

MINUTES OF CONVOCATION

Thursday, 25th October, 2001  
9:00 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Aaron, Arnup, Banack, Bindman, Bobesich, Boyd, Braithwaite, Campion, Carey, Carpenter-Gunn, Cass, Chahbar, Cherniak, Coffey, Copeland, Crowe, Curtis, Diamond, Divinsky, E. Ducharme, T. Ducharme, Epstein, Farquharson, Feinstein, Finkelstein, Go, Gottlieb, Hunter, Lalonde, Lawrence, Legge, O'Brien, MacKenzie, Marrocco, Martin, Millar, Minor, Mulligan, Murphy, Pilkington, Porter, Potter, Puccini, Ross, Ruby, Simpson, Swaye, Topp, White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer announced the appointment of Patricia Jackson to the Ontario Judicial Council which appointment was adopted in camera on September 28th, 2001.

The Treasurer advised that Leonard Braithwaite had resigned from the Equity and Aboriginal Issues Committee.

The Treasurer noted the passing of Mr. Frederick Maltman who died on October 10th, at the age of 87. Mr. Maltman was a significant contributor to the establishment of the Law Society's Errors and Omissions Insurance program.

DIRECTOR OF EDUCATION REPORT

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Education asks leave to report:

B.  
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, October 25th, 2001:

Luc Edmund Barrick	Bar Admission Course
Eric Pierre Boucher	Bar Admission Course
Shawn Andrew Gerry Hamilton	Bar Admission Course
Stephen David Monaghan	Bar Admission Course
Dwight Gordon Newman	Bar Admission Course
Brent Brian Olthuis	Bar Admission Course
Grant Christopher Ritchie	Bar Admission Course
Craig Sandler	Bar Admission Course
Rosella Santilli	Bar Admission Course

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

B.1.4. The following candidate has completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now applies to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, October 25th, 2001:

Yvon Besner	Province of Quebec
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B.2. APPLICATION FOR TEMPORARY MEMBERSHIP UNDER SECTION 28.1

B.2.1. The Attorney General of Ontario has requested that the following person be admitted as a temporary member pursuant to section 28.1 of the Law Society Act to serve in the employ of the Attorney General of Ontario commencing on the date of his deemed Call to the Bar as a barrister and enrolment as a solicitor under that section and ending July 25th, 2002.

Peter Garth Williams	Province of Manitoba
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ALL OF WHICH is respectfully submitted

DATED this the 25th day of October, 2001

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

Carried

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Education were presented to the Treasurer and called to the Bar and the degree of Barrister-at-law was conferred upon each of them. They were then presented by Mr. Carey to Madam Justice Sandra Chapnik to sign the Rolls and take the necessary oaths.

Luc Edmund Barrick	Bar Admission Course
Eric Pierre Boucher	Bar Admission Course
Shawn Andrew Gerry Hamilton	Bar Admission Course
Stephen David Monaghan	Bar Admission Course
Dwight Gordon Newman	Bar Admission Course
Brent Brian Olthuis	Bar Admission Course
Grant Christopher Ritchie	Bar Admission Course
Craig Sandler	Bar Admission Course
Rosella Santilli	Bar Admission Course
Yvon Besner	Transfer, Province of Quebec

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FINANCE & AUDIT COMMITTEE

RE: 2002 BUDGET

Mr. Ruby presented the 2002 Budget including the annual fee and levy for approval by Convocation.

Questions were taken by the Bench, followed by a debate.

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that the general membership fee of \$1,045 be reduced by 25% and that the Budget be sent back to the Finance & Audit Committee to reconsider the Competence and Equity & Diversity programs.

Lost

ROLL-CALL VOTE

Aaron	For
Arnup	Against
Banack	Against
Bindman	Against
Bobesich	Abstain
Braithwaite	Against
Campion	Against
Carpenter-Gunn	Against
Chahbar	Against
Cherniak	Against
Coffey	Against
Copeland	Against
Crowe	Against
Curtis	Against

Diamond	Against
Divinsky	Against
E. Ducharme	Against
T. Ducharme	Against
Epstein	Against
Feinstein	Against
Gottlieb	For
Hunter	Against
Lalonde	Against
Legge	Against
MacKenzie	Against
Martin	Against
Millar	Against
Minor	Against
Mulligan	Against
O'Brien	Against
Pilkington	Against
Porter	Against
Potter	Against
Puccini	Against
Ross	Against
Ruby	Against
Simpson	Against
Swaye	Against
Topp	Against
White	Against
Wilson	Against
Wright	Against

Vote: 39 - Against; 2 - For; 1 Abstention

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that in future the annual budget process proceed by calculating an appropriate and affordable membership fee and that a budget based on that fee be presented to Convocation.

It was moved by Mr. Wright, seconded by Ms. Puccini that the Gottlieb/Aaron motion be tabled.

Lost

ROLL-CALL VOTE

Aaron	Against
Arnup	Against
Banack	For
Bindman	For
Bobesich	Against
Braithwaite	For
Campion	Against
Carpenter-Gunn	For
Chahbar	For

Cherniak	For
Coffey	For
Copeland	Against
Crowe	Against
Curtis	For
Diamond	For
Divinsky	For
E. Ducharme	Against
T. Ducharme	Against
Epstein	Against
Feinstein	For
Gottlieb	Against
Hunter	For
Lalonde	For
Legge	Against
MacKenzie	Against
Martin	Against
Millar	For
Minor	For
Mulligan	For
O'Brien	Against
Pilkington	Against
Porter	Against
Potter	Against
Puccini	Against
Ross	Against
Ruby	For
Simpson	For
Swaye	For
Topp	Against
White	Against
Wilson	For
Wright	For

Vote: 21 - Against; 21 - For

The Treasurer voted against the motion to table.

The Treasurer ruled the Gottlieb/Aaron motion out of order and referred the matter to the Finance & Audit Committee.

It was moved by Mr. Ruby, seconded by Messrs. Crowe and Epstein that the 2002 Budget, annual fee, levy and its components be adopted as follows:

1. "Annual fee of \$1,618 composed of the following:
  2. General membership fee - \$1,045
  3. Compensation Fund levy - \$290
  4. County Library levy - \$208
  5. Capital and Technology levy - \$75
  
6. Tuition fee for Bar Admission Course remains at \$4,400 unchanged from 2001."

Carried

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IN CAMERA

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IN CAMERA Content Has Been Removed

CONVOCATION RECONVENED AT 2:45 P.M.

PRESENT:

The Treasurer, Arnup, Banack, Bindman, Bobesich, Boyd, Carpenter-Gunn, Cherniak, Copeland, Crowe, Curtis, Diamond, Divinsky, E. Ducharme, T. Ducharme, Epstein, Feinstein, Go, Gottlieb, Lalonde, Lawrence, MacKenzie, Marrocco, Millar, Minor, Porter, Potter, Puccini, Ross, Ruby, Simpson, Swaye, Wilson and Wright.

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IN PUBLIC

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ADMISSIONS COMMITTEE REPORT

Mr. E. Ducharme presented the Report of the Admissions Committee for Convocation's approval.

Admissions Committee  
October 25, 2001

Report to Convocation

Purpose of Report: Decision Making

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions Committee ("the Committee") met on October 11th., 2001. Committee members in attendance were: Edward Ducharme (Chair), George Hunter (Vice-Chair), John Campion, Gillian Diamond, Pamela Divinsky, and Daniel Murphy. Staff in attendance were Julia Bass, Bob Bernhardt, Susan Lieberman, Charles Smith, and Roman Woloszczuk.
2. The Committee is reporting on the following matter:  
  
Policy - For Decision  
  
1) Proposed Amendments to By-Laws 11 and 12.

POLICY - FOR DECISION

PROPOSED AMENDMENTS TO BY-LAWS 11 AND 12

Issue

3. A number of amendments to these two By-Laws are required to reflect the new model of the Bar Admission Course and to bring the By-Laws into conformity with current practice. Most of the changes are of a house-keeping nature. The current wording is attached at Appendix 1.
4. The proposed amendments will not have any financial implications.

BY-LAW 11

Transfer Candidates

5. Section 4 of By-Law 11 deals with applications from lawyers from other provinces and territories of Canada to transfer to Ontario. The policy behind the Section is that, in order to be called in Ontario, the lawyers should meet requirements similar to those required of lawyers trained in Ontario. While the by-laws refer to 'a transfer examination', generally such lawyers are required to take a series of transfer examinations.
6. The seventeen-month period specified in paragraph 5 of the by-law is modelled on the length of time it used to take to complete the Bar Admission Course under the previous model. Now that the time has been reduced in Ontario, the time required of transfer candidates must also be reduced. This is in conformity with the requirements of the Protocol on the Inter-Jurisdictional Practice of Law, which provides that transfer candidates must not be required to meet more onerous admission requirements than candidates from the host province.

7. There is currently no time limit for transfer candidates to apply to be called to the Bar after completing the transfer requirements. It is proposed to set a three year time limit after which the candidate would not have an automatic right to be called. This is consistent with the rule governing Bar Admission Course students.
8. The proposed changes are as follows:
  1. Section 4 (1) 2: change "a transfer examination" to "transfer examinations"
  2. Section 4 (1) 3 and 5: add the word "final" before the words "transfer examination"
  3. Section 4 (1) 5: change the words "seventeen months" to "fourteen months"
  4. Section 4: add a new sub-section (8), setting a three-year time limit

#### Call Day

9. Section 6 (3) 1 of By-Law 11 provides that students at a call to the Bar ceremony are to be called to the Bar in a certain order, starting with those who have received certain awards. However, although the prize winners are announced at the start of the ceremony, the practice has been to proceed with the call to the bar in alphabetical order.
10. It is proposed to amend Section 6(3) by deleting paragraphs 1 and 3, and incorporating paragraph 2 into the body of the subsection, specifying that students are to be called to the Bar in alphabetical order, to reflect current practice.

#### BY-LAW 12

##### Staffing of Bar Admission Course

11. Section 1 (5) provides for the staffing of the Bar Admission course by "demonstrators, administrative officers and clerical assistants". This provision is regarded as obsolete.
12. The proposal is to delete Section 1 (5) as unnecessary.

##### Content of Bar Admission Course

13. Since the passage of the by-law, a shorter, re-configured model of the Bar Admission Course has been introduced. It is thus appropriate to amend the wording to reflect the new model of the Course.
14. The proposed changes are as follows:
  - a. Section 2 (1) (a) change "one month" to "two months"
  2. Section 2 (1) (b) change "twelve months" to "ten months", and delete the words "before entry into the teaching term referred to in clause (c)"
  3. Section 2 (1) (c) change "three months" to "two months"

##### Time Limit in BAC

15. A number of administrative problems have been caused by the fact that, while most students complete the BAC within one complete course cycle, there are some students who do not complete the course, and fail to notify the Law Society of their intention to do so. These students can remain registered as students in the course for years without participating in the course at all.
16. The Committee proposes to add a new section providing for a defined time for continuing as a student in the Bar Admission Course without the requirement of reapplying. It is proposed that the defined time be two years from the date upon which the student began participating in any of the phases of the BAC. This would mean that a student who began the skills phase on May 1, 2001 and failed to complete it or any other phase of the course would cease to be a student in the BAC on May 1, 2003. The student could, of course, reapply for admission.

17. Similarly, there is currently no provision in the by-law for the expiry of BAC credits, in the case of students who pass part of the BAC but do not proceed to be called to the Bar.
18. The Committee proposes to add a new provision that credits expire after 3 years, subject to a discretion for the Director of Education to extend this time limit in appropriate cases.

#### Withdrawal from BAC

19. Similarly, there is no simple mechanism for a student to withdraw from the Course voluntarily when personal circumstances require.
20. The Committee proposes to add a provision for students to withdraw from the BAC.

#### Filing of documents

21. Reflecting the old model of the BAC, Section 4(5) requires a student to file supporting documents with the Director of Education by the end of August.
22. The Committee proposes to delete the words "in August" and replace them with "at the time specified by the director".

#### Tuition fees

23. Section 5 (1): Under the old model of the BAC, students were required to pay the fee in full before starting the Course. The new policy on tuition fees, however, gives students longer to pay, so that they can use the income earned during articles to pay their fees, (fees must now be paid before a certificate of completion will be issued).
24. The Committee proposes to delete the words "and each tuition fee shall be paid before the student-at-law commences the teaching term for which the tuition fee is required".

#### The Committee's Deliberations

25. The Committee considers that these are housekeeping amendments that do not represent any substantial policy change.

#### Decision for Convocation

26. The Committee asks Convocation to approve the changes in principle and direct that the necessary amending by-laws be prepared.

### INFORMATION ITEMS

27. The Committee presents the following reports for information:
  1. Annual Report on the Bar Admission Course,
  2. Articling Report 2001,
  3. 'Options in the Evaluation of Articling Experiences' (Report commissioned from the Ontario Institute for Studies in Education),  
Note: this report was referred by the Admissions Committee to the Task Force on the Continuum of Legal Education.

REPORT TO THE ADMISSIONS COMMITTEE  
ON THE IMPLEMENTATION OF THE NEW MODEL OF THE  
BAR ADMISSION COURSE

SUMMARY

1. On March 26 1999, Convocation approved the recommendations of the Task Force on Bar Admission Course reform, resulting in the new model of the Bar Admission Course (BAC) being approved for implementation in May 2001. The new model has been successfully implemented, and benefits include:

- a successful integration of the teaching of skills and substantive law;
- a high approval rating by students;
- considerably increased flexibility as compared to previous BAC models;
- a substantially reduced time to call;
- delivery in all metropolitan centres with law schools; and
- the availability of non-skills components through distance education.

Concerns with respect to the new model relate to student burnout and student readiness for some aspects of the course. Both of these concerns are addressed in this report.

2. The previous model of the BAC consisted of a 4-week Phase One, a requirement for a year of articling of which 4 weeks could be vacation, and a 15.2-week Phase Three. The new model, as approved and subsequently modified by Convocation, has an 8-week Skills Phase, ten months of articling, and a 10-week Substantive/Procedural Phase. The integration of the teaching of substantive law and skills in the Skills Phase was intended to provide more realistic and relevant skills training. The skills exercises were to be oriented towards areas of law chosen by the student. The scheduling of the Course was changed in order to eliminate "compulsory wait time", and as a result students can be called to the bar five months earlier in 2002 under the new model, and as much as seven months earlier in 2003. (In 2002 the major ceremonial calls for students within the new model will be in September, and in 2003 the ceremonial set of calls will be held in July, with additional ceremonial calls in September as numbers warrant.) The specific recommendations as approved by Convocation are presented in italics in the material that follows. This report provides an update on the progress achieved to-date for each of the recommendations.
3. The new model began in May 2001, with the following features:
  - a. The Skills Phase ran from May 1, 2001 to June 27, 2001.
  2. Students can choose to complete both teaching phases prior to articling, from June 28, 2001 through to August 30, 2001. Approximately 75% of the students chose to do the course in this sequence. The students were then able to start articling in September. Although this was the student's choice, in practice it was frequently heavily influenced by the articling principal. (The Guidelines for the Recruitment of Articling Students were revised to require principals, or firms, to inform students of the pattern of articling required for employment no later than the time of the interview for firms in the matching program, or at the point of offer for firms not using the matching program.)
  - c. Alternatively, students can choose to article between the two teaching phases. Students who chose to do the articling phase between the two teaching phases were available for articling by June 28, 2001. These students will return for their Substantive/Procedural phase in July and August of 2002.
  - d. Students who successfully complete the new model will be called to the bar in September 2002, as opposed to February 2003, regardless of the order in which they choose to do the phases.
  - e. Those students who choose to do the entire in-class portion prior to articling in 2002 will be able to be called to the bar in July of 2003. Those who choose to do articling between the in-class portions will be eligible for call in September 2003.

