocent Party protection carried by lawyers in partnership or association, as well as the optional Innocent Party protection available to these and other lawyers under the program.

LAWPRO's best estimate of the cost to provide this new coverage is $3 million per annum - $500 on a per lawyer basis. To the extent that claims experience proves to be different than expected, premiums for future years will be adjusted.

26. Consideration was given to whether a real estate transaction levy mechanism should fund the costs associated with this enhanced coverage, but was rejected in that the risk of fraud is not proportional to the size of a lawyer's practice, but rather to the absence of controls in that practice.

27. LAWPRO expects to implement this change effective January 1, 2008, in order to satisfy government requirements. It is possible, however, that the government will instead require implementation late in 2007. Should this occur, no additional premium would be charged for the stub period.

28. Lawyers will be advised during the insurance application process that, if they intend to practise real estate law in Ontario in 2008 they must first be eligible, apply for, and be granted this coverage before being able to practise real estate law.

29. LAWPRO will provide this new real estate practice coverage at a cost of $500 per real estate lawyer for the year. Lawyers who cease or commence practicing real estate law part way through the year will be eligible for a *pro rata* premium adjustment, subject to a 60-day minimum premium and only one such premium adjustment for the year.

Protection Against Misappropriations During Mobility

30. The Federation of Law Societies has been concerned about the need to ensure the public is provided with uniform protection against misappropriations by lawyers exercising their mobility rights since the resolution adopting the National Mobility Agreement ("NMA") was first passed. In early 2004, the Federation appointed a task force to review the coverage in place for lawyer misappropriation across Canada, and to recommend how to achieve better uniformity of coverage for clients suffering damages in the event of misappropriation.

31. The Task Force on Compensation Funds ("Task Force") has considered various approaches to ensure general uniformity in protection, including:

- uniform protection for all Canadian lawyers,
- uniform protection for mobile lawyers only, or
- a "matching coverage" approach, whereby the home jurisdiction of the acting lawyer provides protection at least equal to that provided by the host jurisdiction, for defalcations associated with the host jurisdiction.

32. The Task Force opted to focus on developing uniform protection for mobile lawyers only. This approach addresses the immediate concern of lawyer mobility, and leaves it open in future to address the challenges associated with reconciling all compensation fund programs across the country or developing a single national compensation fund program. This approach would apply to lawyers governed by the NMA, as well as the Inter-Jurisdictional Practice Protocol or a restricted appearance certificate issued by a law society.

33. The Task Force is now focused on developing this mobile uniform protection, which involves:

- establishing a limit of liability that would cover the vast majority of claims based on historical information available;
- providing protection to all types of clients, including claims by banks and corporations (who generally are not protected under the present Compensation Fund Guidelines in Ontario); and
- identifying a consistent approach to claims handling and an expeditious approach to claims handling.

34. To help establish an appropriate limit of liability, the various jurisdictions have now obtained actuarial assessments of their respective compensation fund loss experience.

35. Following the establishment of an agreed limit, law societies in each jurisdiction will determine how best to provide the agreed-on mobile uniform protection. For Ontario lawyers, LAWPRO and the Law Society of Upper Canada propose that a restricted form of innocent party coverage be provided under the insurance program, to the extent that lawyers exercise their mobility rights in other Canadian jurisdictions.

36. This protection would form part of the base insurance program and would be funded through the base-rated premiums. The cost of this added exposure to the program is not expected to be significant, not only because of the relatively early stage of mobility within Canada, but also because of the areas of practice that most lend themselves to mobility, and the precautions in place under the mobility initiative in respect of trust accounts.

37. For example, the most prevalent areas of practice in Ontario involving lawyer misappropriations are real estate practices and wills and estates practices, which together account for 68 per cent of claim costs under the Lawyers' Fund for Client Compensation.

Proportion of Lawyer Misappropriation Claim Costs, 2003-2007
Source: Lawyers' Fund for Client Compensation

(see chart in Convocation Report)

38. These areas of practice do not seem to lend themselves to significant mobility practices. Under the NMA, a visiting lawyer may not open a trust account in the host jurisdiction; instead the lawyer must promptly remit trust funds received to the lawyer's home trust account, or deposit the funds into the trust account of a member/licensed lawyer in the host jurisdiction.

39. To better assess and monitor the exposure associated with any proposed mobile uniform protection, it is important to understand the degree to which Ontario lawyers are exercising their mobility rights and in respect of what areas of practice. This information was first gathered through amendment to the Member's Annual Report form in relation to 2005, which lawyers filed in the first quarter of 2006. According to this filing, 11.6% of Ontario lawyers engaged in some form of practice outside Ontario. It is noteworthy that more than 98.8% of claims from the 2000-2006 period arise from lawyers in firms of five or fewer lawyers, while only 7% of lawyers in such firms engaged in extra-provincial practice.

40. Further limitation of the exposure arises from the mobility restrictions, which limit the amount of time practising in another jurisdiction to a maximum of 100 days per year.

41. Accordingly, LAWPRO should continue to work with the Law Society to identify and provide the appropriate level of mobile uniform protection contemplated by the Federation of Law Societies for Ontario lawyers exercising their mobility rights within Canada.

PART 3 — THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

42. The program appears to be on track for 2007, with LAWPRO currently performing at or better than budget. An important reflection of the current program's success is the consistent "A" (Excellent) rating that LAWPRO has received from A.M. Best Co. for each of the last seven years.

43. To date, investment returns and revenue from transaction levies are better than projected, driven largely by a robust economic climate and continued strong real estate market.

44. However, the stable loss experience of the last few years has trended up. Recent statistics indicate an increase in the number of claims involving $100,000 or more (as seen below) and a resulting overall increase in claims severity (cost per claim). As well, the number of real estate claims reported, and costs attributed to these claims, has increased noticeably.

Dollar Value of Claims Valued at Greater than $100,000
By Age and Fund Year

(see chart in Convocation Report)

Count of Claims Valued at Greater than $100,000
By Age and Fund Year

(see chart in Convocation Report)

45. To establish the recommended base levy for 2008, the LAWPRO Board considered several factors:

- the cumulative effect of the recent investment results and economic environment on the program;
- the uncertainties associated in predicting the results of the program each year; and
- the expected revenues which supplement the base levies.

46. To ensure the program's long-term viability, LAWPRO and the Board take a conservative approach to projections of revenue, as well as claims frequency and severity, taking into account factors such as related economic trends, emerging claims trends, general economic conditions and inflationary pressures on the claims portfolio.

47. Proposed changes for the 2008 program, as they relate to protection against lawyer misappropriation under the new Real Estate Coverage, are priced separately. Other changes should have a relatively minor impact in setting the base rate.

48. The LAWPRO Board therefore advises that the base insurance premium for the program for 2008 should be reduced by $300 to $2,300 per lawyer, to give credit for the superior

investment income and positive claim reserve development on older fund years. However, the higher claims costs noted earlier may require an increase in the base rate in future years. As is illustrated in the graph following paragraph 51, LAWPRO forecasts on a three-year time horizon. This forecast is reviewed and revised annually based on new information as it emerges.

49. The Board is satisfied that this adjustment in base rate appropriately recognizes recent favourable results, while ensuring that the program continues to operate on a self-sustaining basis, and protecting the company's sound financial position on the whole.

Premiums – Costs, revenues and pricing

50. LAWPRO's revenue requirements for the 2008 insurance program are based on the anticipated cost of claims for the year, and the cost of applicable taxes and program administration. LAWPRO estimates total program funds required for 2008 to be $80.4 million. This is in-line with the current forecast for the 2007 program, which is approximately $81 million. For 2008, LAWPRO expects claims costs (excluding the new real estate coverage) to be $71 million [see chart below].

Claims Cost of Ontario Program—Calendar & Fund Year ($000's)

(see chart in Convocation Report)

51. As in past years, premium revenues to meet fiscal requirements for 2008 will come from three principal sources: The base premiums, levy surcharges, and the Premium Stabilization Fund. The projected insurance revenues from these three sources are as follows.

Premium Revenues, by Source ($000s)

(see chart in Convocation Report)

52. In 2008, the new real estate practice coverage is expected to generate $3 million in premiums in excess of the amounts shown above. This will cover the expected $3 million in additional claims arising from this coverage.

a) Levy surcharges:

53. Based on recent forecasts published by Canada Mortgage and Housing Corporation (CMHC), residential sales are expected to decline by approximately 5 per cent in 2008. Ontario housing starts are expected to moderate but remain at historical averages.

54. The levy surcharges include a $50 transaction levy paid by lawyers for each prescribed real estate and civil litigation transaction in which they are involved, as well as a claims history levy surcharge ("CHS")[2] . Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

[2] The claims history levy surcharge ranges from $2,500 for a lawyer with one claim paid in the last five years in practice, to $25,000 for a lawyer with five claims paid in the last five years in practice (an additional $10,000 is levied for each additional claim paid in excess of five).

55. For 2008, LAWPRO estimates transaction and claims history levy surcharge revenues at $22.5 million. This is down from $22.8 million now forecast for 2007, although equal to the $22.5 million original budgeted for that year. Civil litigation and claims history levy surcharge revenues have been quite stable over time, while real estate transaction levies have declined 27 per cent since 1999, despite an increase in residential real estate activity of 23 per cent during the same period.

Number of Levies v. Real Estate Transactions
Annual rolling aggregate units

(see chart in Convocation Report)

56. The increased use of title insurance is considered to be largely responsible for the reduction in real estate transaction levies since 1999. Lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer.

57. It is estimated that well over 90 per cent of residential real estate transactions now handled in Ontario are title-insured.[3] Since early 2005, real estate transaction levies collected have moved in tandem with residential real estate sales. This indicates a maturity or saturation of this market for title insurance.

58. To account for ongoing uncertainties in the real estate market and the prospect of a shortfall, a conservative approach has been taken in estimating revenues from levy surcharges.

59. The use of transaction levies ensures an element of risk rating in the insurance program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. The use of levies also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995. (Risk rating is discussed in more detail in paragraphs 82 to 88 of this report).

b) Premium Stabilization Fund:

60. Since the introduction of the 1999 program, any excess receipts from the transaction levies and claims history surcharges collected in the year have been held and managed on a revolving account basis and applied to the insurance program. These funds are used to guard against any future shortfall in levy receipts in a given year, appreciating the difficulties in forecasting transaction levy revenues in a changing economic climate, and to act as a buffer against the need for sudden increases in base premium revenues.

[3] LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy filings.

61. As well, through the use of a refund of premium provision in the policy, any surplus in funds resulting from claims costs being lower than budgeted are similarly transferred to the Premium Stabilization Fund (the Fund) for future insurance purposes. This refund of premium provision, which has been in place since the 2000 policy period and considers premiums and claims costs under the program since the 1995 policy year, has generated a total of $34.7 million in refund premiums.

62. At June 30, 2007, the Premium Stabilization Fund balance was $32.7 million. The current forecast would see $26.5 million in the Fund as at December 31, 2007. LAWPRO advises that $8.3 million (about $400 per insured lawyer) would be drawn from that surplus and applied towards the 2008 program.

63. This represents approximately one-third of the anticipated balance of the Fund as at December 31, 2007. Similar draws are forecast for the 2009 and 2010 budget years. Although the balance in the fund is expected to continue to decline over time, as draws exceed declining contributions in the form of surplus transaction levies and refund of premiums in profitable years, the Fund is expected to continue to offer a significant source of stability and revenue in determining the base rate in the short term.

c) *Base premiums*

Base Premium, by Fund Year

(see chart in Convocation Report)

64. For 2008, the LAWPRO Board advises that the base premium is to be decreased by $300, or about 11.5 per cent to $2,300 per member. As illustrated in the graph on the previous page, this is the lowest level since before 1995. The proposed base premium is based on the following assumptions:

- 21,600 practising insured lawyers (full-time equivalents);
- $74 million in anticipated total claims costs ($71 million plus $3 million for real estate practice coverage);
- $22.5 million in budgeted transaction and claims history levy revenues;
- $8.3 million drawn from the Premium Stabilization Fund; and
- 5 per cent return on investment.

65. Although the number of lawyers in practice year over year has grown steadily by one to two per cent, there has not been a corresponding increase in the number of claims. Between 1995 and 2006, an additional 3,900 lawyers came into practice over this time, while the number of claims per thousand lawyers decreased to 100 from 129. However, since 2004 there has been a noticeable increase in claims severity (see chart paragraph 44).

66. Our forecast for 2008 reflects these trends, and takes a conservative approach to projecting the frequency and cost of claims under the program. Uncertainties associated with predicting trends, as well as any uncertainties in anticipating claims associated with recommended program changes, and general economic and inflationary pressures on the program, dictate this prudent approach.

67. In setting a base rate for 2008, LAWPRO looked at a three-year planning horizon. Various scenarios were modeled for the three-year period to test the proposed rate structure. Under a "status-quo" type scenario, with a similar level of subsidization from the Premium Stabilization Fund level of subsidy in each of the three years[4] , the base premium remains constant over the period. Many factors influence this forecast, most significantly interest rates and claims experience. This forecast should be considered illustrative, rather than definitive in nature.

68. Strong investment returns in 2006 and the first half of 2007, combined with a strong economy as reflected in real estate activity, enables LAWPRO to reduce the 2008 premium.

69. Accordingly:

a) The base premium is decreased by $300 to $2,300 per lawyer for 2008, from the $2,600 per lawyer charged in 2007.
b) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at $22.5 million for the purposes of establishing the base premium for 2008 and other budgetary purposes.
c) $8.3 million (approximately $400 per insured lawyer) is expected to be drawn from the Premium Stabilization Fund built up in previous years (a $26.5 million balance is forecast as at December 31, 2007) and applied to the 2008 insurance premium.
d) To the extent that levies [noted in (b) above] collected in 2008 are different than the budgeted amount, the surplus or shortfall is expected to flow to/from the Premium Stabilization Fund.

Reinsurance

70. LAWPRO annually assesses its need for reinsurance based on its capital position, its claims results and volatility. Although claims results overall have been relatively stable, there are indications of an increase in the average size of claims going forward. LAWPRO's capital position has continued to improve beyond that seen five years ago, when it was first decided to assume 100 per cent of the risk of the program. In addition to LAWPRO's own resources, additional reserves are being carried in the Errors & Omissions Insurance Fund.

71. Accordingly, the Board proposes that LAWPRO not pursue the expensive course of purchasing reinsurance on a program-wide basis. Instead, as has been done in the last five years, the retroactive premium endorsement would be used to backstop the capital held in LAWPRO with the Premium Stabilization Fund/E&O Surplus, to a maximum of $15 million in the event that claims experience is outside of the expected range of outcomes.

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[4] Assumptions:

- Investment returns during the period have been projected at 5 per cent per annum.
- The number of practising lawyers is expected to grow approximately 2% per annum.

72. For 2008, LAWPRO will consider purchasing reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has since 2005. This protection against aggregated losses extends across both the professional liability and TitlePLUS programs, and offers some measure of protection against a series of claims such as fraud-related claims relating to a single lawyer, or a single defect in title affecting an entire condominium project.

73. Accordingly, 100 per cent of the premiums and losses for the Ontario professional liability program again will be retained by the company in 2008, subject to reinsurance protecting the program from aggregated losses.

The 2008 program

74. With the exception of the proposed policy changes detailed earlier, all aspects of the insurance program for 2008 would remain unchanged from that now in place.

75. As detailed in Appendix A, subject to the noted changes, the current insurance program for lawyers in private practice encompasses the following:

- standard practice coverage, including Mandatory Innocent Party Coverage;
- coverage options, including Innocent Party Buy-Up, Part-Time Practice, and Restricted Area of Practice.

76. The current program also provides for premium discounts and surcharges. Discounts and surcharges expressed as a percentage of premium include:

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- adjustments for deductible options and minimum premiums; and
- a “no application form” surcharge.

77. Discounts and surcharges expressed as a stated dollar amount include:

- the Mandatory Innocent Party premium;
- optional Innocent Party Buy-Up premium;
- premium discount for early lump sum payment;
- e-filing discount; and
- Continuing Legal Education discount.

78. Lawyers renewing their insurance applications online this fall will benefit from several enhancements including online access to their policy status information, their financial account information, as well as the status of their application and transaction levy filings.

79. Again this year, sole practitioners and lawyers in firms of up to ten lawyers who file insurance applications electronically generally will have instant access to their policy documentation and invoices online.

80. All practising lawyers will be able to easily access their 2008 policy documentation and invoices online through a secure section of the LAWPRO website. As in the past, lawyers again can opt for hard copies of these materials.

81. Subject to the changes identified earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2007 will remain unchanged for the 2008 insurance program.

Risk Rating

a) Background

82. As already discussed in this report, the Task Force Report concluded that the cost of insurance under the program should generally reflect the risks.

83. Specifically the Report indicated that "... as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."[5]

84. In keeping with this, LAWPRO regularly conducts detailed analyses of the risks associated with the program. The earlier results of these analyses are summarized in previous Reports to Convocation. These analyses concluded that the practice of real estate and civil litigation represented a disproportionate risk when compared to other areas of practice, and that lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

85. The objective of risk rating was finally achieved in 1999 by applying various discounts and the real estate and civil litigation transaction levies and claims history levy revenues to the insurance program.

86. Risk rating, however, is not static. Because the relationship between the cost of claims and different areas of practice may change, LAWPRO must continue to monitor the program to ensure that risk rating continues to be achieved. The results of these earlier risk analyses are re-evaluated each year, and the factors used to assess risk and determine premium under the program are re-evaluated for degree of relevance. The factors currently used to match risk to premium include: area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

87. As in the past, our risk analysis also examined the degree of specialization, size of firm, and geographic location of practice, as possible factors to be used in assessing risk and setting premiums. The potential factors were examined individually and on a multi-variate basis to determine any correlation or dependencies.

88. This review reaffirmed the validity and magnitude of the rating structure currently in place. No changes to the type or amount of surcharges or discounts, as a percentage of the base rate, are contemplated for 2008. The results of the customary re-evaluation of the earlier risk analyses are addressed in this report at paragraphs 96 to 110.

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[5] 1994 Task Force Report, at page 17.

b) Practice trends

89. LAWPRO's present risk analysis reaffirms the results of its last report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with civil litigation equalling or leading the practice of real estate as the area of practice with the greatest relative exposure for losses. In particular, the analysis indicates that:

- Overall, the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with these two areas of practice representing 62 per cent of the claims reported and 61 per cent of the claims costs under the program in 2006;

However:

a) While the exposure relating to the practice of real estate law was less than it had been at its peak[6] , last year this practice area accounted for 31 per cent of the claims reported and 39 per cent of the claims costs under the program.

b) In 2006, the exposure relating to the practice of civil litigation was again substantially more than that traditionally seen, with civil litigation accounting for 31 per cent of the claims reported and 23 per cent of the claims costs under the program (well above the traditional levels of 27 per cent and 18 per cent seen in the 1989-94 period);

c) In 2006, the nature of claims against civil litigators was also reaffirmed, with claims involving the general conduct or handling of the matter at 74 per cent compared to purely missed limitation period claims at 26 per cent; and

d) Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers. Lawyers with claims in the prior ten years were 3.6 times more likely to report a claim during the past year than those with no claims in the prior ten years.

90. The results of this analysis are summarized in the graphs contained in Appendix B of this report.

c) Risk management initiatives

91. A principal mandate of LAWPRO is to help the legal profession manage the risk associated with practice. This is accomplished by providing lawyers with tools and resources that help them manage risk and practise in a more risk-averse fashion. Among LAWPRO's major risk management initiatives are:

- *TitlePLUS®:* Now in its tenth year, LAWPRO's successful title insurance program has had a significant impact on both real estate practice and real estate claims. In 2007, we continued with our consumer education program which involves a print and media campaign highlighting the role of lawyers and TitlePLUS insurance. This initiative

[6] 48 per cent of claims reported and 58 per cent of claims costs seen in the 1989-94 period.

includes a consumer-oriented, online "Real Simple Real Estate Guide" which helps educate consumers about what to expect in real estate transactions and the role a lawyer plays in the transaction. Video content added in 2007 rounded out some of the other information tools and included:

- *What you need to know when you refinance your mortgage*
- *Using a lawyer and title insurance: The Benefits*
- *Why you need TitlePLUS insurance*

TitlePLUS insurance is a competitive product that has made a positive difference in the Ontario real estate market. It expands the choice offered to consumers and lawyers. It influences the behaviour of other title insurers. It educates consumers and has expanded policy coverages available to them. It also provides education on title insurance and real estate trends to lawyers.

- *practicePRO®:* Now in its ninth year, LAWPRO's very successful risk management and claims prevention initiative continues to grow and mature. It is a recognized source of high-quality risk management tools and resources, both inside and outside of Ontario. This year, practicePRO has been active in helping lawyers avoid malpractice claims through articles in LAWPRO Magazine and other law-related publications, new resources and information on the practicePRO website, and live presentations and/or an exhibitor presence at CLE programs and other law-related events. practicePRO continues to build a significant presence in the legal community by expanding relationships and actively working with its various constituents, including the Law Society of Upper Canada, the Ontario and Canadian Bar Associations, The County and District Law Presidents' Association, The Advocates' Society, the Carleton County Law Association, legal goods and service providers, the legal press and others.

- *Elder law and retirement:* The Winter 2007 issue of LAWPRO Magazine highlighted the many and far-reaching implications of aging lawyers and aging clients. It included articles on the opportunities and the potential exposures that come with providing wills and estate planning services to older clients. It also reminded the large number of "boomer" lawyers, who are themselves approaching retirement, of the need to plan for this life-changing event in a positive manner as part of a renewal process, and not as end point. Other articles dealt with avoiding a malpractice claim when working on a will or estate matter, understanding issues of client legal capacity, and reverse mortgages.

- *Doing things better*: The Summer 2007 issue of LAWPRO Magazine focused on many different ways in which lawyers should take a bit more time to do things better. It included articles on how to find and keep good lawyers, and how to delegate responsibly and effectively. Several articles focused on claims prevention, and reviewed the risks and benefits of lawyers sitting on boards, how not to get sued over the GST, and how to avoid drafting errors.

- *Fraud:* LAWPRO continues to take steps to combat fraud through measures within its own operations, its relationship with the profession, and by working with law enforcement, registry, banking, insurance and other organizations and industries also affected by fraud. The Summer 2007 issue of LAWPRO Magazine included articles on how Bill 152 and subsequent government initiatives will affect real estate practitioners; how the new Practice Guidelines provide guidance in the conduct of title-insured transactions; and how lawyers can avoid being duped by scam artists perpetrating real

estate frauds. These articles all build on the information provided to lawyers in the 2001 Special Report on Fraud, the June 2004 "Focus on Fraud" issue of LAWPRO Magazine, and the article on how to "fraud-proof" your practice in the Winter 2006 issue of LAWPRO Magazine.

· *Electronic Discovery:* The widespread use of computers, e-mail and the Internet have made e-Discovery a hot topic for litigators, corporate lawyers and others who deal with electronic records and information. In the September 2005 issue of LAWPRO Magazine, LAWPRO led the charge, making Ontario lawyers aware of the many and far-reaching implications of electronic discovery. The supplemental resources to that issue of the magazine, an e-Discovery reading list and Common/Civil law case digests, are actively being updated and are widely used and referred to by members of the profession. practicePRO participated in the creation of the Sedona Canada E-Discovery Guidelines, a national set of practical guidelines to help lawyers deal with issues that arise while conducting electronic discoveries. These guidelines were based on the Ontario guidelines released in early 2006.

92. The Continuing Legal Education ("CLE") Premium Credit offered under the program is another significant LAWPRO risk-management initiative. In 2001, a premium credit of $50 was first offered to lawyers using the practicePRO Online Coaching Centre, an Internet-based, self-coaching tool that helps lawyers enhance their business and people skills.

93. The premium credit was broadened in the following year to provide a $50 credit (to a maximum of $100 per lawyer in a year) for designated law-related CLE courses and programs completed by the lawyer. These courses are offered by the Law Society, Ontario Bar Association, The Advocates' Society and other non-for-profit CLE providers, and must include a substantial risk management component. In keeping with the most frequent causes of loss, rather than substantive law, the risk management content on these programs deals with the "soft" skills of lawyering, such as lawyer/client communication, documenting a file, and time management.

94. For a credit on premiums for 2008, lawyers must have participated in LAWPRO-approved CLE programs between September 16, 2006, and September 15, 2007. In addition to the Online Coaching Centre, and the Law Society's Skills Self-Assessment tool, 115 programs qualified for the credit during this period, with an estimated 13,500 lawyers eligible for a premium credit. Prior to the implementation of the CLE credit, most CLE programs focused solely on substantive law. Due to the CLE credit, the content of a significant number of Ontario CLE programs has been broadened to include risk management and claims prevention content.

95. Accordingly, the Continuing Legal Education Premium Credit will be continued for the 2009 program, with a $50 premium credit per program, subject to a $100 per lawyer maximum amount, to be applied for pre-approved legal and other educational programs taken and successfully completed by lawyers between September 16, 2007, and September 15, 2008, for which the lawyer has successfully completed the online CLE Declaration Form.

d) Revalidating risk rating

96. It is important to periodically re-evaluate the program by area of practice to ensure that it continues to be effective in its risk rating. The following chart shows the distribution of claims costs by detailed area of practice since 1989.

Distribution of Claim Cost and Program Expenses, by Grouped Area of Practice

(see chart in Convocation Report)

97. Apparent from this chart are the significant and growing claims costs associated with real estate claims; the significant claims costs associated with litigation practice; and the variability associated with most other areas of practice. This variability is largely a reflection of the unpredictability associated with smaller group sizes.

98. The fact that few lawyers practise exclusively in one area provides a compelling reason to group together common or related areas of practice. However, to ensure that risk rating is being achieved, the program's anticipated losses must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program in 2006 and the first six months of 2007), the following charts compare the anticipated losses distributed by area of law, to the proposed base levy premiums by area of practice. The following chart allocates the base levy premiums by the percentage of a lawyer's time spent in an area of practice. The premiums in this chart include only the proposed base levy premiums (together with discounts), and no amounts applied as transaction levies and claims history surcharges.

99. The shortfall between the anticipated claims costs and expenses to base premiums, for both real estate and the litigation grouping, is clearly significant. As already noted, it is proposed that $22.5 million be provided through the transaction levies and claims history levy surcharges. Although clearly benefiting those whose primary area of practice is real estate or who are in the litigation grouping, these additional revenues also benefit those whose secondary and other areas of practice include payment of these levies.

Comparison of Projected 2008 Premium by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law

(see chart in Convocation Report)

100. The latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, base premium levies of about $7,900 and $4,100 would be required of members whose primary area of practice is real estate or civil litigation, respectively.

101. Past reports have discussed the importance of using the transaction and claims history surcharge levies as premium, to avoid any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating.[7]

102. By including the transaction and claims history surcharge levies as proposed, the shortfall between anticipated claims costs and expenses to total insurance levies is almost entirely overcome in these higher risk and other areas of practice.

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[7] 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 35-37; and 1996 LAWPRO Report to Convocation, pp. 32-36.

103. To compare the actual claims experience of lawyers to revenues received from those lawyers, the following chart compares the anticipated premiums (with the transaction and claims history levies) sorted by the lawyer's time in an area of practice, and compares this to the anticipated claims costs and expenses for this area of practice. Real estate transaction levies are entirely allocated to real estate and civil litigation transaction levies are allocated to the litigation category.

Comparison of Projected 2008 Premium + Levies by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law

(see chart in Convocation Report)

104. This comparison indicates that with the benefit of the transaction and claims history surcharge levies, there is a substantial correlation between revenues and claims.

105. However, the graph does indicate some subsidy by area of practice. This subsidy changes somewhat over time. For lawyers whose area of practice is classified as "All Other," premiums somewhat exceed losses.

106. Appreciating the foregoing variables and possibilities of comparison, by area of practice, it appears that the program does substantially meet its objective of risk rating, and that the proposed program will continue to do so in the coming year. Although a small amount of subsidy may exist for some areas of practice, taking into account the commercial realities and the relatively small amount of the subsidy, the cost of insurance under the program is considered to generally reflect the risk. Notably, the Task Force Report acknowledged that "…no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."[8]

107. Other aspects reviewed in the analysis included the exposure based on the size of firm, year of call, geographic location and prior claims history. The results of this analysis reaffirm the premium discounts already in place, including the discounts for new and for part-time practitioners and the surcharge applied to those practitioners with a prior claims history. The results of this analysis support the conclusions of previous reports, and are summarized in the graphs in Appendix B.

108. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice as well as the higher risk associated with real estate conveyancing and civil litigation.

109. Accordingly, the LAWPRO Board is satisfied with the continued use of the transaction and claims history levy revenues as premium, with the result that the cost of insurance under the program continues to generally reflect the risk.

110. Various examples of premiums which would be charged to members depending upon the nature of their practice are summarized in Appendix C of this Report.

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[8] 1994 Task Force Report, at page 17.

CONCLUSION

111. The LAWPRO Board considers the proposed program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Task Force Report. The LAWPRO Board offers this program of insurance for 2008 and asks for Convocation's acceptance of this report at the September Convocation, so that the 2008 insurance program can be implemented by January 1, 2008.

ALL OF WHICH LAWPRO'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

September, 2007

Kim A. Carpenter-Gunn
Chairman, LAWPRO's Board of Directors

APPENDIX A

Appendix "A"

The Standard Insurance Program Coverage for 2008

Eligibility

· Required of all sole practitioners, lawyers practising in association or partnership, and lawyers practising in a Law Corporation, who are providing services in private practice.
· Required of all other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who do not fully meet the program exemption criteria.
· Available to lawyers who do meet the exemption criteria but opt to purchase the insurance coverage.

Coverage limit

· $1 million per CLAIM/$2 million aggregate (i.e. for all claims reported in 2008), applicable to CLAIM expenses, indemnity payments and/or cost of repairs together

Standard DEDUCTIBLE

· $5,000 per CLAIM applicable to CLAIM expenses, indemnity payments and/or costs of repairs together.

Standard base premium

· $2,300 per insured lawyer

Transaction Premium Levy

· $50 per real estate or civil litigation transaction
· No real estate transaction levy generally payable by transferee's lawyer if title-insured

Premium reductions for new lawyers

- Premium for lawyers with less than 4 full years of practice (private and public):
  - ❖ less than 1 full year in practice: premium discount equal to 40 per cent of base premium;
  - ❖ less than 2 full years in practice: premium discount equal to 30 per cent of base premium;
  - ❖ less than 3 full years in practice: premium discount equal to 20 per cent of base premium;
  - ❖ less than 4 full years in practice: premium discount equal to 10 per cent of base premium.

Mandatory Innocent Party Coverage

Eligibility

The minimum coverage of $250,000 per claim/in the aggregate must be purchased by all lawyers practising in association or partnership (including general, MDP and LLP partnerships), or in the employ of other lawyers.

The minimum coverage must also be purchased by all lawyers practising in a Law Corporation, where two or more lawyers practise in the Law Corporation.

Premium

$250 per insured lawyer

2008 Program Options

1. Deductible option

$Nil deductible

- Increase in premium equal to 15 per cent of base premium ($345.00 increase).

$2,500 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Increase in premium equal to 7.5 per cent of base premium ($172.50 increase).

$2,500 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 12.5 per cent of base premium ($287.50 increase).

Standard insurance program: $5,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Base premium of $2,300 per insured lawyer.

$5,000 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 10 per cent of base premium ($230.00 increase).

$10,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

- Decrease in premium equal to 7.5 per cent of base premium ($172.50 decrease).

$10,000 deductible applicable to indemnity payments and/or costs of repairs only

- Increase in premium equal to 7.5 per cent of base premium ($172.50 increase).

$25,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs

- Decrease in premium equal to 12.5 per cent of base premium ($287.50 decrease).

2. Innocent Party Sublimit Coverage Options

Innocent Party Coverage Sublimit Buy-Up: For lawyers practising in associations, partnerships and Law Corporations

Lawyers practising in association or partnership (including general, MDP and LLP partnerships) or a Law Corporation (with more than one practising lawyer) can increase their Innocent Party Coverage in two ways:

Increase coverage sublimit to:	Additional annual premium:
$500,000 per CLAIM/aggregate	$150 per insured lawyer
$1 million per CLAIM/aggregate	$249 per insured lawyer

Optional Innocent Party Sublimit Coverage: For sole practitioners and lawyers practising alone in a Law Corporation

Coverage limits

- $250,000 per CLAIM/in the aggregate
- $500,000 per CLAIM/in the aggregate
- $1 million per CLAIM/in the aggregate

3. Practice Options

Restricted Area of Practice Option

Eligibility

Available only to lawyers who agree to restrict their practice to criminal[9] and/or immigration law[10] throughout 2008.

[9] Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

[10] Immigration law is considered to be the practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining thereto, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

Premium
Eligible for discount equal to 40 per cent of base premium, to a maximum of $920. [11]

Part-Time Practice Option
Eligibility
Available only to part-time practitioners who meet the revised part-time practice criteria.

Premium
Eligible for discount equal to 40 per cent of base premium, to a maximum of $920.

Real Estate Practice Coverage Options
Eligibility
All lawyers who intend to practice REAL ESTATE LAW in Ontario in 2008 must be ELIGIBLE for and apply for this coverage option.

"ELIGIBLE" means eligible to practice REAL ESTATE LAW in Ontario in accordance with the Law Society Act, R.S.O. 1990, c. L.8. Proposed categories of lawyers who would not be ELIGIBLE to practice REAL ESTATE LAW in Ontario, include:

- Those who are in bankruptcy;
- those who have been convicted or disciplined in connection with a real estate fraud;
- those under investigation, where the Law Society obtains: an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practicing real estate; or an undertaking not to practise real estate.

Premium
$500 per insured lawyer

4. Premium Payment Options

Instalment Options:
· Lump sum payment by cheque or pre-authorized payment: eligible for $150 discount.
· Lump sum payment by credit card
· Quarterly instalments
· Monthly instalments

5. E-filing Discount
· $50 per insured lawyer (if filed by November 1, 2007)

6. Continuing Legal Education (Risk Management) Premium Credit

· $50 per course, subject to a $100 per insured lawyer maximum discount, will be applied under the 2009 insurance program.

[11] The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Practitioners' discount combined cannot exceed 40 per cent of the base premium.

- For pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2007, and September 15, 2008, where the lawyer completes and files the required LAWPRO CLE electronic declaration by September 15, 2008.
- LAWPRO'S Online Coaching Centre is included as a pre-approved course, where the insured lawyer completes at least three modules between September 16, 2007, and September 15, 2008.

APPENDIX B

APPENDIX C

APPENDIX D

Appendix D

BY-LAW 6

May 1, 2007
Amended: June 28, 2007

PROFESSIONAL LIABILITY INSURANCE

PART I

LICENSEES HOLDING A CLASS L1 LICENCE

GENERAL

Interpretation

1. (1) In this Part,

"licensee" means a licensee who holds a Class L1 licence;

"Society's insurance plan" means the Society's professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for licensees.

Interpretation: engaging in practice of law

(2) In this Part, a person engages in the practice of law if he or she gives legal advice respecting the laws of Ontario or Canada or provides any professional services of a barrister or solicitor for others.

INSURANCE PREMIUM LEVIES

Requirement to pay insurance premium levies

2. (1) Unless otherwise exempted, every licensee who is eligible for coverage under the Society's insurance plan and who engages in the practice of law during the course of any year shall pay insurance premium levies for that year in accordance with this Part.

Same

(2) A licensee who is required to pay any insurance premium levy shall pay the amount of the levy and any taxes that the Society is required to collect from the licensee in respect of the payment of the insurance premium levy.

Insurance premium levies

3. The insurance premium levies mentioned in section 2 shall consist of a base levy, an innocent party surcharge levy, a claims history surcharge levy and such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan.

Time for payment of insurance premium levies

4. (1) The base levy, the innocent party surcharge levy and the claims history surcharge levy are due and payable on January 1 of the year in which the coverage applies.

Same

(2) Such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan are due and payable on the dates specified by Convocation or the insurer of the Society's insurance plan.

Period of default

5. (1) For the purpose of subsection 46 (1) of the Act, the period of default for failure to pay an insurance premium levy is 120 days after the day on which payment of the levy is due.

Payment plan: deemed date of failure to pay

(2) Where the Society or the insurer of the Society's insurance plan arranges or permits a schedule for the payment of an insurance premium levy by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay the levy will be deemed to have occurred on January 1 of the year in which the coverage applies.

Reinstatement of licence

(3) If a licensee's licence has been suspended under subsection 46 (1) of the Act for failure to pay an insurance premium levy in a given year, for the purpose of subsection 46 (2) of the Act, the licensee shall pay an amount equal to the amount of the insurance premium levy which the licensee is required to pay in respect of that year and a reinstatement fee.

Refund of unearned portion of insurance premium levy

6. Where a licensee, who has paid one or more of the base levy, innocent party surcharge levy and claims history surcharge levy, subsequently, during the course of the year for which the levy or levies were payable, dies, retires, ceases to be eligible for coverage or is exempted by the Society from the requirement to pay one or more of the levies, the unearned portion of the levy or levies shall be refunded on a pro rata basis, subject to a two month minimum.

Society's insurance fund

7. (1) The insurance premium levies paid by licensees shall be used for the Society's insurance fund in respect of licensees, or to pay the required insurance premiums to the insurer of the Society's insurance plan, claims, group deductibles, adjusting costs, counsel and legal fees, administration costs and such other expenses reasonably incurred in connection with the Society's insurance plan.

Society's insurance fund not used up at year-end

(2) If at the end of any year the insurance fund is not entirely used up, the surplus remaining shall be carried forward into the next year.

Eligibility for coverage

8. (1) Every licensee is eligible for the standard coverage under the Society's insurance plan provided that his or her licence is not suspended.

Application for coverage

(2) A licensee who is eligible for coverage under the Society's insurance plan but who is not required under this Part to pay insurance premium levies may apply to the Society or to the insurer of the Society's insurance plan for coverage and, if granted coverage, shall pay the required levies in accordance with this Part.

Exemption from payment of insurance premium levies

9. (1) The following are eligible to apply for exemption from payment of insurance premium levies:

1. Any licensee who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario.

2. Any licensee who, during the course of the year for which a levy is payable,

i. will be resident in a Canadian jurisdiction other than Ontario,

ii. will engage in the practice of law in Ontario on an occasional basis only, and

iii. demonstrates proof of coverage for the licensee's practice of law in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.

3. Any licensee who, during the course of the year for which a levy is payable,

i. will be resident in a reciprocating jurisdiction, and

ii. demonstrates proof of coverage for the licensee's practice of law in Ontario under the mandatory professional liability insurance program of the reciprocating jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.

4. Any licensee who, during the course of the year for which a levy is payable,

i. will be employed by a single employer,

ii. will engage in the practice of law only for and on behalf of the employer as,

A. counsel or solicitor to the Government of Canada or the Government of Ontario,

B. a Crown Attorney,

C. counsel to a corporation other than a law corporation, or

D. a city solicitor, and

iii. will not engage in the practice of law in Ontario other than for and on behalf of the employer.

5. Any licensee employed as a law teacher who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario other than teaching.

6. Any licensee who, during the course of the year for which a levy is payable,

i.
will be employed or volunteer in a clinic within the meaning of the Legal Aid Services Act, 1998, a student legal aid services society or an Aboriginal legal services corporation, that is funded by Legal Aid Ontario, but will not be directly employed by Legal Aid Ontario,

ii.
will engage in the practice of law only through the clinic, student legal aid services society or Aboriginal legal services corporation to individuals in communities served by the clinic, student legal aid services society or Aboriginal legal services corporation and will not otherwise engage in the practice of law in Ontario, and

iii.
demonstrates proof of coverage for such practice of law under a professional liability insurance policy issued by a licensed insurer in Canada, such coverage to be at least equivalent to that required under the Society's insurance plan.

7. Any licensee who, during the course of the year for which a levy is payable, will act in the capacity of an estate trustee, a trustee for an inter vivos trust or an attorney for property in respect of an estate, a trust or a property of a person other than a related person of the licensee of which the licensee was named as estate trustee, trustee or attorney while the licensee was engaged in the practice of law in Ontario and,

i.
will not otherwise engage in the practice of law in Ontario, or

ii.
who otherwise qualifies for exemption from payment of insurance premium levies under paragraph 4, 5 or 6 and will not engage in the practice of law in Ontario other than as provided for under this paragraph or paragraph 4, 5 or 6.

Same

(2) A licensee who is exempt from payment of insurance premium levies under paragraph 1, 2, 3, 4, 5, 6 or 7 of subsection (1) continues to be exempt from payment of insurance premium levies even though he or she engages in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies if the following conditions are met:

1. The licensee's practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies is restricted to engaging in the practice of law only on a pro bono basis and only to or on behalf of non-profit organizations.

2. Prior to engaging in the practice of law in Ontario in contravention of the paragraph under which he or she is exempt from payment of insurance premium levies, the licensee applies to the insurer of the Society's insurance plan, in accordance with procedures established by the insurer, to continue to be exempt from payment of insurance premium levies and the insurer approves the licensee's application.

Interpretation: occasional practice of law

(3) For the purposes of paragraph 2 of subsection (1), in any year, a licensee engages in the practice of law on an occasional basis if, during that year, the licensee,

(a) engages in the practice of law in respect of not more than ten matters; and

(b) engages in the practice of law for not more than twenty days in total.

Interpretation: "reciprocating jurisdiction"

(4) In subsection (1), "reciprocating jurisdiction" means a Canadian jurisdiction other than Ontario,

(a) which is a signatory to,

(i) the National Mobility Agreement originally entered into in December 2002 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, The Barreau du Québec, the Nova Scotia Barristers' Society and the Law Society of Newfoundland; or

(ii) until December 31, 2011, the Territorial Mobility Agreement originally entered into in November 2006 by the Society, the Law Society of Yukon, the Law Society of Northwest Territories, the Law Society of Nunavut, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, The Barreau du Québec, the Law Society of New Brunswick, the Nova Scotia Barristers' Society, the Law Society of Prince Edward Island and the Law Society of Newfoundland;

(b) in which a licensee is authorized to engage in the practice of law; and

(c) which would exempt the licensee from its mandatory professional liability insurance program if the licensee were resident in Ontario and demonstrated proof of coverage for the licensee's practice of law in the jurisdiction under the Society's insurance plan which was reasonably comparable in coverage and limits to the professional liability insurance that would otherwise be required of the licensee by the jurisdiction.

Interpretation: “employer”

(5) In paragraph 4 of subsection (1), “employer” includes a corporation, any affiliated, controlled and subsidiary company of the corporation and any other entity employing the licensee.

Interpretation: “affiliated”, “controlled” and “subsidiary”

(6) In subsection (5), “affiliated”, “controlled” and “subsidiary” have the same meanings given them in the *Securities Act.*

Interpretation: “resident”

(7) In subsection (1), “resident” has the same meaning given it for the purposes of the *Income Tax Act* (Canada).

Interpretation: “related person”

(8) In paragraph 7 of subsection (1), “related person” has the meaning given “related persons” in subsection 251 (2) of the *Income Tax Act* (Canada).

FILING INSURANCE DOCUMENTS

Interpretation: “insurance policy”

10. (1) In this section, “insurance policy” means a policy for indemnity for professional liability issued in respect of a licensee 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 licensee 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.

DEDUCTIBLES

Interpretation: “insurance policy”

11. (1) In this section, “insurance policy” means a policy for indemnity for professional liability issued in respect of a licensee by the insurer of the Society’s insurance plan.

Requirement to pay deductible

(2) A licensee shall pay to the insurer of the Society’s insurance plan, or to such other person as the insurer may direct, any amount of a deductible under an insurance policy that the licensee is required by the insurer to pay.

Compliance with requirement

(3) For the purposes of subsection 47.1 (3) of the Act, a licensee complies with the requirement mentioned in subsection (2) when,

(a) the licensee pays to the insurer of the Society's insurance plan or, if the insurer has directed the licensee to pay to another person, to the person to whom the insurer has directed the licensee to pay, the amount of the deductible that the insurer has required the licensee to pay; or

(b) the licensee complies with an award made by the arbitrator as a result of an arbitration conducted under the insurance policy with respect to the requirement to pay the deductible.

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

Copy of Appendix B.

(pages 45 – 51)

Copy of Appendix C

(pages 53 – 56)

It was moved by Ms. Carpenter-Gunn, seconded by Mr. Caskey, that Convocation accept the proposed insurance program for 2008.

Carried

REPORT OF THE COMPENSATION COMMITTEE

Mr. Millar presented the Report.

Report to Convocation
September 20, 2007

Compensation Committee

Committee Members
Treasurer Gavin Mackenzie, Chair
Derry Millar
Beth Symes
Abdul Chahbar

Purpose of Report: Decision and Information

Prepared by the Human Resources Department
(Laura Cohen 416-947-3396)

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COMMITTEE PROCESS

1. The Compensation Committee ("the Committee") met on August 22, 2007. In attendance were Treasurer Gavin MacKenzie, Derry Millar, Beth Symes and Abdul Chahbar (by telephone). Staff in attendance was Laura Cohen.

FOR DECISION

COMPENSATION COMMITTEE MANDATE

MOTION

2. That Convocation approves the following mandate for the Compensation Committee.

The mandate of the Compensation Committee of the Law Society of Upper Canada is to,

a. set the criteria, including performance goals and objectives, by which the Chief Executive Officer's entitlement to a bonus will be determined annually;
b. conduct the annual performance review of the Chief Executive Officer;
c. recommend the amount of the Chief Executive Officer's bonus entitlement to Convocation annually;
d. make recommendations to Convocation relating to the Chief Executive Officer's compensation (salary, bonus, benefits, pension and perquisites), if appropriate, in accordance with the Chief Executive Officer's contract; and
e. review and approve, if appropriate, the Chief Executive Officer's recommendations with respect to the compensation of the other members of the Law Society's senior management team.

Committee Composition
The Committee shall consist of the Treasurer, the Chairs of the Finance Committee and the Audit Committee and a lay bencher appointed by Convocation on recommendation of the Treasurer.

Quorum
Three members of the Committee constitute a quorum.

Introduction and Background

3. In March 2007, Convocation established a Compensation Committee to part of the Chief Executive Officer's compensation package.

4. On June 28, 2007 the Committee reported to Convocation. During Convocation's discussion of the report, benchers raised a number of issues for the Compensation Committee's consideration.

5. The Committee undertook to develop its mandate, consider the issues raised by benchers at the June Convocation meeting, and report back to Convocation in the fall.

The Committee's Deliberations

6. The Committee considered that the most salient items to be included in its mandate were the following:

   a. Setting the criteria, including performance objectives, by which the CEO's bonus entitlement would be determined annually;
   b. Determining the CEO's bonus entitlement by applying the criteria and reporting thereon to Convocation *in camera;*
   c. Conducting and approving (if warranted) the CEO's annual performance review; and
   d. Considering and approving (if warranted) the CEO's recommendations with respect to the compensation of other members of the Law Society's Senior Management Team.

7. With these items in mind, the Committee proposes the mandate set out in paragraph 2 for Convocation's consideration.

FOR INFORMATION

DISCLOSURE OF SENIOR MANAGEMENT SALARIES

8. The Committee discussed the issue and decided that the Audit Committee was the more appropriate committee to examine it. The Audit Committee has the issue on its agenda.

Re: Compensation Committee Mandate

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the following mandate for the Compensation Committee:

The mandate of the Compensation Committee of the Law Society of Upper Canada is to,

a. set the criteria, including performance goals and objectives, by which the Chief Executive Officer's entitlement to a bonus will be determined annually;
b. conduct the annual performance review of the Chief Executive Officer;
c. recommend the amount of the Chief Executive Officer's bonus entitlement to Convocation annually;
d. make recommendations to Convocation relating to the Chief Executive Officer's compensation (salary, bonus, benefits, pension and perquisites), if appropriate, in accordance with the Chief Executive Officer's contract; and
e. review and approve, if appropriate, the Chief Executive Officer's recommendations with respect to the compensation of the other members of the Law Society's senior management team.

Committee Composition
The Committee shall consist of the Treasurer, the Chairs of the Finance Committee and the Audit Committee and a lay bencher appointed by Convocation on recommendation of the Treasurer.

Quorum
Three members of the Committee constitute a quorum.

Carried

Item for Information
- Disclosure of Senior Management Salaries

REPORT OF THE PARALEGAL STANDING COMMITTEE

Mr. Dray presented the Report and introduced Stephen Parker, a paralegal appointee to the Paralegal Standing Committee.

Report to Convocation
September 20th, 2007

Paralegal Standing Committee

Committee Members
Paul Dray, Chair
Bonnie Warkentin Vice-Chair
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Tom Heintzman

Paul Henderson
Brian Lawrie
Douglas Lewis
Margaret Louter
Stephen Parker
Cathy Strosberg

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Paralegal Standing Committee met on August 23rd, 2007. Committee members present were Paul Dray (Chair), Bonnie Warkentin (Vice chair), Michelle Haigh, Thomas Heintzman, Stephen Parker and Cathy Strosberg. Participating by telephone were Committee members James Caskey, Brian Lawrie and Margaret Louter. Staff members in attendance were Malcolm Heins and Julia Bass.

2. The Committee met further on September 6th. Committee members present were Paul Dray (Chair), Bonnie Warkentin (Vice chair), James Caskey, Seymour Epstein, Michelle Haigh, Paul Henderson (by telephone), Thomas Heintzman, Brian Lawrie, Margaret Louter, Stephen Parker and Cathy Strosberg. Staff members in attendance were Diana Miles, Terry Knott, Elliot Spears, Sheena Weir and Julia Bass.

FOR DECISION

TRUST ACCOUNTS AND RECORD KEEPING REQUIREMENTS

Motion

3. That Convocation approve the following recommendations with respect to trust accounts and record-keeping requirements for paralegals:

a. that the rules on trust accounts and books and records for paralegals be the same as for lawyers;
b. that the record-keeping and trust account requirements be effective upon licensing;
c. that grandparent applicants be subject to a transitional period during which they are not required to transfer fees collected prior to licensing to a trust account, and
d. that the transitional period start on the day they receive their licence and conclude on May 1st 2010. Any fees collected prior to licensing for which the services had not been rendered by May 1, 2010 would have to be placed in trust on that date.

Background

4. The Paralegal Standing Committee presented a report on the rules governing trust accounts and record keeping for paralegals at Convocation on June 28th. At that time, Convocation referred the issue back to the Committee for further study.

5. Since then, the Working Group on Trust Accounts and the Paralegal Standing Committee have studied the issue further and the Committee is presenting this revised report, based on the principles set out below.

General principles

6. All licensees should be required to keep proper books and records. The protection of the public and the integrity of the Law Society's regulatory responsibilities make it impossible to accommodate the views of those who do not wish to have proper books and records.

7. Licensees should continue to have the option of not having a trust account if they do not receive fees in advance of rendering the service and do not receive other client moneys such as settlements. However, all licensees must be familiar with the rules governing which moneys must be placed in trust accounts.

8. For the grandparent applicants, further information about the costs associated with proper record keeping and the operation of trust accounts should be made available, to allay concerns that these will be unaffordable, and assistance with these issues should be an important component of the continuing legal education programme.

9. For future applicants, these issues should become part of the college curriculum for paralegals.

10. The rationale for the rules on trust accounts should be explained to paralegal practitioners, especially that maintaining a trust account is a consumer protection practice designed to ensure that client fees are available for refund in case the paralegal becomes incapacitated or is otherwise unable to provide the paid-for services, as opposed to being a protection against misappropriation of funds.

Implications for 'grandparents'

11. The most difficult challenge presented by introducing the trust account rules is the resulting cash flow problem for existing paralegal firms that have become reliant on fees to finance their daily operations. (This practice is particularly prevalent among paralegals with a large volume of small files, such as traffic court matters. It is less prevalent among

paralegals whose main work is in small claims court, where fees are often paid after the event). Many paralegal practices have been operated as a business, with incoming fees treated as business revenue and used to pay operating costs. While this will no longer be acceptable in the new regulated environment, it is reasonable to move to the new rules in a manner that will not cause undue hardship.

12. Accordingly, accommodation should be made for 'grandparent' firms. These firms will have received and spent fees before rendering the relevant service, prior to licensing. It is these firms that ought to be subject to some accommodation. This accommodation should apply to the trust account rules only – the books and records requirements should come into effect immediately.

13. Immediate implementation of the trust account rules would have negative implications for access to justice, causing many of the 'grandparent' applicants to cease operation. It would defeat the purpose of the 'grandparenting' arrangements if the manner in which the trust account rules are implemented put many of the grandparent applicants out of business. It was an important feature of the public consultations concerning the introduction of paralegal regulation that a transitional programme for 'grandparents' be implemented, so that paralegals currently providing useful services would not be forced to cease operation.

14. Applying the new rules to fees collected prior to the development of the regulatory model would constitute retroactive regulation of conduct that was not contrary to any rules at the time.

15. Using client fees to finance operating costs, when the services have not yet been provided, does not conform to the professional standards of a regulated profession. However, as with other issues in the creation of a new paralegal profession with high standards, it is reasonable to provide a brief transitional period for the new standards to be achieved.

Transitional arrangements for 'grandparents'

16. Paralegals should follow the same rules as for lawyers, subject to transitional provisions for grandparent firms. A reasonable approach would be to give grandparent firms about two years to move into full compliance with the new rules, with the two-year period starting on the day the person receives a licence (in the spring of 2008) and ending on May 1st 2010. After the person is licensed, any funds received by a paralegal must be handled in accordance with the trust account rules, even if they relate to a previously existing file. Funds received prior to licensing may be left in a licensee's operating account until the services are provided, but must be transferred to a trust account by May 2010 if the services have not been provided. (In practice, most cases within the paralegal scope of practice would have been completed within the two years).

17. Such a transitional period represents a reasonable compromise – while it would leave some members of the public temporarily unprotected, should their agent become unable to provide the paid-for services, the number of such files would be phased out over the two years (and probably sooner), giving grandparent applicants sufficient time to adjust their business practices and obtain the necessary financing. This would avoid a situation where many paralegals could be placed in difficulty in terms of immediately obtaining the

necessary bank loans to move the required funds into trust. This grace period would only apply to fees received prior to licensing.

18. Non-grandparent paralegals should be required to comply with trust account rules immediately.

19. Paralegals should be advised to seek professional advice on the best approaches to arranging funding for work-in-progress ('WIP') to permit them to arrange a transition to the new rules.

Other issues

20. The Committee noted that section 57 of the *Law Society Act* requires the interest on trust accounts to be paid over to the Law Foundation, with 75% of the total going to Legal Aid Ontario, although paralegal services are not covered by legal aid certificates. It was noted that LAO also funds the clinic system, which makes considerable use of community legal workers. The Committee favours asking the Law Foundation to consider educational projects that would further access to justice by the use of paralegals.

21. The Committee was of the view that the rules on the receipt of cash should be the same as they are for lawyers – that is, there should be limit of $7,500 on the amount of cash that may be received.

FEE CATEGORIES FOR PARALEGALS

Motion

22. That Convocation approve the Committee's recommendation that the fee categories for paralegals be the same as they are for lawyers, i.e. 100%, 50% and 25%, as set out below.

Background

23. In order to establish the fee process for 2008, it is necessary to decide on the fee structure for the payment of annual fees by paralegals – in particular, whether it should be the same as that for lawyers. This is a separate issue from the setting of the actual amount of the annual fee, although it will have implications for the calculation of fee revenues.

Fee Categories for Lawyers

24. The current fee structure for lawyers is set out in By-law 5, shown in the excerpt attached at Appendix 1:

    a. *100% of the annual fee* (80% of fee paying lawyers): applies to a lawyer who practises law, defined as giving legal advice respecting the laws of Ontario or Canada or delivering the professional services of a barrister or solicitor (this applies to lawyers anywhere in the world, including law teachers, government employees, corporate lawyers, etc).

b. *50% of the annual fee* (12% of fee paying lawyers): applies to licensees who do not practise law, including those employed in education, in government or in a corporation in positions where they are not required to practise law.

c. *25% of the annual fee* (8% of fee paying lawyers). Applies to licensees who do not practise law and who:

i) do not engage in any remunerative work, or
ii) are in full-time attendance at a university, college or educational institution within the meaning of the *Income Tax Act* (Canada), or
iii) are on a maternity, paternity or adoption leave.

25. All lawyers must also pay any taxes that the Law Society is required to collect in respect of the payment of the annual fee. There are exemptions from fees for certain groups, such as lawyers over 65 years of age who only practise *pro bono*, incapacitated lawyers and lawyers who have practised for 50 years.

26. Convocation adopted the current fee structure for lawyers in 1988. The primary rationale for the 50% fee for lawyers not in practice was that they use fewer Law Society services, whether regulatory or competence related.

27. There was also a concern that if lawyers not currently in practice were required to pay the full fee in order to maintain their status in the Law Society, they might decide to let their membership lapse, thus reducing revenues.

28. The 25% fee was designed to alleviate hardship for those with no employment income and to address parental leaves.

Fee Categories for Paralegals

29. It would be in keeping with the Paralegal Task Force recommendation that paralegal regulation follow the pattern of the regulation of lawyers, to adopt the same categories for paralegals. Different treatment of paralegals might be seen as unfair to either paralegals or lawyers.

30. It would cause significant administrative difficulties if the fee categories for paralegals were different from the categories for lawyers. The Law Society's financial and information systems have been set up to process the three fee categories in By-law 5.

31. It may be that, in the short run, there would be few or no paralegal licensees in the 25% and 50% category, since they only apply to persons not providing any legal services. If so, the practical effect of implementing the existing fee categories would be that almost all licensees would pay the same fee.

32. While there may be a number of valid criteria that could be used to develop different fee categories, such as income level and geographic area, such an approach would be very difficult to implement in practice. Such proposals have been considered in the past for the fee categories for lawyers, but have not been found desirable. Generally, proposals to change to the categories have been found to shift the source of fee revenues from one group to another without changing overall revenues significantly. They could be particularly difficult to implement with a new cohort of licensees, about whom there is little reliable information available (e.g. number of licensees in each category).

33. This proposal was considered by the Finance Committee on September 6th, 2007.

34. Adopting the categories in By-law 5 would produce the following fee structure for paralegals:

- 100% of the annual fee: would apply to paralegal licensees who provide legal services, as defined in the *Law Society Act*, whether as practitioners or employees.

- 50% of the annual fee: would apply to paralegal licensees who are working but do not provide legal services.

- 25% of the annual fee: would apply to paralegal licensees who are *not* providing legal services *and*:

    - do not engage in any remunerative work, or
    - are in full-time attendance at a university, college or designated educational institution, or
    - are on maternity, paternity or adoption leave.

35. The Committee will give further consideration to whether exemptions from fees should be granted on the basis of age (e.g. over 65 and providing only *pro bono* legal services) or incapacity, and whether paralegal licensees may have their licences placed in abeyance if appointed to certain positions such as full-time member of the Ontario Municipal Board.

APPENDIX 1

By-Law 5 ~ EXCERPT

Made: May 1, 2007
Amended: June 28, 2007

ANNUAL FEE

PART I LICENCE TO PRACTISE LAW

Application of Part

1. This Part applies to every licensee who is licensed to practise law in Ontario as a barrister and solicitor.

REQUIREMENT TO PAY ANNUAL FEE

Requirement to pay annual fee

2. (1) Every year, a licensee shall pay an annual fee, in accordance with sections 3 and 4, unless the licensee is exempt from payment of the annual fee.

Levy for Compensation Fund

(2) An annual fee shall include a Compensation Fund levy.

AMOUNT PAYABLE AND DUE DATE

Payment due

3. (1) Subject to subsection (7), payment of an annual fee is due on January 1 every year.

Amount payable

(2) Subject to subsections (3), (4) and (6), a licensee shall pay the full amount of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee.

Same: fifty percent

(3) A licensee who does not practise law, including a licensee employed in education, in government or in a corporation in a position where he or she is not required to practise law, shall pay fifty percent of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee.

Same: twenty-five percent

(4) The following licensees shall pay twenty-five percent of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee:

1. A licensee who does not engage in any remunerative work and does not practise law.
2. A licensee who is in full-time attendance at a university, college or designated educational institution within the meaning of the *Income Tax Act* (Canada) and does not practise law.
3. A licensee who is on a maternity, paternity or adoption leave and does not practise law.

Interpretation: practising law

(5) For the purposes of subsections (3) and (4), a licensee practises law if the licensee gives any legal advice respecting the laws of Ontario or Canada or delivers the professional services of a barrister or solicitor.

COLLEGE ACCREDITATION CRITERIA

Motion

36. That Convocation,

    a. approve the Competency Profile and Accreditation Package attached to the Report of the Director of Professional Developments & Competence at Appendix 2;
    b. instruct the Director, Professional Development and Competence to distribute the accreditation materials to the colleges as soon as they are available, on or around October 2007, and
    c. authorize the Director of Professional Development & Competence to commence accrediting colleges according to the process indicated in the Report.

Background

37. The 2004 Task Force Report on Paralegal Regulation recommended that, after the 'grandparent' period, applicants for a paralegal licence should be "required to have successfully completed a college programme approved by the Law Society". Accordingly, it is necessary to set the criteria for the approval of paralegal college courses.

38. The Report of the Director of Professional Development and Competence on the proposed accreditation model, as approved by the Committee, is attached at Appendix 2. The proposed process is designed to ensure that all candidates enter the licensing process at an acceptable level of achievement and are ready to sit the Law Society's licensing examination.

Proposed timelines

39. Colleges will have until May 1, 2010 to submit an accreditation application, be approved, and establish their programme in accordance with their application. Priority consideration will be given to colleges that already have a paralegal course in place.

40. Only approved colleges will be entitled to hold themselves out as having a programme accepted by the Law Society, and following the transitional period that ends in 2010, only candidates from approved programmes will be able to apply to the licensing process.

41. Colleges with curricula that are not approved will be able to reapply and will be provided with details of the changes they must make to meet the required standards.

Development Process

42. The proposed standards were developed by the Professional Development & Competence Department in consultation with many colleges and with the Ministry of Training, Colleges and Universities.

43. The Ministry has indicated that it will not approve any further paralegal programmes until the Law Society has established its accreditation regime and is in a position to accredit paralegal programmes.

Competency Profile

44. The proposed Competency Profile, specifying the course content and the number of hours of instruction in each topic, is attached at TAB 1 of the Report. The required courses are as follows:
    a. Ethics and Professional Responsibility
    b. Practice Management/Operating a Small Business
    c. Introduction to the Legal System
    d. Torts and Contracts
    e. Legal Research/Writing
    f. Evidence and the Litigation Process
    g. Advocacy
    h. ADR – Alternative Dispute Resolution
    i. Small Claims Court
    j. Criminal/Summary Conviction Procedure
    k. Provincial Offences/Motor Vehicle Offences
    l. Administrative Law
    m. Tribunal Practice and Procedure
    n. Employment Law
    o. Residential Landlord and Tenant Law
    p. Communication/Writing
    q. Legal Accounting
    r. Legal Computer Applications
    s. Field Placement/Practicum

Accreditation Package

45. The proposed Accreditation Package is attached at TAB 2 of the Report. This includes the forms that the college must complete, the Competency Profile and other information the colleges will require to become accredited. The Accreditation Package provides that the Law Society will have the right to visit colleges, and audit their programmes, to ensure that the required standards are met and sustained.

Implementation

46. Assessment of each accreditation package will take about 8 to 10 weeks. Colleges may be asked to provide further information in support of their application.

47. Assuming the Competency Profile and Accreditation Package are approved by Convocation, they can be distributed well in advance of the previously scheduled date of December 2007, probably in mid-October, immediately following translation and production.

48. Some colleges may be in a position to offer an approved course as soon as the September 2008 academic term, depending on their ability to make the required revisions to their programmes and/or to establish new programmes that meet the standards.

The Committee's Deliberations

49. The Committee was of the view that the proposed Competency Profile and Accreditation Package are appropriate and recommend their approval.

Appendix 2

Report on Paralegal Program Accreditation

Paralegal Licensing Process

PARALEGAL STANDING COMMITTEE
FOR APPROVAL

Prepared by:

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September 2007

Report on Accreditation of Paralegal Programs
Paralegal Licensing Process

1. Pursuant to the Task Force Report on Paralegal Regulation, the Law Society of Upper Canada will approve or accredit the curricula of those academic institutions whose graduates will be presenting their official transcripts to the Law Society in support of an application to enter the licensing process.

2. The Law Society will be accrediting all paralegal programs that have curricula that meet an established set of course and competency requirements.

3. The objective of the paralegal program accreditation process is to ensure that all candidates presenting transcripts from accredited paralegal programs enter the licensing process at an acceptable level of achievement.

4. A secondary objective of the accreditation process is to allow the Law Society to dispense with an onerous and lengthy licensing assessment process in favour of assuring that the pre-licensing education adequately instructs and assesses the appropriate knowledge and skills expectations for entry-level paralegal practitioners. By assuring that all approved paralegal programs cover the same competencies, the Law Society assures that all candidates applying to be licensed have obtained the same pre-licensing education.

5. Educational institutions currently providing paralegal programming will have until May 1, 2010 to submit an accreditation application, be approved, and establish their program in accordance with their application.

6. Priority for the assessment and consideration of accreditation applications and approvals will be given to those institutions that already have a paralegal course in place.

7. Only those academic institutions that meet the accreditation requirements will be entitled to hold themselves out as having an approved paralegal program that will be accepted by the Law Society.

8. Following the transitional period that will end in 2010, only candidates from approved programs will be able to apply to the licensing process.

Accreditation Process

9. The PD&C Department has been working with various colleges and the Ministry of Training, Colleges and Universities to establish a process whereby an academic institution providing a paralegal program will have the opportunity to establish a curriculum of studies that will meet the requirements for accreditation.

10. The Ministry of Training, Colleges and Universities has indicated to the Law Society that it will not approve any further paralegal programs of study until such time that the Law Society has established its accreditation regime and begins to accredit paralegal programs.

11. A Competency Profile for Paralegal Program Accreditation has now been developed and sets out the minimum expectations for instruction and assessment in a paralegal program of studies. The Profile is attached at TAB 1.

12. The Accreditation Package to be completed by academic institutions in application for accreditation has also been developed. The Package is attached at TAB 2.

13. Assuming approval of the process and package, these materials can be made available to the academic institutions well in advance of the previously scheduled date of December 2007. They can be available by the end of October 2007 immediately following translation and production.

14. It is anticipated that the Law Society's assessment of each accreditation package received from an academic institution will take a minimum of 8 to 10 weeks following submission. It is also anticipated that in many cases, the institution will be asked to provide further or other information in support of their application for accreditation.

15. It is feasible that there may be some academic institutions that will be in a position to offer accredited programming for the September 2008 academic term. The timeline for accreditation following distribution of the packages is dependent upon the academic institutions and their ability and willingness to make the required revisions to their programs and or to establish new programs that meet the articulated standards.

Policy and Operational Requirements

16. As a measure of quality assurance, the accreditation process policies allow the Law Society to attend at the academic institution to review systems, conduct interviews or otherwise assess the information that has been provided by that institution in support of its bid to have its paralegal program accredited.

17. To assure that the accredited paralegal programs maintain an appropriate level of instruction and assessment in keeping with the competency profile for accreditation, each accredited program will be audited within the first 3 years of being accredited and within every 5 years thereafter at the discretion of the Law Society.

18. This quality assurance measure will accomplish two regulatory goals:

    a. Assure that the academic institution has implemented the required revisions to its curriculum in accordance with the approved competency profiles and accreditation package;

    b. Assure that the academic institution maintains the required standards of competence training and assessment in order to continue as an approved program of paralegal studies.

TAB 1 to Report of Director, PD&C

Competency Profile for Paralegal Program Accreditation

Course Name:	Ethics and Professional Responsibility *
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of the permitted scope of practice.
- Demonstrates an understanding of the Paralegal *Rules of Conduct*, specifically:

Rule One – Citation and Interpretation

Rule Two – Professionalism

- Demonstrates integrity (e.g., honesty, meeting financial obligations, responsibility to the Law Society, responsibility to other licensees).
- Demonstrates civility and professionalism in dealings with others (e.g., courtesy, respect, good faith, candour and fairness).
- Understands the meaning and enforceability of an undertaking.
- Maintains appropriate professional relationships with clients, other licensees, employees and others (e.g., does not engage in sexual harassment, discrimination and human rights violations, respects multi-cultural issues).

Rule Three - Duty to Clients

- Demonstrates and maintains competence (e.g., skill and knowledge, care and diligence, client service).
- Demonstrates knowledge of legal principles, substantive law and procedure related to practice area.
- Demonstrates an ability to investigate matters, ascertain client objectives, and implement appropriate courses of action to realize objectives.
- Declines to act or seeks appropriate assistance when matter is beyond own abilities.
- Declines to act when matter is outside permitted scope of practice.
- Takes appropriate steps to determine who the client is and the client's role in the matter (e.g., multiple parties, spouses/family members, business partners, corporations, authority to bind).
- Understands duties related to advising clients (e.g., honesty and candour).
- Understands the obligation to keep the client informed at all stages of the matter (e.g., advising on developments).
- Manages and updates the client's expectations with respect to timeframes, results and costs.
- Understands the obligation owed to clients under a disability (e.g., maintain normal relationship, take appropriate steps to have a lawfully authorized representative appointed).
- Demonstrates an understanding of the obligation to represent the client within the limits of the law (e.g., declines to assist or encourage dishonesty, fraud, crime or illegal conduct).

* *Please consult the Law Society of Upper Canada's Paralegal Competency Profile for a full listing of competencies tested in the Paralegal Licensing Examination.*

- Avoids becoming the tool or dupe of an unscrupulous client (e.g., proceeds of crime, evidence, fraud).
- Accepts only retainers that are reasonable under the law, capable of performance under the law and within the permissible scope of practice.
- Recognizes and fulfils duties related to confidentiality (e.g., cannot disclose without explicit or implied client consent).

Competency Profile for Paralegal Program Accreditation

Course Name:	Ethics and Professional Responsibility *
Minimum Number of Instructional Hours:	30
Competencies:	

* *Please consult the Law Society of Upper Canada's Paralegal Competency Profile for a full listing of competencies tested in the Paralegal Licensing Examination.*

- Recognizes that duties related to confidentiality survive termination of the retainer.
- Recognizes situations that constitute a conflict of interest or potential conflict of interest (e.g., where the paralegal may be disloyal to a client, his or her judgment is impaired, where the paralegal is tempted to prefer his or her own interests to those of his or her client, where the paralegal may be tempted to prefer the interests of one client over another).
- Declines to advise or represent more than one side in a dispute.
- Avoids or manages conflicts of interest (e.g., acting against a client or former client, joint retainers, transfer between paralegal firms, doing business with a client [e.g., investment by client where Paralegal has an interest, borrowing from a client, guarantees]).
- Takes appropriate action in situations where an actual or potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish privacy screen procedures where appropriate, advise the client of the consequences in the event the potential conflict materializes, documents the steps taken when a potential conflict of interest has been identified).
- Understands the obligations related to the preservation and handling of client property.
- Withdraws from representation in compliance with the *Rules of Conduct* or Rules of tribunal (e.g., good cause, notice to the client, serious loss of confidence, non-payment of fees, mandatory withdrawal in cases of discharge by client, dishonourable conduct by client, lack of competence, withdrawal from quasi criminal and criminal proceedings).

<u>Rule Four - Advocacy</u>

- Demonstrates an understanding of the obligations related to acting as an advocate (e.g., raise every issue and advance every argument, attempt to secure every lawful benefit, remedy or defence, advise and assist with the disclosure of documents).
- Understands the obligation to treat the tribunal with candour, courtesy and respect (e.g., abstain from knowingly deceiving the tribunal, abstain from harassing a witness, abstain from offering a benefit or delivering a threat to procure withdrawal of a charge).
- Recognizes issues related to interviewing witnesses (e.g., declaring the Paralegal's interest, refrain from approaching or dealing with person who is represented by another licensee without that licensee's consent, dealing with corporations).
- Recognizes issues related to communicating with witnesses providing testimony (e.g., during and after examination-in-chief, cross-examination and re-examination, during out of court examinations).
- Understands the obligations related to acting as a witness (e.g., abstain from submitting own affidavit when acting as advocate, entrust conduct of case to another licensee when acting as witness).

Competency Profile for Paralegal Program Accreditation

Course Name:	Ethics and Professional Responsibility *
Minimum Number of Instructional Hours:	30
Competencies:	

Rule Six - Duty to Administration of Justice

- Recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice).

Rule Seven – Duty to Licensees

- Avoids engaging in sharp practice (e.g., taking advantage of slips by other licensees not going to the merits or involving a sacrifice of the client's rights).
- Maintains a professional tone in communications (e.g., avoids abusive or offensive language).

Rule Nine- Responsibility to Law Society

- Demonstrates an understanding of the general duty owed to the Law Society.
- Understands the obligation to reply promptly to any communication from the Law Society.
- Demonstrates an understanding of the duty to report own or other licensee's misconduct (e.g., mishandling of trust funds, abandonment of practice, participation in criminal activity or mental instability where clients likely to be prejudiced).
- Demonstrates an understanding of the duty to self-report to the Law Society criminal charges/convictions in accordance with the By-Laws.

Competency Profile for Paralegal Program Accreditation

Course Name:	Practice Management/Operating a Small Business*
Minimum Number of Instructional Hours:	40
Competencies:	

Operating a Small Business

- Demonstrates an understanding of the different methods of business start-up (e.g., starting a business, buying a business, franchising).
- Demonstrates an understanding of the legal forms of business ownership.
- Demonstrates an understanding of the factors involved in planning the start-up of a business (e.g., acquiring insurance, business name, taxes, permits, renting an office, acquiring equipment and supplies, hiring employees, determining fees).
- Demonstrates an understanding of the strategies used to manage a business (e.g., planning, maintenance, growth, organization).

* *Please consult the Law Society of Upper Canada's Paralegal Competency Profile for a full listing of competencies tested in the Paralegal Licensing Examination.*

* *Please consult the Law Society of Upper Canada's Paralegal Competency Profile for a full listing of competencies tested in the Paralegal Licensing Examination.*

- Demonstrates an understanding of the elements of a business plan.
- Demonstrates an ability to analyse trends that may affect the business (e.g., demographic, economical, technological, cultural).
- Demonstrates an understanding of the importance of financial analysis as a success indicator.

Office Systems, Filing Systems, Technology

- Understands the obligation to maintain a conflicts checking system.
- Understands the obligation to maintain reminder systems (e.g., limitation periods, important dates).
- Demonstrates an understanding of the importance of time management.
- Maintains an electronic or written record for each matter for which the paralegal is retained.
- Understands the obligation to properly open and maintain client files (e.g., file organization, file storage, preservation of client property).
- Understands the obligation to properly store client files (e.g., closing, retaining and disposing of client files, closed file storage).
- Understands the obligation to use technology in compliance with the *Rules of Conduct* (e.g., confidentiality, conflicts, advertising, offering services).
- Understands the obligation to use technology in a competent manner (e.g., adopts adequate security measures, employs back-up and disaster recovery plans, considers obsolescence).

Financial Obligations, Fees and Retainers

- Demonstrates an understanding of Rule 5 (Fees and Retainers) of the *Rules of Conduct*.
- Meets all financial obligations (e.g., obligations incurred by the paralegal, obligations incurred on the client's behalf).
- Establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions).
- Sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, hidden fees, rates for various personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements).
- Confirms the acceptable forms of client communication in the retainer (e.g., media and timeframes).

Competency Profile for Paralegal Program Accreditation

Course Name:	Practice Management/Operating a Small Business*
Minimum Number of Instructional Hours:	40
Competencies:	

- Understands the need to manage client expectations regarding fees and nature of work (e.g., recording time spent on client matter, sending out frequent billings).
- Charges fair and reasonable fees and disbursements (e.g., based on time, effort, difficulty or special skill, disclosure of fees, non-appropriation of funds).
- Clearly delineates fees and disbursements in statement of account.
- Understands the obligation to complete tasks in an efficient, timely and cost effective manner.

Rule 8 – Practice Management

- Demonstrates an understanding of Rule 8 of the *Rules of Conduct*.

