MINUTES OF CONVOCATION

Thursday, 28th April, 2011
9:00 a.m.

PRESENT:

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

…….

Secretary: James Varro

The Reporter was sworn.

…….

IN PUBLIC

…….

TREASURER'S REMARKS

The Treasurer welcomed Ronald MacDonald, Q.C., President of the Federation of Law Societies of Canada and Jonathan Herman, the Federation's CEO.

The Treasurer relayed Bonnie Tough's gratitude to Convocation on her receipt of her honorary LL.D. at a special ceremony on April 20, 2011.

The Treasurer announced the appointment of Michelle Haigh and re-appointment of Nancy Cooper and Tim Murphy to the Board of Legal Aid Ontario.

The Treasurer announced the re-appointment of lay benchers Marion Boyd, Seymour Epstein, Dow Marmur, Jack Rabinovitch, Baljit Sikand and Catherine Strosberg for the next bencher term.

The Treasurer thanked Bob Aaron, Larry Banack, Gary Gottlieb, Heather Ross, Clayton Ruby, Gerald Swaye and Bradley Wright, who become ex officio life benchers at the end of this term, for their service to Convocation as elected benchers.

The Treasurer extended heartfelt thanks to James Caskey, Marshall Crowe, Thomas Heintzman, Douglas Lewis and Bonnie Tough, whose terms as elected benchers end in May, for their service to Convocation.

The Treasurer congratulated Cathy Corsetti on her election as chair of the Paralegal Standing Committee for the next year.

Mr. Conway rose on a point of privilege to congratulate the Treasurer as the recipient of the Women's Law Association's President's Award on June 7, 2011.

DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of February 24, 2011 and Special Convocation on April 7, 2011 were confirmed.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, April 28th, 2011.

ALL OF WHICH is respectfully submitted

DATED this 28th day of April, 2011

CANDIDATES FOR CALL TO THE BAR

April 28, 2011

Christopher John Cochlin
Laura Donaldson
Oby Regina Ejidike
Ahmed Erfan
Nathan Paul Forester
Ryan Scott Goldvine
Rozina Jaffer
Stéphanie Megan Linda Lauriault
Mark David Lawlor
Oliver Wade Mac Laren
Munja Maksimcev
Jonathan David Manuel
Samer Reza Muscati
Shaun Patrick Pugin
Sébastien Jean Charles Rheault
Richard Joseph Eric Roy
Juliette Meï Van Yip

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

Carried

FINANCE COMMITTEE REPORT

Ms. Rothstein presented the Report.

Report to Convocation
April 28, 2011

Finance Committee

Committee Members
Carol Hartman, Chair
Linda Rothstein, Vice-Chair
Raj Anand
Larry Banack
Marshall Crowe
Paul Dray
Larry Eustace
Carl Fleck
Susan Hare

Janet Minor
Ross Murray
Judith Potter
Paul Schabas
Catherine Strosberg
Gerald Swaye
Brad Wright

Purpose of Report: Decision and Information

Prepared by the Finance Department
Wendy Tysall, Chief Financial Officer, 416-947-3322

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COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on April 7, 2011. The Committee members in attendance were: Marshall Crowe, Paul Dray, Larry Eustace (teleconference), Carl Fleck, Susan Hare, Janet Minor, Judith Potter, Paul Schabas, Catherine Strosberg (teleconference), and Brad Wright.

2. Staff in attendance: Malcolm Heins, Fred Grady, Julia Bass and Andrew Cawse.

FOR DECISION

INVESTMENT POLICY

Motion

3. That Convocation approve the Law Society's Investment Policy.

4. A copy of the current Investment Policy is attached at Appendix B. In the "Accountabilities and Responsibilities" section of the Investment Policy it states that "Convocation shall….review the administration of the Portfolios in the context of this policy. This shall be done on at least an annual basis." This was last completed in April 2010 when we engaged Hewitt Associates to undertake an investment structure review for the three portfolios.

5. The purpose of the current review is to assess the continued appropriateness of the investment policy. No changes are recommended.

6. The Law Society's investment policy governs the investment portfolios of the General, Compensation and Errors & Omissions Insurance Funds ("E&O Fund"). At December 31, 2010 these investments had a total market value of $78 million comprising $35 million in the E&O Fund, $30 million in the Compensation Fund and $13 million in the General Fund. Attached at Appendix A is a summary of the Society's portfolios and their performance for 2010.