- 4. The new model was simultaneously implemented in each of the five metropolitan areas in Ontario which contain law schools. The enrolment in the initial phases was as follows:

LOCATION	SKILLS PHASE	SUBSTANTIVE/ PROCEDURAL PHASE
Kingston	76	59
London	94	67
Ottawa - English	157	106
Ottawa - French	43	29
Toronto	731	597
Windsor	77	45
<b>TOTAL:</b>	<b>1178</b>	<b>903 (76.7%)</b>

**THE IMPLEMENTATION**

- 5. The new model includes the same substantive areas of law as the previous model of the BAC. The major change is in the creation of the more effective and practical skills training and the new Professional Responsibility and Practice Management module. The new BAC was implemented with updated reference materials in all areas of substantive law, a new 400+ page skills reference book, as well as a collection of newly devised seminar activities for the Skills Phase. The seminars have become the most critical portion of the course, as the seminars integrate substantive and procedural law content with the teaching of skills and professional values.

- 6. The new Skills Phase includes the following three components:

- \* Solicitor Module (3 weeks) - This module provides students with a variety of skills related to a solicitor's role, while providing students the substantive and procedural law relating to either real estate law or business law. At the conclusion of this module students write their exam in the chosen area of law.

- \* Professional Responsibility and Practice Management Module (2 weeks) - This module provides a significantly enhanced focus on both professional responsibility and on skills and knowledge in practice management. At the conclusion of this course a student writes an examination in professional responsibility. (In addition, a professional responsibility exam will be administered at the end of the articling phase.)

- \* Barrister Module (3 weeks) - This module provides students with a variety of skills related to litigation, while at the same time providing the substantive and procedural law relating to either civil litigation or family law. At the conclusion of this course the students write their exam in the chosen area of law.

7. The new Substantive Procedural Phase was originally approved as a 12 week course. Further review of the content, as well as concern about the importance of concluding the course in August, resulted in Convocation's approval of a reduction to 10 weeks. This allows the teaching portion of the course to be completed prior to Labour Day. (The extension of the teaching phase into September would have presented major logistical concerns, both for the students, and for the Law Society in finding space at other educational institutions.) The Department of Education canvassed the Ontario law schools with respect to their examination timetable, which made it apparent that the Skills Phase could not start before May.
8. In 2001, the substantive law portions were offered twice, once in the new model and once in the last running of the old Phase Three. Students completing the old model took Phase Three from September to December.
9. The Department of Education sought and received the approval of Convocation to defer the offering of a part-time version of the new course. The part-time model had been proposed in response to concerns regarding the students' financial needs, which have subsequently been addressed through the creation of a program of forgivable student loans.

#### STATUS OF EACH RECOMMENDATION

##### Recommendation #1:

- *The recommended model of the Bar Admission Course should be adopted to commence with the [Skills Phase]<sup>1</sup> in 2001. The model consists of:*
    - *an eight-week skills oriented teaching and examination term prior to articling [Skills Phase];*
    - *offering of the [Skills Phase] in each of the Ontario cities with a law school;*
    - *the integration of two areas of law into the [Skills Phase], one barrister focused and one solicitor focused, in order to make the skills exercises more practical;*
    - *student choice (limited) with respect to the areas of law their skills courses are oriented toward (e.g., solicitor - Business or Real Estate law; barrister - Family Law or Civil Procedure);*
    - *completion of the bar examinations for the two chosen areas during the [Skills Phase];*
    - *a 52-week articling period [subsequently changed to 10 months];*
    - *a 12-week teaching and examination term [subsequently changed to approximately 10 weeks] after articling that focuses on practice and substantive law with an emphasis on the completion of common transactions in the area of law under study [Substantive/Procedural Phase];*
    - *flexible study methods supported by self-study materials developed for all [Substantive/ Procedural Phase] courses (to assist in distance learning);*
    - *Computer-assisted study materials developed to the extent feasible; and*
    - *opportunities to self-study and write examinations earlier, to the extent that it is feasible to allow/support this option.*
10. Accomplished, with ongoing work in the computerization and self-study components.

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<sup>1</sup> Note: The references to the phases have been changed to reflect the names which were eventually adopted. All references to Phase One in the new model have been replaced by 'Skills Phase', and all references to Phase Three have been replaced by 'Substantive/Procedural Phase'.

Recommendation #2

*Rather than set specific sites for the Bar Admission Course, the Department of Education should be encouraged to make arrangements for the course to be offered in as many sites as feasible within the constraints of budget and the quality of the educational experience.*

11. Accomplished. As previously indicated, the new model was implemented in all five of the metropolitan centres with law schools. Seminars were provided with local practitioner volunteer instructors and lectures were delivered through a combination of live delivery and video-conferencing.

Recommendation #3

*The Law Society of Upper Canada should continue to be the organization that delivers both the examination and teaching components of the Bar Admission Course.*

12. No action required.

Recommendation #4

*The Law Society should initiate a dialogue with Ontario law schools in order to ensure that the Bar Admission Course is not repetitive of the learning that is common to the LL.B. programs within the province.*

13. Ongoing. This is an area that will require ongoing dialogue and the approach to be followed will be influenced by the work of the Task Force on the Continuum of Legal Education. There have been a number of meetings with representatives from Ontario law schools, but there has not been a formal review of the curriculum in each program. It is apparent that the law schools differ substantially in their curriculum *vis a vis* other law schools, and that individual students have considerable choice within a given curriculum. Whereas the focus of the BAC is on a common experience for all students, the focus of the law schools is on the personal growth of individual students.

Members of the Department of Education have visited each of the law schools to speak to the students about their preparation for the Bar Admission Course - both teaching and articling phases. The Law Society is also developing a brochure to ensure that law school students are adequately informed of the expectations they will face in the Bar Admission Course.

Recommendation #5

*The lecture and seminar materials in the substantive law portions of the course should be converted for computer-assisted access and learning to the extent feasible, within the funds available.*

14. Ongoing. This is a process that will occur over a number of years, and requires considerable front-end investment. The Law Foundation of Ontario has approved funding for the initiation of this conversion. A pilot conversion of the precedents provided in Family Law has been completed and the resultant CD-ROMs have been distributed to students in the Course. All Toronto based lectures are being recorded and distributed via video streaming over the Internet. A web-based Accounting course has been developed through the use of Web-CT, and contract development from IBM. Planning is underway for the development of a premiere web-based set of modules in professional ethics, the rules of professional conduct and practice management.

Recommendation #6

*Given the importance of equity and diversity issues expressed in the consultation document in the Aboriginal and equity group consultations and in the literature review conducted by the LSUC Equity Initiatives Department, the implementation of the new model for the LSUC Bar Admission Course will incorporate responses to these issues as feasible. To a large extent this will be accomplished by ensuring that the model, and its subsequent implementation, provides the flexibility in learning opportunities that will meet the needs identified. This flexibility in learning opportunities does not imply flexible or lowered standards for measuring competence. Further, the Department of Education will ensure continued dialogue during implementation with concerned individuals, including the Treasurer's Equity Advisory Group and those involved in the Aboriginal and equity group consultations who wish to remain informed.*

15. Significant progress. Numerous changes have been introduced to address concerns relating to equity and diversity issues. The Department of Education is working closely with the Equity Initiatives Department to develop proactive responses to a range of concerns. Specific changes which help to address this recommendation include the creation and staffing of the Student Success Centre, the implementation of optional orientation sessions for students, development of a forgivable student loan program, enhanced availability of tutoring, sensitivity training for the volunteer BAC instructors, special aboriginal support programs, enhanced support for student accommodations, and web-supported distance education. Of particular note is the improved success rate of Aboriginal students in the Bar Admission Course. As reported to Convocation in June, the success rate for these students improved between the 41<sup>st</sup> to the 42<sup>nd</sup> BAC from a 50% to an 84% completion rate. The implementation of the new structure provides considerably increased flexibility for individual students with respect to how they proceed through the course. The continuing dialogue with the equity-seeking groups is important in ensuring that these issues are successfully addressed.

Recommendation #7

*Recognizing that articling represents the largest segment of the Bar Admission process, and notwithstanding the strong valuing of this component by the junior bar (88% rate the experience as positive), the Task Force recommends that further research and analysis be done on articling to address issues such as:*

1. *whether articles should be shortened,*
2. *the most appropriate duration period for articles,*
3. *whether guidelines should be established for salary and working conditions,*
4. *the range of quality in the articling placements,*
5. *methods for monitoring and improving the quality of placements,*
6. *the Law Society's responsibility in finding suitable placements, given that articling is a requirement for entry into the profession.*

16. Significant progress, with some continuing elements. The Admissions Committee proposed a task force to investigate these issues. Although the task force was struck by Convocation, its work was put on hold pending the completion of the Strategic Planning activity. Subsequently the mandate for the review of articling was integrated into the work of the Task Force on the Continuum of Legal Education. A Working Group of the Admissions Committee addressed some of the issues which required immediate attention, and the Articling Department has funded the development of an analysis of the goals of articling as compared to the goals of other professional work experience programs. This work has been completed by a professor and two researchers at the Ontario Institute for Studies in Education, and the resulting report should inform both the work of the Task Force as well as the Admissions Committee.

17. The Articling Working Group of the Admissions Committee gathered data with respect to the appropriate length for the articling period. In comparing the articling periods in other provinces the Working Group noted that the most common duration is approximately 10 months. Based upon this research, as well as on the subsequent review and analysis by the Admissions Committee, Convocation determined that the articling requirement should be revised to ten months, inclusive of a two week allowance for vacation.

Recommendation #8

*The Department of Education should be required to prepare formal implementation and evaluation reports to the Admissions and Equity Committee, and Convocation, on a yearly basis, which would allow these bodies to evaluate, monitor, and adjust the changes being implemented.*

18. This report represents the second in this series.

Recommendation #9

*The primary source of instructors and authors for the Bar Admission Course should continue to be volunteer members of the practicing bar. Instructors should be trained and supported for their roles, and their success should be monitored and assessed.*

19. Accomplished, and ongoing. Enhanced instructor training was introduced in September 1999. Although the training was originally intended primarily for new instructors, it was sufficiently well received that the Department of Education received calls from experienced instructors requesting inclusion in the sessions. Subsequently the training has been made compulsory for new instructors and recommended for all instructors. Training materials have been developed to complement the training sessions. In addition, instructor meetings were held prior to each module of the course so that the instructors could be notified of changes in the material and sensitized to equity and diversity concerns. The instructor training has been provided to approximately 250 instructors in the various BAC teaching centres.

Recommendation #10

*A pilot project should be initiated to study the difficulties and benefits in allowing students to self-study and complete [Substantive/Procedural] examinations at an earlier point. The pilot could involve two examinations whose courses are scheduled toward the end of the [Substantive/Procedural Phase], and involvement in the pilot would be on a volunteer basis.*

20. Modified implementation. We have piloted self-study with distance education students in Phase Three of the old model. Distance education became available in September 1999, since when we have had nine students in 1999, eighteen students in 2000, and over 40 students in 2001. The success rate for the students in the previous years was comparable to the success rate of the student body as a whole. The scheduling of the new model has made earlier completion of BAC examinations moot for students in the normal post-LL.B. stream.

Recommendation #11

*Sufficient substantive law should be integrated into the skills component so that the skills teaching is valued and viewed as practical by the students.*

21. Accomplished. The integration of substantive and procedural law with the skills training in the new Skills Phase was remarkably successful, as described in the "Measures of Success" section which follows the individual recommendations.

Recommendation #12

*Increase the emphasis on practice management, and ensure that materials developed for this component are readily available to the practicing bar.*

22. Accomplished, and ongoing. The new module on Practice Management and Professional Responsibility in the Skills Phase represents a significant increase in the attention paid to practice management. In addition, the new Internet based materials developed for Accounting could be suitable for sale through CLE, or for free distribution as a practice advisory support. Similar materials will be developed in other areas of practice management as part of the development of the Internet based training in professional ethics, the rules of professional conduct, and practice management.

Recommendation #13

*The legal research component should be updated on an ongoing basis to provide strong legal research skills for both manual and computer-assisted research, and the training and materials developed should be offered through CLE.*

23. Substantially accomplished. BAC faculty are still in the process of determining the most appropriate way to address this objective. The reference materials for the new Skills Phase contain a number of new articles on legal research, and a research assessment was completed by all students during the Skills Phase. In future, the Continuing Education Department is considering implementing an annual research program early each spring, so that the materials could feed into the subsequent offering of the Skills Phase in May/June.

Recommendation #14

*The Phase Three modules should be reviewed to ensure that the focus within each module is on the completion of common transactions within the area of law.*

24. Accomplished. The Section Heads and Senior Instructors in each area of law performed a top down review of each course to ensure that the objectives, content and examinations are appropriate.

## MEASURES OF SUCCESS

25. The integration of substantive and procedural law with the skills training in the new Skills Phase was judged to be a success according to both instructor and student feedback. Whereas the former Phase One had received an approval rating of only 41%<sup>2</sup>, the modules within the new Skills Phase received approval ratings ranging from 70% to 90%.<sup>3</sup> The integration of the teaching of the substantive law with the teaching of the skills proved to be particularly effective. In the past, students and instructors had complained that the skills exercises did not seem realistic as the substantive law on which the exercises were based was so simple that it seemed trite. When the Spence reforms were first introduced in 1991, the initial exercises were more complex. However, the students lacked the substantive content and as a result the exercises were simplified to the point where much of the value was lost. The integration of the substantive and skills content has achieved a satisfactory combination.
26. The Skills Phase involved the introduction of a new set of Skills Phase reference materials (over 400 pages) with articles on problem solving, interviewing, self assessment, legal research, statutory analysis, negotiation, legal writing, motions, and examinations for discovery, as well as on a range of additional advocacy skills.
27. In the manner of the very successful advocacy training developed by the National Institute of Trial Advocates (NITA), and as used by the Advocates Society, the Law Society substantially reduced student/instructor ratios for the advocacy skills instruction days. Most of these days were taught within a ratio of one instructor for every ten students.
28. During the Skills Phase video conferencing was employed frequently to bring the leaders of the profession to the students in all centres in which the BAC was being offered. The video conferenced lecturers included, among others, former Treasurer Robert Armstrong, bencher Derry Millar, bencher Gavin Mackenzie, Law Society CEO Malcolm Heins, David Lepofsky, Austin Cooper, Stephen Grant, Michael Watson, Paul Perrell, and John Rosen, all from Toronto, as well as current Treasurer Vern Krishna from Ottawa. The video-conferencing also allowed lectures to be delivered in Kingston, Windsor and London at times when local expertise was not available. In addition, lectures were captured for video-streamed web distribution in future modules.
29. The new Skills Phase provided opportunities for students to interact with leaders in the profession and to be exposed to their values and beliefs. This interaction is critical during a period in which we are working to ensure that values in ethics and civility are acquired by the students.
30. There were two concerns that arose during the implementation of the two new phases during the spring and summer. During the Skills Phase there were several areas taught in which the students appeared to lack the academic readiness to benefit fully from the course. During both phases there was a problem with student 'burnout'. In each case the faculty and instructors have proposed appropriate adjustments.