Supervision of Staff and Delegation

- Ensures that staff is properly trained to understand and adhere to relevant *Rules of Conduct* (e.g., confidentiality, conflicts, integrity, honesty, civility, discrimination and harassment).
- Delegates and supervises staff appropriately and in accordance with the *Rules of Conduct* (e.g., enhances cost efficiencies for client, does not delegate unless employee is competent and permitted to perform task, ensures employee does not provide legal services, perform work only a paralegal can perform, or hold him or herself out to be a paralegal).
- Demonstrates an understanding of human rights and workplace safety issues concerning employees.

Advertising

- Demonstrates an understanding of marketing and advertising to promote business.
- Understands the obligation to offer and advertise services ethically as per the *Rules of Conduct* (e.g., advertising in good taste, advertising which does not mislead, advertising which does not compare services or charges with other firms, advertise and offer services only within the permitted scope of practice and jurisdiction).
- Demonstrates an understanding of restrictions regarding firm name, letterhead and signs (e.g., does not mislead regarding firm, paralegals employed, jurisdiction where services are offered).

Compulsory Insurance

- Understands the requirement to maintain sufficient insurance.
- Understands the requirement to cooperate with the insurer regarding any claims made against the Paralegal.

* *Please consult the Law Society of Upper Canada's Paralegal Competency Profile for a full listing of competencies tested in the Paralegal Licensing Examination.*

Competency Profile for Paralegal Program Accreditation

Course Name:	Introduction to the Legal System
Minimum Number of Instructional Hours:	40
Competencies:	

- Demonstrates an understanding of the structure of the Canadian government/political system.
- Demonstrates an understanding of the Canadian legal system (e.g., civil vs. common law).
- Demonstrates an understanding of private law, public law, procedural law and substantive law.
- Demonstrates an understanding of legal terminology.
- Demonstrates an understanding of the organization of the Canadian court system.
- Demonstrates an understanding of jurisdiction.
- Demonstrates an understanding of the *Constitution Act*.
- Demonstrates an understanding of the *Charter.*
- Demonstrates an understanding of Property Law (e.g., real property –interests in land, systems of land registration, mortgages; intellectual property; negotiable instruments; *Personal Property Security Act*).
- Demonstrates an understanding of Business Law (e.g., corporations, partnerships, sole proprietorships and the advantages and disadvantages of each, registration of businesses).
- Demonstrates an understanding of Consumer Law (e.g., *Competition Act, Sale of Goods Act, Food and Drugs Act, Repair and Storage Liens Act, Motor Vehicle Repair Act).*

Competency Profile for Paralegal Program Accreditation

Course Name:	Torts and Contracts
Minimum Number of Instructional Hours:	30
Competencies:	

Torts

- Demonstrates an understanding of intentional torts and defences.
- Demonstrates an understanding of negligence law and defences.
- Demonstrates an understanding of occupier's liability law and defences.
- Demonstrates an understanding of strict liability law and defences.
- Demonstrates an understanding of vicarious liability law and defences.
- Demonstrates an understanding of remedies in tort law.
- Demonstrates an understanding of determination of damages.

Contracts

- Demonstrates an understanding of the elements of a valid contract (e.g., intention, offer, acceptance, consideration, legality, form).
- Demonstrates an understanding of conditions, warranties and implied terms.
- Demonstrates an understanding of privity of contract and assignment of contract rights.
- Demonstrates and understanding of contractual defects (e.g., mistake, misrepresentation, undue influence, duress).
- Demonstrates an understanding of methods of discharging a contract.
- Demonstrates an understanding of methods of breaching a contract.
- Demonstrates an understanding of remedies for breach of contract.

Competency Profile for Paralegal Program Accreditation

Course Name:	Legal Research/Writing
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an ability to research and update statutes and regulations through paper and electronic means.
- Demonstrates an ability to research and update cases through paper and electronic means.
- Demonstrates an ability to interpret and apply statutes and regulations.
- Demonstrates an ability to interpret and apply cases.
- Demonstrates ability to draft legal correspondence.
- Demonstrates an ability to draft legal memoranda.
- Demonstrates ability to draft persuasively.

Competency Profile for Paralegal Program Accreditation

Course Name:	Evidence and the Litigation Process
Minimum Number of Instructional Hours:	40
Competencies:	

Evidence

- Demonstrates an ability to apply appropriate statutory rules of evidence.
- Demonstrates an ability to apply appropriate common law rules of evidence.
- Demonstrates an understanding of the basic principles regarding admissibility of evidence (e.g., relevance, materiality, weight, prejudicial effect and probative value).
- Demonstrates an understanding of the exceptions to admissibility (e.g., hearsay, opinion, privilege, improperly obtained evidence, settlement discussions).
- Demonstrates an understanding of the different types of evidence (e.g., testimonial, documentary, real evidence; direct and circumstantial; character and opinion; similar fact evidence, admissions, confessions).
- Demonstrates an understanding of the use of expert evidence at trial (e.g., expert reports, qualifying the experts).

Litigation Process

- Demonstrates an understanding of the adversarial process.
- Demonstrates an understanding of the role of judges, counsel, and effected parties.
- Demonstrates an understanding of the legal burden of proof in criminal matters, civil matters and before administrative tribunals.
- Demonstrates an understanding of obtaining and providing timely disclosure.
- Demonstrates an understanding of the *Limitations Act.*
- Demonstrates an understanding of the commencement of proceedings
- Demonstrates an ability to identify affected parties and provide appropriate notice.
- Demonstrates an understanding of capacity, litigation guardians and parties under a disability.
- Demonstrates an understanding of the trial/hearing process (e.g., pretrial motions, applications, trial proper, decisions).
- Demonstrates an understanding of types of issues dealt with in applications and motions.
- Demonstrates an understanding of compelling witnesses.
- Demonstrates an understanding of the sequence of proceedings in a trial (e.g., opening statements, examination-in-chief, cross-examination, re-examination, closing arguments).
- Demonstrates an understanding of submissions as to cost/sentence.
- Understands the importance of ensuring a matter has been disposed of appropriately (e.g., minutes of settlement, judgment/order issued and entered, final releases, dismissal order).
- Demonstrates an understanding of the basis for appeals.

Competency Profile for Paralegal Program Accreditation

Course Name:	Advocacy
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of courtroom etiquette.
- Demonstrates an understanding of the importance of information gathering, case analysis and planning (e.g., obtain and analyse relevant facts, documents, legal issues).
- Demonstrates an ability to conduct a client interview (e.g., determine the client's goals, objectives and expectations; assessing whether these can be met through legal solutions; ascertain whether client is capable of providing instructions).
- Demonstrates an ability to obtain additional information and resources as needed (e.g., legal research, experts, specialized licensees).
- Develops and assesses theory of the case.
- Develops and analyses litigation strategy.
- Demonstrates an ability to identify the order of the evidence to be called.
- Demonstrates an understanding of the purpose and proper form of direct examination, cross-examination and re-examination.
- Demonstrates an ability to prepare and present opening statements and closing arguments.
- Demonstrates an ability to prepare own witness for, and conduct direct examinations and re-examinations.
- Demonstrates an ability to prepare for and conduct cross-examinations of witnesses of other parties.
- Participates in a mock trial or hearing.
- Demonstrates an ability to anticipate and prepare objections.
- Demonstrates an ability to introduce exhibits.
- Demonstrates an ability to prepare submissions as to costs/sentence.

Competency Profile for Paralegal Program Accreditation

Course Name:	ADR – Alternative Dispute Resolution
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of various dispute resolution mechanisms (e.g., negotiation, mediation, arbitration).
- Understands the importance of explaining to client the potential consequences of dispute resolution.

Negotiation

- Demonstrates an understanding that negotiation is an integral part of the conduct of a matter from inception to completion.
- Demonstrates an ability to identify issues that can be negotiated.
- Understands the importance of explaining to the client the potential consequences of negotiating or failing to negotiate.
- Understands the importance of obtaining instructions concerning negotiations.
- Understands the importance of preparing the client for the negotiation process.
- Demonstrates an ability to identify the strategy and tactics to be used in negotiation.
- Demonstrates an ability to use principles of effective or principled negotiation.
- Understands the importance of documenting the resolution of issues through negotiation.

Mediation and Arbitration

- Demonstrates an ability to identify issues appropriate for mediation.
- Understands the importance of explaining to the client the potential consequences of mediating or failing to mediate.
- Understands the importance of obtaining instructions concerning mediation.
- Understands the importance of preparing the client for the mediation process.
- Demonstrates an ability to identify the strategy and tactics to be used during mediation.
- Demonstrates an ability to use principles of effective and principled mediation.
- Understands the importance of documenting the resolution of issues through mediation.

Paralegal Acting as Mediator

- Understands the obligation of acting as mediator (e.g., cannot represent the parties, ensuring the parties understand the role of mediator).

Competency Profile for Paralegal Program Accreditation

Course Name:	Small Claims Court
Minimum Number of Instructional Hours:	40
Competencies:	

- Demonstrates an understanding of civil procedure and how it applies to Small Claims Court (e.g., *Rules of Civil Procedure, Small Claims Court Rules, Courts of Justice Act*).
- Demonstrates an understanding of parties (persons or entities who can sue and be sued) and joinder.
- Demonstrates an understanding of the types of claims that come before the Small Claims Court.
- Demonstrates an understanding of the commencement and defence of proceedings (Plaintiff's and Defendant's claims).
- Demonstrates an understanding of the rules regarding pleadings (e.g., content, time for delivery, form, purpose, amendment).
- Demonstrates an ability to draft pleadings.
- Demonstrates an understanding of service of process.
- Demonstrates an understanding of any notice and delivery requirements for specific documentary evidence (e.g., business records, medical and other expert reports).
- Demonstrates an understanding of disposition before trial (e.g., summary judgment, determination of issue before trial).
- Demonstrates an understanding of offers to settle and minutes of settlement.
- Demonstrates an ability to draft terms of settlement.
- Demonstrates an understanding of pre-trial conferences.
- Demonstrates an understanding of motions and applications in Small Claims Court.
- Demonstrates an ability to draft motion materials (e.g., notice of motion and affidavit).
- Demonstrates an understanding of the Small Claims Court trial.
- Demonstrates an understanding of the types of evidence presented before the Small Claims Court.
- Demonstrates an understanding of costs.
- Demonstrates an understanding of procedures related to default proceedings (e.g., documentation, calculation of interest).
- Demonstrates an understanding of enforcement of judgments (e.g., examinations in aid of execution, writs of seizure and sale, writs of delivery, garnishment).

Competency Profile for Paralegal Program Accreditation

Course Name:	Criminal/Summary Conviction Procedure
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of the elements of a crime.
- Demonstrates an understanding of relevant legislation (e.g., *Criminal Code, Charter, Controlled Drugs and Substances Act, Youth Criminal Justice Act, Rules of the Ontario Court of Justice in Criminal Proceedings*).

Course Name:	Criminal/Summary Conviction Procedure
Minimum Number of Instructional Hours:	30

Competencies:

- Demonstrates an understanding of professional responsibilities in criminal matters (e.g., duty to client, duty to the court).
- Demonstrates an understanding of the role of police, Crown, and the defendant in criminal proceedings.
- Demonstrates an understanding of investigatory powers (e.g., search and seizure, investigation and questioning of suspects).
- Demonstrates an understanding of arrest and compelling the attendance of the accused.
- Demonstrates an understanding of the classification of offences and trial jurisdiction.
- Demonstrates an understanding of summary conviction proceedings (e.g., part XXVII of the *Criminal Code*).
- Demonstrates an understanding of charging documents (e.g., information).
- Demonstrates an understanding of judicial interim release/bail.
- Demonstrates an understanding of common summary conviction offences.
- Demonstrates an understanding of defences to summary conviction offences (e.g., procedural and substantive).
- Demonstrates an understanding of disclosure obligations (by Crown, third parties and defence counsel).
- Demonstrates an understanding of diversion options.
- Demonstrates an understanding of pleas (e.g., voluntary, informed, consequences).
- Demonstrates an understanding of compelling witnesses.
- Demonstrates an understanding of criminal summary conviction trial procedure (e.g., pre-hearing conference, pretrial motions and applications, trial proper).
- Demonstrates an understanding of the types of evidence presented before the summary conviction court.
- Demonstrates an understanding of sentencing (e.g., purpose and objectives, principles of sentencing, sentencing powers and restrictions).
- Demonstrates an understanding of appeals.

Course Name:	Provincial Offences/Motor Vehicle Offences
Minimum Number of Instructional Hours:	40

Competencies:

- Demonstrates an understanding of the difference between criminal offences and provincial offences.
- Demonstrates an understanding of provincial offences procedure (e.g., *Provincial Offences Act, Courts of Justice Act*).
- Demonstrates an understanding of the role of the police, Crown, provincial offences officers and defendant in the provincial offences system.
- Demonstrates an understanding of investigatory powers (e.g., search and seizure, investigation, questioning of suspects).
- Demonstrates an understanding of the classification of offences (e.g., mens rea, absolute

Course Name:	Provincial Offences/Motor Vehicle Offences
Minimum Number of Instructional Hours:	40
Competencies:	

liability, strict liability).

- Demonstrates an understanding of the types of matters that are heard before the Provincial Offences Court (e.g., *Highway Traffic Act, Compulsory Automobile Insurance Act, Liquor Licence Act, Environmental Protection Act, Occupational Health and Safety Act, Trespass to Property Act, Blind Persons Rights Act, Charter, Municipal By-Laws*).
- Demonstrates an understanding of different procedural streams and charging documents (e.g, under parts 1, 2 and 3 of the POA).
- Demonstrates an understanding of judicial interim release / bail.
- Demonstrates an understanding of disclosure obligations (e.g., by Crown, third parties and defence counsel).
- Demonstrates an understanding of the Provincial Offences trial process (e.g., pre-hearing conference, pretrial motions and applications, trial proper).
- Demonstrates an understanding of *Charter* motions (e.g., s. 11(b)).
- Demonstrates an understanding of pleas (e.g., voluntary, informed, consequences).
- Demonstrates an understanding of the type of evidence presented at a provincial offences hearing.
- Demonstrates an understanding of compelling witnesses.
- Demonstrates an understanding of common offences under the *Highway Traffic Act* (e.g., speeding, fail to stop, improper turn, following too closely, careless driving, fail to report, fail to remain, seatbelt violations).
- Demonstrates an understanding of available defences under the *Highway Traffic Act* (e.g., procedural and substantive).
- Demonstrates an understanding of sentencing (e.g., purpose and objectives, principles of sentencing, sentencing powers and restrictions).
- Demonstrates an understanding of appeal rights.

Course Name:	Administrative Law
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of relevant primary legislation (e.g., *Judicial Review Procedure Act, Statutory Powers Procedures Act,* Human Rights Legislation*, Charter*).
- Demonstrates an understanding of the basic principles of administrative law (e.g., natural justice, fairness, discretion, bias, substantive review of public decision making).
- Demonstrates an understanding of who has standing to sue.
- Demonstrates an understanding of the differences between courts and administrative tribunals.
- Demonstrates an understanding of the general nature, functions and procedures of tribunals.
- Demonstrates an understanding of a tribunal's enabling legislation.
- Demonstrates and understanding of *Charter* claims.

Course Name:	Administrative Law
Minimum Number of Instructional Hours:	30
Competencies:	
• Demonstrates an understanding of *Charter* remedies. • Demonstrates an ability to interpret tribunal decisions. • Demonstrates an understanding of appeals, judicial review and standard of review.	

Competency Profile for Paralegal Program Accreditation

Course Name:	Tribunal Practice and Procedure
Minimum Number of Instructional Hours:	40
Competencies:	
• Demonstrates an understanding of general practice and procedure before administrative tribunals (e.g., burden of proof, who hears cases, record of proceedings, documentation, tribunal process). • Demonstrates an ability to identify and interpret enabling legislation of administrative tribunals. • Demonstrates an understanding of the tribunal hearing process (e.g., motions, applications, hearings, decisions). • Demonstrates an understanding of the sequence of proceedings in a tribunal hearing (e.g., opening statements, direct examination, cross examination, re-examination, closing arguments). • Demonstrates an understanding of the nature of evidence introduced at a tribunal hearing. • Demonstrates an understanding of the legislation, practice and procedure related to the tribunals before which a paralegal may represent a client (e.g., Social Benefits Tribunal, Financial Services Commission of Ontario, Assessment Review Board, Ontario Municipal Board; including service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant).	

Competency Profile for Paralegal Program Accreditation

Course Name:	Employment Law
Minimum Number of Instructional Hours:	30
Competencies:	
• Demonstrates an understanding of relevant legislation (e.g., *Employment Standards Act, Labour Relations Act, Human Rights Code, Workplace Safety and Insurance Act, Occupational Health and Safety Act).* • Demonstrates an understanding of the nature of the employer-employee relationship. • Demonstrates an understanding of the employment contract. • Demonstrates an understanding of employment law principles (e.g., reasonable notice, wrongful dismissal, just cause, constructive dismissal).	

Course Name:	Employment Law
Minimum Number of Instructional Hours:	30

Competencies:

- Demonstrates an understanding of human rights (e.g., harassment and discrimination).
- Demonstrates an understanding of disability and the duty to accommodate.
- Demonstrates an understanding of privacy in the workplace.
- Demonstrates an understanding of employment standards.
- Demonstrates an understanding of labour relations.
- Demonstrates an understanding of the practice and procedure related to the Workplace Safety and Insurance Board and the Workplace Safety and Insurance Appeals Tribunal (e.g., service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant).
- Demonstrates an understanding of the practice and procedure related to the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario (e.g., service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant).
- Demonstrates an understanding of the practice and procedure related to the Ontario Labour Relations Board (e.g., service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant).
- Demonstrates an understanding of the prosecution and defence of regulatory offences related to employment law.

Competency Profile for Paralegal Program Accreditation

Course Name:	Residential Landlord and Tenant Law
Minimum Number of Instructional Hours:	30

Competencies:

- Demonstrates an understanding of relevant legislation (e.g., *Residential Tenancies Act).*
- Demonstrates an understanding of the landlord, tenant relationship.
- Demonstrates an understanding of the types of tenancies.
- Demonstrates an understanding of the rights and responsibilities of the tenant.
- Demonstrates an understanding of the rights and responsibilities of the landlord.
- Demonstrates an understanding of rent control.
- Demonstrates an understanding of rules and procedures regarding the termination of tenancies (e.g., tenant termination, landlord termination, notice of termination).
- Demonstrates an understanding of the process and procedure before the Landlord and Tenant Board (e.g., service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant).
- Demonstrates an understanding of the procedures involved with different types of landlord applications.
- Demonstrates an understanding of the procedures involved with different types of tenant applications.
- Demonstrate an understanding of the type of evidence that is introduced before the tribunal to prove common allegations and defences.

Competency Profile for Paralegal Program Accreditation

Course Name:	Communication/Writing
Minimum Number of Instructional Hours:	20
Competencies:	

- Demonstrates an understanding of the importance of proper writing skills for paralegals.
- Demonstrates an understanding of sentence structure (e.g., grammar, syntax, spelling, punctuation).
- Demonstrates an understanding of the writing process (e.g., draft, revision, editing).
- Demonstrates an ability to properly organize material.
- Demonstrates an ability to draft clearly and concisely.
- Demonstrates an ability to draft client-centered materials.
- Demonstrates an ability to draft legal documents in plain language.
- Demonstrates an ability to draft legal correspondence.
- Demonstrates an ability to prepare routine legal documents.
- Demonstrates an ability to edit standard precedents.

Competency Profile for Paralegal Program Accreditation

Course Name:	Legal Accounting
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of basic accounting terminology.
- Understands and uses general accounting principles (e.g., meets financial and record keeping obligations, understands benefit of employing accountant or bookkeeper to assist).
- Demonstrates an understanding of the accounting equation.
- Demonstrates an understanding of debits and credits.
- Demonstrates an understanding of the difference between a general account and a trust account.
- Demonstrates an understanding of the Law Society's books and record keeping requirements (e.g., maintenance of appropriate trust and general books and records).
- Demonstrates an understanding of the obligations related to trust accounts (e.g., preservation of client property, types of monies to be deposited, withdrawal of trust monies).
- Demonstrates an understanding of accounting journals (in accordance with by-law).
- Demonstrates an understanding of accounting ledgers (in accordance with by-law).
- Demonstrates an ability to analyze and record transactions.
- Demonstrates an ability to adjust entries.
- Demonstrates an ability to prepare a trial balance.
- Demonstrates an understanding of financial statements.
- Demonstrates an understanding of bank reconciliations.
- Demonstrates an understanding of calculating GST.

Competency Profile for Paralegal Program Accreditation

Course Name:	Legal Computer Applications
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an ability to use computer software (e.g., word processing software, presentation software, chart and spreadsheet software, accounting software, email).
- Demonstrates an ability to format and edit documents.
- Demonstrates an ability to produce spreadsheets.
- Demonstrates an ability to produce correspondence.
- Demonstrates an ability to produce memoranda.
- Demonstrates an ability to set up and use legal forms (e.g., headings and jurats).
- Demonstrates an ability to produce legal documents (e.g., pleadings, affidavits, notices of motion, applications).
- Demonstrates an ability to edit precedents.
- Demonstrates an ability to find legal resources on the Internet.

Competency Profile for Paralegal Program Accreditation

Course Name:	Field Placement/Practicum *
Minimum Number of Instructional Hours:	120
Competencies:	

- Demonstrates an ability to prepare an employment resume in accordance with professional legal standards.
- Demonstrates professional behaviour (e.g., consistent attendance and punctuality, reliability, professional demeanour and appearance).
- Demonstrates an understanding of the operations, functions and procedures of the work environment.
- Demonstrates an ability to apply academic skills and knowledge to a practical work setting.
- Demonstrates a willingness to perform all assigned duties in a careful and diligent manner.
- Demonstrates an ability to meet deadlines.
- Demonstrates an ability to respond accurately to written and oral instructions.
- Demonstrates appropriate time management skills.
- Demonstrates an ability to problem solve.
- Demonstrates appropriate interpersonal skills.
- Demonstrates an ability to adapt behaviour in response to professional feedback.
- Demonstrates an ability to use legal precedents, resources and files.
- Demonstrate an ability to adequately analyze the field placement experience.

* *Evaluation of these competencies will be measured by way of a report prepared by the student and the field placement/practicum employer*

TAB 2 to Report of Director, PD&C

ACCREDITATION PROCESS FOR PARALEGAL PROGRAMS

I. INTRODUCTION AND OVERVIEW

In January 2004, the Attorney General of Ontario asked the Law Society of Upper Canada (Law Society) to expand its public interest mandate to include paralegals. The *Access to Justice Act* received Royal Assent in October 2006. This Act mandates the Law Society to govern and regulate lawyers practising law and paralegals providing legal services in Ontario in the public interest.

The underlying rationale for regulating paralegals is to provide consumer protection, particularly in the case of vulnerable clients, and to ensure that consumers have access to alternative competent and high quality legal service providers.

As part of its mandate the Law Society will be accrediting paralegal programs in Ontario, approved by the Ministry of Training, Colleges and Universities (MTCU). These programs are required to include, at a minimum, certain fundamental courses that cover the essential elements of procedural and substantive practice as well as ethical and responsible practice.

Specifically, the paralegal program must offer a minimum of 830 program hours which are comprised of the following: 590 instructional hours in compulsory legal courses within a paralegal's permitted scope of practice (see Section 6 of By-Law 4, attached as Appendix 1 for the areas within the permitted scope of practice) and 120 hours of field placement/practicum work experience. The compulsory legal courses and field placement/practicum component of the program must meet the course structure and competencies set out by the Law Society in the *Paralegal Program Accreditation Course List* attached as Appendix 2, and the *Competency Profile for Paralegal Program Accreditation* attached as Appendix 3. Each educational institution may choose the order in which the courses are offered in their program. Finally, the program must include an additional 120 instructional hours in courses which relate to or support a well-rounded college graduate. If these courses are legal in nature, they cannot fall outside of a licensed paralegal's permitted scope of practice.

Graduates of accredited paralegal programs will be eligible to apply to write the Paralegal Licensing Examination, which in addition to other requirements, must be completed to qualify for a licence to practise as a paralegal in Ontario.

II. ACCREDITATION APPLICATION

To be eligible to receive accreditation, a Paralegal Program approved by the MTCU must submit 2 completed copies of the Accreditation Application (Application). Please ensure the Application is completed in accordance with the enclosed document – *Procedure for Applying for Accreditation of Paralegal Education Programs.*

III. REVIEW OF SUBMITTED ACCREDITATION APPLICATION PACKAGE

The Law Society will review the Application for completeness and will provide a letter of acknowledgement once the Application is received. If a review of the Application reveals that the program does not meet one or more of the requirements or competencies listed in the *Competency Profile for Paralegal Program Accreditation* (Appendix 3) or if additional information or revisions are required to complete the Application or to assess compliance, the Law Society will notify the educational institution and will provide specific details regarding the information that is necessary to complete the process. The institution will then be given an opportunity to respond and the Law Society will reconsider the Application.

IV. CHANGES TO PROGRAM/CURRICULA

Each accredited paralegal program also has an affirmative responsibility to notify the Law Society in writing of any major change that affects its program at the time the change is made or should have been discovered. A major change would include changes to course structure or changes to individual courses that affect compliance with the mandatory requirements and competencies. Changes in program directorship must also be reported.

V. AUDITING / PROGRAM SITE VISIT

The Law Society reserves the right to audit approved paralegal programs. A program site visit will be conducted to validate the information submitted by each institution and assess the effectiveness of program content and processes. Every accredited program will be audited within the first three years of being accredited and within every five years thereafter, at the discretion of the Law Society.

Program directors will be required to verify that the information submitted in the Application is still accurate and should provide a supplement in advance of the time of the visit if changes have been made or are contemplated.

The program site visit may consist of, but is not limited to, the following activities:

1. Meetings with the program director/administrator/dean/chair/coordinator.
2. Meetings with a representative group of students.
3. Meetings with the faculty.
4. Observation of legal specialty classes in session.
5. A tour of the facilities, including the library, computer labs and classrooms.
6. Meetings with key administrators and staff, such as the field placement co-ordinator.
7. Review of records, such as faculty evaluations, student files, and samples of student work.

A draft agenda for the program visit will be sent to the program director when a visit is scheduled. The program director will review the agenda and may suggest changes to the schedule. The schedule will then be finalized by the Law Society.

VI. PRIOR LEARNING ASSESSMENT AND TRANSFERRING CREDITS

The development and articulation of Prior Learning Assessment policies as well as transferring course credits from one educational institution to another will be the sole responsibility of each educational institution.

VII. LIST OF ACCREDITED PARALEGAL PROGRAMS

A list of accredited paralegal programs will be published on the Law Society's website at www.lsuc.on.ca.

Appendix 1
Law Society of Upper Canada – Paralegal Education Program Accreditation

Law Society of Upper Canada By-Law 4, Section 6

Scope of activities

Class P1

Interpretation

6. (1) In this section, unless the context requires otherwise,

"claim" means a claim for statutory accident benefits within the meaning of the *Insurance Act*, excluding a claim of an individual who has or appears to have a catastrophic impairment within the meaning of the Statutory Accident Benefits Schedule;

"party" means a party to a proceeding;

"proceeding" means a proceeding or intended proceeding,

(a) in the Small Claims Court,

(b) in the Ontario Court of Justice under the *Provincial Offences Act*,

(c) in a summary conviction court under the *Criminal Code* (Canada),

(d) before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, or

(e) before a person dealing with a claim or a matter related to a claim, including a mediator, a person performing an evaluation, an arbitrator or the Director acting under section 280, 280.1, 282 or 283 or 284, respectively, of the *Insurance Act*;

"Statutory Accident Benefits Schedule" means the Statutory Accident Benefits Schedule within the meaning of the *Insurance Act*.

Activities authorized

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class P1 licence is authorized to do any of the following:

1. Give a party advice on his, her or its legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

2. Represent a party before,

   i. in the case of a proceeding in the Small Claims Court, before the Small Claims Court,
   ii. in the case of a proceeding under the *Provincial Offences Act*, before the Ontario Court of Justice,
   iii. in the case of a proceeding under the *Criminal Code*, before a summary conviction court,
   iv. in the case of a proceeding before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, before the tribunal, and
   v. in the case of a proceeding before a person dealing with a claim or a matter related to a claim, before the person.

3. Anything mentioned in subsection 1 (7) of the Act, provided the activity is required by the rules of procedure governing a proceeding.

4. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document for use in a proceeding.

5. Negotiate a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

6. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document that affects a party's legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

Appendix 2
Law Society of Upper Canada – Paralegal Education Program Accreditation

Paralegal Program Accreditation Course List

Course Name	Minimum Total Number of Instructional Hours
Ethics and Professional Responsibility	30
Practice Management/Operating a Small Business	40
Introduction to the Legal System	40
Torts and Contracts	30
Legal Research/Writing	30
Evidence and the Litigation Process	40
Advocacy	30
ADR – Alternative Dispute Resolution	30
Small Claims Court	40
Criminal/Summary Conviction Procedure	30
Provincial Offences/Motor Vehicle Offences	40
Administrative Law	30
Tribunal Practice and Procedure	40
Employment Law	30
Residential Landlord and Tenant Law	30
Communication/Writing	20
Legal Accounting	30
Legal Computer Applications	30
Field Placement/Practicum	120

Appendix 3 - Competency Profile for Paralegal Education Program Accreditation

Course Name:	Ethics and Professional Responsibility *
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of the permitted scope of practice.
- Demonstrates an understanding of the Paralegal *Rules of Conduct*, specifically:

Rule One – Citation and Interpretation

Rule Two – Professionalism

- Demonstrates integrity (e.g., honesty, meeting financial obligations, responsibility to the Law Society, responsibility to other licensees).
- Demonstrates civility and professionalism in dealings with others (e.g., courtesy, respect, good faith, candour and fairness).
- Understands the meaning and enforceability of an undertaking.
- Maintains appropriate professional relationships with clients, other licensees, employees and others (e.g., does not engage in sexual harassment, discrimination and human rights violations, respects multi-cultural issues).

Rule Three - Duty to Clients

- Demonstrates and maintains competence (e.g., skill and knowledge, care and diligence, client service).
- Demonstrates knowledge of legal principles, substantive law and procedure related to practice area.
- Demonstrates an ability to investigate matters, ascertain client objectives, and implement appropriate courses of action to realize objectives.
- Declines to act or seeks appropriate assistance when matter is beyond own abilities.
- Declines to act when matter is outside permitted scope of practice.
- Takes appropriate steps to determine who the client is and the client's role in the matter (e.g., multiple parties, spouses/family members, business partners, corporations, authority to bind).
- Understands duties related to advising clients (e.g., honesty and candour).
- Understands the obligation to keep the client informed at all stages of the matter (e.g., advising on developments).
- Manages and updates the client's expectations with respect to timeframes, results and costs.
- Understands the obligation owed to clients under a disability (e.g., maintain normal relationship, take appropriate steps to have a lawfully authorized representative appointed).
- Demonstrates an understanding of the obligation to represent the client within the limits of the law (e.g., declines to assist or encourage dishonesty, fraud, crime or illegal conduct).
- Avoids becoming the tool or dupe of an unscrupulous client (e.g., proceeds of crime, evidence, fraud).
- Accepts only retainers that are reasonable under the law, capable of performance under the

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law and within the permissible scope of practice.
- Recognizes and fulfils duties related to confidentiality (e.g., cannot disclose without explicit or implied client consent).

Course Name:	Ethics and Professional Responsibility *
Minimum Number of Instructional Hours:	30
Competencies:	

- Recognizes that duties related to confidentiality survive termination of the retainer.
- Recognizes situations that constitute a conflict of interest or potential conflict of interest (e.g., where the paralegal may be disloyal to a client, his or her judgment is impaired, where the paralegal is tempted to prefer his or her own interests to those of his or her client, where the paralegal may be tempted to prefer the interests of one client over another).
- Declines to advise or represent more than one side in a dispute.
- Avoids or manages conflicts of interest (e.g., acting against a client or former client, joint retainers, transfer between paralegal firms, doing business with a client [e.g., investment by client where Paralegal has an interest, borrowing from a client, guarantees]).
- Takes appropriate action in situations where an actual or potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish privacy screen procedures where appropriate, advise the client of the consequences in the event the potential conflict materializes, documents the steps taken when a potential conflict of interest has been identified).
- Understands the obligations related to the preservation and handling of client property.
- Withdraws from representation in compliance with the *Rules of Conduct* or Rules of tribunal (e.g., good cause, notice to the client, serious loss of confidence, non-payment of fees, mandatory withdrawal in cases of discharge by client, dishonourable conduct by client, lack of competence, withdrawal from quasi criminal and criminal proceedings).

<u>Rule Four - Advocacy</u>

- Demonstrates an understanding of the obligations related to acting as an advocate (e.g., raise every issue and advance every argument, attempt to secure every lawful benefit, remedy or defence, advise and assist with the disclosure of documents).
- Understands the obligation to treat the tribunal with candour, courtesy and respect (e.g., abstain from knowingly deceiving the tribunal, abstain from harassing a witness, abstain from offering a benefit or delivering a threat to procure withdrawal of a charge).
- Recognizes issues related to interviewing witnesses (e.g., declaring the Paralegal's interest, refrain from approaching or dealing with person who is represented by another licensee without that licensee's consent, dealing with corporations).
- Recognizes issues related to communicating with witnesses providing testimony (e.g., during and after examination-in-chief, cross-examination and re-examination, during out of court examinations).
- Understands the obligations related to acting as a witness (e.g., abstain from submitting own affidavit when acting as advocate, entrust conduct of case to another licensee when acting as witness).

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Course Name:	Ethics and Professional Responsibility *
Minimum Number of Instructional Hours:	30
Competencies:	

Rule Six - Duty to Administration of Justice

- Recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice).

Rule Seven – Duty to Licensees

- Avoids engaging in sharp practice (e.g., taking advantage of slips by other licensees not going to the merits or involving a sacrifice of the client's rights).
- Maintains a professional tone in communications (e.g., avoids abusive or offensive language).

Rule Nine- Responsibility to Law Society

- Demonstrates an understanding of the general duty owed to the Law Society.
- Understands the obligation to reply promptly to any communication from the Law Society.
- Demonstrates an understanding of the duty to report own or other licensee's misconduct (e.g., mishandling of trust funds, abandonment of practice, participation in criminal activity or mental instability where clients likely to be prejudiced).
- Demonstrates an understanding of the duty to self-report to the Law Society criminal charges/convictions in accordance with the By-Laws.

Course Name:	Practice Management/Operating a Small Business*
Minimum Number of Instructional Hours:	40
Competencies:	

Operating a Small Business

- Demonstrates an understanding of the different methods of business start-up (e.g., starting a business, buying a business, franchising).
- Demonstrates an understanding of the legal forms of business ownership.
- Demonstrates an understanding of the factors involved in planning the start-up of a business (e.g., acquiring insurance, business name, taxes, permits, renting an office, acquiring equipment and supplies, hiring employees, determining fees).
- Demonstrates an understanding of the strategies used to manage a business (e.g., planning, maintenance, growth, organization).
- Demonstrates an understanding of the elements of a business plan.
- Demonstrates an ability to analyse trends that may affect the business (e.g., demographic,

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economical, technological, cultural).
- Demonstrates an understanding of the importance of financial analysis as a success indicator.

Office Systems, Filing Systems, Technology
- Understands the obligation to maintain a conflicts checking system.
- Understands the obligation to maintain reminder systems (e.g., limitation periods, important dates).
- Demonstrates an understanding of the importance of time management.
- Maintains an electronic or written record for each matter for which the paralegal is retained.
- Understands the obligation to properly open and maintain client files (e.g., file organization, file storage, preservation of client property).
- Understands the obligation to properly store client files (e.g., closing, retaining and disposing of client files, closed file storage).
- Understands the obligation to use technology in compliance with the *Rules of Conduct* (e.g., confidentiality, conflicts, advertising, offering services).
- Understands the obligation to use technology in a competent manner (e.g., adopts adequate security measures, employs back-up and disaster recovery plans, considers obsolescence).

Financial Obligations, Fees and Retainers
- Demonstrates an understanding of Rule 5 (Fees and Retainers) of the *Rules of Conduct*.
- Meets all financial obligations (e.g., obligations incurred by the paralegal, obligations incurred on the client's behalf).
- Establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions).
- Sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, hidden fees, rates for various personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements).
- Confirms the acceptable forms of client communication in the retainer (e.g., media and timeframes).

Course Name:	Practice Management/Operating a Small Business*
Minimum Number of Instructional Hours:	40

Competencies:

- Understands the need to manage client expectations regarding fees and nature of work (e.g., recording time spent on client matter, sending out frequent billings).
- Charges fair and reasonable fees and disbursements (e.g., based on time, effort, difficulty or special skill, disclosure of fees, non-appropriation of funds).
- Clearly delineates fees and disbursements in statement of account.
- Understands the obligation to complete tasks in an efficient, timely and cost effective manner.

Rule 8 – Practice Management

- Demonstrates an understanding of Rule 8 of the *Rules of Conduct*.

Supervision of Staff and Delegation

- Ensures that staff is properly trained to understand and adhere to relevant *Rules of Conduct* (e.g., confidentiality, conflicts, integrity, honesty, civility, discrimination and harassment).
- Delegates and supervises staff appropriately and in accordance with the *Rules of Conduct* (e.g., enhances cost efficiencies for client, does not delegate unless employee is competent and permitted to perform task, ensures employee does not provide legal services, perform work only a paralegal can perform, or hold him or herself out to be a paralegal).
- Demonstrates an understanding of human rights and workplace safety issues concerning employees.

Advertising

- Demonstrates an understanding of marketing and advertising to promote business.
- Understands the obligation to offer and advertise services ethically as per the *Rules of Conduct* (e.g., advertising in good taste, advertising which does not mislead, advertising which does not compare services or charges with other firms, advertise and offer services only within the permitted scope of practice and jurisdiction).
- Demonstrates an understanding of restrictions regarding firm name, letterhead and signs (e.g., does not mislead regarding firm, paralegals employed, jurisdiction where services are offered).

Compulsory Insurance

- Understands the requirement to maintain sufficient insurance.
- Understands the requirement to cooperate with the insurer regarding any claims made against the Paralegal.

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Course Name:	Introduction to the Legal System
Minimum Number of Instructional Hours:	40

Competencies:

- Demonstrates an understanding of the structure of the Canadian government/political system.
- Demonstrates an understanding of the Canadian legal system (e.g., civil vs. common law).
- Demonstrates an understanding of private law, public law, procedural law and substantive law.
- Demonstrates an understanding of legal terminology.
- Demonstrates an understanding of the organization of the Canadian court system.
- Demonstrates an understanding of jurisdiction.
- Demonstrates an understanding of the *Constitution Act*.
- Demonstrates an understanding of the *Charter.*
- Demonstrates an understanding of Property Law (e.g., real property –interests in land, systems of land registration, mortgages; intellectual property; negotiable instruments; *Personal Property Security Act*).
- Demonstrates an understanding of Business Law (e.g., corporations, partnerships, sole proprietorships and the advantages and disadvantages of each, registration of businesses).
- Demonstrates an understanding of Consumer Law (e.g., *Competition Act, Sale of Goods Act, Food and Drugs Act, Repair and Storage Liens Act, Motor Vehicle Repair Act).*

Course Name:	Torts and Contracts
Minimum Number of Instructional Hours:	30

Competencies:

<u>Torts</u>

- Demonstrates an understanding of intentional torts and defences.
- Demonstrates an understanding of negligence law and defences.
- Demonstrates an understanding of occupier's liability law and defences.
- Demonstrates an understanding of strict liability law and defences.
- Demonstrates an understanding of vicarious liability law and defences.
- Demonstrates an understanding of remedies in tort law.
- Demonstrates an understanding of determination of damages.

<u>Contracts</u>

- Demonstrates an understanding of the elements of a valid contract (e.g., intention, offer, acceptance, consideration, legality, form).
- Demonstrates an understanding of conditions, warranties and implied terms.
- Demonstrates an understanding of privity of contract and assignment of contract rights.
- Demonstrates and understanding of contractual defects (e.g., mistake, misrepresentation, undue influence, duress).
- Demonstrates an understanding of methods of discharging a contract.
- Demonstrates an understanding of methods of breaching a contract.
- Demonstrates an understanding of remedies for breach of contract.

Course Name:	Legal Research/Writing
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an ability to research and update statutes and regulations through paper and electronic means.
- Demonstrates an ability to research and update cases through paper and electronic means.
- Demonstrates an ability to interpret and apply statutes and regulations.
- Demonstrates an ability to interpret and apply cases.
- Demonstrates ability to draft legal correspondence.
- Demonstrates an ability to draft legal memoranda.
- Demonstrates ability to draft persuasively.

Course Name:	Evidence and the Litigation Process
Minimum Number of Instructional Hours:	40
Competencies:	

<u>Evidence</u>

- Demonstrates an ability to apply appropriate statutory rules of evidence.
- Demonstrates an ability to apply appropriate common law rules of evidence.
- Demonstrates an understanding of the basic principles regarding admissibility of evidence (e.g., relevance, materiality, weight, prejudicial effect and probative value).
- Demonstrates an understanding of the exceptions to admissibility (e.g., hearsay, opinion, privilege, improperly obtained evidence, settlement discussions).
- Demonstrates an understanding of the different types of evidence (e.g., testimonial, documentary, real evidence; direct and circumstantial; character and opinion; similar fact evidence, admissions, confessions).
- Demonstrates an understanding of the use of expert evidence at trial (e.g., expert reports, qualifying the experts).

<u>Litigation Process</u>

- Demonstrates an understanding of the adversarial process.
- Demonstrates an understanding of the role of judges, counsel, and effected parties.
- Demonstrates an understanding of the legal burden of proof in criminal matters, civil matters and before administrative tribunals.
- Demonstrates an understanding of obtaining and providing timely disclosure.
- Demonstrates an understanding of the *Limitations Act.*
- Demonstrates an understanding of the commencement of proceedings
- Demonstrates an ability to identify affected parties and provide appropriate notice.
- Demonstrates an understanding of capacity, litigation guardians and parties under a disability.
- Demonstrates an understanding of the trial/hearing process (e.g., pretrial motions, applications, trial proper, decisions).
- Demonstrates an understanding of types of issues dealt with in applications and motions.
- Demonstrates an understanding of compelling witnesses.
- Demonstrates an understanding of the sequence of proceedings in a trial (e.g., opening

Course Name:	Evidence and the Litigation Process
Minimum Number of Instructional Hours:	40
Competencies:	

statements, examination-in-chief, cross-examination, re-examination, closing arguments).
- Demonstrates an understanding of submissions as to cost/sentence.
- Understands the importance of ensuring a matter has been disposed of appropriately (e.g., minutes of settlement, judgment/order issued and entered, final releases, dismissal order).
- Demonstrates an understanding of the basis for appeals.

Course Name:	Advocacy
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of courtroom etiquette.
- Demonstrates an understanding of the importance of information gathering, case analysis and planning (e.g., obtain and analyse relevant facts, documents, legal issues).
- Demonstrates an ability to conduct a client interview (e.g., determine the client's goals, objectives and expectations; assessing whether these can be met through legal solutions; ascertain whether client is capable of providing instructions).
- Demonstrates an ability to obtain additional information and resources as needed (e.g., legal research, experts, specialized licensees).
- Develops and assesses theory of the case.
- Develops and analyses litigation strategy.
- Demonstrates an ability to identify the order of the evidence to be called.
- Demonstrates an understanding of the purpose and proper form of direct examination, cross-examination and re-examination.
- Demonstrates an ability to prepare and present opening statements and closing arguments.
- Demonstrates an ability to prepare own witness for, and conduct direct examinations and re-examinations.
- Demonstrates an ability to prepare for and conduct cross-examinations of witnesses of other parties.
- Participates in a mock trial or hearing.
- Demonstrates an ability to anticipate and prepare objections.
- Demonstrates an ability to introduce exhibits.
- Demonstrates an ability to prepare submissions as to costs/sentence.

Course Name:	ADR – Alternative Dispute Resolution
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of various dispute resolution mechanisms (e.g., negotiation, mediation, arbitration).
- Understands the importance of explaining to client the potential consequences of dispute resolution.

Negotiation

- Demonstrates an understanding that negotiation is an integral part of the conduct of a matter from inception to completion.
- Demonstrates an ability to identify issues that can be negotiated.
- Understands the importance of explaining to the client the potential consequences of negotiating or failing to negotiate.
- Understands the importance of obtaining instructions concerning negotiations.
- Understands the importance of preparing the client for the negotiation process.
- Demonstrates an ability to identify the strategy and tactics to be used in negotiation.
- Demonstrates an ability to use principles of effective or principled negotiation.
- Understands the importance of documenting the resolution of issues through negotiation.

Mediation and Arbitration

- Demonstrates an ability to identify issues appropriate for mediation.
- Understands the importance of explaining to the client the potential consequences of mediating or failing to mediate.
- Understands the importance of obtaining instructions concerning mediation.
- Understands the importance of preparing the client for the mediation process.
- Demonstrates an ability to identify the strategy and tactics to be used during mediation.
- Demonstrates an ability to use principles of effective and principled mediation.
- Understands the importance of documenting the resolution of issues through mediation.

Paralegal Acting as Mediator

- Understands the obligation of acting as mediator (e.g., cannot represent the parties, ensuring the parties understand the role of mediator).

Course Name:	Small Claims Court
Minimum Number of Instructional Hours:	40
Competencies:	

- Demonstrates an understanding of civil procedure and how it applies to Small Claims Court (e.g., *Rules of Civil Procedure, Small Claims Court Rules, Courts of Justice Act*).
- Demonstrates an understanding of parties (persons or entities who can sue and be sued) and joinder.
- Demonstrates an understanding of the types of claims that come before the Small Claims Court.

Course Name:	Small Claims Court
Minimum Number of Instructional Hours:	40

Competencies:

- Demonstrates an understanding of the commencement and defence of proceedings (Plaintiff's and Defendant's claims).
- Demonstrates an understanding of the rules regarding pleadings (e.g., content, time for delivery, form, purpose, amendment).
- Demonstrates an ability to draft pleadings.
- Demonstrates an understanding of service of process.
- Demonstrates an understanding of any notice and delivery requirements for specific documentary evidence (e.g., business records, medical and other expert reports).
- Demonstrates an understanding of disposition before trial (e.g., summary judgment, determination of issue before trial).
- Demonstrates an understanding of offers to settle and minutes of settlement.
- Demonstrates an ability to draft terms of settlement.
- Demonstrates an understanding of pre-trial conferences.
- Demonstrates an understanding of motions and applications in Small Claims Court.
- Demonstrates an ability to draft motion materials (e.g., notice of motion and affidavit).
- Demonstrates an understanding of the Small Claims Court trial.
- Demonstrates an understanding of the types of evidence presented before the Small Claims Court.
- Demonstrates an understanding of costs.
- Demonstrates an understanding of procedures related to default proceedings (e.g., documentation, calculation of interest).
- Demonstrates an understanding of enforcement of judgments (e.g., examinations in aid of execution, writs of seizure and sale, writs of delivery, garnishment).

Course Name:	Criminal/Summary Conviction Procedure
Minimum Number of Instructional Hours:	30

Competencies:

- Demonstrates an understanding of the elements of a crime.
- Demonstrates an understanding of relevant legislation (e.g., *Criminal Code, Charter, Controlled Drugs and Substances Act, Youth Criminal Justice Act, Rules of the Ontario Court of Justice in Criminal Proceedings*).
- Demonstrates an understanding of professional responsibilities in criminal matters (e.g., duty to client, duty to the court).
- Demonstrates an understanding of the role of police, Crown, and the defendant in criminal proceedings.
- Demonstrates an understanding of investigatory powers (e.g., search and seizure, investigation and questioning of suspects).
- Demonstrates an understanding of arrest and compelling the attendance of the accused.
- Demonstrates an understanding of the classification of offences and trial jurisdiction.
- Demonstrates an understanding of summary conviction proceedings (e.g., part XXVII of the *Criminal Code*).

Course Name:	Criminal/Summary Conviction Procedure
Minimum Number of Instructional Hours:	30

Competencies:

- Demonstrates an understanding of charging documents (e.g., information).
- Demonstrates an understanding of judicial interim release/bail.
- Demonstrates an understanding of common summary conviction offences.
- Demonstrates an understanding of defences to summary conviction offences (e.g., procedural and substantive).
- Demonstrates an understanding of disclosure obligations (by Crown, third parties and defence counsel).
- Demonstrates an understanding of diversion options.
- Demonstrates an understanding of pleas (e.g., voluntary, informed, consequences).
- Demonstrates an understanding of compelling witnesses.
- Demonstrates an understanding of criminal summary conviction trial procedure (e.g., pre-hearing conference, pretrial motions and applications, trial proper).
- Demonstrates an understanding of the types of evidence presented before the summary conviction court.
- Demonstrates an understanding of sentencing (e.g., purpose and objectives, principles of sentencing, sentencing powers and restrictions).
- Demonstrates an understanding of appeals.

Course Name:	Provincial Offences/Motor Vehicle Offences
Minimum Number of Instructional Hours:	40

Competencies:

- Demonstrates an understanding of the difference between criminal offences and provincial offences.
- Demonstrates an understanding of provincial offences procedure (e.g., *Provincial Offences Act, Courts of Justice Act*).
- Demonstrates an understanding of the role of the police, Crown, provincial offences officers and defendant in the provincial offences system.
- Demonstrates an understanding of investigatory powers (e.g., search and seizure, investigation, questioning of suspects).
- Demonstrates an understanding of the classification of offences (e.g., mens rea, absolute liability, strict liability).
- Demonstrates an understanding of the types of matters that are heard before the Provincial Offences Court (e.g., *Highway Traffic Act, Compulsory Automobile Insurance Act, Liquor Licence Act, Environmental Protection Act, Occupational Health and Safety Act, Trespass to Property Act, Blind Persons Rights Act, Charter, Municipal By-Laws*).
- Demonstrates an understanding of different procedural streams and charging documents (e.g, under parts 1, 2 and 3 of the POA).
- Demonstrates an understanding of judicial interim release / bail.
- Demonstrates an understanding of disclosure obligations (e.g., by Crown, third parties and defence counsel).
- Demonstrates an understanding of the Provincial Offences trial process (e.g., pre-hearing conference, pretrial motions and applications, trial proper).

Course Name:	Provincial Offences/Motor Vehicle Offences
Minimum Number of Instructional Hours:	40

Competencies:

- Demonstrates an understanding of *Charter* motions (e.g., s. 11(b)).
- Demonstrates an understanding of pleas (e.g., voluntary, informed, consequences).
- Demonstrates an understanding of the type of evidence presented at a provincial offences hearing.
- Demonstrates an understanding of compelling witnesses.
- Demonstrates an understanding of common offences under the *Highway Traffic Act* (e.g., speeding, fail to stop, improper turn, following too closely, careless driving, fail to report, fail to remain, seatbelt violations).
- Demonstrates an understanding of available defences under the *Highway Traffic Act* (e.g., procedural and substantive).
- Demonstrates an understanding of sentencing (e.g., purpose and objectives, principles of sentencing, sentencing powers and restrictions).
- Demonstrates an understanding of appeal rights.

Course Name:	Administrative Law
Minimum Number of Instructional Hours:	30

Competencies:

- Demonstrates an understanding of relevant primary legislation (e.g., *Judicial Review Procedure Act, Statutory Powers Procedures Act,* Human Rights Legislation*, Charter*).
- Demonstrates an understanding of the basic principles of administrative law (e.g., natural justice, fairness, discretion, bias, substantive review of public decision making).
- Demonstrates an understanding of who has standing to sue.
- Demonstrates an understanding of the differences between courts and administrative tribunals.
- Demonstrates an understanding of the general nature, functions and procedures of tribunals.
- Demonstrates an understanding of a tribunal's enabling legislation.
- Demonstrates and understanding of *Charter* claims.
- Demonstrates an understanding of *Charter* remedies.
- Demonstrates an ability to interpret tribunal decisions.
- Demonstrates an understanding of appeals, judicial review and standard of review.

Course Name:	Tribunal Practice and Procedure
Minimum Number of Instructional Hours:	40
Competencies:	

- Demonstrates an understanding of general practice and procedure before administrative tribunals (e.g., burden of proof, who hears cases, record of proceedings, documentation, tribunal process).
- Demonstrates an ability to identify and interpret enabling legislation of administrative tribunals.
- Demonstrates an understanding of the tribunal hearing process (e.g., motions, applications, hearings, decisions).
- Demonstrates an understanding of the sequence of proceedings in a tribunal hearing (e.g., opening statements, direct examination, cross examination, re-examination, closing arguments).
- Demonstrates an understanding of the nature of evidence introduced at a tribunal hearing.
- Demonstrates an understanding of the legislation, practice and procedure related to the tribunals before which a paralegal may represent a client (e.g., Social Benefits Tribunal, Financial Services Commission of Ontario, Assessment Review Board, Ontario Municipal Board; including service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant).

Course Name:	Employment Law
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of relevant legislation (e.g., *Employment Standards Act, Labour Relations Act, Human Rights Code, Workplace Safety and Insurance Act, Occupational Health and Safety Act).*
- Demonstrates an understanding of the nature of the employer-employee relationship.
- Demonstrates an understanding of the employment contract.
- Demonstrates an understanding of employment law principles (e.g., reasonable notice, wrongful dismissal, just cause, constructive dismissal).
- Demonstrates an understanding of human rights (e.g., harassment and discrimination).
- Demonstrates an understanding of disability and the duty to accommodate.
- Demonstrates an understanding of privacy in the workplace.
- Demonstrates an understanding of employment standards.
- Demonstrates an understanding of labour relations.
- Demonstrates an understanding of the practice and procedure related to the Workplace Safety and Insurance Board and the Workplace Safety and Insurance Appeals Tribunal (e.g., service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant).
- Demonstrates an understanding of the practice and procedure related to the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario (e.g., service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant).
- Demonstrates an understanding of the practice and procedure related to the Ontario Labour

Course Name:	Employment Law
Minimum Number of Instructional Hours:	30
Competencies:	
Relations Board (e.g., service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant). • Demonstrates an understanding of the prosecution and defence of regulatory offences related to employment law.	

Course Name:	Residential Landlord and Tenant Law
Minimum Number of Instructional Hours:	30
Competencies:	
• Demonstrates an understanding of relevant legislation (e.g., *Residential Tenancies Act).* • Demonstrates an understanding of the landlord, tenant relationship. • Demonstrates an understanding of the types of tenancies. • Demonstrates an understanding of the rights and responsibilities of the tenant. • Demonstrates an understanding of the rights and responsibilities of the landlord. • Demonstrates an understanding of rent control. • Demonstrates an understanding of rules and procedures regarding the termination of tenancies (e.g., tenant termination, landlord termination, notice of termination). • Demonstrates an understanding of the process and procedure before the Landlord and Tenant Board (e.g., service requirements, time limits, parties, witnesses, evidence, types of relief the Board can grant). • Demonstrates an understanding of the procedures involved with different types of landlord applications. • Demonstrates an understanding of the procedures involved with different types of tenant applications. • Demonstrate an understanding of the type of evidence that is introduced before the tribunal to prove common allegations and defences.	

Course Name:	Communication/Writing
Minimum Number of Instructional Hours:	20
Competencies:	
• Demonstrates an understanding of the importance of proper writing skills for paralegals. • Demonstrates an understanding of sentence structure (e.g., grammar, syntax, spelling, punctuation). • Demonstrates an understanding of the writing process (e.g., draft, revision, editing). • Demonstrates an ability to properly organize material. • Demonstrates an ability to draft clearly and concisely. • Demonstrates an ability to draft client-centered materials. • Demonstrates an ability to draft legal documents in plain language.	

Course Name:	Communication/Writing
Minimum Number of Instructional Hours:	20
Competencies:	

- Demonstrates an ability to draft legal correspondence.
- Demonstrates an ability to prepare routine legal documents.
- Demonstrates an ability to edit standard precedents.

Course Name:	Legal Accounting
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an understanding of basic accounting terminology.
- Understands and uses general accounting principles (e.g., meets financial and record keeping obligations, understands benefit of employing accountant or bookkeeper to assist).
- Demonstrates an understanding of the accounting equation.
- Demonstrates an understanding of debits and credits.
- Demonstrates an understanding of the difference between a general account and a trust account.
- Demonstrates an understanding of the Law Society's books and record keeping requirements (e.g., maintenance of appropriate trust and general books and records).
- Demonstrates an understanding of the obligations related to trust accounts (e.g., preservation of client property, types of monies to be deposited, withdrawal of trust monies).
- Demonstrates an understanding of accounting journals (in accordance with By-Law).
- Demonstrates an understanding of accounting ledgers (in accordance with By-Law).
- Demonstrates an ability to analyze and record transactions.
- Demonstrates an ability to adjust entries.
- Demonstrates an ability to prepare a trial balance.
- Demonstrates an understanding of financial statements.
- Demonstrates an understanding of bank reconciliations.
- Demonstrates an understanding of calculating GST.

Course Name:	Legal Computer Applications
Minimum Number of Instructional Hours:	30
Competencies:	

- Demonstrates an ability to use computer software (e.g., word processing software, presentation software, chart and spreadsheet software, accounting software, email).
- Demonstrates an ability to format and edit documents.
- Demonstrates an ability to produce spreadsheets.
- Demonstrates an ability to produce correspondence.
- Demonstrates an ability to produce memoranda.
- Demonstrates an ability to set up and use legal forms (e.g., headings and jurats).
- Demonstrates an ability to produce legal documents (e.g., pleadings, affidavits, notices of motion, applications).
- Demonstrates an ability to edit precedents.
- Demonstrates an ability to find legal resources on the Internet.

Course Name:	Field Placement/Practicum *
Minimum Number of Instructional Hours:	120
Competencies:	

- Demonstrates an ability to prepare an employment resume in accordance with professional legal standards.
- Demonstrates professional behaviour (e.g., consistent attendance and punctuality, reliability, professional demeanour and appearance).
- Demonstrates an understanding of the operations, functions and procedures of the work environment.
- Demonstrates an ability to apply academic skills and knowledge to a practical work setting.
- Demonstrates a willingness to perform all assigned duties in a careful and diligent manner.
- Demonstrates an ability to meet deadlines.
- Demonstrates an ability to respond accurately to written and oral instructions.
- Demonstrates appropriate time management skills.
- Demonstrates an ability to problem solve.
- Demonstrates appropriate interpersonal skills.
- Demonstrates an ability to adapt behaviour in response to professional feedback.
- Demonstrates an ability to use legal precedents, resources and files.
- Demonstrate an ability to adequately analyze the field placement experience.

* *Evaluation of these competencies will be measured by way of a report prepared by the student and the field placement/practicum employer*

PROCEDURE FOR APPLYING FOR ACCREDITATION OF PARALEGAL EDUCATION PROGRAMS

SUBMISSION OF ACCREDITATION APPLICATION

The following is the procedure to apply for accreditation of a paralegal education program:

1. Prepare a report on the forms provided by the Law Society.

2. Submit two copies of the report to:

   Paralegal Education Program Accreditation,
   Professional Development & Competence Department
   The Law Society of Upper Canada, Osgoode Hall
   130 Queen Street West
   Toronto, ON M5H 2N6

PREPARING THE REPORT

Please adhere to these procedures in preparing the report:

Application Requirements

- The report must be submitted in a 3-ring loose-leaf binder with tabs as indicated.
- The name of the institution must be on the spine and the cover of the binder.
- The report must be word processed and prepared using a standard 11-point font size, on standard weight 8 1/2" by 11" paper.
- Pages of the report must be numbered.
- The report must be submitted using the standard forms provided.
- Where indicated, the standard forms must be accompanied by supporting documentation including detailed course outlines/syllabi, course assessments and faculty resumes.
- Tabbed dividers must be used to separate the sections as outlined below.

Content Requirements

The binder should include the following contents in the following order:

- A title page, signed by the program director/administrator/dean/chair/coordinator or acknowledged head of the institution which includes; the complete name, address, telephone number, fax number and email address of the institution and program; and the date the Application was submitted.

- A dated cover letter prepared by the program director confirming that two copies of the completed Application are enclosed and being sent to the Law Society.

- A table of contents should follow the cover letter indicating each Tab and/or Sub-tab, along with the corresponding page number.

- Tab 1 should include Form 1 – *Application for Accreditation of Paralegal Education Programs* that requests general information about the institution and the appropriate contact information.

- Tab 2 should include Form 2 – *Paralegal Program Course Overview* that requests an overview of the paralegal program.

- Tab 3 should include Form 3 – *Individual Course Information Form* that requests an outline of each paralegal course that will be taught in the program. Each course should be separated by a separate Sub-tab with the relevant course outlines/syllabi and assessments inserted after each course information form.

    - Included with the Application, institutions must provide to the Law Society a course outline/syllabi for each course that will be offered in the curriculum. This course outline/syllabi must include a detailed list of all topics covered and resources to be used in teaching each course. Information on how the competencies are taught and assessed must also be included in this detailed outline. Evidence of past, or current if available, course assessments must also be provided with the Application. Additionally, up-to-date course assessments must be mailed to the Law Society as soon as they become available.

- Tab 4 should include Form 4 – *List of Faculty* that requests faculty information. Please include faculty resumes in alphabetical order according to the form.

    - Faculty who teach legal subjects should include (but are not limited to) duly qualified paralegals, lawyers, judges, justices of the peace, members or former members of tribunals and employees or former employees of courts.

- Tab 5 should include Form 5 – *Field Placement Form* that requests field placement/practicum information.

    - As part of the program requirements, each student must complete a minimum of 120 hours of field placement/practicum work in institutions such as paralegal firms; administrative tribunals; government agencies; non-governmental organizations; legal aid clinics; collection agencies; courts; law firms; legal departments of corporations or other potential employers of paralegals. Students

must be exposed to areas within the permitted scope of paralegal practice throughout the course of their field placement and should meet the competencies set out in Appendix 3. Evaluation of these competencies will be measured by way of a report prepared by the student and field placement/practicum employer.

- Tab 6 should include Form 6 – *Competencies Course Chart* that requests information regarding which course(s) each competency will be taught in and how each competency will be taught, practised and assessed.

    - Each accredited program must incorporate into its curriculum all mandatory courses and competencies as set out in the Law Society's *Paralegal Program Accreditation Course List* and *The Competency Profile for Paralegal Program Accreditation*, attached as Appendix 2 and 3 respectively. Institutions may broaden the scope of the courses and competencies if they wish. Institutions may use their discretion as to the order in which the courses and competencies are taught. Competencies must be evaluated by way of a formal assessment. Programs that include legal courses that do not fall within the permitted scope of paralegal practice will not be approved. Please see Section 6 of By-Law 4, attached as Appendix 1, for areas within the permitted scope of practice.

Additional Program Locations

If an educational institution offers a paralegal program in more than one location, and the content and faculty of those programs differ, a new set of forms must be completed for each program location. If the only change to the program is the complement of faculty, then only Forms 1 and 4 should be filled out for each program location.

CONTACT INFORMATION

Should you have any questions about this process, please contact Leah Daniels at (416) 947-3301.

FORM 1

APPLICATION FOR

PARALEGAL EDUCATION PROGRAM ACCREDITATION

All forms are designed to be completed directly in a Word processing program using a computer. Feel free to expand or contract space for answers as appropriate.

A. GENERAL INFORMATION

Institution Name: _____

Main Address: _____

_____

City: _____ Province: _____ Postal Code: _____

Telephone: _____ Fax: _____

Institution Website Address: _____

Program Name: _____

Program Address: _____

_____

City: _____ Province: _____ Postal Code: _____

Telephone: _____ Fax: _____

Program Website Address: _____

Submitted by: _____

Print Name

_____

Signature

Position/Title: _____

Date Submitted: _____

FORM 1 – CONTINUED

B. CONTACT INFORMATION

President or Dean of Institution:

Name: _____

Title: _____

Telephone: _____ Ext: _____ Fax: _____

Email: _____

Assistant Name: _____

Telephone: _____ Ext: _____ Fax: _____

Email: _____

Program Director or Head:

Name: _____

Title: _____

Telephone: _____ Ext: _____ Fax: _____

Email: _____

Assistant Name: _____

Telephone: _____ Ext: _____ Fax: _____

Email: _____

Program Coordinator: (if different from above)

Name: _____

Title: _____

Telephone: _____ Ext: _____ Fax: _____

Email: _____

Assistant Name: _____

Telephone: _____ Ext: _____ Fax: _____

Email: _____

FOR INFORMATION

COMMUNICATIONS

50. The information sheet on permitted business structures that is circulated in response to enquiries on this topic is attached at Appendix 3. (This sheet is currently being revised to add further information regarding Multi-Disciplinary Practices and Affiliations.)

51. The recent 'Paralegal Update Number 2' is attached at Appendix 4.

52. The Treasurer and staff members recently met with Associate Chief Justice Ebbs. A letter sent by ACJ Ebbs to all Regional Senior Justices of the Peace is attached at Appendix 5. The Law Society has been invited to address the conferences of Justices of the Peace taking place in September and October.

Appendix 3

LAW SOCIETY OF UPPER CANADA ~ INFORMATION SHEET
PERMITTED BUSINESS STRUCTURES

All licensees may practise as sole practitioners, partners or in a professional corporation. Business corporations are not permitted to provide professional services to members of the public. Licensees are encouraged to seek professional advice on the best business structure for their particular situation.

Professional Corporations

The regulatory framework for professional corporations derives from two sources:
- the *Ontario Business Corporations Act (OBCA)* and
- the *Law Society Act*, sections 61.0.1 to 61.0.9 and By-law 7, Part II.

The *OBCA* defines a professional corporation as 'a corporation incorporated or continued under OBCA that holds a valid certificate of authorization issued under an Act governing the profession' – in this case the *Law Society Act (LSA)*. A 'member' is defined in the *OBCA* as a member of a profession governed by an Act that permits professional corporations.

The *OBCA* sets conditions that must be satisfied by all professional corporations:

1. All issued and outstanding shares of the corporation must be legally and beneficially owned, directly or indirectly, by one or more members of the same profession.

   - *This means that family members or associates who are not members of the profession may not be shareholders of the professional corporation.*
   - *Multi-discipline practices are not permitted in the form of professional corporations with shareholders who are members of different professions. However, s. 61.0.1(1)(c) of the Law Society Act permits a professional corporation with lawyers and paralegals as shareholders.*

- *Holding companies are permitted as shareholders but with the same limitations. The shares in the holding company must be wholly owned by the member(s) in question and may not be owned by family members or associates. (You cannot do indirectly what is impermissible directly.)*

2. All officers and directors of the corporation must be shareholders of the corporation.

3. The name of the corporation must include the words "Professional Corporation" or "Société Professionelle" and must comply with the OBCA regulations and the rules and by-laws of the respective profession.

   - *The Law Society's By-law 7, Part II and Rule 3.02 of the Rules of Professional Conduct apply. As well, Convocation approved a policy regarding appropriate names when the name rule was expanded to permit some trade names.*
   - *The words "Professional Corporation" must appear in full and not separated by other words or punctuation. This replaces Inc., Corp., or other forms that identify corporations.*

4. The corporation may not have a number name.

5. The articles of incorporation must provide that the corporation may not carry on business other than the practice of the profession, but this does not prevent the corporation from carrying on activities related to the practice of the profession, including the temporary investment of surplus funds earned by the corporation.

   - *This restriction must be included in the articles of incorporation of the professional corporation submitted to the Law Society submitted with an application for a certificate of authorization.*

The *OBCA* also provides that professional liability is not affected by practising through a professional corporation.

Law Society's By-law 7, Part II

A professional corporation may not start practice without first obtaining a certificate of authorization from the Law Society. (Only a corporation composed of persons licensed by the Law Society may apply). Application is a two-step process:

- First, the Law Society must approve the corporate name to be used
- Second, the professional corporation's articles of incorporation must be approved by applying for a Certificate of Authorization

Permitted Names

- A professional corporation may not use the name of another professional corporation or a name that is confusingly similar. The name may include that of any shareholder of the corporation, except a shareholder who becomes a member of a tribunal or any other office with duties incompatible with the practice of the profession.

- The professional corporation may retain the name of a deceased licensee who practised law or provided legal services through the corporation, or a deceased shareholder of the professional corporation.

- The professional corporation's name may include the phrases "and Associates" or "and Company" if three or more licensees practice law and/or provide legal services through the professional corporation. (A paralegal associate would be an employee of the professional corporation in which they provide legal services).

- In October 2006, Convocation clarified that a person cannot be considered an 'associate' if the person is the principal or employee of another entity.

- In May 2004, Convocation approved criteria for assessing whether a name is misleading. For example, names may not include,

    - reference to specific geographic locations, government agencies, public or charitable legal services organizations, other non-legal corporate entities, cultural, racial, ethnic or religious groups or organizations, existing law firms, or other entities or organizations (e.g. "Osgoode Hall Law Professional Corporation");
    - language that implies the firm is the only or the best firm, or would be misleading as to the number of licensees practising in the firm or their status;
    - implying the existence of a partnership, affiliation, or association between licensees when no such relationship exists;
    - language that is specifically prohibited by statute or that is demeaning, degrading or derogatory.

Certificate of Authorization

Applications for a Certificate of Authorization must include

- the application form,
- the articles of incorporation (and where necessary articles of amalgamation or articles of continuance) and
- the application fee.

The certificate will be issued if,

- the corporation complies with *OBCA* and *LSA* requirements for a professional corporation,
- the name of the professional corporation complies with OBCA and Law Society requirements and policies,
- the directors are licensees none of whose licence has been suspended, and
- the individuals who will practise law or provide legal services through the corporation are licensed by the Law Society to do so.

The certificate is valid until December 31 of the year of its issue and must be renewed annually by way of an application with a renewal fee. Renewal applications must be received 90 days before the certificate's expiry date. The renewal certificate is valid until December 31 of the year for which it is renewed.

A replacement certificate may be issued for a fee if a certificate is lost or there is a change of information. The replacement certificate is valid until December 31 in the year it is issued.

The professional corporation must apply to the Law Society to surrender the certificate of authorization if the corporation does not wish to renew its certificate, no longer wishes to practise law or provide legal services in Ontario, or wishes to voluntarily wind up or dissolve.

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

(1) Copy of Form 2 Paralegal Program Course Overview.

(Tab C, pages 76 – 133)

(2) Copy of the "Law Society Paralegal UPDATE dated August 2007.

(Tab D, Appendix 4, pages 138 – 139)

(3) Copy of a letter from The Honourable Donald A. Ebbs, Associate Chief Justice, Ontario Court of Justice to the Regional Senior Justices of the Peace dated August 10, 2007 Re: Paralegal Regulation.

(Tab D, Appendix 5, pages 140 – 141)

Re: Trust Account and Record Keeping Requirements

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve the following recommendations with respect to trust accounts and record-keeping requirements for paralegals:

a. that the rules on trust accounts and books and records for paralegals be the same as for lawyers;
b. that the record-keeping and trust account requirements be effective upon licensing;
c. that grandparent applicants be subject to a transitional period during which they are not required to transfer fees collected prior to licensing to a trust account, and
d. that the transitional period start on the day they receive their licence and conclude on May 1, 2010. Any fees collected prior to licensing for which the services had not been rendered by May 1, 2010 would have to be placed in trust on that date.

Carried

It was moved by Mr. Aaron, seconded by Mr. Silverstein, that the proceeds with respect to real estate transactions and mortgage transactions not be eligible for deposit into a paralegal's trust account.

Withdrawn

It was moved by Ms. Curtis, seconded by Mr. Aaron, that paragraphs 3(c) and (d) of the main motion be deleted.

Lost

ROLL-CALL VOTE

Aaron	For	Lawrie	Against
Aitken	Against	Lewis	Against
Anand	Against	McGrath	Against
Backhouse	Against	Millar	Against
Banack	For	Minor	Against
Campion	Against	Pawlitza	Against
Carpenter-Gunn	For	Porter	Against
Caskey	Against	Potter	For
Chahbar	Against	Pustina	Against
Conway	Against	Rabinovitch	Against
Crowe	Against	Robins	Against
Curtis	For	Ross	Against
Dickson	Against	Rothstein	Against
Dray	Against	Ruby	Against
Epstein	Against	St. Lewis	Against
Finlayson	Against	Sandler	Against
Go	Against	Schabas	Against
Gottlieb	For	Sikand	Against
Halajian	For	Silverstein	Against
Hartman	Against	C. Strosberg	Against
Heintzman	Against	Swaye	Against
Henderson	Against	Symes	Against
Krishna	Against	Warkentin	Against
		Wright	Against

Vote: 7 For; 40 Against

It was moved by Mr. Wright, seconded by Mr. Silverstein, that the transitional period set out in paragraph 3(d) be amended by deleting May 1, 2010 and substituting December 31, 2008.

Lost

ROLL-CALL VOTE

Aaron	For	Lawrie	Against
Aitken	Against	Lewis	Against
Anand	Against	McGrath	Against
Backhouse	Against	Millar	Against
Banack	For	Minor	For
Campion	Against	Pawlitza	Against
Carpenter-Gunn	For	Porter	Against
Caskey	Against	Potter	For
Chahbar	Against	Pustina	Against
Conway	Against	Rabinovitch	Against
Crowe	Against	Robins	Against
Curtis	For	Ross	For
Dickson	Against	Rothstein	Against
Dray	Against	Ruby	Against
Epstein	Against	St. Lewis	Against
Finlayson	Against	Sandler	Against
Go	For	Schabas	Against
Gottlieb	For	Sikand	Against
Halajian	For	Silverstein	For
Hartman	Against	C. Strosberg	Against
Heintzman	Against	Swaye	For
Henderson	Against	Symes	Against
Krishna	Against	Warkentin	Against
		Wright	For

Vote: 13 For; 34 Against

Re: Fee Categories for Paralegals

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve the Committee's recommendation that the fee categories for paralegals be the same as they are for lawyers, i.e. 100%, 50% and 25% as set out in the Report.

Carried

Re: College Accreditation Criteria

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation,

a. approve the Competency Profile and Accreditation Package attached to the Report of the Director of Professional Developments & Competence at Appendix 2;
b. instruct the Director, Professional Development and Competence to distribute the accreditation materials to the colleges as soon as they are available, on or around October 2007, and

c. authorize the Director of Professional Development & Competence to commence accrediting colleges according to the process indicated in the Report.

Carried

Item for Information

- Communications

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

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN PUBLIC

.....

REPORT OF THE TRIBUNALS COMMITTEE

Mr. Sandler presented the Report.

Report To Convocation
September 20, 2007

Tribunals Committee

Committee Members
Mark Sandler (Chair)
Bonnie Warkentin (Vice-Chair)
Raj Anand
Larry Banack
Carole Curtis
Jennifer Halajian
Derry Millar
Joanne St. Lewis

Purposes of Report: Decision
Information

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

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COMMITTEE PROCESS

1. The Committee met on September 6, 2007. Committee members Mark Sandler (Chair), Bonnie Warkentin (Vice Chair), Raj Anand, Larry Banack, Carole Curtis, Jennifer Halajian, Derry Millar, and Joanne St. Lewis attended. Bencher Heather Ross also attended. Staff members Katherine Corrick, A.K. Dionne, Grace Knakowski, Elliot Spears and Sybila Valdevieso also attended.

FOR DECISION

HOUSEKEEPING AMENDMENTS TO THE CURRENT RULES OF PRACTICE AND PROCEDURE

MOTION

2. That the rules of practice and procedure adopted by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, March 26, 1999, April 30, 1999, May 28, 1999, September 24, 1999, January 27, 2000, June 23, 2000, February 21, 2001, June 22, 2001, April 25, 2003, June 22, 2005, March 23, 2006, September 28, 2006 and June 28, 2007, be revoked and replaced with the English and French Rules of Practice and Procedure set out at APPENDIX 2.

Introduction and Background

3. Amendments to the *Law Society Act* have necessitated "housekeeping" amendments to Law Society by-laws and rules to reflect different terminology and other alterations to the *Act*.

4. The current Rules of Practice and Procedure must be amended to reflect these changes. An annotated version of the English Rules is set out at APPENDIX 1 highlighting the proposed housekeeping changes. Because of the number of changes the motion before Convocation is to revoke and replace the Rules in their entirety as set out at APPENDIX 2.