7. The General Fund is the Society's operating fund, accounting for the Society's program delivery and administrative activities related to the regulation and licensing of members. The Society maintains the Compensation Fund pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of a member. The E&O Fund accounts for insurance-related transactions between LAWPRO, the Society and insured lawyers.

8. Since 2003, Foyston Gordon & Payne ("FGP") have been our investment managers. Our investment consultant, Aon Hewitt has just completed their review of FGP's performance at December 31, 2010 which is attached. The summarized results for the four year return, net of fees are:

	COMPENSATION	GENERAL	E&O
Fund	4.9%	4.5%	3.5%
Benchmark	4.5%	4.7%	3.3%

9. The Society's investment policy, with its bias towards fixed income is conservative and relatively defensive. This fixed income bias assisted in the preservation of capital during the 2008 financial crisis and is also proving effective in the wake of the recent disaster in Japan as bonds have rallied sharply. Equity markets experienced major sell-offs and volatility, with international markets particularly hard hit.

10. Given the situation in Japan, and the relatively weak recovery in the world economy, we do not recommend that the Committee consider changes to the policy at this time. The policy's defensive posture is, in our opinion, the appropriate policy to guide the Society's investment activities for the next year after which time the annual policy review will again be presented to the Committee for consideration.

11. The history and development of the Society's current policy follows for the information of the Committee.

Investment Policy Evolution

12. The Law Society's investment policy for the Compensation Fund was modified in 2000 to establish an externally managed long-term portfolio for the Compensation Fund; a long-term portfolio for the General Fund was added in 2004. The manager's mandate, for both funds, included investments in Canadian and United States equity markets. The target portfolio was 87% fixed income 13% equities. In the current investment policy these targets are now 85% and 15% for fixed income and equities respectively and the equity investments are now restricted to Canadian equities only, based on risk assessment and net returns. In 2010, the investment policies for the Compensation Fund, General Fund and E&O Fund were combined into one due to the similar nature and investment horizon of the funds.

Previous Investment Structure Review – Major Findings and Observations

13. As noted above, our investment consultants conducted an investment structure review in early 2010. After reviewing the consultant's report, Convocation approved the Finance Committee's conclusion not to make any changes to the investment policy, with the exception of increasing the equity component from 13% to 15%.

14. The principal findings of the Hewitt report from 2010 are summarized below:

    a) Risk - The Law Society has an *ability* to adopt a higher level of risk, however the Law Society's *willingness* to adopt a higher level of risk is very low. The current Investment Structure is generally in line with the Law Society's nature, goals and purpose.

    b) Active versus Passive Management - The Law Society should consider passive investment management. Passive management aims to replicate the performance of a specified stock market index. This recommendation is based on the difficulty active managers have experienced in adding value to Canadian bond returns, where we have the most exposure.

    c) Global Equities - Investing in global equities may increase expected returns without increasing expected risk, because of improved diversification if the currency risk can be managed.

    d) Asset Mix – the allocation between fixed income securities and equities is generally appropriate.

    e) Investment Manager - Moving to a passive investment structure as in b) above may require a change is investment manager. Hewitt notes that such a change could be disruptive and costly.

Finance Department's Comments on Investment Structure Review

15. Staff comments on the consultant's review are:

i. Risk -We concur with Hewitt's point on the ability of the Law Society to adopt a higher level of risk and the Law Society's unwillingness to adopt such a higher level. The Finance Department sees this approach to risk as a natural outcome of the Law Society's primary investment objective - the preservation of capital. The Law Society is a not-for-profit organization that does not rely on the returns from its investments to substantially support its operations. The Law Society acts as a prudent investor, with a low tolerance for risk, by investing funds surplus to its immediate cash needs primarily in high quality government and corporate bonds and, to a far lesser extent, Canadian equities.

ii. Asset Mix – Hewitt indicates that the Society's current asset mix is generally appropriate for the Society's investment objectives although Hewitt favours some exposure to global equities as a diversification tool.

iii. Hewitt notes that the Society's current policy and asset mix, protected capital during the September 2007 – February 2009 market meltdown period.

iv. Although, the Finance department does not disagree with the general principle of reduced risk with geographic diversification, it appears muted in practice and we believe that the current economic climate lends itself to a defensive investment strategy. The current policy has demonstrated its effectiveness under adverse market conditions. The Finance department recommends maintaining the status quo on the asset mix, including its Canada only equity orientation.

v. Active vs. Passive Management - On the issue of active vs. passive management, Hewitt suggests the Law Society should consider passive management. While the Finance department agrees that it is difficult for fixed income managers to exceed their appropriate benchmark, it does believe that it is important for an investment manager to strive to exceed the relevant benchmark and to make tactical decisions on asset allocation when appropriate.

vi. As an active manager, FGP has outperformed the fixed income benchmark for the Compensation Fund's portfolio, has underperformed for the General Fund and outperformed the benchmark for the E&O Fund over the last four years. They have therefore "added value".

vii. For these reasons, the Finance Department is not in favour of passive management. However, the Department is not fundamentally opposed to a passive management philosophy.