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<sup>2</sup> *Survey performed by the Institute for Social Research, York University, in November of 1998, of those who had been called to the bar in the five years previous to the survey. The survey was conducted as part of the BAC reform process.*

<sup>3</sup> *Based upon surveys administered by the Project Leader for the Implementation of the New Model of the BAC, Cindy Pinkus.*

31. The Skills Phase started on May 1, 2001. Students in LL.B. programs had, in many cases, examinations and assignments which were due on April 30. In addition, because Phase One in the previous model had a reputation as being relatively easy, a number of students chose to work during the new phases. The combined impact of these two pressures on the students resulted in a number of them becoming exhausted by the end of the summer, with a corresponding drop in attendance in the latter courses in the Substantive/Procedural Phase. In 2002, the course start is May 6, so that students will have a short break before the BAC.
32. The Department of Education will be bringing forward suggestions in November with respect to attendance requirements. Through requiring attendance for certain portions of the course (for example the Skills Phase and Professional Responsibility), providing better direction to students with respect to the effort required for the course, and reducing the number of assessments in the Skills Phase, students in the future should experience less pressure and be better prepared.

#### MODIFICATIONS

32. In the both the solicitor and the barrister modules of the course students have been given a choice of area of law, in order to be more 'student friendly'. Students are able to study in an area in which they have sufficient background, and can relate to the material. With the Real Estate Law /Business Law choice in the solicitor module this worked well. In the barrister module, the choice was between Civil Litigation and Family Law. Students who chose Family Law had decidedly more difficulty with the course, as instructors found students to be unaware of the basics they needed to tackle the subject. Many of the students had not taken any family law in law school, and although they had taken civil procedure they were not sufficiently familiar with court structures and procedures, with the result that the failure rate was 3.5 times greater in the Family Law course. In the past the Department of Education has scheduled Civil Litigation prior to the Family Law course, which helped students to be sufficiently prepared. On the other hand, there have been no problems with the Civil Litigation course, which has proved to be one of the more popular courses offered.
33. The Department of Education is proposing to move Civil Litigation into the barrister module. Students will then take Family Law in the Substantive/Procedural Phase. This timing change will have no impact on the substantive law that each student is taught.
34. Instructors also found that the students were insufficiently prepared for the Professional Responsibility issues and exercises. Students take this course after either Business Law or Real Estate in the solicitor module. Lacking experience from articling, and not having had the interaction with the practising bar provided by the other courses, the students had difficulty relating to the problems presented. As issues of professional ethics and responsibility are discussed in each of the other courses students acquire a broader understanding of the nature of professionalism.
35. The Department of Education is proposing to move Criminal Law into the Skills Phase and Professional Responsibility and Practice Management into the Substantive/Procedural Phase, so that the two courses trade positions. Criminal Law will serve as the vehicle to deliver some litigation skills, which are currently overloaded in the barrister module. In addition, Criminal Law will serve as the course in which matters of professional responsibility as related to criminal practice are introduced.
36. In the future it may be advisable to offer some component of the Professional Responsibility course at other times during the year, so that all the students have completed at least a portion of their articles. A proposal on this topic is being developed.

37. These modifications have no budget implications.

ARTICLING REPORT  
2001

Articling & Placement Office  
Department of Education  
Law Society of Upper Canada  
September 21, 2001

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ARTICLING & PLACEMENT OFFICE  
ARTICLING REPORT, 2001

HIGHLIGHTS

During the twelve months ended June 30, 2001, the Articling & Placement Office, in addition to administering the department in an effective, efficient and equitable manner, achieved all of its specific goals for the year by:

- a. Streamlining administrative processes,
- b. Revising and clarifying policies and criteria for abridgments, national and international articling,

- c. Commissioning a research study about the articling evaluation process,
- d. Reviewing and making recommendations for improving the process of principal approval and renewal, and
- e. Communicating its policies and procedures widely and transparently.

Looking forward to the coming year, the Articling & Placement Office plans to continue to administer the department in an effective, efficient and equitable manner and has identified the following specific goals:

- a. Examine fundamental aspects of articling, using the report "Options in the Evaluation of Articling Experiences" to launch this review,
- b. Continue to streamline the operations of the Articling & Placement Office, and
- c. Set standards to ensure continuing outstanding customer service.

## I PURPOSE OF THIS REPORT

1. The purpose of this report is to provide a summary of the Articling program and its administration for the year ended June 30, 2001. This report provides some notes about the background and history of articling in Ontario. It also describes the current program and the processes used to monitor the program. This report does not address recruitment and placement activities of the Articling & Placement Office as these activities are reported on each December in the annual Placement Report.
2. In addition to the usual goals of administering the department in an effective, efficient and equitable manner, the department set the following specific articling goals in Year 2000:
  - a. To streamline administrative processes,
  - b. To revise and clarify policies and criteria for abridgments, national and international articling,
  - c. To undertake research about the articling evaluation process,
  - d. To study and make recommendations for improving the process of principal approval and renewal, and
  - e. To communicate its policies and procedures widely and transparently.
3. In Year 2000, Convocation reduced the articling term from twelve months (which included up to four weeks of vacation) to ten months (which includes up to two weeks of vacation). The ten month term applied to students who began articling in 2001 or who were enrolled in the 44<sup>th</sup> Bar Admission Course. This change led to revisions of other connected policies, forms and the administrative cycle.
4. This report is organized as follows:
  - a. Purpose
  - b. Background
  - c. Articling Program, 2001
  - d. Conclusion
5. Tab references in this report refer to forms and other documents contained in Articling Documents Year 2001.

## II BACKGROUND

6. The objective of the Bar Admission Course ("BAC") is to provide lawyers-in-training with the skills, knowledge and sense of professional responsibility required for the initial years of practice, and to assure not only effective service of clients' interests, but a steady, constructive growth of professional character and lawyering ability. The Bar Admission Course consists of a teaching term, with skills assessments and examinations, and an articling term of ten months which includes two weeks vacation.
7. The articling portion of the Bar Admission Course follows a teaching phase that stresses skills and professional responsibility. In fact, a significant feature of both the new and former models of the Bar Admission Course is the importance of the teaching skills phase: both principals and articling students have benefited from the practical skills taught prior to commencing articles.
8. The articling portion is intended to train the student to apply, in a practical way, the intellectual knowledge acquired at law school, to acquire practical skills, and to develop a sense of "professionalism" which encompasses the attitudes and values of the legal profession. It builds on the skills and ethical base established in the teaching phase of the Bar Admission Course and provides the most practical portion of the student's training to become qualified as a lawyer.
9. A short history of articling in Ontario is included in Appendix One of this Report. May 1, 2001 marked the beginning of the "new model" BAC. As stated earlier in this report, as part of the BAC revision, Convocation approved a reduction of the length of the articling term to ten months, from the previous twelve. This new reduced length of articles, combined with the changes to the teaching phases of the BAC, provides the opportunity to be called to the Bar sooner and provides more flexibility for students trying to coordinate their education with other aspects of their lives. Although a small number of students began the new ten-month articling term early in 2001, the majority of students start in July or September of 2001.

## III ARTICLING PROGRAM, YEAR 2001

10. This section of the report is organized as follows:
  - a. Outreach
  - b. Principals (Approval, Renewal, Monitoring),
  - c. Education Plans,
  - d. Evaluations,
  - e. Educational Materials,
  - f. Non-traditional Articles,
  - g. Professional Responsibility Exam, and
  - h. Forms.

Each section includes a description of the topic under the heading of Process, and then provides a list of achievements and future directions relating to each of the topics.

a. OUTREACH

11. During 2000 - 2001, the Articling & Placement Office focussed on its goal of making its information available to all interested parties by creating a major web presence of policies, forms and information on the Articling web site for viewing and downloading ([www.lsuc.on.ca/articling](http://www.lsuc.on.ca/articling) ), by establishing a new automatic information phone line (416- 644-4888 Toll Free 1-800-668-7380 Ext 4888), and by frequently communicating with firms and law schools about changes to the articling and summer recruitment programs.
12. A report of Law Society web usage for March 2000 indicated the Articling web pages were amongst the most viewed and downloaded pages of the Law Society web site. For example, articling information and forms were the top five downloaded pages for that month.
13. Memoranda were created to address all articling information aspects. All articling forms (except the Professional Responsibility Exam and Certificate) were revised and posted on the site. Brief descriptions of the articling program, policies and procedures were posted on the web site with relevant links to detailed memos and forms.
14. Notices to the profession have been periodically published in the Ontario Reports. Links to the Articling web page have been provided to various organizations, such as BAR-eX and law schools.
15. Bilingual postcard-sized cards with Articling & Placement Office contact and web site information were distributed to students at law schools.
16. The Head of Articling & Placement visited all the Ontario law schools, McGill, University of Victoria and University of British Columbia law schools, spoke with students and provided information about Ontario's articling program. Also, one of the Articling & Placement Administrators participated in an "Alternate Career Day" at an Ontario law school.
17. In May, the Head of Articling & Placement spoke at a National Association of Law Placement Conference, in a joint presentation with Danielle Raymond, Career Development Officer of University of British Columbia Law School. The focus of the presentation was globalization and information-sharing with details provided about qualification as a lawyer in Canada.
18. Much data is collected by the Articling & Placement Office throughout the year from surveys and the articling evaluations. In the year ended June 30, 2001, the Articling Employment Report summarizing information received from Phase Three 2000 students and the Call to the Bar Employment Summary were issued. In addition, articling evaluation follow-up included letters sent to all firms that were poorly rated and given comments/suggestions by the students in their articling evaluations. These letters were intended to be informative rather than punitive.
19. Achievements
  - a. The Articling & Placement Office achieved a high level of effective information outreach during the year ended June 30, 2001, as evidenced by the web site statistics and anecdotal comments by students, lawyers and others.

- b. The ability to download off-site all significant articling documents and forms (except the Professional Responsibility Exam) saved Law Society resources (staff time and money).
- c. More data was made available to interested parties by means of the various reports created and distributed.
- d. Where students provided reasons for unsatisfactory articling placements, this feedback was conveyed to their firms.

20. Future Directions

- a. The Articling web site will be expanded. The French Articling web site is in development and it is hoped that it will become available over the next year.
- b. The Articling Professional Responsibility Exam for 2001/2002 (questions only) will be posted on the web site.
- c. The current surveys sent to students are being refined - both in the nature of the questions asked and the timing of the surveys. It is hoped that more, and more meaningful, feedback of the articling program will be received.

b. PRINCIPALS (APPROVAL, RENEWAL, MONITORING)

21. Approval of Principals:

- a. Articling students must be under the supervision of a member of the Law Society of Upper Canada (the principal) who has applied to the Law Society to act as an articling principal and has subsequently been approved.<sup>1</sup>
- b. The application package (Tab 9), consisting of an application form and memorandum outlining the principal's role and responsibilities, is available on the Articling & Placement's web site for viewing and/or downloading. Otherwise, a package can be picked up by, or faxed to, an interested member.
- c. Applicants are informed of eligibility criteria, application process, teaching responsibilities of principals, and documentation responsibilities of principals. They are advised that the usual turn-around time for approval, barring any approval obstacles being noted in the compliance checks, is approximately two weeks.

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<sup>1</sup>An exception is made for supervising lawyers of students engaged in national or international articles. In these situations, a supervising lawyer must provide evidence (Certificate of Good Standing) of good standing from his/her governing body.

- d. In order to be approved, a principal must:
  - i. apply in advance of the commencement of the student's articles
  - ii. complete an application form
  - iii. submit an approved education plan which sets out experience to be provided to the articling student in thirteen skills areas, and
  - iv. agree to supervise no more than two articling students at any one time.<sup>2</sup>
  
- e. A Principal's continuing responsibilities include guiding and teaching the articling student and completing those documents requiring the Principal's involvement: Articles of Clerkship, Midterm evaluations, Certificate of Examination in Professional Responsibility, and Principal's Certificate of Service under Articles.
  
- f. The Articling & Placement Office processes applications for approval as a principal as follows:
  - i. Each week, a member of the Articling & Placement Office e-mails a list of new applicants, by name and member number, to the Administrative Compliance Processes Department ("ACP") of the Law Society. This department checks each member's history and status with regards to the following areas:
    - 22. Compensation Fund
    - 23. Discipline (sitsheet, discipline tag, order restrictions, current conduct, past discipline)
    - 24. Forms
    - 25. Investigations
    - 26. Professional Standards/Practice Review
    - 27. Spot Audit
    - 28. Requalification
    - 29. Open complaints
    - 30. Number of closed complaints
    - 31. Trustee activity
  
  - ii. LPIC checks are not done, nor are LPIC waivers requested of the applicants.
  
  - iii. Reports are sent to the Articling & Placement Office for each applicant. If issues are raised by any of the above checks, the names of the Law Society's representatives who dealt with, or are currently dealing with, the situation are provided. The Articling & Placement Office then contacts that person for a more detailed description of the matter.

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<sup>2</sup>This information was not included in the application package prior to September 2000, resulting in some situations of principals supervising more than 2 students.

- iv. Provided that no issues are raised by the compliance checks that would affect a lawyer's ability or suitability to supervise an articling experience, an applicant is approved as a principal. The applicant's date of approval and contact information are entered in the Bar Ad database (principals' table), at which time the applicant is mailed a letter of confirmation and a current copy of the "Articling Handbook for Principals and Students"<sup>3</sup>.
- v. Where there is an outstanding matter to be resolved prior to approving a member as a principal, the Head of Articling & Placement notifies the member that approval will be deferred until such resolution. The member is also advised that (s)he may petition the Admissions Committee for immediate approval. All recommended denials of approval are brought to the Admissions Committee for their decision. Deferred and denied members may not enter into Articles of Clerkship with a student.

g. Approval of Principals: Statistics

- i. From July 1, 2000 to June 30, 2001 the Articling & Placement Office received 447 new applications for approval of principals. After receiving the results of Administrative Compliance Processes' compliance checks, 403 of the members were approved immediately and the results of the remaining applications are outlined in the chart below.
- ii. Summary of New Application Statistics

Number of members submitted to ACP:	447
Number of members immediately approvable:	403
Number of members requiring follow-up:	44
Number of members approved after follow-up:	38
Number of members not approved:	6
Members deferred by Head of Articling & Placement:	3
Members deferred by Admissions Committee:	2
Members denied by Admissions Committee:	1
Total number of approvable members:	441

- iii. Prior year comparison: For the six months ended June 30, 2001, 163 new principals were approved compared with 207 approvals in the six months period ended June 30, 2000.

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<sup>3</sup>Prior to July 2000, the Articling Handbook was not sent to newly approved principals until March of the year following approval when the Handbook, along with the Professional Responsibility Exam, were sent to each principal. This delay in receiving the handbook contributed to problems with principals who did not act in accordance with the roles and responsibilities of a principal, as set out in the Handbook. Accordingly, all newly approved principals are now sent the Articling Handbook.