5. The Committee brings two points to Convocation's attention:

   a. In June 2007 the Convocation approved an amendment to Rule 3.06(1) to remove the words "or otherwise make public". This is reflected in Appendix 2 in both the English and French versions.

   b. Pursuant to the amendments to the *Law Society Act* the term "student member" no longer exists. Students are now included in the term "licensee". References in the amended Rules reflect this change.

APPENDIX 1

RULES OF PRACTICE AND PROCEDURE

MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*

~~As amended, June 28~~Revoked and replaced, September 20, 2007.

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

(MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*)

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THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

(MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*)

RULE 1 GENERAL RULES

1.01 Application

Rules 1 through 15 apply to hearings before tribunals under sections 27~~, 28.1~~, 30, 31~~, 32~~, 34, 38, 43, 45~~, 49.1~~, 49.32 (1), 49.32 (2), 49.42~~,~~ and 49.43 of the *Law Society Act* (hereinafter "the Act").

Definitions

1.02 (1) In these Rules, unless the context requires otherwise, words that are not defined in subrule (2) have the meanings defined in the Act or the *Statutory Powers Procedure Act.*

(2) In these Rules,

"appeal" means an appeal under subsections 49.32 (1) and (2) of the Act;

"Appeals Management Tribunal" or "AMT" means the bencher to whom jurisdiction is assigned in procedural matters;

"complainant" means a person who has made a complaint to the Society regarding a ~~member or student member~~licensee which is relevant to the application;

"Hearings Management Tribunal" or "HMT" means the bencher to whom jurisdiction is assigned in procedural matters;

"holiday" means a holiday as defined in the *Rules of Civil Procedure*;

~~"interim order" means an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practice law;~~

"motion" means a request for a ruling or decision by a tribunal on a particular issue at any stage in the proceeding which is subject to these Rules, other than a request for an adjournment;

"originating process" means a notice of application and a notice of hearing;

"party" means the Society, the person who is subject to the proceeding, and any other person added as a party by the tribunal in accordance with the Act;

"person subject to a proceeding" means a ~~member, student member~~licensee, former ~~member~~licensee or non-Ontario lawyer as the context may require;

"proceeding" means a proceeding under the Act that commences with the service of an originating process;

"tribunal" means whichever of the HMT, Hearing Panel, AMT, or Appeal Panel that is or will be hearing the applicable part of a proceeding~~;~~.

Interpretation of Rules

1.03 (1) These Rules shall be liberally construed to secure the just and expeditious determination of proceedings.

(2) Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

Substantial Compliance

1.04 (1) Substantial compliance with a form or notice required by or under these Rules is sufficient.

(2) No proceeding is invalid by reason only of a defect or other irregularity in form.

Compliance with a Rule

1.05 (1) Any provision of these Rules may be waived with the consent of the parties and leave of the tribunal.

(2) The tribunal may, where it is in the interests of justice, dispense with compliance with any Rule at any time and upon such terms as are just.

Computing Time

1.06 Subject to Rule 1.07, in computing time periods specified in these Rules or in an order of a tribunal,

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;

(b) where a period of less than seven days is prescribed, holidays shall not be counted;

(c) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it shall be deemed to be received or effective on the next day that is not a holiday.

Extension or Abridgment of Time Periods

1.07 (1) A tribunal by order may extend or abridge any time prescribed by these Rules on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Withdrawal of Counsel

1.08 Where counsel for a party seeks to be removed from the record of a proceeding, counsel shall bring a motion for leave to withdraw before the tribunal.

Removal of Counsel

1.09 Where a party seeks to remove a counsel from the record of a proceeding, the party shall bring a motion before the tribunal.

Communication with a Tribunal

1.10 Communication with a tribunal outside of the hearing shall be in the presence of all parties or their counsel, or in writing through the Clerk of the tribunal with a copy served on all parties.

Summons

1.11 (1) A summons to witness may be signed by an officer or employee of the Society who holds the office of Senior Counsel and Manager, Tribunals Office.

(2) On the request of a party, an officer or employee of the Society who holds the office of Senior Counsel and Manager, Tribunals Office shall provide a summons to a witness in blank form and the party may complete the summons and insert the name of the witness.

(3) Service of a summons on a witness is the responsibility of the party who obtained the summons.

(4) The party who obtained the summons shall pay attendance money to a witness in accordance with Tariff A under the *Rules of Civil Procedure.*

(5) Notwithstanding subrule (4), if a person is in attendance at the hearing, it is unnecessary to serve the person with a summons or to pay attendance money to call the person as a witness.

Form of Proceeding

1.12 (1) Subject to subrule (2), hearings shall be held orally with the parties, and their counsel if applicable, appearing in person.

(2) The tribunal on motion by any party may order that some or all of a hearing be held as an electronic hearing.

(3) On a motion under subrule (2), the tribunal may consider, on balance,

(a) the suitability of the subject matter;

(b) the nature of the evidence and whether credibility is in issue;

(c) whether the matters in dispute are questions of law;

(d) the convenience of the parties;

(e) the cost, efficiency and timeliness of the proceeding;

(f) the avoidance of delay or unnecessary length;

(g) the fairness of the process;

(h) public accessibility to the hearing;

(i) the fulfilment of the Society's statutory mandate; and

(j) any other matter which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.

(4) On consent, a party may move for an order that some or all of a hearing be held as a written hearing.

Location of Hearings

1.13 (1) Subject to this rule, all hearings shall be held at the offices of the Society in Toronto.

(2) The tribunal, on motion by any party, may order that a hearing be held at a place other than the offices of the Society in Toronto.

(3) On a motion under subrule (2), the tribunal may consider, on balance,

(a) the convenience of the parties;

(b) the cost, efficiency and timeliness of the proceeding;

(c) the avoidance of delay or unnecessary length;

(d) the fairness of the process;

(e) public accessibility to the hearing;

(f) the fulfilment of the Society's statutory mandate; and

(g) any other matter which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.

(4) The tribunal may set the location of a hearing in a place other than the offices of the Society in Toronto only after consultation with the Hearings Coordinator and the Secretary.

(5) The Hearings Coordinator shall be informed forthwith where there is a request for an adjournment of a hearing scheduled to be held in a location other than the offices of the Society in Toronto.

Adjournments

1.14 (1) Where the grounds for a request for an adjournment are known in advance of the date scheduled for the hearing, the adjournment request shall be made,

(a) to the HMT, where a hearing before a Hearing Panel is pending and a Hearing Panel is not seized of the proceeding; or

(b) to the AMT, where an appeal to the Appeal Panel is pending and an Appeal Panel is not seized of the proceeding,

where a sitting of the HMT or AMT is scheduled, or can be scheduled, before the date scheduled for the hearing.

(2) In circumstances to which subrule (1) does not apply, a request for adjournment shall be made to the tribunal on the date scheduled for the hearing.

RULE 2 JOINDER AND NON-PARTY PARTICIPATION

Joinder of Parties

2.01 Where permitted under the Act, the Hearing Panel may add any person as a party to a proceeding.

Non-Party Participation

2.02 (1) A tribunal may allow a person who is not a party to participate in a proceeding if the participation of the person would, in the opinion of the tribunal, be of assistance to the tribunal, or is required in the interests of justice.

(2) The tribunal shall determine the extent of such participation, when granted, and without limiting the generality of this, the tribunal may allow the person to make oral or written submissions, to lead evidence, and to cross-examine witnesses.

RULE 3 ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

Proceedings are Public~~other than Capacity and Professional Competence Proceedings~~

3.01 Hearings shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed;

(b) intimate financial or personal matters or other 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; or

(c) it is necessary to maintain the confidentiality of a privileged document or communication.

Reasons and Order of the Tribunal

3.02 (1) Subject to subrule (2), the order and reasons of a tribunal, including any written disposition, are a matter of public record.

(2) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal may order that all or part of its reasons, except for those referred to in subrule (3), are not to be made public.

(3) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal shall issue with its decision a written statement of the reasons for holding the proceeding, or applicable part of the proceeding, in the absence of the public but shall do so without disclosing any matters which, in the opinion of the tribunal, ought not to be disclosed.

Procedure Where Party Seeks *In Camera* Order

3.03 (1) A party seeking an order that any part of a proceeding be held in the absence of the public shall bring a motion in public before the tribunal in accordance with rule 7 with necessary modifications.

(2) Where a party is of the view that it will not be possible to argue the motion without disclosing specific matters which are the subject of the motion, that party may seek an order that the motion be heard in the absence of the public.

(3) Where a party requests that the motion be held in the absence of the public, the party shall state in public the general grounds upon which the motion is brought without disclosing the specific matters which the party wishes to be received in the absence of the public.

(4) Where a party requests that the motion be heard in the absence of the public, the tribunal may grant leave to a non-party to participate in the motion.

(5) In considering whether to permit a non-party to participate in the motion, the tribunal shall consider the nature of the non-party's interest, whether there is any reason for concern that the non-party may fail to maintain the confidentiality of matters which are disclosed in the absence of the public, and whether the interests of the public will otherwise be adequately represented.

(6) The tribunal shall advise a non-party who is permitted to participate in the absence of the public that, unless otherwise ordered, the non-party may not publish or otherwise communicate or disclose to anyone outside the hearing room anything that has been disclosed in the absence of the public.

(7) The tribunal shall advise the non-party that if the confidentiality of the proceeding is breached, in appropriate cases, the tribunal or any party to the proceeding may state a case to the Divisional Court for an order punishing that person for contempt.

(8) In circumstances where the motion is held in the absence of the public and is dismissed, the tribunal may, in public, following the motion, order that the motion be treated as if the motion had been held in public.

Varying, Setting Aside or Suspending an *In Camera* Order

3.0~~3.1~~4 (1) Following the completion of a conduct or discipline hearing, a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made in that conduct or discipline hearing pursuant to rule 3.01 or section 9 of the *Statutory Powers Procedure Act* that all or part of a conduct or discipline hearing be held *in camera*, but where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.

(2) A motion under sub-rule (1) shall be made in accordance with rule 7 except that the notice of motion shall be served on all parties and any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.

~~3.04 REVOKED: September 28, 2006.~~

~~3.04.1 REVOKED: September 28, 2006.~~

Application to Appeals

3.05 The provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications to an appeal from a decision or order of a tribunal.

Non-publication Orders

3.06 (1) A tribunal may order that information disclosed in the course of a proceeding open to the public is not to be published by any person, provided that the tribunal is satisfied that the information discloses,

(a) matters involving public security;

(b) intimate financial or personal matters or other 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; or

(c) matters for which it is necessary to maintain the confidentiality of a privileged document or communication.

(2) A motion for a non-publication order shall be made in accordance with rule 3.03 with necessary modifications.

Varying, Setting Aside or Suspending a Non-publication Order

3.07 (1) A motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made pursuant to rule 3.06, but where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.

(2) A motion under sub-rule (1) shall be made in accordance with rule 3.0~~3.1~~4 (2).

RULE 4 COMMENCEMENT OF PROCEEDINGS

Conduct, Capacity, Professional Competence and Non-Compliance Proceedings

4.01 (1) A notice of application shall be issued by the Society in Form 4A in respect of conduct, capacity, professional competence and non-compliance proceedings.

(2) A copy of the notice of application shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

~~Admission~~Licensing, Restoration~~, Requalification,~~ and Reinstatement~~, and Readmission~~ Proceedings

4.02 (1) A notice of hearing shall be issued by the Society in Form 4B,

(a)~~-~~ in respect of ~~admission~~licensing and restoration applications where a hearing is required by the Society; and

~~(b) in respect of readmission applications, in every case;~~

(~~c~~b) in respect of ~~requalification and~~ reinstatement applications where the person ~~the~~ subject ~~of~~to the proceeding requests, in writing, a hearing.

(2) A copy of the notice of hearing shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

Abandonment of a Proceeding

4.03 (1) Prior to the hearing of a conduct, capacity, professional competence or non-compliance proceeding on its merits, the Society may abandon a notice of application by delivering a notice of abandonment in Form 4C.

(2)~~-~~ Prior to the hearing of a~~n admission~~licensing or restoration proceeding on its merits, the Society may abandon the requirement of a hearing by delivering a notice of abandonment in Form 4C.

(3) Prior to the hearing of a~~n admission~~licensing, restoration, ~~requalification,~~ or reinstatement ~~or readmission~~ proceeding on its merits, the person subject to the proceeding may abandon his or her application by delivering a notice of abandonment in Form 4C.

RULE 5 SERVICE OF DOCUMENTS

Service of Documents on Parties

5.01 (1) An originating process shall be served on the person subject to the proceeding,

(a) personally;

(b) by mailing a copy thereof in a registered letter addressed to the person's last known residence or office address as shown by the records of the Society; or

(c) where a person subject to a proceeding is represented by counsel prior to issuance of an originating process, on counsel where counsel endorses on the originating process or a copy of it an acceptance of service and the date of the acceptance.

(2) An originating process shall be served at least ten days before it is first returnable before a tribunal.

(3) Service of any document other than an originating process may be effected,

(a) by personal delivery to the party or the party's counsel;

(b) by regular or registered mail to the last known address of the party or the party's counsel;

(c) by facsimile transmission to the last known facsimile transmission number of the party or the party's counsel but, where the recipient is the person subject to the proceeding or his or her counsel, the consent of the recipient is required;

(d) ~~(d)~~ by courier, including Priority Post, to the last known address of the party or the party's counsel; or

(e) by any other means authorized or permitted by the tribunal.

(4) Service is deemed to be effective when delivered,

(a) by personal delivery or facsimile transmission before 4 p.m., on the day of delivery or facsimile transmission, and after that time, on the next day;

(b) by regular or registered mail, on the fifth day after mailing;

(c) by courier, on the second day after the document was provided to the courier; or

(d) by any means authorized or permitted by the tribunal, on the date ordered by the tribunal.

Proof of Service

5.02 (1) Service of a document may be proved by,

(a) an affidavit of the person who served it; or

(b) where a person is represented in a proceeding or on a motion and the document is served on the person's representative, the written admission or acceptance of service of the person's representative.

(2) The affidavit or written admission or acceptance of service may be printed on the back sheet or on a stamp or sticker affixed to the back sheet of the document served.

RULE 6 DISCLOSURE

Obligations of the Society

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

(a) a copy of any document upon which it intends to rely and the opportunity to examine any other document;

(b) a summary of the oral evidence of all witnesses; and

(c) the list of witnesses which the Society intends to call.

(2) Subject to rule 6.05, evidence against a person subject to a proceeding is not admissible unless disclosure of that evidence has been made at least ten days before the hearing.

Obligations of the Person Subject to a Proceeding

6.02 ~~(1)~~ In ~~admission~~licensing, ~~requalification,~~ restoration, and reinstatement proceedings, evidence upon which the person subject to the proceeding intends to rely is not admissible unless the person has provided to the Society, within 60 days of receipt of the notice of hearing,

(a) a copy of any documents upon which the person intends to rely;

(b) a summary of the oral evidence of all witnesses upon which the person intends to rely; and

(c) the list of witnesses which he or she intends to call.

~~(2) In readmission proceedings, evidence upon which a person subject to the proceeding intends to rely is not admissible in that proceeding unless he or she has provided to the Society, with the prescribed application form, the material listed in subrule (1)(a) through (c) within 60 days of receipt of the notice of hearing.~~

Summaries of Evidence

6.03 where parties are required to disclose a summary of the oral evidence of a witness, the summary shall be in writing and contain,

(a) the substance of the evidence of the witness;

(b) a list of documents or things, if any, to which the witness will refer; and

(c) the witness' name and address or, if the witness' address is not provided, the name of a person through whom the witness can be contacted.

Expert Reports

6.04 Evidence of an expert led by any party or non-party participant is not admissible unless the party or non-party participant gives all parties in the proceeding, at least ten days before the hearing, the expert's curriculum vitae, and a copy of the expert's written report or, if there is no written report, a summary of the evidence.

Discretion of Tribunal

6.05 A tribunal may, in its discretion, allow the introduction of evidence that is not admissible under rules 6.01, 6.02 and 6.04 and may make such directions as it considers necessary to ensure that no party is prejudiced.

RULE 7 MOTIONS

Making the Motion

7.01 A motion shall be made by notice of motion (Form 7A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

Scheduling the Motion

7.02 A motion may be scheduled for hearing,

(a) on any date on which the merits of the application to which the motion relates is scheduled to be heard; or

(b) on a date obtained from the Hearings Coordinator.

Service of Notice

7.03 Where a motion is made on notice, the notice of motion shall be served on all parties and any person who will be affected by the order sought at least ten days before the date on which the motion is to be heard.

Filing of Notice

7.04 Where a motion is made on notice, the notice of motion shall be filed, with proof of service, with the Clerk to the Tribunal, at least seven days before the date the motion is to be heard.

Abandoning a Motion

7.05 (1) A party who makes a motion may abandon it by serving a notice of abandonment (Form 7C) on every party or person served with the notice of motion and filing it, with proof of service, with the Clerk to the Tribunal.

(2) A party who serves a notice of motion and does not file it or appear at the hearing of the motion shall be deemed to have abandoned the motion unless the tribunal orders otherwise.

(3) Where a motion is abandoned or is deemed to be abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith unless the tribunal orders otherwise.

Materials for Use on the Motion

7.06 (1) Where a motion is made on notice, the moving party shall serve a motion record on every party or person served with the notice of motion, and shall file it, with proof of service, with the Clerk to the Tribunal, at least seven days before the date on which the motion is to be heard.

(2) The moving party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter;

(b) a copy of the notice of motion; and

(c) all affidavits and other material to be relied upon.

(3) Where a motion is made on notice, the responding party may serve a motion record on the moving party and every party or person served with the notice of motion, and file it, with proof of service, with the Clerk to the Tribunal, at least three days before the date on which the motion is to be heard.

(4) The responding party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter; and

(b) any materials to be relied upon not contained in the moving party's motion record.

(5) Where a motion is made on notice, a party may serve on every party and person served with the notice of motion a factum and a book of the authorities referred to in the factum.

(6) The moving party shall serve its factum and book of authorities, if any, and shall file them, with proof of service, with the Clerk to the Tribunal, at least seven days before the date on which the motion is to be heard.

(7) The responding party shall serve its factum and book of authorities, if any, and shall file them, with proof of service, with the Clerk to the Tribunal, at least three days before the date on which the motion is to be heard.

(8) When filing materials with the Clerk to the Tribunal, a party shall file,

(a) two copies of the materials where the motion is to be heard by one member of the Hearing Panel, the HMT or the AMT;

(b) four copies of the materials where the motion is to be heard by three members of the Hearing Panel; and

(c) six copies of the materials where the motion is to be heard by the Appeal Panel.

Motion on Consent

7.07 (1) Despite rule 1.12, where a motion is on consent, the motion may be heard in writing without the attendance of the parties or person affected by the order unless the tribunal orders otherwise.

(2) Where the motion is on consent, the moving party shall file the consent and a draft of the formal order, with the notice of motion, with the Clerk to the Tribunal.

Disposition of Motion

7.08 After hearing a motion, a tribunal may,

(a) grant the relief sought;

(b) dismiss the motion, in whole or in part;

(c) adjourn the motion, in whole or in part; or

(d) if the motion is heard prior to the hearing of the merits of the application to which the motion relates, adjourn the motion to be disposed of by the tribunal hearing the merits of the application.

Order

7.09 (1) After a tribunal has disposed of a motion, the tribunal shall make an endorsement of its order on the motion record, where the motion was made on notice, or on the notice of application, where notice was not required, unless,

(a) the tribunal delivers written reasons for its order; or

(b) the circumstances make it impractical for the tribunal to make the endorsement.

(2) Where a motion is made on notice, after a tribunal has disposed of the motion, the successful party shall, and any other party or person served with a notice of motion may, submit a draft of the formal order (Form 7B).

(3) The tribunal or the chair of the part of the tribunal that hears a motion shall review all drafts submitted under subrule (2) and shall, with or without amending it, sign one of the drafts.

Costs and Adjournment

7.10 All motions shall be brought in a timely fashion having regard to all of the circumstances and the moving party's failure to do so may be taken into account in awarding costs on the motion and in granting any related adjournment which may be necessary.

RULE 8 INTERLOCUTORY SUSPENSION AND RESTRICTION ORDERS

Authority to Make Interlocutory Suspension or Restriction Order

8.01 On motion by the Society, the Hearing Panel may make an interlocutory order suspending ~~the rights and privileges of a member or student member~~a licensee's licence or restricting the manner in which a ~~member~~licensee may practise law or in which a licensee may provide legal services.

General

8.02 (1) Except as otherwise provided for in this rule, rule 7 applies with necessary modifications to a motion for an interlocutory suspension or restriction order.

(2) Where an application to the Hearing Panel has not been authorized by the Proceedings Authorization Committee or the Hearing Panel has not commenced a hearing on the merits of an application, with the authorization of the Proceedings Authorization Committee, the Society may make a motion relating to the application to the Hearing Panel for an interlocutory suspension or restriction order.

Making the Motion

8.03 A motion for an interlocutory suspension or restriction order shall be made by notice of motion.

Service of Notice

8.04 (1) The notice of motion shall be served on the ~~member or student member~~licensee at least three days before the date on which the motion is to be heard.

(2) Despite subrule (1), the Hearing Panel may make an order without the notice of motion having been served on the ~~member or student member~~licensee where,

(a) the circumstances render the service of the notice of motion impracticable or unnecessary; or

(b) the delay necessary to effect service might entail serious consequences.

(3) Subrule 5.01 (1) applies to the service of a notice of motion.

Filing of Notice

8.05 (1) Where the notice of motion has been served, the notice of motion shall be filed, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(2) Where service of the notice of motion is not required, the notice of motion shall be filed, with the Clerk to the Tribunal, at or before the hearing of the motion.

Materials for Use on the Motion

8.06 (1) Where the notice of motion has been served, the Society shall serve a motion record on the ~~member or student member~~licensee, at least three days before the date on which the motion is to be heard, and shall file it, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(2) Where the notice of motion has been served, the ~~member or student member~~licensee may serve a motion record on the Society not later than 2:00 p.m. on the day before the date on which the motion is to be heard, and file it, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(3) Where the notice of motion has been served, the Society shall serve its factum and book of authorities, if any, on the ~~member or student member~~licensee, at least three days before the date on which the motion is to be heard, and shall file them, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(4) Where the notice of motion has been served, the ~~member or student member~~licensee shall serve its factum and book of authorities, if any, on the Society not later than 2:00 p.m. on the day before the date on which the motion is to be heard, and shall file them, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(5) Where service of the notice of motion is not required, the Society shall file the motion record and the factum and book of authorities, if any, with the Clerk to the Tribunal, at or before the hearing of the motion.

Evidence

8.07 Despite rule 11.01, section 15 of the *Statutory Powers Procedure Act* applies in a hearing of a motion for an interlocutory suspension or restriction order.

Disposition of Motion

8.08 Where it appears to the Hearing Panel that the notice of motion ought to have been served on the ~~member or student member~~licensee, the Hearing Panel shall adjourn the motion and direct that the notice of motion be served on the ~~member or student member~~licensee.

Order

8.09 (1) Every interlocutory suspension or restriction order shall, when it is first made, be an interim interlocutory order until 30 days after service of the order on the ~~member or student member~~licensee and, after that, shall become a final interlocutory order unless fresh evidence or a material change in circumstances is brought by the parties to the attention of the tribunal that made the order and the tribunal varies or cancels the order.

(2) Unless the Hearing Panel provides otherwise, a final interlocutory suspension or restriction order continues in force until an order of the Appeal Panel sets aside or varies the order or the Hearing Panel makes a final order after a hearing of the application on its merits.

(3) Unless the Hearing Panel provides otherwise, where service of the notice of motion was not required, the Society shall serve on the ~~member or student member~~licensee any order or formal order made by the Hearing Panel and a copy of the notice of motion, motion record and all other documents used in the hearing of the motion.

RULE 9 PRE-HEARING PROCEDURES

Tribunal to Which Proceeding is First Returnable

9.01 (1) A proceeding shall be first returnable before the HMT to set a date for a hearing on its merits.

(2) Despite subrule (1), a proceeding which originates by notice of application may be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where the hearing of the merits of another application involving the same parties has already been scheduled.

(3) Despite subrule (1), a proceeding which originates by notice of application shall be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where,

(a) the application is for a determination of whether a ~~member~~licensee has contravened section 33 of the Act by one or more of the following:

i. Failing to maintain financial records as required by the by-laws.

ii. Failing to respond to inquiries from the Society.

iii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act; or

(b) the nature of the application requires that the hearing of the merits of the application be expedited.

(4) When the originating process is served, the Society shall give notice of the time when and the place at which the proceeding shall be returnable before the HMT or the Hearing Panel.

Setting Hearing Dates

9.02 (1) Subject to subrule (2), a hearing into a proceeding shall be set only on regularly scheduled hearing dates obtained from the Hearings Coordinator.

(2) Where the parties estimate that the hearing will require more than one day,

(a) the parties shall request special dates for the hearing at the HMT; and

(b) the HMT, at its discretion, may direct that the parties to attend a pre-hearing conference as prescribed by Rule 10.

(3) Prior to requesting the HMT to set special dates for the hearing, the parties shall first obtain available dates from the Hearings Coordinator.

RULE 10 PRE-HEARING CONFERENCES

Party to Request

10.01 (1) Prior to the hearing of a proceeding on its merits, commenced by either a notice of application or a notice of hearing, any party may request that a pre-hearing conference take place before a bencher.

(2) There shall not be more than one pre-hearing conference in a proceeding except by order of the pre-hearing conference bencher or the HMT or on the consent of the parties.

(3) The pre-hearing conference bencher shall not sit on the tribunal at the hearing of a proceeding on its merits unless the parties consent in accordance with rule 12.01.

Attendance at Pre-Hearing

10.02 (1) Where a party refuses to attend a pre-hearing conference, an order that a pre-hearing conference be held may be obtained on motion to the HMT.

(2) Unless otherwise ordered, written notice of the time and place of a pre-hearing conference shall be given by the Hearings Coordinator to the parties and the pre-hearing conference bencher.

(3) Unless otherwise ordered or the parties consent, the parties and their counsel are required to attend in person.

Preparation for Pre-hearing Conference

10.03 Unless otherwise ordered, the parties shall exchange pre-hearing conference memoranda and any related documents and provide copies to the pre-hearing conference bencher, at least two days prior to the pre-hearing conference.

Electronic Pre-hearing Conference

10.04 A pre-hearing conference may be held by conference telephone with the consent of the parties and leave of the pre-hearing conference bencher or the HMT.

Procedure at Pre-hearing Conference

10.05 At the pre-hearing conference, the presiding bencher shall discuss with the parties, among other things,

(a) whether any of the issues can be settled;

(b) whether the issues can be simplified;

(c) whether the parties are able to enter into an agreed statement of facts concerning all or part of the subject matter of the proceeding; and

(d) the advisability, in appropriate cases, of attempting other forms of resolution.

Closed and Without Prejudice

10.06 A pre-hearing conference shall not be open to the public and all discussions at the pre-hearing conference shall be without prejudice.

Documents

10.07 Documents provided to the pre-hearing conference bencher shall,

(a) at the conclusion of the pre-hearing conference, be returned by the pre-hearing conference bencher to the party who provided them; and

(b) not be considered to be filed in the proceedings.

Agreements and Undertakings

10.08 (1) Agreements and undertakings made at a pre-hearing conference may be recorded in a memorandum prepared by or at the direction of the pre-hearing conference bencher.

(2) Copies of the memorandum referred to in subrule (1) shall be provided to the parties.

(3) Agreements and undertakings in the memorandum referred to in subrule (1) are binding upon the parties to the proceeding unless otherwise ordered by the Hearing Panel.

RULE 11 EVIDENCE

Rules of Evidence

11.01 (1) The rules of evidence applicable in civil proceedings apply in proceedings under the Act.

(2) Notwithstanding subrule (1), with leave of the tribunal, an affidavit or statutory declaration of any person is admissible in evidence as proof, in the absence of evidence to the contrary, of the statements made therein.

(3) An affidavit for use in a proceeding may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit but where, in the opinion of the tribunal, better evidence should be adduced through direct evidence of a witness, the tribunal may require the party to file or call such direct evidence and strike out the evidence filed.

Cross-Examination before Official Examiner

11.02 (1) A tribunal may order, on its own motion or on the motion of a party, that the cross-examination of the deponent of an affidavit or statutory declaration be conducted before an official examiner.

(2) Where the cross-examination of the deponent of an affidavit or statutory declaration is conducted before an official examiner, it shall be conducted in a manner analogous to the procedure under the *Rules of Civil Procedure* and, where necessary, the parties may seek direction from the tribunal.

Documentary Evidence

11.03 In addition to providing a copy to the other party, any party tendering a document as evidence shall provide to the Clerk of the tribunal,

(a) four copies of each document where the hearing is before a three member Hearing Panel; or,

(b) two copies of each document where the hearing is before a one member Hearing Panel, the HMT, or the AMT.

Certain information not admissible

11.04 Notwithstanding subrule 11.01 (1), information obtained by the Discrimination and Harassment Counsel as a result of the performance of his or her duties under clause ~~4~~19 (1) (a) of By-Law ~~36~~11 shall not be used and is inadmissible in a proceeding before the tribunal.

RULE 12 CONDUCT OF HEARINGS

Consent

12.01 Where the ~~member or student member~~licensee and the Society consent to a hearing before a one member Hearing Panel, a consent in Form 12A, must be filed with the Hearing Panel prior to the commencement of the hearing.

Pre-hearing Conference

12.02 Where a pre-hearing conference has been held in relation to a proceeding, and the ~~member or student member~~licensee and the Society consent to the proceeding being heard before the pre-hearing bencher sitting as a one member Hearing Panel,

(a) the hearing shall not commence until after the conclusion of the pre-hearing conference;

(b) the hearing shall be conducted in accordance with the same rules applicable to any other proceeding before a Hearing Panel; and,

(c) consent, in Form 12B, shall be executed after the pre-hearing conference by both the ~~member or student member~~ licensee and the Society and filed with the Hearing Panel prior to the commencement of the hearing.

Exclusion of Witnesses in Proceedings

12.03 (1) A tribunal may order that one or more witnesses be excluded from the hearing until called to give evidence.

(2) An order under subrule (1) may not be made in respect of a party to the proceeding or a witness whose presence is essential to advise counsel for the party calling the witness, but the tribunal may require any such party or witness to give evidence before other witnesses are called to give evidence on behalf of that party.

(3) Where an order is made excluding one or more witnesses from the hearing, there shall be no communication to an excluded witness of any evidence given during the witness' absence from the hearing, except with the leave of the tribunal, until after the witness has been called and has given evidence.

Visual or Audio Recording of Proceedings

12.04 Subsections 136 (1), (2) and (3) of the *Courts of Justice Act* apply to proceedings with necessary modifications.

Transcripts

12.05 (1) All oral and electronic hearings shall be recorded to permit the production of a transcript.

(2) The first party to order a transcript shall pay the cost of transcribing and shall file a copy of the transcript as part of the record.

Interpreters

12.06 (1) Where a witness requires an interpreter, the Society shall provide the interpreter, subject to an order to the contrary by the tribunal.

(2) An interpreter shall be competent and independent and, before the witness is called, shall swear or affirm that he or she will interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and his or her answers.

Special Needs

12.07 Parties shall notify the Hearings Coordinator as early as possible of any special needs of the parties or their witnesses.

RULE 13 ORDERS

~~Admonitions and~~ Reprimands

13.01 (1) Unless the right of appeal is waived by the Society and the ~~member or student member~~licensee, a reprimand ~~or admonition~~ shall not be administered before the time for serving a notice of appeal has expired.

(2) A reprimand ~~or admonition~~ may be administered by any member of the tribunal.

(3) Where an order of reprimand ~~or admonition~~ is appealed and where the Appeal Panel decides that a reprimand ~~or admonition~~ is the appropriate disposition, the reprimand ~~or admonition~~ may be administered by any member of the Appeal Panel.

(4) A reprimand ~~or admonition~~ may be administered in writing.

(5) Except where a reprimand ~~or admonition~~ is administered in writing, it is to be administered at a sitting of the Hearing Panel or the Appeal Panel, as the case may be, that is open to the public.

~~(6) An admonition shall be a matter of public of record but shall not be published in the Ontario Lawyers Gazette or in any formal media release by the Society except where the admonition is referred to in subsequent or other proceedings.~~

Orders issued by One Member Hearing Panel in Conduct Proceedings

13.02 A one member Hearing Panel may not make an order under ~~subsections~~paragraphs 35 (1) 1 or 35 (1) 2 of the Act.

Written Reasons

13.03 (1) Subject to subrule (2) and subrule 15.07, a tribunal is required to give reasons in writing if the request for written reasons is made within thirty days after the day on which the panel makes its final decision or order.

(2) A Hearing Panel shall issue written reasons for decisions in relation to capacity applications in every case.

Incapacity Orders Made in the Absence of the ~~Member or Student Member~~Licensee

13.04 (1) Where the Hearing Panel has proceeded in the absence of a ~~member or student member~~licensee and has determined that there are reasonable grounds for believing that the ~~member or student member~~licensee is, or has been, incapacitated, the Hearing Panel may make an interlocutory order suspending the ~~rights and privileges of the member or student member~~licensee's licence or restricting the manner in which the ~~member~~licensee may practise law or in which the licensee may provide legal services.

(2) An interlocutory order made under subrule (1) shall become a final order of the Hearing Panel, with respect to the application to which it relates, thirty days after the date on which the interlocutory order is made, unless the ~~member or student member~~licensee appears before the Hearing Panel for the hearing of the merits of the application.

RULE 14 COSTS

Security for Costs

14.01 (1) In ~~admission, readmission~~licensing, reinstatement~~,~~ or restoration ~~or requalification~~ proceedings, or an appeal arising from any of these proceedings, the tribunal, on motion by the Society, may make such order for security for costs as is just where it appears that,

(a) the person subject to the proceeding has an order for payment of costs made against him or her in the same or another proceeding under the Act which remains unpaid in whole or in part; and

(b) there is good reason to believe that the proceeding is unwarranted and the person subject to the proceeding has insufficient assets in Ontario to pay the costs of the Society where ordered.

(2) A person subject to a proceeding against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding except with leave of the tribunal.

(3) Where a person subject to a proceeding defaults in giving the security required by an order, the tribunal, on motion by the Society, may dismiss the proceeding and any stay obtained no longer applies.

Motions for Costs

14.02 A request for costs shall be made by motion to the tribunal which heard the proceeding on its merits or where otherwise appropriate.

Costs against the Society

14.03 In ~~admission~~licensing, conduct, capacity, professional competence or non-compliance proceedings, where it appears that the proceedings were unwarranted, the tribunal may order that such costs as it considers just be paid to the person subject to the proceeding by the Society and any other party to the proceeding.

Costs to the Society

14.04 (1) In appropriate cases, where a tribunal has made a determination in a proceeding that is adverse to a party other than the Society, the tribunal may make an order requiring that party to pay all or part of,

(a) the Society's legal costs and expenses;

(b) the Society's costs and expenses incurred in investigating the matter; and

(c) the Society's costs and expenses incurred in conducting the proceeding.

(2) In awarding costs and expenses, the tribunal shall apply any tariff which may be approved by Convocation from time to time.

Wasted or Unreasonable Costs

14.05 (1) Where a party or non-party participant has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the tribunal may make an order awarding such costs as are just.

(2) An order under subrule (1) may be made by the tribunal on its own motion or on the motion of any party in the proceeding.

RULE 15 APPEALS

General

15.01 Subject to the Act, there is no appeal from a final interlocutory order of the Hearing Panel other than an interlocutory order suspending ~~the rights and privileges of a member or student member~~a licensee's licence or restricting the manner in which a ~~member~~licensee may practise law or in which a licensee may provide legal services.

Stay Pending Appeal

15.02 A party seeking a stay of a final order of a Hearing Panel shall bring a motion to the Appeal Panel in accordance with Rule 7 with necessary modifications.

Commencement of Appeals

15.03 (1) An appeal shall be brought by a notice of appeal in accordance with Form 15A.

(2) The notice of appeal shall be served on all other parties and filed with the Clerk to the Appeal Panel:

(a) within 30 days of service of the order;

(b) after 30 days on consent of the parties, or with leave of the Appeal Panel.

Materials on the Appeal

15.04 (1) A party delivering a notice of appeal shall contemporaneously serve and file a certificate of the contents of the record book, in accordance with Form 15B, listing the contents of the record book necessary for that party's purposes.

(2) Within five days of delivery of a certificate of the contents of the record book, the other party shall serve and file a certificate of the contents of the record book in accordance with Form 15B.

(3) Subject to subrule (5), the contents of the record book shall contain the documents listed in the certificate(s), as the case may be, unless ordered otherwise by the AMT.

(4) Within thirty days of delivery of the first certificate of the contents of the record book, the party delivering a notice of appeal shall serve a record book on the opposing party or counsel for that party and shall file 6 copies of the record book with the Clerk to the Appeal Panel.

(5) Where a party fails to deliver a certificate of the contents of the record book, that party shall be deemed to accept the other party's certificate of the contents of the record book, unless the party obtains the consent of the other party or an order from the AMT.

(6) The record book shall contain, in consecutively numbered pages, the following,

(a) a table of contents describing each document by its nature and date and, in the case of an exhibit, by exhibit number or letter;

(b) a copy of each notice of appeal;

(c) a copy of each document required;

(d) all relevant transcripts or a list of all relevant transcripts together with a certificate of the court reporter confirming that such transcripts have been ordered and any deposit required for preparation of transcripts has been paid; and

(e) a copy of each certificate of the contents of the record book.

(7) The party delivering a notice of appeal shall serve a factum on all other parties within 15 days of the delivery of the record book.

(8) Within 15 days of receipt of a factum, a party shall serve a responding factum on all other parties.

(9) Each factum shall contain a concise statement, without argument, of the facts, issues to be argued, a concise statement of law, and authorities relating to each issue and the order sought.

(10) Each party shall serve with their factum, a book of authorities unless the authorities to be relied upon are contained in the standard book of authorities.

(11) Each party shall file 6 copies of that party's factum and book of authorities with the Clerk to the Appeal Panel.

(12) Where the party who files a notice of appeal fails to file a certificate of content of the record book, record book, factum or book of authorities in the time prescribed by this rule or by the AMT, the notice of appeal shall be deemed to be abandoned, unless the party obtains the consent of the other party or an order from the AMT.

Appeal Management Tribunal (AMT)

15.05 (1) The AMT shall schedule hearings before the Appeal Panel.

(2) The AMT shall hear motions with respect to,

(a) the abridgement or extension of any time prescribed by these Rules or by a previous order of the AMT;

(b) the location of the hearing of an appeal or a motion;

(c) the form of the hearing, including a request to hold a hearing as an electronic or written hearing;

(d) the consequences of non-compliance with a previous order of the AMT;

(e) the materials to be filed with the Appeal Panel;

(f) procedural issues regarding motions before the Appeal Panel including the contents of any affidavit or the record book of further evidence, the scope or conduct of a cross-examination, and the costs of transcripts and appointments before an official examiner; and

(g) requests to strike out a notices of appeal for failure to comply with these rules or any order of the AMT or the Appeal Panel.

(3) The AMT may, on request of a party or on its own motion, transfer the hearing of a motion to the Appeal Panel hearing the proceeding on its merits.

Motion to Tender Fresh Evidence

15.06 (1) If a party seeks to tender evidence to the Appeal Panel which was not before the Hearing Panel, the party shall bring a motion before the Appeal Panel in accordance with Rule 7 with necessary modifications.

(2) Both parties shall be prepared to proceed with the Appeal Panel's consideration of the appeal on its merits following a motion to tender fresh evidence, in any event of the result of the motion.

(3) Where the party who files a notice of motion to tender fresh evidence fails to file supporting materials in the time prescribed by this rule or by the AMT or fails to attend for cross-examination if required or fails to obtain transcripts of any cross-examinations in accordance with these rules, the notice of ~~-~~motion to tender fresh evidence shall be deemed abandoned, unless the party obtains the consent of the other party or an order from the AMT.

Reasons

15.07 The Appeal Panel shall give written reasons for its decision in every case.

RULE 16 SUMMARY ORDERS

Application

16.01 (1) Rule 16 applies to matters concerning sections 46, 47, 47.1, 48, 49~~, 49.1~~ and 49.32 (3) ~~-~~of the Act.

(2) Rules 1, 5, 6, 7, 10, 11, 12 and 14 apply with necessary modification to Rule 16.

Definitions

16.02 In this Rule,

"summary disposition bencher" means an elected bencher appointed by Convocation, pursuant to sections 46, 47, 47.1, 48~~,~~ or 49~~ or 49.1~~ of the Act, to make summary orders.

"summary order" means an order prescribed by sections 46, 47, 47.1, 48~~,~~ or 49 ~~or 49.1~~ of the Act.

"summary order appeal" means an appeal prescribed by subsection 49.32 (3) of the Act.

Summary Orders

16.03 A summary order issued by the summary disposition bencher shall be in accordance with Form 16A.

Service of Notice of Summary Orders

16.04 (1) Notice to a ~~member~~licensee or former ~~member~~licensee of a summary order having been made shall be served personally or by mailing a copy thereof in a registered letter addressed to the person's last known residence or office address as shown by the records of the Society.

(2) Where notice is given by registered mail it shall be deemed to have been given on the fifth day after the mailing.

Appeal of a Summary Order

16.05 (1) An appeal of a summary order on any question of fact or law shall be brought by a notice of appeal in accordance with Form 16B.

(2) The notice of appeal shall be served on the Society and filed with the Clerk to the Appeal Panel~~:~~.

(a)~~-~~ within 30 days of service of notice of the order on the ~~member~~licensee; or

(b) after 30 days on consent of the Society, or with leave of the Appeal Panel.

Disclosure of Documents by Society

16.06 Where a notice of appeal is served on the Society, it shall make disclosure to the ~~member~~licensee or former ~~member~~licensee, within 10 days of receipt of the notice of appeal, of all relevant documents in its possession, power or control.

Appeal Record

16.07 (1) The ~~member~~licensee or former ~~member~~licensee shall serve on the Society within 30 days of service of the notice of appeal,

(a) an appeal record which shall contain the summary order, the notice of appeal, all affidavits, and any other material to be relied upon; and

(b) a factum, if desired by the ~~member~~licensee or former ~~member~~licensee, and a book containing any authorities referred to in the factum.

(2) The ~~member~~licensee or former ~~member~~licensee shall file six copies of the materials referred to in subrule (1) with the Clerk of the Appeal Panel with proof of service within 5 days of service of the materials on the Society.

Responding to an Appeal

16.08 (1) The Society shall serve on the ~~member~~licensee or former ~~member~~licensee, within 10 days of the receipt of an appeal record,

(a) a responding appeal record containing any materials not contained in the appeal record upon which it intends to rely; and

(b) a factum, if desired by the Society, and a book of those authorities referred to in the factum.

(2) The Society shall file six copies of the materials in subrule (1) with the Clerk of the Appeal Panel with proof of service no more than 5 days after the service of the material upon the ~~member~~licensee or former ~~member~~licensee.

Evidence on the Appeal of a Summary Order

16.09 Subject to Rules 11.01 (3) and 11.02, evidence on the appeal of a summary order shall be given by affidavit unless the Appeal Panel orders otherwise.

Scheduling the Appeal

16.10 After the ~~member~~licensee or former ~~member~~licensee has complied with Rule 16.07, the ~~member~~licensee or former ~~member~~licensee shall contact the Hearings Coordinator within 30 days to obtain available dates and times for the hearing of the appeal.

Abandoning a Summary Order Appeal

16.11 (1) The ~~member~~licensee or former ~~member~~licensee may abandon a summary order appeal by serving a notice of abandonment in Form 4C on the Society and the Clerk of the Appeal Panel.

(2) The ~~member~~licensee, or former ~~member~~licensee, who,

(a) fails to comply with the provisions of Rule 16.07;

(b) fails to comply with the provisions of Rule 16.10; or

(c) fails to appear at the hearing of the appeal,

shall be deemed to have abandoned the summary order appeal unless the Appeal Panel orders otherwise.

(3) Where an appeal is abandoned or is deemed to have been abandoned, the Society is entitled the costs of the appeal unless the Appeal Panel orders otherwise.

Appeals on Consent

16.12 Where an appeal is on consent, the appeal may be heard in writing without the attendance of the Society or the ~~member~~licensee or former ~~member~~licensee unless the Appeal Panel orders otherwise. The written consent of the parties and a draft order shall be filed with the Clerk of the Appeal Panel.

Adopted by Convocation: January 28, 1999
Amended: February 19, 1999, March 26, 1999, April 30, 1999, May 28, 1999, September 24, 1999, January 27, 2000, June 23, 2000, February 21, 2001, June 22, 2001, April 25, 2003, June 22, 2005, March 23, 2006, September 28, 2006 and June 28, 2007.
Revoked and replaced by Convocation: September 20, 2007.

These Rules can be found at www.lsuc.on.ca.

FORM 4A - NOTICE OF APPLICATION

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of ~~member~~licensee, etc.*) of the (*City, Town, etc.*), a (*~~member~~licensee, etc.*) of the Law Society.

NOTICE OF APPLICATION

TO: ***(NAME OF ~~MEMBER~~LICENSEE, ETC.)***

TAKE NOTICE THAT ~~t~~The Law Society of Upper Canada intends to apply to the Hearing Panel of the Law Society ~~-~~(*nature of application*)

The [*professional misconduct AND/OR conduct unbecoming AND/OR~~-~~ non-compliance*] that is alleged is particularized as follows: *(set out particulars)*

AND TAKE FURTHER NOTICE THAT a date will be set before the Hearings Management Tribunal of the Law Society for the hearing of this Application before the Hearing Panel~~-~~, at the offices of ~~t~~The Law Society of Upper Canada, in the East Wing of Osgoode Hall, 130 Queen Street West, in the City of Toronto, on *(day)*, *(date)* at *(time)*, and that you are entitled to be present at the hearing with or without counsel and to make submissions.

[*OR*:
AND TAKE FURTHER NOTICE THAT the hearing into this Application will be held before the Hearing Panel of the Law Society of Upper Canada, at the offices of the Law Society of Upper Canada, in the East Wing of Osgoode Hall, 130 Queen Street West, in the City of Toronto, on the ~~-~~*(day)*, *(date)* at *(time)* and that you are entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions.~~-~~]

AND TAKE FURTHER NOTICE THAT should you fail to attend, the hearing may be conducted in your absence and you will not be entitled to any further notice in the proceeding.

(Date)

_____

(Name and telephone number of counsel)

FORM 4B - NOTICE OF HEARING

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of ~~member~~licensee~~, student member~~, etc.*) of the (*City, Town, etc.*), a (*~~member~~licensee~~, student Member~~ etc.*) of the Law Society.

NOTICE OF HEARING

TO: ***(NAME OF ~~MEMBER, STUDENT MEMBER~~LICENSEE, ETC.)***

TAKE NOTICE THAT ~~that~~ a date will be set by the Hearings Management Tribunal for the hearing of your application (*nature of application* *) before the Hearing Panel of ~~t~~The Law Society of Upper Canada, at the offices of the Law Society of Upper Canada, in the East Wing of Osgoode Hall, 130 Queen Street West, in the City of Toronto, on the *(day)*, *(date)* at *(time)* and that you are entitled to be present at the hearing with or without counsel and make submissions.

OR

~~t~~The hearing of your application for (*nature of application*) will be held before the Hearing Panel of the Law Society of Upper Canada, at the offices of the Law Society of Upper Canada, in the East Wing of Osgoode Hall, 130 Queen Street West, in the City of Toronto, on *(day)*, *(date)* at *(time)* and that you are entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions.

AND TAKE FURTHER NOTICE THAT should you fail to attend at the hearing, the hearing may be conducted in your absence or your application may be deemed abandoned and you will not be entitled to any further notice in the proceeding.

(Date)

_____
(Name and telephone number of counsel)

**(the following are examples)*

~~admission~~licensing pursuant to section 27 ~~OR 28.1~~ of the *Law Society Act*
~~readmission pursuant to subsection 30 (3) OR 49.42 (4) of the *Law Society Act*~~
reinstatement pursuant to subsection 49.42 (1) OR 49.42 (3) of the *Law Society Act*
restoration pursuant to subsection 31(2) of the *Law Society Act*

FORM 4C - NOTICE OF ABANDONMENT

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*insert name of ~~member or student member~~licensee, etc.*) of the (*City, Town, etc.*), a (*~~Member, Student Member~~licensee, etc*.) of the Law Society.

NOTICE OF ABANDONMENT

TAKE NOTICE that *(name of party)* hereby abandons *(it's/his/her)* application for a determination that *(insert nature of application).*

DATED this day of , ~~1999~~____.

(*Date*)

(*Name, address and telephone number of party's solicitor or party*)

TO: (*Name, address and telephone number of responding party's solicitor or responding party*)

FORM 7 A - NOTICE OF MOTION

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of ~~member, student member~~licensee, etc)* of the (*City, Town, etc.*), a (*~~member, student member~~licensee, etc.*) of the Law Society.

NOTICE OF MOTION

(*Identify party*) will make a motion to (*name tribunal*) on (*day*), (*date*), at (*time*), or as soon after that time as the motion can be heard, in a hearing room at the Law Society at 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard (choose appropriate option):

____ in writing with the consent of the responding party; or

____ orally.

THE MOTION IS FOR (*Set out precise relief sought*).

THE GROUNDS FOR THE MOTION ARE (*Set out the grounds to be argued*).

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion: (*List the affidavits or other documentary evidence to be relied on*).

(*Date*)

(*Name, address and telephone number of moving party's solicitor or moving party*)

TO:- (*Name, address of responding party's solicitor or responding party*)

FORM 7B -- ORDER ON A MOTION

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (~~*member*~~*licensee, etc.*) of the (*City, Town, etc.*), a (~~*member*~~*licensee, etc.*) of the Law Society.

ORDER

THIS MOTION, made by (*identify moving party*) for (*state the relief sought in the notice of motion, except to the extent that it appears in the operative part of the order*), was heard on (*date*), (*at name place OR electronically OR in writing*), before (*list appeal OR hearing panel bencher(s)*)**.**

ON READING the (*give particulars of the material filed on the motion*) and on (*hearing OR reading*) the submissions of counsel for (*identify parties*), (*where applicable, add (identify party) appearing in person OR no one appearing for (identify party), although properly served as appears from (indicate proof of service*)),

1. IT IS ORDERED that ...

2. IT IS FURTHER ORDERED that ...

(*Date*)

_____

(*Signature of presiding Chair of tribunal*)

FORM 7C - NOTICE OF ABANDONMENT

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*insert name of ~~member or student member~~licensee, etc.*) of the (*City, Town, etc.*), a (*~~Member, Student Member~~licensee, etc*.) of the Law Society.

NOTICE OF ABANDONMENT

TAKE NOTICE that *(name of party)* hereby abandons *(its/his/her)* motion for *(insert nature of motion).*

DATED this day of , ~~200~~____ .

(*Date*) (*Name, address and telephone number of party's solicitor or party*)

TO: (*Name, address and telephone number of responding party's solicitor or responding party*)

~~FORM 12A~~ – CONSENT TO HEARING BEFORE SINGLE BENCHER

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of ~~member or student member~~licensee, etc.*) of the (*City, Town, etc.*), a (*~~member, student member~~licensee, etc.*) of the Law Society.

CONSENT TO HEARING BY SINGLE BENCHER HEARING PANEL

1. Pursuant to Ontario Regulation ~~30/99~~167/07 made under the *Law Society Act*, the (~~*member, student member*~~*licensee*) and the Law Society (the ~~"~~"parties"~~"~~) hereby consent to this Application being heard and determined by a single Bencher Hearing Panel.

2. The parties give this consent in the full understanding that, due to the nature of the Application, the parties have the right to a hearing before a three Bencher Hearing Panel and the parties specifically waive that right.

(~~*Member or Student Member*~~*Licensee*) (*Law Society Counsel*)

(*date of signature*) (*date of signature*)

FORM 12B – CONSENT TO HEARING BEFORE PRE-HEARING CONFERENCE BENCHER

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of* ~~*member or student member*~~*licensee*, *etc.*) of the (*City, Town, etc.*), a (~~*member, student member*~~*licensee*, *etc.*) of the Law Society.

CONSENT TO HEARING BEFORE PRE-HEARING CONFERENCE BENCHER

1. Pursuant to Ontario Regulation ~~30/99~~167/07 made under the *Law Society Act*, (*the* ~~*member or student member*~~*licensee*) and the Law Society (the ~~"~~"parties"~~"~~) hereby consent to this Application being heard and determined by a single Bencher Hearing Panel.

2. The parties give this consent in the full understanding that, due to the nature of the Application, the parties have the right to a hearing before a three Bencher Hearing Panel and the parties specifically waive that right.

3. The parties further consent to naming (*name of* Bencher) as the single Bencher Hearing Panel, notwithstanding that he/she has acted as the pre-hearing conference Bencher.

4. The parties acknowledge that a pre-hearing conference has taken place before (*name of Bencher*) on (*date*) and that:

(a) the issues with respect to this Application have been thoroughly explored at the pre-hearing conference;

(b) a resolution has been agreed upon by the parties;

(c) the (~~*member or student member*~~*licensee*) admits (*professional misconduct/conduct unbecoming*);

(d) this consent has been given by the parties after the conclusion of the pre-hearing conference; and

(e) no aspect of the pre-hearing conference was contingent upon this consent.

5. The parties further acknowledge that the single Bencher Hearing Panel will conduct the hearing, make findings and make an order as to penalty based solely upon the evidence placed and submissions made before him/her at the hearing.

(~~*Member or Student Member*~~*Licensee*) (*Law Society Counsel*)

(*date of signature*) (*date of signature*)

FORM 15~~-~~A - NOTICE OF APPEAL TO APPEAL PANEL

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of* ~~*member or student member*~~*licensee*, *etc.*) of the (*City, Town, etc.*), a (~~*member or student member*~~*licensee*, *etc.*) of the Law Society.

NOTICE OF APPEAL

(*Identify party*) APPEALS to the Appeal Panel from the order of the Hearing Panel dated (*date*).

(*Identify party*) ASKS that the order be set aside and an order be granted as follows: (*Set out relief sought*.)

THE GROUNDS OF APPEAL are as follows: (*Set out briefly the grounds of appeal.*)

(*Date*) (*Name, address and telephone number of party's solicitor or party*)

TO:- (*Name, address of responding party's solicitor or responding party*)

FORM 15B -- CERTIFICATE OF CONTENTS OF THE RECORD BOOK

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (~~*member*~~*name of licensee*, *etc.*) of the (*City, Town, etc.*), a (~~*member*~~*licensee*, *etc.*) of the Law Society.

CERTIFICATE OF CONTENTS OF THE RECORD BOOK

(*Identify party*) certifies that the following evidence is required for the appeal:

1. Exhibit numbers (*specify exhibits by number*).

2. The evidence of (*names of witnesses*).

(*Date*) (*Name, address and telephone number of party's solicitor or party*)

TO:- (*Name, address and telephone number of other party's solicitor or other party*)

FORM 16A – SUMMARY ORDER

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

SUMMARY ORDER

WHEREAS each of the ~~members~~licensees named in the attached (*schedule or schedules*) (*nature and length of default and relevant by-law*)

PURSUANT to (*authority for order*),

IT IS ORDERED that (*terms of order*).

DATED

_____

Summary Disposition Bencher

FORM 16 B - NOTICE OF APPEAL OF SUMMARY ORDER

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of ~~member~~licensee*) of the (*City, Town, etc.*), a (*~~member~~licensee, etc.*) of the Law Society.

NOTICE OF APPEAL OF SUMMARY ORDER

(*name of ~~member~~licensee*) APPEALS to the Appeal Panel from the summary order of the summary disposition bencher dated (*date of order*).

(*name of ~~member~~licensee*) ASKS that the order be set aside and an order be granted as follows: (*Set out relief sought*.)

THE GROUNDS OF APPEAL are as follows: (*Set out briefly the grounds of appeal.*)

(*Date*)

(*Name, address and telephone number of ~~member~~licensee or counsel, if represented.)*

TO: ~~The Secretary~~
~~The Law Society of Upper Canada~~
~~130 Queen Street West, Osgoode Hall~~
~~Toronto, Ontario M5H 2N6~~

APPENDIX 2
3-dpm

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE
MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON SEPTEMBER 20, 2007

MOVED BY

SECONDED BY

THAT the rules of practice and procedure adopted by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, March 26, 1999, April 30, 1999, May 28, 1999, September 24, 1999, January 27, 2000, June 23, 2000, February 21, 2001, June 22, 2001, April 25, 2003, June 22, 2005, March 23, 2006, September 28, 2006 and June 28, 2007, be revoked and replaced with the following:

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

(MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*)

RULE 1 GENERAL RULES

1.01 Application

Rules 1 through 15 apply to hearings before tribunals under sections 27, 30, 31, 34, 38, 43, 45, 49.32 (1), 49.32 (2), 49.42 and 49.43 of the *Law Society Act* (hereinafter "the Act").

Definitions

1.02 (1) In these Rules, unless the context requires otherwise, words that are not defined in subrule (2) have the meanings defined in the Act or the *Statutory Powers Procedure Act.*

(2) In these Rules,

"appeal" means an appeal under subsections 49.32 (1) and (2) of the Act;

"Appeals Management Tribunal" or "AMT" means the bencher to whom jurisdiction is assigned in procedural matters;

"complainant" means a person who has made a complaint to the Society regarding a licensee which is relevant to the application;

"Hearings Management Tribunal" or "HMT" means the bencher to whom jurisdiction is assigned in procedural matters;

"holiday" means a holiday as defined in the *Rules of Civil Procedure*;

"motion" means a request for a ruling or decision by a tribunal on a particular issue at any stage in the proceeding which is subject to these Rules, other than a request for an adjournment;

"originating process" means a notice of application and a notice of hearing;

"party" means the Society, the person who is subject to the proceeding, and any other person added as a party by the tribunal in accordance with the Act;

"person subject to a proceeding" means a licensee, former licensee or non-Ontario lawyer as the context may require;

"proceeding" means a proceeding under the Act that commences with the service of an originating process;

"tribunal" means whichever of the HMT, Hearing Panel, AMT, or Appeal Panel that is or will be hearing the applicable part of a proceeding.

Interpretation of Rules

1.03 (1) These Rules shall be liberally construed to secure the just and expeditious determination of proceedings.

(2) Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

Substantial Compliance

1.04 (1) Substantial compliance with a form or notice required by or under these Rules is sufficient.

(2) No proceeding is invalid by reason only of a defect or other irregularity in form.

Compliance with a Rule

1.05 (1) Any provision of these Rules may be waived with the consent of the parties and leave of the tribunal.

(2) The tribunal may, where it is in the interests of justice, dispense with compliance with any Rule at any time and upon such terms as are just.

Computing Time

1.06 Subject to Rule 1.07, in computing time periods specified in these Rules or in an order of a tribunal,

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;

(b) where a period of less than seven days is prescribed, holidays shall not be counted;

(c) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it shall be deemed to be received or effective on the next day that is not a holiday.

Extension or Abridgment of Time Periods

1.07 (1) A tribunal by order may extend or abridge any time prescribed by these Rules on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Withdrawal of Counsel

1.08 Where counsel for a party seeks to be removed from the record of a proceeding, counsel shall bring a motion for leave to withdraw before the tribunal.

Removal of Counsel

1.09 Where a party seeks to remove a counsel from the record of a proceeding, the party shall bring a motion before the tribunal.

Communication with a Tribunal

1.10 Communication with a tribunal outside of the hearing shall be in the presence of all parties or their counsel, or in writing through the Clerk of the tribunal with a copy served on all parties.

Summons

1.11 (1) A summons to witness may be signed by an officer or employee of the Society who holds the office of Senior Counsel and Manager, Tribunals Office.

(2) On the request of a party, an officer or employee of the Society who holds the office of Senior Counsel and Manager, Tribunals Office shall provide a summons to a witness in blank form and the party may complete the summons and insert the name of the witness.

(3) Service of a summons on a witness is the responsibility of the party who obtained the summons.

(4) The party who obtained the summons shall pay attendance money to a witness in accordance with Tariff A under the *Rules of Civil Procedure.*

(5) Notwithstanding subrule (4), if a person is in attendance at the hearing, it is unnecessary to serve the person with a summons or to pay attendance money to call the person as a witness.

Form of Proceeding

1.12 (1) Subject to subrule (2), hearings shall be held orally with the parties, and their counsel if applicable, appearing in person.

(2) The tribunal on motion by any party may order that some or all of a hearing be held as an electronic hearing.

(3) On a motion under subrule (2), the tribunal may consider, on balance,

(a) the suitability of the subject matter;

(b) the nature of the evidence and whether credibility is in issue;

(c) whether the matters in dispute are questions of law;

(d) the convenience of the parties;

(e) the cost, efficiency and timeliness of the proceeding;

(f) the avoidance of delay or unnecessary length;

(g) the fairness of the process;

(h) public accessibility to the hearing;

(i) the fulfilment of the Society's statutory mandate; and

(j) any other matter which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.

(4) On consent, a party may move for an order that some or all of a hearing be held as a written hearing.

Location of Hearings

1.13 (1) Subject to this rule, all hearings shall be held at the offices of the Society in Toronto.

(2) The tribunal, on motion by any party, may order that a hearing be held at a place other than the offices of the Society in Toronto.

(3) On a motion under subrule (2), the tribunal may consider, on balance,

(a) the convenience of the parties;

(b) the cost, efficiency and timeliness of the proceeding;

(c) the avoidance of delay or unnecessary length;

(d) the fairness of the process;

(e) public accessibility to the hearing;

(f) the fulfilment of the Society's statutory mandate; and

(g) any other matter which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.

(4) The tribunal may set the location of a hearing in a place other than the offices of the Society in Toronto only after consultation with the Hearings Coordinator and the Secretary.

(5) The Hearings Coordinator shall be informed forthwith where there is a request for an adjournment of a hearing scheduled to be held in a location other than the offices of the Society in Toronto.

Adjournments

1.14 (1) Where the grounds for a request for an adjournment are known in advance of the date scheduled for the hearing, the adjournment request shall be made,

(a) to the HMT, where a hearing before a Hearing Panel is pending and a Hearing Panel is not seized of the proceeding; or

(b) to the AMT, where an appeal to the Appeal Panel is pending and an Appeal Panel is not seized of the proceeding,

where a sitting of the HMT or AMT is scheduled, or can be scheduled, before the date scheduled for the hearing.

(2) In circumstances to which subrule (1) does not apply, a request for adjournment shall be made to the tribunal on the date scheduled for the hearing.

RULE 2 JOINDER AND NON-PARTY PARTICIPATION

Joinder of Parties

2.01 Where permitted under the Act, the Hearing Panel may add any person as a party to a proceeding.

Non-Party Participation

2.02 (1) A tribunal may allow a person who is not a party to participate in a proceeding if the participation of the person would, in the opinion of the tribunal, be of assistance to the tribunal, or is required in the interests of justice.

(2) The tribunal shall determine the extent of such participation, when granted, and without limiting the generality of this, the tribunal may allow the person to make oral or written submissions, to lead evidence, and to cross-examine witnesses.

RULE 3 ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

Proceedings are Public

3.01 Hearings shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed;

(b) intimate financial or personal matters or other 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; or

(c) it is necessary to maintain the confidentiality of a privileged document or communication.

Reasons and Order of the Tribunal

3.02 (1) Subject to subrule (2), the order and reasons of a tribunal, including any written disposition, are a matter of public record.

(2) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal may order that all or part of its reasons, except for those referred to in subrule (3), are not to be made public.

(3) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal shall issue with its decision a written statement of the reasons for holding the proceeding, or applicable part of the proceeding, in the absence of the public but shall do so without disclosing any matters which, in the opinion of the tribunal, ought not to be disclosed.

Procedure Where Party Seeks *In Camera* Order

3.03 (1) A party seeking an order that any part of a proceeding be held in the absence of the public shall bring a motion in public before the tribunal in accordance with rule 7 with necessary modifications.

(2) Where a party is of the view that it will not be possible to argue the motion without disclosing specific matters which are the subject of the motion, that party may seek an order that the motion be heard in the absence of the public.

(3) Where a party requests that the motion be held in the absence of the public, the party shall state in public the general grounds upon which the motion is brought without disclosing the specific matters which the party wishes to be received in the absence of the public.

(4) Where a party requests that the motion be heard in the absence of the public, the tribunal may grant leave to a non-party to participate in the motion.

(5) In considering whether to permit a non-party to participate in the motion, the tribunal shall consider the nature of the non-party's interest, whether there is any reason for concern that the non-party may fail to maintain the confidentiality of matters which are disclosed in the absence of the public, and whether the interests of the public will otherwise be adequately represented.

(6) The tribunal shall advise a non-party who is permitted to participate in the absence of the public that, unless otherwise ordered, the non-party may not publish or otherwise communicate or disclose to anyone outside the hearing room anything that has been disclosed in the absence of the public.

(7) The tribunal shall advise the non-party that if the confidentiality of the proceeding is breached, in appropriate cases, the tribunal or any party to the proceeding may state a case to the Divisional Court for an order punishing that person for contempt.

(8) In circumstances where the motion is held in the absence of the public and is dismissed, the tribunal may, in public, following the motion, order that the motion be treated as if the motion had been held in public.

Varying, Setting Aside or Suspending an *In Camera* Order

3.04 (1) Following the completion of a conduct or discipline hearing, a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made in that conduct or discipline hearing pursuant to rule 3.01 or section 9 of the *Statutory Powers Procedure Act* that all or part of a conduct or discipline hearing be held *in camera*, but where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.

(2) A motion under sub-rule (1) shall be made in accordance with rule 7 except that the notice of motion shall be served on all parties and any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.

Application to Appeals

3.05 The provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications to an appeal from a decision or order of a tribunal.

Non-publication Orders

3.06 (1) A tribunal may order that information disclosed in the course of a proceeding open to the public is not to be published by any person, provided that the tribunal is satisfied that the information discloses,

(a) matters involving public security;

(b) intimate financial or personal matters or other 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; or

(c) matters for which it is necessary to maintain the confidentiality of a privileged document or communication.

(2) A motion for a non-publication order shall be made in accordance with rule 3.03 with necessary modifications.

Varying, Setting Aside or Suspending a Non-publication Order

3.07 (1) A motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made pursuant to rule 3.06, but where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.

(2) A motion under sub-rule (1) shall be made in accordance with rule 3.04 (2).

RULE 4 COMMENCEMENT OF PROCEEDINGS

Conduct, Capacity, Professional Competence and Non-Compliance Proceedings

4.01 (1) A notice of application shall be issued by the Society in Form 4A in respect of conduct, capacity, professional competence and non-compliance proceedings.

(2) A copy of the notice of application shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

Licensing, Restoration and Reinstatement Proceedings

4.02 (1) A notice of hearing shall be issued by the Society in Form 4B,

(a) in respect of licensing and restoration applications where a hearing is required by the Society; and

(b) in respect of reinstatement applications where the person subject to the proceeding requests, in writing, a hearing.

(2) A copy of the notice of hearing shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

Abandonment of a Proceeding

4.03 (1) Prior to the hearing of a conduct, capacity, professional competence or non-compliance proceeding on its merits, the Society may abandon a notice of application by delivering a notice of abandonment in Form 4C.

(2) Prior to the hearing of a licensing or restoration proceeding on its merits, the Society may abandon the requirement of a hearing by delivering a notice of abandonment in Form 4C.

(3) Prior to the hearing of a licensing, restoration, or reinstatement proceeding on its merits, the person subject to the proceeding may abandon his or her application by delivering a notice of abandonment in Form 4C.

RULE 5 SERVICE OF DOCUMENTS

Service of Documents on Parties

5.01 (1) An originating process shall be served on the person subject to the proceeding,

(a) personally;

(b) by mailing a copy thereof in a registered letter addressed to the person's last known residence or office address as shown by the records of the Society; or

(c) where a person subject to a proceeding is represented by counsel prior to issuance of an originating process, on counsel where counsel endorses on the originating process or a copy of it an acceptance of service and the date of the acceptance.

(2) An originating process shall be served at least ten days before it is first returnable before a tribunal.

(3) Service of any document other than an originating process may be effected,

(a) by personal delivery to the party or the party's counsel;

(b) by regular or registered mail to the last known address of the party or the party's counsel;

(c) by facsimile transmission to the last known facsimile transmission number of the party or the party's counsel but, where the recipient is the person subject to the proceeding or his or her counsel, the consent of the recipient is required;

(d) by courier, including Priority Post, to the last known address of the party or the party's counsel; or

(e) by any other means authorized or permitted by the tribunal.

(4) Service is deemed to be effective when delivered,

(a) by personal delivery or facsimile transmission before 4 p.m., on the day of delivery or facsimile transmission, and after that time, on the next day;

(b) by regular or registered mail, on the fifth day after mailing;

(c) by courier, on the second day after the document was provided to the courier; or

(d) by any means authorized or permitted by the tribunal, on the date ordered by the tribunal.

Proof of Service

5.02 (1) Service of a document may be proved by,

(a) an affidavit of the person who served it; or

(b) where a person is represented in a proceeding or on a motion and the document is served on the person's representative, the written admission or acceptance of service of the person's representative.

(2) The affidavit or written admission or acceptance of service may be printed on the back sheet or on a stamp or sticker affixed to the back sheet of the document served.

RULE 6 DISCLOSURE

Obligations of the Society

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

(a) a copy of any document upon which it intends to rely and the opportunity to examine any other document;

(b) a summary of the oral evidence of all witnesses; and

(c) the list of witnesses which the Society intends to call.

(2) Subject to rule 6.05, evidence against a person subject to a proceeding is not admissible unless disclosure of that evidence has been made at least ten days before the hearing.

Obligations of the Person Subject to a Proceeding

6.02 In licensing, restoration, and reinstatement proceedings, evidence upon which the person subject to the proceeding intends to rely is not admissible unless the person has provided to the Society, within 60 days of receipt of the notice of hearing,

(a) a copy of any documents upon which the person intends to rely;

(b) a summary of the oral evidence of all witnesses upon which the person intends to rely; and

(c) the list of witnesses which he or she intends to call.

Summaries of Evidence

6.03 Where parties are required to disclose a summary of the oral evidence of a witness, the summary shall be in writing and contain,

(a) the substance of the evidence of the witness;

(b) a list of documents or things, if any, to which the witness will refer; and

(c) the witness' name and address or, if the witness' address is not provided, the name of a person through whom the witness can be contacted.

Expert Reports

6.04 Evidence of an expert led by any party or non-party participant is not admissible unless the party or non-party participant gives all parties in the proceeding, at least ten days before the hearing, the expert’s curriculum vitae, and a copy of the expert's written report or, if there is no written report, a summary of the evidence.

Discretion of Tribunal

6.05 A tribunal may, in its discretion, allow the introduction of evidence that is not admissible under rules 6.01, 6.02 and 6.04 and may make such directions as it considers necessary to ensure that no party is prejudiced.

RULE 7 MOTIONS

Making the Motion

7.01 A motion shall be made by notice of motion (Form 7A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

Scheduling the Motion

7.02 A motion may be scheduled for hearing,

(a) on any date on which the merits of the application to which the motion relates is scheduled to be heard; or

(b) on a date obtained from the Hearings Coordinator.

Service of Notice

7.03 Where a motion is made on notice, the notice of motion shall be served on all parties and any person who will be affected by the order sought at least ten days before the date on which the motion is to be heard.

Filing of Notice

7.04 Where a motion is made on notice, the notice of motion shall be filed, with proof of service, with the Clerk to the Tribunal, at least seven days before the date the motion is to be heard.

Abandoning a Motion

7.05 (1) A party who makes a motion may abandon it by serving a notice of abandonment (Form 7C) on every party or person served with the notice of motion and filing it, with proof of service, with the Clerk to the Tribunal.

(2) A party who serves a notice of motion and does not file it or appear at the hearing of the motion shall be deemed to have abandoned the motion unless the tribunal orders otherwise.

(3) Where a motion is abandoned or is deemed to be abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith unless the tribunal orders otherwise.

Materials for Use on the Motion

7.07 (1) Where a motion is made on notice, the moving party shall serve a motion record on every party or person served with the notice of motion, and shall file it, with proof of service, with the Clerk to the Tribunal, at least seven days before the date on which the motion is to be heard.

(2) The moving party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, ncluding each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter;

(b) a copy of the notice of motion; and

(c) all affidavits and other material to be relied upon.

(3) Where a motion is made on notice, the responding party may serve a motion record on the moving party and every party or person served with the notice of motion, and file it, with proof of service, with the Clerk to the Tribunal, at least three days before the date on which the motion is to be heard.

(4) The responding party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter; and

(b) any materials to be relied upon not contained in the moving party's motion record.

(5) Where a motion is made on notice, a party may serve on every party and person served with the notice of motion a factum and a book of the authorities referred to in the factum.

(6) The moving party shall serve its factum and book of authorities, if any, and shall file them, with proof of service, with the Clerk to the Tribunal, at least seven days before the date on which the motion is to be heard.

(7) The responding party shall serve its factum and book of authorities, if any, and shall file them, with proof of service, with the Clerk to the Tribunal, at least three days before the date on which the motion is to be heard.

(8) When filing materials with the Clerk to the Tribunal, a party shall file,

(a) two copies of the materials where the motion is to be heard by one member of the Hearing Panel, the HMT or the AMT;

(b) four copies of the materials where the motion is to be heard by three members of the Hearing Panel; and

(c) six copies of the materials where the motion is to be heard by the Appeal Panel.

Motion on Consent

7.07 (1) Despite rule 1.12, where a motion is on consent, the motion may be heard in writing without the attendance of the parties or person affected by the order unless the tribunal orders otherwise.

(2) Where the motion is on consent, the moving party shall file the consent and a draft of the formal order, with the notice of motion, with the Clerk to the Tribunal.

Disposition of Motion

7.08 After hearing a motion, a tribunal may,

(a) grant the relief sought;

(b) dismiss the motion, in whole or in part;

(c) adjourn the motion, in whole or in part; or

(d) if the motion is heard prior to the hearing of the merits of the application to which the motion relates, adjourn the motion to be disposed of by the tribunal hearing the merits of the application.

Order

7.09 (1) After a tribunal has disposed of a motion, the tribunal shall make an endorsement of its order on the motion record, where the motion was made on notice, or on the notice of application, where notice was not required, unless,

(a) the tribunal delivers written reasons for its order; or

(b) the circumstances make it impractical for the tribunal to make the endorsement.

(2) Where a motion is made on notice, after a tribunal has disposed of the motion, the successful party shall, and any other party or person served with a notice of motion may, submit a draft of the formal order (Form 7B).

(3) The tribunal or the chair of the part of the tribunal that hears a motion shall review all drafts submitted under subrule (2) and shall, with or without amending it, sign one of the drafts.

Costs and Adjournment

7.10 All motions shall be brought in a timely fashion having regard to all of the circumstances and the moving party's failure to do so may be taken into account in awarding costs on the motion and in granting any related adjournment which may be necessary.

RULE 8 INTERLOCUTORY SUSPENSION AND RESTRICTION ORDERS

Authority to Make Interlocutory Suspension or Restriction Order

8.01 On motion by the Society, the Hearing Panel may make an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or in which a licensee may provide legal services.

General

8.02 (1) Except as otherwise provided for in this rule, rule 7 applies with necessary modifications to a motion for an interlocutory suspension or restriction order.

(2) Where an application to the Hearing Panel has not been authorized by the Proceedings Authorization Committee or the Hearing Panel has not commenced a hearing on the merits of an application, with the authorization of the Proceedings Authorization Committee, the Society may make a motion relating to the application to the Hearing Panel for an interlocutory suspension or restriction order.

Making the Motion

8.03 A motion for an interlocutory suspension or restriction order shall be made by notice of motion.

Service of Notice

8.04 (1) The notice of motion shall be served on the licensee at least three days before the date on which the motion is to be heard.

(2) Despite subrule (1), the Hearing Panel may make an order without the notice of motion having been served on the licensee where,

(a) the circumstances render the service of the notice of motion impracticable or unnecessary; or

(b) the delay necessary to effect service might entail serious consequences.