16. Hewitt's favoured alternative to maintaining the status quo, was to use another manager to passively manage an indexed short-term income fund and a hedged, indexed, global equity fund. The pros and cons of passive and global investing have been discussed above. Using this structure would reduce the impact of higher management fees for global equities and minimize currency risk at a relatively low cost.

Optimizing Investment Returns

17. The Law Society currently enjoys a very favourable management fee on the bond portfolio under management at FGP. The current fee, 5 basis points[1] on asset value, compares favourably with a passive bond fund manager. The current fee for equities is 45 basis points. Based on the Law Society's target asset mix of 85% fixed income and 15% equities, the total investment management fee with FGP is approximately 11 basis points compared to 8 or 9 basis points with a passive manager, a difference of about $11,000.

18. In addition, FGP currently provides investment management services for the Law Society Foundation at no cost. It is unlikely that the Law Society would be able to obtain a similar arrangement with a new investment manager.

Recommendation

19. Globally, financial markets are currently very volatile. The Law Society's fixed income portfolio currently has a relatively high yield compared to current rates available. It is apparent that the resource based Canadian equity market will move in line with global economic developments. Within this context, the Finance Department recommends the following in regards to the investment structure and management.

20. Maintain the status quo. The Law Society should elect to maintain its current investment structure and present investment manager, Foyston, Gordon and Payne.

    This has the following advantages:

    a. Maintains the Law Society's orientation to fixed income investments reducing exposure to volatile equity markets.
    b. Denominates the Law Society's investments in Canadian dollars eliminating exposure to foreign currency fluctuations.
    c. Offers relatively low investment management fees for an actively management fixed income portfolio.
    d. Does not force a liquidation of fixed income investments that currently have a relatively high yield and the reinvestment in lower yielding fixed income instruments.
    e. If a search for a new investment manager is required, the cost to do a full search for an active manager is estimated at $100,000. The cost for a passive manager search would be less, particularly if a single manager is selected and invited to present.

21. The Committee recommends no changes to the Investment Policy and therefore no changes to the Law Society's investment structure and investment manager.

[1] 100 basis points is 1 percent.

Appendix B

LAW SOCIETY OF UPPER CANADA

INVESTMENT POLICY

Revised by Convocation
April 2010

Purpose

1. The Law Society, has adopted the following Investment Policy governing the management of the General Fund Long-Term Funds, the Compensation Fund Long-Term Funds and the Errors & Omissions Insurance Fund Long-Term Funds ("the Portfolios") and short-term investments. The Portfolios comprise the funds not required to finance the short-term obligations of the Law Society's operations. Descriptions of these Funds can be found in the Law Society's Annual Financial Statements.

Accountabilities and Responsibilities

2. Convocation

   Convocation shall:

   - review and approve the Investment Policy
   - approve investment performance objectives
   - approve the appointment and continuing retention of the Investment Manager and Custodian
   - review the Portfolios' investment returns, and the administration of the Portfolios in the context of this policy. This shall be done on at least an annual basis.

3. Finance Committee

   The Finance Committee shall:

   - review and recommend approval of the Investment Policy to Convocation
   - review the Portfolios and monitor their performance
   - review and recommend the appointment and continuing retention of the Investment Manager and Custodian
   - review and recommend investment performance objectives
   - periodically report to Convocation on the investment returns of the Portfolios, and the administration of the Portfolios. This shall be done on at least an annual basis.

4. Law Society Management

   Law Society management, supplemented by professional assistance when required, has overall responsibility for:

   - preparing and recommending changes to the Policy
   - recommending the selection of the Investment Manager and Custodian
   - recommending investment performance objectives
   - monitoring the Portfolios to ensure compliance with legislative requirements and this policy
   - periodically evaluating the Investment Manager and Custodian
   - accounting for transactions in the Portfolios
   - reviewing the Portfolios' investment returns and the administration of the Portfolios in the context of this policy. This shall be done on at least a quarterly basis.