- h. For the past several years, the Articling & Placement Office monitored Articles of Clerkship to ensure that all lawyers listed on the Articles of Clerkship as principals were, in fact, approved principals: each evening, after office hours, Information Services ran a program that compared supervising lawyers as per the Articles of Clerkship with the Principals approved as per the Principals Table of the Bar Admission Course database. The Articling & Placement Office followed-up all irregularities noted in this comparison.
- i. Because of a change in the database, this automatic check may not be available for the upcoming articling term, resulting in the need to create an alternate approach to ensure that only approved principals sign Articles of Clerkship.

22. Renewal of Principals:

- a. A lawyer must be approved each year to act as a principal. In 1999, approximately 2000 lawyers were automatically renewed without submitting applications. In Year 2000, in an effort to avoid unnecessary work in performing renewal checks, members were asked to submit a renewal application. As a result, approximately 1300 renewals were processed, reducing compliance checks by approximately 700. However, approximately 200 lawyers who had not completed the renewal application form scrambled to apply in Summer 2000, often at the same time as their students were commencing articles. Thus, for the 2001 articling term, the system reverted back to automatic checks for all members approved as principals for the previous year. For 2001, renewals were submitted for the same compliance checks as new applicants. Renewed principals also received a letter of approval.
- b. The renewal process has been subject to much study and consultation during the current year. A proposal for reform of the renewal process prepared by the Articling & Placement Office has been accepted by the Director of Education. The proposal focuses on streamlining the process while reducing inconvenience to principals and maintaining a high level of review. Starting in the current year, renewals will be done on a staggered two-year basis. All principals supervising students will be automatically considered for renewal.
- c. Renewal of Principals Statistics:

Number of members submitted to ACP:	1707
Number of members immediately approvable:	1541
Number of members requiring follow-up:	166
Number of members approved after follow-up:	154
Number of members not approved:	12
Members deferred after follow-up inquiries:	6
Members who withdrew from renewal consideration:	4
Members who were asked to submit a new ed plan that addressed a specific issue of concern:	2
<b>Total number of approvable members prior to the education plan review process:</b>	<b>1695</b>

23. Monitoring of principals during the Articling Year:

- a. When members are reported as disciplined, administratively suspended or subject to criminal proceedings, their names are checked to see if they are approved as principals. In the current year, there were no such occurrences.
- b. Similarly, when firms with articling students merge or dissolve, the Articling & Placement Office follows-up to ensure proper consideration for students articling at those firms.
- c. It is hoped that the Law Society's information systems will eventually be able to automatically notify the Articling & Placement Office of disciplinary concerns affecting on-going principals.
- d. The issue of monitoring, approving and renewing members who are at the time of application, or subsequently, under investigation is currently under review.

24. Achievements

- a. With the support of ACP, approximately 1700 principals were renewed prior to June 30, 2001.
- b. Barring any compliance issue, principals are usually approved within the goal of approximately two weeks.
- c. Computerized tracking sheets have been established to track the process for each member applying for approval or being renewed.
- d. A major filing initiative was undertaken to merge two incompatible pre-existing manual filing systems into one all-purpose system.
- e. A major study with recommendations about the renewal process was undertaken. In August 2001, this report and its recommendations were accepted by the Director of Education.

25. Future Directions

- a. The current principal application form will be reviewed and possibly amended pursuant to the new and anticipated privacy laws.
- b. Implementation of recommendations proposed in the Renewal of Principals Report is anticipated.
- c. Because of the change to a staggered two-year renewal process for previously approved principals who have had articling students in the previous year, it is anticipated that the number of compliance checks will be considerably reduced, resulting in saved resources.

- d. The Articling & Placement Office has reviewed and made recommendations concerning the approval or renewal of applicants who are at the time of application, or subsequently, under investigation and this matter will be considered by the Admissions Committee in Fall 2001.
- e. The Articling & Placement Office plans to consolidate the policies relating to approval and renewal of principals into one comprehensive policy with procedures and criteria.

c. EDUCATION PLANS

26. Process:

- a. Since the Articling Reform of 1990 was implemented, all firms taking on an articling student must submit an education plan that describes the anticipated articling experience to be provided to that student. Generally only one education plan per firm is filed with the Articling & Placement Office<sup>4</sup>. There is no expiration date for an education plan; and, in fact, firms are advised that their plans may remain in effect until the firm wishes to make a change, at which time the firm should notify the Articling & Placement Office to have the change approved. Although all other documents associated with the articling relationship involve the student and his/her principal, an education plan is filed by and maintained according to firm.
- b. Sample education plans (Tab 2) are provided by the Articling & Placement Office. Although these plans were “meant as guidelines only, to assist principals in addressing their minds as to how an Education Plan can be organized”<sup>5</sup>, in fact most firms reproduce the samples, making only minor modifications. Education plans can be in either narrative or checklist format, and should address the following: anticipated experience in terms of the thirteen lawyering skills<sup>6</sup>, amount of secretarial support expected, and for large firms: information about rotations, educational seminars, guidance and advice.
- c. An education plan does not have to include aspects of every skill. For example, a corporate education plan which provides no advocacy may well be approvable. However, all plans must address professional responsibility and practice management. Where a plan is found to be deficient because it has not included any professional responsibility and practice management aspects or for another reason, the principal is contacted and the problem explained. In these situations, no resistance has been noted in having the principals amend their education plans.

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<sup>4</sup>A firm might file two education plans where one plan covers the usual rotations of most of the students and a second plan has been tailored to those students who will be specializing in a particular area.

<sup>5</sup>Ibid.

<sup>6</sup>The thirteen lawyering skills were identified in the *Proposals* as professional responsibility, interviewing, advising, fact investigation, legal research, problem analysis, planning & conduct of a matter, file & practice management, office systems, drafting, writing, negotiation, and advocacy.

- d. Like the Articles of Clerkship, the educational plan is to be filed with the Articling & Placement Office within two weeks of the commencement of articles. Prior to the current year, no follow-up was done to determine whether firms had, in fact, filed education plans. In a survey administered to Phase Three 2000 students, 50% of respondents stated that they had not seen a copy of their Education Plan. When students have not seen their Education Plan, they are unable to evaluate their articling experience using the Midterm and Final Evaluations, which compares the experience received to that outlined in the student's Education Plan (see following section on Evaluations).
- e. The system for filing and tracking education plans was updated this year and tracking was initiated to ensure that all approved firms/principals had an Education Plan filed with the Articling and Placement Office.
- f. In the year ended June 30, 2001, 108 members were not renewed as principals because no education plan was received from them.<sup>7</sup>
- g. Education Plan Statistics

Principals, or firms, without an ed plan who received the first letter of request	219
Ed plans received as a result of first letter	54
Principals, or firms, who withdrew as a result of first letter	18
Principals, or firms, who received a second request letter	147
Ed plans received as a result of second letter	39
Principals, or firms, who did not submit an ed plan/were not been renewed	108

27. Achievements

- a. Preliminary results of a survey administered to students articling in the current year indicate that more students are seeing their education plans (increase to over 70% from 50%).
- b. Placements without education plans were identified, and members were not re-approved as principals without having an approved education plan on file with the Articling & Placement Office.
- c. Internal systems were revised to better track education plans.

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<sup>7</sup>Principals were sent several written requests for education plans, and the Articling & Placement Office followed up these letters with a phone call prior to notifying the member that approval would be deferred until receipt by the Articling & Placement Office of an approved education plan.

- d. Communications with principals and students emphasized the necessity of education plans. For example, a question was added to the 2000 - 2001 end-of-term articling evaluations asking the student if a copy of the education plan had been seen by the student, and, if not, why.

28. Future Directions

- a. The sample education plans will be reviewed for consistency with the learning objectives of the Skills Phase of the new model Bar Admission Course and current articling objectives.
- b. It is hoped that the Law Society's Information Systems will support better integration of education plan information in order to monitor for "no education plan" situations.
- c. Court education plans are being reviewed and revised, and students who are clerking will be provided with consistent evaluations.

d. EVALUATIONS

29. Process:

- a. Midterm evaluations (Tab 4) must be completed at approximately the mid-point of the articling term by each of the student and the principal. These evaluations are similar and assess how closely the experience provided to date has matched up to what was outlined in the education plan. Only the students, not the principals, are asked to provide an overall rating of the articling experience in terms of unsatisfactory, satisfactory, good, or very good/excellent. This overall rating is based on how closely the experience matches that which was promised in the education plan. There are also questions on the evaluation about time spent on routine tasks, secretarial support provided, and about computer access.
- b. It has been consistent over the last several years that 90% of students rate their overall articling experience as good, or very good/excellent on their midterm evaluations, compared to what was anticipated in the education plan. Only 1% rate the overall articling experience as poor, compared to what was anticipated in the education plan. Comments from the students who rated their articling experience as either unsatisfactory or satisfactory are summarised in a spreadsheet indicating the firm where they are placed, and the name of their articling principal.
- c. Students who rate their experience as being unsatisfactory in the midterm evaluations are contacted by the Articling & Placement Office to further review the situation and to work out strategies for improving the experience. The principals of these students may also be personally contacted (however, often the student requests that there be no contact with the principal). The Head of the Articling and Placement Office may also meet with principals in order to develop strategies for addressing the student's concerns.

- d. At the end of the articling term, only the student completes a final evaluation. This evaluation is identical to the student's midterm evaluation and compares the experience provided to that in the education plan. The statistics support the same distribution (90% good or very good/excellent; 1% poor) as for midterm evaluations.
- e. Students are told at Law School presentations that should a problem arise during their Articling term, they are to contact the Articling & Placement Office immediately for support and advice. Several situations occur each year which require some type of intervention, involving mediation rather than confrontation. Approximately ten such situations have arisen over this past year. Sometimes, the resolution involves termination of a particular articling placement.<sup>8</sup>
- f. In a survey of Phase Three students, concerns were expressed by respondents that the midterm and final evaluations were inadequate. Students in court clerkship placements suggested that they should receive evaluations more appropriate to their experience. Others felt that there was inadequate follow-up of the evaluations.

30. Achievements

- a. Doug Hart, Ph.D. of Ontario Institute for Studies in Education of the University of Toronto was commissioned by the Articling & Placement Office to prepare a report "Options in the Evaluation of Articling Experiences". This report provides a theoretical framework for Ontario's articling experience in the context of other professional training programs. It is anticipated that this report will be released in early Fall 2001.
- b. Additional follow-up of the articling evaluations was initiated. Summary letters setting out areas of concern were sent to those firms where students gave comments and rated the firm poor or satisfactory on a 1999-2000 articling term evaluation. Approximately 9% of firms with articling students received such letters.
- c. The Superior Court of Ontario was provided with updated, more relevant evaluation forms.

31. Future Directions

- a. The Articling & Placement Office is currently working with other courts to create appropriate education plans and matching evaluations.
- b. The current arrangements for evaluating articling experiences will be reviewed in accordance with the report "Options in the Evaluation of Articling Experiences".

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<sup>8</sup>Termination guidelines are provided on p.28 of the Articling Handbook 2001.

e. EDUCATIONAL MATERIALS

32. Process:

- a. The *Proposals*<sup>9</sup> stated that principals should receive “adequate materials, including videotapes,... that deal with techniques of effective supervision and components of an effective articling experience, and if principals undertake to review these materials and certify that they have read and understood them, this will meet the educational criteria for principals.” No videotapes nor acknowledgment of having read any training materials has been implemented<sup>10</sup>.
- b. Principals were supplied with hard copy of the Articling Handbook (Tab 1), upon approval and with their letter of renewal. Students were given the Articling Handbook during the Skills Phase. Students who received rescheduling of the Skills Phase were mailed an Articling Handbook. The Articling Handbook is also available for downloading on the Law Society’s web site.<sup>11</sup>
- c. Articling Handbook 2001 describes the responsibilities of principals and students. It provides information about the professional obligations and commitments of both principals and students, structuring the articling term, filing and other responsibilities, summaries of the teaching phases, initiatives for unplaced students, sample assignment checklists, sample education plan, and a section on identifying and responding to harassment and discrimination.

33. Achievements

- a. The Articling Handbook was considerably revised. The format was changed to be more user-friendly, by organizing and presenting the information in a clearer way. Unlike the most recent years’ handbooks, Articling Handbook 2001 was produced as a thermal-bound booklet. The Equity Department helped to provide an instructive section on identifying and responding to harassment and discrimination. A new six-page chapter added to address students’ professional obligations and commitments includes sections on professional responsibility, Bar Admission Course requirements, meeting your principal’s and firm’s expectations, gaining the most from your articling placement, what to do if things are not working out, and recommended resources. Anecdotal feedback indicates that principals and students are finding Articling Handbook 2001 a useful resource.
- b. There have been several meetings with articling co-ordinators of the large Toronto law firms on equity in articling. Although the focus of these meetings has been recruitment, equity during the articling phase has also been discussed, and the need for continuing supports such as a strong mentor program has been identified.

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<sup>9</sup>Commentary to Recommendation 9.1.

<sup>10</sup>However, since September 2000, an acknowledgment of having read the Memorandum “Application for Approval as an Articling Principal” (Tab 9) has been required.

<sup>11</sup>Articling Handbook, information, forms and memoranda may be downloaded at [www.lsuc.on.ca/articling](http://www.lsuc.on.ca/articling).

- c. All forms have been reviewed and revised to provide clearer instruction of articling requirements, such as the need to file an approved education plan. The fact that the use of education plans has already increased by approximately 40% is encouraging.

34. Future Directions

- a. The Articling Handbook will continue to be refined and revised. For example, it is intended that the section on "Gaining the most from your articling placement" will be expanded with additional suggestions on how students might elicit constructive and timely feedback from their principals.
- b. Training of principals may be incorporated into the current Equity In Articling initiative, possibly involving Continuing Legal Education programs or other seminars sponsored by the Law Society. In particular, thought will be given to a program on developing and implementing equitable hiring and work practices.

f. NON-TRADITIONAL ARTICLES

35. Process

- a. The term "Non-traditional articles" includes abridgments, reschedulings (eg. articling prior to completing the Skills Phase or splitting articles on either side of a teaching phase), national, international, joint, part-time, or assigned articles.
- b. The approval process varies somewhat for each of these non-traditional articles but the common themes are that there should be written documentation, including an approved education plan and the supervising lawyer's acknowledgement of the arrangement prior to commencement of articles, Articling & Placement Office approval of the supervising lawyer, and documentation signifying completion of the arrangement. Where applicable, certificates of good standing are required.
- c. In 2001, new policies were approved by Convocation for both Abridgments and National and International Articles. These policies addressed the new ten-month articling term and clarified criteria for granting these requests. Issues relating to abridgments, national, and international articles were detailed in a separate report presented to the Admissions Committee in November 2000.

- d. Since August 2000, requests have been monitored by use of a spreadsheet which tracks requests by applicant name and includes receipts of significant documentation and other pertinent information. In the year ended June 30, 2001, staff processed and/or approved the following:

Abridgment applications	55 (2000 - 46) <sup>12</sup>
Modifications or rescheduling of BAC program	138 (2000 - 86) <sup>13</sup>
Other non-traditional articles	29 (2000 - 29) <sup>14</sup>

36. Achievements

- a. The Articling & Placement Office's implementation of procedures and newly prepared user-friendly, comprehensive documentation to support the change in policy for abridgments, international and national articling have resulted in a more streamlined application process, decisions based on consistently applied criteria and a transparent process which is more accessible to applicants.
- b. The tracking of all non-traditional articling requests has resulted in better customer service and administrative follow-up.
- c. Because of the extensive outreach efforts of the Articling & Placement Office, students and principals appear to be more aware of the flexible arrangements that may be made to structure a quality non-traditional articling placement.
- d. Responding to requests from NCA students to help them feel more "connected" to the pre-call training process, The Articling & Placement Office has begun an initiative to collect and publish NCA student testimonials which present accounts of individual experiences and provide helpful suggestions. One such testimonial has already been posted on the articling web-site.