(3) Subrule 5.01 (1) applies to the service of a notice of motion.

Filing of Notice

8.05 (1) Where the notice of motion has been served, the notice of motion shall be filed, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(2) Where service of the notice of motion is not required, the notice of motion shall be filed, with the Clerk to the Tribunal, at or before the hearing of the motion.

Materials for Use on the Motion

8.06 (1) Where the notice of motion has been served, the Society shall serve a motion record on the licensee, at least three days before the date on which the motion is to be heard, and shall file it, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(2) Where the notice of motion has been served, the licensee may serve a motion record on the Society not later than 2:00 p.m. on the day before the date on which the motion is to be heard, and file it, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(3) Where the notice of motion has been served, the Society shall serve its factum and book of authorities, if any, on the licensee, at least three days before the date on which the motion is to be heard, and shall file them, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(4) Where the notice of motion has been served, the licensee shall serve its factum and book of authorities, if any, on the Society not later than 2:00 p.m. on the day before the date on which the motion is to be heard, and shall file them, with proof of service, with the Clerk to the Tribunal, not later than 4:00 p.m. on the day before the date on which the motion is to be heard.

(5) Where service of the notice of motion is not required, the Society shall file the motion record and the factum and book of authorities, if any, with the Clerk to the Tribunal, at or before the hearing of the motion.

Evidence

8.07 Despite rule 11.01, section 15 of the *Statutory Powers Procedure Act* applies in a hearing of a motion for an interlocutory suspension or restriction order.

Disposition of Motion

8.08 Where it appears to the Hearing Panel that the notice of motion ought to have been served on the licensee, the Hearing Panel shall adjourn the motion and direct that the notice of motion be served on the licensee.

Order

8.09 (1) Every interlocutory suspension or restriction order shall, when it is first made, be an interim interlocutory order until 30 days after service of the order on the licensee and, after that, shall become a final interlocutory order unless fresh evidence or a material change in circumstances is brought by the parties to the attention of the tribunal that made the order and the tribunal varies or cancels the order.

(2) Unless the Hearing Panel provides otherwise, a final interlocutory suspension or restriction order continues in force until an order of the Appeal Panel sets aside or varies the order or the Hearing Panel makes a final order after a hearing of the application on its merits.

(3) Unless the Hearing Panel provides otherwise, where service of the notice of motion was not required, the Society shall serve on the licensee any order or formal order made by the Hearing Panel and a copy of the notice of motion, motion record and all other documents used in the hearing of the motion.

RULE 9 PRE-HEARING PROCEDURES

Tribunal to Which Proceeding is First Returnable

9.01 (1) A proceeding shall be first returnable before the HMT to set a date for a hearing on its merits.

(2) Despite subrule (1), a proceeding which originates by notice of application may be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where the hearing of the merits of another application involving the same parties has already been scheduled.

(3) Despite subrule (1), a proceeding which originates by notice of application shall be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where,

(a) the application is for a determination of whether a licensee has contravened section 33 of the Act by one or more of the following:

i. Failing to maintain financial records as required by the by-laws.

ii. Failing to respond to inquiries from the Society.

iii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act; or

(b) the nature of the application requires that the hearing of the merits of the application be expedited.

(4) When the originating process is served, the Society shall give notice of the time when and the place at which the proceeding shall be returnable before the HMT or the Hearing Panel.

Setting Hearing Dates

9.02 (1) Subject to subrule (2), a hearing into a proceeding shall be set only on regularly scheduled hearing dates obtained from the Hearings Coordinator.

(2) Where the parties estimate that the hearing will require more than one day,

(a) the parties shall request special dates for the hearing at the HMT; and

(b) the HMT, at its discretion, may direct that the parties to attend a pre-hearing conference as prescribed by Rule 10.

(3) Prior to requesting the HMT to set special dates for the hearing, the parties shall first obtain available dates from the Hearings Coordinator.

RULE 10 PRE-HEARING CONFERENCES

Party to Request

10.01 (1) Prior to the hearing of a proceeding on its merits, commenced by either a notice of application or a notice of hearing, any party may request that a pre-hearing conference take place before a bencher.

(2) There shall not be more than one pre-hearing conference in a proceeding except by order of the pre-hearing conference bencher or the HMT or on the consent of the parties.

(3) The pre-hearing conference bencher shall not sit on the tribunal at the hearing of a proceeding on its merits unless the parties consent in accordance with rule 12.01.

Attendance at Pre-Hearing

10.02 (1) Where a party refuses to attend a pre-hearing conference, an order that a pre-hearing conference be held may be obtained on motion to the HMT.

(2) Unless otherwise ordered, written notice of the time and place of a pre-hearing conference shall be given by the Hearings Coordinator to the parties and the pre-hearing conference bencher.

(3) Unless otherwise ordered or the parties consent, the parties and their counsel are required to attend in person.

Preparation for Pre-hearing Conference

10.03 Unless otherwise ordered, the parties shall exchange pre-hearing conference memoranda and any related documents and provide copies to the pre-hearing conference bencher, at least two days prior to the pre-hearing conference.

Electronic Pre-hearing Conference

10.04 A pre-hearing conference may be held by conference telephone with the consent of the parties and leave of the pre-hearing conference bencher or the HMT.

Procedure at Pre-hearing Conference

10.05 At the pre-hearing conference, the presiding bencher shall discuss with the parties, among other things,

(a) whether any of the issues can be settled;

(b) whether the issues can be simplified;

(c) whether the parties are able to enter into an agreed statement of facts concerning all or part of the subject matter of the proceeding; and

(d) the advisability, in appropriate cases, of attempting other forms of resolution.

Closed and Without Prejudice

10.06 A pre-hearing conference shall not be open to the public and all discussions at the pre-hearing conference shall be without prejudice.

Documents

10.07 Documents provided to the pre-hearing conference bencher shall,

(a) at the conclusion of the pre-hearing conference, be returned by the pre-hearing conference bencher to the party who provided them; and

(b) not be considered to be filed in the proceedings.

Agreements and Undertakings

10.08 (1) Agreements and undertakings made at a pre-hearing conference may be recorded in a memorandum prepared by or at the direction of the pre-hearing conference bencher.

(2) Copies of the memorandum referred to in subrule (1) shall be provided to the parties.

(3) Agreements and undertakings in the memorandum referred to in subrule (1) are binding upon the parties to the proceeding unless otherwise ordered by the Hearing Panel.

RULE 11 EVIDENCE

Rules of Evidence

11.01 (1) The rules of evidence applicable in civil proceedings apply in proceedings under the Act.

(2) Notwithstanding subrule (1), with leave of the tribunal, an affidavit or statutory declaration of any person is admissible in evidence as proof, in the absence of evidence to the contrary, of the statements made therein.

(3) An affidavit for use in a proceeding may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit but where, in the opinion of the tribunal, better evidence should be adduced through direct evidence of a witness, the tribunal may require the party to file or call such direct evidence and strike out the evidence filed.

Cross-Examination before Official Examiner

11.02 (1) A tribunal may order, on its own motion or on the motion of a party, that the cross-examination of the deponent of an affidavit or statutory declaration be conducted before an official examiner.

(2) Where the cross-examination of the deponent of an affidavit or statutory declaration is conducted before an official examiner, it shall be conducted in a manner analogous to the procedure under the *Rules of Civil Procedure* and, where necessary, the parties may seek direction from the tribunal.

Documentary Evidence

11.03 In addition to providing a copy to the other party, any party tendering a document as evidence shall provide to the Clerk of the tribunal,

(a) four copies of each document where the hearing is before a three member Hearing Panel; or,

(b) two copies of each document where the hearing is before a one member Hearing Panel, the HMT, or the AMT.

Certain information not admissible

11.04 Notwithstanding subrule 11.01 (1), information obtained by the Discrimination and Harassment Counsel as a result of the performance of his or her duties under clause 19 (1) (a) of By-Law 11 shall not be used and is inadmissible in a proceeding before the tribunal.

RULE 12 CONDUCT OF HEARINGS

Consent

12.01 Where the licensee and the Society consent to a hearing before a one member Hearing Panel, a consent in Form 12A, must be filed with the Hearing Panel prior to the commencement of the hearing.

Pre-hearing Conference

12.02 Where a pre-hearing conference has been held in relation to a proceeding, and the licensee and the Society consent to the proceeding being heard before the pre-hearing bencher sitting as a one member Hearing Panel,

(a) the hearing shall not commence until after the conclusion of the pre-hearing conference;

(b) the hearing shall be conducted in accordance with the same rules applicable to any other proceeding before a Hearing Panel; and,

(c) consent, in Form 12B, shall be executed after the pre-hearing conference by both the licensee and the Society and filed with the Hearing Panel prior to the commencement of the hearing.

Exclusion of Witnesses in Proceedings

12.03 (1) A tribunal may order that one or more witnesses be excluded from the hearing until called to give evidence.

(2) An order under subrule (1) may not be made in respect of a party to the proceeding or a witness whose presence is essential to advise counsel for the party calling the witness, but the tribunal may require any such party or witness to give evidence before other witnesses are called to give evidence on behalf of that party.

(3) Where an order is made excluding one or more witnesses from the hearing, there shall be no communication to an excluded witness of any evidence given during the witness' absence from the hearing, except with the leave of the tribunal, until after the witness has been called and has given evidence.

Visual or Audio Recording of Proceedings

12.04 Subsections 136 (1), (2) and (3) of the *Courts of Justice Act* apply to proceedings with necessary modifications.

Transcripts

12.05 (1) All oral and electronic hearings shall be recorded to permit the production of a transcript.

(2) The first party to order a transcript shall pay the cost of transcribing and shall file a copy of the transcript as part of the record.

Interpreters

12.06 (1) Where a witness requires an interpreter, the Society shall provide the interpreter, subject to an order to the contrary by the tribunal.

(2) An interpreter shall be competent and independent and, before the witness is called, shall swear or affirm that he or she will interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and his or her answers.

Special Needs

12.07 Parties shall notify the Hearings Coordinator as early as possible of any special needs of the parties or their witnesses.

RULE 13 ORDERS

Reprimands

13.01 (1) Unless the right of appeal is waived by the Society and the licensee, a reprimand shall not be administered before the time for serving a notice of appeal has expired.

(2) A reprimand may be administered by any member of the tribunal.

(3) Where an order of reprimand is appealed and where the Appeal Panel decides that a reprimand is the appropriate disposition, the reprimand may be administered by any member of the Appeal Panel.

(4) A reprimand may be administered in writing.

(5) Except where a reprimand is administered in writing, it is to be administered at a sitting of the Hearing Panel or the Appeal Panel, as the case may be, that is open to the public.

Orders issued by One Member Hearing Panel in Conduct Proceedings

13.02 A one member Hearing Panel may not make an order under paragraphs 35 (1) 1 or 35 (1) 2 of the Act.

Written Reasons

13.03 (1) Subject to subrule (2) and subrule 15.07, a tribunal is required to give reasons in writing if the request for written reasons is made within thirty days after the day on which the panel makes its final decision or order.

(2) A Hearing Panel shall issue written reasons for decisions in relation to capacity applications in every case.

Incapacity Orders Made in the Absence of the Licensee

13.04 (1) Where the Hearing Panel has proceeded in the absence of a licensee and has determined that there are reasonable grounds for believing that the licensee is, or has been, incapacitated, the Hearing Panel may make an interlocutory order suspending the licensee's licence or restricting the manner in which the licensee may practise law or in which the licensee may provide legal services.

(2) An interlocutory order made under subrule (1) shall become a final order of the Hearing Panel, with respect to the application to which it relates, thirty days after the date on which the interlocutory order is made, unless the licensee appears before the Hearing Panel for the hearing of the merits of the application.

RULE 14 COSTS

Security for Costs

14.01 (1) In licensing, reinstatement or restoration proceedings, or an appeal arising from any of these proceedings, the tribunal, on motion by the Society, may make such order for security for costs as is just where it appears that,

(a) the person subject to the proceeding has an order for payment of costs made against him or her in the same or another proceeding under the Act which remains unpaid in whole or in part; and

(b) there is good reason to believe that the proceeding is unwarranted and the person subject to the proceeding has insufficient assets in Ontario to pay the costs of the Society where ordered.

(2) A person subject to a proceeding against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding except with leave of the tribunal.

(3) Where a person subject to a proceeding defaults in giving the security required by an order, the tribunal, on motion by the Society, may dismiss the proceeding and any stay obtained no longer applies.

Motions for Costs

14.02 A request for costs shall be made by motion to the tribunal which heard the proceeding on its merits or where otherwise appropriate.

Costs against the Society

14.03 In licensing, conduct, capacity, professional competence or non-compliance proceedings, where it appears that the proceedings were unwarranted, the tribunal may order that such costs as it considers just be paid to the person subject to the proceeding by the Society and any other party to the proceeding.

Costs to the Society

14.04 (1) In appropriate cases, where a tribunal has made a determination in a proceeding that is adverse to a party other than the Society, the tribunal may make an order requiring that party to pay all or part of,

(a) the Society's legal costs and expenses;

(b) the Society's costs and expenses incurred in investigating the matter; and

(c) the Society's costs and expenses incurred in conducting the proceeding.

(2) In awarding costs and expenses, the tribunal shall apply any tariff which may be approved by Convocation from time to time.

Wasted or Unreasonable Costs

14.05 (1) Where a party or non-party participant has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the tribunal may make an order awarding such costs as are just.

(2) An order under subrule (1) may be made by the tribunal on its own motion or on the motion of any party in the proceeding.

RULE 15 APPEALS

General

15.01 Subject to the Act, there is no appeal from a final interlocutory order of the Hearing Panel other than an interlocutory order suspending a licensee’s licence or restricting the manner in which a licensee may practise law or in which a licensee may provide legal services.

Stay Pending Appeal

15.02 A party seeking a stay of a final order of a Hearing Panel shall bring a motion to the Appeal Panel in accordance with Rule 7 with necessary modifications.

Commencement of Appeals

15.03 (1) An appeal shall be brought by a notice of appeal in accordance with Form 15A.

(2) The notice of appeal shall be served on all other parties and filed with the Clerk to the Appeal Panel:

(a) within 30 days of service of the order;

(b) after 30 days on consent of the parties, or with leave of the Appeal Panel.

Materials on the Appeal

15.04 (1) A party delivering a notice of appeal shall contemporaneously serve and file a certificate of the contents of the record book, in accordance with Form 15B, listing the contents of the record book necessary for that party's purposes.

(2) Within five days of delivery of a certificate of the contents of the record book, the other party shall serve and file a certificate of the contents of the record book in accordance with Form 15B.

(3) Subject to subrule (5), the contents of the record book shall contain the documents listed in the certificate(s), as the case may be, unless ordered otherwise by the AMT.

(4) Within thirty days of delivery of the first certificate of the contents of the record book, the party delivering a notice of appeal shall serve a record book on the opposing party or counsel for that party and shall file 6 copies of the record book with the Clerk to the Appeal Panel.

(5) Where a party fails to deliver a certificate of the contents of the record book, that party shall be deemed to accept the other party's certificate of the contents of the record book, unless the party obtains the consent of the other party or an order from the AMT.

(6) The record book shall contain, in consecutively numbered pages, the following,

(a) a table of contents describing each document by its nature and date and, in the case of an exhibit, by exhibit number or letter;

(b) a copy of each notice of appeal;

(c) a copy of each document required;

(d) all relevant transcripts or a list of all relevant transcripts together with a certificate of the court reporter confirming that such transcripts have been ordered and any deposit required for preparation of transcripts has been paid; and

(e) a copy of each certificate of the contents of the record book.

(7) The party delivering a notice of appeal shall serve a factum on all other parties within 15 days of the delivery of the record book.

(8) Within 15 days of receipt of a factum, a party shall serve a responding factum on all other parties.

(9) Each factum shall contain a concise statement, without argument, of the facts, issues to be argued, a concise statement of law, and authorities relating to each issue and the order sought.

(10) Each party shall serve with their factum, a book of authorities unless the authorities to be relied upon are contained in the standard book of authorities.

(11) Each party shall file 6 copies of that party's factum and book of authorities with the Clerk to the Appeal Panel.

(12) Where the party who files a notice of appeal fails to file a certificate of content of the record book, record book, factum or book of authorities in the time prescribed by this rule or by the AMT, the notice of appeal shall be deemed to be abandoned, unless the party obtains the consent of the other party or an order from the AMT.

Appeal Management Tribunal (AMT)

15.05 (1) The AMT shall schedule hearings before the Appeal Panel.

(2) The AMT shall hear motions with respect to,

(a) the abridgement or extension of any time prescribed by these Rules or by a previous order of the AMT;

(b) the location of the hearing of an appeal or a motion;

(c) the form of the hearing, including a request to hold a hearing as an electronic or written hearing;

(d) the consequences of non-compliance with a previous order of the AMT;

(e) the materials to be filed with the Appeal Panel;

(f) procedural issues regarding motions before the Appeal Panel including the contents of any affidavit or the record book of further evidence, the scope or conduct of a cross-examination, and the costs of transcripts and appointments before an official examiner; and

(g) requests to strike out a notices of appeal for failure to comply with these rules or any order of the AMT or the Appeal Panel.

(3) The AMT may, on request of a party or on its own motion, transfer the hearing of a motion to the Appeal Panel hearing the proceeding on its merits.

Motion to Tender Fresh Evidence

15.06 (1) If a party seeks to tender evidence to the Appeal Panel which was not before the Hearing Panel, the party shall bring a motion before the Appeal Panel in accordance with Rule 7 with necessary modifications.

(2) Both parties shall be prepared to proceed with the Appeal Panel's consideration of the appeal on its merits following a motion to tender fresh evidence, in any event of the result of the motion.

(3) Where the party who files a notice of motion to tender fresh evidence fails to file supporting materials in the time prescribed by this rule or by the AMT or fails to attend for cross-examination if required or fails to obtain transcripts of any cross-examinations in accordance with these rules, the notice of motion to tender fresh evidence shall be deemed abandoned, unless the party obtains the consent of the other party or an order from the AMT.

Reasons

15.07 The Appeal Panel shall give written reasons for its decision in every case.

RULE 16 SUMMARY ORDERS

Application

16.01 (1) Rule 16 applies to matters concerning sections 46, 47, 47.1, 48, 49 and 49.32 (3) of the Act.

(2) Rules 1, 5, 6, 7, 10, 11, 12 and 14 apply with necessary modification to Rule 16.

Definitions

16.02 In this Rule,

"summary disposition bencher" means an elected bencher appointed by Convocation, pursuant to sections 46, 47, 47.1, 48 or 49 of the Act, to make summary orders.

"summary order" means an order prescribed by sections 46, 47, 47.1, 48 or 49 of the Act.

"summary order appeal" means an appeal prescribed by subsection 49.32 (3) of the Act.

Summary Orders

16.03 A summary order issued by the summary disposition bencher shall be in accordance with Form 16A.

Service of Notice of Summary Orders

16.04 (1) Notice to a licensee or former licensee of a summary order having been made shall be served personally or by mailing a copy thereof in a registered letter addressed to the person's last known residence or office address as shown by the records of the Society.

(2) Where notice is given by registered mail it shall be deemed to have been given on the fifth day after the mailing.

Appeal of a Summary Order

16.05 (1) An appeal of a summary order on any question of fact or law shall be brought by a notice of appeal in accordance with Form 16B.

(2) The notice of appeal shall be served on the Society and filed with the Clerk to the Appeal Panel,

(a) within 30 days of service of notice of the order on the licensee; or

(b) after 30 days on consent of the Society, or with leave of the Appeal Panel.

Disclosure of Documents by Society

16.06 Where a notice of appeal is served on the Society, it shall make disclosure to the licensee or former licensee, within 10 days of receipt of the notice of appeal, of all relevant documents in its possession, power or control.

Appeal Record

16.07 (1) The licensee or former licensee shall serve on the Society within 30 days of service of the notice of appeal,

(a) an appeal record which shall contain the summary order, the notice of appeal, all affidavits, and any other material to be relied upon; and

(b) a factum, if desired by the licensee or former licensee, and a book containing any authorities referred to in the factum.

(2) The licensee or former licensee shall file six copies of the materials referred to in subrule (1) with the Clerk of the Appeal Panel with proof of service within 5 days of service of the materials on the Society.

Responding to an Appeal

16.08 (1) The Society shall serve on the licensee or former licensee, within 10 days of the receipt of an appeal record,

(a) a responding appeal record containing any materials not contained in the appeal record upon which it intends to rely; and

(b) a factum, if desired by the Society, and a book of those authorities referred to in the factum.

(2) The Society shall file six copies of the materials in subrule (1) with the Clerk of the Appeal Panel with proof of service no more than 5 days after the service of the material upon the licensee or former licensee.

Evidence on the Appeal of a Summary Order

16.09 Subject to Rules 11.01 (3) and 11.02, evidence on the appeal of a summary order shall be given by affidavit unless the Appeal Panel orders otherwise.

Scheduling the Appeal

16.10 After the licensee or former licensee has complied with Rule 16.07, the licensee or former licensee shall contact the Hearings Coordinator within 30 days to obtain available dates and times for the hearing of the appeal.

Abandoning a Summary Order Appeal

16.11 (1) The licensee or former licensee may abandon a summary order appeal by serving a notice of abandonment in Form 4C on the Society and the Clerk of the Appeal Panel.

(2) The licensee, or former licensee, who,

(a) fails to comply with the provisions of Rule 16.07;

(b) fails to comply with the provisions of Rule 16.10; or

(c) fails to appear at the hearing of the appeal,

shall be deemed to have abandoned the summary order appeal unless the Appeal Panel orders otherwise.

(3) Where an appeal is abandoned or is deemed to have been abandoned, the Society is entitled the costs of the appeal unless the Appeal Panel orders otherwise.

Appeals on Consent

16.12 Where an appeal is on consent, the appeal may be heard in writing without the attendance of the Society or the licensee or former licensee unless the Appeal Panel orders otherwise. The written consent of the parties and a draft order shall be filed with the Clerk of the Appeal Panel.

Adopted by Convocation: January 28, 1999
Amended: February 19, 1999, March 26, 1999, April 30, 1999, May 28, 1999, September 24, 1999, January 27, 2000, June 23, 2000, February 21, 2001, June 22, 2001, April 25, 2003, June 22, 2005, March 23, 2006, September 28, 2006 and June 28, 2007.
Revoked and replaced by Convocation: September 20, 2007.

These Rules can be found at
www.lsuc.on.ca.

FORM 4A - NOTICE OF APPLICATION

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of licensee, etc.*) of the (*City, Town, etc.*), a (*licensee, etc.*) of the Law Society.

NOTICE OF APPLICATION

TO: ***(NAME OF LICENSEE, ETC.)***

TAKE NOTICE THAT The Law Society of Upper Canada intends to apply to the Hearing Panel of the Law Society (*nature of application*)

The [*professional misconduct AND/OR conduct unbecoming AND/OR non-compliance*] that is alleged is particularized as follows: *(set out particulars)*

AND TAKE FURTHER NOTICE THAT a date will be set before the Hearings Management Tribunal of the Law Society for the hearing of this Application before the Hearing Panel, at the offices of The Law Society of Upper Canada, in the East Wing of Osgoode Hall, 130 Queen Street West, in the City of Toronto, on *(day)*, *(date)* at *(time)*, and that you are entitled to be present at the hearing with or without counsel and to make submissions.

[*OR*:
AND TAKE FURTHER NOTICE THAT the hearing into this Application will be held before the Hearing Panel of the Law Society of Upper Canada, at the offices of the Law Society of Upper Canada, in the East Wing of Osgoode Hall, 130 Queen Street West, in the City of Toronto, on the *(day)*, *(date)* at *(time)* and that you are entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions.]

AND TAKE FURTHER NOTICE THAT should you fail to attend, the hearing may be conducted in your absence and you will not be entitled to any further notice in the proceeding.

(Date)

_____
(Name and telephone number of counsel)

FORM 4B - NOTICE OF HEARING

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of licensee, etc.*) of the (*City, Town, etc.*), a (*licensee, etc.*) of the Law Society.

NOTICE OF HEARING

TO: ***(NAME OF LICENSEE, ETC.)***

TAKE NOTICE THAT a date will be set by the Hearings Management Tribunal for the hearing of your application (*nature of application* *) before the Hearing Panel of The Law Society of Upper Canada, at the offices of the Law Society of Upper Canada, in the East Wing of Osgoode Hall, 130 Queen Street West, in the City of Toronto, on the *(day)*, *(date)* at *(time)* and that you are entitled to be present at the hearing with or without counsel and make submissions.

OR

The hearing of your application for (*nature of application*) will be held before the Hearing Panel of the Law Society of Upper Canada, at the offices of the Law Society of Upper Canada, in the East Wing of Osgoode Hall, 130 Queen Street West, in the City of Toronto, on *(day)*, *(date)* at *(time)* and that you are entitled to be present at the hearing with or without counsel and to adduce evidence and make submissions.

AND TAKE FURTHER NOTICE THAT should you fail to attend at the hearing, the hearing may be conducted in your absence or your application may be deemed abandoned and you will not be entitled to any further notice in the proceeding.

(Date)

_____
(Name and telephone number of counsel)

**(the following are examples)*

licensing pursuant to section 27 of the *Law Society Act*
reinstatement pursuant to subsection 49.42 (1) OR 49.42 (3) of the *Law Society Act*
restoration pursuant to subsection 31(2) of the *Law Society Act*

FORM 4C - NOTICE OF ABANDONMENT

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*insert name of licensee, etc.*) of the (*City, Town, etc.*), a (*licensee, etc*.) of the Law Society.

NOTICE OF ABANDONMENT

TAKE NOTICE that *(name of party)* hereby abandons *(it's/his/her)* application for a determination that *(insert nature of application).*

DATED this day of , .

(*Date*) (*Name, address and telephone number of party's solicitor or party*)

TO: (*Name, address and telephone number of responding party's solicitor or responding party*)

FORM 7A - NOTICE OF MOTION

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of licensee, etc)* of the (*City, Town, etc.*), a (*licensee, etc.*) of the Law Society.

NOTICE OF MOTION

(*Identify party*) will make a motion to (*name tribunal*) on (*day*), (*date*), at (*time*), or as soon after that time as the motion can be heard, in a hearing room at the Law Society at 130 Queen Street West, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard (choose appropriate option):

____ in writing with the consent of the responding party; or

____ orally.

THE MOTION IS FOR (*Set out precise relief sought*).

THE GROUNDS FOR THE MOTION ARE (*Set out the grounds to be argued*).

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion: (*List the affidavits or other documentary evidence to be relied on*).

(*Date*) (*Name, address and telephone number of moving party's solicitor or moving party*)

TO: (*Name, address of responding party's solicitor or responding party*)

FORM 7B - ORDER ON A MOTION

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*licensee, etc.*) of the (*City, Town, etc.*), a (*licensee, etc.*) of the Law Society.

ORDER

THIS MOTION, made by (*identify moving party*) for (*state the relief sought in the notice of motion, except to the extent that it appears in the operative part of the order*), was heard on (*date*), (*at name place OR electronically OR in writing*), before (*list appeal OR hearing panel bencher(s)*)**.**

ON READING the (*give particulars of the material filed on the motion*) and on (*hearing OR reading*) the submissions of counsel for (*identify parties*), (*where applicable, add (identify party) appearing in person OR no one appearing for (identify party), although properly served as appears from (indicate proof of service*)),

1. IT IS ORDERED that ...

2. IT IS FURTHER ORDERED that ...

(*Date*)

_____
(*Signature of presiding Chair of tribunal*)

FORM 7C - NOTICE OF ABANDONMENT

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*insert name of licensee, etc.*) of the (*City, Town, etc.*), a (*licensee, etc*.) of the Law Society.

NOTICE OF ABANDONMENT

TAKE NOTICE that *(name of party)* hereby abandons *(its/his/her)* motion for *(insert nature of motion).*

DATED this day of , .

(*Date*) *party's*

(*Name, address and telephone number of solicitor or party*)

TO: (*Name, address and telephone number of responding party's solicitor or responding party*)

FORM 12A – CONSENT TO HEARING BEFORE SINGLE BENCHER

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of licensee, etc.*) of the (*City, Town, etc.*), a (*licensee, etc.*) of the Law Society.

CONSENT TO HEARING BY SINGLE BENCHER HEARING PANEL

1. Pursuant to Ontario Regulation 167/07 made under the *Law Society Act*, the (*licensee*) and the Law Society (the "parties") hereby consent to this Application being heard and determined by a single Bencher Hearing Panel.

2. The parties give this consent in the full understanding that, due to the nature of the Application, the parties have the right to a hearing before a three Bencher Hearing Panel and the parties specifically waive that right.

(*Licensee*) (*Law Society Counsel*)

(*date of signature*) (*date of signature*)

FORM 12B – CONSENT TO HEARING BEFORE PRE-HEARING CONFERENCE BENCHER

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of licensee, etc.*) of the (*City, Town, etc.*), a (*licensee, etc.*) of the Law Society.

CONSENT TO HEARING BEFORE PRE-HEARING CONFERENCE BENCHER

1. Pursuant to Ontario Regulation 167/07 made under the *Law Society Act*, (*the licensee*) and the Law Society (the "parties") hereby consent to this Application being heard and determined by a single Bencher Hearing Panel.

2. The parties give this consent in the full understanding that, due to the nature of the Application, the parties have the right to a hearing before a three Bencher Hearing Panel and the parties specifically waive that right.

3. The parties further consent to naming (*name of* Bencher) as the single Bencher Hearing Panel, notwithstanding that he/she has acted as the pre-hearing conference Bencher.

4. The parties acknowledge that a pre-hearing conference has taken place before (*name of Bencher*) on (*date*) and that:

(a) the issues with respect to this Application have been thoroughly explored at the pre-hearing conference;

(b) a resolution has been agreed upon by the parties;

(c) the (*licensee*) admits (*professional misconduct/conduct unbecoming*);

(d) this consent has been given by the parties after the conclusion of the pre-hearing conference; and

(e) no aspect of the pre-hearing conference was contingent upon this consent.

5. The parties further acknowledge that the single Bencher Hearing Panel will conduct the hearing, make findings and make an order as to penalty based solely upon the evidence placed and submissions made before him/her at the hearing.

(*Licensee*) (*Law Society Counsel*)

(*date of signature*) (*date of signature*)

FORM 15A - NOTICE OF APPEAL TO APPEAL PANEL

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of licensee, etc.*) of the (*City, Town, etc.*), a (*licensee, etc.*) of the Law Society.

NOTICE OF APPEAL

(*Identify party*) APPEALS to the Appeal Panel from the order of the Hearing Panel dated (*date*).

(*Identify party*) ASKS that the order be set aside and an order be granted as follows: (*Set out relief sought*.)

THE GROUNDS OF APPEAL are as follows: (*Set out briefly the grounds of appeal.*)

(*Date*) (*Name, address and telephone number of party's solicitor or party*)

TO: (*Name, address of responding party's solicitor or responding party*)

FORM 15B - CERTIFICATE OF CONTENTS OF THE RECORD BOOK

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of licensee, etc.*) of the (*City, Town, etc.*), a (*licensee, etc.*) of the Law Society.

CERTIFICATE OF CONTENTS OF THE RECORD BOOK

(*Identify party*) certifies that the following evidence is required for the appeal:

1. Exhibit numbers (*specify exhibits by number*).

2. The evidence of (*names of witnesses*).

(*Date*) (*Name, address and telephone number of party's solicitor or party*)

TO: (*Name, address and telephone number of other party's solicitor or other party*)

FORM 16A - SUMMARY ORDER

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

SUMMARY ORDER

WHEREAS each of the licensees named in the attached (*schedule or schedules*) (*nature and length of default and relevant by-law*)

PURSUANT to (*authority for order*),

IT IS ORDERED that (*terms of order*).

DATED

_____

Summary Disposition Bencher

FORM 16 B - NOTICE OF APPEAL OF SUMMARY ORDER

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*;

AND IN THE MATTER OF (*name of licensee*) of the (*City, Town, etc.*), a (*licensee, etc.*) of the Law Society.

NOTICE OF APPEAL OF SUMMARY ORDER

(*name of licensee*) APPEALS to the Appeal Panel from the summary order of the summary disposition bencher dated (*date of order*).

(*name of licensee*) ASKS that the order be set aside and an order be granted as follows: (*Set out relief sought*.)

THE GROUNDS OF APPEAL are as follows: (*Set out briefly the grounds of appeal.*)

(*Date*) (*Name, address and telephone number of licensee or counsel, if represented.)*

TO:

BARREAU DU HAUT-CANADA

RÈGLES DE PRATIQUE ET DE PROCÉDURE

(PRISES EN APPLICATION DE L'ARTICLE 61.2 DE LA *LOI SUR LE BARREAU*)

RÈGLE 1 DISPOSITIONS GÉNÉRALES

Champ d'application

1.01 Les règles 1 à 15 s'appliquent aux audiences tenues devant un tribunal aux termes des articles 27, 30, 31, 34, 38, 43, 45, des paragraphes 49.32 (1) et (2) et des articles 49.42 et 49.43 de la *Loi sur le Barreau* (la « Loi »).

Définitions

1.02 (1) Dans les présentes règles, les termes qui ne sont pas définis au paragraphe (2) s'entendent au sens de la Loi ou de la *Loi sur l'exercice des compétences légales*, sauf si le contexte exige une autre interprétation.

(2) Les définitions qui suivent s'appliquent aux présentes règles.

« acte introductif d'instance » Avis de requête ou avis d'audience. (« originating process »)

« appel » Appel interjeté en vertu des paragraphes 49.32 (1) et (2) de la Loi. (« appeal »)

« instance » Instance prévue par la Loi et qui est introduite par la signification d'un acte introductif d'instance. (« proceeding »)

« jour férié » Jour férié au sens des Règles de procédure civile. (« holiday »)

« motion » Demande visant à ce que le tribunal rende une décision sur une question donnée à une étape quelconque de l'instance régie par les présentes règles, à l'exclusion d'une demande d'ajournement. (« motion »)

« partie » Le Barreau, la personne visée par une instance et toute autre personne jointe comme partie par le tribunal conformément à la Loi. (« party »)

« personne visée par l'instance » Titulaire de permis, ancien titulaire de permis ou avocat non-ontarien, selon le contexte. (« person subject to a proceeding »)

« plaignant ou plaignante » Une personne qui a porté plainte auprès du Barreau concernant un titulaire de permis. (« complainant »)

« tribunal » Le TG, le Comité d'audition, le TGA ou le Comité d'appel, selon celui qui entend ou qui entendra la partie applicable d'une instance. (« tribunal »)

« Tribunal de gestion des appels » ou « TGA » Le conseiller qui est compétent ou la conseillère qui est compétente en matière de procédure. (« Appeals Management Tribunal » or « AMT »)

« Tribunal de gestion des audiences » ou « TG » Le conseiller qui est compétent ou la conseillère qui est compétente en matière de procédure. (« Hearings Management Tribunal » or « HMT »)

Interprétation

1.03 (1) Les présentes règles s'interprètent libéralement de façon à entraîner le règlement juste et rapide des instances.

(2) Les questions que ne prévoient pas les présentes règles sont tranchées par analogie avec elles.

Observation pour l'essentiel

1.04 (1) L'observation pour l'essentiel d'une formule ou d'un avis exigé par les présentes règles ou en vertu de celles-ci est suffisante.

(2) Aucun vice de forme ni aucune irrégularité technique n'a pour effet d'invalider une instance.

Observation des règles

1.05 (1) Il peut être renoncé à l'application d'une disposition des présentes règles avec le consentement des parties et l'autorisation du tribunal.

(2) Le tribunal peut, dans l'intérêt de la justice, dispenser de l'observation d'une règle à des conditions justes.

Calcul des délais

1.06 Sous réserve de la règle 1.07, le calcul des délais prescrits par les présentes règles ou par une ordonnance obéit aux règles suivantes :

a) si le délai est exprimé en nombre de jours séparant deux événements, il se calcule en excluant le jour où a lieu le premier événement mais en incluant le jour où a lieu le second;

b) si le délai prescrit est inférieur à sept jours, les jours fériés ne sont pas comptés;

c) si le délai pour accomplir un acte sous le régime des présentes règles expire un jour férié, l'acte peut être accompli le jour suivant qui n'est pas férié;

d) tout document qui, sous le régime des présentes règles, est réputé reçu ou signifié un jour férié est réputé l'être le jour suivant qui n'est pas férié.

Prorogation ou abrègement des délais

1.07 (1) Le tribunal peut, par ordonnance, proroger ou abréger tout délai fixé par les présentes règles à des conditions justes.

(2) La motion qui vise à obtenir la prorogation d'un délai peut être présentée avant ou après l'expiration du délai prescrit.

Motion en cessation d'occuper présentée par l'avocat

1.08 L'avocat d'une partie peut, par voie de motion, demander au tribunal de cesser d'occuper.

Motion en cessation d'occuper présentée par la partie

1.09 Toute partie qui souhaite qu'un avocat cesse d'occuper peut présenter une motion en ce sens au tribunal.

Communication avec le tribunal

1.10 Toute communication avec le tribunal en dehors des audiences se fait en présence de toutes les parties ou de leurs avocats respectifs, ou par écrit par l'intermédiaire du greffier ou de la greffière du tribunal, une copie de la communication étant signifiée à toutes les parties.

Assignation

1.11 (1) L'assignation de témoin peut porter la signature d’une ou d’un employé du Barreau qui occupe le poste d’avocat(e) principal(e) et directeur(trice), bureau des tribunaux.

(2) À la demande d'une partie, une ou un employé du Barreau qui occupe le poste d’avocat(e) principal(e) et directeur(trice), bureau des tribunaux, lui fournit une assignation vierge et la partie peut la compléter en y inscrivant le nom du témoin.

(3) La signification d'une assignation de témoin incombe à la partie qui l'a obtenue.

(4) La partie qui a obtenu l'assignation verse l'indemnité de présence au témoin conformément au tarif A des *Règles de procédure civile.*

(5) Malgré le paragraphe (4), il n'est pas nécessaire de signifier une assignation à une personne qui est présente à l'audience ni de lui verser une indemnité de présence pour la faire comparaître comme témoin.

Méthode d'instruction

1.12 (1) Sous réserve du paragraphe (2), les audiences se tiennent oralement, en présence des parties et de leurs avocats respectifs, si elles en ont un.

(2) Le tribunal peut, sur motion d'une partie, ordonner que tout ou partie de l'audience se tienne électroniquement.

(3) Sur motion visée au paragraphe (2), le tribunal peut peser ce qui suit :

a) la pertinence de l'objet de l'instance;

b) la nature de la preuve et la question de savoir si la crédibilité est en litige;

c) la question de savoir si les questions en litige sont des questions de droit;

d) la facilité pour les parties de se conformer à l'ordonnance;

e) le coût et l'efficience de l'instance, ainsi que le respect des délais;

f) le fait d'éviter les retards ou toute prolongation inutile de l'instance;

g) l'équité du processus;

h) l'accès du public à l'audience;

i) le fait que le Barreau puisse remplir la mission que lui confie la Loi;

j) toute autre question qu'il considère pertinente dans ses efforts visant à en arriver à un règlement juste et rapide de l'instance.

(4) Sur consentement, une partie peut, par voie de motion, demander au tribunal d'ordonner que tout ou partie de l'audience se tienne sur pièces.

Lieu des audiences

1.13 (1) Sous réserve de la présente règle, toutes les audiences se tiennent dans les bureaux du Barreau à Toronto.

(2) Sur motion présentée par une partie, le tribunal peut ordonner qu'une audience se tienne ailleurs que dans les bureaux du Barreau à Toronto.

(3) Sur motion visée au paragraphe (2), le tribunal peut peser ce qui suit :

a) la facilité pour les parties de se conformer à l'ordonnance;

b) le coût et l'efficience de l'instance, ainsi que le respect des délais;

c) le fait d'éviter les retards ou toute prolongation inutile de l'instance;

d) l'équité du processus;

e) l'accès du public à l'audience;

f) le fait que le Barreau puisse remplir la mission que lui confie la Loi;

g) toute autre question qu'il considère pertinente dans ses efforts visant à en arriver à un règlement juste et rapide de l'instance.

(4) Le tribunal ne peut ordonner que l'audience se tienne ailleurs que dans les bureaux du Barreau à Toronto qu'après avoir consulté le coordonnateur ou la coordonnatrice des audiences et le ou la secrétaire.

(5) Le coordonnateur ou la coordonnatrice des audiences est informé immédiatement de toute demande d'ajournement d'une audience qui doit se tenir ailleurs que dans les bureaux du Barreau à Toronto.

Ajournement

1.14 (1) Si les motifs de la demande d'ajournement sont connus avant la date prévue de l'audience et qu'une séance du TG ou du TGA est prévue ou peut l'être avant cette date, la demande d'ajournement est présentée :

a) soit au TG, si l'audience que doit tenir un comité d'audition est en instance et qu'un comité d'audition n'est pas encore saisi de l'affaire;

b) soit au TGA, si un appel interjeté devant un comité d'appel est en instance et qu'un comité d'appel n'est pas encore saisi de l'affaire.

(2) Si le paragraphe (1) ne s'applique pas, la demande d'ajournement est présentée au tribunal à la date prévue de l'audience.

RÈGLE 2 JONCTION ET INTERVENTION DE TIERS

Jonction des parties

2.01 Si la Loi le permet, le Comité d'audition peut joindre toute personne comme partie à l'instance.

Intervention de tiers

2.02 (1) Le tribunal peut permettre à un tiers à l'instance d'y intervenir si cette intervention est, à son avis, susceptible de l'aider ou si elle est requise dans l'intérêt de la justice.

(2) Le tribunal fixe l'étendue de cette intervention, s'il l'accorde, et il peut notamment permettre au tiers de présenter des observations orales ou écrites, de présenter des éléments de preuve et de contre-interroger des témoins.

RÈGLE 3 ACCÈS AUX AUDIENCES ET ORDONNANCES DE NON-PUBLICATION

Les instances sont publiques

3.01 Les audiences sont publiques, sauf si le tribunal est d'avis que, selon le cas :

a) des questions intéressant la sécurité publique pourraient être révélées;

b) des questions financières ou personnelles de nature intime ou d'autres questions pourraient être révélées, qui sont telles qu'eu égard aux circonstances, l'avantage qu'il y a à ne pas les révéler dans l'intérêt de la personne concernée ou dans l'intérêt public l'emporte sur le principe de la publicité des audiences;

c) il est nécessaire de protéger le caractère confidentiel d'une communication ou d'un document privilégié.

Motifs et ordonnance du tribunal

3.02 (1) Sous réserve du paragraphe (2), l'ordonnance et les motifs du tribunal, y compris toute décision écrite, sont du domaine public.

(2) Le tribunal devant lequel une instance s'est déroulée, en totalité ou en partie, à huis clos peut ordonner que ses motifs, à l'exclusion de ceux visés au paragraphe (3), ne soient pas rendus publics, en totalité ou en partie.

(3) Le tribunal devant lequel une instance s'est déroulée, en totalité ou en partie, à huis clos peut joindre à sa décision un énoncé écrit des motifs pour lesquels l'audience s'est déroulée ainsi, mais ce faisant, il ne doit pas divulguer les questions qui, à son avis, ne doivent pas l'être.

Procédure dans le cas où une partie demande une ordonnance de huis clos

3.03 (1) La partie qui veut qu'une partie d'une instance se déroule à huis clos présente une motion en ce sens au tribunal lors d'une audience publique conformément à la règle 7, avec les adaptations nécessaires.

(2) La partie qui estime qu'il sera impossible de débattre la motion sans divulguer des questions particulières qui en font l'objet peut demander une ordonnance prévoyant que la motion soit entendue à huis clos.

(3) La partie qui demande l'audition de la motion à huis clos énonce, lors d'une audience publique, les moyens généraux sur lesquels s'appuie la motion sans divulguer les questions particulières dont elle souhaite que l'audition se fasse à huis clos.

(4) Si une partie demande que la motion soit entendue à huis clos, le tribunal peut autoriser un tiers à participer à l'audition de la motion.

(5) Lorsqu'il examine s'il doit permettre à un tiers de participer à l'audition de la motion, le tribunal examine la nature de l'intérêt de cette personne, la question de savoir s'il y a un risque que cette personne ne respecte pas le caractère confidentiel des questions qui sont divulguées à huis clos et celle de savoir si l'intérêt public sera par ailleurs adéquatement représenté.

(6) Le tribunal informe le tiers qu'il autorise à participer à l'audition de la motion à huis clos du fait que, sauf ordonnance contraire, il ne peut communiquer ni divulguer, notamment par voie de publication, à quiconque hors la salle d'audience quoi que ce soit qui a été divulgué à huis clos.

(7) Le tribunal informe le tiers que, s'il est porté atteinte au caractère confidentiel de l'instance, lorsque les circonstances de l'espèce le justifient, lui-même ou une partie à l'instance peut, par exposé de cause présenté à la Cour divisionnaire, demander une ordonnance pour outrage contre lui.

(8) Lorsque la motion entendue à huis clos est rejetée, le tribunal peut, par la suite, lors d'une audience publique, ordonner qu'elle soit traitée comme si elle avait été entendue au cours d'une audience publique.

Modification, annulation ou suspension d'une ordonnance de huis clos

3.04 (1) À l'issue d'une audience tenue en matière de conduite ou de discipline, une motion peut être présentée au Comité d'audition en vue de modifier, d'annuler ou de suspendre l'application d'une ordonnance rendue au cours de cette audience conformément à la règle 3.01 ou à l'article 9 de la *Loi sur l'exercice des compétences légales*, qui prévoit la tenue de tout ou partie de cette audience à huis clos. La motion est présentée au Comité d'appel lorsque c'est lui qui a rendu une telle ordonnance.

(2) La motion visée au paragraphe (1) est présentée conformément à la règle 7, à l'exception près que l'avis de motion est signifié à toutes les parties et à toute personne qui sera touchée par l'ordonnance demandée, au moins 10 jours avant l'audition de la motion, et est déposé, avec la preuve de sa signification, au moins sept jours avant la date de l'audition auprès du greffier ou de la greffière du tribunal.

Application aux appels

3.05 Les dispositions des règles 3.01, 3.02 et 3.03 s'appliquent, avec les adaptations nécessaires, à un appel d'une décision ou d'une ordonnance d'un tribunal.

Ordonnances de non-publication

3.06 (1) Le tribunal peut, par ordonnance, interdire à quiconque de publier les renseignements divulgués au cours d'une instance qui se déroule publiquement, à la condition d'être convaincu que ces renseignements révèlent :

a) des questions intéressant la sécurité publique;

b) des questions financières ou personnelles de nature intime ou d'autres questions qui sont telles qu'eu égard aux circonstances, l'avantage qu'il y a à ne pas les révéler dans l'intérêt de la personne concernée ou dans l'intérêt public l'emporte sur le principe de la publicité des audiences;

c) des questions pour lesquelles il est nécessaire de protéger le caractère confidentiel d'une communication ou d'un document privilégié.

(2) La motion visant à obtenir une ordonnance de non-publication est présentée conformément à la règle 3.03, avec les adaptations nécessaires.

Modification, annulation ou suspension des ordonnances de non-publication

3.07 (1) Une motion peut être présentée au Comité d'audition en vue de modifier, d'annuler ou de suspendre l'application d'une ordonnance rendue en vertu de la règle 3.06. La motion est présentée au Comité d'appel lorsque c'est lui qui a rendu une telle ordonnance.

(2) La motion visée au paragraphe (1) est présentée conformément au paragraphe 3.04 (2).

RÈGLE 4 INTRODUCTION DES INSTANCES

Instances portant sur la conduite, la capacité, la compétence professionnelle et l'inobservation

4.01 (1) Le Barreau délivre un avis de requête rédigé selon la formule 4A à l'égard des instances portant sur la conduite, la capacité, la compétence professionnelle et l'inobservation.

(2) Une copie de l'avis de requête est déposée auprès du greffier ou de la greffière du Comité d'audition et est signifiée à la personne visée par l'instance.

Instances portant sur l'accès à la profession et le rétablissement

4.02 (1) Le Barreau délivre un avis d'audience rédigé selon la formule 4B :

a) à l'égard des demandes d'accès et de rétablissement, s'il exige la tenue d'une audience;

b) à l'égard des demandes de rétablissement si la personne visée par l'instance demande par écrit une audience.

(2) Une copie de l'avis d'audience est déposée auprès du greffier ou de la greffière du Comité d'audition et est signifiée à la personne visée par l'instance.

Désistement

4.03 (1) Avant l'audience sur le fond d'une instance portant sur la conduite, la capacité, la compétence professionnelle ou l'inobservation, le Barreau peut se désister de l'avis de requête en remettant un avis de désistement rédigé selon la formule 4C.

(2) Avant l'audience sur le fond d'une instance portant sur l'accès ou le rétablissement, le Barreau peut se désister de l'exigence d'une audience en remettant un avis de désistement rédigé selon la formule 4C.

(3) Avant l'audience sur le fond d'une instance portant sur l'accès ou le rétablissement, la personne visée par l'instance peut se désister de sa demande en remettant un avis de désistement rédigé selon la formule 4C.

RÈGLE 5 SIGNIFICATION DES DOCUMENTS

Signification de documents aux parties

5.01 (1) L'acte introductif d'instance est signifié à la personne visée par l'instance :

a) soit en personne;

b) soit en en envoyant une copie par la poste dans une lettre recommandée adressée à la dernière adresse connue du domicile ou du bureau de la personne qui figure dans les dossiers du Barreau;

c) soit, si la personne est représentée par un avocat avant la délivrance de l'acte, à cet avocat, s'il inscrit, sur l'acte ou une copie, qu'il accepte la signification et indique la date de l'acceptation.

(2) La signification de l'acte introductif d'instance se fait au moins dix jours avant qu'il soit rapportable en premier lieu devant un tribunal.

(3) La signification d'un document qui n'est pas un acte introductif d'instance peut se faire :

a) par remise à personne à la partie ou à son avocat;

b) par courrier ordinaire ou enregistré envoyé à la dernière adresse connue de la partie ou de son avocat;

c) par télécopie envoyée au dernier numéro de télécopieur connu de la partie ou de son avocat, auquel cas le consentement du ou de la destinataire est obligatoire, s'il s'agit de la personne visée par l'instance ou de son avocat;

d) par messagerie, notamment par Poste prioritaire, la livraison étant adressée à la dernière adresse connue de la partie ou de son avocat;

e) par tout autre moyen qu'autorise ou permet le tribunal.

(4) La signification est réputée valide :

a) le jour de la remise à personne ou de la transmission par télécopieur, lorsqu'elle est effectuée par ce moyen avant 16 heures, ou le jour suivant, lorsqu'elle est effectuée après 16 heures;

b) le cinquième jour qui suit son envoi par courrier ordinaire ou enregistré;

c) le deuxième jour qui suit sa remise au service de messagerie, le cas échéant;

d) le jour qu'ordonne le tribunal, lorsqu'elle est effectuée par tout autre moyen qu'il autorise ou permet.

Preuve de la signification

5.02 (1) La signification d'un document peut être établie :

a) soit au moyen d'un affidavit de la personne qui l'a effectuée;

b) soit au moyen de la reconnaissance ou de l'acceptation écrite de la signification par le représentant ou la représentante de la personne dans une instance ou dans l'audition d'une motion à qui le document est signifié, le cas échéant.

(2) L'affidavit ou la reconnaissance ou l'acceptation écrite de la signification peut être imprimé sur la feuille arrière du document signifié, ou sur une estampille ou une vignette apposée sur la feuille arrière.

RÈGLE 6 DIVULGATION

Obligations du Barreau

6.01 (1) Le Barreau divulgue tout ce qu'exige la loi et, notamment, fournit ce qui suit à la personne visée par l'instance, au moins 10 jours avant l'audience :

a) une copie de tout document sur lequel il se propose de s'appuyer en donnant à la personne l'occasion d'examiner tout autre document;

b) un résumé des témoignages oraux de tous les témoins;

c) la liste des témoins que le Barreau se propose d'appeler.

(2) Sous réserve de la règle 6.05, la preuve contre une personne visée par l'instance n'est admissible que si elle a été divulguée au moins 10 jours avant l'audience.

Obligations de la personne visée par l'instance

6.02 (1) Dans les instances portant sur l'accès et le rétablissement, la preuve sur laquelle la personne visée par l'instance se propose de s'appuyer n'est admissible que si elle fournit ce qui suit au Barreau dans les 60 jours de la réception de l'avis d'audience :

a) une copie de tout document sur lequel elle se propose de s'appuyer;

b) un résumé des témoignages oraux de tous les témoins sur lesquels elle se propose de s'appuyer;

c) la liste des témoins qu'elle se propose d'appeler.

Résumé des témoignages

6.03 Le résumé du témoignage oral qu'une partie est tenue de divulguer est écrit et comprend ce qui suit :

a) la teneur du témoignage;

b) la liste des documents ou choses, le cas échéant, auxquels le témoin renverra;

c) les nom et adresse du témoin ou, à défaut de l'adresse, le nom d'une personne par l'intermédiaire de laquelle il est possible de communiquer avec lui.

Rapports d'experts

6.04 Le témoignage d'un expert qu'appelle une partie ou un tiers n'est admissible que s'il ou si elle donne à toutes les parties à l'instance, au moins 10 jours avant l'audience, le *curriculum vitæ* de l'expert et une copie de son rapport écrit ou, à défaut, le résumé de son témoignage.

Pouvoir discrétionnaire du tribunal

6.05 Le tribunal peut, à sa discrétion, permettre la présentation d'une preuve qui est inadmissible en application des règles 6.01, 6.01 et 6.04 et donner toutes les directives qu'il estime nécessaires pour éviter tout préjudice à une partie.

RÈGLE 7 MOTIONS

Présentation des motions

7.01 Les motions sont présentées par voie d’avis de motion (formule 7A) sauf si la nature de la motion ou les circonstances rendent cet avis inutile.

Inscription des motions au calendrier

7.02 Une motion peut être inscrite en vue de son audition :

a) soit n’importe quel jour où la requête à laquelle elle se rapporte doit être entendue sur le fond;

b) soit à une date obtenue auprès du coordonnateur ou de la coordonnatrice des audiences.

Signification de l'avis

7.03 L'avis de motion présentée sur préavis est signifié aux parties et à quiconque est touché par l'ordonnance, au moins dix jours avant l'audition de la motion.

Dépôt de l'avis

7.04 L'avis de motion présentée sur préavis est déposé, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal, au moins sept jours avant l'audition de la motion.

Désistement

7.05 (1) La partie qui a présenté une motion peut s'en désister en signifiant un avis de désistement (formule 7C) à chaque partie ou personne à qui l'avis de motion a été signifié et en le déposant, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(2) Sauf ordonnance contraire du tribunal, la partie qui signifie un avis de motion et qui ne le dépose pas ou qui ne se présente pas à l'audience tenue sur la motion est réputée s'en être désistée.

(3) Sauf ordonnance contraire du tribunal, si la motion a fait ou est réputée avoir fait l'objet d'un désistement, la partie intimée qui a reçu signification de l'avis de motion a droit aux dépens de la motion sans délai.

Documents requis pour les motions

7.06 (1) Au moins sept jours avant l'audition d'une motion présentée sur préavis, la partie qui la présente signifie un dossier de motion aux parties et personnes à qui l'avis de motion a été signifié et le dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(2) Le dossier de motion de la partie qui la présente comprend ce qui suit, dans des pages numérotées consécutivement :

a) une table des matières énumérant chaque document, y compris les pièces, et les décrivant selon leur nature et leur date et, dans le cas d'une pièce, selon son numéro ou sa lettre;

b) une copie de l'avis de motion;

c) les affidavits et les autres documents sur lesquels s'appuie la motion.

(3) Au moins trois jours avant l'audition d'une motion présentée sur préavis, la partie intimée peut signifier un dossier de motion à la partie qui a présenté la motion et aux parties et personnes à qui l'avis de motion a été signifié et le déposer, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(4) Le dossier de motion de la partie intimée comprend ce qui suit, dans des pages numérotées consécutivement :

a) une table des matières énumérant chaque document, y compris les pièces, et les décrivant selon leur nature et leur date et, dans le cas d'une pièce, selon son numéro ou sa lettre;

b) les documents qui ne figurent pas dans le dossier de motion de l'auteur de celle-ci et sur lesquels la partie s'appuiera.

(5) Si la motion est présentée sur préavis, une partie peut signifier aux autres parties et personnes à qui l'avis de motion a été signifié un mémoire et le dossier de la jurisprudence à laquelle celui-ci renvoie.

(6) Au moins sept jours avant l'audition d'une motion, la partie qui l'a présentée signifie, si elle en a, son mémoire et le dossier de la jurisprudence à laquelle celui-ci renvoie et les dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(7) Au moins trois jours avant l'audition d'une motion, la partie intimée signifie, si elle en a, son mémoire et le dossier de la jurisprudence à laquelle celui-ci renvoie et les dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal.

(8) La partie qui dépose des documents auprès du greffier ou de la greffière du tribunal les lui remet :

a) en deux copies si la motion doit être entendue par un membre du Comité d'audition, par le TG ou par le TGA;

b) en quatre copies si la motion doit être entendue par trois membres du Comité d'audition;

c) en six copies si la motion doit être entendue par le Comité d'appel.

Motion sur consentement

7.07 (1) Malgré la règle 1.12, la motion qui est présentée sur consentement peut être entendue sur pièces en l'absence des parties ou de quiconque est touché par l'ordonnance, sauf ordonnance contraire du tribunal.

(2) L'auteur de la motion qui est présentée sur consentement dépose l'acte de consentement et un projet d'ordonnance avec l'avis de motion auprès du greffier ou de la greffière du tribunal.

Décision

7.08 Après avoir entendu la motion, le tribunal peut :

a) soit accorder la mesure de redressement;

b) soit rejeter la motion, en totalité ou en partie;

c) soit ajourner la motion, en totalité ou en partie;

d) soit, si elle est entendue avant l'audition sur le fond de la requête à laquelle elle se rapporte, déférer la motion au tribunal qui entend la requête sur le fond.

Ordonnance

7.09 (1) Après que la motion a fait l'objet d'une décision, le tribunal inscrit son ordonnance au dossier de motion, si celle-ci est présentée sur préavis, ou dans l'avis de requête, si le préavis n'est pas nécessaire, sauf si, selon le cas :

a) il rend des motifs écrits;

b) cela n'est pas commode dans les circonstances.

(2) Après que la motion présentée sur préavis a fait l'objet d'une décision, la partie qui a eu gain de cause doit remettre un projet d'ordonnance (formule 7B) et toute autre partie ou personne à qui l'avis de motion a été signifié peut le faire.

(3) Le tribunal ou le président ou la présidente du comité du tribunal qui entend la motion examine les projets remis en application du paragraphe (2) et, sans le modifier ou après l'avoir modifié, en signe un.

Dépens et ajournement

7.10 Toutes les motions sont présentées dans les meilleurs délais eu égard à toutes les circonstances. Il peut être tenu compte de l'inobservation de la présente règle par la partie qui en présente une lors de l'adjudication des dépens de la motion et de tout ajournement rendu ainsi nécessaire.

RÈGLE 8 ORDONNANCES INTERLOCUTOIRES DE SUSPENSION ET DE RESTRICTION

Pouvoir de rendre des ordonnances interlocutoires de suspension et de restriction

8.01 Sur motion présentée par le Barreau, le Comité d'audition peut rendre une ordonnance interlocutoire ayant pour effet de suspendre le permis du titulaire de permis ou de restreindre la manière dont un titulaire de permis peut exercer le droit ou fournir des services juridiques.

Généralités

8.02 (1) Sauf disposition contraire de la présente règle, la règle 7 s'applique, avec les adaptations nécessaires, aux motions présentées en vue d'obtenir une ordonnance interlocutoire de suspension ou de restriction.

(2) Si le Comité d'autorisation des instances n'a pas autorisé la présentation d'une requête au comité d'audition ou que ce dernier n'a pas commencé l'audience sur le fond de la requête, le Barreau peut, avec l'autorisation du Comité d'autorisation des instances, présenter au Comité d'audition une motion se rapportant à cette requête en vue d'obtenir une ordonnance interlocutoire de suspension ou de restriction.

Présentation de la motion

8.03 Les motions présentées en vue d'obtenir une ordonnance interlocutoire de suspension ou de restriction le sont par voie d'avis de motion.

Signification de l'avis

8.04 (1) L'avis de motion est signifié au titulaire de permis au moins trois jours avant la date d'audition de la motion.

a) Malgré le paragraphe (1), le Comité d'audition peut rendre une ordonnance sans que l'avis de motion ait été signifié au titulaire de permis si, selon le cas :

b) les circonstances ou la nature de la motion rendent la signification de l'avis de motion peu pratique ou inutile;

c) le délai nécessaire à la signification risque d'entraîner des conséquences graves.

(3) Le paragraphe 5.01 (1) s'applique à la signification d'un avis de motion.

Dépôt de l'avis

8.05 (1) L'avis de motion qui a été signifié est déposé, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(2) L'avis de motion dont la signification n'est pas obligatoire est déposé auprès du greffier ou de la greffière du tribunal au plus tard lors de l'audition de la motion.

Documents requis pour les motions

8.06 (1) En cas de signification de l'avis de motion, le Barreau signifie un dossier de motion au titulaire de permis au moins trois jours avant l'audition de la motion et le dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(2) En cas de signification de l'avis de motion, le titulaire de permis peut signifier au Barreau un dossier de motion au plus tard à 14 heures, la veille de l'audition de la motion, et le déposer, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(3) En cas de signification de l'avis de motion, le Barreau signifie, s'il en a, son mémoire et le dossier de la jurisprudence à laquelle celui-ci renvoie au titulaire de permis au moins trois jours avant l'audition de la motion et le dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(4) En cas de signification de l'avis de motion, le titulaire de permis signifie au Barreau, s'il en a, son mémoire et le dossier de la jurisprudence à laquelle celui-ci renvoie au plus tard à 14 heures, la veille de l'audition de la motion, et le dépose, avec la preuve de la signification, auprès du greffier ou de la greffière du tribunal au plus tard à 16 heures, la veille de l'audition de la motion.

(5) Si la signification de l'avis de motion n'est pas obligatoire, le Barreau dépose le dossier de motion, ainsi que le mémoire et le dossier de la jurisprudence, s'il en a, auprès du greffier ou de la greffière du tribunal au plus tard lors de l'audition de la motion.

Preuve

8.07 Malgré la règle 11.01, l'article 15 de la *Loi sur l'exercice des compétences légales* s'applique à l'audition d'une motion présentée en vue d'obtenir une ordonnance interlocutoire de suspension ou de restriction.

Décision

8.08 S'il estime que l'avis de motion aurait dû être signifié au titulaire de permis, le Comité d'audition ajourne la motion et ordonne que l'avis de motion lui soit signifié.

Ordonnance

8.09 (1) L'ordonnance interlocutoire de suspension ou de restriction est, lors de son rendu, une ordonnance interlocutoire provisoire ayant effet jusqu'à 30 jours après la signification de l'ordonnance au titulaire de permis; à la fin de ce délai, elle devient une ordonnance interlocutoire définitive, sauf si les parties portent à l'attention du tribunal qui l'a rendue de nouvelles preuves ou un changement important des circonstances et que le tribunal la modifie ou l'annule.

(2) Sauf indication contraire du Comité d'audition, l'ordonnance provisoire définitive de suspension ou de restriction reste en vigueur jusqu'à ce qu'une ordonnance du Comité d'appel l'annule ou la modifie, ou jusqu'à ce que le Comité d'audition rende une ordonnance définitive après l'audition sur le fonds de la requête.

(3) Sauf indication contraire du Comité d'audition, si la signification de l'avis de motion n'était pas obligatoire, le Barreau signifie au titulaire de permis l'ordonnance du Comité d'audition, ainsi qu'une copie de l'avis de motion, du dossier de motion et de tous les autres documents utilisés au cours de l'audition de la motion.

RÈGLE 9 PROCÉDURES PRÉPARATOIRES À L'INSTANCE

Tribunal devant lequel l'instance est rapportable en premier lieu

9.01 (1) L'instance est rapportable en premier lieu devant le TG pour que soit fixée la date de l'audience sur le fond de l'instance.

(2) Malgré le paragraphe (1), l'instance introduite par voie d'avis de requête peut être rapportable en premier lieu devant le Comité d'audition pour que se tienne l'audience sur le fond de la requête si l'audition sur le fond d'une autre requête mettant en cause les mêmes parties a déjà été inscrite au calendrier.

(3) Malgré le paragraphe (1), l'instance introduite par voie d'avis de requête est rapportable en premier lieu devant le Comité d'audition pour que se tienne l'audience sur le fond de la requête si, selon le cas :

a) la requête est présentée en vue de faire trancher la question de savoir si le titulaire de permis a enfreint l'article 33 de la Loi pour l'un ou l'autre des motifs suivants :

(i) l'omission de tenir des registres financiers comme l'exigent les règlements administratifs,

(ii) l'omission de donner suite aux demandes de renseignements du Barreau,

(iii) l'omission de collaborer avec quiconque effectue une vérification, une enquête, une inspection, une perquisition ou une saisie en application de la partie II de la Loi;

b) la nature de la requête exige que l'audition soit accélérée.

(4) Lors de la signification de l'acte introductif d'instance, le Barreau donne avis de la date, de l'heure et du lieu où l'instance est rapportable devant le TG ou le Comité d'audition.

Fixation des dates d'audience

9.02 (1) Sous réserve du paragraphe (2), l'audience d'une instance n'est fixée qu'aux dates d'audience normales obtenues du coordonnateur ou de la coordonnatrice des audiences.

(2) Si les parties estiment que l'audience demandera plus d'une journée :

a) d'une part, elles demandent des dates spéciales au TG aux fins de sa tenue;

b) d'autre part, le TG peut, à sa discrétion, ordonner que les parties participent à une conférence préparatoire à l'audience en prescription de la règle 10.

(3) Les parties obtiennent les dates disponibles du coordonnateur ou de la coordonnatrice des audiences avant de demander au TG de fixer des dates spéciales pour la tenue de l'audience.

RÈGLE 10 CONFÉRENCES PRÉPARATOIRES À L'AUDIENCE

Demande d'une partie

10.01 (1) Avant la tenue de l'audience sur le fonds de l'instance, que celle-ci soit introduite par voie d'avis de requête ou d'avis de motion, toute partie peut demander qu'une conférence préparatoire à l'audience se tienne devant un conseiller ou une conseillère.

(2) Il ne peut se tenir plus d'une conférence préparatoire à l'audience par instance, sauf sur ordre du conseiller ou de la conseillère qui la préside ou du TG, ou avec le consentement des parties.

(3) Le conseiller ou la conseillère qui préside la conférence préparatoire à l'audience ne doit pas faire partie du tribunal lors de l'audience sur le fonds de l'instance, sauf si les parties y consentent conformément à la règle 12.01.

Présence à la conférence préparatoire à l'audience

10.02 (1) Si une partie refuse d'assister à la conférence préparatoire à l'audience, une ordonnance imposant la tenue d'une telle conférence peut être obtenue, par voie de motion, du TG.

(2) Sauf ordonnance contraire, le coordonnateur ou la coordonnatrice des audiences donne aux parties et au conseiller ou à la conseillère qui préside la conférence préparatoire à l'audience un avis écrit de la date, de l'heure et du lieu de la tenue de la conférence.

(3) Sauf ordonnance contraire ou consentement des parties, les parties et leurs avocats assistent en personne à la conférence.

Préparation de la conférence préparatoire à l'audience

10.03 Sauf ordonnance contraire, au moins deux jours avant la tenue de la conférence préparatoire à l'audience, les parties échangent des mémoires et tout autre document pertinent et en fournissent des copies au conseiller ou à la conseillère qui préside la conférence.

Tenue de la conférence préparatoire à l'audience par voie électronique

10.04 La conférence préparatoire à l'audience peut se tenir par conférence téléphonique si les parties y consentent et que l'autorise le conseiller ou la conseillère qui préside la conférence ou le TG.

Procédure de la conférence préparatoire à l'audience

10.05 Lors de la conférence préparatoire à l'audience, le conseiller ou la conseillère qui la préside discute avec les parties, entre autres, de ce qui suit :

a) la possibilité de transiger les questions en litige;

b) la possibilité de simplifier les questions en litige;

c) la possibilité que les parties concluent un exposé conjoint des faits concernant la totalité ou une partie de ce qui fait l'objet de l'instance;

d) l'opportunité, si les circonstances de l'espèce le justifient, d'avoir recours à d'autres modes de règlement.

Tenue de la conférence à huis clos et sous réserve des droits

10.06 La conférence préparatoire à l'audience se tient à huis clos et toutes les discussions qui s'y déroulent sont sous réserve des droits des personnes qui y assistent.

Documents

10.07 Les documents fournis au conseiller ou à la conseillère qui préside la conférence préparatoire à l'audience;

a) d'une part, sont remis par lui, à l'issue de la conférence, à la partie qui les a fournis;

b) d'autre part, ne sont pas traités comme des documents déposés aux fins de l'instance.

Transactions et engagements

10.08 (1) Les transactions conclues et les engagements pris au cours de la conférence préparatoire à l'audience peuvent être inscrits dans un procès-verbal rédigé par le conseiller ou la conseillère qui préside la conférence ou sur ses directives.

(2) Les parties reçoivent des copies du procès-verbal visé au paragraphe (1).

(3) Les ententes et les engagements qui figurent dans le procès-verbal visé au paragraphe (1) lient les parties à l'instance, sauf si le Comité d'audition ordonne autrement.

RÈGLE 11 PREUVE

Règles d'administration de la preuve

11.01 (1) Les règles d'administration de la preuve applicables dans les instances civiles s'appliquent aux instances prévues par la Loi.

(2) Malgré le paragraphe (1), avec l'autorisation du tribunal, les affidavits ou les déclarations solennelles sont admissibles comme preuve, en l'absence de preuve à l'effet contraire, des déclarations qu'elles contiennent.

(3) L'affidavit à l'appui d'une instance peut faire état des éléments que le déposant ou la déposante tient pour véridiques sur la foi de renseignements relativement à des faits non contestés, pourvu que la source de ces renseignements et le fait qu'ils sont tenus pour véridiques soient indiqués. Toutefois, s'il estime que la déposition directe d'un témoin permettrait d'établir une meilleure preuve, le tribunal peut exiger que la partie dépose cette déposition directe ou appelle ce témoin et il peut radier la preuve déposée.

Contre-interrogatoire devant un auditeur officiel

11.02 (1) Le tribunal peut ordonner, de son propre chef ou sur motion d'une partie, que le contre-interrogatoire d'un déposant ou d'une déposante d'un affidavit ou d'une déclaration solennelle se tienne devant un auditeur officiel.

(2) L'auditeur officiel mène le contre-interrogatoire du déposant ou de la déposante de l'affidavit ou de la déclaration solennelle d'une manière semblable à la procédure prévue dans les *Règles de procédure civile* et, au besoin, les parties peuvent demander des directives au tribunal.

Éléments de preuve documentaire

11.03 En plus d'en fournir une copie à l'autre partie, la partie qui présente un document comme élément de preuve en fournit le nombre de copies suivant au greffier ou à la greffière du tribunal :

a) quatre copies, si l'audience se tient devant un Comité d'audition de trois membres;

b) deux copies, si l'audience se tient devant un Comité d'audition d'un membre, le TG ou le TGA.

Non-admissibilité de certains renseignements

11.04 Malgré le paragraphe 11.01 (1), les renseignements obtenus par le conseiller ou la conseillère en matière de discrimination et de harcèlement dans le cadre de ses fonctions en vertu de l'alinéa 19 (1) a) du règlement administratif 11 ne seront pas utilisés et sont inadmissibles dans une instance devant un tribunal.

RÈGLE 12 DÉROULEMENT DES AUDIENCES

Consentement

12.01 Si le titulaire de permis et le Barreau consentent à la tenue d'une audience devant un Comité d'audition d'un membre, le consentement rédigé selon la formule 12A est déposé auprès du Comité avant le début de l'audience.

Conférence préparatoire à l'audience

12.02 S'il s'est tenu une conférence préparatoire à l'audience relativement à l'instance et que le titulaire de permis et le Barreau consentent à ce que l'instance soit entendue devant le conseiller ou la conseillère qui a présidé la conférence, qui siège alors en tant que Comité d'audition d'un membre :

a) l'audience ne commence pas avant l'issue de la conférence préparatoire;

b) l'audience se déroule conformément aux règles qui sont applicables à toute autre instance instruite devant un Comité d'audition;

c) le titulaire de permis et le Barreau signent le consentement rédigé selon la formule 12B après la conférence préparatoire à l'audience et ce consentement est déposé auprès du Comité d'audition avant le début de l'audience.

Exclusion des témoins au cours de l'instance

12.03 (1) Le tribunal peut ordonner l'exclusion d'un ou de plusieurs témoins de la salle d'audience jusqu'à ce qu'ils soient appelés à témoigner.

(2) L'ordonnance visée au paragraphe (1) ne peut être rendue à l'égard d'une partie à l'instance ou d'un témoin dont la présence est essentielle pour renseigner l'avocat de la partie qui l'a appelé à témoigner. Le tribunal peut toutefois exiger que cette partie ou ce témoin témoigne avant que d'autres témoins soient appelés à témoigner par cette partie.

(3) Sauf autorisation du tribunal, nul ne peut communiquer au témoin exclu le contenu des témoignages entendus pendant son absence, avant que ce témoin soit lui-même appelé et témoigne.

Enregistrement sur film ou sur bande sonore de l'instance

12.04 Les paragraphes 136 (1), (2) et (3) de la *Loi sur les tribunaux judiciaires* s'appliquent, avec les adaptations nécessaires, aux instances.

Transcriptions

12.05 (1) Toutes les audiences orales et électroniques sont enregistrées de façon à permettre la production d'une transcription.

(2) La première partie qui commande une transcription en paie le coût et en dépose une copie comme élément du dossier.

Interprètes

12.06 (1) Le Barreau fournit l'interprète dont un témoin a besoin, le cas échéant, sauf ordonnance contraire du tribunal.

(2) L'interprète est compétent et indépendant et s'engage, sous serment ou affirmation solennelle, avant que le témoin soit appelé, à traduire fidèlement le serment ou l'affirmation solennelle du témoin ainsi que les questions qui lui sont posées et ses réponses.

Besoins particuliers

12.07 Les parties informent le coordonnateur ou la coordonnatrices des audiences de leurs besoins particuliers ou de ceux de leurs témoins.

RÈGLE 13 ORDONNANCES

Réprimandes

13.01 (1) Une réprimande ne doit pas être administrée avant l'expiration de la période désignée pour signifier un avis d'appel à moins que le Barreau, le titulaire de permis ne renonce au droit d'appel.

(2) N'importe quel membre du tribunal peut administrer la réprimande.

(3) N'importe quel membre du Comité d'appel peut administrer la réprimande si, à l'issue de l'appel d'une ordonnance en prévoyant l'administration, le Comité décide que cette mesure constitue le règlement approprié de l'affaire.

(4) La réprimande peut être administrée par écrit.

(5) Sauf lorsque l'administration se fait par écrit, la réprimande est administrée lors d'une séance publique du Comité d'audition ou du Comité d'appel, selon le cas.

Ordonnances rendues par un Comité d'audition d'un membre dans des instances portant sur la conduite

13.02 Un comité d'audition d'un membre ne peut rendre d'ordonnance en application des dispositions 35 (1) 1 et 35 (1) 2 de la Loi.

Motifs écrits

13.03 (1) Sous réserve du paragraphe (2) et de la règle 15.07, le tribunal est tenu de donner ses motifs par écrit si une demande en ce sens est présentée dans les 30 jours qui suivent celui où il a rendu sa décision ou son ordonnance définitive.

(2) Le Comité d'audition motive par écrit toutes ses décisions relatives à des requêtes en établissement de la capacité.

Ordonnances relatives à l'incapacité rendues en l'absence du titulaire de permis

13.04 (1) Le Comité d'audition peut rendre une ordonnance interlocutoire ayant pour effet de suspendre les droits et les privilèges d’un titulaire de permis ou de restreindre la manière dont un titulaire de permis peut exercer le droit ou fournir des services juridiques s'il a instruit une instance en son absence et a des motifs raisonnables de croire qu’il est ou a été incapable.