5. Investment Manager

The Investment Manager directs the business of the Portfolios' purchases and sales, has full investment discretion subject to the Investment Policy, and has responsibility for:

- Managing the Portfolios in terms of this Investment Policy, and in the best interests of the Law Society
- Providing written notification to management of the Law Society of any violations of this Investment Policy
- Adhering to the best standards of industry practice
- Required communications as described in Section 20.

6. Custodian

The Custodian shall:

- store and protect all ownership documentation for the Portfolios
- execute all transactions for the Portfolios as directed by the Investment Manager
- collect all income of the Portfolios
- provide monthly statements to the Law Society
- make all required filings to government, regulatory, taxation or other authorities.

and shall be one of the following:

- A bank listed in Schedule I or II of the Bank Act (Canada)
- A trust company that is incorporated under the laws of Canada, and that has shareholders' equity of not less than $10,000,000
- A company that is incorporated under the laws of Canada and that is an affiliate of a bank or trust company referred to above and has shareholders' equity, of not less than $10,000,000.

Philosophy

7. The Law Society is of the belief that:

- superior rates of return over longer time periods will be achieved through active management of a broadly diversified portfolio of high quality securities
- high-risk securities, which could lead to excessive volatility and the possibility of a reduction in the capital value of the Portfolios in a depressed market, are to be avoided
- extreme positions in either individual securities or in an asset class are to be avoided.

Business Characteristics

8. In order to establish an appropriate Investment Policy for the Portfolios, the following characteristics of the Law Society, relevant to the Portfolios, are noted.

- The Law Society is the governing body of Ontario's legal profession
- Governance of the Law Society is regulated by The *Law Society Act*
- The Law Society is a not-for-profit corporation and is not subject to income or capital taxes
- The primary revenue source for both the General Fund and the Compensation Fund is member fees, mainly received between December and May of each year. The primary revenue source for the E&O Fund is premiums and levies from members received in the period November to January and then in quarterly increments

- Total revenue for the Law Society for the year ended December 31, 2009 was $156 million
- The General Fund finances the day-to-day operation of the Law Society. It includes funds restricted by Convocation primarily the Working Capital Reserve (up to two months operating expenses) and the Capital Allocation Fund (capital acquisitions and improvements)
- The Compensation Fund is maintained to mitigate losses sustained by clients because of the dishonesty of a member. It is a discretionary fund, and claim payments have a maximum of $150,000
- The Errors & Omissions Insurance Fund accounts for insurance related transactions between Lawyers' Professional Insurance Company, the Law Society and insured lawyers
- Balances for investments at 31 December 2009 were:

CATEGORY	2009 ($mill)
Total Cash and Short-Term Investments	36.6
Errors & Omissions Insurance Fund - Long-Term Investments	42.5
General Fund – Long-Term Investments	12.2
Compensation Fund – Long-Term Investments	27.1
TOTAL	118.4

- Withdrawals from the Portfolios will depend on operating conditions and capital requirements and therefore the Portfolios should be sensitive to short-term volatility.

Objectives

9. The primary objective is to preserve and enhance the real capital base of the Portfolios.

10. The secondary objective is to generate investment returns to assist the Law Society in funding its programs.

11. Even with the guidelines outlined in this Policy, the investment returns from the Portfolios will vary from year to year, reflecting market and economic conditions, levels of inflation, government policies and many other factors which are beyond the control of the Investment Manager. These outside factors should not deter the Investment Manager from exercising due diligence and using its best efforts to achieve the long-term primary investment objective for the Portfolios as set out above, and the following benchmarks:

- By asset class
  - to outperform the appropriate market index return

- By benchmark portfolio
  - To outperform a static benchmark portfolio consisting of the benchmark of the asset mix ranges noted below (i.e., a portfolio consisting of 85% of the DEX Short-Term Bond Index total return, and 15% of the total return of the S&P/TSX Composite Index, over a four year moving average or complete market cycle).

Investment Manager

12. To achieve these objectives the Law Society will retain the services of a firm registered as Investment Counsel and Portfolio Manager with the Ontario Securities Commission to manage the investment Portfolios on a discretionary basis within the constraints outlined in this document. The Investment Manager is to be guided by the following:

Asset Mix

13. The following asset mix guidelines, based on market values, constitute the acceptable range of exposure for the various asset classes, which comprise each Portfolio:

	% of Total Fund		
	Minimum	*Benchmark*	Maximum
Cash and Short-Term	0%	0%	15%
Bonds	60%	85%	95%
Total Fixed Income	75%	85%	95%
Canadian Equity	5%	15%	25%

Diversification

14. The investment risk of the Portfolios shall be reduced by maintaining a diversified selection of industries and companies which places primary emphasis on value, long-term growth, and safety of capital. All percentages are based on market values, except where indicated.