37. Future Directions

- a. Checklists are in process of being developed to support all non-traditional articling requests.
- b. The Articling & Placement Office will further explore other non-traditional articling possibilities, for example in discussions with the Pro Bono Students Association.

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<sup>12</sup>For the year ended June 30, 2001, of the 55 abridgments granted, 26 were based on non-compassionate grounds (i.e. prior legal experience), 23 on compassionate grounds (e.g. medical reasons, placement problems, etc.) And 6 involved a combination of compassionate and non-compassionate grounds.

<sup>13</sup>The increase is, in part, due to the change to the new model of the BAC. Seventeen of the students receiving a rescheduling were on exchange programs and unable to commence the Skills Phase by May 1, 2001 and 24 were students who enrolled in Phase Three prior to articling. Twenty-one were "out-of-phase" NCA students.

<sup>14</sup>This category includes students who receive approval for national and international articling credit or part-time articling credit.

- c. Additional support for NCA students will be provided. For example, the Articling & Placement Office is planning to host a meeting in November, 2001 for NCA students studying at Toronto law schools. The purpose of this meeting is to discuss articling concerns of NCA students and how the Articling & Placement Office can provide useful support.
  
  - g. PROFESSIONAL RESPONSIBILITY EXAM
38. Process:
- a. A professional responsibility exam has been mailed to each student in the spring of each year, with the answers being mailed directly to the principals. This “take-home” exam (Tab 8) consists of approximately ten questions which relate to ethical responsibilities of lawyers and avoidance of professional liability. Answers are to be hand-written in the book and must be discussed with the principal (or designate) who then signs a Certificate which attests to the process followed. The questions generally require the student to refer to the Rules of Professional Conduct and the Commentaries and to identify and discuss the professional responsibility issues raised by the facts. The entire exam booklet, with attached certificate, is then submitted to the Law Society.
  
  - b. The Professional Responsibility Exam for 2001 was restructured to reflect the New Rules of Professional Conduct, effective November 1, 2000. In 2001 the exam questions and answers were available only in paper-based form which was picked up or mailed from the Articling and Placement Office. Consistent with prior years, students submitted the completed exam book with principal’s signed *Certificate of Examination in Professional Responsibility* although, in fact, only the certificate is retained in the student’s BAC file.
39. Achievements
- a. Anecdotal feedback from students and principals about professional responsibility exam has been positive. It appears that a successful exam was produced for the articling term 2000-2001.
40. Future Directions
- a. For students articling in the 2001 - 2002 articling term, a different exam format will be used, permitting students to download the questions from the articling web site. Students will be required to submit only the signed Certificate.
  
  - b. The ability of the Law Society to provide principals with secured access to the professional responsibility exam answers online by using their member number to access a restricted site will be explored.

- c. When a student articling in the normal order, after the first teaching phase, the student has had a course on professional responsibility prior to commencing articles. However, those students who article out-of-phase and prior to taking the teaching phase have not had the same exposure to the Rules of Professional Conduct. Requiring some level of training or testing of the Rules of Professional Conduct for those articling out of phase, prior to commencing articles, will be reviewed.

h. FORMS

41. Process

- a. In addition to the forms mentioned earlier in this report, three significant articling forms are:

- Articles of Clerkship (Tab 3)
- Principal's Certificate of Service under Articles (Tab 5)
- Student's Affidavit of Service under Articles (Tab 6)

- b. The Articles of Clerkship, setting out the responsibilities of the principal and articling student, must be completed and filed by the student within two weeks of commencing articles. Although there is a reference to fulfilling the requirements of the Education Plan in the Articles of Clerkship form, there is no positive onus on either party for having reviewed and accepted the Education Plan.

- c. The end-of-term documents include the Principal's Certificate of Service under Articles and the Student's Affidavit of Service under Articles which are required to be completed and filed at the completion of the articling period. One of the features of the Principal's Certificate of Service under Articles form is a statement in which the principal attests, "I believe that ..... is a fit and proper person to be called to the Bar and admitted to practice as a Solicitor of her Majesty's Courts of Ontario". Whether a student works outside of the articling arrangement is also addressed in the end-of-term documents. These forms have changed very little since they were adopted in 1942. When a principal feels that (s)he cannot attest to such a statement, a letter is accepted setting out all other aspects required on the form. The matter is then sent to the Investigations Department of the Law Society to determine whether a good character investigation is warranted.

42. Achievements

- a. Principals and students have found the ability to download forms from the articling web-site very convenient. Having the forms online also has reduced staff and other resources previously needed to mail or fax the documents.
- b. French versions of forms were brought more in line with the English versions.
- c. Each form was reviewed and amended to be consistent with other forms of a similar type, for example Articles of Clerkship, Joint Articles of Clerkship, Assignment of Articles and Temporary Assignment of Articles are now similar in format.

43. Future Directions

- a. All articling forms are being reviewed in conjunction with the ongoing review of forms pursuant to the new privacy laws.
- b. The “fit and proper” clause on the Principal’s Certificate of Service will be reviewed.
- c. Review of the report “Options in the Evaluation of Articling Experiences” will also address reporting needs of the articling experience.

IV CONCLUSION

44. The Articling & Placement Office is committed to ensuring that each of the approximately eleven hundred students articling at any given time enjoy a quality articling experience. As this snapshot of the articling program indicates, all aspects of the articling program were reviewed in the last twelve months. The period from July 1, 2000 to June 30, 2001 represented a period of transition and change of the Articling & Placement Office. Over these months, every aspect of the articling program was examined, issues identified, policies referred to the Admissions Committee, new administrative processes developed, and new procedures and policies implemented. Outreach efforts succeeded in making all articling information accessible to all stakeholders and interested parties.

45. In particular, during the twelve months ended June 30, 2001, the Articling & Placement Office, in addition to administering the department in an effective, efficient and equitable manner, achieved all of its specific goals for the year by:

- a. Streamlining administrative processes,
- b. Revising and clarifying policies and criteria for abridgments, national and international articling,
- c. Commissioning a research study about the articling evaluation process,
- d. Reviewing and making recommendations for improving the process of principal approval and renewal, and
- e. Communicating its policies and procedures widely and transparently.

46. Looking forward to the coming year, the Articling & Placement Office plans to continue to administer the department in an effective, efficient and equitable manner and has identified the following specific goals:

- a. Examine fundamental aspects of articling, using the report “Options in the Evaluation of Articling Experiences” to launch this review,
- b. Continue to streamline the operations of the Articling & Placement Office, and
- c. Set standards to ensure continuing outstanding customer service.

## APPENDIX ONE

### History of Articling in Ontario

1. Pre-1990 Articling Reform
  - a. Articling has been a feature of legal training in Ontario since the Law Society's earliest days. In fact, "[u]ntil 1819 lawyers were trained by apprenticeship only: five years for barristers and three years for solicitors".<sup>15</sup>
  - b. Articling has served and continues to serve varying functions for different groups within the legal community. From the governing body's perspective, articling must ensure that a lawyer "...so licensed has had the opportunity to obtain the training and experience necessary to meet the requisite standard of professional competence."<sup>16</sup> From the students' perspective, articling "...is an opportunity to test both the labour market and their skills while gaining experience in the practice of law".<sup>17</sup> From the firm's perspective, articling is an "...opportunity to assess students as potential associates of the firm, while at the same time fulfilling a shared professional responsibility to ensure that new lawyers have been exposed to some real practical experience before their call."<sup>18</sup>
  - c. Prior to the Articling Reform of 1990, a student would submit an application for admission to the Bar Admission Course which would identify the student's principal. The principal would then be sent a letter signed by the chair of the Legal Education Committee which set out the role and responsibility of the principal and thanked the lawyer. Articles of Clerkship were executed at the commencement of articles and the Principal's Certificate of Service under Articles and the Student's Affidavit of Service under Articles were executed at the end of articles. Students were required to complete a Professional Responsibility exam during their articles.
  - d. There were no education plans or evaluations. By monitoring "the qualifications of students, the qualifications of principals, mediation mechanisms, review by the Admissions Committee, surveys, the discipline process, and court action"<sup>19</sup>, it was felt that articles as a whole were monitored.

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<sup>15</sup>J. Burton, "Articling in Ontario: History and Recommendations for Change to 1985", Symposium on Articling 1988, Bar Admission Advisory Committee, Law Society of Upper Canada, (1988), pg. 37.

<sup>16</sup>Graham W.S. Scott, Q.C., "The Articling Component in Legal Education", Legal Education in Canada: report and Background Papers of a National Conference on Legal Education, Winnipeg, Manitoba, 1985, published by Federation of Law Societies of Canada (1987), pg. 407.

<sup>17</sup>Ibid, pg. 408.

<sup>18</sup>Ibid, pg. 409.

<sup>19</sup>K. Howard, "The Monitoring of Articles", Symposium on Articling 1988, Bar Admission Advisory Committee, Law Society of Upper Canada, (1988), pg. 143.

2. 1990 Articling Reform

- a. *The Proposals for Articling Reform*, (the *Proposals*) adopted by Convocation, October, 1990 brought much needed structure to the articling process. The Executive Summary for the *Proposals*<sup>20</sup> set out the following new procedures for the articling process:

...To ensure the educational quality of articles, the Articling Director will: approve prospective principals based upon prescribed criteria; restrict principals to a maximum of two articling students; and delineate the skills areas which should be learned as part of the articling process.

Principals must submit Education Plans to the Articling Director for approval. The effectiveness of these plans will be formally evaluated by both principal and student at the mid-term and conclusion of the articling term. The Articling Director may intervene to ensure compliance with the Education Plan, and when any other serious problem arises during articling.

Educational materials to assist principals in the provision of effective articles will be developed...

3. Current Model:

- a. A model similar to that proposed in the *Proposals* is currently being followed. Details about the approval and renewal of principals, education plans, articling evaluations and other aspects of the articling program are presented in the main body of this report.

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

- |     |   |                   |
|-----|---|-------------------|
| (1) | Copy of "Options in the Evaluation of Articling Experiences". | (pages 47 - 105)  |
| (2) | Copy of Existing Wording of By-Laws 11 and 12.                | (Pages 106 - 121) |

Re: Amendments to By-Laws 11 and 12

It was moved by Mr. E. Ducharme, seconded by Ms. Ross that changes be approved in principle and that the necessary amendments to By-Laws 11 and 12 be made to reflect the new model of the Bar Admission Course.

Carried

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<sup>20</sup>*Proposals for Articling Reform 1990*, up-dated June 1994, pg. i.

ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Boyd presented the Report of the Access to Justice Committee for approval by Convocation.

Access to Justice Committee

October 25, 2001

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Report to Convocation

Purpose of Report: Decision Making

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on September 10, 2001 and for a full day on October 15, 2001. On October 15, committee members in attendance were: Ron Manes (Chair), Marion Boyd and Barbara Laskin (Vice-Chairs), Stephen Bindman, Todd Ducharme, Seymour Epstein, Charles Harnick, George Hunter and Derry Millar. Staff in attendance were Malcolm Heins, Julia Bass, Lucy Rybka-Becker and Charles Smith, assisted by Dr Elaine Todres.
2. The Committee is reporting on the following matter:
  - Policy - For Decision
    - 1) Adoption of the Committee's mandate.

### ADOPTION OF THE COMMITTEE'S MANDATE

#### Issue

3. The Committee is proposing to Convocation the Committee's mandate for incorporation into the by-laws.

#### The Committee's Deliberations

4. The Committee took into account:
  1. The Law Society's mandate to "advance the cause of justice and the rule of law" as stated in the Society's Role Statement.
  2. The Strategic Plan's requirement that the Law Society "govern and lead the legal profession by addressing issues that relate to professionalism, the rule of law and access to justice", and "assume a leadership role to improve access of individuals and small businesses to legal services".
  3. The recent remarks of the Chief Justice of Ontario and the Treasurer of the Law Society on the importance of access to justice.

#### Proposed Mandate

5. The Committee proposes the following mandate:

"The mandate of the Access to Justice Committee is to develop, for Convocation's approval, policy options for promoting access to justice throughout Ontario."

#### Request to Convocation

6. Convocation is requested to approve the above mandate for inclusion in By-Law 9.

.....

#### Re: Mandate of the Access to Justice Committee

It was moved by Mr. T. Ducharme, seconded by Mr. Simpson that the Committee's mandate be approved for inclusion in By-Law 9.

Carried

#### Re: Amendment to the Mandate of the Emerging Issues Committee

The matter was not reached.

#### PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. MacKenzie presented the Report of the Professional Regulation Committee for approval by Convocation.

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on October 11, 2001. In attendance were:

Gavin MacKenzie (Chair)

Carole Curtis (Vice-Chair)

Patrick Furlong

Gary Gottlieb

Ross Murray

Marilyn Pilkington

Avvy Go

Staff: Lesley Cameron, Margot Devlin, David McKillop, Felecia Smith, Richard Tinsley, Jim Varro, Andrea Waltman and Jim Yakimovich.

2. This report contains a policy report on amendments to the Members Annual Report (MAR) and an information report on file, caseload management and staffing issues in the complaints resolution, investigations and discipline departments.

POLICY

AMENDMENTS TO THE MEMBERS ANNUAL REPORT (MAR)

A. INTRODUCTION

3. Administrative Compliance Processes staff responsible for the Member’s Annual Report (MAR) requested that the Committee review and approve for Convocation’s consideration amendments to the MAR for the filing year 2001. The MAR is prescribed under By-Law 17 (Filing Requirements).<sup>1</sup>

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<sup>1</sup>The relevant section of the By-Law reads:

Requirement to submit annual report

2. (1) Every member shall submit a report to the Society, by March 31 of each year, in respect of the member’s practice of law and other related activities during the preceding year.

Member’s Annual Report

(2) The report required under subsection (1) shall be in Form 17A [Member’s Annual Report].

4. The proposed changes are described below in detail, based on information prepared for the Committee by Margot Devlin, Team Leader, Administrative Compliance Processes.
5. The Committee reviewed the explanations for the proposed amendments and is proposing that the changes be made, with certain amendments (identified below) proposed by members of the Committee.