(2) L’ordonnance interlocutoire rendue en vertu du paragraphe (1) devient une ordonnance définitive du Comité d’audition, à l’égard de la requête à laquelle elle se rapporte, 30 jours après celui où elle est rendue, sauf si le titulaire de permis comparaît devant le Comité d’audition pour l’audition sur le fond de la requête.

RÈGLE 14 DÉPENS

Cautionnement pour dépens

14.01 (1) Dans les instances portant sur l'accès ou le rétablissement, ou dans les appels découlant de ces instances, le tribunal peut, sur motion du Barreau, rendre une ordonnance de cautionnement pour dépens juste s'il est établi :

a) que la personne visée par l'instance fait l'objet d'une ordonnance de condamnation aux dépens dans la même instance ou dans une autre prévue par la Loi et que ceux-ci n'ont pas encore été acquittés, en totalité ou en partie;

b) qu'il existe de bonnes raisons de croire que l'instance est injustifiée et que la personne qu'elle vise n'a pas suffisamment de biens en Ontario pour payer les dépens du Barreau si cela lui était ordonné.

(2) Sauf avec l'autorisation du tribunal, la personne visée par l'instance contre qui est rendue une ordonnance de cautionnement pour dépens ne peut prendre d'autres mesures dans l'instance tant que le cautionnement n'a pas été versé.

(3) Si une personne visée par l'instance ne verse pas le cautionnement imposé par l'ordonnance, le tribunal peut, sur motion du Barreau, rejeter l'instance, auquel cas tout sursis imposé est levé.

Motions visant à obtenir les dépens

14.02 La demande de dépens est présentée par voie de motion au tribunal qui a instruit l'instance sur le fond ou à tout autre organe de décision approprié.

Condamnation aux dépens du Barreau

14.03 S'il appert qu'une instance portant sur l'accès, la conduite, la capacité, la compétence professionnelle ou l'inobservation était injustifiée, le tribunal peut condamner le Barreau et toute autre partie à l'instance aux dépens qu'il estime juste de payer à la personne visée par l'instance.

Adjudication de dépens au Barreau

14.04 (1) Lorsque les circonstances de l'espèce le justifient, s'il a rendu, dans une instance, une décision défavorable à une partie autre que le Barreau, le tribunal peut condamner cette partie à payer, en totalité ou en partie :

a) les frais de justice du Barreau;

b) les frais que le Barreau a engagés pour faire enquête sur l'affaire;

c) les frais que le Barreau a engagés pour la procédure d'instruction.

(2) En adjugeant les dépens, le tribunal applique tout tarif approuvé par le Conseil, de temps à autre.

Dépens déraisonnables ou inutiles

14.05 (1) Si une partie ou un tiers a fait engager des dépens sans raison valable ou les a fait augmenter inutilement par des retards abusifs, sa négligence ou tout autre défaut, le tribunal peut, par ordonnance, adjuger des dépens justes.

(2) L'ordonnance visée au paragraphe (1) peut être rendue par le tribunal de son propre chef ou sur motion d'une partie à l'instance.

RÈGLE 15 APPELS

Dispositions générales

15.01 Sous réserve de la Loi, il ne peut être interjeté appel d'une ordonnance interlocutoire définitive rendue par le Comité d'audition, si ce n'est une ordonnance interlocutoire ayant pour effet de suspendre le permis d'un titulaire de permis ou de restreindre la manière dont un titulaire de permis peut exercer le droit ou fournir des services juridiques.

Sursis de l'ordonnance portée en appel

15.02 La partie qui demande le sursis d'une ordonnance définitive rendue par un Comité d'audition présente une motion en ce sens au Comité d'appel conformément à la règle 7, avec les adaptations nécessaires.

Introduction des appels

15.03 (1) L'appel est introduit par voie d'avis d'appel rédigé selon la formule 15A.

(2) L'avis d'appel est signifié à toutes les autres parties et déposé auprès du greffier ou de la greffière du Comité d'appel :

a) dans les 30 jours de la signification de l'ordonnance;

b) après la période de 30 jours avec le consentement des parties ou avec l'autorisation du Comité d'appel.

Documents relatifs à l'appel

15.04 (1) La partie qui remet l'avis d'appel signifie et dépose en même temps un certificat du contenu du dossier d'appel, rédigé selon la formule 15B, qui indique le contenu du dossier d'appel nécessaire à ses fins.

(2) Dans les cinq jours de la remise du certificat du contenu du dossier d'appel, l'autre partie signifie et dépose un certificat du contenu du dossier d'appel rédigé selon la formule 15B.

(3) Sous réserve du paragraphe (5), le contenu du dossier d'appel comprend les documents indiqués dans le ou les certificats, selon le cas, sauf ordonnance contraire du TGA.

(4) Dans les 30 jours de la remise du premier certificat du contenu du dossier d'appel, la partie qui remet l'avis d'appel signifie un dossier d'appel à la partie adverse ou à son avocat et en dépose six copies auprès du greffier ou de la greffière du Comité d'appel.

(5) La partie qui ne remet pas un certificat de contenu du dossier d'appel est réputée accepter le certificat de l'autre partie, sauf si elle obtient le consentement de l'autre partie ou une ordonnance du TGA.

(6) Le dossier d'appel comprend ce qui suit, dans des pages numérotées consécutivement :

a) une table des matières décrivant chaque document selon sa nature et sa date et, dans le cas d'une pièce, selon son numéro ou sa lettre;

b) une copie de chaque avis d'appel;

c) une copie de chaque document requis;

d) toutes les transcriptions pertinentes ou leur liste, ainsi qu'un certificat du sténographe judiciaire attestant que ces transcriptions lui ont été commandées et que la somme requise pour leur préparation a été consignée;

e) une copie de chaque certificat du contenu du dossier d'appel.

(7) La partie qui remet l'avis d'appel signifie un mémoire à toutes les autres parties dans les 15 jours de la remise du dossier d'appel.

(8) Dans les 15 jours de la réception du mémoire, chaque partie à qui il a été signifié signifie un mémoire de l'intimé à toutes les autres parties.

(9) Chaque mémoire comprend un exposé concis, sans les arguments, des faits, les questions qui seront plaidées, un exposé concis des questions de droit, la jurisprudence relative à chaque question et l'ordonnance demandée.

(10) Chaque partie signifie un livre de jurisprudence avec son mémoire, sauf si la jurisprudence sur laquelle elle s'appuiera figure dans le « livre des juges ».

(11) Chaque partie dépose son mémoire et son livre de jurisprudence en six copies auprès du greffier ou de la greffière du Comité d'appel.

(12) La partie qui dépose un avis d'appel et qui ne dépose pas un certificat de contenu du dossier d'appel, un dossier d'appel, un mémoire ou un livre de jurisprudence dans les délais prescrits par la présente règle ou par le TGA est réputée s'être désistée de l'avis d'appel, sauf si elle obtient le consentement de l'autre partie ou une ordonnance du TGA.

Tribunal de gestion des appels (TGA)

15.05 (1) Le TGA établit le calendrier des audiences du Comité d'appel.

(2) Le TGA entend les motions relatives à ce qui suit :

a) l'abrègement ou la prorogation des délais prescrits par les présentes règles ou par une de ses ordonnances antérieures;

b) le lieu de l'audience portant sur un appel ou une motion;

c) la méthode d'instruction, notamment les demandes que celle-ci se fasse électroniquement ou sur pièces;

d) les conséquences de l'inobservation d'une de ses ordonnances antérieures;

e) les documents qui doivent être déposés auprès du Comité d'appel;

f) les questions de procédure touchant les motions présentées au Comité d'appel, notamment le contenu de tout affidavit ou du dossier d'appel comprenant des éléments de preuve supplémentaires, l'étendue ou le déroulement d'un contre-interrogatoire, les dépens des transcriptions et les rendez-vous avec l'auditeur officiel;

g) les demandes de radiation de l'avis d'appel pour inobservation des présentes règles, d'une de ses ordonnances ou d'une ordonnance du Comité d'appel.

(3) Le TGA peut, à la demande d'une partie ou de son propre chef, déférer l'audition de la motion au Comité d'appel qui instruit l'instance sur le fond.

Motion en présentation de nouveaux éléments de preuve

15.06 (1) La partie qui souhaite présenter des éléments de preuve dont le Comité d'audition n'a pas été saisi présente une motion en ce sens au Comité d'appel conformément à la règle 7, avec les adaptations nécessaires.

(2) Les deux parties doivent être prêtes à ce que le Comité d'appel examine l'appel sur le fond à la suite d'une motion en présentation de nouveaux éléments de preuve, quelle que soit l'issue de la motion.

(3) La partie qui dépose un avis de motion en présentation de nouveaux éléments de preuve et qui ne dépose pas les documents justificatifs dans les délais prescrits par la présente règle ou par le TGA, qui ne se présente pas au contre-interrogatoire si elle y est tenue ou qui n'obtient pas les transcriptions d'un contre-interrogatoire conformément aux présentes règles est réputée s'être désistée de l'avis de motion, sauf si elle obtient le consentement de l'autre partie ou une ordonnance du TGA.

Motifs

15.07 Le Comité d'appel motive toutes ses décisions par écrit.

RÈGLE 16 ORDONNANCES SOMMAIRES

Champ d'application

16.01 (1) La règle 16 s'applique aux questions concernant les articles 46, 47, 47.1, 48, 49 et le paragraphe 49.32 (3) de la Loi.

(2) Les règles 1, 5, 6, 7, 10, 11, 12 et 14 s'appliquent, avec les adaptations nécessaires, à la règle 16.

Définitions

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

« appel d'une ordonnance sommaire » Appel prescrit par le paragraphe 49.32 (3) de la Loi. (« summary order appeal »)

« conseiller ou conseillère qui rend la décision sommaire » Conseiller élu ou conseillère élue qui est nommé par le Conseil conformément à l'article 46, 47, 47.1, 48 ou 49 de la Loi pour rendre une ordonnance sommaire. (« summary disposition bencher »)

« ordonnance sommaire » Ordonnance prescrite par l'article 46, 47, 47.1, 48 ou 49 de la Loi. (« summary order »)

Ordonnances sommaires

16.03 L'ordonnance sommaire rendue par le conseiller ou la conseillère qui rend la décision sommaire est rédigée selon la formule 16A.

Signification des ordonnances sommaires

16.04 (1) L'avis d'une ordonnance sommaire une fois dressé et remis au titulaire de permis ou à un ancien titulaire de permis lui est signifié en personne ou en lui en envoyant une copie dans une lettre recommandée adressée à la dernière adresse connue de son domicile ou de son bureau qui figure dans les dossiers du Barreau.

(2) L'avis donné par courrier recommandé est réputé l'avoir été le cinquième jour de sa mise à la poste.

Appel d'une ordonnance sommaire

16.05 (1) L'appel d'une ordonnance sommaire sur une question de fait ou de droit est introduit par un avis d'appel rédigé selon la formule 16B.

(2) L'avis d'appel est signifié au Barreau et déposé auprès du greffier ou de la greffière du Comité d'appel :

a) dans les 30 jours de la signification de l'avis au titulaire de permis;

b) après la période de 30 jours avec le consentement du Barreau ou avec l'autorisation du Comité d'appel.

Divulgation de documents par le Barreau

16.06 Si un avis d'appel lui est signifié, le Barreau divulgue au titulaire de permis ou à l'ancien titulaire de permis , dans les 10 jours de la réception de l'avis d'appel, tous les documents pertinents qui se trouvent en sa possession, sous son contrôle ou sous sa garde.

Dossier d'appel

16.07 (1) Dans les 30 jours de la signification de l'avis d'appel, le titulaire de permis ou l'ancien titulaire de permis signifie ce qui suit au Barreau :

a) un dossier d'appel qui comprend l'ordonnance sommaire, l'avis d'appel, tous les affidavits et tout autre document sur lequel il s'appuiera;

b) un mémoire, s'il le souhaite, et un livre de la jurisprudence à laquelle renvoie le mémoire.

(2) Le titulaire de permis ou l'ancien titulaire de permis dépose les documents visés au paragraphe (1), avec la preuve de leur signification, en six copies auprès du greffier ou de la greffière du Comité d'appel dans les cinq jours de leur signification au Barreau.

Réponse à un appel

16.08 (1) Dans les 10 jours de la réception du dossier d'appel, le Barreau signifie ce qui suit au titulaire de permis ou à l'ancien titulaire de permis:

a) un dossier d'appel de la partie intimée qui comprend les documents qui ne figurent pas dans le dossier d'appel et sur lesquels il se propose de s'appuyer;

b) un mémoire, s'il le souhaite, et un livre de la jurisprudence à laquelle renvoie le mémoire.

(2) Le Barreau dépose les documents visés au paragraphe (1), avec la preuve de leur signification, en six copies auprès du greffier ou de la greffière du Comité d'appel dans les cinq jours de leur signification au titulaire de permis ou à l'ancien titulaire de permis.

Administration de la preuve lors de l'appel d'une ordonnance sommaire

16.09 Sous réserve du paragraphe 11.01 (3) et de la règle 11.02, la preuve est administrée par affidavit lors de l'appel d'une ordonnance sommaire, sauf ordonnance contraire du Comité d'appel.

Inscription de l'appel au calendrier

16.10 Après s'être conformé à la règle 16.07, le titulaire de permis ou l'ancien titulaire de permis communique avec le coordonnateur ou la coordonnatrice des audiences dans les 30 jours en vue d'obtenir les dates et les heures auxquelles l'appel peut être entendu.

Désistement de l'appel d'une ordonnance sommaire

16.11 (1) Le titulaire de permis ou l'ancien titulaire de permis peut se désister de l'appel d'une ordonnance sommaire en signifiant un avis de désistement rédigé selon la formule 4C au Barreau et au greffier ou à la greffière du Comité d'appel.

(2) Sauf ordonnance contraire du Comité d'appel, est réputé s'être désisté de l'appel d'une ordonnance sommaire le titulaire de permis ou l'ancien titulaire de permis qui :

a) soit n'observe pas les dispositions de la règle 16.07;

b) soit n'observe pas les dispositions de la règle 16.10;

c) soit ne se présente pas à l'audition de l'appel.

(3) Sauf ordonnance contraire du Comité d'appel, le Barreau a droit aux dépens de l'appel si celui-ci a fait ou est réputé avoir fait l'objet d'un désistement

Appel avec consentement

16.12 Sauf ordonnance contraire du Comité d'appel, l'appel avec consentement peut être entendu sur pièces en l'absence du Barreau ou du titulaire de permis ou de l'ancien titulaire de permis. Le consentement écrit des parties et un projet d'ordonnance sont alors déposés auprès du greffier ou de la greffière du Comité d'appel.

Adoptées : Le 28 janvier 1999
Modifiées : Les 19 février 1999, 26 mars 1999, 30 avril 1999, 28 mai 1999, 24 septembre 1999, 27 janvier 2000, 23 juin 2000, 21 février 2001, 22 juin 2001, 25 avril 2003, 22 juin 2005, 23 mars 2006 et 28 septembre 2006.
Abrogées et remplacées par le Conseil : Le 20 septembre 2007.

On peut consulter ces règles sur www.lsuc.on.ca.

FORMULAIRE 4A - AVIS DE REQUÊTE

N° de dossier

LE BARREAU DU HAUT-CANADA

RELATIVEMENT À la *Loi sur le Barreau*

ET RELATIVEMENT À (*nom du titulaire de permis, etc.*) de (*ville, etc.*) titulaire de permis du Barreau du Haut-Canada.

AVIS DE REQUÊTE

À : (*NOM DU TITULAIRE DE PERMIS, ETC.*)

SACHEZ que le Barreau du Haut-Canada a l'intention de s'adresser au comité d'audition du Barreau du Haut-Canada (*nature de la requête*).

Les détails de la conduite alléguée contre vous, constituant [*un manquement professionnel* OU *une conduite indigne* OU *manquement*], sont décrits ci-dessous (*donner les détails*)

SACHEZ ÉGALEMENT qu'une date sera fixée par le tribunal de gestion des audiences du Barreau du Haut-Canada pour la tenue d'une audience auprès du comité d'audition dans les bureaux du Barreau du Haut-Canada, aile est d'Osgoode Hall, 130, rue Queen Ouest, Toronto, le (*jour mois année*) à (*heures*) et que pouvez être présent à l'audience, avec ou sans votre avocat, afin de faire vos représentations.

[*OU* :
SACHEZ ÉGALEMENT que l'audition de la présente requête sera tenue devant le tribunal de gestion des audiences du Barreau du Haut-Canada dans les bureaux du Barreau du Haut-Canada, aile est d'Osgoode Hall, 130, rue Queen Ouest, Toronto, le (*jour mois année*) à (*heures*) et que pouvez être présent à l'audience, avec ou sans votre avocat, afin de produire votre preuve et de faire vos représentations.]

SACHEZ ÉGALEMENT que si vous ne vous présentez pas à l'audience, celle-ci pourra avoir lieu en votre absence et aucun autre avis ne vous sera donné par la suite.

(*Date*)

_____
(*Nom et numéro de téléphone de l'avocat(e)*)

FORMULAIRE 4B - AVIS D'AUDIENCE

N^{o} de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT *(nom du titulaire de permis, etc.)* de *(Ville, etc.)*, *(titulaire de permis, etc.)* du Barreau du Haut-Canada

AVIS D'AUDIENCE

À : (*nom du titulaire de permis, etc*.)

SACHEZ QUE le tribunal de gestion des audiences fixera la date de l'audience de votre demande *(nature de la requête*)* devant le tribunal de gestion des audiences du Barreau du Haut-Canada dans les bureaux du Barreau du Haut-Canada, aile est d'Osgoode Hall, 130, rue Queen Ouest, Toronto, le *(jour) (date)* à *(heure)* et que pouvez être *(présent ou présente)* à l'audience, avec ou sans votre avocat, afin de faire vos représentations.

OU

L'audience de votre demande *(nature de la requête)* se tiendra devant le comité d'audition du Barreau du Haut-Canada dans les bureaux du Barreau du Haut-Canada, aile est d'Osgoode Hall, 130, rue Queen Ouest, Toronto, le *(jour) (date)* à *(heure)* et que vous pouvez être présent à l'audience, avec ou sans votre avocat, afin de faire vos représentations.

SACHEZ ÉGALEMENT QUE ~~que~~ si vous ne vous présentez pas à l'audience, celle-ci pourra avoir lieu en votre absence ou votre requête sera tenue pour abandonnée et aucun autre avis ne vous sera donné par la suite.

(Date) _____

(*Nom et téléphone de l'avocat(e)*

**(exemples :)*

- d'accès à la profession, conformément à l'article 27 de la *Loi sur le Barreau*
- de rétablissement, conformément au paragraphe 49.42(1)- or – 49.42(3) de la *Loi sur le Barreau*
- de restitution, conformément à l'article 31, paragraphe (2) de la *Loi sur le Barreau*

FORMULAIRE 4C - AVIS D'ABANDON

N° de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT *(nom du titulaire de permis, etc.)* de *(Ville, etc.)*, *(titulaire de permis, etc.)* du Barreau.

AVIS D'ABANDON

SACHEZ QUE, par la présente, *(nom de la partie)* abandonne sa requête *(insérez la nature de la requête).*

Signé le jour de .

(Date) _____

(*Nom, adresse et téléphone de l'avocat(e) de la partie ou de la partie)*

À : (*Nom, adresse et téléphone de l'avocat(e) de la partie intimée ou de la partie intimée)*

FORMULAIRE 7A - AVIS DE MOTION

N^{o} de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT *(nom du titulaire de permis, etc.)* de *(Ville, etc.)*, *(titulaire de permis, etc.)* du Barreau.

AVIS DE MOTION

(Nommez la partie) introduira une motion au *(nommez le tribunal),* le *(date)* à *(heure)* ou aussitôt que la motion peut être entendue, dans une salle d'audience du Barreau au 130, rue Queen Ouest, Toronto (Ontario).

MÉTHODE D'AUDIENCE PROPOSÉE : la motion sera entendue (*Sélectionnez la méthode appropriée*)

_____ par écrit avec le consentement de la partie intimée

ou

_____ de vive voix.

L'OBJECTIF DE CETTE MOTION EST *(décrivez le recours recherché).*

LES RAISONS DE CETTE MOTION SONT : *(Décrivez les motifs de défense).*

LES PREUVES DOCUMENTAIRES SUIVANTES seront utilisées à l'audience :
(Énumérez les affidavits ou autre preuve documentée.)

(Date)

_____

(*Nom, adresse et téléphone de l'avocat(e) de la partie requérante ou de la partie requérante)*

À : (*Nom, adresse et téléphone de l'avocat(e) de la partie intimée ou de la partie intimée)*

FORMULAIRE 7B – ORDONNANCE DE MOTION

N^{o} de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT (*titulaire de permis, etc.)* de *(Ville, etc.)*, *(titulaire de permis, etc.)* du Barreau.

ORDONNANCE

CETTE MOTION, introduite par *(nommez la partie requérante)* pour *(nommez le recours recherché dans l'avis de motion, sauf s'il apparaît dans la partie exécutoire de l'ordonnance)*, a été entendue le *(date)*, (au *nommez l'endroit OU* électroniquement *OU* par écrit*)* devant *(énumérez le conseiller ou la conseillère du comité d'appel OU du comité d'audition).*

À LA LECTURE de *(donnez les détails des documents déposés avec la motion*) et à *(l'audition OU la lecture)* de la présentation des avocats de *(nommez les parties)*, (*où applicable, ajoutez en présence de (nommez la partie) OU en l'absence de représentation pour (nommez la partie), quoique dûment signifié tel qu'indiqué dans (indiquez la preuve de signification))*

1. IL A ÉTÉ ORDONNÉ QUE...

2. IL A ÉTÉ ÉGALEMENT ORDONNÉ QUE...

(Date) _____

(*Signature de la personne présidant au tribunal)*

FORMULAIRE 7C – AVIS D'ABANDON

N^{o} de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT (*titulaire de permis, etc.)* de *(Ville, etc.)*, *(titulaire de permis, etc.)* du Barreau.

AVIS D'ABANDON

SACHEZ QUE *(nom de la partie)* abandonne par la présente sa motion pour *(insérez la nature de la motion).*

SIGNÉ le .

(*Date*) (*Nom, adresse et téléphone de l'avocat(e) de la partie*)

À : (*Nom, adresse et téléphone de l'avocat(e) de la partie intimée ou de la partie intimée*)

FORMULAIRE 12A – CONSENTEMENT À UNE AUDIENCE DEVANT UN SEUL CONSEILLER OU CONSEILLÈRE

N^{o} de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT *(nom du titulaire de permis, etc.)* de *(Ville, etc.)*, *(titulaire de permis, etc.)* du Barreau.

CONSENTEMENT À UNE AUDIENCE DEVANT UN COMITÉ D'AUDITION D'UN SEUL CONSEILLER OU CONSEILLÈRE

1. En vertu du règlement de l'Ontario 167/07 pris en application de la *Loi sur le Barreau,* le *(titulaire de permis)* et le Barreau (les « parties ») consentent, par la présente, à ce que cette requête soit entendue et décidée par un comité d'audition d'un seul conseiller ou conseillère.

2. Les parties donnent leur consentement sachant parfaitement qu'en raison de la nature de la requête, les parties ont droit à une audience devant un comité d'audition de trois conseillers ou conseillères et les parties renoncent explicitement à leurs droits.

(Titulaire de permis) *(Avocat(e) pour le Barreau)*

(date de signature) *(date de signature)*

FORMULAIRE 12B – CONSENTEMENT À UNE AUDIENCE DEVANT UN CONSEILLER OU CONSEILLÈRE DE LA CONFÉRENCE PRÉPARATOIRE À L'AUDIENCE

N^{o} de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT (nom du titulaire de permis, etc.) de (Ville, etc.), (titulaire de permis, etc.) du Barreau.

CONSENTEMENT À UNE AUDIENCE DEVANT UN SEUL CONSEILLER OU CONSEILLÈRE DE LA CONFÉRENCE PRÉPATOIRE À L'AUDIENCE

1. En vertu du règlement de l'Ontario 167/07 pris en application de la *Loi sur le Barreau,* le *(titulaire de permis)* et le Barreau (les « parties ») consentent, par la présente, à ce que cette requête soit entendue et décidée par un comité d'audition *(d'un seul conseiller OU d'une seule conseillère).*

2. Les parties donnent leur consentement sachant parfaitement qu'en raison de la nature de la requête, les parties ont droit à une audience devant un comité d'audition de trois conseillers ou conseillères et les parties renoncent explicitement à leurs droits.

3. Les parties consentent également à nommer (*nom du conseiller ou de la conseillère*) comme (*seul conseiller OU seule conseillère*) au comité d'audition, en dépit du fait qu'(*il OU elle*) a agi comme *(conseiller OU conseillère)* à la conférence préparatoire à l'audience.

4. Les parties reconnaissent que la conférence préparatoire à l'audience s'est tenue devant (*nom du conseiller ou de la conseillère*) le (date) et que :

a) les questions relatives à cette requête ont été méticuleusement étudiées à la conférence préparatoire à l'audience

b) les parties ont convenu d'un règlement

c) le *(titulaire de permis)* reconnaît avoir adopté une conduite qui constitue *(une inconduite professionnelle OU une conduite indigne).*

d) ce consentement a été donné par les parties après la tenue de la conférence préparatoire à l'audience

e) aucun des aspects de la conférence préparatoire à l'audience n'est subordonné à ce consentement.

5. Les parties reconnaissent également *(qu'un seul conseiller OU qu'une seule conseillère)* du comité d'audition tiendra l'audience, formulera des conclusions et prendra une décision quant aux sanctions basées uniquement sur les évidences et les représentations faites devant *(lui OU elle)* à l'audience.

(Titulaire de permis) *(Avocat(e) pour le Barreau)*

(date de signature) *(date de signature)*

FORMULAIRE 15A- AVIS D'APPEL

N° de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT *(nom du titulaire de permis, etc.)* de *(Ville, etc.)*, *(titulaire de permis, etc.)* du Barreau.

AVIS D'APPEL

(Nommez la partie) FAIT APPEL de l'ordonnance du comité d'audition datée du *(date).*

(Nommez la partie) DEMANDE que l'ordonnance soit annulée et que soit accordée l'ordonnance de *(Décrivez le recours recherché).*

LES RAISONS DE L'APPEL sont les suivantes : (*décrivez brièvement les motifs d'appel*).

(Date)

_____

(*Nom, adresse et téléphone de l'avocat(e) de la partie ou de la partie)*

À : (*Nom, adresse et téléphone de l'avocat(e) de la partie intimée ou de la partie intimée)*

FORMULAIRE 15B – CERTIFICAT DU CONTENU DU DOSSIER D'APPEL

N° de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT (*titulaire de permis, etc.)* de *(Ville, etc.)*, *(titulaire de permis, etc.)* du Barreau.

CERTIFICAT DU CONTENU DU DOSSIER D'APPEL

(Nommez la partie) atteste que les éléments de preuve suivants sont requis pour l'appel :

1. les preuves numéro (précisez les pièces par numéro).

2. le témoignage de (noms des témoins).

(Date)

_____

(*Nom, adresse et téléphone de l'avocat(e) de la partie ou de la partie)*

À : (*Nom, adresse et téléphone de l'avocat(e) de la partie ou de la partie)*

FORMULAIRE 16A- ORDONNANCE SOMMAIRE

N° de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ORDONNANCE SOMMAIRE

ATTENDU QUE chacun des titulaires de permis, dont le nom apparaît *(à l'annexe jointe OU aux annexes jointes) (nature et longueur du manquement et règlement administratif pertinent)*,

EN VERTU DE *(responsable de l'ordonnance)*,

IL EST ORDONNÉ que *(conditions de l'ordonnance).*

Signé le _____

(Conseiller ou Conseillère) aux ordonnances sommaires

FORMULAIRE 16B - AVIS D'APPEL D'UNE ORDONNANCE SOMMAIRE

N^{o} de dossier

LE BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la *Loi sur le Barreau*

ET DANS UNE AFFAIRE CONCERNANT *(nom du titulaire de permis, etc.)* de *(Ville, etc.)*, *(titulaire de permis, etc.)* du Barreau.

AVIS D'APPEL D'UNE ORDONNANCE SOMMAIRE

(Nommez la partie) FAIT APPEL, au comité d'appel, de l'ordonnance sommaire *(du conseiller OU de la conseillère)* aux ordonnances sommaires, datée du *(date).*

(Nommez la partie) DEMANDE que l'ordonnance soit annulée et que soit accordée l'ordonnance de *(Décrivez le recours recherché).*

LES RAISONS DE L'APPEL sont les suivantes : (décrivez brièvement les motifs d'appel).

(*Date*)

(*Nom, adresse et téléphone du titulaire de permis ou avocat, si représenté.)*

À :

INFORMATION MONITORING

TRIBUNALS OFFICE QUARTERLY STATISTICS

6. Convocation is provided with the Tribunals Office Quarterly Statistics for the first and second quarters of 2007 (January – March; April – June) at APPENDICES 3 and 4.

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

Copies of the Quarterly Statistics for the first and second quarters of 2007 (January–March, April–June).

(Tab B, Appendices 3 and 4, pages 147 –183)

Re: Housekeeping Amendments to the Current Rules of Practice and Procedure

It was moved by Mr. Sandler, seconded by Mr. Banack, that the Rules of Practice and Procedure adopted by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, March 26, 1999, April 30, 1999, May 28, 1999, September 24, 1999, January 27, 2000, June 23, 2000, February 21, 2001, June 22, 2001, April 25, 2003, June 22, 2005, March 23, 2006, September 28, 2006 and June 28, 2007, be revoked and replaced with the English and French Rules of Practice and Procedure set out at APPENDIX 2.

Carried

Item for Information

- Tribunals Office Quarterly Statistics

BENCHER PLANNING SESSION UPDATE

Dr. David Weiss addressed Convocation about the upcoming bencher planning session.

REPORT OF THE COMPENSATION FUND COMMITTEE

Mr. Wright presented the Report.

Report to Convocation
September 20, 2007

Compensation Fund Committee

Committee Members

Brad Wright, Chair
Robert Aaron
Marshall Crowe
Gerald Swaye

Purpose of Report: Decision and Information

Prepared by the Compensation Fund
Department (416 596-4646)

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COMMITTEE PROCESS

1. The Committee met on September 5, 2007. Members in attendance were Brad Wright (Chair), Marshall Crowe and Gerald Swaye. Staff and others in attendance were Zeynep Onen, Dan Abrahams, Maria Loukidelis, Fred Grady and Craig Allen (LawPRO VP & Actuary).

FOR DECISION

AMENDMENTS TO THE GUIDELINES ARISING FROM AMENDMENTS TO THE *LAW SOCIETY ACT*

Motion

2. That Convocation approve the amendments to the *Guidelines for the Determination of Grants from the Compensation Fund* as set out in the Guidelines at Appendix 1 to this report.

Introduction

3. As a result of amendments to the *Law Society Act* effective May 1, 2007, amendments to the Guidelines for the Determination of Grants from the Fund are required to replace the old terminology with current language. At this stage, the changes are of a housekeeping nature, and are being reported to Convocation for approval.

4. The following are the changes that are proposed:

   i) changing "member" to "lawyer" where it appears;
   ii) changing "law practice" to "professional business", defined to mean the practice of law and the business operations relating to it; and
   iii) changing the name of the Fund to "Compensation Fund" from the "Lawyers Fund for Client Compensation" in the title.

Appendix 1

The Law Society of Upper Canada

GENERAL GUIDELINES FOR THE DETERMINATION OF GRANTS FROM THE ~~LAWYERS FUND FOR CLIENT COMPENSATION~~COMPENSATION FUND

1. It must be shown that, at the time the ~~member~~lawyer licensee received funds or property of a claimant,

   a) a solicitor and client relationship existed between the claimant and the ~~member,~~lawyer, and that

b) the ~~member~~lawyer received funds or property of the claimant in his or her capacity as a ~~solicitor,~~lawyer, and that

c) the claimant's loss was in consequence of dishonesty, on the part of the ~~member,~~lawyer, in connection with such ~~member's law practice.~~lawyer's professional business*.

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

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

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

3. Money left with a ~~member~~lawyer to be used in a venture, in which the ~~member~~lawyer and the person advancing the money are both participants, is not money received by the ~~member~~lawyer in connection with his or her ~~law practice,~~professional business, or in his or her capacity as a ~~member,~~lawyer, despite the fact that the ~~member~~lawyer performs legal services in connection with the venture. Misappropriation by the ~~member~~lawyer of money left with the ~~member~~lawyer to participate in a venture with the ~~member,~~lawyer, or failure to properly account by the ~~member,~~lawyer, is not conduct for which relief from the Fund is available.

4. a) There shall be no recovery of money advanced to the ~~member~~lawyer if the purpose of such advance was known by the claimant to be a loan to the ~~member~~lawyer or in circumstances where the claimant should have known that the advance was a loan to the ~~member.~~lawyer. It is deemed that the advance was to the ~~member,~~lawyer, if it was for the ~~member~~lawyer personally or to the ~~member's~~lawyer's spouse or a corporation, syndicate or partnership in which the ~~member or member's~~lawyer or lawyer's spouse or both of them directly or indirectly, have a substantial interest.

b) Notwithstanding the foregoing, if a claimant is induced to lend money to a ~~member~~lawyer because of a solicitor and client relationship, consideration can be given to making a grant when the loan is not repaid.

*Professional business means the practice of law and the business operations relating to it.

5. There must be satisfactory proof that money or money's worth was received by the ~~member~~lawyer from or on behalf of the claimant and equivalent money or money's worth has not been returned or accounted for to the claimant.

6. Ordinarily,

   a) the amount of the loss in respect of which a grant may be made is the difference between the amount received by the ~~member~~lawyer and the actual amount returned or otherwise accounted for to the claimant; and

   b) all amounts paid to the claimant, even though purporting to be interest, or on account of interest, should be deducted in determining the amount of the grant, less the amount of any income tax paid on that interest.

   Payment of interest to the claimant, or costs (except counsel fees set out below), expenses or damages incurred or suffered by the claimant will not be made out of the Fund. Counsel fees may be allowed as follows: $500. (may be increased in complicated cases) for preparation of claim documents and final resolution of the claim plus $800. per day in the discretion of the Referee if a hearing is held.

7. The amount of a grant may be reduced in circumstances where the claimant expected or should reasonably be considered as having expected that the funds entrusted to the ~~member~~lawyer were to be invested in a risky investment that might not be recovered in full.

8. Carelessness, on the part of the claimant, which causes or contributes to a loss, is a factor which may be considered in making a grant from the Fund. It is not feasible to attempt to exhaustively define what constitutes carelessness. Each claim for a grant depends on its particular facts. It may be considered to be carelessness where a claimant advances or continues to advance money to a ~~member,~~lawyer, if the claimant has knowledge of facts which reasonably should cause the claimant to doubt the integrity, or the financial reliability of the ~~member.~~lawyer.

9. Where the dealings with the ~~member~~lawyer have been conducted by a trustee or agent for or on behalf of another person, the merits of the claim, the decision to make a grant and the amount of the grant should be determined as though the trustee or agent had been dealing with his or her own funds. If a grant is made, care should be taken that it reaches and thereafter will be preserved for the person beneficially entitled. If the formal written claim is not made in the name of the person entitled to benefit from any grant made in respect of that claim, the record should be corrected to meet the circumstances and to ensure that the proper person receives the benefit of the grant.

10. Where a claimant has a reasonable cause of action against some other person, which would reimburse the claimant or reduce the amount of his or her loss, and would not be recoverable by such other person from the Fund, the claimant, as a general rule, should be required to take all reasonable steps to effect recovery from such other person before a grant is made from the Fund. It is in the discretion of the Committee whether all reasonable steps have been taken, but such discretion should be exercised primarily in the interests of the claimant rather than the protection of the Fund.

11. Where the ~~member~~lawyer would appear to have a valid claim against the claimant for fees and disbursements in respect of services that have been rendered to the claimant, the approximate amount thereof, can, in the discretion of the Referee, be deducted from the amount of the grant that would otherwise be made.

12. Where a claim arises out of circumstances that strongly suggest criminal conduct on the part of the ~~member,~~lawyer, the claimant shall report the facts to the relevant police authority for investigation. The claimant must then satisfy the Fund that he or she has done so failing which the claim may not be entertained.

13. The financial circumstances of the person actually suffering the loss and the degree of hardship suffered by that person as a result of the loss are factors to be taken into account when determining any grant. No grant shall be made to a bank or other financial institution engaged in the business of lending money.

14. Ordinarily, a claimant who elects to take steps to recover the loss in pursuit of a private agreement with an apparently dishonest ~~member~~lawyer will not be entitled to a grant unless the Law Society~~Lawyers Fund for Client~~ Compensation Fund and Discipline Departments have been informed before any such steps are taken.

15. In the case of a ~~member~~lawyer who conducts ~~a legal~~the practice of law in a jurisdiction outside Ontario, other than a practice within Canada that complies with the provisions of the Inter-Jurisdictional Practice Protocol, no grant shall be paid out of the Fund when the funds or property of the claimant were received by or on behalf of the ~~member~~lawyer in connection with a matter that originated in that jurisdiction or in connection with a trust of which the ~~member~~lawyer was or is a trustee that originated outside Ontario.

~~Revised July 1, 2001~~ (Revised April 30, 2007)

FOR INFORMATION

CURRENT FUND STATUS AND LEVY ISSUES FOR 2008

5. The Committee was provided with a report by Craig Allen, Vice-President and Actuary at LawPRO, reporting on the unpaid claims liability and Fund balance as of June 30, 2007. The report indicates the unpaid claims liability as at June 30, 2007 is similar in amount to the value at December 31, 2006 ($9,325,000 vs. $9,243,000). The Fund Balance as at June 30, 2007 is $21.1 million, increased from $19.4 million at December 2006 and decreased slightly from $21.4 million as at March 31, 2007.

6. The bulk of the increase in the Fund Balance since the end of 2006, $1.2 million, is related to changes in the accounting recognition of financial instruments, beginning January 1, 2007, which changed the treatment of unrealized gains on investments. In addition, there was favourable development on claims reported before December 31, 2006. The small decrease of $0.3 million in the Fund Balance since March 31, 2007 is primarily explained by incurred claims in the quarter slightly higher than budgeted and by a small decrease in the favourable development on claims reported prior to December 31, 2006.

7. The Committee also considered an actuarial analysis prepared by Craig Allen setting out projections for the Fund Balance as at December 31, 2008 under a number of 2008 claims scenarios. In particular, the Committee reviewed issues surrounding the levy, the optimum Fund surplus and the impact of a catastrophic claim or series of claims.

8. Materials considered by the Committee are attached as Appendix 2.

9. Notwithstanding the fact that the Fund is in a healthy position, but given the inherently uncertain environment in which the Fund operates, the Committee decided that the recommendation to maintain the levy at $200 was appropriate.

GRANTS PAID BY THE FUND

10. The Committee wishes to report that the following grants were approved and paid from the Fund between March 31, 2007 and August 28, 2007, in the amounts shown. (Only members whose discipline proceedings are completed or who are deceased are identified by name.)

Licensee (Status if Disciplined)	Number of Claimants	Total Grants Paid ($)
Desmond, Irene (Disbarred January 23, 2007)	1	$800.00
Dullege, Roy (Permitted to Resign November 23, 2006)	5	$16,190.00
Fellin, Renato (Disbarred April 26, 2006)	1	$100,000.00
Greenglass, Morton (Disbarred April 7, 2006)	1	$47,209.73
Leich, Peter (Disbarred July 6, 2006) and Sacks, Glenn (Permitted to Resign July 22, 2006)	7	$152,685.65
Lubon-Butcher, Maxima (Permitted to Resign July 30, 2007)	1	$12,640.21
Marek, Andrew (Disbarred October 4, 2006)	1	$810.42
Misir, Vishnu (Disbarred August 25, 2005)	1	$6,841.95
Muslim, Mohammed (Permitted to Resign September 14, 2006)	1	$2,000.00
Richardson, Peter (Suspended Discipline March 17, 2006)	1	$2,991.00
Solicitor #145 (Suspended July 11, 2006)	4	$81,519.81
Solicitor #158 (Suspended April 23, 2007)	1	$2,200.00
Solicitor #161 (Suspended October 6, 2006)	2	$15,000.00
Solicitor #167 (Suspended September 30, 2005)	1	$100,000.00
Solicitor #168 (Suspended October 6, 2006)	1	$750.00
		$541,638.77

Appendix 2

LAWYERS' PROFESSIONAL INDEMNITY COMPANY
MEMORANDUM

TO: LAW SOCIETY OF UPPER CANADA

FROM: CRAIG ALLEN

CC: MICHELLE STROM

DATE: AUGUST 29, 2007

RE: UNPAID CLAIMS LIABILITY, JUNE 30, 2007, LAWYERS' FUND FOR CLIENT COMPENSATION

The unpaid claims liability, as at June 30, 2007 for the Lawyers' Fund for Client Compensation, is estimated to be $9,325,000. This amount is

- discounted for the time value of money (in the amount of $469,000),
- includes a provision for internal claims handling expenses (in the amount of $2,326,000), and
- includes a margin to provide for unfavourable developments as claims proceed toward resolution (in the amount of $999,000).

The value of the unpaid claims liability at December 31, 2006, was estimated at $9,243,000.

On an undiscounted basis the liability at June 30, 2007 is $8,795,000, which compares to an undiscounted liability of $8,720,000 at December 31, 2006.

To calculate the unpaid claims liability amount, add the provision for unfavourable developments and subtract the time value of money.

Undiscounted claims liability	$8,795,000
Add: Provision for unfavourable developments	$999,000
Less: Time value of money	$469,000
Unpaid Claims Liability	$9,325,000

The following table summarizes the individual items that account for the carrying forward of the December 31, 2006 undiscounted claims liability through to June 30, 2007:

	Claims	Internal Costs	Total
Claims Liability at December 31, 2006	$6,016,000	$2,704,000	$8,720,000
Add: Adverse (Favourable) Development on Claims Reported before December 31, 2006	(415,000)	(221,000)	(636,000)
Claims Liability at December 31, 2006 with Benefit of Hindsight	5,601,000	2,483,000	8,084,000
Add: Claims Incurred in Jan.- June 2007	1,496,000	870,000	2,366,000
Less: Payments Made in Jan.- June 2007	759,000	896,000	1,655,000
Claims Liability at June 30, 2007	6,338,000	2,457,000	8,795,000

Fund Balance

The Fund Balance as at June 30, 2007 is $21.1 million, increased from $19.4 million at December 2006 and decreased from $21.4 million as at March 31, 2007.

In keeping with changes in the accounting for financial instruments, beginning January 1, 2007, Compensation Fund assets are now held at market value (they were held at amortized cost prior to January 1, 2007).

As such, the bulk of the increase in the Fund Balance since December 31, 2006, $1.2 million, is related to the difference in the treatment of unrealized gains on investments. The next largest component of the increase in the Fund Balance is the favourable development on claims reported before December 31, 2006, of $0.6 million. The remaining decrease of $0.1 million is due to miscellaneous variances from budget.

The small decrease of $0.3 million in the Fund Balance since March 31, 2007 is primarily explained by incurred claims in the quarter of $0.8 million, slightly higher than the budgeted amount of $0.7 million, and by a decrease of $0.1 million in the favourable development on claims reported prior to December 31, 2006.

TO: Lawyers' Fund for Client Compensation Committee

FROM: Craig Allen
Vice President & Actuary

DATE: September 6, 2007

RE: Considerations Re Compensation Fund Levy 2008

This memorandum addresses a number of considerations to assist the Committee in its deliberations on the 2008 levy for the Lawyers' Fund for Client Compensation.

It should be noted that the Federation of Law Societies is currently examining the issue of how to provide protection from defalcation for clients of lawyers practicing temporarily in jurisdictions other than their home jurisdiction. This memorandum does not address those considerations.

Beginning in 2001, the Compensation Fund undertook a sustained program to increase its Fund Balance (the net worth of the Fund net of amounts earmarked for claims in progress). In each year from 2001 through 2003, the Compensation Fund levy provided roughly $2.7 million for smaller incidents and an additional amount for large-scale defalcations. As there was no major defalcation during this period, the Fund Balance grew from $9.3 million at December 2000 to $19.5 million at December 2004.

In light of the growth of the Fund Balance, the decision was made to reduce the member levy from $230 for 2004 to $200 for 2005. This reduction in the levy, in effect, eliminated the provision within the levy for large-scale defalcations. The levy would roughly cover the Fund's costs for a year where there was no large-scale defalcation - however, if there were such a large-scale incident, its claims would reduce the Fund Balance.

Protection for worse-than-expected results is thus provided by the Fund Balance, not by any provision in the annual levy. (From 2001 through 2004, further protection was provided by insurance of the Fund underwritten by LAWPRO. The favorable results over the 2001 – 2004 period, along with the substantial growth in the buffer provided by the Fund Balance enabled the Fund to discontinue the insurance program).

<u>The Indicated Levy</u>

The provision of $2.7 million for expected claims remains appropriate for 2008. The indicated provision for recurring routine-type claims remains at $2.7 million, while the Fund Balance at $21.1 million is sufficient to provide for intermittent large-scale defalcations.

For 2007, the costs of operating the program were budgeted at $7,577,200, including claims costs, direct expenses, and an allocation of roughly $1 million for indirect expenses. Plans for 2008 are to keep the budget roughly consistent with 2007.

Thus, the needed revenue for 2008 is again $7,577,200. For 2007, the budget for investment income was $1,170,000. A similar amount is expected for 2008, which reduces the amount to be raised by the levy to $6,407,200. Divided among a full-time equivalent count of lawyers of 32,800 (up from 32,000 for 2007) the indicated levy per member is $195, which differs by an insignificant amount from the 2007 levy of $200.

Claims and Levy Scenarios

While the above calculation indicates a levy of $200, the sufficiency of such an amount depends on the actual claims experience as it emerges. The committee may wish to consider the effect of levy amounts of $180 and $220, in addition to the $200 shown above. The Fund Balance under these levy scenarios and under a number of different claims scenarios will be considered.

The projection of the Fund Balance assumes that the remainder of 2007 proceeds according to the 2007 budget, and that the levy option and claims scenario take effect in 2008. It further assumes that there will be no change in the operational expenses of the Fund for 2008, over 2007 budget levels.

The following table presents the annual claims experience since 1991 for small-scale and large-scale defalcations. These claims are re-stated to the current limit of $100,000 per claimant. For 2007, it is assumed that claims for the remainder of the year will equal the amount budgeted for those two quarters.

($000s)

Year	Small-Scale	Large-Scale	Total
1991	4,000	4,800	8,800
1992	4,400	0	4,400
1993	2,800	900	3,700
1994	2,400	1,600	4,000
1995	2,500	500	3,000
1996	2,500	3,800	6,300
1997	2,000	600	2,600
1998	1,400	2,200	3,600
1999	2,100	0	2,100
2000	1,400	4,100	5,500
2001	2,200	0	2,200
2002	2,400	0	2,400
2003	2,600	0	2,600
2004	2,400	1,100	3,500
2005	2,700	0	2,700
2006	2,800	0	2,800
2007 (est.)	2,800	0	2,800

The table below presents the Fund Balance at year end for the years 1999 through 2006, along with the January 1, 2007 and June 30, 2007 Fund Balances. This table provides a context for the current Fund Balance of $21.1 million.

Date	Fund Balance
Dec. 1999	$12.4 million
March 2000	$8.0 million
Dec. 2000	$9.3 million
Dec. 2001	$13.6 million
Dec. 2002	$14.9 million
Dec. 2003	$17.4 million
Dec. 2004	$19.5 million
Dec. 2005	$17.9 million
Dec 31, 2006	$19.4 million
Jan 1, 2007	$20.5 million
Jun. 2007	$21.1 million

Note that the value of the Fund Balance at Jan. 1, 2007 was $1.1 million higher than at Dec. 31, 2006. This increase reflects the changes in accounting for financial instruments, effective on that date. Under the new accounting standards, the Fund's investments are held at market value, while they were previously held at amortized cost.

It should also be noted that, as the investments are held at market value, their value will fluctuate with market conditions. At January 2007, the market value of the portfolio exceeded its book value. However, market values can also fall below book values, and the Fund Balance will therefore be subject to this source of variability.

Under all the scenarios following, no provision has been made for fluctuations in the market values of the investment portfolio.

Scenario 1:

Under this scenario, claims for the year are valued at $2.7 million. This is the level of claims experienced in 2005, and is roughly equal to an average year of claims (in the absence of a large-scale defalcation).

The current Fund Balance of $21.1 million progresses to the following amounts, under each of the options, in this scenario:

Option	Fund Balance, Dec 2008
$180 Levy	$20.4 million
$200 Levy	$21.1 million
$220 Levy	$21.8 million

We see that, under these options, the Fund Balance straddles its current level. This claims scenario is the most likely: results similar to this have appeared in eight of the last twelve years.

Scenario 2:

This scenario assumes that claims for the year are valued at $5.5 million. This is the level of claims experienced in 2000, which is representative of a year in which a large-scale defalcation comes to light.

The current Fund Balance of $21.1 million changes under each of the funding options, as follows:

Option	Fund Balance, Dec 2008
$180 Levy	$17.6 million
$200 Levy	$18.3 million
$220 Levy	$19.0 million

Under Scenario 2 with the $200 levy, the Fund Balance returns roughly to its level in mid 2004.

Scenario 3:

Under this scenario, claims for the year are valued at $12.2 million. This scenario is constructed by beginning with the value of claims experienced in 1991, $7.5 million. This is the year where the Fund's claims reached their peak value.

While some of the claims reported in 1991 were subject to the $100,000 per-claimant limit now in place, many were limited to $60,000. It is projected that the 1991 claims would have been valued at $8.8 million had the $100,000 limit been in place uniformly.

In addition, there were only 15,200 lawyers in private practice in Ontario in 1991, compared to the 21,000 currently in practice. If the count of 1991 claims were adjusted in line with the increased number of lawyers, the $8.8 million of limits-adjusted claims would rise to $12.2 million.

The current Fund Balance of $21.1 million changes under each of the funding options as follows:

Option	Fund Balance, Dec 2008
$180 Levy	$10.9 million
$200 Levy	$11.6 million
$220 Levy	$12.3 million

Under this scenario at the $200 levy, the Fund Balance reaches a level above its December 2000 level. (Note that the suddenly lower Fund Balance at December 2000 prompted the Law Society to seek insurance of the Fund). While a reduction of the Fund Balance to this level would be a financial setback, the Fund would be able to continue operations with no difficulty.

Scenario 4:

In this scenario, we determine the maximum level of claims that the Fund has the capacity to absorb in 2008, under each of the levy options, given its current Fund Balance.

Under this scenario, the resources available to fund the payment of newly reported claims are limited to the Fund Balance plus the funds from a levy of one of $180, $200 or $220.

(Where the levy is $200, the amount within the levy available to fund claims is $2.7 million, while a levy of $180 provides $2.0 million and $220 provides $3.4 million.)

Option	Maximum Funded Claim Value for 2008
$180 Levy	$23.1 million
$200 Levy	$23.8 million
$220 Levy	$24.5 million

New Exposure for Fraudulent Instruments Coverage

In response to media coverage of title and mortgage fraud, the Ontario government has announced a program of reform to address and reduce the incidents of real estate fraud. This program may restrict the ability to perform transfers in the Land Titles system to lawyers. Further, it may require that registration of a transfer involve two lawyers. Provisions concerning the Land Titles Assurance Fund ensure faster payouts to innocent homeowners and purchasers, and impose standards of due diligence for lenders and others applying to the LTAF.

With access to registration for transfers being restricted to lawyers, government is seeking expanded insurance protection for real estate practitioners for instances involving lawyer fraud. This insurance protection is to be provided by LAWPRO and will have the following provisions:

- It applies only to the registration of fraudulent instruments under the Land Titles Act,
- It applies regardless of whether legal services were provided,
- It does not apply where the transaction occurred prior to the coverage taking force, nor to transactions to which title insurance would apply,
- It is subject to a limit of coverage of $250,000 per claim, $1 million in aggregate.

The following persons would not be eligible for the coverage:

- Persons who are in bankruptcy,
- Persons who have been convicted or disciplined in connection with real estate fraud,
- Those under investigation, where the Law Society obtains an interlocutory suspension order, or a restriction on the lawyer's practice prohibiting the lawyer from practicing real estate, or an undertaking not to practice real estate.

The Committee should be aware that where the per-claim or aggregate limit prevents full recovery of the claimant's loss, some claimants may make claims to the Compensation Fund; however, as the vast majority of real estate transactions in Ontario are title insured, it is expected that such claims will occur infrequently.

Re: Amendments to the Guidelines Arising from Amendments to the *Law Society Act*

It was moved by Mr. Wright, seconded by Mr. Crowe, that Convocation approve the amendments to the *Guidelines for the Determination of Grants from the Compensation Fund* set out below:

The Law Society of Upper Canada

GENERAL GUIDELINES FOR THE DETERMINATION OF GRANTS FROM THE ~~LAWYERS FUND FOR CLIENT COMPENSATION~~COMPENSATION FUND

1. It must be shown that, at the time the ~~member~~lawyer licensee received funds or property of a claimant,

   a) a solicitor and client relationship existed between the claimant and the ~~member,~~lawyer, and that

   b) the ~~member~~lawyer received funds or property of the claimant in his or her capacity as a ~~solicitor,~~lawyer, and that

   c) the claimant's loss was in consequence of dishonesty, on the part of the ~~member,~~lawyer, in connection with such ~~member's law practice.~~lawyer's professional business*.

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

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

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

*Professional business means the practice of law and the business operations relating to it.

3. Money left with a ~~member~~lawyer to be used in a venture, in which the ~~member~~lawyer and the person advancing the money are both participants, is not money received by the ~~member~~lawyer in connection with his or her ~~law practice,~~professional business, or in his or her capacity as a ~~member,~~lawyer, despite the fact that the ~~member~~lawyer performs legal services in connection with the venture. Misappropriation by the ~~member~~lawyer of money left with the ~~member~~lawyer to participate in a venture with the ~~member,~~lawyer, or failure to properly account by the ~~member,~~lawyer, is not conduct for which relief from the Fund is available.

4. a) There shall be no recovery of money advanced to the ~~member~~lawyer if the purpose of such advance was known by the claimant to be a loan to the ~~member~~lawyer or in circumstances where the claimant should have known that the advance was a loan to the ~~member.~~lawyer. It is deemed that the advance was to the ~~member,~~lawyer, if it was for the ~~member~~lawyer personally or to the ~~member's~~lawyer's spouse or a corporation, syndicate or partnership in which the ~~member or member's~~lawyer or lawyer's spouse or both of them directly or indirectly, have a substantial interest.

b) Notwithstanding the foregoing, if a claimant is induced to lend money to a ~~member~~lawyer because of a solicitor and client relationship, consideration can be given to making a grant when the loan is not repaid.

5. There must be satisfactory proof that money or money's worth was received by the ~~member~~lawyer from or on behalf of the claimant and equivalent money or money's worth has not been returned or accounted for to the claimant.

6. Ordinarily,

a) the amount of the loss in respect of which a grant may be made is the difference between the amount received by the ~~member~~lawyer and the actual amount returned or otherwise accounted for to the claimant; and

b) all amounts paid to the claimant, even though purporting to be interest, or on account of interest, should be deducted in determining the amount of the grant, less the amount of any income tax paid on that interest.

Payment of interest to the claimant, or costs (except counsel fees set out below), expenses or damages incurred or suffered by the claimant will not be made out of the Fund. Counsel fees may be allowed as follows: $500. (may be increased in complicated cases) for preparation of claim documents and final resolution of the claim plus $800. per day in the discretion of the Referee if a hearing is held.

7. The amount of a grant may be reduced in circumstances where the claimant expected or should reasonably be considered as having expected that the funds entrusted to the ~~member~~lawyer were to be invested in a risky investment that might not be recovered in full.

8. Carelessness, on the part of the claimant, which causes or contributes to a loss, is a factor which may be considered in making a grant from the Fund. It is not feasible to attempt to exhaustively define what constitutes carelessness. Each claim for a grant depends on its particular facts. It may be considered to be carelessness where a claimant advances or continues to advance money to a ~~member,~~lawyer, if the claimant has knowledge of facts which reasonably should cause the claimant to doubt the integrity, or the financial reliability of the ~~member.~~lawyer.

9. Where the dealings with the ~~member~~lawyer have been conducted by a trustee or agent for or on behalf of another person, the merits of the claim, the decision to make a grant and the amount of the grant should be determined as though the trustee or agent had been dealing with his or her own funds. If a grant is made, care should be taken that it reaches and thereafter will be preserved for the person beneficially entitled. If the formal written claim is not made in the name of the person entitled to benefit from any grant made in respect of that claim, the record should be corrected to meet the circumstances and to ensure that the proper person receives the benefit of the grant.

10. Where a claimant has a reasonable cause of action against some other person, which would reimburse the claimant or reduce the amount of his or her loss, and would not be recoverable by such other person from the Fund, the claimant, as a general rule, should be required to take all reasonable steps to effect recovery from such other person before a grant is made from the Fund. It is in the discretion of the Committee whether all reasonable steps have been taken, but such discretion should be exercised primarily in the interests of the claimant rather than the protection of the Fund.

11. Where the ~~member~~lawyer would appear to have a valid claim against the claimant for fees and disbursements in respect of services that have been rendered to the claimant, the approximate amount thereof, can, in the discretion of the Referee, be deducted from the amount of the grant that would otherwise be made.

12. Where a claim arises out of circumstances that strongly suggest criminal conduct on the part of the ~~member,~~lawyer, the claimant shall report the facts to the relevant police authority for investigation. The claimant must then satisfy the Fund that he or she has done so failing which the claim may not be entertained.

13. The financial circumstances of the person actually suffering the loss and the degree of hardship suffered by that person as a result of the loss are factors to be taken into account when determining any grant. No grant shall be made to a bank or other financial institution engaged in the business of lending money.

14. Ordinarily, a claimant who elects to take steps to recover the loss in pursuit of a private agreement with an apparently dishonest ~~member~~lawyer will not be entitled to a grant unless the Law Society~~Lawyers Fund for Client~~ Compensation Fund and Discipline Departments have been informed before any such steps are taken.

15. In the case of a ~~member~~lawyer who conducts ~~a legal~~the practice of law in a jurisdiction outside Ontario, other than a practice within Canada that complies with the provisions of the Inter-Jurisdictional Practice Protocol, no grant shall be paid out of the Fund when the funds or property of the claimant were received by or on behalf of the ~~member~~lawyer in connection with a matter that originated in that jurisdiction or in connection with a trust of which the ~~member~~lawyer was or is a trustee that originated outside Ontario.

~~Revised July 1, 2001~~ (Revised April 30, 2007)

Carried

Items for Information
- Current Fund Status and Levy Issues for 2008
- Grants Paid by the Fund

REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Ms. Pawlitza presented the Report.

Report to Convocation
September 20, 2007

Professional Development & Competence Committee

Committee Members
Laurie Pawlitza(Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)
Robert Aaron
Carole Curtis
Susan Hare
Laura Legge
Daniel Murphy
Judith Potter
Nicholas Pustina

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Committee met on September 6, 2007. Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice Chair), Mary Louise Dickson (Vice Chair), Alan Silverstein ((Vice Chair), Robert Aaron, Carole Curtis, Susan Hare, Laura Legge, Daniel Murphy, Judith Potter and Nicholas Pustina attended. Bencher Gerry Swaye also attended. Staff members Diana Miles and Emily Prosser also attended.

AMENDMENT TO BY-LAW 4

MOTION

2. THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007 and June 28, 2007, be further amended as follows:

    1. Section 9 of By-Law 4 be amended by adding the following:

    Exemption from degree or certificate requirement

    (1.1) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

    (a) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position; or

    (b) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position.

    Dispense de l'exigence de diplôme ou de certificat

    (1.1) Le requérant ou la requérante est dispensé de l'exigence prévue à l'alinéa 1 du paragraphe (1) dans les conditions suivantes :

a) le requérant ou la requérante est doyen ou doyenne d'une faculté de droit agrée et a entamé la deuxième année consécutive à ce poste;

b) le requérant ou la requérante est membre permanent du corps professoral d'une faculté de droit agrée et a entamé la troisième année consécutive dans ces fonctions.

Introduction and Background

3. It was drawn to the attention of the Legal Affairs department that an exemption from one of the L1 licensing requirements respecting law school Deans and law school teachers was inadvertently left out during the redraft of the by-laws. Law school deans entering into the second consecutive year in that position and law school teachers entering into the third consecutive year in that position are eligible for a Class L1 licence (formerly call to the bar) without a Canadian bachelor of law degree from a law school in Canada that is an accredited law school or a certificate of qualification from the National Committee on Accreditation. This is not a new provision. In the former by-laws, section 5 of former By-law 11 set out the requirements for call to the bar of law deans and teachers.

4. Section 9 of current By-law 4 sets out the requirements for a Class L1 licence as follows:

Requirements for issuance of Class L1 licence

9. (1) The following are the requirements for the issuance of a Class L1 licence:

1. The applicant must have one of the following:
i. A bachelor of laws degree from a law school in Canada that was, at the time the applicant graduated from the law school, an accredited law school.

ii. A certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Law Deans.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

3. The applicant must have successfully completed a skills and professional responsibility program conducted by the Society not more than three years prior to the application for licensing.

4. The applicant must have,

i. successfully completed service under articles of clerkship for a period of time, not to exceed ten months, as determined by the Society, and

ii. if service under articles of clerkship was completed more than three years prior to the application for licensing, successfully completed the additional education and obtained the additional experience that the Society determines is necessary to ensure that the applicant is familiar with current law and practice.

5. Exemptions to the requirements of section 9 are then set out in the by-law. Although the exemption of law Deans and law school teachers from the requirement of section 9(1) 2 and 9(1) 3 and 4 were included, the exemption from section 9(1) 1 was omitted. The motion set out above rectifies the omission.

INFORMATION AND MONITORING

QUARTERLY BENCHMARK REPORT

6. The Professional Development and Competence Department's quarterly benchmark report for the 2nd quarter of 2007 is set out at APPENDIX 1 for Convocation's information.

LICENSING PROCESS

7. The Licensing Process is now in its second year. Candidates have now completed the skills component. The majority of candidates have written the licensing examinations. Staff is currently reviewing the experience with this year's process, as is done annually, and will report to Convocation on any proposed adjustments or changes.

LAW SCHOOL PROPOSAL

8. The Director of Professional Development and Competence was contacted by and met with the President of Wilfred Laurier University who indicated that the university would be submitting a proposal to the Ministry of Training, Colleges and Universities for a law school. She advised him of Convocation's decision, made some months ago as part of the discussions of Lakehead University's proposal for a law school, to not consider any further applications until the Licensing & Accreditation Task Force has completed its work on reviewing the requirements for the "approved law degree". The National Committee on Accreditation must also consider the proposal.

9. Wilfred Laurier has submitted is proposal to the Ministry, which is also aware of the Law Society's Task Force.

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

Copy of the Professional Development and Competence Department's quarterly benchmark report for the 2nd quarter of 2007.

(Tab B, Appendix 1, pages 8 – 23)

Re: Amendment to By-Law 4

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that -

By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007 and June 28, 2007, be further amended as follows:

1. Section 9 of By-Law 4 be amended by adding the following:

Exemption from degree or certificate requirement

(1.1) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

(a) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position; or

(b) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position.

Dispense de l'exigence de diplôme ou de certificat

(1.1) Le requérant ou la requérante est dispensé de l'exigence prévue à l'alinéa 1 du paragraphe (1) dans les conditions suivantes :

a) le requérant ou la requérante est doyen ou doyenne d'une faculté de droit agrée et a entamé la deuxième année consécutive à ce poste;

b) le requérant ou la requérante est membre permanent du corps professoral d'une faculté de droit agrée et a entamé la troisième année consécutive dans ces fonctions.

Carried

Items for Information
- Quarterly Benchmark Report
- Licensing Process
- Law School Proposal

INTERIM REPORT OF THE LICENSING AND ACCREDITATION TASK FORCE
(for information)

Professor Krishna gave an update on the work of the Task Force.

Report To Convocation
September 20, 2007

Licensing and Accreditation Task Force

Task Force Members

Vern Krishna, Chair
Constance Backhouse
Carole Curtis
Carol Hartman
Laurie Pawlitza

Purposes of Report: Information

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

TASK FORCE PROCESS

1. Since its establishment in March 2007 the Task Force has met on the following occasions:

   · April 17, 2007
   · May 7, 2007
   · May 24, 2007
   · June 14, 2007
   · June 26, 2007
   · June 28, 2007
   · July 6, 2007 (all day meeting)
   · August 9, 2007 (al day meeting)
   · September 11, 2007

2. In addition to the Task Force members, the Treasurer and the Chief Executive Officer have attended some of the meetings. Staff members to the Task Force are Diana Miles and Sophia Sperdakos.

FOR INFORMATION

LICENSING AND ACCREDITATION TASK FORCE

Introduction and Background

3. In March 2007 Convocation approved the establishment of a Licensing and Accreditation Task Force whose mandate is to,

   · undertake an analysis of and make recommendations on the most effective means by which the Law Society's established competency requirements for call to the bar of Ontario can be achieved within the pre-and-post-call continuum of legal education;

   · review the criteria for approving law degrees, and make recommendations on more appropriate criteria; and

   · analyze the impact of increased numbers of applicants for admission to the bar of Ontario, from domestic and international sources, on the viability of the current licensing process, and make appropriate recommendations.

4. Pursuant to its terms of reference the Task Force was to provide an interim report to Convocation in September 2007. The purpose of this interim report is to,

   a. update Convocation on the Task Force's activities to date, including the nature of its consultations; and

   b. outline its budgetary needs for 2008.

5. At this stage of its deliberations, the Task Force has not yet discussed all the issues within its mandate nor has it reached any final recommendations on those issues it has begun to discuss. Its plan is to come to Convocation with recommendations as it concludes its deliberations on each issue. This will allow the Task Force's mandate to be more easily addressed.

Continuum of Legal Education issues

6. In its March 2007 report to Convocation recommending the establishment of a Task Force, the Professional Development and Competence Committee highlighted the numerous issues that necessitated the establishment of a Task Force. Respecting the continuum of legal education it noted that there is, the need to determine the most effective way for the Law Society's established competency requirements for call to the bar to be achieved within the pre-and-post-call legal education continuum. The consideration of this question necessitates an analysis of each level of the legal education continuum - law school, aspects of the licensing process (specifically the skills program and articling) and post-call learning – not as individual units, but as components of a whole that together should produce candidates with the required competencies for call to the bar;

7. The Task Force has begun its analysis with the view that to the extent possible the continuum of legal education should,

   a. encompass law school, the licensing process and post-call learning;

   b. avoid duplication among the components of the continuum;

   c. ensure there are no gaps among the components of the continuum; and

   d. position the learning at the point in the continuum when it will be most effective.

8. The Task Force is also of the view that a meaningful discussion of the continuum necessitates,

   a. a willingness to consider new approaches;

   b. accurate knowledge and an understanding of current law school curricula, particularly skills and professional responsibility offerings; and

   c. a critical analysis of the current skills component in the licensing process, including consideration of whether it remains viable or necessary.

9. The Task Force has undertaken a consultation with the Ontario Law Deans and the Canadian Law Deans to determine the nature of their schools' instruction in professional responsibility and certain skills. This information will enable the Task Force to better analyze the continuum and be in a position to make recommendations to Convocation that address the principles set out in paragraph 7 and the analysis set out in paragraph 8 above.

10. In the course of its analysis the Task Force is also considering whether some of the learning undertaken during the skills component of the licensing process would be better shifted to the immediate post-call period.

11. The Task Force anticipates providing a report and recommendations to Convocation on this issue in October, for information, with the intention of seeking feedback on it from the profession, legal organizations, law schools and other interested parties before Convocation considers the Report for decision.

Approved Law Degree

12. The Task Force has devoted much of its time to date on the complex analysis of what should constitute an approved law degree. The requirements for an approved law degree date back to 1957, with some adjustments in 1969, and are woefully outdated to address the reality of the legal profession in the 21st century. In its report to Convocation recommending the establishment of the Task Force the Professional Development and Competence Committee noted,

> No review of these requirements has been undertaken in more than 35 years. They reflect a reality of legal education that is outdated and does little to assist universities interested in opening law faculties to understand what is necessary to establish a faculty that will produce an approved law degree.

13. This issue is relevant not only to Ontario law schools, but also to all law schools and law societies across the country. The Federation of Law Societies of Canada has recently established its own Task Force to consider, among other issues, the approved law degree. Its membership includes representatives from across Canada. The Chair of the Law Society's Task Force is one of the members of the Federation Task Force. It is essential that the two Task Forces collaborate and agree on the end product to ensure that graduates with Canadian LL.B degrees continue to be eligible to enter common law bar admission or licensing programs across the country without further qualification.

14. To date, the Task Force's analysis of this issue has included a discussion of principles and a framework that should underlie the approved law degree. From such a framework the Task Force is developing options for how curriculum issues should be addressed and is also examining the current requirements for law school structures to assess their continued relevance. This latter analysis includes consideration of prerequisites for law school admission, the requisite number of credit hours in the LL.B degree, requirements for joint degrees and library and information technology requirements.

15. The Task Force is continuing to discuss the approved law degree and examining possible options with a view to their effect on current law school structures, future proposals for new law schools, National Committee on Accreditation candidates, requirements of the *Fair Access to Regulated Professions Act* and the continuum of legal education.

Implications of increased law school graduates on articling program

16. In its report to Convocation recommending the establishment of the Task Force, the Professional Development and Competence Committee noted,

> the projected increase in the number of candidates entering the licensing process, from both domestic and international sources… will have a serious effect on the viability of the current licensing process. This issue has an urgency to it that cannot be ignored…
>
> A number of factors are currently in play that will likely result in the number of candidates in the licensing program rising even more significantly. In addition there will continue to be pressures to facilitate quicker access to the licensing process. The factors in play include the following:
>
> i. The University of Ottawa has increased the size of its student body.
> ii. Bond University in Australia has a significant number of Canadian students who it is anticipated will return to Canada for admission. Although not all of them will come to Ontario, a significant number may.

iii. Lakehead University has applied for a law school with an annual entry of 25-30 students.
iv. There is likely to continue to be the standard 4% increase in registration levels, many from international jurisdictions.
v. Efforts are increasing by those seeking to have international law degrees apply on par with Canadian LLB degrees.
vi. The Law Foundation of Ontario is studying the desirability of part-time LLB studies.

17. Since it began its work the Task Force continues to receive information about the increasing interest in establishing new law schools in Ontario, international law schools seeking to attract Canadian students, and proposals for different delivery methods for the LL.B degree. These include,

a. a proposal from Wilfred Laurier University for a law school;
b. interest expressed by a further law school in Australia in developing a program that caters to Canadian law students, similar to Bond University's program;
c. Athabaska University, which specializes in distance learning examining the possibility of a distance education law program;
d. an increasing number of distance education law schools in the United Kingdom, including London University and Wolverhampton;
e. an increasing number of Canadian students going abroad to law school who will return to Ontario and other parts of Canada through the NCA route.

18. The Task Force will begin its analysis of the articling issues shortly, but there is little doubt that the pressures on the program will continue to increase with the increase in the number of candidates seeking admission to the bar of Ontario. The Task Force will be taking a very comprehensive approach to examining the articling component of the licensing program, including examining the need for fundamental changes to the requirement.

National Committee on Accreditation (NCA)

19. The National Committee on Accreditation is a Committee of the Federation of Law Societies of Canada and is responsible for evaluating the legal training and professional experience of persons with international or Canadian non-common law legal credentials who wish to be admitted to a common law bar in Canada. In addition it is responsible for approving new law schools and new law school programs, with input from the law societies affected by any proposal.

20. Ontario has recently passed the *Fair Access to Regulated Professions Act*. It is likely that the Manitoba legislature will pass similar legislation in the near future.

21. The Act's purpose is stated as helping to ensure that regulated professions and individuals applying for registration are governed by registration practices that are transparent, objective, impartial, and fair. A positive duty is placed on regulated professions to meet the requirements of the Act. If a regulated profession makes its own assessment of qualifications it must do so in a way that is transparent, objective, impartial and fair. If it retains a third party, such as the NCA, it shall "take reasonable steps" to ensure the third party does the same.

22. As the Task Force considers the appropriate requirements for the approved law degree, it is considering the implications of this discussion on the NCA requirements. This issue is also part of the Federation Task Force's mandate as both groups seek to ensure that the NCA criteria for providing a certificate of accreditation are fair, transparent, objective and impartial.

Consultation Process

23. The Task Force's mandate includes a significant consultation component. It has already begun that process by engaging the Ontario Law Deans in discussion and by participating as a member of the Federation of Law Societies of Canada Task Force, which will also engage the Canadian Council of Law Deans and all law societies in the discussion.

24. Its consultation process is developing incrementally, with different groups to be engaged at points in time when issues relevant to their interests are addressed. As mentioned above, for example, it anticipates seeking input from the professions and legal organizations on the report it will provide to Convocation in October.

Budget for 2008

25. When the Task Force was established it was unsure how its work would unfold. It sought, and Convocation approved, a budget from the contingency fund of $50,000 for the balance of the 2007 budget year, consisting of $30,000 for consultation costs and $20,000 for research.

26. The Task Force has not yet incurred costs for consultation or research, but anticipates that it will need these funds for 2008, although it is not clear if the specific allocation of the funds will be as originally anticipated. At the end of 2007, the balance of the unspent money will be transferred to the Special Projects Fund and those funds will be available to the Task Force for 2008.

REPORT OF THE HERITAGE COMMITTEE (for information)

Professor Backhouse gave an update on the 175th Anniversary: Legal History Symposium that takes place on October 12, 2007.

Report to Convocation
September 20, 2007

Heritage Committee

Committee Members
Constance Backhouse (Chair)
Gary Lloyd Gottlieb (Vice-Chair)
Robert Aaron
Patrick Furlong
Allan Lawrence
Laura Legge

Purposes of Report: Information

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

COMMITTEE PROCESS

1. The Committee met on September 6, 2007. Committee members Constance Backhouse (Chair), Gary Lloyd Gottlieb (Vice-Chair), Patrick Furlong, Allan Lawrence and Laura Legge attended. Staff members Susan Lewthwaite and Terry Knott also attended.

INFORMATION

175TH ANNIVERSARY: LEGAL HISTORY SYMPOSIUM

2. There is one remaining activity respecting the 175th anniversary of the official opening of Osgoode Hall, namely, the Legal History Symposium, which takes place on October 12, 2007.

3. The one-day symposium highlights the legal profession's long and rich history with a diverse offering of papers from scholars across the country. They will explore historic themes relating to the profession's early history, legal education, social change, professional ideology, and writing legal history. The symposium brochure is set out at Appendix 1.

4. The Law Society's CLE division has arranged for online and other registration. This can be done through the Law Society's website at http:ecom.lsuc.on.ca/cle/calendar.jsp (click the icon for the October schedule). *There is no charge for the program, but registration is required for all attendees.*

5. A dinner will be held the night before the symposium for presenters and there will be a reception for seminar attendees following the symposium.

6. The Chair of the Committee will provide further information about the symposium at Convocation. Benchers are urged to attend the symposium and to notify others of this important event.

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

Copy of the brochure on the Legal History Symposium respecting the 175th anniversary of the official opening of Osgoode Hall.

(Appendix 1, pages 4 – 7)

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'EQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Mr. Copeland and Ms. Ross presented the Report.

Report to Convocation
September 20, 2007

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

Committee Members
Joanne St. Lewis, Chair
Raj Anand, Vice-Chair
Paul Copeland
Mary Louise Dickson
Avvy Go
Doug Lewis
Judith Potter
Robert Topp

Purposes of Report: Decision and Information

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

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For Information..... TAB B

Equality and Access to Justice Template

Report of the Activities of the Discrimination and Harassment Counsel – January 1 to June 30, 2007

Retention of Women in Private Practice project – Update

Equity Public Education Series - 2007

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on September 6, 2007. Committee members Joanne St. Lewis, Chair, Raj Anand, Vice-Chair, Paul Copeland, Mary Louise Dickson, Avvy Go, Judith Potter and Robert Topp attended. Staff members Jewel Amoah, Josée Bouchard, Marisha Roman and Rudy Ticzon attended.

FOR DECISION

PROPOSAL TO INCREASE EFFECTIVENESS OF HUMAN RIGHTS MONITORING GROUP

(Deferred from June 28, 2007 Convocation)

MOTION

2. That Convocation approves the following recommendations:

   a. That the Human Rights Monitoring Group ("Monitoring Group") explore the possibility of developing a network of organizations, and work collaboratively with them, to address human rights violations against judges and lawyers.
   b. That the Monitoring Group be authorized to collaborate with the Law Society of Zimbabwe (the "LSZ") to assist it in strengthening its self-regulation capabilities and the independence of the profession.

BACKGROUND

3. The mandate of the Law Society of Upper Canada is to govern the legal profession in the public interest by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct, and by upholding the independence, integrity and honour of the legal profession, for the purpose of advancing the cause of justice and the rule of law. It is fundamental to our justice system that the legal profession be independent and be perceived to be so, and that lawyers and judges be able to perform their legitimate professional duties without undue or illegal interference.

4. In light of these values and of the Law Society's mandate, Convocation approved in March 2006, a policy to systematically respond to human rights violations that target members of the legal profession and the judiciary as a result of the discharge of their legitimate professional duties. Such violations are against international norms and conventions, in particular the *United Nations Basic Principles on the Role of Lawyers* (1990), and represent threats to the independence of the profession, the rule of law and access to justice.

5. In April 2006, Convocation appointed the following benchers to the Monitoring Group: Paul Copeland, Chair, Anne Marie Doyle, Heather Ross, Mark Sandler and Joanne St. Lewis. Equity Initiatives Department staff members provide support to the Monitoring Group.

6. On June 28, 2007, following the bencher election, benchers Heather Ross (Chair), Raj Anand, Paul Copeland, Mark Sandler and Joanne St. Lewis were appointed as members of the Monitoring Group.

7. The mandate of the Monitoring Group is,

   a. to review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
   b. to determine if the matter is one that requires a response from the Law Society; and
   c. to prepare a response for review and approval by Convocation.

8. The mandate further states that where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps, as he or she deems appropriate. In such instances, the Monitoring Group shall report on the matters at the next meeting of Convocation.

9. At its meeting of September 28, 2006, the Monitoring Group proposed to establish contacts with the Department of Foreign Affairs and International Trade ("DFAIT"), the Canadian Bar Association (the "CBA") and other organizations to identify ways of effectively intervene in cases of human rights violations that target lawyers and judges. The Monitoring Group also proposed that the Honorable Allan Rock be invited to a Monitoring Group meeting to provide advice on how the Monitoring Group could more effectively implement its mandate.

10. On January 22, 2007, Paul Copeland and Josée Bouchard met with representatives of the Department of Justice ("DOJ"), the DFAIT and the CBA.

11. On April 19, 2007, the Monitoring Group met to discuss whether Law Society interventions have been effective, and whether to recommend additional or different strategies to increase its effectiveness. Benchers Paul Copeland, Anne Marie Doyle, Heather Ross, Mark Sandler and Joanne St. Lewis, and staff members Jewel Amoah and Josée Bouchard participated in the meeting. The Honourable Allan Rock also participated via teleconference call for the first half of the meeting.

12. The Monitoring Group decided to recommend the following strategies to Convocation,

    a. to explore the possibility of developing a network of organizations, and work collaboratively with them, to address human rights violations against judges and lawyers;
    b. that it be authorized to collaborate with the LSZ to assist it in strengthening its self-regulation capabilities and the independence of the profession.

13. This report is divided as follows:

    a. Overview of Monitoring Group work;
    b. Overview of meetings with DOJ, DFAIT and CBA;
    c. International human rights initiatives - other organizations;
    d. Monitoring Group vision and proposed strategy;
    e. Recommendation I – Network of organizations;
    f. Recommendation II - Collaborating with the Law Society of Zimbabwe;
    g. Appendix 1 - Monitoring Group Quarterly Report – Fourth Quarter 2006;
    h. Appendix 2 – Monitoring Group Quarterly Report – First Quarter 2007;
    i. Appendix 3 – Zimbabwe's Judicial System;
    j. Appendix 4 – ICJ Mission Report – 2007.

OVERVIEW OF MONITORING GROUP WORK

14. Between September 2006 and March 2007, the Monitoring Group recommended, and Convocation approved, Law Society interventions in about twenty cases (Appendices 1 and 2 - Quarterly Reports) originating from the following countries: Algeria, China, Democratic Republic of Congo, Georgia, Honduras, India, Iran, Philippines, Saudi Arabia, Sudan, Syria, Tunisia and Vietnam.

15. The interventions related to cases of human rights violations against both judges and lawyers as a result of the discharge of their professional duties. Reports of the incidents indicate that the lawyers and judges have been subjected to various forms of persecutions, including,

    a. harassment and intimidation;
    b. unlawful detentions and incommunicado detentions;
    c. unlawful house arrests;
    d. violence, abuse and torture; and
    e. assassinations.

16. The Monitoring Group relies on information provided by external organizations dedicated to promoting the rule of law and human rights internationally. Since its inception, the Monitoring Group has relied on the following sources :[1]
    a. Amnesty International;
    b. Association for a Just Society;
    c. European Bar Human Rights Institute;
    d. Human Rights Watch;
    e. Law Society of England and Wales;
    f. Lawyers Rights Watch Canada; and
    g. World Organisation against Torture – The Observatory.

17. Although it is difficult to assess whether the Monitoring Group's work has been effective, the Law Society has received some responses to its interventions.

18. For example, the Treasurer sent an intervention letter, dated November 27, 2006, to the government of the Philippines expressing the Law Society's concern over reports of attacks and killings of lawyers and judges in the Philippines as a result of the discharge of their legitimate professional duties. Paul Copeland, in a letter dated November 30, 2006, sent copies of the letter of intervention to the President of the Integrated Bar of the Philippines informing him of the Law Society's intervention and indicating that the Monitoring Group would value the opportunity to communicate with him in regard to what problems, if any, lawyers may be experiencing in that country. The Law Society received a reply, dated 14 February 2007, from the National President of the Integrated Bar of the Philippines, José Vicente B. Salazar, acknowledging receipt of the letter, thanking the Law Society for its concern, indicating that the bar is fully supportive of the Monitoring Group's endeavor and looking forward to further correspondence from the Law Society.

19. The Law Society also received a letter, dated March 28, 2007, from the Office of the Prosecutor General of Georgia in response to an intervention letter from the Law Society about lawyer Giorgi Getsadze. Reports indicated that Mr. Getsadze had been charged for taking illegal actions while studying a case and could face between one and three years in prison. It did not appear, from reports about the case, that Mr. Getsadze had done anything more than investigate an alleged claim of corruption in the penitentiary system. The response from the Office of the Prosecutor General of Georgia informed the Law Society of the facts and process in the case, and assured the Law Society that the investigation was conducted neither to intimidate Mr. Getsadze, nor to prevent him from carrying out his work. The letter also expressed assurances that all necessary measures have been taken to secure the interest of justice as well as human rights of the respective persons involved in the case. The Law Society responded by thanking the Head of the Human Rights Protection Unit of the Office of the Prosecutor General for his prompt attention to the Law Society's letter, for informing the Law Society of Upper Canada about the case, and for providing assurances that Mr. Getsadze will be treated fairly and impartially.

[1] See description of organizations at Appendices 1 and 2.

20. The creation of the Monitoring Group has also led to collaboration opportunities with lawyers from other countries, which have been valuable to those lawyers as well as to the Law Society. The following meetings have been arranged:

    a. On November 8, 2006, the Law Society received leading human rights advocates and Human Rights Watch Award recipients, Mandira Sharma from Nepal and Veronica Cruz from Mexico. Representatives from Lawyers Rights Watch Canada and from Human Rights Watch also participated. The luncheon provided an opportunity for the Law Society to establish contacts with human rights advocates who have been persecuted as a result of the performance of their professional duties.
    b. On February 5, 2007, Josée Bouchard made a presentation to an Ethiopian delegation of lawyers, Semegne Wube, State Minister for Justice, Eshetu Woldesemayat, Deputy Assistant Attorney General, Merkneh Yigezu, Head, Training and Research Department, Michael Teklu, Assistant Attorney General and Dinet Abdi, Head, Women's Affairs Department in Ethiopia. The presentation included the following topics:

        i. Organization of the legal profession in Ontario;
        ii. Contribution of the Law Society to the development of policies in the justice sector;
        iii. Gender equality in the justice system;
        iv. Continuing legal education;
        v. Public legal information activities of the Law Society.

    c. On March 28, 2007, the Law Society received Arnold Tsunga, Executive Director, Zimbabwe Lawyers for Human Rights, Acting Executive Secretary of the LSZ and recipient of the 2006 Human Rights Watch Award. On March 29, 2007, Mr. Tsunga was also invited to have lunch with benchers of the Law Society, including members of the Monitoring Group. Mr. Tsunga's visit provided an opportunity for the Law Society to begin discussions with him about potential collaborations with the LSZ.
    d. On May 25, 2007, Margaret Ng, appointed representative of the Hong Kong Law Society on the Hong Kong Legislative Council, and Albert Ho, an elected member of the Hong Kong Legislative Council and the Chair of the recently formed Chinese Human Rights Lawyers Concern Group, met with the Monitoring Group to exchange information about the Monitoring Group work and to discuss their work in promoting the human rights of lawyers in China.

OVERVIEW OF MEETINGS WITH DOJ, THE DFAIT AND THE CBA

21. The following provides an overview of Law Society's meetings with the DOJ, the DFAIT and the CBA.

Meeting with the DOJ

22. On January 22, 2007 at 11:30 a.m., Paul Copeland and Josée Bouchard met with Serge Lortie and Antoinette Jones, Directors, International Development Group of the DOJ. Paul Copeland provided an outline of the mandate and work of the Monitoring Group and indicated that the group is interested in identifying contacts in foreign countries and legitimate organizations that could assist it in its work.

23. Ms Jones and Mr. Lortie indicated that the DOJ is involved in international affairs usually by undertaking projects in foreign countries that assist those jurisdictions in establishing the rule of law and promoting the independence of the judicial system and the bar.

24. Ms Jones and Mr. Lortie were of the view that the Law Society, as the regulator of the legal profession in the interest of the public, could offer its expertise on international projects that tend to have a systemic impact, rather than concentrating on individual interventions on behalf of persecuted lawyers and judges.

25. Mr. Lortie and Ms Jones also noted that the DOJ is usually involved in projects that take an integrated approach and include collaborations between governments, law societies, legal associations, the legal profession and the public. The Canadian International Development Agency ("CIDA") is often the funding agency for such projects. The DOJ International Cooperation Group has undertaken projects in the Czech Republic, Slovak Republic, Republic of Hungary, Ukraine, Bangladesh and French-speaking Africa. Mr. Lortie and Ms Jones indicated that they could assist the Monitoring Group by providing information about law societies and associations in the countries in which they are involved.

Meeting with the DFAIT

26. On January 22, 2007 at 2:00 p.m., Paul Copeland and Josée Bouchard met with John Hannaford, Director, United Nations, Human Rights and Economic Law Division, Alan Kessel, Legal Advisor, Robert Sinclair, Deputy Director, Human Rights and Sabine Nölke, Deputy Director, United Nations, Human Rights and Humanitarian Law Section of the DFAIT. Paul Copeland provided an outline of the mandate and work of the Monitoring Group and indicated that the group is interested in the following:

    a. determining how it could be more effective in implementing its mandate;
    b. identifying contacts and legitimate organizations in foreign countries that could be of assistance; and
    c. ensuring the accuracy of information relied on by the Law Society.

27. Representatives of DFAIT indicated that sending intervention letters is already done by a number of non-governmental organizations ("NGO") and is not likely to be an effective use of resources. It is also unlikely that foreign governments would reply to such letters, as the Law Society may be perceived in foreign countries as tantamount to an NGO.

28. It was suggested that the Law Society use its expertise, and the expertise of its membership, to develop training programs or technical assistance programs that would address the issues of persecution of lawyers and judges in a more systemic way. The Law Society could also engage in more analytical work, such as looking at legislation around the world that is used to persecute lawyers and judges or constrain human rights advocacy. Foreign countries appreciate Canada's expertise in restorative justice initiatives. Instead of undertaking intervention activities for individual lawyers or judges, it was suggested that the Law Society engage in more systemic work.

29. The DFAIT group had high praises for the work of the following organizations and encouraged the Law Society to establish contacts with those organizations:
    a. International Commission of Jurists;
    b. United Nations Human Rights Council;
    c. Commonwealth Lawyers Association;
    d. American Bar Association.

30. Representatives of DFAIT indicated that it is important for the Monitoring Group, should it decide to continue its intervention work, to develop reliable contacts in various countries and to concentrate efforts on intervening in certain targeted countries.

31. DFAIT is working with a range of Canadian and international partners to strengthen the capacity of multilateral mechanisms as well as regional and national actors to advance human rights implementation, promotion and protection, with a view to preventing the potential outbreak of violent conflict. Examples of initiatives include providing assistance to the International Centre for Human Rights Education to strengthen the capacity of Indonesia's Directorate General of Human Rights Protection and supporting efforts through research and capacity building.[2]

Meeting with the CBA

32. On January 22, 2007 at 4:00 p.m., Paul Copeland and Josée Bouchard met with Robin Sully, Director of International Development and Joan Bercovitch, Director of Legal and Governmental Affairs of the CBA. Participants discussed initiatives of the CBA in foreign jurisdictions and its work in intervening on behalf of lawyers and judges who are persecuted in foreign jurisdictions. Joan Bercovitch noted that the CBA rarely intervenes by letter and usually only on the request of the International Bar Association. The International Bar Association has been known to be diligent in verifying the accuracy of facts in cases in which it requests interventions by its members. The CBA sends approximately 12 letters of intervention per year and often receives responses to its letters of intervention.

[2] For further information about DFAIT's programs see: http://www.dfait-maeci.gc.ca/foreign_policy/human-rights/menu-en.asp.

33. Like the DOJ, the CBA engages in more systemic programming by offering project-based expertise to foreign countries. For example, it works with governments, foreign bar associations and advocacy on projects that involve the independence of the bar and access to justice issues. Since 1990, the CBA has delivered legal and justice reform and capacity building projects in twenty-nine countries across Asia, Africa, Central Europe and the Caribbean. The CBA receives most of its International Development funding through two funding streams at the Canadian International Development Agency, Partnership and Bilateral. Examples of projects have included:

a. capacity building with the Chinese Bar;
b. Canada China Legal Aid and Community Legal Services Project;
c. critical law reform initiatives in Vietnam;
d. strengthening the legal profession in Cambodia;
e. Bangladesh Legal Reform Project;
f. legal assistance in Southern Africa;
g. capacity building of the Law Society of Zimbabwe in the area of continuing legal education and human rights advocacy;
h. work with East African law societies;
i. support for legal aid in the Caribbean;
j. justice reform in Jamaica.[3]

INTERNATIONAL HUMAN RIGHTS INITIATIVES - OTHER ORGANIZATIONS

34. Representatives of DFAIT, the DOJ and the CBA noted that a number of associations and organizations are already engaged in promoting the human rights of lawyers and judges. They encouraged the Law Society to consider the work of these organizations and to develop ways of networking with them. It does not appear that there is an umbrella organization that coordinates interventions by leading organizations in cases of human rights violations that target lawyers and judges, with a goal of increasing the impact of those interventions. At its April 19, 2007 meeting, Monitoring Group members indicated that it would be valuable to collaborate closely with organizations that are reliable, credible and show leadership in areas that fall within the mandate of the Monitoring Group. The following provides an overview of the mandate and work of some of the leading organizations.

[3] For further information about the CBA international initiatives see http://www.cba.org/cba/idp/pdf/YIIP2002.pdf.

International Commission of Jurists ("ICJ")

35. Representatives of the DFAIT strongly encouraged the Law Society to consult with the International Commission of Jurists, noting that the work undertaken by that organization is credible, of high quality and reliable. The ICJ is dedicated to the primacy, coherence and implementation of international law and principles that advance human rights. The ICJ takes an impartial, objective and authoritative legal approach to the protection and promotion of human rights through the rule of law. The ICJ was founded in Berlin in 1952 and its membership is composed of sixty eminent jurists who are representatives of the different legal systems of the world. The ICJ is based in Geneva and the Canadian section of the ICJ is located in Ottawa. The following eminent jurists are members of the board of the ICJ Canadian section: Paul D. Fraser, President, Professor Ed Ratushny, Past-President, Brian A. Crane, Vice-President, Hon. Charles T. Hackland, Secretary-Treasurer, Hon. W. Ian Binnie and L'hon. Michèle Rivet, Commissionners, Hon. Roberts G. Richards, Vice-President Prairies, Hon. Ronald Atkey, Vice-President Ontario, L'hon. Ginette Piché, Vice-présidente, Québec and Dr. Moira A. McConnell, Vice-President, Atlantic.

36. The mandate of the ICJ allows it to intervene in human rights cases. For example, the ICJ called on Russian authorities to cease harassment of ICJ Commissioner and other defence lawyers of Mikhail Khodorkovsky. It has also urged the Interim Government of Nepal to reaffirm its commitment to ending and preventing enforced disappearances. It has put pressure on the Thailand and Sri Lanka governments to ratify the Convention against Enforced Disappearances. Other activities have included the publication of a newsletter, holding conferences on human rights, presenting position papers and open letters and undertaking fact-finding missions.[4]

United Nations Human Rights Council

37. In March 2006, the United Nations established the Human Rights Council, based in Geneva, to replace the Commission on Human Rights, as a subsidiary organ of the General Assembly. The council will serve as a forum for dialogue on human rights, undertake periodic reviews of the fulfillment by each State of its human rights obligations and commitments, contribute towards the prevention of human rights abuses and work in close cooperation in the field of human rights with governments, regional organizations, national human rights institutions and civil society.

38. The Office of the United Nations High Commissioner for Human Rights intervenes on individual complaints and undertakes fact-finding missions. Information produced by the High Commissioner's office and the Human Rights Council is considered reliable.[5]

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[4] For further information about the ICJ see http://www.icj.org/rubrique.php3?id_rubrique=11&lang=en.

[5] For further information about the Human Rights Council see http://www.un.org/News/Press/docs/2006/ga10449.doc.htm.

Commonwealth Lawyers Association

39. The DFAIT and the CBA recommended that the Monitoring Group consider the work of the Commonwealth Lawyers Association. The Commonwealth Lawyers Association is involved in a variety of project work, including a Commonwealth Human Rights Initiative. The initiative includes fact-finding missions to highlight violations of human rights in specific Commonwealth countries and to contribute to repairing the situation and restoring peace, the rule of law and human rights. The Commonwealth Lawyers Association also intervenes in human rights cases. For example, the Association submitted, with the Human Rights Committee of England & Wales, an Amices brief in the US Supreme Court of Appeal relating to habeas corpus. It has also intervened before the House of Lords on the use of evidence obtained by torture and at the United States Supreme Court on the Guantanamo Bay detainees.[6]

The American Bar Association ("ABA") Centre for Human Rights

40. The ABA Centre for Human Rights was established by the ABA to serve as the coordinating entity within the ABA for issues respecting human rights. The Center works within and outside of the ABA to enhance public education on human rights issues and coordinate the Rule of Law Letter Program. It informs the ABA on human rights issues and ABA policy and it provides technical assistance to outside organizations involved in the field.

41. On behalf of the ABA, the Centre has on various occasions, affirmed its support for the rule of law in the international community. It has expressed the ABA's concern as to serious human rights violations that have been brought to the ABA's attention.

42. The President of the ABA is authorized to send "rule of law' letters to government leaders of countries where violations are alleged to have occurred. Prior to the sending of the letters, the drafts are reviewed by the chairs of the Sections of Individual Rights and Responsibilities and International Law and Practice and the Standing Committees on Law and National Security.[7] DFAIT has indicated that the ABA has a credible reputation.

International Bar Association Human Rights Institute

43. The CBA indicated that it considers requests to intervene in individual cases of human rights violations that target lawyers and judges at the demand of the International Bar Association ("IBA"). The IBA has a reliable process in place to ensure due diligence when a request for intervention is made to member organizations. The IBA promotes human rights through a number of initiatives, such as,

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[6] For more information about the Commonwealth Law Conference see http://www.commonwealthlawyers.com/CLC.asp.

[7] For more information about the American Bar Association Center for Human Rights see www.abanet.org/humanrights/

a. fact-finding missions to countries when there is a sudden deterioration in the rule of law and independence of the judiciary;
b. capacity building programs of support to associations and law societies worldwide;
c. independent expert visits to observe trials around the world to encourage fair trial standards and monitor and report upon legal proceedings;
d. training programs for lawyers and judges; and
e. media work and advocacy campaigns.

44. When the IBA receives reliable information that lawyers, judges, officials or persons involved in the operation of legal systems have been threatened, abused or detained, intervention letters are sent. The IBA has intervened in a number of cases, such as the intimidation of Arnold Tsunga (Zimbabwe), Muhammed al-Mansoori (United Arab Emirates), Evel Fanfan (Haiti), Mohammed Abbou (Tunisia), Gao Zhinsheng and Chen Guang Cheng (China) and others.[8]

Law Society of England and Wales

45. As a result of the globalization of legal business opportunities for solicitors overseas, the Law Society of England and Wales is taking on a growing international role. The Law Society runs a number of international cooperation projects with lawyers in other countries, including training projects and capacity building projects.

46. The Law Society of England and Wales also campaigns for lawyers whose human rights are violated and in cases where the penalties are imposed in violation of international human rights standards. The Law Society,
a. writes letters of intervention;
b. organizes conferences, seminars, events and other activities;
c. raises awareness of international human rights amongst solicitors and law students;
d. publishes useful materials on international human rights;
e. undertakes legal assistance project work in developing and emerging countries.

47. The Law Society of England and Wales has published a number of useful brochures about the work of its international department.[9]

[8] For more information about the International Bar Institute see http://www.ibanet.org/humanrights/headerpage.cfm.

[9] For more information about the international human rights work of the Law Society of England and Wales, see http://www.lawsociety.org.uk/influencinglaw/internationallaw/humanrights.law.

International Criminal Bar

48. The International Criminal Bar (ICB) acts as the representative of counsel before the International Criminal Court (ICC). Its objective is to ensure that counsel are able to practice in total independence before the ICC. The ICB was founded on June 15, 2002, at the Conference of Montreal. Members of the ICB Council come from five continents and represent all of the world's legal systems. ICB members include national and regional bars, the largest international organizations of counsel, as well as counsel who are deeply involved in the development of international criminal law.

49. The ICB publishes news flashes, press releases, support letters, codes of conduct and resolutions in support of lawyers. It also organizes training programs and conferences.[10]

MONITORING GROUP' PROPOSED STRATEGY

50. In light of observations made by representatives of the DFAIT, the DOJ and the CBA suggesting that the Law Society might consider shifting its focus away from individual intervention letters to more systemic or focused activities, the Monitoring Group considered how it might more effectively implement its mandate and whether it wishes to recommend amendments to its mandate.

51. Although the mandate of the Monitoring Group is aligned with the role of the Law Society, to uphold the independence of the legal profession and to promote the rule of law and access to justice, the Monitoring Group is of the view that the work it has done to date may not be as effective as it could be. The following observations were made:

    a. The large volume of letters sent by the Law Society each month may have the effect of creating a perception that the Law Society intervenes in most cases that are brought to its attention, and may diminish the credibility of the Law Society's intervention activities. In its first two quarters of operation, the Law Society intervened in about twenty cases. In contrast, the American Bar Association, which is authorized to send rule of law letters to government leaders of countries where violations are alleged to have occurred, has intervened through letters of intervention in approximately six cases since 2002. The IBA, which sends out letters of intervention when it receives reliable information that lawyers, judges, officials of law or persons involved in the operation of legal systems have been threatened, detained or abused, intervened in ten cases in 2006. The Law Society of England and Wales, which writes letters of intervention in support of lawyers whose human rights have been violated, has been more prolific and intervened in approximately thirty cases of persecuted lawyers in 2005.
    b. Representatives of DFAIT, the DOJ and the CBA all observed that the Law Society, if it decides to continue to intervene in individual cases, may wish to do so in cooperation with leading organizations such as the IBA, the International Commission of Jurists, the ABA or the Law Society of England and Wales.

[10] For more information about the International Criminal Bar, see http://www.bpi-icb.org/.

c. Factual information considered by the Monitoring Group is sometimes insufficient to make fully informed decisions about cases and the potential impact of a Law Society intervention. Therefore, in some cases, Law Society letters of intervention could aggravate the situation of lawyers and judges instead of being of assistance.
d. Individual intervention letters may not be as effective as adopting a more systemic approach to intervening or a more proactive approach through education.

52. In light of these observations, the Monitoring Group met on April 19, 2007 to consider other strategies, if required, to increase its effectiveness. The following options were considered:

a. maintaining the status quo;
b. adopting guidelines to assist it in making informed decisions about cases, including a decision-making process and criteria,
c. intervening in a more systemic fashion to promote the rule of law by putting pressure on foreign authorities to adopt human rights conventions and to abide by international human rights laws, instead of intervening in individual cases of human rights violations;
d. increasing its on-line information by including newsletters about international human rights of lawyers and judges, international covenants, protocols, contacts, links to other organizations and press releases if applicable;
e. using its expertise by offering to participate in projects led by other organizations, such as the CBA and the DOJ.

53. The Monitoring Group also benefited from the expertise of The Honourable Allan Rock. The Honourable Rock was of the view that the Monitoring Group could be more effective if it took a systemic approach to human rights violations that target lawyers and judges, as opposed to sending individual letters of intervention. He noted that a number of non-governmental organizations and associations are already in the business of sending intervention letters to foreign authorities. The Law Society should work in areas where it can add value, by either raising awareness of broader issues and by engaging in capacity building efforts.

54. The Law Society of England and Wales was noted as a good model because it has adopted a multi-pronged approach, which includes sponsoring seminars and events to increase awareness of the issues, encouraging law students and lawyers to write about those matters, and contributing to international projects on a selective basis. The Honourable Rock suggested that the Law Society may wish to consider organizing continuing legal education programs or international conferences. These events could serve as conduits to connect lawyers and human rights activists.

55. The Honourable Rock suggested that organizations such as the International Commission of Jurists, the American Bar Association, the International Bar Association and the Law Society of England and Wales could collaborate to intervene jointly in cases.

56. The Monitoring Group concluded that interventions in the form of individual letter writing are not very effective and that an alternate strategy should be adopted. Although the group will continue to monitor reports of human rights violations that target lawyers and judges, it proposes to shift its strategy by establishing a network of leading human rights organizations to develop collaborative strategies to effectively address human rights violations against lawyers and judges. As mentioned above, it does not appear that there is an umbrella organization that coordinates interventions by leading organizations in cases of human rights violations that target lawyers and judges.

57. Human rights organizations have noted that in their experience, reports, submissions and statements jointly made by a number of leading organizations are more effective in addressing human rights violations and are more likely to have an impact on authorities. Organizations have created ad hoc international networks when required, but have not established a network to collaborate on an on-going basis to combat human rights violations against lawyers and judges. The following are examples of human rights violations that have attracted reactions from international and national legal organizations, but have not led to concerted intervention efforts, or have led to concerted efforts aimed at addressing violations on a case by case basis, only:

    a. In 2006, the Dutch Lawyers for Lawyers reported the findings of a fact-finding mission to the Philippines to assess the government's investigations of the extra-judicial killings of lawyers and judges. Organizations such as Lawyers' Rights Watch, Amnesty International, the Bar Human Rights Committee of England and Wales, the Law Society of Upper Canada and the Asian Human Rights Commission united in their interventions by endorsing the recommendations of the fact-finding mission. However, this coordinated effort was done for the purpose of intervening in the case of human rights violations that target lawyers and judges in the Philippines only, and did not develop into a broad based and ongoing network of leading organizations that work to promote the human rights of lawyers and judges.
    b. Recently, a number of organizations have intervened by condemning human rights violations that target lawyers and judges in Zimbabwe. Those interventions appear to have been undertaken independently by leading human rights organizations without the benefit of a coalition or concerted effort. For example, the ICJ conducted a high-level mission, while the Commonwealth Lawyers Association, the Law Society of England and Wales, the IBA and the ABA all intervened independently by condemning the human rights violations against lawyers.

58. Members are of the view that a first step to establish a strong network of leading human rights organizations is to coordinate a meeting to identify mutual activities and develop collaborative strategies. The recommendation to establish the network is further described below.

59. In addition to the first recommendation, the Monitoring Group also recommends that it be authorized to collaborate with the LSZ to assist it in strengthening its independence and self-regulatory capacity. This second recommendation is presented as a result of Mr. Tsunga's request for collaboration. An outline of the Zimbabwe judicial system is presented at Appendix 3. This recommendation builds on previous Law Society interventions in relation to Zimbabwe. In 2001, the Law Society adopted a motion conveying the Society's concerns and condemnation to the Government of Zimbabwe of the attacks on the principles of the independence and integrity of the bar and the judiciary. The recommendation also builds on work undertaken by other organizations. The recommendation to establish a collaborative strategy with the LSZ is described below.

RECOMMENDATION I –NETWORK OF ORGANIZATIONS

60. The Monitoring Group recommends that it explore the possibility of developing a network of organizations that combat human rights violations against lawyers and judges. In order to develop a strong network of organizations, the Monitoring Group proposes to coordinate a meeting of leading organizations to exchange ideas and collaborate on strategies. The Law Society's role would be to organize the meeting with a goal of creating a network of organizations that will agree to coordinate their efforts when they intervene in cases of human rights violations against judges and lawyers. The Law Society would not act as the umbrella organization that coordinates the work of leading international organizations, but would be the catalyst in creating the network. The objectives of such a meeting would be,
    a. to share information about the mandate, responsibilities and activities of participating organizations;
    b. to build capacity within the Law Society to be more effective in addressing issues of human rights violations against lawyers and judges;
    c. to establish a networking group to develop systemic strategies to address human rights violations against members of the judiciary and the legal profession;
    d. to identify initiatives that are a priority and require urgent attention;
    e. to identify a list of national and regional bar associations, NGOs or other legal groups that can assist in this initiative.

61. The Monitoring Group suggests that only organizations that have played a leadership role in addressing human rights violations be invited to participate. The following are examples of organizations and governmental branches that might be invited:
    a. International Commission of Jurists;
    b. Commonwealth Lawyers Association;
    c. American Bar Association Centre for Human Right;
    d. International Bar Association Human Rights Institute;
    e. Law Society of England and Wales;
    f. International Criminal Bar;
    g. Amnesty International;
    h. Lawyers Rights Watch Canada;
    i. Human Rights Watch;
    j. The Observatory;
    k. CBA;

l. DOJ;
m. DFAIT.

62. Should this recommendation be approved, the initiative would proceed as follows:
a. the Law Society through its Monitoring Group, would contact organizations to identify interested parties (it should be noted that the Law Society is already in contact with a number of leading organizations that actively work to combat human rights abuses of lawyers and judges);
b. external sources of funding if required, would be identified;[11]
c. the Monitoring Group, with the support of the Equity Department, would organize the meeting;
d. the Law Society would undertake follow-up activities based on the findings of the meeting.

63. The Monitoring Group anticipates that the Law Society would provide mostly in kind contributions to this initiative and that financial requirements would be sought from external sources of funding. The Equity Initiatives Department would provide staff support to coordinate the meeting, and continue to provide support to the work of the Monitoring Group. It is expected that the level of staff support to the Monitoring Group would increase temporarily to provide assistance in organizing the meeting, but that the level of staff support for ongoing Monitoring Group activities would resume to its actual level following the meeting.

64. The Monitoring Group has also made initial contacts with potential participating organizations to identify organizations that are interested in participating. The Law Society has received responses indicating an interest in such an initiative. For example, the Monitoring Group met with representatives of the Law Society of England & Wales on September 10, 2007 to discuss joint initiatives. Participants indicated that the Chief Executive Officer of the Law Society of England & Wales is committed to combating human rights abuses throughout the world and recognizes the role that law societies in general, and more particularly the Law Society of England & Wales, can play in this area. The Law Society of England & Wales' International Department intervenes in cases of human rights violations against lawyers and judges and is involved in special projects throughout the world. Participants indicated that stronger collaborative strategies between organizations, including the Law Society of Upper Canada, would increase the effectiveness of its work.[12]

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[11] Preliminary research into potential sources of funding indicate that the most likely source of funding for such an initiative would be through CIDA's Conferences and Events Secretariat, which supports participation by eligible delegates at conferences that address topics of particular interest to the CIDA. Other potential sources of funding include the Rights and Democracy (Canada) and ICJ Canada.

[12] The Law Society has also received a response of interest from the International Bar Association.

RECOMMENDATION 2 - COLLABORATION WITH LAW SOCIETY OF ZIMBABWE

Mr. Tsunga's request for assistance

65. As mentioned above, on March 28, 2007, Arnold Tsunga[13] , Executive Director, Zimbabwe Lawyers for Human Rights, Acting Executive Secretary of the LSZ and recipient of the 2006 Human Rights Watch Award, made a presentation at the Law Society of Upper Canada about the state of the rule of law in Zimbabwe. On March 29, 2007, he attended a Convocation lunch with benchers. Mr. Tsunga asked that the Law Society of Upper Canada consider collaborating with the LSZ, and proposed short, medium and longer term initiatives as follows:
    a. Proposed short-term collaboration could involve promoting the safety of human rights lawyers in light of heightened persecution of lawyers in Zimbabwe. Mr. Tsunga suggests that the Law Society might consider coordinating short-term internships for Zimbabwe lawyers who are forced to temporarily move out of Zimbabwe for safety reasons. Some law firms may be interested in participating in such an initiative by hosting Zimbabwe lawyers and retaining them to do research and other work on a short-term basis.
    b. Short to medium term collaboration could involve strengthening self-regulation capabilities of the Zimbabwe legal profession as a way to secure its independence. Mr. Tsunga believes that the most significant activity that the LSZ and the Law Society of Upper Canada could mutually undertake is the production of a comprehensive code of conduct for the legal profession in Zimbabwe. It is

[13] Arnold Tsunga is Executive Secretary of the Law Society of Zimbabwe as well as the Executive Director of Zimbabwe Lawyers for Human Rights. He sits on a number of Boards of human rights groups and provides leadership on a voluntary basis to a number of non-profit organizations including being the Co-ordinator of the SADC Lawyers Association Human Rights Committee; Board Member of Zimbabwe Human Rights NGO Forum; Chairperson Advisory Board of the Zimbabwe National Students Association (ZINASU), the authentic student movement in Zimbabwe; Vice Chairperson of the Voice of The People (VOP) Board which seeks to establish an independent broadcaster in Zimbabwe; Management Committee member of The Media Monitoring Project of Zimbabwe which monitors public media use in Zimbabwe; he is the past National Chairperson - Zimbabwe Human Rights Association, ZIMRIGHTS which is a grassroots based human rights watchdog.

He has written numerous articles on the human rights and rule of law situation within Zimbabwe and the region. He passionately works with grassroots communities using his lawyering skills to equip communities and place them at the centre of resolving their human rights and developmental challenges. Arnold Tsunga has received international recognition for his role in promoting and protecting human rights, being nominated for and winning some awards such as the Martin Ennals Award for Human Rights defenders (2006), the Human Rights Watch Human Rights defender Award (2006), Certificate of Special Congressional Recognition, 2006 (US Congress), Certificate of Courage in Civil Liberties (Parkinson's Fund) (2004) and runner up for the Martin Ennals Award for Human Rights Defenders (2004).

anticipated that there will be twice as many lawyers on the register of the LSZ in the next two years due to increased intake of students by universities. Mr. Tsunga notes that it is critical that by the time the students graduate, there be a comprehensive code of conduct that will lead to the self-regulation of the legal profession. Mr. Tsunga also suggests that the two law societies could exchange information about continuing legal education programs.

c. Medium to long-term projects could include supporting judicial reform to work toward the full return to the rule of law.

Increased human rights violations against lawyers in Zimbabwe

66. The Monitoring Group also notes reports of increased mistreatment and human rights violations against judges and lawyers. According to numerous sources[14] , lawyers Alec Muchadehama and Andrew Makoni, two senior lawyers of the Zimbabwe Lawyers for Human Rights (the "ZLHR") were arrested outside the High Court in Harare by members of the Law and Order Section of Harare Central police. They were taken to the Central police station for interrogation but were not provided with reasons for their arrest. There have also been reports[15] that on May 8, 2007, Mrs. Beatrice Mtetwa, president of the LSZ, Ms. Irene Petras, Acting Executive Director of ZLHR, Mr. Mordecai Mahlangu, a senior lawyer and former president of the LSZ, Mr. Chris Mhike, Councillor of the LSZ, Mr. Colin Kuhuni, Councillor of the LSZ, and another senior lawyer Mr. Fitzpatrick, were severely beaten by the police in Harare, for leading the legal profession to defend the rule of law and protest the frequent harassment of lawyers by the police and the endemic defiance of court orders by the government. There have also been reports that there is a death list issued by Zimbabwean secret services, which includes the names of several human rights defenders, journalists and political opponents, in particular Arnold Tsunga and Mr. Lovemore Madhuku, President of the National Constitutional Assembly (NCA).[16]

67. The ICJ recently concluded a high-level Mission to inquire into the recent arrests, detention and beatings of lawyers in Zimbabwe. The Honourable Claire L'Heureux-Dubé and Mr. George Kegoro, Executive Director of the ICJ, Kenya Section, represented the ICJ on the Mission. The press release of the findings is presented at Appendix 4. The Mission noted that it was disturbed by the unjustifiable harassment, detention and beating of lawyers and the increased tension between the LSZ and the Government. Such treatment is interfering with the proper functioning of the administration of justice, the role of lawyers and their independence, and is making it difficult for lawyers to act for clients who are viewed by the Government as dissidents. The Mission also noted that

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[14] The Observatory ZWE 003/0507/OBS 046; Zimbabwe Lawyers for Human Rights Urgent Appeal; *Zimbabwe Lawyer Decries Intimidation* New York, May 10, 2007, http://realtime.com; *Attacks on Lawyers Deliberate, Zimbabwe Lawyer Says,* James Butty, Washington D.C., 11 May 2007.

[15] The Observatory ZWE 003/0507/OBS 046; *Zimbabwe Cracks Down on Opposition Lawyers,* World, May 25, 2007,.

[16] The Observatory ZWE 002/0507/OBS 042

the independence of lawyers and judges is a cornerstone of the rule of law. It is essential in a democratic state to protect the separation of powers, the fair application of the law and the rights of all people in the country, and to prevent arbitrary actions by the executive. The ICJ concluded that the actions of the police against lawyers undermines the independence of the legal profession and their right and duty to carry out their professional obligations, including representing anyone suspected of a criminal offence.

Law Society intervention regarding human rights violations in Zimbabwe - 2001

68. The Law Society intervened, on July 26, 2001, in response to the release of the *International Bar Association Report on Zimbabwe – 2001*, which outlined the results of a fact finding mission organized by the Human Rights Institute of the International Bar Association. The Delegation had been sent as a response to growing international concerns at the apparent erosion of the rule of law in Zimbabwe, as evidenced by reports of lawlessness in the country and intimidation of the judiciary. The purpose of the Delegation's fact finding mission was "to examine (i) the status of lawyers and judges in Zimbabwe; (ii) the legal guarantees for the effective functioning of the justice system, including the independence of the judiciary and respect for the judiciary, and whether these guarantees are respected in practice; (iii) the ability of lawyers to render their services freely; and (iv) any impediment, either in law or practice, that jeopardized the administration of justice."

69. The report found that the independence of the judiciary was being undermined by threats to, and intimidation of judges. Threatening and demeaning remarks and acts had been directed against the judiciary and no government action had been taken to stop or discourage people from intimidating members of the judiciary. The independence of the judiciary was also being undermined by the sustained campaign to force the resignation of a number of judges, including by threats of violence. This campaign had been fuelled and encouraged by the Government and a principal target of the campaign was Chief Justice Gubbay, who had been forced into early retirement. This forced retirement of Chief Justice Gubbay and the pressure on other judges to resign were violations of the Constitution of Zimbabwe and international standards.

70. The report also noted that the LSZ was under increasing pressure to curtail its criticism of governmental actions with regard to the judiciary. The LSZ had been courageous and vociferous in supporting the judiciary and the rule of law. The Delegation noted that it hoped that the Government did not intend to pass legislative amendments that would limit the ability of lawyers to engage in public discussion regarding matters concerning the law and the administration of justice.

71. As a result, on July 26, 2001, the Law Society of Upper Canada adopted the following motion, moved by Bradley Wright, seconded by Judith Potter and George Hunter:
    a. HEREAS the Law Society of Upper Canada, the traditional name of the governing body of lawyers in Ontario, Canada, is committed to the principles of the independence and integrity of the bar and the judiciary, and to the principles of democracy, liberty, and responsibility, all in the public interest;

b. THEREFORE the Law Society of Upper Canada conveys to the Government of Zimbabwe the Society's deepest concerns and strongest condemnations of the attacks on those principles by the Government of Zimbabwe, specifically and without limitation the forced retirement of Chief Justice Anthony Gubbay and the intimidation of judges and officials in the administration of justice system. The Law Society of Upper Canada calls upon the government of Zimbabwe to affirm and act upon an abiding commitment to the principles enunciated above, and thereby gain the respect of ourselves and the international community.

Other Organizations Collaborating with Zimbabwe

72. Canada has had a strong relationship with Zimbabwe since its independence in 1980 and a number of Canadian organizations have been providing assistance to the Zimbabwe legal profession to build its capacity to promote the rule of law and the independence of the profession. The Canadian International Development Agency ("CIDA") has contributed funding since 1980 for projects in support of reducing poverty and improving the overall quality of life of the people of Zimbabwe.[17] The current official development cooperation program focuses on two key sectors, human rights, governance and protection and health (HIV/AIDS), along with the intersection of gender equality. Included in the key sectors are programs designed to support local partners to promote the rule of law in Zimbabwe by improving access to the justice system.

73. The CBA, with funding from CIDA, worked from 2003-2006 to support the LSZ and to help strengthen the rule of law by increasing the capacity of the LSZ to deliver continuing legal education programs, increase human rights advocacy of lawyers and publish law reports to provide precedents for the legal community.

74. The Human Rights Monitoring Group does not intend to duplicate efforts undertaken by other organizations in Zimbabwe, but to build on these efforts and, if appropriate, to work with these organizations to assist the LSZ. It is of the view that the Law Society of Upper Canada can provide expertise in the area of self-regulation and the promotion of the rule of law, and it recommends that the Law Society agree to collaborate with the LSZ.

Proposed Collaboration with the LSZ

75. Since its inception, the Monitoring Group has been monitoring human rights violations of lawyers in Zimbabwe and has established professional relationships with the LSZ. Recent reports indicate that human rights violations of lawyers in Zimbabwe are escalating and that action from law societies is urgently needed.

[17] Information posted on-line at www.acdi-cida.gc.ca/zimbabwe-e.

76. In light of the Law Society's condemnation of the government of Zimbabwe's treatment of the judiciary and breach of the rule of law, of the increasing human rights violations against members of the judiciary and of the legal profession since 2001, and as a result of Mr. Tsunga's requests for collaboration with the LSZ, it is recommended that Convocation authorize the Monitoring Group to collaborate with the LSZ to assist it in strengthening its self-regulation capabilities and the independence of the profession. Zimbabwe is a country that shares the common law tradition and this initiative would allow the Law Society to use its expertise as a regulatory body that has been successful in promoting the independence of the profession, to assist a foreign law society in enhancing its self-regulatory capability.

77. The Monitoring Group suggests that the Law Society take on a leadership role on the international level by collaborating with the LSZ. The Group is of the view that this recommendation falls within the mandate of the Law Society, to promote the rule of law and the independence of the legal profession, it is within its area of expertise and it would increase the Law Society's international visibility and leadership role in promoting the rule of law and the independence of the profession.

78. Such collaboration could include the following:

    a. working with the LSZ, and other organizations such as the Zimbabwe Lawyers for Human Rights, to intervene by condemning the increased human rights violations by Zimbabwe authorities against lawyers;
    b. establishing contacts and ongoing correspondence with lawyers at the LSZ to reassure them of the support of law societies from outside of Zimbabwe;
    c. identifying organizations that are involved in projects with the Zimbabwe justice system, more specifically with the LSZ, and establishing collaborative relationships with them;
    d. identifying and confirming the immediate and long term needs of the LSZ, and how the Law Society of Upper Canada and the LSZ would collaborate on activities that are within their mandate.

79. Should the Law Society adopt this recommendation, it would likely focus some of its activities on assisting the LSZ to develop a code of conduct for the legal profession in Zimbabwe. This initiative would require on-going and regular exchanges of information with the LSZ about the Law Society of Upper Canada's experience in developing a code of conduct for the profession and how the code could be adapted to apply to the needs of the LSZ and the Zimbabwe legal context. It is anticipated that the Law Society of Upper Canada would engage in this initiative by creating a small group of internal expert staff and benchers, along with representatives of organizations that have already be involved in projects with Zimbabwe, if appropriate, to provide feedback and expertise to the LSZ. We expect that most of the work could be done on-line and would not require significant financial resources. Should significant financial resources be required, the Monitoring Group would provide a report to Convocation with a budget and funding strategy. Contacts have already been established with the LSZ, and the LSZ has requested our collaboration. Therefore, we expect that the approval to proceed with such an initiative would be most welcome.

80. The Monitoring Group anticipates that the Law Society would provide mostly in kind contributions to this initiative and that significant financial requirements, if any, would be sought from external sources of funding.[18] Staff and bencher resources would be required as follows:
    a. Equity Initiatives Department staff support would be required to coordinate the initiative and participate in its activities.
    b. Some expert staff support would likely be required from the Policy Secretariat and/or the Professional Regulation. It is not anticipated that staff resources from those areas would be significant. The requirement for resources is likely to be staggered over a number of years and be required on an irregular basis.
    c. Benchers would participate in this project, either as members of the Monitoring Group or a small working group.

APPENDIX 1

Report of the Human Rights Monitoring Group
Fourth Quarter - 2006

MANDATE OF HUMAN RIGHTS WORKING GROUP
The Human Rights Monitoring Group (the "Monitoring Group") is a group of benchers of the Law Society of Upper Canada appointed by Convocation to monitor human rights violations that target members of the legal profession and the judiciary as a result of the discharge of their legitimate professional duties.

The mandate of the Human Rights Monitoring Group is,

- to review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
- to determine if the matter is one that requires a response from the Law Society; and
- to prepare a response for review and approval by Convocation.

On April 27, 2006, Convocation appointed the following benchers to the Human Rights Monitoring Group:

- Paul Copeland, Chair;
- Anne Marie Doyle;
- Heather Ross;
- Mark Sandler; and
- Joanne St. Lewis.

[18] Preliminary research into potential sources of funding indicate that such project might fall within the funding criteria of the following organizations: the Commonwealth Secretariat, the Commonwealth Human Rights Initiative, the Commonwealth Lawyers' Association, the Canadian Institute for the Administration of Justice, Human Rights First, the Carter Centre, the Law Society of England and Wales through twining and bilateral assistance programs, the Council of Bars and Law Societies of Europe, the Union Internationale des Avocats and the International Bar Association.

SOURCE OF INFORMATION

The Monitoring Group relies on information provided by external organizations dedicated to promoting the rule of law and human rights internationally. The Monitoring has, to date, relied on the following sources:

Amnesty International

Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights. Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the *Universal Declaration of Human Rights* standards. In pursuit of this vision, Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Lawyers Rights Watch Canada

Lawyers' Rights Watch Canada was incorporated as a non-profit society on June 8, 2000. It is a committee of Canadian lawyers who promote human rights and the rule of law by providing support internationally, to human rights defenders in danger. It promotes the implementation and enforcement of international standards designed to protect the independence and security of human rights defenders around the world. It campaigns for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy and produces legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders. Lawyers' Rights Watch Canada also works in cooperation with other human rights organizations and seeks to identify illegal actions against advocates, campaigns for the end of such actions and lobbies for the implementation of effective, immediate and long-term remedies.

World Organisation against Torture: The Observatory

The World Organisation against Torture is the world's largest coalition of non-governmental organizations that fight against arbitrary detention, torture, summary and extrajudicial executions, forced disappearances and other forms of violence. It is based in Geneva and has a network of about 300 local, national and regional organizations, which share the common goal of eradicating any practice that violates human rights. In 1997 the World Organisation against Torture created the Observatory in association with the International Federation for Human Rights. They intervene by means of more than 150 urgent appeals per year. They also undertake missions in the field, with the collaboration of national, regional and international non-governmental organizations.

CASES IN WHICH LAW SOCIETY HAS INTERVENED

The Law Society, on the recommendation of the Monitoring Group, has intervened in the following cases by writing letters about alleged human rights violations that target lawyers or members of the judiciary to foreign authorities. It has also written letters to local law societies to inform them of the Law Society's actions and to request their cooperation. The information provided below has been reported by the sources identified above.

China – Lawyer Gao Zhisheng
Lawyer Gao Zhisheng is the director of the Beijing-based Shengzhi Law Office. He has defended members of the banned spiritual movement Falun Gong and has taken on several high-profile cases and defended a number of activists, including human rights activist Yang Maodong, journalist and former professor Zheng Yichun, and Pastor Cai Zhuohua, who has been imprisoned for three years for 'illegal business practices' such as printing and selling copies of the Bible.

It appears that in November 2005, the Beijing Municipal Bureau of Justice suspended the operations of the Shengzhi Law Office for one year and revoked Gao Zhisheng's licence to practice law. These events appear to be linked to his work in defending activists, and in particular his publication of an open letter calling for religious freedom and an end to the persecution of the Falun Gong spiritual movement. Since then, Gao Zhisheng has been subjected to continuous surveillance and other forms of harassment and intimidation by the authorities.
On August 15, 2006, Gao Zhisheng was detained in Shandong Province by police officers from Beijing and was held incommunicado. The police have reportedly provided no reason for his detention to his family.

The Law Society sent letters to the Prime Minister of the People's Republic of China, the Minister of Justice of the People's Republic of China, the Minister of Public Security of People's Republic of China, representatives of the Chinese Embassy in Ottawa and the Chinese Consulate in Toronto, and copies to the Director of the Beijing Public Security Bureau. Copies of the letter was also sent to the All China Lawyers Association informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case.

In December 2006, Gao Zhisheng was convicted of subversion and received a suspended three-year prison sentence. He was also stripped of political rights for one year. Gao Zhisheng was convicted based on nine articles posted on Web sites abroad, the Xinhua News Agency said, disclosing the details of the charges against him for the first time. It said the articles "defamed and made rumors about China's current government and social system, conspiring to topple down the regime." Gao Zhisheng's lawyer was barred from attending the trial on the grounds that it involved official secrets.

A group of more than 50 foreign scholars and human rights campaigners issued a public appeal in October for Beijing to stop harassing activists, citing the cases of Gao and others.

China - Lawyer Zheng Enchong
Lawyer Zheng Enchong had his licence to practice law revoked in 2001 after he advised more than 500 families displaced by Shanghai's urban redevelopment projects on their rights to fair compensation from the authorities. He continued to give advice although his applications for reinstatement of his law licence failed. Mr. Enchong was arrested on 6 June 2003 and accused of stealing 'state secrets' and passing them to 'entities outside China'.

Zheng Enchong was released from Tilanqiao Prison in Shanghai on June 5, 2006 on completion of his three-year sentence. However, his political rights have been suspended by a year. He is forbidden from meeting foreigners, from talking to the media, from attending protests, from participating in political activities, and from taking a leading position in state enterprises. The police have also banned him from leaving his residential district.

On July 12, 2006, Zheng Enchong and his wife Jiang Meili were detained by police at their home and were taken to the police station. They were questioned separately for several hours. Police officers searched Zheng Enchong's home and confiscated his computer, documents, and names of contacts, as well as draft documents about alleged forced evictions. The police detained Zheng Enchong again on July 21, 2006 to question him about information found on his computer. He was released after four hours of questioning. Zheng Enchong was also detained briefly on June 11, 2006 and on June18, 2006.

The Law Society sent letters to the Director of the Shanghai Bureau of Justice, the Prime Minister of the People's Republic of China, to representatives of the Chinese Embassy in Ottawa and of the Chinese Consulate in Toronto, and copies to the Mayor of the Shanghai Municipal People's Government. Copies of the letter were also sent to the All China Lawyers Association informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case.

China - Chen Guangcheng
In early 2005, lawyer Chen Guangcheng began to investigate the violence perpetrated on local women and their families in the name of meeting birth planning quotas in his native Linyi City. Efforts were made to bring legal action against local authorities for related violations of national law. Eventually, the State Family Planning Commission conducted its own investigation and admitted publicly that officials had violated the law and that disciplinary action was being taken.

Since August 2005, it appears that the authorities have tried to undermine and intimidate Chen Guangcheng, his family and other villagers, through illegal means such as close surveillance, threats, house arrest and secret detention. On September 6, 2005, Chen Guangcheng was placed under "residential surveillance".

On March 11, 2006, local police arrested and questioned Chen Guangcheng on the pretext that he and other activists had obstructed traffic. On June 11, 2006, Chen Guangcheng's wife, Yuan Weijing, was notified by the Yinan County Public Security Bureau that her husband had been charged with "deliberate destruction of property" and with "organising a mob to disrupt traffic". On May 8, 2006, when Chen Guangcheng's lawyer requested to meet him, the police denied that they were holding Chen Guangcheng in detention.

On August 24, 2006, Chen Guangcheng was sentenced to four years and three months imprisonment for "deliberate destruction of property" and "organising a mob to disrupt traffic". The trial only lasted two hours. During the judicial proceedings, it appears that Chen Guangcheng was denied access to his legal team. The first instance in his trial took place without the presence of his legal team, as they were all detained by the police or denied access to the court. Xu Zhiyong, one of his defence lawyers, was beaten by five unidentified men, taken into police custody and released 22 hours later, after the end of Chen Guangcheng's trial. On the same day, police detained Li Jinsong and Zhang Lihui on charges of theft. Both Zhang Lihui and Li Jinsong were released, but were then barred from attending the trial.Lawyers Yang Zaixin and Zhang Jiankang were also harassed and forcibly returned home for their involvement in Chen Guangcheng's defence.

Consequently, authorities appointed a public defender who did not read Chen Guangcheng's file and did little to defend him. Chen Guangcheng is currently under detention at the Yinan County Detention Centre.

The Law Society sent letters to President Hu Jintao of the People's Republic of China, the Minister of Justice of the People's Republic of China, the Minister of Foreign Affairs of the People's Republic of China, Ambassador, Sha Zukang and representatives of the Chinese Embassy in Ottawa and of the Chinese Consulate in Toronto. Copies of the letter was also sent to the All China Lawyers Association informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case.

India- Lawyer Leitanthem Umakanta Meitei
Human rights lawyer Leitanthem Umakanta Meitei, Secretary General of the Threatened Indigenous Peoples' Society, was arrested without an arrest warrant at his home in Porompat Thawanthaba Leikai by a team of Manipur police officers. They seized CDs and books from the Threatened Indigenous Peoples' Society and the International Labour Organisation, among other things.

Following the arrest, Mr. Umakanta Meitei was detained at Imphal Police Station. He was interrogated, allegedly tortured by the police, and denied access to a lawyer. He was charged under Sections 38 and 39 of the *Unlawful Activities Prevention Act (1967)*, which involves being a member of, and supporting terrorist organisations. He was accused of maintaining links with the illegal group 'Organisation to Save the Revolutionary Movement in Manipur'.

On August 29, 2006, the Chief Judicial Magistrate ordered that Mr. Umakanta be released on bail due to lack of evidence. He refused to pay bail on the basis that the charges against him were false and he insisted on an unconditional release. As a result, he was held in judicial custody for another 15 days at the Sajiwa Central Jail.

The Chief Judicial Magistrate found that the police had tortured Mr. Umakanta Meitei while he was in custody and ordered the prison authorities to arrange for a medical examination by a doctor approved by the Health Department. Mr. Umakanta Meitei had developed health complications that included heart pain and periodic memory lapses.

In October, 2006, Mr. Leitanthem Umakanta Meitei was released and all charges against him were dropped. He had been detained for six weeks and his detention may have been connected with a demonstration organized by Apunba Lup on August 23, 2006 to protest against a bomb attack that occurred on August 16, 2006 and that killed five and injured more than forty at a Hindu prayer temple of Krishna in Manipur.

The Law Society sent intervention letters to the Prime Minister of India, the Union Minister of Home Affairs, the Chief Justice of India, the Chairperson of the National Human Rights Commission of India, the Chief Minister of Manipur, the Chairperson of the Manipur State Human Rights Commission and the High Commissioner of India in Canada. The Law Society also sent copies of the letter to the regulator of the legal profession in India, asking for its collaboration in exchanging information about this case.

Sudan - Lawyers Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat Dafaalla and Mohamed Badawi

On May 15, 2006, officers from the National Security Bureau (NSB) in Nyala, Southern Darfur, summoned for questioning lawyer Mossaad Mohamed Ali, Coordinator of the Amel Centre in Nyala. Mr. Ali was detained for thirteen hours without being questioned or charged with an offence. The next morning, Mr. Ali was summoned to the security offices, where he remained in detention until May 20, 2006. He was denied access to his family and to legal counsel. Security officers denied the United Nations Mission in Sudan (UNMIS) an opportunity to meet with him. No reason was given as to why Mr. Ali was summoned, arrested and held incommunicado.

On July 27, 2006, Mr. Ali, and volunteer lawyers at the Amel Centre, Ms. Rasha Souraj and Ms. Ebtisam Alsemani, received a letter from the NSB notifying them that the Attorney General had filed a case against them for "offences against the State". The defendants were accused of sending false reports and of disclosing information of a military nature, and they were warned that their case had been given to the police and that they would likely be arrested following a police investigation.

On August 1, 2006, Mr. Ali and volunteer lawyer at the Amel Centre, Ms. Najat DafaAlla, reported to the security offices. They were separated and interrogated by a police officer about the events in Otash camp, a camp for internally displaced people. They were accused of spreading false information and of being a threat to public security. It is believed that they were being investigated for their work in defending the rights of five individuals from the Otash camp, who were detained after participating in a demonstration against the Darfur Peace Agreement, on May 30, and 31, 2006. Lawyers applied for the release of the detainees unless there was a valid charge against them. Prior to being released, Mr. Ali and Ms. DafaAlla were told that the police would evaluate the facts and would refer their case to the Attorney General in order to move the case before the courts.

On September 9, 2006, lawyer Mohamed Badawi, Coordinator of the Amel Centre in El Fashir, was summoned by the NSB, where he reported and was released after three hours. Similar incidents occurred on the following day. Prior to being released, without being charged, he was interrogated by security officers about the Amel Centre's activities and about the Centre's relationship with international organisations and with the Communist Party.

The Law Society sent letters to the His Excellency Lieutenant General Omar Hassan al-Bashir, President of the Republic of Sudan and Chief of State, Mr. Al Zubeir Beshir Taha, Minister of the Interior, Mr. Mustafa Lam Akol Ajawin, Minister of Foreign Affairs, Dr. Abdelmuneim Osman Mohamed Taha, Rapporteur, Advisory Council for Human Rights, His Excellency Salva Kiir Mayardit, First Vice-President, People's Palace, His Excellency Ali Osman Mohamed Taha, Vice-President, People's Palace, Mr. Ali Mohamed Osman Yassin, Minister of Justice and Attorney General, Ministry of Justice, and Dr. Faiza Hassan Taha, Ambassador of the Republic of Sudan to Canada. The Law Society also sent copies of the letter to the Sudan bar association informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case.

Philippines – Attacks against Filipino Lawyers and Judges

An investigative report on attacks against Filipino lawyers and judges titled *From Facts to Action*[19] . From Facts to Action was published and presents findings of serious harassment, intimidation and killings of lawyers and judges in the Philippines as a result of the performance of their professional duties.

The report's conclusions indicate as follows:

1. Human rights lawyers and judges are increasingly threatened, intimidated and killed and are not able to carry out their professional obligations.
2. The harassment and killing of members of the legal profession undermines the independence of judges and lawyers and, as a consequence, the rule of law and faith in the judiciary.
3. There is a pattern in the harassment and killing of human rights lawyers and judges, which is connected to the killings of members of left oriented groups. Prior to attacks, victims are labeled *'communists'* or *'enemies of the state'* by the military. The labeling is followed by threats and surveillance from the military.
4. In nearly all cases the victims are killed in the same way. The assassinations are shooting incidents with a hit-and-run character conducted by a team of unidentified motorcycle-riding men.
5. Even when the atrocities are brutal, there is little response or action on the part of the government to resolve the problem. No one has been charged and all killings remain unsolved.
6. There are wide ranging allegations that the state security forces are involved in the killings and these allegations are supported by investigations conducted by the Philippine Commission on Human Rights.
7. The Philippine government has done little to address the killings. It has not responded to allegations that its own security forces are involved, nor has it taken effective measures to improve the poor record of prosecutions of the perpetrators.
8. Recently, President Arroyo ordered that the killings be investigated and stopped. Her orders led to the establishment of a special investigative Task Force, known as USIG.
9. There are concerns that USIG is not an independent body since its chair is the Philippine National Police, which has a poor record of investigating human rights violations, and is mistrusted by the Philippine people.
10. The government has not condemned the killings publicly and the lack of response has led to a culture of impunity where more human rights violations may take place. Such is the climate of impunity that lawyers and judges consider it 'part of their job' to be threatened, and witnesses of killings do not cooperate with the police out of fear or because they know nothing will be done.

[19] The International Fact Finding Mission, *From Facts to Action: Report on the attacks against Filipino lawyers and judges*, released by the Dutch Lawyers for Lawyers Foundation, July 24, 2006.

The Law Society sent letters to the President of the Republic of the Philippines. Copies of the letter was also sent to the regulator of the legal profession in the Philippines, the Integrated Bar of the Philippines, asking for its collaboration in exchanging information about these cases.

Syria – Lawyer Anwar Al-Bunni
Lawyer Anwar al-Bunni is the founding member of the Syrian Human Rights Association. He is the head of the Committee for the Defence of Prisoners of Conscience. He has represented many prisoners of conscience in Syria. He is also the president of the Office of Studies and Juridical Consulting in Damascus.

Mr. Anwar al-Bunni was arrested on May 17, 2006 after signing the *Beirut-Damascus Declaration*, a petition drawn up by 274 Syrian and Lebanese human rights activists asking Syria to improve its diplomatic relations with Lebanon by respecting Lebanon's independence and sovereignty.

Anwar al-Bunni remains at Adra prison. Upon his arrest, he was charged with 'undermining national pride', 'incitement to racial and sectarian hatred', and with 'slander of public administrative and governmental bodies.' Since his arrest, Anwar al-Bunni has refused to speak to Syrian authorities without a lawyer. He went on a hunger strike as a form of protest from May 17 to June 4, 2006. He also joined other prisoners in their hunger strikes for a few days in September 2006.

Prior to his arrest, Anwar al-Bunni was to be designated the head of a European Union Centre for Human Rights Training, the first in the country. The Centre's opening was blocked by the authorities.

The Law Society sent letters to the President of the Republic of Syria, the Minister of the Interior of Syria, the Ministry of Justice of Syria, the Ministry of Foreign Affairs of Syria and the Ambassador of the diplomatic Mission of the Syrian Arab Republic in Canada. The Human Rights Monitoring Group also sent copies of the letter to the regulator of the legal profession in Syria, asking for its collaboration in exchanging information about this case.

Tunisia – Lawyer Mohammed Abbou
Lawyer Mohammed Abbou, member of the National Council for Civil Liberties in Tunisia, was arrested in March 2005 as a result of an article he published online. In November 2005, the UN Working Group on Arbitrary Detention concluded that Mohammed Abbou's detention was arbitrary and in violation of Article 19 of the *Universal Declaration of Human Rights* and Article 19 of the *International Covenant on Civil and Political Rights*, which guarantee the right to freedom of expression.

In April 2006, Mohammed Abbou was sentenced to imprisonment for three years and six months. He is currently imprisoned in the town of El-Kef, approximately 200 kilometers from his family home in the capital, Tunis, making visits by his family difficult.

The UN Working Group on Arbitrary Detention has adopted the opinion that his detention was arbitrary. Since his detention in March 2005 he has undertaken several hunger strikes in protest at the conditions of his detention. He continues to face harassment and ill treatment by the prison administration. Mohammed Abbou's detention have deteriorated further after a demonstration in support of his case outside the prison earlier this year. On more than one occasion he has had his cell searched by prison guards in the middle of the night. Following a request to change his cell, prison guards beat him up and his mattress was removed. He is now forced to sleep on an iron bedstead. Other prisoners, at the instigation of prison authorities, have harassed him.

The Law Society sent a letter to Bechir Tekkari, Minister of Justice and Human Rights. Copies of the letter be sent to the Barreau de la Tunisie informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case.

RESULTS OF INTERVENTIONS
To date, the Law Society has not received responses to its letters of intervention from either the foreign authorities or the local law societies or associations.

CONTACT AT THE LAW SOCIETY

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APPENDIX 2

Report of the Human Rights Monitoring Group
First Quarter – 2007
January 1 – March 31, 2007

MANDATE OF HUMAN RIGHTS WORKING GROUP
The Human Rights Monitoring Group (the "Monitoring Group") is a group of benchers of the Law Society of Upper Canada appointed by Convocation to monitor human rights violations that target members of the legal profession and the judiciary as a result of the discharge of their legitimate professional duties.

The mandate of the Human Rights Monitoring Group is,

a. to review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
b. to determine if the matter is one that requires a response from the Law Society; and
c. to prepare a response for review and approval by Convocation.

The mandate further states that where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps, as he or she deems appropriate. In such instances, the Human Rights Monitoring Group shall report on the matters at the next meeting of Convocation.

On April 27, 2006, Convocation appointed the following benchers to the Human Rights Monitoring Group:

- Paul Copeland, Chair;
- Anne Marie Doyle;
- Heather Ross;
- Mark Sandler; and
- Joanne St. Lewis.

SOURCE OF INFORMATION

The Monitoring Group relies on information provided by external organizations dedicated to promoting the rule of law and human rights internationally. During this reporting period, the Monitoring relied on the following sources:

Amnesty International

Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights. Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the *Universal Declaration of Human Rights* standards. In pursuit of this vision, Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Association for a more Just Society

The Association was created in 1998 by a group of Christians with many years of experience of community development in Honduras. Their commitment is to work toward true development and justice because in their experience government efforts are not sufficient to reduce poverty. They also believe that such efforts often fail, not because they are flawed, but because policies, laws and unethical practices fail to respect the needs and rights of the poor. Since 1999 the Association receives its primary financial support from international Christian organizations such as the International Justice Mission, the Tear Fund, the Christian Reformed World Relief Committee and the Cherry Creek Presbyterian Church.

European Bar Human Rights Institute
The European Bar Human Rights Institute was created in 2001 in Luxembourg under the direction of the European Lawyers Union. Since that time, the following institutions have also become statutory members: the Law Society of England and Wales, the Institute of Human Rights of the Bar of Brussels, the Institute of training in Human Rights of the Paris Bar, the distinguished Human Rights Institute of the Bar of Bordeaux and the Polish Bar Human Rights Institute.

Human Rights Watch
Human Rights Watch is the largest human rights organization based in the United States. Human Rights Watch researchers conduct fact-finding investigations into human rights abuses in all regions of the world. Human Rights Watch then publishes those findings in dozens of books and reports every year, generating extensive coverage in local and international media. This publicity helps to embarrass abusive governments in the eyes of their citizens and the world. Human Rights Watch then meets with government officials to urge changes in policy and practice -- at the United Nations, the European Union, in Washington and in capitals around the world.

Law Society of England and Wales
The Law Society of England and Wales is the representative body for solicitors. It negotiates and lobbies with government and provides training, advice and ultimately promotes solicitors across England and Wales. The Law Society also seeks to influence the development of law and procedure across a wide range of areas both at home and abroad. Its growing international role has come as a result of the globalisation of legal business and the increasing opportunities that exist for solicitors abroad. Some of the international work that the Law Society is involved in includes practice rights for solicitors overseas, representing solicitors abroad, promoting human rights worldwide, campaigning for legal reform in Europe, promoting projects to develop legal systems and professions abroad and producing newsletters. In this way the Law Society works actively for international human rights through its International Human Rights Committee, which focuses on campaigning for lawyers whose human rights are violated and in cases where the death penalty is imposed in violation of international human rights standards.

Lawyers Rights Watch Canada
Lawyers' Rights Watch Canada was incorporated as a non-profit society on June 8, 2000. It is a committee of Canadian lawyers who promote human rights and the rule of law by providing support internationally, to human rights defenders in danger. It promotes the implementation and enforcement of international standards designed to protect the independence and security of human rights defenders around the world. It campaigns for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy and produces legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders. Lawyers' Rights Watch Canada also works in cooperation with other human rights organizations and seeks to identify illegal actions against advocates, campaigns for the end of such actions and lobbies for the implementation of effective, immediate and long-term remedies.

World Organisation against Torture: The Observatory
The World Organisation against Torture is the world's largest coalition of non-governmental organizations that fight against arbitrary detention, torture, summary and extrajudicial executions, forced disappearances and other forms of violence. It is based in Geneva and has a network of about 300 local, national and regional organizations, which share the common goal of eradicating any practice that violates human rights. In 1997 the World Organisation against Torture created the Observatory in association with the International Federation for Human Rights. They intervene by means of more than 150 urgent appeals per year. They also undertake missions in the field, with the collaboration of national, regional and international non-governmental organizations.

CASES IN WHICH LAW SOCIETY HAS INTERVENED
During this reporting period, the Law Society, on the recommendation of the Monitoring Group, intervened in the following cases by writing letters about alleged human rights violations that target lawyers or members of the judiciary to foreign authorities. It has also written letters to local law societies to inform them of the Law Society's actions and to request their cooperation. The information provided below has been reported by the sources identified above.

Lawyers Amine Sidhoum Abderramane and Hassiba Boumerdesi - Algeria

On November 21, 2006, the Observatory reported that two human rights lawyers, Amine Sidhoum Abderramane and Hassiba Boumerdesi, may face imprisonment after being charged with what appear to be charges made in an attempt to intimidate and deter the lawyers from carrying out their human rights work.

Amine Sidhoum Abderramane, a member of the SOS Disappeared, an Algerian group that represents the families of the more than 7,000 people who disappeared during the 1990s in the armed struggle between the government and Islamic groups in Algeria, has been accused of providing his business cards to a detained client. He has confirmed that he gave the business cards to the client and has stated that this act is not an offence.

On September 10, 2006, Amine Sidhoum Abderramane appeared before a justice on charges of "bringing unauthorised objects into a detention facility", in accordance with Article 166 of the *Prison Regulating and Reintegration of Prisoners Code,* and Articles 16 and 31 of the *Prison Security Code*. His hearing was scheduled for November 7, 2006.

Amine Sidhoum Abderramane also faces defamation charges in a separate case because he publicly criticized the fact that his client was detained for two and a half years without a trial. In September 2006 the Minister of Justice charged him with 'bringing the judiciary into disrepute". On September 18, 2006, a judge upheld the charge and ordered that he be released temporarily. He faces between three and five years prison and fines of between 2,500 and 5,000 euros, which is approximately between $4,000 and $8,000 Canadian.

Hassiba Boumerdesi, a member of the SOS Disappeared, has been accused of giving a client in detention the minutes of his court hearing without first getting authorization. She states that she obtained a verbal authorization from the prison authorities before giving the document to her client. Hassiba Boumerdesi appeared before a justice on September 25, 2006 for the charge of "bringing unauthorised objects into a detention facility." Her hearing was scheduled for November 7, 2006.

The Observatory believes that the lawyers are being prosecuted for activities that were carried out legally and in the interest of assisting their clients. The charges are based on legal provisions, which ban the illegal transfer of "money, correspondence, medicine, or any other unauthorized object" to detainees and on allegations by prison authorities that items were given to detainees without prior authorization. It is believed that the real reason that the lawyers have been charged is because they have actively exposed the breaches of the Algerian justice system. Both lawyers are well known for their human rights work. They have defended people accused of terrorism-related offences, and they have exposed systemic human rights violations in terrorism-related cases.

Lawyer Marie-Thérèse Nlandu Mpolo-Nene - Democratic Republic of Congo
Amnesty International reported that, on November 21, 2006, members of the Special Services police arrested Marie-Thérèse Nlandu Mpolo-Nene, a lawyer at the Supreme Court of Justice of the Democratic Republic of Congo, and the leader of the political party for peace. She is currently under detention at the central prison in Kinshasa. Amnesty International believes that she is a prisoner of conscience, detained solely for pursuing her legitimate professional activities as a lawyer and for her peaceful political views.

Marie-Thérèse Nlandu Mpolo-Nene represents Jean-Pierre Bemba, former Vice-President of the country, in his appeal to the Supreme Court of Justice against the results of the second round of presidential elections. Marie-Thérèse Nlandu Mpolo-Nene ran as a presidential candidate in the first round of voting July 30, 2006, but was eliminated. As a result, her political party gave its support to the candidacy of Jean-Pierre Bemba for the second round of presidential elections on October 29, 2006.

Both rounds of presidential elections resulted in tensions and outbreaks of violence in Kinshasa and in an increase in politically motivated human rights violations. Election results were announced November 15, 2006. The results gave Joseph Kabila, the outgoing President, 58% of the vote, and his rival Jean-Pierre Bemba, the outgoing Vice-President, 42%. Jean-Pierre Bemba and his supporters alleged that there had been significant fraud and appealed to the Supreme Court of Justice to overturn the results.

The Supreme Court began hearing the complaints on November 21, 2006 and violence broke out outside the Court between supporters of Jean-Pierre Bemba and the police. It is alleged that soldiers loyal to Jean Pierre-Bemba fired shots. The Supreme Court was set on fire, and was partially destroyed by protestors before order was restored.

Marie-Thérèse Nlandu Mpolo-Nene was arrested that day at the Kin-Mazière police station; the headquarters of the Special Services police, where she had gone to visit six of her colleagues arrested the day before. She was charged with ‘organizing an insurrectionary movement’ and with ‘illegal possession of firearms.’ The first charge relates to a speech she made to supporters of Jean-Pierre Bemba outside the Supreme Court on November 20, 2006, in which she asked them to exercise their right to protest “in a disciplined way.”

She was held at the Kin-Mazière police station for one night before being transferred to the central prison in Kinshasa. Her lawyer visited her on November 24, 2006 and according to reports she has not been harmed physically.

Lawyer Nasser Zarafshan - Iran
The Observatory reported that, on November 13, 2006, lawyer Nasser Zarafshan, who is imprisoned at Evin prison[20] since August 2002, was severely beaten by prisoners who had just been transferred to Evin prison. Nasser Zarafshan is a lawyer, an author and a translator. He is a distinguished member of the Iranian Writers' Association, Kanoon, a member of the Committee on Serial Killings in Iran and a member of the Iranian Bar Association. He has acted as the legal representative of two of the families of Iranian writers who were assassinated in November 1998.

Reportedly, Nasser Zarafshan was very critical of the shortcomings in the official investigation into these murders. In October of 2000, members of the Judicial Organization of Armed Forces arrested him after he gave a speech in Chiraz in which he said that the intelligence services had murdered five Iranian intellectuals in Tehran in 1998.

In December of 2000 he was charged with publishing information about the assassinations and he was imprisoned. In February of 2002, he was tried in a military court behind closed doors with his lawyer present. The presiding judge was a prosecutor with the Judicial Organization of Armed Forces. On March 19, 2002 he was sentenced to five years in prison. The sentence consisted of two years for disseminating state secrets, three years for the possession of firearms, and 70 lashes for the possession of alcohol.

Nasser Zarafshan has denied the charge of weapons and alcohol stating that the authorities planted the items. On July 16, 2002 an appeals court upheld the sentence and he was arrested on August 7, 2002.

Iranian judicial organizations have failed to explain why Nasser Zarafshan, a civilian, was brought before the Judicial Organization of Armed Forces, the purpose of which is to try members of the armed forces and Revolutionary Guards for violations of the military code.