*B. NATURE OF THE CHANGES*

6. An attempt has been made to streamline the MAR. The number and content of questions has been reduced for a more concise format.
7. The following changes, highlighted in the copy of the MAR at Appendix 1, are proposed by the Committee:

Location on Form	Explanation	Is the change new, a clarification, a revision or has a section from the 2000 MAR been removed?
Page 1 - A) Identification	A new feature permits members to indicate whether they wish to have their name and business address included or removed from the mailing lists the Society provides without charge to various professional legal associations and organizations. The request is necessary in light of privacy considerations that the Society must observe. The lists are provided to permit the organizations to send members information on various professional matters, to conduct membership drives, etc. Members are asked to mark the box on the form if they do not wish to be included in the mailing lists.	NEW
Page 2 - B) Status	On the prior annual reports, the questions under Occupation Profile attempted to clarify the status of members and employment structure. Members found this section confusing to complete. In the revised form, the status questions are more concise.	CLARIFICATION
Page 3 - D) Areas of Practice	Two areas of law have been added to the main legal practice categories to accommodate all areas of the Specialist Certification program.	REVISED/NEW
Page 6 - E) Learning Activities	Revisions are being made to the Self-Study categories, to identify categories for research for client related matters and other reading. This will remedy any ambiguity that may have existed in the former "research or reading" category.	REVISED/NEW

Location on Form	Explanation	Is the change new, a clarification, a revision or has a section from the 2000 MAR been removed?
Previously found on page 9 of 2000 MAR	<p>Qualification Status question: On September 28, 2001, Convocation approved a new program called the Private Practice Refresher Program that will require lawyers who have not been in private practice for five years or more to undergo a refresher program prior to entering private practice.</p> <p>Replacing the former Requalification Program, the Private Practice Refresher Program will come into effect on January 1, 2002, but will not affect lawyers until 2007. Members will no longer be required to fill out a detailed qualification form in the Members' Annual Report. The Law Society will no longer track members each year or issue notices on an annual basis regarding qualification status.</p>	REMOVED
Previously found on page 9 of 2000 MAR	Private Practice Information: The information was originally intended to be used by the Lawyer Referral Program to save the lawyers enrolled there from completing one more form. As noted above, the small number of members enrolled in the lawyer referral program does not warrant the majority of the profession recording this detail. This section has been removed.	REMOVED
Previously found on page 9 of 2000 MAR	Members who offer services in the French language: This question will now appear in English, to address concerns raised by members who were unable to understand the statements in French (the Society received a number of complaints about signing a form with a section that they did not understand).	CLARIFICATION
Previously found on page 10 of 2000 MAR	Question 5 was removed as the information was not used by the Spot Audit Program in the selection of its target group. The question related to brokerage companies outside of the law practice which are audited by the Financial Services Commission.	REMOVED
Page 7 - F) Individual Member Questions	Question 5 is now the more concise amalgamation of questions 6 and 7 from the 2000 MAR.	CLARIFICATION
Page 10 - Certification and Signature	This year, if the member chooses the Joint Filing Option at Section G, he/she must obtain the signature of the filing member at Section H of their form. This enables the filing member to verify and confirm when they are reported to have responsibility for filing the financial information on behalf of the firm and allows for a quick cross-reference system by the Law Society. For this purpose, there will be an accommodation for large firms to permit the filing member to attach a list of lawyers who are each filing the MAR, rather than signing each lawyer's MAR.	NEW

8. The request for use of members' names and business addresses, described in the first item in the chart, is necessary to obtain members' wishes on use of their names and addresses in light of current privacy considerations and anticipated privacy legislation. While there is no privacy legislation applicable to the Society in place, provincial legislation based on upcoming federal privacy legislation is likely in the next few years and the Society wishes to be sensitive to any application this legislation may have to its operations.
9. The Committee discussed at some length whether the request should appear on the form, in particular on the first page. An alternative was using a separate sheet to be mailed with the MAR, which would include the request and explanatory information about why the request is being made. The concerns with having the request on the form was the possibility that members' attention would quickly be drawn to the request on the first page, and that many may simply check the box indicating no use of the name, either because they may not understand the question or have not been given adequate information about its importance.
10. The Committee decided that the request should remain on the form for the following reasons:
  1. The MAR is a mandatory form and the best way to obtain the information requested on the privacy issue is to include the request in the form. There is concern that members will not return the separate form, or will lose it. If the request is included on the form, it will be answered, or if left blank, will be an indication that the member permits the use described.
  2. Very similar language has been provided to bar admission students and new calls for their responses. There is a desire to be consistent with this request.
  3. The language in the request - "to facilitate the maintenance of mailing lists, and enhance communications with the profession, including information about programs, initiatives, products and services" - which essentially describes the limited use to which the information can be put by the professional legal organizations, is important information for members. Agreements are signed with the organizations prior to release of the information and specify the limited use of the information.

*C. DECISION FOR CONVOCATION*

11. Two versions of the amended MAR appear in this report. As noted above, the version at Appendix 1 highlights the changes in shaded text for the year 2001 filing based on the changes described in the chart. The version attached to the motion at the end of this section of the report is the form of the MAR to be prescribed by Convocation under By-Law 17 as Form 17A (with date references removed). French versions of the form will be available at Convocation.
12. Convocation is requested to approve the amendments to the MAR as proposed by the Committee and prescribe the form of the MAR attached to the following motion:

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 17

[FILING REQUIREMENTS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON OCTOBER 25, 2001

MOVED BY

SECONDED BY

THAT By-Law 17 [Filing Requirements] made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, May 28, 1999, October 29, 1999, January 27, 2000, June 22, 2000, October 19, 2000 and April 26, 2001 be further amended by revoking Form 17A and substituting the following:

INFORMATION

REPORT ON COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE FILE MANAGEMENT,  
CASELOADS AND OPERATIONS

13. The Secretary, Richard Tinsley, Senior Counsel - Discipline Lesley Cameron, James Yakimovich (Manager, Investigations) and David McKillop ( Director, Compensation Fund, Resolution and Trustee Services) reported to the Committee on caseload management in the Complaints Resolution, Investigations, and Discipline Departments. The reports appear at Appendix 2. These reports are prepared monthly for review by the Committee as part of its monitoring function respecting file management. The Committee receives general information and statistics on file management and caseloads in the departments noted above.<sup>2</sup> The reports in this report cover the period to the end of September 2001.

APPENDIX 1

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<sup>2</sup>The Chair of the Committee, as a member of the Proceedings Authorization Committee, is not a member of the Hearing Panel and accordingly does not and cannot have adjudicative responsibilities. Information received by the Committee, as reflected in the reports appended to this report, does not itemize specific cases.

MEMBERSHIP INFORMATION FORM (MAR)  
(REVISIONS HIGHLIGHTED)

APPENDIX 2

FILE MANAGEMENT AND CASELOAD STATISTICS FOR  
COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE  
TO SEPTEMBER 2001

THE LAW SOCIETY OF UPPER CANADA

Complaints Resolution Management Report

To: Richard Tinsley, Secretary

And: Gavin MacKenzie, Chair, Professional Regulation Committee

And: David McKillop, Manager

From: Audrey Cado, Team Leader, Complaints Resolution

Date: October 5, 2001

Re: September, 2001 - File Management Statistics

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Note

On June 1, 2001, Complaints Resolution assumed responsibility for the screening of new complaints. To assist us with this role, on September 24, 2001 the following staff joined the team:

1 Complaint Counsel  
2 Complaint Officers

During the month of August, 2001, two experienced Complaint Resolution Officers left on maternity leave. As a result, on September 24, 2001, two contract Complaint Resolution Officers also joined our team.

These five new individuals are currently undergoing training.

File Management Statistics

As a result of the re-design of Complaints Resolution, IT has been working with us to enable us to provide statistics which report on the new activities undertaken by Complaints Resolution. The ability to run those reports has not been finalized but it is anticipated that the reports will be completed shortly. This month's report is an abridged version of the regular report. It is anticipated that the October report will be in full format.

*Number of Active Files as of September 30, 2001*

Type of File	Number of Active Files
Complaint	1255
Bankruptcy	13
Panel Orders and Undertakings	48
Practice Windup	25
Total Active	1341

Files closed between September 1, 2001 and September 30, 2001

281

Discipline Costs

As of September 30, 2001, outstanding cost awards totalled \$133,563.40. Of that amount payment of \$86,826.73 is being actively pursued. The remainder of \$46,736.67 is not currently being pursued as the Members are currently suspended. Suspended Members are monitored bi-annually to determine whether there has been a change in their status to that of a practising Member and, if so, the cost award is pursued. The following chart shows the amount of costs collected in the last two months.

Costs Collected Per Month

(See Graph in Convocation file)

Note: Since January 1, 2001, Complaints Resolution has collected \$42,050 in costs.

Resolution of Complaints

From September 1, 2001 to September 30, 2001, Complaints Resolution closed approximately 281 files.

Complaints Review Statistics

As of September, 2001, there were 50 cases in Complaints Review. The following chart provides a comparison of CRC files as of January 31, 2001 through to September 30, 2001.

Active Files by Year

This chart shows the number of files opened in the Complaints system by year and that are currently in the Complaints Review process, awaiting hearing.

Active Files By Year

(See Graph in Convocation file)

Investigations Department Management Report

TO: Gavin MacKenzie, Chair, Professional Regulation Committee

COPY: Richard Tinsley, Secretary

FROM: James Yakimovich, Manager, Investigations

DATE: October 3, 2001

RE: Management Report - Investigations Department

Summary of Results for the Month:

Change in Total Case Numbers ( More than one investigation may be open against a member )	Net Increase of 8 member cases
Number of Members Under Investigation	191
Cases Completed in September	18
Cases Older Than One Year Outstanding	41
New Instructions This Month-s.49.3	26
Complaints/Client Count	795

At September 30, 2001, the department carries an investigation inventory of 257 member cases and 21 Unauthorized Practice cases, for a total of 278 investigation cases.

Member Case Inventory

(See Graph in Convocation file)

Cases Older Than One Year

The number of cases older than one year is forty one (41) cases. The following chart provides a summary of action plans associated with the cases:

Planned Result	Total
Awaiting PAC Review	5
Close or Referred to PAC in October	10
Close or Referred to PAC in November	12
Close or Referred to PAC in December	11
Further Investigation Necessary-Target Beyond December	3
Totals	41

Factors Influencing the Department

In late-June, information surfaced that suggests that a number of lawyers, primarily sole practitioners, have been engaged in schemes to prefer the interest of borrower clients over that of the institutional lender clients. The nature of these cases are on point with the discussion provided in the *Special Report on Fraud, Practice Pro (LPIC), Summer 2001* publication. The preliminary investigation activity has drawn investigators from existing case work. (Senior management have been provided with overview information.)

Unauthorized Practice Investigations

The non-member case investigations for unauthorized practice are in addition to the member investigations reported above. The chart that follows depicts the number of cases open.

Unauthorized Practice Investigations

(See Graph in Convocation file)

Cases Instructed - Year to Date

Background: In the calendar year 2000, the department sought “instructions” pursuant to s. 49 *Law Society Act* to commence 490 case investigations ( 401 member cases + 12 student cases + 77 non-member cases ). The case investigations “instructed” during 2001 will be measured against the statistics gathered in 2000 in order to provide a basis of comparison.

The cases instructed by the Secretary in 2001 are depicted in the graph that follows. A total of two hundred forty nine (249) new member investigations and six (6) student member investigations, have been approved during the first nine of the year, it can be anticipated that about three hundred forty (340) new member case investigations will be approved in addition to cases pertaining to unauthorized practice.

Cases Investigations Instructed by The Secretary

(See Graph in Convocation file)

Planned Case Completions

Background: Each month, the investigation teams identify case investigations that will be completed in the following two months. These plans are often subject to revision because of the necessity to cease investigation activity to dedicate time to support a discipline hearing, or, because existing investigations must be deferred in order to respond to a newly received matter that requires an urgent response.

Several cases have been completed and await the decision of PAC on October 10.

The projected completions for the next two months are depicted on the graph that follows.

Member Case Completion Projections for Next 2 Months

(See Graph in Convocation file)

Outstanding Discipline Department Requests

A monitoring system is in place with respect to requests made of investigators for disclosure materials and for additional investigation work. The following information pertains to September 2001.

Requests Outstanding at End of September = 3
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DISCIPLINE DEPARTMENT

MEMORANDUM

TO: Professional Regulation Committee

FROM: Lesley Cameron  
Senior Counsel - Discipline

DATE: October 4, 2001

RE: *Discipline Department Information*

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The purpose of this memorandum is to provide information about matters in the discipline process for the month of September, 2001.

Total Matters in Discipline Process

Attached as Chart 1 is a list of the number of each type of file carried by the Discipline Department at September 30, 2001. As can be seen from Chart 1:

3. 124 matters are pending hearing or appeal;
4. 24 conduct applications have been authorised for prosecution by the Proceedings Authorisation Committee, but have not yet been issued;
5. 74 conduct applications have been issued and are in the discipline process: 41 are before the Hearings Management Tribunal with no hearing date set; 29 have hearing dates set or the hearing is underway; 4 are adjourned sine die;
6. 5 appeals are pending before the Law Society Appeal Panel;
7. 1 appeal and 2 judicial reviews are pending before the Divisional Court.

Aging of Matters Authorised but not Issued

Of the 24 files authorised for prosecution but in which the conduct application had not yet issued as of September 30, 2001, 12 were authorised more than 3 months ago.

Attached as Chart 2 is a summary of the age and carriage of these 12 files. As can be seen from Chart 2, of these 12 files:

- i) 6 are between 3 and 6 months old, meaning that between 3 and 6 months has elapsed since authorisation;
- ii) 4 are between 6 and 12 months old; and
- iii) 2 are over 1 year old.

All but 2 of these 12 files required further investigation after authorisation for prosecution. Of the 2 files which did not require further investigation, 1 file is just over 6 months old and is complex and voluminous. It will be issued by the time the Committee receives this memorandum. The other file is just over 3 months old and will be issued by November 9, 2001.

The 2 files over 1 year old are in the hands of outside counsel. One of them required a court order authorising a search and seizure and documents remain outstanding following the execution of this order. The other has been authorised for non disciplinary resolution but remains on the list pending the successful completion of this resolution.

The Chair of the Proceedings Authorisation Committee and the Secretary have been provided with the names of the files, a description of the nature of the allegations in each file and a brief status report on each file in this category as of September 30, 2001.

#### Historical Comparison

Attached as Chart 3 is a summary of the age and carriage of matters which were authorised for prosecution by the Proceedings Authorisation Committee, but in which the conduct application had not yet been issued as of the end of various months beginning in August of 2000. Chart 3 includes the information summarised in Chart 2, but adds figures from previous months for comparison purposes.

#### Other Matters

In late August the Law Society was served with a summons requiring production of closed investigation and discipline files. The context was a motion by a defendant member to dismiss the plaintiff's civil action against him. The summons was served on the Law Society by the plaintiff. The Law Society refused to produce the files. On September 24, 2001 discipline counsel successfully resisted the production of the files in the resulting motion before a Master. The Master agreed with the Law Society's position that the plaintiff had not established that the files would be relevant. Costs will be spoken to in October, 2001.

Two other matters were argued by discipline counsel in the Ontario Superior Court of Justice in September, but the decisions have not been released.