Nasser Zarafshan's health is extremely poor, he requires treatment of a specialist outside of the prison, and he has been denied medical care.

Lawyer Giorgi Getsadze - Georgia
On November 30, 2006, the Observatory reported information about the case of Giorgi Getsadze, a lawyer in the Public Defender's Office in Georgia.

A former employee of the Penitentiary claimed that there had been a number of money transfers made to detainees and he contacted the Public Defender's Office to report that in his view the money transfers were being used as a form of corruption. To verify the allegations, Giorgi Getsadze visited the Penitentiary and on November 1, 2006 he interviewed several people.

[20] Evin Prison is well known as housing a wing for political prisoners. It is the same prison where Kazemi, the photojournalist, was arrested for taking photographs.

Following his investigation, Giorgi Getsadze was accused of trying to obtain information by offering money to prison staff. Members of the Public Defender's Office have said that Giorgi Getsadze asked prison staff about the possibility of transferring money to the detainees, but that this was done in order to establish if the former employee's claim was true.

As a result of a telephone conversation with a colleague about his visit to the penetentiary, Giorgi Getsadze has been charged under Article 145 of the Georgian *Criminal Code* for 'taking illegal actions while studying a case.' Members of the Georgian police who reported Giorgi Getsadze to the authorities overheard the telephone conversation.

As a result of the charge under Article 145 of the *Criminal Code*, Giorgi Getsadze faces between one and three years in prison, or a 'restriction of freedom' that would involve being placed in a corrective centre. According to reports, the sanction 'restriction of freedom' is rarely used so it is more likely that he will be imprisoned.

Since the beginning of 2006, the Public Defender's office has been denouncing human rights violations in Georgian penitentiaries to the General Prosecutor's Office. Some cases have been investigated but no sanctions have been taken. According to the Observatory, the charges against Giorgi Getsadze are intended to intimidate him and to stop him from carrying out his work in support of human rights at the Public Defender's office in Georgia.

Lawyer Bui Thi Kim Thanh - Vietnam
On November 22, 2006, the Observatory published information about the case of Bui Thi Kim Thanh, a lawyer in Vietnam. On December 5, 2006 Amnesty International published further information about the case.

Lawyer Bui Thi Kim Thanh, has been committed to the Central Psychiatric Hospital in Bien Hoa, Saigon, where she is being held against her will, after being interrogated by the police. According to her family, on November 2, 2006, the police took her to a local psychiatric hospital where two doctors assessed her and found no evidence of a mental illness. The police then took her to Bien Hoa Hospital where she was admitted and remains confined.

Bui Thi Kim Thanh is an outspoken critic of Vietnam's land confiscation policies and an active defender of expropriated farmers and other victims of injustice, whom she has helped to file complaints and to seek compensation. She has also represented the Democratic Party of Vietnam[21] and continues to do pro-bono work defending low-income people.
According to reports, she has been given injections of unknown drugs against her will. There is no medical basis for the injections, and Amnesty International believes that this treatment constitues punishment by the authorities for her work on behalf of the unauthorised pro-democracy party.

[21] The Democratic Party of Vietnam (XXI) is an unauthorized organization established by prominent dissident Hoang Minh Chinh in June of 2006. It calls for a multi-party democracy and human rights.

One of the effects of the drugs is that she is not able to speak. Reportedly, the authorities offered to release her on the condition that she not talk to anyone about her treatment but she refused. As a result, she is not allowed to receive visitors. She has not been charged with an offence.

Lawyer Dionisio Díaz Garcia - Honduras
The following information has been reported about Honduran lawyer Dionisio Díaz Garcia, who was murdered on December 4, 2006 in Tegucigalpa, Hondura's capital. He was the main labour lawyer for the Association working in the Labour Rights for Vulnerable Populations program. He was in charge of providing legal defense and representation on labour rights to hundreds of security guards employed by 13 private security companies.

On December 4, 2006 he was driving to the Supreme Court and was shot dead by masked men on a motorcycle. They shot him in the head and the chest at close range.

Mr. Díaz Garcia had begun talking with the owners of several private security companies but he had not been able to communicate with two companies: Delta Security Services and Service & Seguridad Técnica de Honduras. Richard Swasey, a U.S. citizen, owns both companies. Due to Mr. Díaz Garcia's efforts, the Labour Court placed an embargo on two of the vehicles owned by Delta Security Services and the Service & Seguridad Técnica de Honduras. With inspectors from the Ministry of Labour, Mr. Díaz Garcia carried out an inspection of the areas where the security guards worked and found that labour rights were regularly violated.

In response to the legal actions taken against them, on September 19, 2006 representatives of the two companies forcefully entered the central office of the Association in Tegucigalpa. Following the September 19, 2006 encounter, a Honduran news website ran a paid advertisement claiming that the Association had not paid social security to its employees and making slanderous statements about the staff of Revistazo, the Association's online news journal. After the advertisement ran, a number of vehicles with tinted windows and without license plates were seen parked outside of the Association's central office and staff members reported being followed by the vehicles.

The Association and other Honduran non-governmental organisations reported the threats and harassment to President Zelaya on September 27, 2006 and to the Attorney General on September 28, 2006. In October and November, they also reported the threats and harassment to the Attorney General's Special Human Rights Office and the National Human Rights Commission but the authorities did not take any action.

On November 27, 2006, a fellow lawyer at the Association received a text message stating that Dionisio Díaz Garcia's life was in danger. A few days later, Donaldo Burke, a former agent of the Honduras General Bureau for Criminal Investigations contacted Mr. Díaz Garcia and insisted on having a private meeting to discuss the location of a vehicle that was in Mr. Díaz Garcia's custody and that had mysteriously disappeared, and to discuss concerns over the labour violations against the security guards. In response to the text message threats, to being followed and to the disappearance of the vehicle in his custody, Mr. Díaz Garcia, registered official reports with the General Bureau for Criminal Investigations and with the Office of the Public Prosecutor.

The General Bureau for Criminal Investigations did not act on his reports but did act on a report filed by Service & Seguridad Técnica de Honduras, which claimed that Mr. Díaz Garcia had stolen the disappeared vehicle. Similarly, the Office of the Public Prosecutor ignored Mr. Díaz Garcia's report but took legal action against him based on the report of the Service & Seguridad Técnica de Honduras. On December 4, 2006 Mr. Díaz Garcia was murdered.

Lawyer Abdolfattah Soltani - Iran
Amnesty International reported information about this case on December 8, 2006. Abdolfattah Soltani is a well-known human rights lawyer and the lawyer for the family of Zahra Kazemi, an Iranian-Canadian photojournalist murdered in Iran.

In October 2003, the Iranian Parliament released its inquiry into the death of Zahra Kazemi and concluded that Saeed Mortazavi, Prosecutor General of Tehran, and other members of the judiciary were directly involved in her death.

On July 25, 2005, during an in camera hearing in the Zahra Kazemi case in which the Court of Appeal tried to establish the circumstances of her death and the responsible parties, Abdolfattah Soltani questioned the independence and fairness of the trial by pointing out that the officials involved in the case had not been indicted by the court. Among the officials was Saeed Mortazavi.

On July 27, 2005, Saeed Mortazavi issued two warrants, accusing Abdolfattah Soltani of releasing 'secret and classified national intelligence information' in connection with his work defending an espionage case. Abdolfattah Soltani was arrested on July 30, 2005 when he took part in a sit-in protest at the Bar of Tehran against both a warrant for his arrest and a search warrant for his home. Abdolfattah Soltani was held in solitary confinement from July to September of 2005. In September of 2005 he was moved to a cell with another prisoner and his wife was finally allowed to visit him in the presence of a prison guard. He was not informed of the case against him and was not allowed access to his lawyers.

In December 2005, Saeed Mortazavi made the decision to replace the investigating judge originally appointed to deal with Abdolfattah Soltani's case with another judge apparently because he was considering releasing him on bail. On December 3, 2005 the new investigating judge extended the detention by three months.

In January of 2006, Abdolfattah Soltani was finally allowed to meet with his lawyers. He had not had access to his case file nor had he been formally charged with an offence. On March 5, 2006, after seven months in prison, he was released temporarily following a bail hearing. His bail had originally been set at 8 billion Rials (about $870,000 US), an amount that far exceeded normal bail requirements, but it was later reduced to 1 billion Rials (about $109,504 US) due to pressure from his lawyers.

His first court appearance was held on April 5, 2006. His lawyers had still not been allowed access to his case file. In addition to the charge of espionage, he was charged with 'insulting the regime', 'propaganda against the regime', and 'acting against national security' under the provisions of the *Iranian Penal Code*. The charges related to 4 cases in which he acted as lawyer, two nuclear espionage cases, one on behalf of Zahra Kazemi's family, and the case of a former intelligence Ministry official. His trial was set for July of 2006.

On July 16, 2006, the Revolutionary Court acquitted him of a previous charge of espionage but convicted him of 'disclosing confidential documents' with a sentence of 4 years in prison, and convicted of 'propaganda against the system' with a sentence of 1 year in prison. He is currently free on bail while he appeals the Court's ruling and awaits the decision.

Lawyer Saleh Kamrani - Iran

Saleh Kamrani is an Iranian Azerbaijani[22] lawyer who has been practicing law since 1999. He has represented a number of Iranian Azerbaijanis who have been detained in connection with their political or cultural activities and he has defended members of other ethnic groups, such as Iranian Arab writer Yusuf Azizi Bani Torof and Persian human rights defender Mohsen Sazegara. He has repeatedly suffered harassment at the hands of the Iranian security forces, including phone calls threatening him with arrest.

His telephone conversations, correspondence and contacts have been monitored and he and his wife have been interrogated and threatened by security officials when leaving or entering the country. Saleh Kamrani has also been prevented from leaving Iran on several occasions. In 2005 he was detained for three days with his brother in the town of Oromieh. He has written articles on human rights and has helped to organize training in human rights for lawyers and students.

At 3 pm on June 14, 2006, Saleh Kamrani made a routine telephone call to his wife, Mina Esgeri, and told her he was on his way home. When he did not show up, Mina Esgeri called the Ministry of Intelligence and officials there refused to confirm if they knew of his whereabouts.

It appears that Saleh Kamrani left the office to give an interview, but was accosted by three plain-clothes men. The men handcuffed him and forced him into their car. He was taken to Evin Prison where his handcuffs were removed and he was blindfolded. He was forced to undress and all his belongings were confiscated before being taken to cell 77, an extremely small cell that he described as a dungeon. The cell light was kept on permanently and he could hear the shouts and cries of other prisoners being tortured and interrogated.

On June 18, 2006 the Ministry of Intelligence acknowledged the detention. Saleh Kamrani was held in solitary confinement and reportedly subjected to psychological torture, including threats of arresting his wife. He was prevented from sleeping by being summoned for lengthy interrogations in the middle of the night. He spent 97 days in solitary confinement. He went on a hunger strike for seven days, demanding an end to the threats against his wife and the release of one of his lawyers, Ramin Mohammadkhani, who was arrested during his interrogations and brought to Evin Prison handcuffed.

[22] Iranian Azerbaijanis, mainly Shi'a Muslims and the largest minority in Iran, constitute 30% of the population.

On occasion other prisoners were brought to his cell so that he could not claim solitary confinement to the court. He was questioned on all aspects of his life. Tshe evidence that the Ministry of Intelligence had against him included speeches, interviews, and correspondence from the previous 15 years, recorded telephone conversations, email messages, statements from others about him, including statements from his brothers extracted under torture and a picture of Saleh Kamrani wearing a tie.[23] He was accused of contacting human rights organizations such as Amnesty International and of having contacts with foreigners, with Israelis in particular.

Reportedly the authorities discussed releasing him on bail with Mina Esgeri. She was told that if she paid 10 million Toumans,[24] more than $10,000 US, he would be released conditionally. She obtained the money and then was told the amount was changed to 50 million Toumans, about $54,000 US. She managed to raise the money and on July 6, 2006 she spent the day awaiting his release only to be told that the authorities had changed their mind about releasing him and had instead extended his detention. Following this incident, Mina Esgeri was allowed to visit him every two weeks in the presence of officers of the Ministry of Intelligence who requested that she and Saleh Kamrani speak only in Persian. They both refused.

Since Saleh Kamrani suffers from a heart condition he needs regular medication. During his detention he was denied access to medication. On August 9, 2006 Mina Esgeri said the prison doctors examined him and requested he have access to a heart specialist but the prison authorities denied it.

On September 13, 2006 Saleh Kamrani was allowed to meet with his lawyer for the first time. A second court hearing took place on September 18, 2006 at which he was charged under Article 500 of the Islamic Penal Code of Iran[25] .

Lawyer Yang Maodong (also known as Guo Feixiong) - China
The Human Rights Monitoring Group considered information published by the Observatory on January 17, 2007 about the case of Yuang Maodong, a lawyer in China. Further information was obtained from the Law Society of England and Wales.

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[23] Officials of the Islamic Republic of Iran are not allowed to wear ties.
[24] The official currency of Iran is the Rial but since but it has devalued so much that most people use the Touman, which is the unofficial currency. 1 Touman is the equivalent of 10 Rials.
[25] Article 500 states the following 'Whoever propagates in whatever manner against the system of the Islamic Republic of Iran or in favor of groups or organizations who oppose the system shall be sentenced to imprisonment from three months to one year.' Saleh Kamrani was sentenced to one year in prison suspended for five years. Officers of the Ministry of Intelligence were present at both court hearings.

Yang Maodong, also known as Guo Feixiong, is a lawyer with the Beijing based Shengzhi law office. Yang Maodong began providing legal assistance to Taishi villagers in July 2005 when the villagers wanted the elected chief of the village, Chen Jinsheng, dismissed. The government refused to accept the requests for his removal. As a result, the villagers staged a number of sit-ins and hunger strikes. Since that time, the local government has taken coercive measures against the villagers by arresting them and injuring them. Yang Maodong has been reporting the coercive measures on the Internet.

Yang Maodong was arrested on September 13, 2005 and he was released without charge on December 27, 2005. Between September 13 and October 4, 2005 he was held *incommunicado.* On February 3, 2006 he was detained for 12 hours and released the following day. Prior to his release, he was dragged out by a group of unidentified men who beat him violently. They reportedly twisted his arms and kicked his lower back in front of police officers who did not defend him.

On February 8, 2006 Yang Maodong issued an open letter to Chinese President Hu Jintao and to Premier Wen Jiabao protesting against the excessive use of force in government crackdowns on demonstrators and civil society. He was critical of the use of force in rural areas in the context of forced evictions where violence against a widening circle of human rights lawyers appears to be sanctioned by the authorities. He requested that the authorities engage in a dialogue with the villagers to avoid an escalation in rural land disputes and to ensure a guarantee of local democracy, press freedoms and the protection of human rights lawyers.

On the day he issued the letter he was detained for 26 hours in Beijing and was escorted home by three police officers the next day. Since that detention the authorities have monitored his house and his movements.

He was detained on September 14, 2006 before being formally arrested on September 30, 2006 on suspicion of taking part in an 'illegal business activity.' On October 19, 2006, the Guangzhou Public Security Bureau referred his case to the Guangzhou Municipal Prosecutor who sent the case back to the Public Security Bureau for further investigation. Since his detention he has been interrogated nearly one hundred times.

On September 29, 2006 his lawyers were finally allowed access to Yang Maodong at the Guangzhou Municipal Detention Centre at which time he told them that the conditions of his detention were very bad and that he had written a letter of complaint to the Prosecutor. The detention centre officials refused to deliver the letter.

According to the Observatory Yang Maodong's detention is connected to his involvement in defending the rights of the Taishi villagers, in the framework of their struggle against the corruption of Chen Jinsheng.

It is alleged that Yang Maodong was subjected to torture and degrading treatment while in detention. On January 11, 2007, while in detention, he told his lawyer that he had been handcuffed and shackled to his bed for more than 40 days. He also said that he was deprived of sleep for days and subjected to around-the-clock interrogation. At the time he shared this information with his lawyer he had been on a 25-day hunger strike in protest of his detention.

Sulieman al-Rushudi and Essam al-Basrawi - Saudi Arabia

The Human Rights Monitoring Group considered information published by Lawyers Rights Watch and Amnesty International on February 6, 2007 about the case of Sulieman al-Rushudi and Essam al-Basrawi in Saudi Arabia.

Amnesty International was informed about the incommunicado detention of at least ten human rights defenders including two lawyers, Sulaiman al-Rashudi and Essam al-Basrawi. Some of the other detainees may be lawyers but their professions remain unreported.

The men were arrested and are believed to be at risk of ill treatment. Some were arrested in the city of Madinah, while others were arrested in Bahra, a residential area of the city of Jeddah. Those in Bahra, had met to discuss the organization of peaceful activities in favour of democratic and political reforms in Saudi Arabia and they were arrested by officials of the General Intelligence Service.

The same officials from the General Intelligence Service stormed the home of Essam al-Basrawi. They destroyed his furniture and his personal belongings and they confiscated his books and his computer.

All the men arrested are well known for their peace activism and in the past they have engaged in the signing of petitions addressed to King Abdullah Bin Abdulaziz Al-Saud. The petitions have asked the King to initiate political and democratic reforms with respect to human rights.

Reportedly, the detainees are suspected of "illegally collecting money and passing it on to suspicious elements outside of the country" and the Ministry of the Interior issued a statement claiming the men were collecting money to "help terrorism". Since the arrests, relatives of those detained have asked, in vain, to be permitted to visit them. They have also requested that the men have access to lawyers.

On February 5, 2007, Essam al-Basrawi's son tried to visit his father to provide him with medicine because Essam al-Basrawi is ill and disabled. His request was denied and he was warned that he should never again ask to see his father.

Amnesty International reports that the Saudi Arabian authorities regularly hold detainees *incommunicado* when they are tortured and ill-treated. This can last for months or years and often ends when a confession has been obtained.

In March 2004, a group of reformists signed a petition calling for changes to the system of government. Some members of the group were arrested, including Sulieman al-Rushudi, but he was released after a few weeks. Others were held as prisoners of conscience and were only released a year later in 2005.

RESULTS OF INTERVENTIONS

The Treasurer sent an intervention letter, dated November 27, 2006, to the government of the Philippines expressing the Law Society's concern over reports of attacks and killings of lawyers and judges in the Philippines as a result of the discharge of their legitimate professional duties. Paul Copeland, Chair of the Human Rights Monitoring Group, in a letter dated November 30, 2006, sent copies of the letter of intervention to the President of the Integrated Bar of the Philippines informing him of the Law Society's intervention and indicating that we would value the opportunity to communicate with him in regard to what problems, if any, lawyers may be experiencing in that country.

The Law Society received a reply, dated 14 February 2007, from the National President José Vicente B. Salazar, of the Integrated Bar of the Philippines.

CONTACT THE LAW SOCIETY

Contact information for the Human Rights Monitoring Group:

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APPENDIX 3

Zimbabwe's Judicial System[26]

The following provides an overview of Zimbabwe's judicial system.

On 18 April 1980, the United Kingdom government formally granted Zimbabwe independence. Zimbabwe has a hybrid, or plural, legal system in the sense that the law currently in force was adopted from foreign jurisdictions and imposed into the country by settlers during the colonial era. Zimbabwe's legal system consists of the common law (non statutory or unwritten Anglo Roman Dutch law), legislation, case law, and customary law. The *Constitution* of Zimbabwe contains, among other things, a declaration of rights, makes provisions for the executive, sets out matters relevant to parliament, deals with the public service and the judiciary and sets out provisions relating to the police force and prison services.

[26] See http://austbar.asn.au/dmdocuments/The_State_of_Justice_in_Zimbabwe_-Final_Report_03_12_04.pdf. See also http://www.nyulawglobal.org/globalex/_edn1.

The justice system in Zimbabwe includes the Supreme Court, the High Court, the Administrative Court, the Magistrates' Courts, the office of the Attorney General and associated public prosecutors, and the legal profession. The Constitution contains various provisions, which provide for the separation of powers between the executive and the judiciary, the composition of the judiciary and for judicial independence.

The Legal Profession

The legal profession in Zimbabwe is regulated by the *Legal Practitioners Act 1981*, which provides for the registration of practitioners. Registration procedures for admission as a legal practitioner to the High Court remain in the hands of the court. Requirements for registration include that the practitioner should be a fit and proper person and that he or she be resident of Zimbabwe.

The LSZ is a regulating body of the legal profession in Zimbabwe. It has statutory recognition and is established under the *Legal Practitioners Act*. The LSZ was formed in 1981 to regulate the practice of law by registered legal practitioners in Zimbabwe. It is an autonomous and self-regulating body and it represents most lawyers in Zimbabwe. With an independent and competent legal profession, the LSZ provides a basis for an independent judiciary in Zimbabwe and the LSZ is acutely aware of this important responsibility that it has to the country. The LSZ is committed to the following objectives: promoting the study of the law, contributing, undertaking or making recommendations on legal training, controlling the admission of new members to the profession, maintaining a register of members, regulating the profession in respect of continuing training, disciplining, representing the profession and articulating its views on various issues, promoting justice, defending human rights, the rule of law and the independence of judiciary and generally controlling and managing the legal profession. The number of lawyers in Zimbabwe is approximately 600-800, of whom the majority practise in Harare and approximately 80 practise in Bulawayo.

Law Schools

There is currently one law school in Zimbabwe, the University of Zimbabwe Law School. The University offers a Bachelor of Laws Honours Degree, which is studied over a four-year period. The Judicial College of Zimbabwe also offers legal studies and was established to train Magistrates, Prosecutors and Judicial Officers such as clerks of court.

Zimbabwe Lawyers for Human Rights

Zimbabwe Lawyers for Human Rights ("ZLHR") is a not for profit human rights organization whose core objective is to foster a culture of human rights in Zimbabwe as well as encourage the growth and strengthening of human rights at all levels of Zimbabwean society through observance of the rule of law. ZLHR is committed to upholding respect for the rule of law and the unimpeded administration of justice, free and fair elections, the free flow of information and the protection of constitutional rights and freedoms in Zimbabwe and the surrounding region. It keeps these values central to its programming activities. The organization works in conjunction with partner organizations that deal in human rights and its promotion. The organization is perhaps the leading organization in terms of human rights issues as it offers free protection to human rights victims through free litigation. It also carries out mass public education programmes and it is involved in the protection and promotion of children's rights.

Justice in Zimbabwe and the state of the rule of law

In recent years, the international community generally and international legal circles in particular have increasingly raised concerns about the state of the rule of law and the justice system in Zimbabwe. A number of reports on the subject of the rule of law, the judiciary and human rights have been written, and are listed in the Bibliography of *A State of Justice in Zimbabwe.* The crisis in the rule of law and the justice system is usually taken to have commenced in the late 1999 when events related to land reform and a referendum on a proposal for amendments to the Constitution in 2000 have aggravated the crisis.

Vilification of the judiciary by the executive was not unprecedented prior to 1999, but it is then that the frequency and tenor of verbal attacks increased markedly and became unrelenting and vicious. In addition to verbal attacks, the judges were subjected to physical intimidation.

Members of the legal profession engaged in human rights law or cases touching upon politically sensitive areas have also been under profound pressure in recent years and the situation has deteriorated dramatically since 2000. There have been a number of reports of harassment, intimidation, attacks and arrests of lawyers as a result of the discharge of their professional duties. Reports indicate that the legal system has been distorted and subverted for the illegitimate maintenance of political power.

In May 2004, a Canadian delegation, including Raj Anand, Alison Armstrong, Grace-Eward Galabuzi, Alex Neve and Rhea Whitehead, went to South Africa and Zimbabwe to demonstrate solidarity and strengthen support for Zimbabwean and South African civil society groups and to learn how Canadian civil society can effectively influence policy makers in Canada, Zimbabwe and South Africa. In September 2004, the delegation produced its report *Zimbabwe Under Siege: A Canadian Civil Society Perspective*[27] . The report comments on the dramatic deterioration in the human rights of Zimbabweans, to the point where the legal system is virtually unrecognizable. The police, military, prosecution and judiciary – the pillars of the rule of law in a democratic society, have increasingly become partisan instruments of the state. In 2002, the Government passed two draconian laws to further its erosion of constitutional rights, more specifically freedom of expression.[28]

According to the Canadian delegation, "the position of the legal profession is particularly dire. Many lawyers and members of the judiciary feel isolated and forgotten. Human rights lawyers have been obstructed and assaulted while attempting to do no more than carry out their professional duties…the pattern has extended to the highest levels of the Zimbabwean judiciary, which historically was regarded with great respect."

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[27] Available on-line at http://www.amnesty.ca/amnestynews/upload/Zim_Mission_Report04.pdf.

[28] The *Public Order and Security Act* creates several criminal offences such as the making of abusive or false statements about the President, and requires anyone who organizes a public gathering to give the police four days' notice. The *Access to Information and Protection of Privacy Act* established a commission, which is empowered to register publishers of news media and accredit journalists. The provisions have been used to shut down the only independent daily newspaper.

The report makes a series of recommendations, including the following:

> Increased international solidarity: Canadian civil society groups need to continue to support Zimbabwean civil society through campaigning and lobbying, as well as by assisting with training and resource needs. It is especially important to increase solidarity between Canadian and Zimbabwean churches, unions, parliamentarians, human rights and media originations and legal associations.

A recent report written by various human rights organizations, including the International Bar Association, entitled *Zimbabwe: Human Rights in Crisis* (May 2007)[29] demonstrates how the principles of the rule of law and the independence of the courts in Zimbabwe have been severely compromised through intimidation of judges and lawyers.

South African Development Community Symposium on Administration of Justice

In September 2004, Zimbabwe Lawyers for Human Rights ("ZLHR") partnered with the LSZ and the SADC Lawyers Association ("SADCLA") to hold a symposium on the administration of justice in the SADC region. The Symposium came up with SADCLA Declaration on Administration of Justice and a Plan of Action, which emphasized among other things the importance of wider networking of the legal profession within the region to ensure best practices. Following the success of the symposium, it has been turned into an annual event. The topics addressed at the symposium indicate what the Zimbabwe Lawyers for Human Rights and the LSZ see as important and urgent issues to address. Some of the topics covered included but were not limited to:

1. The appointment processes of judges;
2. The development of a code of conduct for judges, lawyers within the region;
3. The rule of law, separation of powers and the judiciary;
4. The collaboration of civil society and legal professional associations with intergovernmental institutions such as the SADC, African Union, and African Commission on Human and Peoples' Rights;
5. Socio-economic rights within the context of forced in evictions in Zimbabwe and challenges for the administration of justice;
6. A general audit of human rights, the rule of law and independence of the judiciary within the region.

[29] *Zimbabwe: Human Rights in Crisis* available at www.redress.org/reports/zimbabweshadowreportmay07.pdf.

APPENDIX 4

ZIMBABWE - ICJ CONCLUDES HIGH-LEVEL MISSION TO INQUIRE INTO RECENT ARRESTS, DETENTION AND BEATINGS OF LAWYERS

11th June 2007

The International Commission of Jurists (ICJ) concluded on 9 June 2007 its five-day Mission to Zimbabwe to investigate the facts and law surrounding the reports of recent arrests, detention and beatings of lawyers.

The Honourable Claire L'Heureux-Dubé (Canada), former Justice of the Supreme Court of Canada and former President of the ICJ and Mr. George Kegoro (Kenya), Executive Director of the International Commission of Jurists, Kenya Section, represented the ICJ on this Mission. During the five days in Harare, Zimbabwe, the Mission met the Permanent Secretary of the Ministry of Justice, Legal and Parliamentary Affairs and the Attorney-General. The Mission regrets that its requests to meet with the Chief Justice of the Supreme Court and the Judge President of the High Court, as well as the Minister of Justice and the Minister of Home Affairs, were not answered. The Mission also met with the President and members of the Law Society, lawyers, senior advocates and law professors, as well as other civil society representatives. Below are the observations of the Mission, presented at a press conference in Johannesburg on Monday, 11 June 2007.

OBSERVATIONS OF THE ICJ MISSION TO ZIMBABWE

There have been well-known and documented patterns of executive interference in the independence of the judiciary and the legal profession in Zimbabwe over a number of years now and particularly since the beginning of 2007. However, the events of 4 May 2007 and the following days were clearly an escalation in the harassment and intimidation of the legal profession, particularly those lawyers who seek to represent in court opposition activists and other persons perceived to be unpopular with the Government.

The events of May 2007

The Mission was told that on Friday, 4 May 2007, two lawyers, Alec Muchadehana and Andrew Makoni, while representing opposition supporters, were arrested at the High Court by police. It later became clear that the police justified the arrests by asserting that they considered the lawyers had lied in an affidavit submitted to the court on behalf of their clients. Other lawyers, upon learning of the arrest of their colleagues, successfully applied to the High Court for their release. The police did not act on that order and the two lawyers were taken into custody, each held in a different police station. On Saturday, 5 May, the lawyers representing the two detained lawyers again successfully applied for their release. Again, these court orders were ignored by the police and the two lawyers were kept in custody, incommunicado and without medication and food. Their families were denied access and, according to the lawyers, were also threatened. For a third time, on Sunday 6 May, their representatives successfully applied for the release of the two lawyers. That court order was again ignored by the police. On Monday, 7 May, the two lawyers were charged with obstruction of justice and released on bail. The Mission has learned that they are awaiting trial.

While these two lawyers were kept in detention, police raided their offices and seized several documents. Two lawyers sent to represent them during the search demanded to see a search warrant but were also assaulted by police.

The Mission was informed that the lawyer representing the Attorney-General in court and who consented to the three release orders issued by the High Court was subsequently assaulted by the police, who apparently disapproved of his consent to the releases. The Attorney General, while not denying this incident, indicated to the Mission that the representative in question acted outside his authority. The Attorney-General considered the claims regarding the two lawyers to be mere allegations, although he indicated they would be investigated.

When he met the Mission, the Permanent Secretary of the Ministry of Justice was of the view that the police acted properly in arresting the two lawyers on the basis that they had committed a crime by allegedly lying in the allegations made in the affidavits, signed for and on behalf of their clients. The Permanent Secretary said he had not and would not investigate the matter. Following the events described above, the President of the Law Society convened a meeting of its members. It was decided to assemble at the High Court on 8 May and march peacefully to present a petition to various government officials, including the Minister of Justice and the Attorney-General. Although not legally required, the Law Society gave the police prior notice of the march. A number of members of the Bar, some fully robed, proceeded to the Court House, again informed the police about the purpose of their march and were told by them to disband on the pretext that such a march was illegal. The police then chased the lawyers with batons. Four lawyers, including the President of the Law Society, were loaded into a police truck, taken out of the city and beaten with batons to a point where some had thereafter to receive medical attention. The four lawyers were left by the police at the roadside and were later brought back to the city by their colleagues.

The Attorney-General told the Mission that such a march by lawyers for professional purposes was fully legal and the police may have made a mistake and acted in error in dispersing the march. However, he also indicated that the lawyers were also in error by needlessly notifying the police about the march which may, in his view, have induced the police to act in error. The Permanent Secretary, for his part, denied that any beatings took place and suggested that these incidents were stage managed to discredit the Government of Zimbabwe in the eyes of the international community.

Following the arrest and beatings of members of the Bar, the President of the Law Society attempted to file a complaint with several police stations, but each refused to register it claiming that they were not the proper police station to receive the complaint.

On the claims surrounding the march and the beatings, the Attorney-General indicated that the matter was under investigation by his office, but that the investigation had been hampered by the failure of the Law Society to submit a written complaint to his office as agreed at a meeting with them. However, the Mission was provided with a letter written by the Law Society to the Attorney-General, dated 22 May 2007. This letter enclosed a report about the general state of affairs of the legal profession, as well as a copy of a letter sent to the Deputy Commissioner, Crime, with more specific details of the events of 8 May, including the failed attempt to lodge a criminal complaint.

Conclusions and recommendations of the Mission

The Mission underscores that the information it received from the Law Society about the above incidents was corroborated by lawyers and other reliable persons with whom the Mission met during its stay in Harare.

The Mission is disturbed that the unjustifiable harassment, detention and beating of lawyers has only increased the tension between the Law Society and the Government. Such treatment is interfering with the proper functioning of the administration of justice, the role of lawyers and their independence and is making it difficult for lawyers to act for clients viewed by the Government as dissidents.

The fact that in the reported incidents the police repeatedly and blatantly ignored court orders is a clear contempt of the court and breaches the most fundamental principles of the rule of law. Ignoring court orders can only bring the administration of justice into disrepute and requires swift action by the judiciary and by the Government itself.

The Mission is greatly concerned about the role the police have been allowed to play in Zimbabwe in relation to judicial and legal institutions. Based on information received, it would appear that the police have taken upon themselves the unconstitutional role of overseer of both the Attorney-General and the courts in the performance of their independent functions. The Mission urges the Government to restrain the police and the Mission expresses its concern that the arbitrary actions of the police are apparently being tolerated by the courts and the Attorney-General.

The Mission finds that several fundamental rights have been violated in relation to individual lawyers during the incidents it has described. The lawyers taken into custody by the police were arbitrarily arrested and detained, with no apparent, justifiable basis in law. They were held incommunicado and the two lawyers who were not released as ordered by the court were denied their rights to due process, and their continuing detention was arbitrary. The Mission is concerned about the charges that still stand against two lawyers. The lawyers who were beaten suffered torture or ill-treatment and members of the Law Society have been denied their right to associate freely and to protest peacefully.

The Mission is astonished about the cavalier response that the attacks by police on members of the Law Society have elicited from relevant public authorities. It is the view of the Mission that, beyond the physical aspects of the attacks, they also represent a disturbing attack on the rule of law in Zimbabwe.

The Mission is also deeply concerned that the harassment of lawyers is being fueled, and the attacks by police legitimised, by what appears to be a systematic campaign by the less than independent media to vilify the Law Society and individual members of the Bar. Such a tactic can only aggravate further the relationship between the legal profession and the Government.

The Mission considers that the actions of the police against lawyers undermines the independence of the legal profession and their right and duty to carry out their professional obligations, including representing anyone suspected of a criminal offence. The contempt of court orders by the police is undermining further the independence of the judiciary.

The independence of lawyers and judges is a cornerstone of the rule of law. It is essential in a democratic state to protect the separation of powers, the fair application of the law and the rights of all people in the country, and to prevent arbitrary actions by the executive.

The rights and principles that the Mission considers have been violated in Zimbabwe in the incidents it has investigated, are enshrined in the Constitution of Zimbabwe, as well as international treaties that Zimbabwe has ratified, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. The independence of the legal profession is also guaranteed in the UN Basic Principles on the Role of Lawyers.

In conclusion, the Mission considers that the present level of tension between the Government and the legal profession, if not resolved soon, will only deepen the damage to the rule of law in Zimbabwe and the rights of all people in the country to seek legal representation. The Mission urges the Government to end the harassment of lawyers, to control the police and hold them accountable, and to restore a fundamental democratic principle that is pivotal for the rule of law in Zimbabwe - the independence of the legal profession.

FOR INFORMATION

EQUALITY AND ACCESS TO JUSTICE TEMPLATE

81. On March 10, 2005, the Equity and Aboriginal Issues Committee adopted an Equality Template, which included definitions of “equality” and “diversity” to be applied by the Law Society. The Committee also recognized the unique position of Aboriginal and Francophone communities. The Equality Template assists in identifying the potential impact, positive or negative, of policies and initiatives on Aboriginal, Francophone and equality-seeking communities. The instrument is also useful to determine whether there are alternative ways to proceed that would alleviate negative impacts on Aboriginal, Francophone and equality-seeking communities and promote equality. In March 2005, the Equality Template was presented to Convocation for information.

82. The Template guides Law Society benchers and staff in considering equality principles when developing policies, projects and initiatives. The questions in the Equality Template were integrated within the Senior Management Team Initiative Proposal Form and the Policy Secretariat Policy Development Template.

83. Since 2005, the Equality Template has been used in decision-making processes, policy development activities, implementation of policies, development of programs and initiatives, and in consultations undertaken by the Law Society. For example, the template is used in,
    a. Senior Management Team’s decision making processes;
    b. policy development activities;
    c. implementation of programs;
    d. development and management of projects;
    e. development of resources and tools; and
    f. training and education programs.

84. In 2007, the Access to Justice Committee considered whether the Equality Template could be expanded to include an analysis of the impact of policies, programmes and initiatives on access to justice. It adopted a modified version of the Equality Template at its September 5, 2007 meeting. It also recommended that the revised template be adopted by the Equity and Aboriginal Issues Committee and presented jointly by the two committees to Convocation for information.

REPORT OF THE ACTIVITIES OF THE DISCRIMINATION AND HARASSMENT COUNSEL, JANUARY 1, 2007 TO JUNE 30, 2007

BACKGROUND

85. Subsection 20 (1) (b) of By-law 11 – *Regulation of Conduct, Capacity and Professional Competence* provides that, unless the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) directs otherwise, the Discrimination and Harassment Counsel (the DHC) shall make a report to the Committee not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.

86. Subsection 20(2) of By-law 11 provides "The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting".

87. On September 6, 2007, the DHC Program presented to the Committee, pursuant to Subsection 20(1)(b) of By-law 11, the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* for the period January 1, 2007 to June 30, 2007 (Appendix 5). The Equity Committee presents the report to Convocation for information, pursuant to Subsection 20(2) of By-law 11.

SUMMARY OF REPORT

88. During the reporting period, 75 individuals contacted the DHC with new matters.

89. During the reporting period, 2 individuals communicated with the DHC in French. The remaining contacts with the Program were all in English.

90. Seventeen (17) individuals raised specific complaints of discrimination or harassment by a lawyer, law firm, legal department or legal clinic in Ontario. Of the 17 new discrimination and harassment complaints against lawyers or law firms, 12 were from the public and 5 were from members of the legal profession.

91. Of the 5 complaints made by the legal profession, one was made by a law student. All other complaints were from lawyers. Four complaints were made by women. All complaints from members of the profession arose in the context of the complainant's employment or job interview. The complaints were based on the following prohibited grounds of discrimination: sex (2 complaints), disability (2 complaints), family status (1 complaint) and age (1 complaint).

92. Of the 12 lay individuals who contacted the DHC, 9 were women. The number of public complaints can be summarized under the following grounds: sex (7 complaints), race (2 complaints), disability (2 complaints), religion (1 complaint) and sexual orientation (1 complaint).

93. No formal mediation was conducted during this reporting period. However, at the request of complainants, the DHC intervened informally and communicated with respondents in several cases. In each case, the matter was resolved.

RETENTION OF WOMEN IN PRIVATE PRACTICE - UPDATE

BACKGROUND

94. On September 26 and 27, 2005, the Law Society held a benchers' planning session to identify core issues that would drive policy making between 2005 and 2007. Benchers identified the issue of retaining women in private practice as a priority, and decided that the Law Society should develop strategies to address this issue.

95. As a result, the Committee created the Retention of Women Working Group with a mandate to,
    a. identify best practices in law firms and in sole practice to enhance the retention of women;
    b. determine the role of the Law Society in addressing the issue of retention of women in private practice;
    c. design and implement strategies for medium and large law firms to retain women;
    d. develop strategies to respond to the socio-economic needs of women in small firms and sole practices including the viability of their practices as well as their unique child-care challenges; and
    e. take into account the needs of women from diverse communities.

96. Members of the Working Group are,
    a. Laurie Pawlitza (Co-Chair);
    b. Bonnie Warkentin (Co-Chair);
    c. Nathalie Boutet (Representative of the Association des juristes d'expression française de l'Ontario - AJEFO);
    d. Marion Boyd;
    e. Kim Carpenter-Gunn;
    f. James Caskey;
    g. Soma Choudhury (Representative of the Equity Advisory Group);

h. Paul Copeland;
i. Katherine Hensel (Representative of Rotiio> taties Aboriginal Advisory Group);
j. Janet Minor;
k. Julie Ralhan;
l. Linda Rothstein;
m. Mark Sandler;
n. Joanne St. Lewis; and
o. Beth Symes.[30]

97. The Retention of Women Working Group met on January 25, 2006 to set out the preliminary framework for addressing the issue of retention of women in private practice in large, medium and small firms and women in sole practices. The Working Group decided to focus on identifying solutions and developing practical tools and best practices through a comprehensive consultation with women lawyers and law firms. It was decided that the consultation would also serve as a catalyst to create change in the legal profession and to enhance awareness about these issues and possible solutions.

98. The Working Group wished to avoid duplicating studies that have already been done on the issue of retention of women in private practice. The objective of consulting with women lawyers and law firms was to provide practical solutions and prospective models for the retention of women in private practice. An extensive review of the existing findings indicates that, although law firms understand the costs associated with the departure of lawyers from private practice and are committed to addressing this issue, concrete and comprehensive solutions have not been identified.

99. The Law Society retained the services of the Gandalf Group to conduct the consultation with women lawyers and managing partners of law firms. The Gandalf Group presented its report to the Working Group in February 2007, which included proposed best practices for the legal profession.

100. The Retention of Women Working Group also created an Expert Advisory Group (the "Expert Advisory Group") of women in large, medium and small law firms and in sole practices across the province to provide advice in developing its recommendations. Members of the Expert Advisory Group are,
a. Aida Abraha, Rehovos Law Chambers, Toronto;
b. Lisa Borsook, WeirFoulds LLP, Toronto;
c. Gina Brannan, Brannan Meiklejohn Barristers, Toronto;
d. Georgina Carson, MacDonald & Partners LLP, Toronto;
e. May Cheng, Fasken Martineau Dumoulin LLP, Toronto;

[30] The membership of the Working Group has changed since its inception. The following individuals have also participated in the Working Group: Justice Laurence Pattillo, Andrea Alexander, Ritu Bhasin (Representative of the EAG), Dr. Richard Filion, Holly Harris, Thomas Heintzman and Tracey O'Donnell.

f. Kirby Chown, McCarthy Tetrault LLP, Toronto;
g. Carole Curtis, Barrister and Solicitor, Toronto;
h. Neena Gupta, Gowling Lafleur Henderson LLP, Kitchener;
i. Julia Holland, Torys LLP, Toronto;
j. Alison Hurst, Counsel, Toronto;
k. Freya Kristjanson, Borden Ladner Gervais LLP, Toronto;
l. Mary-Jo Maur, Barrister and Solicitor, Kingston;
m. Noa Mendelsohn Aviv, Canadian Civil Liberties Association;
n. Lana Nakonechny, Dickson MacGregor Appell LLP, Toronto;
o. Josée Forest-Niesing, Lacroix Forest LLP/S.R.L, Sudbury;
p. Sue-Lynn Noel, Owens, Wright LLP, Toronto;
q. Cynthia Petersen, Sack Goldblatt Mitchell LLP, Toronto;
r. Joanne Clarfield-Schaefer, Bennett Jones LLP, Toronto;
s. Jennifer Sims, Law Society of Upper Canada;
t. Victoria Starr, Barrister and Solicitor, Toronto;
u. Deborah Watkins, Daoust Vukovich LLP, Toronto;
v. Jennifer Watson, Barrister and Solicitor, Toronto;
w. Heather Williams, Cavanagh Williams, Ottawa; and
x. Ruby Wong, Cassels Brock & Blackwell LLP, Toronto.

101. The Expert Advisory Group and the Working Group met throughout 2006 and 2007 to review findings in this area and develop recommendations for the Committee's consideration. This update report provides a summary of the findings that will be relied upon to develop the Retention of Women Working Group's recommendations. The Working Group expects to present a final report, including recommendations, to Convocation in the fall 2007.

EQUITY PUBLIC EDUCATION SERIES – FALL 2007

102. Law and Mental Health: Legal Rights and Interests of Culturally Diverse Clients (Organized in partnership with the South Asian Legal Clinic of Ontario)

Date: October 15, 2007
Time: 2:00 p.m. – 5:00 p.m.
Location: Donald Lamont Learning Centre

103. Louis Riel Day – Environmental Co-Management: The First Nation Experience and Implications for the Métis Community

Date: November 15, 2007
Time: 4:00 p.m. – 6:00 p.m.
Location: Donald Lamont Learning Centre
(Reception will follow at 6:00 p.m. in Convocation Hall)

APPENDIX 5

REPORT OF THE ACTIVITIES OF THE DISCRIMINATION AND HARASSMENT COUNSEL FOR THE LAW SOCIETY OF UPPER CANADA

(for the period from January 1 to June 30, 2007)

Prepared by:
Cynthia Petersen
Discrimination and Harassment Counsel

A. OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

1. During this reporting period (January 1 to June 30, 2007), 75 individuals contacted the DHC Program with a new matter.[31] The volume of new contacts was distributed as follows:

(see graph in Convocation Report)

2. Of the 75 individuals who contacted the DHC during this reporting period, 50 (67%) used the telephone to make their initial contact and 25 (33%) used email.

3. The DHC provided services to two callers in French. The remaining contacts with the Program were all in English.

B. SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

4. Of the 75 new contacts with the Program, 17 individuals raised specific complaints of discrimination or harassment by a lawyer, law firm, legal department or legal clinic in Ontario.

5. Of the 17 new discrimination and harassment complaints against lawyers, 12 were made by members of the public and 5 were made by members of the legal profession.

[31] Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same matter are not counted in this number.

C. COMPLAINTS FROM WITHIN THE LEGAL PROFESSION

6. One of the complaints from within the profession was made by a law student. All other complaints from within the profession were made by lawyers called to the bar.

7. Of the 5 complaints from within the legal profession, 4 were made by women (including one by a female law student). Only one complaint from within the profession was made by a man.

8. All of the complaints from within the legal profession arose in the context of either the complainant's employment or a job interview.

9. The following grounds of discrimination were raised in the complaints from within the legal profession: sex, disability, age and family status.

10. Two (2) of the complaints were based on sex. Specifically:
    a. a female associate complained about sexual harassment by a male partner in her law firm; and
    b. a female associate complained about workplace reprisals by her firm after the end of a consensual sexual relationship that she had with a male senior partner in the firm.

11. Two complaints were based on disability:
    a. a male lawyer complained that his employment in a law firm was terminated because of his mental disability; and
    b. a female law student reported that she was asked about her hearing impairment in a job interview, in a manner that suggested that her disability would be a negative factor in the firm's hiring decision.

12. One complaint was based on family status. A female associate reported that her law firm was discriminating against her and refusing to accommodate her as a single mother.

13. One complaint was based on age. A female law student who self identified as a "mature student" reported that she was asked about her age in a job interview with a law firm.[32]

[32] This was the same student who was asked about her disability in the job interview (see above).

14. In summary, the number of complaints[33] in which each of the following prohibited grounds of discrimination was raised are:

a.	sex	2	(both sexual harassment)
b.	disability	2	
c.	family status	1	
d.	age	1	

Grounds Raised in Complaints by Members of the Profession

(see graph in Convocation Report)

D. PUBLIC COMPLAINTS

15. Of the 12 complaints by members of the public, 9 were made by women and 3 were made by men.

16. Of the 12 public complaints:
   a. involved clients complaining about their own lawyer or about a lawyer they had sought to retain;
   b. 3 arose in the context of the complainant's employment;
   c. 4 involved litigants who were complaining about the conduct of opposing counsel in their cases;
   d. 1 involved an investigator who was complaining about a lawyer representing one of the parties involved in the investigation; and
   e. 1 involved a person who complained about a lawyer who was a tenant in her building.

17. The public complaints raised one or more of the following grounds of discrimination: sex, race, disability, sexual orientation and religion.

18. Seven (7) of the public complaints were based (in whole or in part) on sex as a ground of discrimination:
   a. one man complained about anti-male sexist discrimination by opposing counsel in a custody dispute;
   b. one woman complained about sexual harassment by opposing counsel in a family court matter;
   c. two women employed in law firms (one as a law clerk and the other as a secretary) complained about sexist discrimination and sexual harassment by their respective male bosses;
   d. a female client complained about sexist remarks that were made by her own female lawyer;[34]

[33] These numbers do not add up to 5 because some complaints involved multiple grounds of discrimination.

[34] This client also complained about racialized insults uttered by her lawyer (see below).

e. one female client complained about sexist harassment by her own male lawyer; and
f. one woman complained about sexual harassment by a male lawyer who was a tenant in her building.

19. Two (2) complaints were based (in whole or in part) on race. Specifically:
a. a woman of mixed-race reported that her female lawyer uttered racialized insults at her in anger;[35] and
b. a Chinese man complained that opposing counsel made discriminatory racist remarks about him and his colleagues in correspondence related to litigation.

20. Two complaints were based on disability:
a. a disabled client complained about discrimination by a lawyer that she sought to retain for civil litigation; and
b. a legal assistant employed in a law firm complained that her employer failed to accommodate her disability.

21. One complaint was based on religion. A man complained that opposing counsel in a custody dispute made discriminatory derogatory remarks about his Christian faith.

22. One complaint was based on sexual orientation. A lesbian retained to conduct an investigation reported that counsel for one of the parties involved in the investigation harassed her based on her sexual orientation.

23. In summary, the number of complaints[36] in which each of the following grounds of discrimination was raised are as follows:

a.	sex	7 (including 4 sexual harassment)
b.	race	2
c.	disability	2
d.	religion	1
e.	sexual orientation	1

(see graph in Convocation Report)

E. EXAMPLES OF RECENT COMPLAINTS

24. The following are examples of some elements of the discrimination and harassment complaints received by the DHC during this reporting period:
a. A female associate complained that a male partner in her law firm repeatedly suggested to her that she should wear make-up and shoes with stiletto heels to attract male clients.

[35] She also complained about sexist remarks made by the lawyer (see above).
[36] These numbers do not add up to 12 because some complaints were based on multiple grounds of discrimination.

b. A female client complained that her own (male) family law lawyer, who knew she had been a victim of domestic abuse in her marriage, repeatedly told her to "shut up" and said that he "understood why her husband had left her" because she was "difficult".
c. A disabled law student was asked in an articling job interview at a litigation boutique how she thought her hearing impairment would hurt her in the courtroom.
d. A female client of mixed race complained that her own female lawyer was repeatedly rude to her and made sexist and racist remarks, including a comment about how she "didn't look like a normal human being".
e. A female associate who had a consensual sexual relationship with a senior male partner in her law firm complained about employment reprisals (eg. unwarranted poor performance appraisals, ostracization, poor quality of work) after the affair ended. She left the firm claiming that it had become a poisoned work environment.
f. A female law clerk reported that her male boss repeatedly made uninvited sexual advances toward her ("I can see you're interested in me", "if you sleep with me I'll take you away on vacation", "I like your short skirt", etc.) She rejected his advances and he subsequently gave her unwarranted negative job references when she sought employment elsewhere.
g. A male associate complained that his employment was terminated by a law firm because he suffers from depression and anxiety.
h. A female associate who is a single mother of two young children reported that she was refused flexible hours and flexible working arrangements to accommodate her child care responsibilities, and complained that she was discriminated against at her firm (in terms of compensation and quality of work) because she requested this accommodation.

F. SERVICES PROVIDED TO COMPLAINANTS

25. Complainants who contacted the DHC were advised of various avenues of redress open to them, including:
a. filing an internal complaint within their workplace;
b. filing a complaint with the Ontario Human Rights Commission;
c. filing a complaint with the Law Society; and
d. contacting a lawyer for advice regarding other possible legal action.

26. Complainants were also provided with information about each of these options, including:
a. what (if any) costs might be involved in pursuing an option;
b. whether legal representation is required in order to pursue an option;
c. how to file a complaint or make a report (eg. whether it can be done electronically, whether particular forms are required, etc.)
d. the processes involved in each option (eg. investigation, conciliation, hearing, etc.)

e. what remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.); and
f. the existence of time limits for each avenue of redress.

27. Complainants were told that the options available to them are not mutually exclusive.

28. Complainants were given information about who to contact in the event that they decided to pursue any of their options.

29. In some cases, upon request, strategic tips were provided to complainants about how to handle a situation without resort to a formal complaints process (eg. confronting the offender, documenting incidents, speaking to a mentor).

30. Some complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights commission, or other organizations.

31. In addition to being advised about the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program. Where mediation was offered, the nature and purpose of mediation were explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in reaching a mutually satisfactory resolution of the complaint.

32. No formal mediation sessions were conducted during this reporting period. However, at the request of complainants, the DHC intervened informally and communicated with respondents in a number of cases in an effort to facilitate a resolution of the complaint. In each case, a resolution was reached.

G. SUMMARY OF GENERAL INQUIRIES

33. Of the 75 new contacts with the DHC during this reporting period, 26 (35%) involved general inquiries relating to equity issues within the Program's mandate. These inquiries included:
a. questions about the scope of the DHC Program's mandate;
b. questions about the services offered by the DHC;
c. requests from the public for promotional materials about the DHC Program;
d. requests for educational seminars on discrimination and harassment issues; and
e. inquiries about the data collected by the DHC.

H. PROMOTIONAL ACTIVITIES

34. During this reporting period, the DHC spoke about the Program and about professional responsibility to the 1st year class of students at the Faculty of Law at Windsor University. She also participated in a panel at the University of Toronto (Faculty of Law) at a Conference on Equity in the Legal Profession, where she disseminated data collected in the Program.

35. Periodic advertisements were placed (in English and French) in the Ontario Reports to promote the Program. The DHC website was also maintained.

36. French, English, Chinese and braille brochures for the Program continue to be circulated to legal clinics, community centres, libraries, law firms, government legal departments, and faculties of law.

I. MATTERS OUTSIDE THE DHC MANDATE

37. During this reporting period, the DHC received 32 calls/emails relating to matters outside the Program's mandate.

38. These contacts included complaints about workplace harassment or discrimination in non-legal settings, discrimination and harassment complaints against judges, and complaints against lawyers that did not involve any human rights issues (eg. allegations of breach of confidentiality or unethical conduct, client billing disputes, etc.) In addition, several individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.

39. All of these individuals were referred to other agencies, including the LSUC's Lawyer Referral Service. An explanation of the scope of the Program's mandate was provided to each person.

40. Although there is a relatively high volume of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

Re: Human Rights Monitoring Group

It was moved by Ms. Ross, seconded by Mr. Anand, that Convocation approve the following recommendations:

a. That the Human Rights Monitoring Group ("Monitoring Group") explore the possibility of developing a network of organizations, and work collaboratively with them, to address human rights violations against judges and lawyers.
b. That the Monitoring Group be authorized to collaborate with the Law Society of Zimbabwe (the "LSZ") to assist it in strengthening its self-regulation capabilities and the independence of the profession.

Carried

ROLL-CALL VOTE

Aitken	For	Lawrie	For
Anand	For	Lewis	Against
Backhouse	For	McGrath	Against
Banack	Against	Millar	For
Campion	For	Minor	For
Carpenter-Gunn	For	Pawlitza	Abstain
Caskey	Against	Porter	Against
Conway	Against	Potter	For
Crowe	Against	Pustina	For
Curtis	For	Rabinovitch	For
Dickson	For	Ross	For
Dray	Abstain	Rothstein	For
Epstein	Abstain	Ruby	For
Finlayson	Against	St. Lewis	For
Go	For	Schabas	For
Gottlieb	For	Sikand	For
Halajian	Against	Silverstein	Against
Hartman	For	C. Strosberg	For
Heintzman	For	Swaye	For
Henderson	Against	Symes	For
Krishna	Against	Warkentin	For
		Wright	For

Vote: 28 For; 12 Against; 3 Abstentions

Items for Information

- Equality and Access to Justice Template
- Report of the Activities of the Discrimination and Harassment Counsel – January 1 to June 30, 2007
- Retention of Women in Private Practice Project – Update
- Equity Public Education Series – 2007

REPORT NOT REACHED

Emerging Issues Committee Report

Report to Convocation
September 20, 2007*

Emerging Issues Committee

Committee Members
Ron Manes, Co-chair
Bonnie Warkentin, Co-chair
Robert Aaron
Paul Copeland
Susan Elliott
Richard Filion
Holly Harris
Allan F. Lawrence
Janet Minor
Julian Porter
Joanne St. Lewis

Purpose of Report: Decision

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

* deferred from March 29, April 26, May 25 and June 28, 2007 Convocations

COMMITTEE PROCESS

1. The Emerging Issues Committee ("the Committee") met on January 10, 2007. In attendance were Ron Manes and Bonnie Warkentin (Co-Chairs), Paul Copeland (by telephone), Allan Lawrence, Holly Harris, Julian Porter and Joanne St. Lewis. Staff in attendance were Katherine Corrick, Jim Varro, Roy Thomas and Allyson O'Shea.

DISSOLUTION OF THE EMERGING ISSUES COMMITTEE

MOTION

2. That Convocation approve the dissolution of the Emerging Issues Committee.

Background

3. The Emerging Issues Committee ("the Committee") was created as a standing committee of Convocation in July 2001 and tasked with "providing long-range intelligence on issues of concern to the profession". The Committee's original mandate in By-Law 9 was as follows:

> The mandate of the Emerging Issues Committee is to monitor emerging policy issues affecting the Society and the legal profession that do not fall directly within the jurisdiction of any other standing committee, to undertake and direct research into such policy issues and to develop for Convocation's approval strategic plans and other proposals relating to such policy issues.

4. After their first meeting, the new Committee's co-chairs reported to Convocation in November 2001 seeking an amendment to the mandate. The co-chairs felt it was "inevitable" that in "most cases", issues of concern to the profession would directly impact on issues of interest to other standing committees or task forces. The co-chairs did not want the Emerging Issues Committee to be restricted in the matters that it could consider, and asked that the words, "that do not fall directly within the jurisdiction of any other standing committee," be deleted from the Committee's mandate. Convocation agreed. The current mandate of the Committee, now in By-Law 3 – Benchers, Convocation and Committees, is as follows:

> The mandate of the Emerging Issues Committee is to monitor emerging policy issues affecting the Society and the legal profession, to undertake and direct research into such policy issues and to develop for Convocation's approval strategic plans and other proposals relating to such policy issues.

Evolution of the Committee and Reasons for Dissolution

5. The Committee has noted that over time, its role and function have shifted away from its stated mandate. The Committee has also met less frequently in the past two years. In the Committee's view, these developments are primarily the result of

   a. a mandate that, if fully realized, would require an allocation of resources that is not possible to achieve,
   b. the Committee performing a "triage" function in initially reviewing issues and then referring them to other appropriate committees or to discrete task forces to study (e.g. the task force on issues relating to sole practitioners and small firms, and the task force on corporate governance)[1] ,
   c. improved processes for dealing with new issues at the Society, and
   d. a more experienced staff who facilitate policy development for benchers' decision-making in Convocation.

6. After thoughtful consideration, the Committee has concluded that the dissolution of the Emerging Issues Committee would be appropriate, for the following reasons.

[1] For example, the Committee's issue relating to access to a lawyer in smaller communities was subsumed within the Sole Practitioner and Small Firm Task Force and the issue of priorities and planning was subsumed within the Governance Task Force.

The Committee's "Triage" Function

7. In many cases, the Committee was assigned issues that it quickly realized would have more appropriately been assigned to other standing committees or to a task force. This effectively saw the Committee fulfilling a "triage" function, increasingly so in recent years. What the first co-chairs perceived at the outset – that the majority of issues that would be considered by the Committee would interest or impact on the work of other committees – has indeed become the case. The Committee essentially sorted new issues to determine their appropriate "home" within one of the other established committees or whether a task force was required.

8. Exceptions to this "triage" function have been few. In the past five years, the Committee undertook significant work on three projects:

   a. An examination based on the core values of the profession which led to referrals to the Professional Regulation Committee for recommended regulatory reforms and to Convocation's creation of a Governance Task Force;
   b. Review of United States legislation, The *Sarbanes-Oxley Act*, and the resulting recommendations, through the Professional Regulation Committee, for further regulatory reforms to address the lawyer's role when he or she discovers corporate wrongdoing; and
   c. Review of intellectual property professionals' attempt to obtain a legislated agent-client privilege.

9. The Committee understood early in these projects that these matters would eventually be referred to other Committees or groups. The first two issues, as noted, were referred to the Professional Regulation Committee for what would become amendments to the *Law Society Act*, the By-Laws and the *Rules of Professional Conduct*. The third item was referred to the Federation of Law Societies of Canada, given its national scope. A committee was established there to carry on with the work on that subject.

10. It has been over a year since the Committee has produced any significant analysis of new issues. Moreover, it is the Committee's view that even the above-mentioned policy issues could have been assigned to other standing committees of Convocation, or alternatively, assigned to a new task force or working group formed specifically for those issues.

11. Accordingly, the Committee believes that the current triage function of the Committee is neither necessary nor the best use of resources.

Improved Channeling of Policy Issues

12. The manner in which issues arriving at the Society are reviewed and assigned has improved in the past few years.

13. Issues relating to the Society's mandate find their way to committees and, if necessary, Convocation in a number of ways. Benchers and staff become aware of issues through colleagues, political or other networks and through legal and mainstream media. Typically, these issues have already "emerged". Benchers and staff, the latter through the CEO or Director of Policy, bring these issues to the attention of the Treasurer. On

occasion, benchers will approach staff regarding new issues or matters of concern. These are then reviewed and appropriate action is taken to address them.

14. With increasingly experienced staff in the policy and other key departments, matters are quickly channeled to the appropriate group, if required, for consideration. This enhances the process of information sharing among benchers, staff, and the Treasurer. This process, although still informal, has become sufficiently sophisticated so that new issues of importance to the Society are appropriately and quickly assessed and routed accordingly.

15. Convocation's adoption of recommendations of the Governance Task Force to improve Convocation's priority-setting responsibilities, of which this process is a part, will bring more structure to priority planning and priority setting. In particular, the recommendation that Convocation institute a full review of priorities as part of plan to achieve the Society's strategic objectives will envelope the Committee's forward-looking responsibilities and make its separate existence redundant.[2]

Bencher, Staff and Financial Resource Issues

16. It appears that, initially, the Emerging Issues Committee was intended to proactively determine new issues on the legal horizon in order to provide an analysis of "not yet emerged" issues that were relevant to the Law Society's mandate. This was never realized, as to do so would require substantial use of the Society's policy staff (and others) and may involve significant financial expenditures that might be difficult to link to any specific regulatory priority.

17. With respect to staff, when the Law Society restructured its governance in 1996, the number of standing committees of Convocation was reduced to four. When the Emerging Issues Committee was created in 2001, it brought the number of standing committees to six. The number of committees has since grown to 13. The number of Policy Counsel in the Policy Secretariat who support the work of the committees, their working groups and stand-alone task forces has remained at three since 1996, with the more recent addition of Counsel to the Office of the Director of Policy.

18. While the Policy staff has gained experience over the years and has become better at handling these increased responsibilities, appropriate allocation of these human resources must be observed. Practically speaking, these resources are not available for the type of exercise described in paragraph 16. Policy Counsel attend the meetings of Convocation and all committees. Policy Counsel draft the required Reports to Convocation and Committee Agendas on a two-week cycle during the bencher year for the vast majority of these committees and groups. In addition, the task of scheduling meetings and finding meeting rooms for 13 different committees has also become exceedingly challenging for staff. To fulfill the proactive function described above in a meaningful way, additional resources, and the related financial expenditure, would inevitably be required.

[2] These recommendations were adopted by Convocation on March 29, 2007.

19. In any event, in the Committee's view, it is questionable whether this type of forward-looking initiative would have borne results such that the Society would have been "ahead of the curve" in policy development related to the Society's mandate. The Society has improved, and continues to improve, its ability to take timely action on information that comes to the Society, as previously described.

20. At a higher level, the Committee considered its role within the overall corporate governance structure. The Committee's view is that responsible use of financial and human resources makes the continuation of the Committee unnecessary. Time that benchers devote to the Committee, and the associated travel and accommodation expense for out of town benchers, could be better utilized in more focused work that is directly linked to the Society's governance mandate.

21. The dissolution of the Committee will not affect the integrity of the Society's ability to govern the profession, nor impact negatively on the manner in which the benchers organize themselves corporately for the Society's governance responsibilities. The Committee's view is that it is not contributing significantly to the work of Convocation, and that resources devoted to it may be more usefully applied elsewhere.

Other Options Considered

22. The Committee briefly considered other options for revamping the Committee's structure. For example, the Committee considered transforming itself into a "brainstorming" group with a more philosophical focus that would include a multi-disciplinary element, such as non-bencher lawyers and academics. Another option would be to have the Committee continue without any permanent members, other than a named chair, so that it could be called upon on an *ad hoc* basis to deal with defined issues. Under that model, the Committee could then be populated for those specific issues.

23. The Committee favoured elements of the latter option. However, it determined that creating a committee on an *ad hoc* basis for a specific issue really amounts to the creation of a task force, something which is currently done by Convocation when deemed necessary.

Current Processes and Recommended Improvements are Sufficient

24. The Committee favours the current process whereby the Treasurer and Convocation assign new policy issues to the appropriate standing committee. Where a new issue of importance to the Society does not fall within the mandate of one of the standing committees, the Treasurer should continue to use his or her discretion to form a task force and populate it with benchers (or others if necessary) who have the appropriate expertise with the particular subject matter. These issues can then be studied in a more focused way that maximizes bencher and outside expertise, and makes more efficient use of Law Society human and financial resources.

25. The Governance Task Force recommendations, noted earlier, will also improve the manner in which issues are identified and dealt with as a matter of priority.

26. For all of the above reasons, the Committee requests that Convocation dissolve the Committee. If Convocation agrees with this request, amendments to By-Law 3 to revoke the Committee's mandate will be required.

REPORTS FOR INFORMATION

Access to Justice Committee Report
- Access to Justice and Equality Template

Audit Committee Report
- Amendments to By-Laws 2 and 3
- Financial Statements
- Investment Compliance Report

Professional Regulation Committee Report
- Member's Annual Report 2007
- Professional Regulation Division Operational Guidelines
- Professional Regulation Division Quarterly Report

Report to Convocation
September 20, 2007

Access to Justice Committee

Committee Members
Marion Boyd, Co-Chair
Judith Potter, Co-Chair
Paul Schabas, Vice-Chair
Paul Dray
Avvy Go
Jennifer Halajian
Susan McGrath
Bonnie Tough

Purpose of Report: Information

Prepared by the Equity Initiatives Department
(Jewel Amoah, Counsel - 416-947-3425)

COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on September 5, 2007. Committee members Judith Potter, Co-Chair, Paul Schabas, Vice-Chair, Paul Dray, Avvy Go, Susan McGrath and Bonnie Tough attended. Staff members Jewel Amoah and Josée Bouchard attended.

FOR INFORMATION

EQUALITY AND ACCESS TO JUSTICE TEMPLATE

BACKGROUND

Equality Template

2. In 1997, the Law Society adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the *Bicentennial Report*), which made sixteen recommendations seeking to provide a coherent approach to advancing new policies and enhancing the implementation of existing policies directed at advancing the goals of equality and diversity within the legal profession.

3. The recommendations were grouped under the following categories: policy development, advancement of equality and diversity policies, governance, education, regulation and employment/contracting for legal services.

4. In 2003, Convocation established the Bicentennial Report Working Group to review and report on the implementation status of the recommendations contained in the *Bicentennial Report*. The Bicentennial Report Working Group noted in its 2004 *Bicentennial Implementation Report* that,

> Advancing equality requires effective tools of measurement and analysis. The Law Society has an impressive array of initiatives but no coherent standards by which to measure their effectiveness and mark their progress. It is for this reason the Working Group has highlighted the need for an equity template that would include definitions of the terms "equity" and "diversity". Staff, bencher committees and Convocation would use the template to analyze the impact of policies on persons from equality-seeking, Aboriginal and Francophone communities.

5. The Bicentennial Report Working Group proposed that a definition of "equality" and "diversity" be developed and an equality decision-making template be formulated to guide the Law Society in its policy development activities.

6. On March 10 2005, the Committee adopted the Equality Template, which included definitions of "equality" and "diversity" to be applied by the Law Society. The Committee also recognized the unique position of Aboriginal and Francophone communities. The Equality Template was presented to Convocation for information.

7. The Template was adopted by the Committee to guide Law Society benchers and staff in considering equality principles when developing policies, projects and initiatives. The questions in the Equality Template were integrated within the Senior Management Team Initiative Proposal Form and the Policy Secretariat Policy Development Template.

8. The Equality Template does not attempt to determine whether an initiative, project or policy should proceed. It assists in identifying the potential impact, positive or negative, of policies and initiatives on Aboriginal, Francophone and equality-seeking communities. The instrument is also useful to determine whether there are alternative ways to proceed that would alleviate negative impacts on Aboriginal, Francophone and equality-seeking communities and promote equality.

9. Since 2005, the Equality Template has been used in decision-making processes, policy development activities, implementation of policies, development of programs and initiatives, and in consultations undertaken by the Law Society. For example, the template is used in,

    a. Senior Management Team's decision making processes;
    b. policy development activities;
    c. implementation of programs;
    d. development and management of projects;
    e. development of resources and tools; and
    f. training and education programs.

Inclusion of Access to Justice

10. In 2007, the Access to Justice Committee considered whether the Equality Template could be expanded to include an analysis of the impact of policies, programmes and initiatives on access to justice. It adopted a modified version of the Equality Template at its September 5, 2007 meeting. It also recommended that the revised template be adopted by the Equity and Aboriginal Issues Committee and presented jointly by the two committees to Convocation for information.

11. The revised template, which was renamed the Equality and Access to Justice Template was approved by the Equity and Aboriginal Issues Committee at its September 6, 2007 meeting. The Equality and Access to Justice Template is attached as Appendix 1.

Appendix 1

Equality and Access to Justice Template

The Law Society is committed to the entrenchment of equity and diversity principles in its work and policies, while section 4.2 of the *Law Society Act* provides that the Law Society has a duty to facilitate access to justice for the people of Ontario. This makes it appropriate for the introduction of a tool which will assist in examining issues through the lenses of equality and of access to justice.

The Equality and Access to Justice Template does not attempt to determine whether an initiative, project or policy should proceed. It assists in identifying the potential impact, positive or negative, of initiatives, projects and policies on access to justice, and on Aboriginal,

Francophone and equality-seeking communities. The instrument is also useful to determine whether there are alternative ways to proceed that would alleviate negative impacts or that would accentuate the positive impacts on Aboriginal, Francophone and equality-seeking communities and promote equality and access to justice.

The Law Society defines members of "equality-seeking communities" as people who consider themselves a member of such a community by virtue of, but not limited to, ethnicity, ancestry, place of origin, colour, citizenship, race, religion or creed, disability, sexual orientation, marital status, age, family status and/or gender. The Law Society recognizes and respects the uniqueness of the Aboriginal and Francophone communities and is committed to the promotion of rights for Aboriginal and Francophone communities. In addition, the Law Society is committed to the promotion of rights of members of equality-seeking communities. The Law Society also recognizes that people may be more vulnerable due to their membership in more than one of the identified groups or communities.

All people in Ontario are entitled to fair and equal access to the law regardless of income or socio-economic status. Access to justice requires fair and equal access to competent, professional and affordable legal services, advice and information. Moreover, members of Aboriginal, Francophone and equality-seeking groups are susceptible to obstacles where their community or group identification may impede their full access to justice.

Convocation, Committees, managers and project leads should apply this instrument to initiatives, projects or policy development such as the development of internal policies and guidelines and significant projects and initiatives. The questions outlined below may be integrated within already existing processes, or may be used as an equality and access to justice template to be applied on its own.

The first set of questions is intended to elucidate any potential impact on Aboriginal, Francophone or equality-seeking communities. Such impact may or may not include an impact on the ability of these communities to access justice. The second set of questions is intended to address any potential impact on access to justice, more generally, which may or may not arise because the persons affected are members of equality-seeking groups. Projects and initiatives may have consequences for access to justice that might not be readily identifiable through consideration of the first set of questions alone.

Impact on Aboriginal, Francophone and/or equality-seeking communities

1. What are the potential benefits for Aboriginal, Francophone and/or equality-seeking communities?

_____
_____
_____

2. What are the potential risks or barriers that may affect members of Aboriginal, Francophone and/or equality-seeking communities?

_____
_____
_____

3. What is the foreseeable impact on members of Aboriginal, Francophone and/or equality-seeking communities?

4. If foreseeable impact on members of Aboriginal, Francophone and/or equality-seeking communities, how could the initiative, project or policy be modified to eliminate or reduce negative impact, or create or accentuate positive impact?

5. What, if any, additional research or consultation is desirable or essential to better appreciate the impact of the initiative, project or policy on diverse groups?

6. Have issues of accessibility for persons with disabilities been considered?

7. What, if any, aspects of the initiative, project or policy should be undertaken in both official languages?

8. What benchmarks and measures can be used to assess the success and impact of the initiative, project or policy on members of Aboriginal, Francophone and equality-seeking communities?

9. Is there an intended or unintended impact with respect to equality or diversity?
Yes ☐ No ☐

Impact on access to justice

10. What are the potential benefits for enhancing access to justice?

11. What are the potential risks or barriers that may affect access to justice?

12. What is the foreseeable impact on access to justice?

13. If foreseeable impact on access to justice, how could the initiative, project or policy be modified to eliminate or reduce negative impact, or create or accentuate positive impact?

14. What, if any, additional research or consultation is desirable or essential to better appreciate the impact of the initiative, project or policy on access to justice?

15. What benchmarks and measures can be used to assess the success and impact of the initiative, project or policy on access to justice?

16. Is there an intended or unintended impact with respect to access to justice?

Yes ☐ No ☐

Committee Members
Beth Symes, Chair
Marshall Crowe, Vice-Chair
Abdul Chahbar
Ross Murray
Vern Krishna

Purposes of Report: Decision and Information

Prepared by Wendy Tysall,
Chief Financial Officer – 416-947-3322

TABLE OF CONTENTS

For Information

COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on September 5, 2007. Committee members in attendance were: Beth Symes (c.), Marshall Crowe, Vern Krishna and Ross Murray.

2. Staff in attendance were Wendy Tysall, Fred Grady, Brenda Albuquerque Boutilier and Andrew Cawse.

FOR INFORMATION

BY-LAW FOR AUDIT COMMITTEE

3. The Audit Committee reviewed draft changes to By-Law 2 (Corporate Provisions) and By-Law 3 (Benchers, Convocation and Committees). A motion for Convocation's approval of the changes is in the September 2007 Report to Convocation from the Finance Committee. The Audit Committee recommends approval of the changes.

FOR INFORMATION

GENERAL FUND - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2007

4. The Audit Committee recommends the financial statements for the General Fund for the second quarter of 2007 be received by Convocation for information.

Law Society of Upper Canada

General Fund
Financial Statement Highlights
For the six months ended June 30, 2007

5. At the end of June, the Society's General Fund has a surplus of $1.1 million and an accumulated fund balance of $38.1 million.

6. In the approved budget for 2007, operating expenses were projected to exceed operating revenues by $500,000.

Accounting Standards Change – Financial Instruments

7. The Canadian Institute of Chartered Accountants (CICA) introduced a new accounting standard for reporting financial instruments. A financial instrument is defined as any contract that gives rise to a financial asset of one party and a financial liability or equity instrument of another party. Financial instruments include cash, receivables, payables, investments in equity and debt instruments. Under this requirement financial instruments are reported at fair (market) value.

8. Fair value is "the amount for which an asset or liability could be exchanged between knowledgeable, willing parties in an arm's length transaction." The fair value objective should be to reflect the market's view, rather than an entity's or its management's preferences and expectations.

9. As required by this standard, we reviewed the nature and intent of the long-term investment portfolio held and classified the investments as "held for trading". The Audit Sub-Committee approved this classification in December 2006. This classification method appropriately discloses the Law Society's resources and funds available for distribution.

10. Selection of the held for trading classification requires that all gains and losses, realized or unrealized, be reported as income of the period. As a transitional step, accumulated unrealized gains as at January 1, 2007 are reported on the Statement of Changes in Fund Balances.

Paralegal Fund

11. Convocation approved the paralegal startup budget in February 2007. The budget projects a deficit in the fund of $2.4 million at the end of 2007. This deficit is expected to be reduced to $1.5 million in the first quarter of 2008 with the collection of examination fees from grandparent and transitional applicants writing the exam in first quarter of 2008.

12. Convocation approved funding of this deficit from the Society's cash reserves with recovery from paralegal licensees over a number of years, yet to be determined.

13. As set out in the Statement of Changes in Fund Balances, a separate fund to track activity related to paralegal regulation has been set up. In the first half of 2007, a net amount of $276,000 was spent, primarily on paralegal exam development. Given the relatively late approval of the budget in February, spending is behind budget. Spending will accelerate through the balance of the year as implementation progresses.

Balance Sheet

14. Cash and short-term investments, accounts receivable, prepaid expenses and accounts payable and accrued liabilities comprise the working capital of the General Fund and total $33.3 million (2006: $29.2 million). Accounts receivable are for the most part lawyers' annual fees that are paid as part of the monthly installment plan and amounts due from the Compensation Fund. Accounts payable and accrued liabilities have decreased from $8.8 million to $3.6 million due to changes in amounts due to the Compensation Fund and as a result of the payment or elimination of litigation provisions in 2006.

15. In 2007, portfolio investments are shown at market value compared to valuation at cost in 2006. Portfolio investments at June 30, 2007 are shown at market value of $11.2 million (cost: $11.2 million). Portfolio investments at June 30, 2006 are shown at a cost of $10.5 million (market: $10.4 million).

16. Deferred revenue of $26.2 million is comprised largely of lawyers' fees billed but not yet earned and licensing process fees billed but not yet earned.

Revenues and Expenses

17. Annual lawyer fee revenue is recognized on a monthly basis. Lawyers' fees have increased from $19.6 million in 2006 to $22.2 million in 2007 with an increase of approximately 750 lawyers and a fee increase of $92 per lawyer, or seven percent.

18. Other income has increased approximately $901,000 over 2006, primarily attributable to the $1.2 million in funding for CanLII expenses from the Law Foundation. A report on the Law Foundation's funding for CanLII and the offsetting repayment of the grant for the Ottawa property is attached.

19. Investment income for the six months is analyzed below:

Interest received	$739,000
Realized gains	$143,000
Unrealized loss	($215,000)
Excess investment income transferred from the E&O Insurance Fund	$1,625,000
Total	$2,292,000

The unrealized loss is reducing the $254,000 gain accounted for at the beginning of the year to bring the portfolio investments to market value at that time.

20. Overall, expenses are tracking close to 2006 with a few exceptions.

21. At the end of June, professional development and competence expenses are less than for the same period in 2006 ($7.2 million versus $7.4 million). However expenses in the second half of the year in such areas, as database support and instruction will see expenses track closer to 2006.

22. The approved 2007 budget established increased regulatory expenses of $2.2 million compared to the 2006 budget. Actual regulatory expenses in 2006 exceeded budget by $1.2 million and so far 2007 regulatory expenses of $7.4 million are higher than the same period in 2006 by $1.2 million. The most significant component of this increase is counsel fees. Outside counsel fees to the end of June are $903,000 compared to the annual budget of $950,000.

23. The Regulatory department is projecting that outside counsel will cost approximately $1.5 million by year end. This is significantly more than the $950,000 budgeted. The projected cost of outside counsel this year is generally attributable to a number of matters, including the following:

- The accelerated use of experts on mortgage fraud cases
- Potentially high profile matters involving complex issues where our staff lack the requisite resources
- Billings on complaints against benchers
- Matters in which court intervention has been required in order to facilitate a proper Law Society investigation
- Highly contested unauthorized practice matters
- Some matters assigned to outside counsel deemed especially significant to our role as a regulator.

24. Administrative expenses are $500,000 more than the same period in 2006 largely because of increased spending on information systems, recruitment and training costs.

25. Capital allocation fund expenses have increased from $1.2 million in 2006 to $1.8 million in 2007, reflecting the repayment of the LFO grant for the Ottawa building.

Changes in Fund Balances

26. The new disclosure requirements relating to financial instruments are being implemented in 2007. This means unrealized gains on investments at the beginning of 2007 of $254,000 are separately identified on the Statement of Changes in Fund Balances as portfolio investments are shown at market value on the Balance Sheet. Changes in unrealized gains / losses during 2007 will be included in investment income.

27. The capital allocation fund balance has decreased resulting from the repayment of the Ottawa building grant to the Law Foundation.

28. The county library fund holds funds collected from lawyers' annual fees for transfer to Library Co for county library purposes. The fund deficit ($42,000) should be reduced in the second half of the year with additional fee revenue generated by the call to the bar in July.

29. The repayable allowance fund has made loans to students based on need in the total amount of $57,000 to 21 students (2006: $77,000 to 22 students).

Paralegal Fund

30. The total year to date expenses in the Paralegal Fund is $301,000 against the year to date budgeted expenses of $1.0 million. It is still relatively early in the process and expenses are expected to equate to budget at year end.

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FOR INFORMATION

COMPENSATION FUND - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2007

43. The Audit Committee recommends the financial statements for the Compensation Fund for the second quarter of 2007 be received by Convocation for information.

Law Society of Upper Canada
Compensation Fund
Financial Statement Highlights
For the six months ended June 30, 2007

44. The first half of 2007 has been completed for the Compensation Fund ("the Fund") and the Fund's balance of $21.1 million has increased from $19.4 million reported in June 2006. The Fund's Statement of Revenues and Expenses and Change in Fund Balance reports a surplus of $602,000 for the six months ended June 30, 2007 compared to a surplus of $1.5 million for the first half of 2006.

45. An actuarial valuation of the reserve for unpaid grants was prepared as at June 30, 2007 and the balance has increased by $82,000 over its valuation at December 31, 2006.

Accounting Standards Change – Financial Instruments

46. The Canadian Institute of Chartered Accountants (CICA) introduced a new accounting standard for reporting financial instruments. A financial instrument is defined as any contract that gives rise to a financial asset of one party and a financial liability or equity instrument of another party. Financial instruments include cash, receivables, payables, investments in equity and debt instruments. Under this requirement financial instruments are reported at fair (market) value.

47. Fair value is "the amount for which an asset or liability could be exchanged between knowledgeable, willing parties in an arm's length transaction." The fair value objective should be to reflect the market's view, rather than an entity's or its management's preferences and expectations.

48. As required by this standard, we reviewed the nature and intent of the long-term investments held and classified them as "held for trading". The Audit Sub-Committee approved this classification in December 2006. This classification method most appropriately discloses the results of the Fund's long-term transaction investments.

49. Selection of the held for trading classification requires that all gains and losses, realized or unrealized, be reported as income of the period. As a transitional step, accumulated unrealized gains of $1.2 million as at January 1, 2007 are reported in the change in fund balance section of the Statement of Revenues and Expenses and Change in Fund Balance.

First Half Balance Sheet

50. The working capital of the Fund, comprising the cash and short-term investments, interest and other receivables, and accounts payable and accrued liabilities is consistent year on year with net totals of $8.7 million and $9.2 million at June 30, 2007 and 2006 respectively.

51. In 2007, portfolio investments are shown at market value compared to valuation at cost in 2006. Portfolio investments at June 30, 2007 have a market value of $25 million (cost: $24.6 million). Portfolio investments at June 30, 2006 are shown at a cost of $23 million (market: $23 million).

52. Deferred revenue of $3.2 million represents fee revenue billed but not yet recognized as income. The increase over 2006 is a result of growth in the number of lawyers billed. The annual fee for the Fund of $200 is unchanged from 2006.

53. The reserve for unpaid grants has declined $358,000 from the mid-point of 2006 to $9.3 million. The report of the actuary is attached.

First Half Revenues and Expenses and Change in Fund Balance

54. Fee revenues of $3.2 million have increased by $97,000 compared with the first quarter of 2006. The annual levy of $200 per lawyer is consistent between the years with slightly more lawyers in the current quarter. Annualized fee revenue for the Fund will approximate $6.2 million.

55. Investment income for the six months is analyzed below:

Interest received	$585,000
Realized gains	$412,000
Less: Unrealized loss	($686,000)
Total	$311,000

It should be noted that the unrealized loss is reducing the $1.2 million gain accounted for at the beginning of the year to bring the portfolio investments to market value at that time as we comply with the change in accounting standards for reporting at market value. Since that time increasing interest rates have adversely affected the market values of fixed income holdings.

56. Grants paid of $756,000, are half the amount paid in the first half of 2006.

57. Recoveries of claims paid have decreased from $629,000 in the first half of 2006 to $372,000 this year. Recoveries do not follow any pattern and are difficult to predict. The high value of the recoveries last year arose after court approval of transfers from the frozen trust accounts of two disbarred lawyers.

58. As previously mentioned, the most significant change in presentation from 2006 is the reporting of unrealized gains at January 1, 2007. These gains, totaling $1.2 million, are reported in the change in fund balance section of the statement.

59. All gains and losses, realized or unrealized, arising during 2007 and in years following will be reported as investment income on the Statement of Revenues and Expenses and Change in Fund Balance.

FOR INFORMATION

LIBRARYCO INC. - FINANCIAL STATEMENTS FOR THE SIX MONTHS ENDED JUNE 30, 2007

60. The Audit Committee recommends the second quarter financial statements for LibraryCo Inc. be received by Convocation for information.

61. The financial statements were reviewed and approved by the board of LibraryCo on August 20, 2007.

FOR INFORMATION

LAWPRO - FINANCIAL STATEMENTS FOR THE THREE MONTHS ENDED MARCH 31, 2007

62. The Audit Committee recommends the first quarter financial statements for LawPro be received by Convocation for information.

FOR INFORMATION
STATEMENT OF INVESTMENT COMPLIANCE – SHORT-TERM PORTFOLIO

63. The Audit Committee recommends the short-term investment compliance reports for the second quarter be received by Convocation for information.

FOR INFORMATION
STATEMENT OF INVESTMENT COMPLIANCE – LONG-TERM PORTFOLIO

64. The Audit Committee recommends the long-term investment compliance reports for the second quarter be received by Convocation for information.

FOR INFORMATION

INVESTMENT COMPLIANCE REPORT – FOYSTON, GORDON & PAYNE

65. The Audit Committee recommends the long-term investment compliance reports from our investment managers for the second quarter be received by Convocation for information.

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

(1) Copies of the financial statements for the General Fund for the second quarter of 2007.
(pages 5 – 13)

(2) Copies of the financial statements for the Compensation Fund for the second quarter of 2007.
(pages 23 – 24)

(3) Copies of the financial statements for LibraryCo Inc. for the second quarter.
(pages 26 – 34)

(4) Copies of the financial statements for LAWPRO for the first quarter.
(pages 36 – 49)

(5) Copy of short-term investment compliance reports for the second quarter.
(page 50)

(6) Copy of long-term investment compliance reports for the second quarter.
(page 51)

(7) Copy of long-term investment compliance reports – Foyston, Gordon & Payne.
(pages .52 – 55)

Report to Convocation
September 20, 2007

Professional Regulation Committee

Committee Members
Clayton Ruby, Chair
Julian Porter, Vice-Chair
Heather Ross, Vice-Chair
Linda Rothstein, Vice-Chair
Melanie Aitken
Tom Conway
Brian Lawrie
George Finalyson
Patrick Furlong
Gary Gottlieb
Ross Murray
Sydney Robins
Bonnie Tough
Roger Yachetti

Purpose of Report: Information

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

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For Information

COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on September 6, 2007. In attendance were Clay Ruby (Chair), Julian Porter, Heather Ross and Linda Rothstein (Vice-chairs), Melanie Aitken (by telephone), Tom Conway, Brian Lawrie, Patrick Furlong, Gary Gottlieb, Ross Murray and Bonnie Tough. Staff attending were Naomi Bussin, Warren Chin, Ravinder Dusanjh, Jeremy Goring, Terry Knott, Dulce Mitchell, Zeynep Onen, and Jim Varro.

MEMBER'S ANNUAL REPORT 2007

2. Part II of By-Law 8 under the *Law Society Act* includes the requirement for a lawyer licensee to file an annual report with the Law Society with respect to his or her practice and related activities, including trust account holdings.

3. Subsections (1) and (2) of s. 4 of the By-Law read:

> Requirement to submit annual report
> 4. (1) Every licensee who holds a Class L1 licence shall submit a report to the Society, by March 31 of each year, in respect of,
>
> (a) the licensee's professional business during the preceding year; and
> (b) the licensee's other activities during the preceding year related to the licensee's practice of law.
>
> Annual Report
> (2) The report required under subsection (1) shall be in a form provided by the Society.

4. The Committee received a copy the form referenced in subsection 4(2). This form, appearing at Appendix 1, replaces the prescribed Member's Annual Report under former By-Law 17 (in force until May 1, 2007). Because this form was a prescribed form under the By-Law, changes to the form, which occurred on a yearly basis, required an amendment to By-Law 17, which had to be made by Convocation.

5. The current form, which continues to use the title "Member's Annual Report" (MAR), is not prescribed under By-Law 8. The form continues to be a requirement in the By-Law and reflects Convocation's policy that the form and its content as described in the By-Law is necessary as a regulatory requirement. As the form is not prescribed, it is not required to be approved by Convocation and is provided in this report for the information of Convocation.

6. An explanation of the changes from last year's MAR, on which the form is based, appear at Appendix 2. No changes of substance have been made. The form has been prepared with input from relevant Law Society staff.

APPENDIX 1

MEMBER'S ANNUAL REPORT 2007

APPENDIX 2

2007 MEMBER'S ANNUAL REPORT (MAR)
EXPLANATION OF CHANGES

Overview of Changes to the MAR

No significant changes to the wording or content of the questions have been made in the 2007 Member's Annual Report. Minor modifications to the 2007 MAR formatting have been made to improve the ease of use of form and increase readability. These changes are aimed at reducing time-consuming follow-up. Changes to the 2007 MAR have been made with input from Spot Audit, LawPRO, the Society's Client Service Centre, and Finance.

To be consistent with new legislation and by-laws, terminology has been updated throughout the report as follows:

Old Language	New Language
Member	Lawyer licensee
Member number	Lawyer licensee number (Member number)
Member Resource Centre	Resource Centre
Membership record	Law Society's records
Administrative Compliance Processes	Administrative Compliance

All references to by-laws have been updated to correspond to the new by-laws.

Specific Changes

Non-Mandatory Questions (Inside front cover)

The *"Electronic fee invoices"* survey question which was present on the 2006 MAR has been removed as authorized by Finance.

Section B - Year End Status

Three new statuses have been added as follows:

New Status	Mandatory Section(s)	Optional section(s)
Corporate Counsel (Insured)	E, F	C,D,G
Corporate Counsel (Not Insured)	E, F	C,D,G
Emeritus Lawyer	E, F	C,D,G

The Corporate Counsel statuses were added to permit Membership Services to determine the appropriate fee category. The Emeritus status has been added to comply with a new policy which permits retired lawyers to provide legal services pro bono (without charge) through Pro Bono Law Ontario (PBLO) without paying the Law Society annual fee.

Section C - Allocation of Legal Services & Section D - Areas of Practice

Reference to *"allocation of legal services"* has been changed to *"allocation of practice"*, the wording *"not engaged in the private practice of law but who provided any legal services"* has been changed to *"engaged in the practice of law other than in private practice"* and finally the wording *"provided legal services"* has been changed to *"engaged in the practice of law".*

These changes are made to ensure consistency with terms used under the amended *Law Society Act* and new by-laws.

Section F - Individual Licensee Questions

Question 1: Cash Transactions

This question has been amended to clarify reporting requirements for accepting fees and disbursements in cash from a client. The word "any" was added to prompt a "yes" response in cases where the licensee received such funds in respect of more than one file. The question now reads:

1a) "Did you receive cash in an aggregate amount equivalent to $7,500.00 CDN or more in respect of any one client file during the 2007 calendar year?*
If "Yes" to 1a)
1b) Was the cash solely for legal fees and/or client disbursements?

If "No" to 1b), provide full particulars below with respect to compliance with By-Law 9, Part III (Cash Transactions)."

Question 3: Estates and Power(s) of Attorney (page 6)

In the 2006 MAR, question 3 produced over 600 errors and incomplete reports, which required follow-up. Spot Audit has provided minor changes to navigation instructions, and minor changes were made to reposition questions to improve readability.

Question 3a)iii
At the request of Spot Audit, the wording *"files open at any time during the year where"* was removed. This question now reads *"In 2007, the total number of estates in which you were sole estate trustee was:"* This change will include estates for related persons in licensees' responses.

Question 3a)v
The word "files" was removed. The question now reads *"The total dollar value as at December 31, 2007 of all separate* bank accounts and investments* for the estates referred to in 3a)iv) was:"* This change will include estates for related persons in licensees' responses.

Question 3a)vii, 3b)vii & 3c)vi
Spot Audit has requested that the words *"part of"* in question 3a)vii, be replaced with the wording *"recorded in"*. The word *"financial activities"* was replaced with *"accounting records"* Question 3a)vii now reads: *"Was the total dollar value indicated in 3a)v) recorded in the firms accounting records?"* The equivalent questions in 3b) and 3c) have been similarly amended.

Question 3b)iii
At the request of Spot Audit, the wording *"files open at any time during the year in which"* was replaced with the wording *"persons for whom"*. This question now reads *"In 2007, the total number of persons for whom you exercised a Power of Attorney was:"* The purpose of this change was to include Powers of Attorney for related persons in licensees' responses.

Question 3b)v
The word "files" was removed. The question now reads *"The total dollar value as at December 31, 2007 of all separate* bank accounts and investments* for the Powers of Attorney referred to in 3b)iv) was:"* This change will include estates for related persons in licensees' responses.
Question 3c)
Spot Audit has requested that question 3c)i be amended to add the following instructions in brackets: *"(Only the lawyer licensee responsible for the estate should answer 'Yes')."*

This change will eliminate those lawyers who have signing authority over the firms trust account but were not responsible for the estate. In the 2006 MAR format, all lawyers who had signing authority over the firms trust account fell within our definition of "controlling estate assets" (even when they were not the one responsible for the estate). This instruction will effectively capture only those lawyers who were responsible for the estate.

Question 4: Borrowing from Clients

Spot Audit has requested that the wording, *"in which you were then practicing law?"* replace the previous wording, *"of which you were then a member?"* the question now reads: *"In 2007, were you indebted, either directly or indirectly, to a client or person who at the time of borrowing was or had been your client or a client of a firm in which you were then practicing law?"*

Section G – Financial Reporting

Within the heading, the wording *"Designated Financial Filing Member"* has been removed from the instructions. This will reduce confusion and prompt all licensees in private practice to complete this section.

Question 1: Trust and General Accounts (page 8)

This question caused much confusion for lawyers filing the 2006 MAR. Question 1 alone produced over 500 errors and incomplete reporting requiring follow-up. This question has been reformatted into a chart to ensure accurate reporting by capturing general account(s) information regardless of whether a trust account was operated.

Questions 2 & 3: Financial Filing Option (page 8)

To avoid confusion, question 3 is now being referred to as the *"Designated Financial Filing Option".* This will clarify its purpose.

At Spot Audit's request, the wording *"firm members"* has been replaced with *"lawyers in your firm"* in the sentence: *"Note: If you are reporting financial information on behalf of other lawyers in your firm, you must also submit a Financial Filing Declaration".*

The instructions heading in question 3 has been changed to:
"The designated financial filing option is available to lawyer licensees who are not responsible for filing trust information, and who, as at December 31, 2007, were engaged in the private practice of law, and practiced exclusively as a partner of a law firm or an employee (or associate practicing in the manner of an employed lawyer) employed by either a sole practitioner or a law firm."

Question 4: Firm Records (page 9)

As many licensees were improperly completing this question, the following changes have been made to provide clarity.

The wording *"all applicable sections in By-law 9"* was added, the question now reads: *"Were books and records for all your firm's general and/or trust accounts (mixed, separate, estates, power(s) of attorney and other interest generating investments) maintained throughout 2007, on a current basis, in accordance with all applicable sections in By-Law 9 (enclosed) made under the Law Society Act?*

This change will allow individuals to provide a "Yes" response in cases where certain sections within By-law 9 are not applicable to ones circumstances.

The wording, *"Complete only those areas where you were deficient"* was added.

The "n/a" column has been removed
The references to sections in the by-law were updated to the new corresponding by-law sections.

Below the chart, *"25"* has replaced *"15"* in the wording, *"Trust comparisons are to be completed within 25 days of the effective date of the monthly trust reconciliation"* in order to reflect the new requirements prescribed in By-law 9.

Question 5: Trust Account Reconciliation (page 10)

Question 5a), 5b) & 5c)
In question 5a) the wording *"The total dollar value of"* was added. The question now reads: *"The total dollar value of mixed trust bank accounts"*

Question 5b)
At the request of Spot Audit, the question has been expanded to include "other interest and income generating investments". The question now reads: *"The total dollar value of separate interest bearing trust accounts or income generating trust accounts/investments?"*

Former Question 5d)
At the request of Spot Audit, this question was removed as a result of its incorporation into question 5b).

Question 6

As large numbers of errors resulted from former questions 5a)i, 5a)ii, 5b)i and 5c)i , these questions have been merged to question 6. They are now 6a)i, 6a)ii, 6b) and 6c) respectively.

Question 9 – Unchanged and/or Unclaimed Client Trust Ledger Account Balances*

Spot Audit has requested the wording for question 9 be updated to read: *"Were there client trust ledger account balances that were unchanged (i.e had no activity) for the entire year?"*

Question 10 - Unchanged and/or Unclaimed Client Trust Ledger Account Balances*

Spot Audit has requested this question to include a reference to the applicable statutory authority. This question now reads: *"Of the amounts identified in question 9, were any unclaimed for two years or more? (Section 59.6 Law Society Act)"*

PROFESSIONAL REGULATION DIVISION OPERATIONAL GUIDELINES PUBLISHED ON THE LAW SOCIETY WEBSITE

7. In an effort to increase the transparency and accessibility of the professional regulation process, Professional Regulation Division staff have prepared for the Law Society's website certain operational guidelines used by the Division in complaints resolution and investigation. The guidelines are part of a Professional Regulation Division policies and procedures manual.

8. Professional Regulation Division staff receive numerous requests for operational policies and guidelines. To date, these have not been publicly available. Making this information available on the website mirrors the steps taken by a number of other organizations which have a tribunal function to make operational procedures available to the public, such as the Workplace Safety & Insurance Board, Citizenship & Immigration Canada and the Office of the Information and Privacy Commissioner.

9. The first guidelines prepared for the website are those that replace the Protocol for Complainants and the Third Party Complaints policies. The Investigations Task Force Report, approved by Convocation on May 25, 2006, recommended the revocation of these policies and that they be replaced with more flexible operational guidelines. This was done and the guidelines were added to the Professional Regulation Division manual, which is updated regularly.[1] The next step, as reflected in this report, has been to make parts of the manual publicly available.[2]

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[1] For example, the Manual has recently been updated to reflect process changes and changes to the *Law Society Act* and By-Laws.

[2] The web version of the guidelines does not include references to internal staff processes and other Law Society departments and divisions. Otherwise, the guidelines are intact.

10. Although the guidelines are quite detailed, the information will be of interest to some licensees and complainants. The guidelines, appearing at Appendix 3, cover the following:

One: Responsibility to Complainants
Two: Service Standards
Three: Confidentiality, Information Sharing and Disclosure
Four: Risk Management
Five: Third Party Complaints / Concurrent Proceedings

11. These guidelines reflect key subjects for public communications. It is anticipated that the guidelines will be posted on the Society's website by October 2007.

APPENDIX 3

Professional Regulation Department
Operational Guidelines

Guideline 1:
Responsibility to Complainants

1.1 Introduction

Staff must ensure that complaints are dealt with professionally, with sensitivity and as quickly as possible.

Staff needs to be mindful that the Law Society can only address matters that fall within its statutory jurisdiction and mandate.

The Professional Regulation Department's (PRD's) objectives in working with Complainants are as follows:

i. To be fair and be seen to be fair by ensuring open, transparent, consistent and accessible case processes aimed at protecting, promoting and enforcing high standards of professional competence and conduct in the legal professions.

ii. To provide a principled, competent and effective complaint process in professional regulation that is timely and adheres to consistent guidelines, standards, procedures and policies.

iii. To resolve professional regulation matters through exercising sensitive, professional and moral judgment guided by the basic principles underlying the *Law Society Act*, the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct*.

iv. To adhere to high quality service standards in all professional regulation activities and interactions with the Society's stakeholders.

1.2 The Relationship with the Complainant

The regulatory process is initiated when a concern of professional misconduct by a Licensee or Student Licensee is brought to the attention of the Society. A Complainant begins the process by initiating the complaint, providing information and consent when appropriate. He or she may also be required to serve as a witness in any disciplinary proceedings should the matter proceed to prosecution. The Complainant is not responsible for carriage of the regulatory case. However, PRD staff has the responsibility to report to the Complainant on the progress and outcome of the case.

1.2.1 Guidelines for Interaction with the Complainant:

- Treat the Complainant with sensitivity and understanding
- Communicate in plain language
- Assist a Complainant, where necessary, in recording a complaint about a Licensee. As a rule, complaints must be made in writing, but the Law Society will accept complaints recorded on audiotapes or videotapes
- Acknowledge or respond to letters, faxes and e-mails within 48 hours of receipt and no later that one-week from date of receipt
- Return telephone calls to a Complainant by the end of the next business day at the latest.
- Offer assistance in French if requested
- Employ best efforts to provide assistance in the language of the Complainant's choice if that language is not English or French.
- Where practical, meet with the Complainant (in a location that is suitable and convenient to him or her)

1.3 Information to be Provided to the Complainant

- The Role and Mandate of the Law Society of Upper Canada
- The relationship between the Law Society and the public
- What the Law Society can and cannot do with their information
- The fact that the Law Society cannot guarantee that their identity or the information they provide to the Law Society shall be kept confidential from the Licensee
- That PRD staff must disclose the information received from them to the Licensee and that disclosure may involve providing the Licensee with any copies of documents supplied or prepared by them

- The possibility that they may be required as a witness should the matter proceed to Discipline

- What information PRD staff can and cannot share with them

- The function and responsibility of the Law Society to:

    - Decide if and how a complaint shall be addressed;
    - Decide if a complaint is to be investigated and the conduct of the investigation;
    - Decide if a licensee is to be the subject matter of discipline proceedings, and;
    - Determine the mechanism of the resolution and the disposition of a complaint.

1.3.1 Prior to Initiation of Discipline Proceedings

- The status of the complaint with which he or she is involved. A status report should be provided at least every 90 days, unless otherwise agreed upon by the Complainant and the PRD staff handling the complaint

- The reasons for not taking further action on a complaint when a complaint is closed based on PRD staff or outside investigator's decision

- The referral of a matter to the committee of benchers responsible for authorization of discipline proceedings (Proceedings Authorization Committee) within 14 days after the fact of the referral is communicated to the Licensee

- The opportunity to take their complaint to the Complaints Resolution Commissioner when the Complainant is dissatisfied with a PRD staff decision to close a file (in accordance with By-Law 11)

- The decision of the Proceedings Authorization Committee, including the type of proceeding authorized, if any, within 14 days after the decision is communicated to the Licensee

1.3.2 At Institution of Proceedings

- The fact that an application has been issued for a conduct, competence or capacity proceeding based on the Complainant's complaint unless a Complainant advised that he or she does not wish to be kept informed. This communication should take place in writing and as soon as reasonably possible after the Licensee has been served with the application. The communication should also include a brief explanation of the hearing process and advice on whether the Complainant has a right to be present at the hearing.

1.3.3 At the Hearing Stage

With regard to Conduct proceedings, Discipline Counsel should:

- Seek the views of the Complainant on his or her expectations of the outcome of the proceedings against the Licensee at an early stage in the prosecution
- Advise the Complainant of the hearing date, once the date has been set and any subsequent changes in this date
- Advise the Complainant of significant decisions regarding the withdrawal or amendment of particulars with which the Complainant is involved, where practicable
- Advise the Complainant of any joint submissions as to penalty, where practicable
- Write to the Complainant advising him or her of the final disposition of the application and provide a copy of written reasons of the Hearing Panel, if any in instances when the Complainant does not attend the hearing
- In the event of an appeal, advise the Complainant of the appeal, the hearing date of the appeal and the outcome

With regard to Competence or Capacity Proceedings, Discipline Counsel should:

- Advise the Complainant of the date of the hearing, once it has been set and whether or not the hearing is in public
- Advise the Complainant of any changes in the hearing date
- Whether or not the hearing is in public, write to the Complainant, advising:
    - Whether a finding of incapacity or incompetence was made or whether the application was dismissed
    - Of the resulting order of the Hearing Panel as may be permitted by the rules governing practice and procedure at Law Society proceedings
    - Provide a copy of any written reasons of the Hearing Panel, as may be permitted by the rules governing practice and procedure at Law Society proceedings
    - Whether or not the hearing is in public, in the event of an appeal, advise the Complainant of the appeal, the hearing date of the appeal and the outcome

- The fact that an application has been issued for a competence or capacity proceeding based on the Complainant's complaint unless a Complainant advised that he or she does not wish to be kept informed. This communication should be in writing and as soon as reasonably possible after the licensee has been served with the application. It should also include a brief explanation of the hearing process and advice on whether the Complainant has a right to be present at the hearing.

Professional Regulation Department
Operational Guidelines

Guideline 2:
Service Standards

2.1 Introduction

This policy is intended to encourage accessibility and transparency, and promote the adoption of consistent service standards for dealing with Licensees, Complainants, Claimants and others involved in the regulatory process. While case-specific exceptions are inevitable, these should be kept to a minimum. In general, staff should deal with each letter, phone call, fax or e-mail in accordance with this policy unless there are compelling and justifiable reasons to depart from standard procedure.

Departments may establish specific service standards for specific situations and/or business processes. Staff are responsible for observing both sets of standards, and for bringing any exceptions or concerns to their manager's attention.

2.2 Service Standards for Specific Departments

Please be aware that the following are timeline standards only, please refer to Guideline One: Responsibility to Complainants for the full list of service standards that apply to the Complainant.

2.2.1 Intake Department

- File assignments are to be made on the same day that the cases are transferred to Intake from the Client Service Centre.
- Intake staff conducts a preliminary risk assessment of each complaint. If the matter is determined to be high-risk, the case is streamed to Investigations.
- If additional documentation/information is required, Intake staff should contact the Complainant within 15 days of the file assignment.
- If the Complainant fails to provide the requested documentation/information by the date specified in the substantiation letter, the file is closed. Intake staff is to write to the Licensee, advising that while a complaint was made, the file has been closed.

2.2.2 Complaints Resolution Department

- The File should be assigned to Complaints Resolution ("CR") staff within two days of receipt of the file from the Intake Department
- An Acknowledgement letter should be sent to the Complainant within two days of the file assignment to CR staff
- A notification of the complaint should be provided to the Licensee (if appropriate) within two days of the file assignment to CR staff
- Unless there are exceptional circumstances, a status report on the complaint should be provided to the Complainant at least every 90 days, unless otherwise agreed upon by the Complainant and the PRD staff handling the complaint
- A status report on the complaint should be provided to the licensee at least every 90 days, or more frequently as appropriate in the circumstances of the case, unless otherwise agreed upon by the Licensee and the staff handling the complaint. After discussion with and permission from management, staff may be relieved of this obligation to provide a status report if doing so would jeopardize investigation of the complaint
- "Fast-Tracked" cases should be resolved within 60 days of the receipt of the complaint.
- The Complainant should be advised of the referral of a matter to the Proceedings Authorization Committee ("PAC") within 14 days after the referral is communicated to the licensee
- The Complainant should be advised of the decision of PAC, including the type of proceeding authorized, if any, within 14 days after the decision is communicated to the licensee
- The investigation should be completed and a report submitted to the manager of the department no later than 90 to 180 days from assignment of the file to CR staff.
- The median target closing date is 90 days from the receipt of the complaint.

2.2.3 Investigations Department

- Assignment of the file to Investigations should occur within two days of receipt of the file from the Intake Department
- An acknowledgement letter should be sent to the Complainant within five days of the assignment of the file to Investigations staff.
- An initial contact with the Complainant should be made by the Investigator within 30 days of the file assignment to the Investigator
- If appropriate, and assuming that it would not jeopardize any investigation of the complaint, contact the Licensee as soon as is reasonably possible to advise him or her of the receipt of the complaint.
- Unless in exceptional circumstances, a status report should be provided to the Complainant at least every 90 days, unless otherwise agreed upon by the Complainant and the PRD staff handling the complaint

- A status report on the complaint should be provided to the Licensee at least every 90 days, or more frequently as appropriate in the circumstances of the case, unless otherwise agreed upon by the Licensee and the staff handling the complaint. After discussion with and permission from management, staff may be relieved of this obligation to provide a status report if doing so would jeopardize investigation of the complaint
- Efforts should be made to gather all evidence within 90 days of the assignment of the file to the Investigator
- Generally, the Investigation report should be submitted to the Manager of the Investigations Department within 180 days of assignment of the file to the Investigator.
- The Complainant should be advised of the referral of a matter to the Proceedings Authorization Committee within 14 days after the fact of the referral is communicated to the Licensee, if the referral is communicated to the Licensee.
- The Complainant should be advised of the decision of the Proceedings Authorization Committee within 14 days after the decision is communicated to the Licensee.

2.2.4 Discipline Department

- The Complainant should be advised by Discipline Counsel of the referral of a matter to the Proceedings Authorization Committee within 14 days after the referral is communicated to the Licensee if a Conduct Application is being sought.
- The Complainant should be advised by Discipline Counsel of the decision of the Committee, including the type of proceeding authorized, if any, within 14 days after the decision is communicated to the Licensee

Professional Regulation Department
Operational Guidelines

Guideline 3:
Confidentiality, Information Sharing and
Disclosure

3.1 Introduction

The operation of section 49.3 and other sections of the *Law Society Act* makes the Law Society, and especially the Professional Regulation Division (PRD), the inevitable repository of a great deal of confidential and sensitive information. This includes information that would otherwise be subject to solicitor-client privilege or would be subject to the Rule regarding confidentiality between a client and a Paralegal Licensee.

In part, as a result of the Law Society's broad investigative and seizure powers, section 49.12 of the *Law Society Act* imposes stringent restrictions on the extent to which information obtained as a result of an audit, investigation, review, search or seizure can be disclosed. When confronted by an issue involving confidentiality, information-sharing or disclosure, staff must always consider what and how information can be revealed without violating either section 49.12 or the need to maintain the integrity of the regulatory process.

3.2 Handling Requests for Information – General Considerations

The following points should be considered when a request for information is received:

- The identity of the individual, department or organization requesting information about a Licensee, Complainant or complaint, and the requestor's relationship to the inquiry or investigation – the greater the distance from the inquiry or investigation, the more likely disclosure is to be problematic.

- The reason(s) for the request for information – in most instances, confidential information cannot be disclosed if the basis for the request is not clearly specified.

- The nature of the allegations against the Licensee – confidential information not germane or relevant to the allegations under review typically is less amenable to disclosure.

- The need for the inquiry or the investigation to obtain complete, reliable and accurate information – care should be taken not to disclose information that may effectively undermine the Law Society's ability to obtain additional information from other sources.

- The type of information or documents under consideration – the more sensitive, or privileged, the information, the less likely it is to be readily disclosable.

- The risk of harm to any person posed by the potential disclosure of the information – the greater the risk of harm, the less likely uncensored disclosure is to occur.

- The amount of harm to which the disclosure of the information would risk exposing the inquiry or investigation – the need to preserve the integrity of the investigation or inquiry is secondary only to the express requirements of section 49.12.

- The stage in the regulatory process that the complaint or the regulatory case has reached – some stages of the process (such as after the issuance of a conduct application, when matters are already part of the public record) are more amenable to disclosure than others (such as while an investigation is still ongoing).

- The common law duty of confidentiality on the part of the Law Society – staff should be mindful of case law developments in this area, especially decisions that help interpret the meaning of section 49.12 and comparable sections in other legislation.

- The statutory and common law duty of disclosure of the "fruits of the investigation" to the Licensee who is the focus of a conduct, competency or capacity application by the Law Society – it should generally be presumed that Licensees will receive full disclosure of all relevant information once an application is authorized and issued.

3.3 Solicitor/Client Privilege and the *Law Society Act*

As the repository of solicitor-client privilege, the Society has a special obligation to ensure that privilege is not lost. Hence care should be taken not to disclose solicitor-client information unless all parties consent or unless it is necessary for the administration of the *Act* or is otherwise authorized under s. 49.12.

Solicitor-client privilege is a common-law rule that currently only applies to lawyers. It is important to recognize, however, that the *Paralegal Rules of Conduct* impose a responsibility to protect confidential information obtained as a result of a relationship between a Paralegal Licensee and his or her client. As the repository of this information, the Society has a special obligation to ensure that the confidential nature of the information is not lost. Care should be taken not to disclose paralegal - client confidential information unless all parties consent or unless it is necessary for the administration of the *Act* or is otherwise authorized under s. 49.12.

3.4 Inside Information

In addition to case-specific considerations suggested by section 49.12 and the need to maintain investigative integrity, Convocation has created a more general policy dealing with the treatment of "inside information".

Inside information is any information concerning the Law Society that a person obtains during the course of employment with the Law Society. Examples would include information as to specific complaints or discipline charges against a Licensee and details of the Licensee's Errors and Omissions record. Information relating to the financial affairs or condition of the Law Society that has not been made available generally to the public is another example of inside information.

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

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

3.5 Requests for Status Reports on Regulatory Matters

This policy sets out the process to be followed in the event of a request for a status report, other than a request from a Licensee or Complainant, on a regulatory matter. Requests for status reports may originate from a number of sources, including benchers, senior management and external bodies, such as the media and government agencies.

3.5.1 Confidentiality

The need to maintain confidentiality will often limit what can be disclosed, and the content of a status report will vary depending on the requestor. In framing a status report, staff and management will consider the following confidentiality criteria:

- The requirements of section 49.12 of the *Law Society Act*, which restricts the Society's ability to disclose information about a complaint, investigation, etc.
- Any Law Society or Convocation policies with respect to confidentiality and disclosure of information, including policies related to the interpretation of section 49.12
- The need to protect solicitor-client privilege
- The need to protect confidentiality between a paralegal and his or her client
- The requestor's "need to know" in the context of the Law Society's fulfillment of its regulatory obligations
- The need to protect the Law Society's ability to thoroughly investigate and, where appropriate, prosecute a matter
- The need to avoid prejudicing the Law Society in future Discipline proceedings
- The need to avoid tainting the Proceedings Authorization Committee
- The need to avoid creating a reasonable apprehension of bias or any sense that the Society has prejudged or reached premature conclusions on the validity of a complaint
- The requestor's own ability and willingness to maintain confidentiality and abide by both the letter and spirit of section 49.12

3.5.2 The Structure of a Status Report

Status reports will typically contain the following basic elements. The degree of detail will vary depending on the confidentiality considerations outlined above.

- The name of the Licensee
- The nature of the complaint(s) and, if appropriate, the identity of the Complainant
- Who (and which department) has carriage of the file
- What has been done since the file was assigned
- What steps are imminent
- What steps are envisioned (e.g., referral to PAC, file closure)
- What time-frames are anticipated
- Explanation as to any significant delay to date or any future delay that is anticipated
- Any other information that is relevant to the inquiry and that satisfies the confidentiality criteria set out above

3.6 Information Sharing Prior to the Initiation of Discipline Proceedings: Complainants, Witnesses, the Public and the Licensee

Staff should be careful and judicious in disclosing any information in a regulatory matter, especially prior to the conclusion of the investigation and/or the authorization and issuance of a Conduct Application.

3.6.1 Information Sharing with the Complainant

Staff:

- Should share with the Complainant only the information that is necessary to advance its inquiry or investigation prior to the conclusion of the investigation
- Be mindful that the Complainant may also be a witness
- Must advise Complainants that the Law Society cannot and does not ensure that their identity and the information they provide to the Law Society will remain confidential and that they may be required to give evidence as a witness.
- Where the matter is being closed by PRD staff without a referral to the Proceedings Authorization Committee, staff should provide the Complainant with a closing letter which contains the following information:
  - A summary of the evidence considered
  - The outcome, e.g. the decision of the PRD staff to take no further action
  - The reasons for the staff decision
  - For matters closed in Complaints Resolution or Investigations, the fact that complaints review may be available to the complainant if he or she is dissatisfied with the Law Society's decision to take no further action.
- Not withstanding the above requirement, other confidentiality requirements (i.e. solicitor-client privilege, third party information, or safety concerns) may restrict the extent of the information provided to the complainant about the reasons for the decision.

3.6.2 Information Sharing With Witnesses

Individuals who are witnesses or potential witnesses should receive only enough information to be able to assist and advance the investigation or inquiry. Staff:

- Are not required to provide witnesses or potential witnesses with information about the outcome of the inquiry or investigation
- Must advise witnesses and potential witnesses of the fact that the Law Society cannot and does not ensure that their identity and the information they provide to the Law Society will remain confidential.

3.6.3 Information Sharing With the Public

Information about an inquiry or investigation is generally not provided to the public until a regulatory case has become a matter of public record, as per s.49.12 (2)(c) of the *Law Society Act*. Staff:

- Must not share with the public any information regarding the existence of a complaint or that a Licensee is subject to an audit, investigation, review, search seizure or proceeding.

- Must not disclose to the public any information regarding a past complaint or investigation that did not result in public proceedings against a member

3.6.4 Information Sharing With the Licensee

Staff should, as soon as practicable in the course of a case, advise the Licensee of the complaint under inquiry or investigation. This is intended to permit the Licensee a fair opportunity to respond. Staff should:

- Only provide the Licensee with sufficient particulars to identify the misconduct alleged and need not disclose every aspect of the complaint at the investigation or inquiry stage

Unless required to further the investigation or inquiry, staff should generally not share the following information with the Licensee until formal disclosure, i.e., after the authorization of a conduct application:

- Names of witnesses and potential witnesses
- Copies of witness statements
- Complete details of witness statements
- Copies of documentary information
- Copies of evidence, and
- The contents of the regulatory case

More information sharing with the Licensee may occur if staff determine that:

- Further disclosure will assist or advance the inquiry or investigation; and
- The risk that the Licensee will fabricate or destroy evidence is negligible
- The risk that the Licensee will improperly interfere with witnesses or potential witnesses is negligible, and
- The benefits to the inquiry or the investigation outweigh the risks of disclosure.

In these circumstances staff should provide to the Licensee only information necessary to advance the Law Society's inquiry or investigation.

3.6.5 Inquiries About A Licensee's Complaint History

Staff should inform requestors that:

- The number of complaints lodged against a Licensee is not a matter of public record
- The LSUC documents all grievances against Licensees, whether or not they have merit; and
- Therefore, the number of complaints may not indicate the quality of the Licensee's services

3.6.6 Inquiries About A Licensee's Discipline History

Caution must be exercised when dealing with an inquiry of this nature. Consideration must be given to the type of history as there are some Applications made to a Hearing Panel that are not a matter of public record. In general, discipline-related inquiries should be referred to staff designated for this purpose in the Client Service Centre.

3.6.6.1 Inquiries about Licensees who have been Suspended, Disbarred or Whose Licenses have been Revoked

Where a Licensee's license has been revoked, or the Licensee has been permitted to surrender his or her license in the context of formal discipline, staff may:

- Advise the person making the request for information about the former Licensee's status.

- Advise that, because the person is no longer a Licensee of the Law Society, the Law Society no longer has the authority to regulate his or her conduct.

Where a Licensee is currently suspended in the context of formal discipline, staff may:

- Advise that the Licensee is suspended and therefore not currently entitled to practise.

- Refer the Complainant back to the Client Service Centre for details of the suspension.

3.6.7 Inquiries about Licensees with Practice Restrictions

The Law Society's website indicates whether a Licensee is subject to a practice restriction. Inquiries about practice restrictions are directed to the Client Service Centre. If there is a public, active, restrictive undertaking in place, the caller is directed to the Monitoring & Enforcement administrator.

The caller is advised of M&E's mandate to monitor a Licensee's compliance with orders and undertakings that have been obtained by the Law Society. The caller is also advised that the terms of the undertaking will be read but no interpretation of the terms will be provided. The M&E staff will read the undertaking to the caller, taking care not to provide any information that would be deemed confidential, such as specific references to client names, trust account numbers or any terms which in and of themselves are noted as being restricted from release.

3.6.8 Discipline Counsel Opinions

At any stage of the investigation processes, staff may request input or an opinion from Discipline Counsel. All comments and opinions provided by Discipline Counsel within these processes are considered privileged. To help ensure that privilege can be asserted, documents containing Counsel's input or opinion should be:

- Marked "Privileged Information" and;
- Restricted circulation outside the Law Society

3.7 Information Sharing With the Police and Public Authorities

The Law Society co-operates with the police, to the full extent permitted by law, in order to identify potential criminal activity by Licensees and by individuals being investigated for the unauthorized practice of law. While the regulatory arm of the Law Society is not and should not be seen to be an investigative arm of the police, Licensees who engage in criminal activity ought not expect to be shielded by the Law Society from criminal liability. Any disclosure to police must be consistent with the confidentiality provisions of the *Law Society Act*. In particular, section 49.12 of the Act sets a very high standard of confidentiality for the Law Society. However, as of May 1, 2007, an additional provision has been added to s. 49.12, which permits disclosure of information if there are reasonable grounds for believing that if the disclosure is not made, there is a significant risk of harm to the person who was the subject of the investigation or to another person, and making the disclosure is likely to reduce the risk.

3.7.1 Law Society Disclosure Before Information is Public

The victims of alleged crimes are normally the ones expected to report to the police. Members of the public who are interested in filing a complaint at the Law Society should be told of the importance of notifying the police of potential criminal activity. They can be referred to the Law Society website, where this message is given along with general information about the complaints process. This message is repeated in a brochure that is sent to all complainants describing the complaints process. The message is reinforced with the form that people must complete to commence a complaint, which contains a box on which they are asked to indicate whether the police have been notified of the concern.

When the Law Society staff member assigned to investigate a complaint uncovers evidence of criminal activity, the staff member will consult with his/her manager or assistant-manager. If disclosure is not authorized under s. 49.12(f) of the Act, disclosure to the police can be considered, pursuant to section 49.13 of the Act. Disclosure to other public authorities, such as the Children's Aid Society, may also be considered.

Where the complainant appears to be the victim, the Law Society staff member will suggest to the complainant that he/she contact the police. A report to the police is not a requirement for the Law Society to commence or continue an investigation.

While complainants can be directed to particular police services, they are not normally directed to particular police officers or units, as the police services have their own intake procedures and contact information is widely available. Law Society staff should not express an opinion on any particular criminal offence having been committed and certainly not on the likelihood of a criminal conviction based on the available evidence.

3.7.2 Law Society Disclosure After Information is Public

A notice of application may disclose information about a complaint that becomes public when the notice of application is issued. Additional information about a complaint becomes publicly available when it is entered into evidence at a Law Society conduct proceeding, unless there is an order to the contrary.

Information concerning the unauthorized practice of law will be publicly available when the charge is laid under the *Provincial Offences Act.* Additional information will be in the public domain when it is entered into evidence in the prosecution in a criminal court.

Law Society staff may notify the police of information that reveals potential criminal conduct after that information has been made public in the hearing or trial process. The police may also learn of such information from news releases about the results of Law Society discipline proceedings and through the posting of those results on the Law Society website.

If the police are interested in information about potential criminal activity that has been made public in a Law Society discipline proceeding, or prosecution, they may, upon request, be provided with that information. The information may be copies of documents that were entered as exhibits at the hearing or transcripts of testimony. Law Society staff will also co-operate with the police in the execution of an appropriate search warrant in the event that the police request further information that is not in the public domain. This will be done in a manner consistent with the confidentiality concerns that are noted above.

3.8 Information Sharing and Disclosure Obligation to the Licensee

The Law Society has a legal obligation to provide full and complete disclosure to a Licensee who is the subject of a Conduct, Capacity or Competency Application. This disclosure obligation is of a continuing nature and does not end with the issuance of the Application. The Law Society's obligation to disclose information in its possession to the Licensee continues until the matter is finally disposed of. Additional information that comes into the possession of the Law Society after the issuance of an Application is also subject to the Law Society's disclosure obligation.

Discipline Counsel makes all decisions regarding disclosure with carriage of the matter. A decision to not disclose information can be challenged by the subject Licensee and then the Hearing Panel determines the matter.

Discipline Counsel must disclose all information:

- That touches on the matters at issue in the Application
- That is of an exculpatory or inculpatory nature
- That the Law Society intends to introduce in evidence, and
- That may be of assistance to the Licensee in making full answer and defence

Discipline Counsel need not disclose information that is clearly irrelevant. Caution should be exercised in the assessment of relevance, given the obligation to disclose information that "may be of assistance" to the Licensee. In reality, the Law Society's disclosure obligation shall most often require that the contents of the entire regulatory case file be disclosed to the Licensee. Information that should be disclosed to the Licensee includes but is not limited to:

- All statements obtained from persons who have provided information to the Law Society
- If statements do not exist, other information such as staff interview notes
- If notes do not exist, all information in staff's possession relating to any evidence that individual could give
- Staff notes pertaining to the progress of the investigation
- Telephone transaction notes pertinent to the investigation
- Video tapes obtained or made in the course of the investigation
- Audio tapes obtained or made in the course of the investigation
- The discipline history of the Licensee
- Records, reports and documentary information and evidence pertaining to the investigation or investigation regardless of the form in which this information is stored

3.9 Discipline Decisions

Discipline decisions in conduct matters are generally available to the public. Staff should however, refer all requests for such decisions to appropriate staff in the Client Service Centre.

The Law Society regularly publishes news releases and posts online the results of its hearing and/or appeal panels. Hearing and Appeal panels are composed of Law Society Benchers (Licensees and lay people) and other appointed Licensees who are responsible for determining the appropriate disposition of matters. For the most up-to-date, discipline history please contact the Law Society Client Service Centre.

Professional Regulation Department
Operational Guidelines

Guideline 4:
Risk Management

4.1 Introduction

In allocating finite resources and assigning priorities, staff and managers should subject the regulatory case to an initial risk assessment, and to periodic reassessments as circumstances evolve. In conducting risk assessments, the need for public protection is always of paramount importance.

4.2 Application of Guidelines

Individual staff are responsible for risk assessment on their files and are also responsible for consulting with Management as required, to enable appropriate risk assessments to take place.

The Intake Department conducts the first risk assessment in the life of a typical file, and assists in identifying which incoming regulatory matters should receive urgent priority. Subsequently, risk assessment and reassessment is a responsibility shared by:

- Staff with carriage of the file
- Managers and Assistant Managers of departments to which files are assigned
- The Director of Professional Regulation

4.3 Risk Assessment

Files with greater risk factors are to be given higher priority. These files are those that will require prompt and potentially more intrusive regulatory intervention. The risk factors discussed here are not exhaustive. Each individual situation will require careful scrutiny to enable staff to ascertain the actual degree of risk posed.

4.3.1 Risk to the Public

- Likelihood of Harm

(i) The Risk of Recurrence:

The most likely harm to the public will be from a recurrence of misconduct. Typically, the risk of recurrence will be assessed having regard to:

- Any pattern of misconduct alleged,
- The *prima facie* plausibility of the allegation, and
- Any remedial response by others.

Where there is reason to believe that the alleged misconduct was an isolated event, the risk of recurrence may be considered low. Allegations that are more *prima facie* plausible may require more careful and immediate attention than those rendered less plausible by the surrounding circumstances. The remedial response of others (such as the police) may have reduced the risk and, correspondingly, the urgency of any response by the Law Society.

In assessing whether an allegation is an isolated event staff will consider:

- The discipline history of the Licensee,
- Whether the allegation arises out of the Licensee's usual area of practice or out of the legal services the Licensee is permitted to provide, and;
- Whether the Licensee was suffering any unique personal or professional stress that may have caused or contributed to activity that is otherwise out of character.

Staff must avoid prejudging the outcome of any investigation. Nonetheless, for the purpose of assessing risk, plausibility can be assessed by drawing reasonable inferences from known facts. For example, there may be several independent complaints and/or witness reports about the same or similar misconduct, or the police may have laid criminal charges, or a firm may have fired the Licensee.

Effective remedial action by others may include criminal charges with either incarceration or bail conditions that help to ensure public protection. Alternatively, the Licensee may have been terminated from the employment that provided access to particular information and/or funds. The Licensee also may have agreed to appropriate counseling and/or supervision.

(ii) Preservation of Evidence:

The public also suffers when evidence that is necessary to determine the truth of an allegation is lost through obstruction or delay. Therefore, even where the risk of recurrence is considered to be low, an investigation may be expedited where there is an urgent need to preserve evidence, to prevent it from being destroyed or otherwise lost.

· Severity of consequences

Typically severity will be assessed having regard to the nature of the allegations and the circumstances of the alleged and potential victims.

The public can be harmed by the misconduct of Licensees in a number of ways. For example, clients may suffer financial loss through inappropriate use of funds held in trust. As a further example, legal rights may be compromised through inappropriate action in the course of the retainer. As a final example, in extreme cases, Licensees may inflict physical or emotional suffering.

In assessing the likely impact of financial loss, staff will consider the victim's economic circumstances. Those with limited financial resources are likely to suffer more from misuse of their funds. In considering prejudice to a legal position, staff will consider whether irreparable harm has been caused and whether the Licensee is likely to cause similar prejudice to others.

Typically, the risk of physical or emotional harm will demand an urgent response, particularly where the alleged victims are children or others considered vulnerable.

· Resource Allocation

Depending on the circumstances, where significant risk to the public is perceived, the Law Society may decide to allocate resources for an immediate full investigation, or it may decide to allocate those resources necessary to reduce the risk to a more acceptable level, by imposing an interim measure.

(iii) Interim Measures

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Appropriate interim measures may include:

- An undertaking with practice restrictions
- An undertaking with restrictions on the legal services that may be provided
- Co-signing controls on a trust account
- A trusteeship of the Licensee's professional business
- An interlocutory suspension
- Notice to the public, as permitted under the *Law Society Act*

4.3.2 Risk to the Licensee

· Likelihood of Harm

(i) Loss of reputation

Any allegation of misconduct may cause stress and loss of reputation to the Licensee/respondent. The risk is greatest when there are more serious allegations at issue and for those issues that have some public notoriety attached to them.

(ii) Loss of evidence

The ability of the Licensee to respond to an allegation may suffer where evidence is not gathered quickly. For example, where allegations of discrimination or harassment involve two conflicting and uncorroborated oral versions of events, it is particularly important to investigate while memories are fresh.

· Severity of consequences

The Licensee's personal and professional circumstances may be considered in determining whether exceptional prejudice may result from delay in completing an investigation. Relevant considerations may include:

- The size of the community where the Licensee practices; an unresolved allegation of misconduct is more likely to affect a Licensee practicing in a small town than in a larger centre
- The Licensee's area of practice; some specialties attract relatively few practitioners or legal service providers and are quite close knit - a cloud over a Licensee may have a more profound impact in these situations
- The Law Society's need to determine the Licensee's fitness to serve as an articling principal or qualify for inter-jurisdictional mobility
- In the cases of law students, the need to resolve good character issues before an anticipated Call to the Bar.

· Allocation of Resources

Prompt allocation of investigative resources may be required in situations where the risk to the Licensee is exceptionally high, or is disproportionate to the nature of the allegations themselves. In addition, if well-publicized allegations seem implausible and easy to refute, staff may consider giving priority to the investigation.

4.3.3 Risk to the Law Society and the Legal Profession

· Likelihood of Harm

The privilege of self-regulation rests on maintaining public confidence and a clear public perception that the Law Society regulates effectively in the public interest. The public will judge the Law Society, and to some extent will also judge the professions, by how quickly and effectively the Law Society responds to cases that place the public interest at risk. Furthermore, innocent Licensees may be exposed to regulatory action and/or negligence claims arising from a transaction involving misconduct on the part of other Licensees.

· Severity of consequences

Public confidence can be lost through ineffective regulation and also through a failure to communicate effective regulation. Individual cases may, depending on their notoriety, diminish public confidence if not handled in a timely fashion. Furthermore, individual Licensees, who are exposed to liability through the misconduct of colleagues, should know that there is an effective regulatory response.

· Allocation of resources

Ongoing risk assessment and appropriate resource allocation will demonstrate the profession's commitment to policing itself.

The Law Society may choose to direct resources to cases that can result in strong precedents to achieve broader regulatory objectives. For example, a decision of a hearing panel may send a message of general deterrence. As a further example, a decision may guide the profession in an area of practice that is not directly covered by the rules.

Professional Regulation Department
Operational Guidelines

Guideline 5:
A. Third Party Complaints
B. Concurrent Proceedings

Guideline 5A:
Third Party Complaints

5A.1 General

5A.1.1 Introduction

The Law Society receives complaints from "third parties", or parties other than clients of the Licensee who is the subject of the complaint, on a regular basis.

The 1990 Third Party Complaints Policy was revoked by Convocation on May 25, 2006. In revoking the 1990 policy, Convocation directed Law Society staff to create operational guidelines to replace it.

5A.1.2 Definition

A third party complaint is a complaint made by a person who is not a client of the Licensee who is the subject of the complaint. These guidelines apply to Professional Regulation Department (PRD) intake, resolution and investigation of the following types of third party complaints:

1. A complaint received from a third party in a litigation matter opposed in interest to the client of the Licensee. A common example would be one party in a family law litigation matter complaining about the other party's representative.

2. A complaint received from a third party opposed in interest to the client of the Licensee, in circumstances outside of litigation. Sources of these complaints could be parties involved in negotiations or other transactions, for example in the area of family, commercial, civil, criminal, real estate or labour law.

3. A complaint received from a third party in a litigation matter opposed in interest to the Licensee personally. The complaint may relate to the Licensee's behaviour in either a professional or personal capacity.

4. A complaint received from a third party opposed in interest to the Licensee personally, in circumstances outside of litigation. The complaint may relate to the Licensee's behaviour in either a professional or personal capacity.

5. Information received from a third party who is not necessarily opposed in interest to the Licensee but is also not a client of the Licensee (e.g. a member of the judiciary, a member of a tribunal, a government official or the media).

5A.1.3 General Considerations

Protecting the public is always of paramount concern to the Law Society. Hence, it is important to emphasize that, in all the circumstances outlined above, the Law Society has jurisdiction to investigate and may be expected to do so immediately where the need to protect the public so demands. Reference should be made to Guideline 4 – *Risk Management* in this respect.

However, in other circumstances, the Law Society may instead defer its investigation or delay the formal conclusion of an investigation until the outcome of a concurrent proceeding. The context of the complaint, including the need to avoid interfering unduly in court proceedings, may also affect the extent of the Law Society's disclosure of information to the interested third party who made the complaint.

5A.2 Responding to and Investigating Third Party Complaints

This section identifies some of the factors to consider in responding to and/or investigating a third party complaint. The fact that the Licensee is a third party does not affect the Law Society's jurisdiction to regulate its Licensees and the Law Society does attempt to resolve or investigate many third party complaints. However, set out below are considerations specific to third party complaints that will assist staff in deciding how to proceed. Please note that, in most cases, no single factor will be determinative. All factors should at least be considered.

5A.2.1 Factors to Consider

· Professional Obligations to a Person Who is Not the Licensee's Client

The Law Society receives a significant number of complaints from opposing representatives and from opposing parties who may or may not be represented by counsel. These matters may already be the subject of litigation, or may arise out of a dispute with the Licensee's client. Upon receipt of these types of complaints, the Law Society must determine whether the complaints raise a reasonable suspicion that the Licensee may have engaged in professional misconduct.

It is important to ensure that the complaint does not simply arise out of the Complainant's failure to appreciate the Licensee's professional obligations to a person who is not his or her client. It is also worth determining if the Complainant is simply frustrated with the litigation process, in which the Licensee is a participant. It is the Law Society's responsibility to determine whether complaints of this nature actually require investigation, or whether a more informal resolution is appropriate.

· Risk Management

Risk management is one of the primary responsibilities of the Law Society's Professional Regulation Division. A risk assessment must be conducted according to the guidelines set out in Guideline 4 - *Risk Management*. If the risk to the public, to the Licensee or to the Law Society is high, the Law Society may have to proceed with an investigation even where the Complainant is a third party and/or there are concurrent proceedings underway. Conversely, where there is no, or minimal risk, an investigation can be more comfortably delayed or deferred pending the outcome of the proceedings.

· Abuse of Process

The Law Society must be wary of the risk that its regulatory processes may be used for an ulterior motive. For example, complaints have been made to the Law Society as a tactic to apply pressure to an opposing party, or the opposing party's counsel, in civil proceedings, or with the hope of using the fruits of the Law Society investigation to advance a civil claim.

The Law Society's regulatory mechanisms are not to be made available simply to advance the position of an opposing party in litigation. There are, however, circumstances in which this may be the unavoidable outcome of an investigation or other Law Society proceeding.

· The Position of the Parties

Where the complaint is about a matter in litigation, the Complainant and the Licensee should be asked for their position on whether the investigation should be deferred. While the Law Society is not bound by their positions, their representations may help limit unnecessary Law Society interference in the related matter. Such representations should be documented: an agreement by the Licensee and/or the Complainant to fully or partially defer a Law Society investigation could be significant in a subsequent complaint about delay in the Law Society proceeding.

· The Likelihood of the Issue Being Decided in the Related Proceeding

Staff should consider the relationship between the complaint and the issue in dispute in litigation or elsewhere. Are the issues identical? Are they similar? The degree of similarity may warrant a decision to defer pending the outcome of the external dispute. It is also important to consider whether the external proceeding is likely to produce a judicial or quasi-judicial decision on the merits. Where the external proceeding is likely to be resolved with a formal decision, then this, too, may make it more appropriate to defer the Law Society investigation.

· Length of the Delay

Staff should consider how long a deferral will be necessary. The Law Society will more likely defer an investigation for a shorter period of time because a short deferral is less likely to prejudice our ability to investigate thoroughly. A decision to defer can be reassessed at any time and this should happen if, for example, the external proceeding is taking significantly longer than was originally expected or new information is provided.

· The Likelihood of Interfering With the Other Proceeding

An investigation of a complaint that is very similar to the related matter will more likely have some bearing on that matter. For example, Law Society contact with witnesses may influence the evidence they give in the related matter. A parallel Law Society investigation may also result in disclosure demands in the other proceeding for evidence gathered by the Law Society.

· Solicitor-Client Privilege / Confidentiality Between a Licensee and Client

Although an issue may arise in a context where a lawyer could ordinarily assert the privilege against a Complainant or a paralegal could assert the Rule protecting client confidentiality against a Complainant opposed in interest to his or her client, the existence of solicitor – client privilege or client confidentiality does not itself prevent the Law Society from investigating the matter. According to the powers conferred by the *Law Society Act*, a Licensee may not refuse to provide information on the ground that it is subject to solicitor-client privilege or that it is subject to rules regarding client confidentiality. At the same time, the Law Society must be careful not to *disclose* any information that is subject to solicitor-client privilege or client confidentiality, as set out in the following section.

5A.2.2 Disclosure of Information

When the Law Society decides to defer or close a third party complaint, the PRD staff member will have to communicate this decision to the Complainant (as well as the Licensee). Where the Complainant requests complaints review by the Complaints Resolution Commissioner of the decision to take no further action, additional disclosure considerations will apply. Where the Complainant is not the client of the Licensee, the Law Society must always be particularly careful about the extent of the information disclosed to the Complainant in its communications.

In explaining its reasons for closing a file, the Law Society must balance:

- its confidentiality obligations under the *Act*;
- its responsibility to Licensees regarding personal and professional information obtained through investigations that are to be closed; and
- its responsibility to Complainants and to the public to act in a fair and transparent manner.

A Complainant is entitled to a reasonable explanation of the Society's decision to take no further action. However, in the circumstances of a third party complaint, additional considerations include:

- The fact that the Law Society has the right to obtain information protected by solicitor-client privilege and Licensee–client confidentiality, but the information remains privileged and confidential and therefore may not be disclosed to a third party;
- The extent to which the third party Complainant has a direct interest in the outcome of the matter.

Guideline 5B: Concurrent Proceedings

5B.1 Concurrent Regulatory and/or Civil Proceedings

This policy identifies some of the factors to consider in deciding to investigate a complaint where there is a related civil/regulatory proceeding or, alternatively, to defer the investigation while the other matter proceeds. This applies to all non-criminal proceedings, which could include, for example: civil litigation; an ongoing investigation and/or prosecution by the Ontario Securities Commission; investigation and/or prosecution of a complaint to the Human Rights Commission; or a disciplinary proceeding by another Law Society.

If investigation is deferred, the progress of the other matter must be monitored.

Complaints involving related concurrent proceedings may also be third party complaints. In those circumstances, please refer to the previous section.

5B.1.1 Factors to Consider

· Risk Management

Risk management is one of the primary responsibilities of the Law Society's Professional Regulation Division. A risk assessment must be conducted according to the guidelines set out in Guideline 4 - *Risk Management.* If the risk to the public, to the Licensee or to the Law Society is high, the Law Society may have to proceed with an investigation even where there are concurrent proceedings underway. Conversely, where there is no, or minimal risk, an investigation can be more comfortably delayed or deferred pending the outcome of the proceedings.

· Abuse of Process

The Law Society must be wary of the risk that its regulatory processes may be used for an ulterior motive. For example, complaints have been made to the Law Society as a tactic to apply pressure to an opposing party, or the opposing party's counsel, in civil proceedings, or with the hope of using the fruits of the Law Society investigation to advance a civil claim.

The Law Society's regulatory mechanisms are not to be made available simply to advance the position of an opposing party in litigation. There are, however, circumstances in which this may be the unavoidable outcome of an investigation or other Law Society proceeding.

· The Position of the Parties

Where the complaint is about a matter in litigation, the Complainant and the Licensee may be asked for their position on whether the investigation should be deferred. While the Law Society is not bound by their positions, their representations may help limit unnecessary Law Society interference in the related matter. Such representations should be documented: an agreement by the Licensee and/or the Complainant to fully or partially defer a Law Society investigation could be significant in a subsequent complaint about delay in the Law Society proceeding.

· The Likelihood of the Issue Being Decided in the Related Proceeding

Staff should consider the relationship between the complaint and the issue in dispute in litigation or elsewhere. Are the issues identical? Are they similar? The degree of similarity may warrant a decision to defer pending the outcome of the external dispute. It is also important to consider whether the external proceeding is likely to produce a judicial or quasi-judicial decision on the merits. Where the external proceeding is unlikely to be resolved with a formal decision, then this, too, may make it more appropriate to defer the Law Society investigation.

· Length of the Delay

Staff should consider how long a deferral will be necessary. The Law Society will more likely defer an investigation for a shorter period of time because a short deferral is less likely to prejudice our ability to investigate thoroughly. A decision to defer can be reassessed at any time and this should happen if, for example, the external proceeding is taking significantly longer than was originally expected or new information is provided.

· The Likelihood of Interfering With the Other Proceeding

An investigation of a complaint that is very similar to the related matter will more likely have some bearing on that matter. For example, Law Society contact with witnesses may influence the evidence they give in the related matter. A parallel Law Society investigation may also result in disclosure demands in the other proceeding for evidence gathered by the Law Society. The Law Society should strive to minimize interference with other types of proceedings although, as noted, our responsibility to protect the public interest is always of paramount concern, even when there are concurrent proceedings elsewhere.

· Cooperation From Third Parties

Staff should consider whether a court or tribunal is the best place to determine the matter in issue because the court or tribunal may be better able than the Law Society to compel cooperation from third parties.

· Solicitor-Client Privilege and Licensee–Client Confidentiality

Staff should consider whether the Law Society is better situated than another forum to investigate the matter in issue because, according to the powers conferred by the Law Society Act, a lawyer Licensee and a paralegal Licensee may not refuse to provide information on the ground that it is subject to solicitor-client privilege or on the basis that it is subject to the rules protecting client confidentiality.

· Expertise

A specialized tribunal, such as the Ontario Securities Commission or the Ontario or Canadian Human Rights Commissions, may be the most appropriate forum for determining an issue that engages particular expertise. On the other hand, the Law Society may be better equipped to deal with matters that are most directly related to the practice of law or the provision of legal services.

· Resources

The time and effort required for an independent Law Society investigation may not be justified where the issue is likely to be determined in the related proceeding. Nonetheless, it is important to maintain public confidence in the willingness and ability of the Law Society to take appropriate and timely remedial measures. Resource considerations do not supplant the need to protect the public interest.

· Interim Public Protection

It may be reasonable to defer an investigation where interim measures are in place to protect the public. These could include:

- An undertaking with practice restrictions
- An undertaking with restrictions on the legal services that may be provided
- Co-signing controls on a trust account
- A trusteeship order over the Licensee's professional business
- An interlocutory suspension, or
- Controls on the impugned activity from another regulatory authority, such as the trading restrictions of the Ontario Securities Commission.

5B.1.2 When an Investigation is Closed or Deferred

After considering the factors set out in 5B.1.1 above, the file may be closed by Law Society staff, even where regulatory issues arise from the complaint. The file may be reopened if new information that relates to the conduct of the Licensee is received in future, for example, a decision of an assessment officer or a judge commenting negatively on a Licensee's conduct. In those circumstances, it is the responsibility of the Complainant to bring the new information to the Law Society's attention.

The Law Society may also defer an investigation due to concurrent proceedings in circumstances where the Law Society has jurisdiction to proceed. When an investigation is deferred, the concurrent proceedings continue to be monitored by the Law Society.

A letter must be written to the Complainant and the Licensee advising of the decision to close the file or monitor the concurrent proceedings. The letter to the Complainant must also remind the Complainant to:

- Preserve evidence in his or her possession;
- Contact the Law Society if the court or tribunal makes findings or comment about the conduct of the Licensee; and
- Where the Law Society is monitoring the proceedings, to provide new evidence or information to the Law Society upon receipt and to contact the Law Society when the concurrent proceedings are complete.

5B.2 Licensees Suspected of Criminal Activity/Charged Criminally

5B.2.1 Licensee's Obligation to Report to Law Society

On December 9, 2005, Convocation passed a new policy that introduces reporting requirements on Licensees who have been charged with certain offences. By-Law 8 is available on the Law Society's website, but the following are the categories of charges for which a Licensee or student Licensee must report to the Society, in writing:

a) An indictable offence under the Criminal Code (Canada);
b) An offence under the Controlled Drugs and Substances Act (Canada);
c) An offence under the Income Tax Act (Canada) or under an Act of the legislature of a province or territory of Canada in respect of the income tax law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the Licensee or relates in any way to the practice of law or provision of legal services by the Licensee;
d) An offence under an Act of the legislature of a province or territory of Canada in respect of the securities law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the Licensee or relates in any way to the practice of law or provision of legal services by the Licensee; and
e) An offence another Act of Parliament, or under another Act of the legislature of a province or territory of Canada, where the charge alleges, explicitly or implicitly, dishonesty on the part of the Licensee or relates in any way to the practice of law or provision of legal services by the Licensee.

The By-Law contains information about requirements to report where there is a private prosecution and also an interpretation of "indictable offence".

The Licensee or student Licensee must report the charge as soon as "reasonably practicable" after he or she receives notice of the charge and must inform the Law Society of the disposition of the charge as soon as "reasonably practicable" after he or she receives notice of the disposition.

5B.2.2 Deferral of the Investigation

Where a Licensee is charged with a criminal offence, the investigation or conclusion of the investigation may be deferred until the conclusion of the criminal proceedings. Reference should be made to the factors set out in Guideline 4 - Risk Management in determining whether the Law Society must take immediate action, which could be an investigation of the merits of the concern or an interim measure for public protection while the investigation is deferred. In addition, please refer to the following section for criteria for seeking an interlocutory suspension of a Licensee suspected of criminal activity.

5B.2.3 Criteria for Seeking an Interlocutory Suspension of the Licensee Suspected of Criminal Activity

All criteria for seeking an interlocutory suspension order must be related to the need for public protection, pursuant to 49.27 of the Law Society Act. Section 49.27 restricts a Hearing Panel from making an interlocutory suspension or restriction order unless "there are reasonable grounds for believing that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice, if the order is not made and that making the order is likely to reduce the risk."

While the Law Society has an obligation to be fair to the Licensee, it is not the role of the Law Society to balance the need for public protection against other interests, such as the presumption of innocence that would apply in the criminal justice system. The public must be protected where the Licensee may directly harm clients and others through the continued practice of law. Public protection should also include maintaining respect for the administration of justice and, in particular, the reputation of the Law Society as an effective regulatory body.

5B.2.4 When to Seek an Interlocutory Suspension Order of a Licensee Suspected of Criminal Activity

It may be necessary to seek an interlocutory suspension order based on criminal charges and before trial. The risk to the public may be too great, for too long, to wait for a conviction. This does not mean that Licensees are presumed guilty, but rather it simply means that the need for public protection is of paramount importance. This is analogous to pre-trial procedures in the criminal context where, although the accused is presumed innocent, a court may impose bail conditions or even deny bail in order to protect the public.

A conviction will make the case for an interlocutory suspension order stronger since the allegations giving rise to the concern for public protection have been proved beyond a reasonable doubt. The fact of a conviction should trigger concern for public protection even where there is an appeal and, therefore, the conviction is not conclusive proof of the facts of the offence. Transcripts of the decisions in which conviction and sentence are imposed will likely be crucial evidence in support of an application for an interlocutory suspension order.

5B.2.5 Factors to Consider When Seeking an Interlocutory Suspension Order

· The Severity of the Charge

The best general indication of severity is whether the Crown proceeds by way of indictment. Cases where Licensees are charged with an indictable offence should be carefully considered. Other charges where the Licensee is required to report under By-law 8 should also be carefully considered.

· The Connection Between the Offence and the Licensee's Practice

A connection will include cases where the Licensee has used the professional business (not just the premises but also his or her status as a Licensee) to commit the offence. For example, this could be the case where the Licensee uses his or her position of counsel to smuggle drugs to a prisoner. There will also be cases where the Licensee may not have used the business to commit the offence, but the nature of the alleged offence suggests that the Licensee should not be trusted to continue practicing law or provide legal services, even pending the outcome of proceedings. Many cases of fraud will fall into this category, even where the criminal allegations do not relate specifically to the Licensee's professional business.

· Response of Other Law Societies

In cases where a lawyer Licensee is also a member of another Law Society, the response of the other Law Society to the criminal charge or conviction should be considered.

· Availability of Evidence

Where there has been a charge or conviction, proof will be required. Reasonable efforts should be made to obtain supporting evidence, such as transcripts of court proceedings. However, an interlocutory suspension order will typically be required before there has been a full investigation of the underlying facts of the charge or conviction, because of the urgency of the need for public protection. The Law Society must also be concerned that its investigation does not interfere with ongoing criminal proceedings.

· The Connection Between the Offence and the Administration of Justice

Offences such as perjury or obstruction of justice may indicate that the Licensee is not suitable to act as an officer of the court even where the alleged offence was not committed in the course of his or her business.

· The Licensee's Response to the Law Society

The Law Society should promptly contact a Licensee with any concern related to protecting the public arising out of a criminal charge. If the Licensee shows insight into the allegation and is cooperative in addressing reasonable concerns for public safety, an interlocutory suspension order may not be necessary. On the other hand, if the Licensee is not cooperating with reasonable requests, such as signing an undertaking to either restrict or suspend a practice, there may be no alternative to seeking an interlocutory suspension order. For example, a Licensee charged with an offence related to sexual activity with a minor may be expected to provide an undertaking to meet children in the course of practice or in the course of providing legal services only when they are accompanied by an adult.

· Bail Conditions

Bail conditions may address the need for public protection. For example, a Licensee accused of smuggling drugs to a prisoner is likely to be denied access to prisons. Nonetheless, the Law Society may still need to take action because the charge may reflect on the trustworthiness of the Licensee. It may also be necessary to act in order to maintain public confidence in the integrity of the profession.

5B.3 Referral to the Proceeding Authorization Committee

Under section 50 of Law Society By-law 11, the Law Society may refer a matter to the Proceedings Authorization Committee ("PAC") to obtain directions with respect to the conduct of an investigation. In circumstances where direction is required from benchers about whether to defer or proceed with an investigation, the Law Society may refer this issue to PAC.

PROFESSIONAL REGULATION DIVISION
QUARTERLY REPORT

12. Professional Regulation Division's Quarterly Report (second quarter 2007), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period April to June 2007.

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

(1) Copy of the Member's Annual Report.

(Tab A, Appendix 1, pages 6 – 19)

(2) Copy of the Professional Regulation Division Quarterly Report (second quarter 2007).

(Tab C, Appendix 2, pages 59 – 103)

CONVOCATION ROSE AT 1:05 P.M.

Confirmed in Convocation this 25th day of October, 2007.

Treasurer