Chart 1

Matters in Discipline Process as of September 30, 2001	
Discipline Providing Assistance to Investigations	0.17
Conduct Applications Authorized But Not Issued	24
Conduct Applications Issued Hearing Date Not Set	41
Conduct Applications Issued Hearing Date Set or Hearing Started	29
Conduct Applications Issued Adjourned Sine Die	4
Capacity Applications Authorized But Not Issued	0
Capacity Applications Issued Hearing Date Not Set	1
Admission Hearings	10
Readmission Hearings	4
Reinstatement Hearings	3
Appeals to Law Society Appeal Panel	5
Appeals/Judicial Reviews Divisional Court	3
Total Matters	141

Chart 2

Conduct Applications Authorized For Prosecution but not Issued as Conduct Applications as of September 30, 2001			
	3 to 6 Months Old	6 to 12 Months Old	Over 1 Year Old
Law Society Counsel	6	4	0
Outside Counsel	0	0	2
Total	6	4	2

Chart 3

CONDUCT APPLICATIONS AUTHORISED FOR PROSECUTION BUT NOT ISSUED AS CONDUCT APPLICATIONS				
Month	Carriage	3 to 6 Months Old	6 to 12 Months Old	Over 1 Year Old
August 31, 2000	Law Society Counsel	14	5	15
	Outside Counsel	0	0	1
	Total	14	5	16
October 31, 2000	Law Society Counsel	14	3	5
	Outside Counsel	9	1	5
	Total	23	4	10
November 30, 2000	Law Society Counsel	12	2	2
	Outside Counsel	9	1	5
	Total	21	3	7
December 15, 2000	Law Society Counsel	9	2	2
	Outside Counsel	4	3	4
	Total	13	5	6
January 31, 2001	Law Society Counsel	11	4	1
	Outside Counsel	2	6	4
	Total	13	10	5

CONDUCT APPLICATIONS AUTHORISED FOR PROSECUTION BUT NOT ISSUED AS CONDUCT APPLICATIONS				
Month	Carriage	3 to 6 Months Old	6 to 12 Months Old	Over 1 Year Old
February 28, 2001	Law Society Counsel	7	2	1
	Outside Counsel	0	5	4
	Total	7	7	5
March 30, 2001	Law Society Counsel	6	1	0
	Outside Counsel	0	4	3
	Total	6	5	3
April 24, 2001	Law Society Counsel	6	2	0
	Outside Counsel	0	3	3
	Total	6	5	3
May 31, 2001	Law Society Counsel	6	3	0
	Outside Counsel	0	1	5
	Total	6	4	5
June 30, 2001	Law Society Counsel	5	3	1
	Outside Counsel	0	0	5
	Total	5	3	6
July 31, 2001	Law Society Counsel	5	5	1
	Outside Counsel	0	0	3
	Total	5	5	4
August 30, 2001	Law Society Counsel	4	5	0
	Outside Counsel	0	0	2
	Total	4	5	2
September 30, 2001	Law Society Counsel	6	4	0
	Outside Counsel	0	0	2
	Total	6	4	2

Re: Amendments to the Members Annual Report (MAR)

An updated version of the Members Annual Report for 2001 was distributed to Convocation for approval.

It was moved by Ms. Curtis, seconded by Ms. Puccini that the privacy box be removed.

Lost

It was moved by Mr. MacKenzie, seconded by Ms. Ross that the Members Annual Report distributed to Convocation be prescribed as Form 17A under By-Law 17 [Filing Requirements].

Carried

MOTION - DRAFT MINUTES

It was moved by Mr. Wright, seconded by Mr. Crowe that the Draft Minutes of Convocation of September 28th, 2001 be approved.

Carried

MOTION - APPOINTMENTS

It was moved by Mr. Wright, seconded by Mr. Crowe -

THAT Helen Puccini, Judith Potter and Larry Banack be reappointed to the Ontario Bar Association Council.

THAT William Simpson be appointed to the Canadian Bar Association National Council.

Carried

EQUITY & ABORIGINAL ISSUES COMMITTEE & FINANCE & AUDIT COMMITTEE REPORTS

Re: Equity and Diversity in the Legal Profession Conference

Mr. Copeland presented the item in the Report dealing with funding for a Equity and Diversity Conference.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES

Report to Convocation

Purpose of Report: Information

Prepared by the Equity Initiatives Department

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3. BACKGROUND INFORMATION ON *EQUITY AND DIVERSITY IN THE LEGAL PROFESSION: PROMOTING DIALOGUE, CREATING CHANGE PROJECT\** ..... 5

\* *The funding application, including the project proposal and action plan, is available from staff for review. If interested in a copy, please call Charles Smith at (416) 947-4052 or via e-mail at [csmith@lsuc.on.ca](mailto:csmith@lsuc.on.ca).*

*TERMS OF REFERENCE/COMMITTEE PROCESS*

The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (EAIC) met on Wednesday, October 10, 2001, 4 - 6 p.m.. In attendance were:

Paul Copeland (Chair)  
Helene Puccini (Vice-Chair)  
Derry Millar (Vice-Chair)  
Janet Minor  
Tom Carey

Staff present: Charles Smith, Josée Bouchard, Jewel Amoah, Margaret Froh

The Committee reports the following item for Convocation Decision-Making:

*Equity and Diversity in the Legal Profession: Promoting Dialogue, Creating Change.*

**EQUITY AND DIVERSITY IN THE LEGAL PROFESSION: PROMOTING DIALOGUE, CREATING CHANGE**

1. As part of its public education program promoting equity and diversity within the legal profession, the Law Society hosts activities to commemorate the United Nations International Day for the Elimination of All Forms of Racial Discrimination on March 21 of each year.
2. This day was proclaimed by the United Nations in 1966 in commemoration of the peaceful protest against the “pass laws” in South Africa in 1959, a series of laws that restricted the mobility of people of colour in that country. The peaceful protest was disrupted by police intervention resulting in the deaths of a significant number of protestors.
3. Adopted by Convocation in January, 1999, the first of these events was for a conference coordinated in partnership with the League for Human Rights, B’nai Brith Canada and included internationally renowned lawyers and law enforcement representatives addressing the legal implications of hate on the internet. In 2000, the Law Society convened the first CLE addressing critical race theory and its legal implications as well as co-sponsored a conference and series of workshops with the African Legal Clinic and the Ontario Bar Association focusing on the Canadian preparations for the United Nations World Conference Against Racism and the legal implications of harassment and discrimination in the workplace. In 2001, the Law Society hosted an event in cooperation with the Canadian Bar Association’s Racial Equality Implementation Committee, the Law Society of British Columbia, and the Ontario Bar Association Joint Action Committee on Equity and Diversity. Titled *Equity Law, Social Context and the New Rules of Professional Conduct*, this seminar examined the social context of race and racism, changes in law effecting diverse racial groups, and the changes in the *New Rules of Professional Conduct* contemporaneous with these changes.
4. In preparation for the March 2002 event, the Equity Initiatives Department has confirmed the interest of a number of partners for a conference and series of meetings focusing on the many initiatives within the legal profession to implement equity and diversity initiatives. Such partnerships seek to include: the National Judicial Institute, the Canadian Association of Provincial Court Judges Equality Committee, the Canadian Bar Association’s Standing Committee on Equality and Racial Equality Implementation Committee, the Association of Canadian Law Deans, the Indigenous Bar Association, the Association de juristes d’expression française de l’Ontario, Aboriginal legal educators, representatives from other law societies and from various legal associations involved in developing and implementing equity and diversity initiatives.

5. Scheduled to be held over three days close to March 21, 2002, the purpose of the conference and series of meetings is to report on the status of each organization's equity and diversity initiatives, assess their development and examine opportunities for ongoing information sharing as well as program development and implementation. The conference and series of meetings will be open to members of the profession and representatives of community-based organizations concerned about equity and diversity in the legal profession and within Canadian law. A report on the results of these activities will be prepared for all participants.
6. The cost of the conference and series of meetings is \$157,000.00 and \$74,000.00 is being requested from the Department of Canadian Heritage to support this initiative. The remaining amount of \$83,000 reflects the use of Law Society facilities and staff time to support the initiative. Staff of the Equity Initiatives Department have discussed this application with representatives of the Department of Canadian Heritage who are positively inclined to support the grant proposal. The funding received will support the preparation of promotion and advertising, the retention of a project coordinator, travel and accommodations for key speakers representing organizations involved in the conference as well as material preparation and distribution.
7. As this is an initiative sponsored each year by the Law Society, there is no cost to the organization since the funding to cover the staff time normally associated with this event is included in the Equity Initiatives Department's annual budget.
8. *The Committee requests that Convocation endorse the grant application to the Department of Canadian Heritage to support the Equity and Diversity in the Legal Profession: Promoting Dialogue, Creating Change Project and direct the Chief Executive Officer to submit the application prepared by the Equity Initiatives Department for this purpose.*

#### APPENDIX

##### Background Information for *Equity and Diversity in the Legal Profession: Promoting Dialogue, Creating Change Project*

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9. The Law Society of Upper Canada plays a leading role in the legal profession in its commitment to equity and diversity. Through its Equity Initiatives Department, the Law Society has established cooperative working relationships with various legal and community-based organizations working on issues of equity and diversity within the legal profession.
10. Assuming its leadership role, the Equity Initiatives Department has proposed to host a conference that would bring together the various stakeholders in the profession to share information on equity and diversity strategy initiatives and to build cooperative strategies for policy and program implementation. A funding application has been drafted for the Multicultural Program at the Department of Canadian Heritage, and ongoing discussions with senior staff at the Department of Canadian Heritage indicate that the draft funding application has been favourably received.
11. Currently there are a number of associations and organizations within the legal profession who are undertaking various policy, research, and program initiatives to further equity and diversity within the profession. These initiatives, however, are often undertaken in isolation, and stakeholders have not communicated their strategies with each other and thus are not benefiting from opportunities of information and resource sharing, nor from opportunities to build collective and cooperative strategies to promote equality issues and further diversity in the legal profession.

12. The *Equity and Diversity in the Legal Profession: Promoting Dialogue, Creating Change* project will create the opportunity for the stakeholders, primarily the National Judicial Institute, the Canadian Association of Provincial Court Judges, the Association of Canadian Law Deans, the Canadian Bar Association, the Indigenous Bar Association, the Association des juristes d'expression française de l'Ontario and racialized Francophones, the Federation of Law Societies, and equity advisors and representatives from the provincial law societies, to evaluate their efforts to further equity and diversity within the profession, and to share that information with other organizations and associations from across Canada. The goal of the project is to share information for the purpose of education as well for the purpose of facilitating policy and program development to further equity and diversity in the legal profession in Canada.

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It was moved by Mr. Wilson, seconded by Mr. Gottlieb that other organizations be called upon for proportional contribution to the costs of the conference.

Lost

It was moved by Mr. Copeland seconded by Mr. T. Ducharme that Convocation endorse the grant application to the Department of Canadian Heritage to support the Equity and Diversity in the Legal Profession: Promoting Dialogue, Creating Change Project and that the Chief Executive Officer submit the application for this purpose with the condition that if the grant is not forthcoming the conference would not go forward.

Carried

It was moved by Mr. Gottlieb and failed for want of a seconder that it be expressly communicated to the participants that this is not a resolution making conference.

REPORT FOR INFORMATION ONLY

Professional Development & Competence Committee Report

Professional Development & Competence Committee

October 25, 2001

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Report to Convocation

Purpose of Report: Information

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

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Committee met on October 11, 2001. Committee members in attendance were Earl Cherniak (Chair), Kim Carpenter-Gunn (Vice-Chair), Bill Simpson (Vice-Chair), Gordon Bobesich, Carole Curtis, Susan Elliott, Barbara Laskin, Janet Minor, Greg Mulligan, Helene Puccini, and Rich Wilson. Staff in attendance were Bob Bernhardt, Felecia Smith, Sophia Sperdakos, Ursula Stojanowicz, and Paul Truster. Malcolm Heins attended a portion of the meeting.

2. The Committee is reporting on the following matters:

Information

3. Report on Specialist Certification Matters Finalized by the Certification Working Group on October 11, 2001 and Approved in Committee on October 11, 2001

4. Status Report on Development of Practice Management and Client Relationships Guidelines

INFORMATION

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE CERTIFICATION WORKING GROUP ON OCTOBER 11, 2001 AND APPROVED IN COMMITTEE ON OCTOBER 11, 2001

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

Civil Litigation	Ian M. Hull (Toronto) Michael Winward (Hamilton)
Construction Law	Geza Robert Banfai (Toronto) Marc C. Doucet (Ottawa) Carlo Greco (Toronto)
Criminal Law	J. Todd Ducharme (Toronto)
Family Law	Daniel S. Melamed (Toronto)
Intellectual Property Law	John S. McKeown (Toronto) John R. Morrissey (Toronto) Dale E. Schlosser (Toronto)
Labour Law	S. Margo Blight (Toronto)
Workplace Safety & Insurance Law	Suzanne Dajczak (Windsor)

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

Bankruptcy & Insolvency Law	Deborah S. Grieve (Toronto)
Civil Litigation	James R. Adams (London) Arthur M. Barat, Q.C. (Windsor) Brian D. Barrie (Owen Sound) E. Marshall Green (Barrie) Paul R. K. Henry (Toronto) Ian D. Kirby (Toronto) Gerald S. Levitan (Toronto) Todd J. McCarthy (Toronto) Robert K. McCartney (Toronto)

	Wilfrid Menninga (Belleville)
	James C. Morton (Toronto)
	Robert Bruce Munroe (Hamilton)
	Louie L. Reznick (Toronto)
	Robert F. Seiler (Oshawa)
	Jeffrey W. Strype (Toronto)
	Stanley C. Tassis (Toronto)
Criminal Law	Alexander Sosna (Whitby)
	M. Peter Zaduk (Toronto)
Environmental Law	Harry A. J. Dahme (Toronto)
	David Estrin (Toronto)
	John L. Martin (Markham)
	Harry Poch (Toronto)
	Dianne Saxe (Toronto)
Family Law	G. Ross Davis (Toronto)
	Matti E. Mottonen (Sudbury)
	Barry T. Paquette (Kitchener)
	Alexander Pazaratz (Hamilton)
	Roland J. Willis, Q.C. (Mississauga)
	Jeffrey Wilson (Toronto)
Labour Law	Barrie Chercover (Toronto)
	Mary Cornish, LSM (Toronto)

7. The Committee also wishes to report that the streamlining of the administration of the specialist certification program continues with the recent transfer of the financial function to the Finance Department and the implementation of continuous billing. In this way invoicing of annual fees is not dependent on Working Group and Specialty Committee meetings. The transfer also ensures compliance with the Law Society's financial practices.

## STATUS REPORT ON THE DEVELOPMENT OF PRACTICE MANAGEMENT AND CLIENT RELATIONSHIPS GUIDELINES

1. The Report of the Second Competence Task Force, approved by Convocation in 1999, emphasized that the clear articulation of competence standards or guidelines is essential to fulfilling the Law Society's competence mandate. The Report also emphasized the importance of the definition of the "competent lawyer" as the underpinning to the development of such standards or guidelines and, additionally, to competence-related activities. Since consideration of that Report, the definition of the "competent lawyer" has been incorporated into the Rules of Professional Conduct. Individual lawyers' practice skills and delivery of legal services may now be assessed against that definition.
2. The Competence Consultation Document, approved by Convocation in March 2000, stated that whatever approach to competence is adopted it would include the development of practice guidelines. The report indicated,

*Under any competence model, competence guidelines will play an important role....In view of the provisions of the Act that expressly provide for the assessment of member competence, the Law Society must develop recognized and accepted performance guidelines against which member performance in pre-determined areas can be evaluated...Whatever specific model the Law Society adopts to implement its competence mandate, acceptable performance guidelines will be an essential component so that the effectiveness of the model may be assessed.*

3. By its approval of the Report of the Second Competence Task Force in April 1999 and the Consultation Document in March 2000, Convocation approved the development of practice guidelines.<sup>1</sup> The provisions of the *Law Society Act* provide authority for the development of guidelines.<sup>2</sup>
4. In March 2001 Convocation approved the approach to the development of practice guidelines recommended in the Committee's report entitled *Implementing the Law Society's Competence Mandate*. The excerpt from the report is set out at Appendix 1.
5. The guideline development process will be a consultative process, as recommended in the March 2001 report. In each subject area undertaken, a preliminary draft of the guidelines will be prepared by one or two practitioners with significant experience in the subject area, to be used as a framework for consultation and discussion. The use of only one or two drafters will provide continuity.
6. The preliminary draft will be circulated to an initial group of 10-15 people or groups for comments and suggestions for additions or changes to the preliminary draft. These comments will be incorporated into a

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<sup>1</sup>Competence Task Force: Final Report (April, 1999) In approving the development of guidelines, Convocation approved the following recommendation: *A variety of resources should be used in developing competence guidelines, including consultation with the profession and drawing on what is learned and observed through practice reviews, competence hearings, the complaints and discipline process, and the LPIC experience.*

<sup>2</sup>Section 62 (0.1) 11 provides that,

Convocation may make by-laws authorizing and providing for the preparation, publication and distribution of guidelines for professional competence.

By-law 9 provides in section 14 (2)

Subject to approval of Convocation, the Professional Development and Competence Committee may prepare guidelines for professional competence.

second draft, which will then be provided to legal organizations and to the profession at large for comment. These comments will be incorporated into a third draft, for further comment. A final draft will be provided to Convocation for approval.

7. The guideline drafter(s) in each subject area will be provided with a Statement of Purpose and Terms of Reference as set out at Appendix 2.
8. The first guidelines approved by Convocation for development are those related to practice management and client relationships.
9. Milton Zwicker, the Managing Partner of Zwicker, Evans & Lewis, with offices in Barrie and Orillia, has agreed to be the drafter of the practice management and client relationships guidelines. The Law Society's Advisory Services department will assist him.
10. Mr. Zwicker practices in the areas of business and commercial law and life and estate planning. He consults, lectures and writes extensively to lawyers on a broad range of management topics and travels throughout Canada and the United States as a lecturer and consultant to bar associations, law firms, and accounting firms. He has been involved in the planning and organization of many workshops and seminars on a wide variety of management topics. He is a Fellow of the College of Law Practice Management.
11. Mr. Zwicker is the author of *The Principles and Practices of Law Firm Management*, *101 Ways to Cut Costs in the Law Office*, and *101 Ways to Market your Law Firm* (published by the CBA), as well as *Developing and Managing a Successful Law Practice* (Carswell, 1995.) He has been a chapter author in the following American Bar Association Law Practice Management Section books: *Win-Win Billing Strategies: Alternatives That Satisfy Your Clients and You*; *Beyond the Billable Hour: An Anthology of Alternative Billing Methods*; *Flying Solo*; and *Lawyer's Handbook: How to Effectively, Efficiently, and Profitably Manage Your Law Firm*.
12. With respect to the development of practice management and client relationships guidelines, the guideline headings and topics to be developed under each topic are set out at Appendix 3.
13. It is anticipated that the first draft will be prepared prior to the end of 2001. Comments and revisions to the draft are anticipated to take place in the early part of 2002.
14. It is projected that the total cost of preparing the draft practice management and client relationships guidelines will be under \$20,000, including the fee for Mr. Zwicker's work and the cost of the consultation process. This amount is currently budgeted for in the 2001 budget.

Excerpt regarding the development of practice guidelines from the Report entitled *Implementing the Law Society's Competence Mandate: Report and Recommendations*

1. *The practice guidelines developed as part of the competence model should be specific in nature and flexible in application;*
2. *The initial emphasis of guidelines development should be on "acceptable performance" and should work towards the identification of "best practices";*
3. *Initially, guidelines should be directed at practice management, including technology and client service issues. More particularly, the first guidelines should focus on what is meant by "the member's attention to the interests of clients", "the records, systems, or procedures of the member's practice" and "other aspects of the member's practice", as set out in section 41 of the Act<sup>3</sup>;*
4. *Guidelines should be developed to provide guidance to lawyers on what they should know and apply in specific areas of substantive law;*
5. *The guidelines development process should be undertaken as a consultative process with the profession and draw on what is learned and observed through practice reviews, competence hearings, the complaints and conduct processes, and the experience of LPIC;*
6. *Guidelines should be widely published in order that, by reference to them, members are able to monitor their own skills, enhancing them where necessary; and*
7. *Guidelines should be reviewed and updated on an ongoing basis to ensure that they continue to be relevant and appropriate.*

*The design process in connection with practice guidelines would include consideration of, among other issues,*

1. *the appropriate approach to guidelines content having regard for the need to take into account different practice approaches and client needs in recognition of the individuality of some aspects of practice;*
2. *the precise nature of the collaborative approach to designing guidelines;*
3. *the direction to be given to those designing guidelines so that guidelines follow a consistent approach;*
4. *the applicability and usefulness of guidelines to those members not in private practice;*
5. *the cost of developing guidelines and the proposed prioritization of resources; and*

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<sup>3</sup>Section 41 of the Act provides that a member fails to meet standards of professional competence if there are deficiencies in certain enumerated areas as identified in (c) above and the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

6. *the system for measuring the appropriateness of the guidelines and their effectiveness, and for updating them on a regular basis.*

Appendix 2

## COMPETENCE GUIDELINES - STATEMENT OF PURPOSE AND TERMS OF REFERENCE

### Reasons for Developing Profession -Wide Competence Guidelines

The commitment to quality and competence is, and will continue to be, a central component of the legal profession. Amendments to the *Law Society Act*, proclaimed in 1999, expanded the Law Society's statutory competence mandate. Section 41 of the Act provides that a member fails to meet standards of professional competence if,

- (a) there are deficiencies in,
  - (i) the member's knowledge, skill, or judgment,
  - (ii) the member's attention to the interest of clients,
  - (iii) the records, systems, or procedures of the member's practice, or
  - (iv) other aspects of the member's practice, and
- (b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

To assist members of the profession in knowing what performance is expected of them under the legislation and to inform the public of the service and quality expectations to which the profession is committed, the Law Society is undertaking the development of guidelines for professional competence.

### Guideline Development Process

The guideline development process is being undertaken as a consultative project.

The initial drafter (s) will be assisted by Law Society staff.

Following a review of this Statement of Purpose the drafter(s) should advise the Professional Development and Competence (PD&C) Committee of any concerns or questions and any changes proposed to the content outline.

The drafter(s) should provide the PD&C Committee with an interim report consisting of one or more draft sections of the guidelines, so that the Committee may consider the attention to audience, tone, detail, and level of performance in the section(s) provided.

The drafting and approval process in each subject area will be as follows:

15. The first draft will be provided to a number of organizations and interested parties for preliminary comment.
16. The drafter(s) will prepare a revised draft by a date to be agreed upon.
17. With Convocation's approval, the revised draft will be circulated widely to legal organizations and the profession for comment by a date to be agreed upon.
18. The drafter(s) will prepare a further draft by a date to be agreed upon.
19. The final draft will be submitted to Convocation for its consideration by a date to be agreed upon.

#### The Purpose of Guidelines

The purpose of guidelines is to assist lawyers to assess, maintain, and enhance their quality of service by providing a general framework for conducting various aspects of legal work.

Guidelines may serve as a preventive tool in the subject areas in which they are developed to,

- a) assist lawyers in avoiding errors,
- b) assist those who practise poorly to know what they can do to improve, and
- c) provide those who practise competently with tools to stay abreast of changing approaches.

Given the existence of statutory competence processes such as focused practice reviews and competence hearings, guidelines will assist in ensuring fairness in such processes, by providing a framework in which they will operate.

Guidelines are not intended to replace a lawyer's professional judgment or to establish a one-size-fits-all approach to the practice of law.

Failure to use the guidelines will not, in and of itself, indicate that a member has not provided quality service. Conversely, use of the guidelines may not ensure that a member has provided quality service. Whether a member has provided quality service will depend upon the circumstances of each case.

#### Reason for Developing the Practice Management and Client Relations Guidelines first

Most lawyers are in private practice or provide services to "clients" as part of their regular work. Law Society complaints statistics, LPIC statistics, and the experience of the Law Society's focused practice review program reveal that practice management and client relationship issues are the cause of, or contribute to, many of the complaints, claims, and competence deficiencies that arise in the profession. Throughout the province members deal with practice management and/or client relationship issues on a daily basis.

For these reasons, the Law Society has chosen to begin guideline development with this subject area.

Following the approach set out under "Guideline Development Process" the goal is to complete the practice management and client relationships guideline by June 2002.

#### Principles to which guideline drafters should adhere

In drafting guidelines, regardless of the specific subject area, drafters will adhere to the following principles:

20. Guidelines will be based on the appropriate mix of legislative and regulatory requirements, case law-developed standards, and professional consensus.
21. To be effective and useful, guidelines must reflect *acceptable practice* experience and approaches throughout the province and in a variety of settings, by taking into account geographic diversity, practice specific realities, available resources, and complexity of client files.
22. Guidelines are not intended to be prescriptive checklists that attempt to delve into every aspect of the subject area or fetter either individual judgment or the ability to adapt procedures to the particular file or situation. They should not be so specific and detailed as to suggest that the practice of law can be reduced to a finite number of pre-identified steps. Guidelines should, however, be specific enough to inform lawyers on appropriate approaches to the subject area of the guidelines so that they can use the guidelines to either affirm their current practices or improve them. They are intended to have enough detail that they can provide practical guidance and provide a range of considerations for lawyers to apply in the subject area.
23. It is appropriate for the guidelines to,
  1. point out essential features of the subject area;
  2. direct lawyers' attention to the importance of taking certain steps and the risks of not taking certain steps; and
  3. where the profession has already widely adopted certain procedures, referring to this fact.
4. Guidelines must be flexible enough that they,
  1. allow for a range of appropriate options, depending upon the nature of the individual file or issue being addressed, and the available resources;
  2. take into account the variations in practice or other work environments from large centres to smaller centres and from simple matters to highly complex ones; and
  3. are supportive.

#### Placing guidelines within the regulatory framework of the legal profession

The guidelines will not replace any legislative provision or regulation that governs the legal profession or any area of law. The guidelines will not replace the provisions of the Rules of Professional Conduct.

#### Content Framework of the Practice Management and Client Relations Guidelines

1. Practice management and client relationship guidelines should be directed primarily at members in private practice. Many of the components that will be covered in the guidelines are specific to running a law practice and providing legal services to numerous clients.

2. At the same time, however, where appropriate, guidelines should be developed so as to be of assistance to those members of the profession who are not in private practice, but who provide legal services and work with clients.
3. To assist the guideline drafter, a preliminary outline of subjects that the practice management and client relations guidelines should address will be provided.

#### Distribution and Review

Guidelines should be widely published in order that, by reference to them, lawyers are able to monitor their skills, enhancing them where appropriate. Guidelines should be reviewed and updated on an ongoing basis to ensure that they continue to be relevant and reflective of acceptable performance.

#### Appendix 3

### Practice Guidelines in Practice Management and Client Service Proposed Outline of Topics

#### Time Management

- tickler system
- recording/docketing of time
- task or to do list - current/future items
- calendar control system
- allocation of time to read/take CLE
- improving precedents in office
- learning effective time management skills
- filing systems
- telephone
  - returning client/other calls
  - arranging of telephone meetings
- effective control of limitation periods
- handling of mail/ e-mail
- plan ahead before meeting with clients, other lawyers, the court

#### File Management

- where files are kept (confidentiality)
- opening/closing file procedures
- open files - what does/does not go in a file
- organizing computer files
- efficient filing system/organization (both manual and electronic)
- file procedures
  - storage
  - destruction

-transfer

conflicts check including engaged/non-engaged clients  
office manual - procedures and systems  
client intake, action, closure systems  
undertakings - how they are dealt with  
knowledge & skill (legal principles, procedures and substantive law)

ADR

writing and drafting skills  
avoiding the 'ghost' client  
engagement/ non-engagement letters  
provision of ILA  
handling client complaints

#### Financial Management

fees and billings

planning for

- business interruptions
- disability
- death

record and bookkeeping requirements including:

- general and trust accounting
- private mortgages
- estates
- electronic funds transfers
- use of credit cards
- power of attorney for sole practitioners
- inactive accounts and unclaimed trust funds
- record retention (paper vs. electronic)
- staff hiring to appropriately deal with the requirements

controls for accounts payable & receivable

partnership/associates agreements

#### Client Service and Communications

understanding and managing client expectations

- length of time taken for matter
- realistic outcomes
- alternatives for client's expected outcomes

following client instructions

keeping client reasonably informed

replying within a reasonable time

- letter
- telephone
- e-mail

informing client about the position of a matter  
giving/not giving legal advice over the phone or casually at a social gathering  
listening skills  
open and honest communications  
efficient and effective writing  
showing respect, patience, empathy and tact towards clients (practicePro)  
fully explaining billing procedures (e.g. monthly, disbursements only)  
obtaining client consent in writing  
repeating and summarizing information from client

#### Technology and Equipment

e-commerce  
computers

- hardware
- software

photocopiers  
document templates  
library and research resources  
phone/voice  
document transmission (e-reg, e-mail, fax, scanner, web)  
office furniture  
office supplies

#### Professional Management

articling students  
summer students  
partners  
associates  
support staff  
training & support  
CLE  
partnership agreements

#### Personal Management

health and fitness  
LINK; OBAP  
family

outside interests  
coping with stress  
recognizing chemical dependencies  
recognizing depression

**Closing Down Your Practice**

dealing with open/closed files  
trust accounts  
unclaimed trust accounts  
will/corporate records, other valuable client property  
memberships (LSUC, CBAO etc.)  
LPIC  
staff  
office equipment  
premises

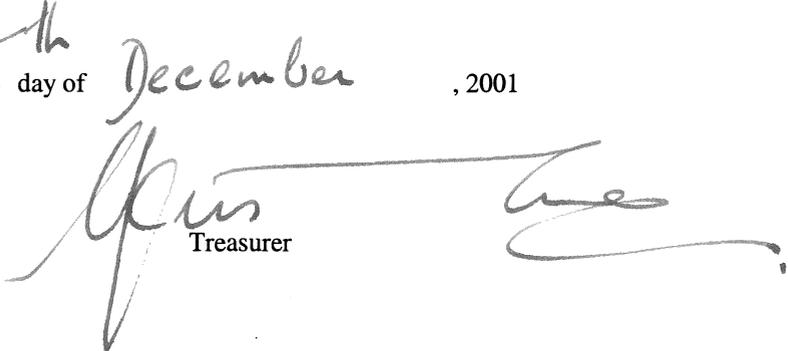
**CORRESPONDENCE**

The following correspondence was before Convocation:

1. Copy of a letter from Chief Justice Brian W. Lennox to the Treasurer dated October 2, 2001 re: Ontario Judicial Council.
2. Copy of a letter from Ms. Julie Mathews, Executive Director, Community Legal Education Ontario to the Treasurer dated October 15, 2001.
3. Copy of a letter from Mr. Robert E. Hirshon to the Treasurer dated October 15, 2001.

CONVOCATION ROSE AT 3:50 P.M.

Confirmed in Convocation, this 5<sup>th</sup> day of December, 2001

  
Treasurer