Short-Term Investments

15. Short-term investments with a maximum term to maturity at purchase of 364 days may be held in the Portfolios when appropriate as an alternative to bond and equity investments. Appropriate short-term investments are:
    (a) Treasury bills issued by the Government of Canada and provincial governments and their agencies
    (b) Obligations of trust companies and Canadian and foreign banks chartered to operate in Canada, including bankers' acceptances
    (c) Commercial paper issued by Canadian corporations with a rating of "R1" or better as established by The Dominion Bond Rating Service or equivalent rating by another recognized bond rating service, at the time of purchase.

16. No more than 8% of each of the portfolios may be invested in the securities of any one single issuer permitted in (b) and (c) above.

17. Where the Investment Manager operates a pooled money market fund, which meets the requirements set out in (a), (b) and (c), this pooled money market fund may be used as an alternative in order to achieve better rates and liquidity.

Bonds

18. Investment instruments allowed include:
    - ☐ bonds, debentures, notes, non-convertible preferred stock, term deposits and guaranteed investment certificates
    - ☐ bonds of foreign issuers denominated in Canadian dollars
    - ☐ NHA-insured mortgage-backed securities or collateralized mortgage-backed securities
    - ☐ Marketable private placements of bonds.

19. Each bond portfolio may be invested up to a maximum of:
    - ☐ 100 % in Government of Canada or Government of Canada guaranteed bonds
    - ☐ 60% in provincial government and provincial government guaranteed bonds
    - ☐ 10 % in municipal bonds; and
    - ☐ 50 % in corporate issues
    - ☐ Not more than 10% of the total market value of each bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer in a foreign currency.

20. Investment in any one security or issuer shall not exceed 10% of each Bond portfolio with the exception of Government of Canada and provincial government bonds and their guarantees.

21. In line with the benchmark portfolio of the DEX Short Term Bond Index, the normal Duration range for the bond portfolio administered under this policy should be between 1 and 5 years. The Duration of a portfolios is a measure of the portfolio's sensitivity to changes in the general level of interest rates (Duration multiplied by change in interest rates gives change in value of bond portfolio).

22. The emphasis within the bond portfolio will be on quality, with a minimum rating "BBB" for bonds and debentures or "P2" for preferred shares by The Dominion Bond Rating Service or equivalent rating by another recognized bond rating service, at the time of purchase.

23. In the event of a downgrade below "BBB" for bonds and debentures, "P2" for preferred shares or "R-1" for short-term investments, the Investment Manager will advise of an appropriate course of action. No more than 10% of the market value of each bond portfolio shall be invested in bonds rated "BBB".

24. In cases where the recognized bond rating agencies do not agree on the credit rating, the bond will be classified according to the methodology used by DEX, which states:

- If two agencies rate a security, use the lower of the two ratings
- If three agencies rate a security, use the most common; and
- If all three agencies disagree, use the middle rating.

25. In the event that an individual bond, debenture, short-term investment or preferred share is no longer rated by a recognized bond rating agency, that security will no longer be considered to be investment grade and the Investment Manager will place the asset on a watch list subject to monthly review by the Investment Manager with the Law Society until such time as the security matures, is sold or until it is upgraded to a level consistent with the purchase quality standards as expressed in the guidelines listed above. The Manager may not infer a rating for an individual unrated security from ratings of other securities issued by the same issuer.

Equities

26. The intent is to provide a diversified selection of Canadian common stocks, also allowing any of the following, provided that they are listed on a recognized stock exchange:
    - ☐ Convertible preferred stock and convertible debentures
    - ☐ Real estate investment trusts ("REITs").

27. The market value of any one issuer cannot represent more than 10% of the market value of the total Portfolios, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.

Other Investments

28. Investments in open or closed-ended pooled or mutual funds are permitted provided that the assets of such funds are permissible investments under this Policy.

29. Deposit accounts of the custodian, or Schedule 1 banks can be used to invest surplus cash holdings.

30. With the exception of rights, warrants and special warrants or instruments used for hedging purposes, no derivative investments will be permitted without the prior written approval of the Finance Committee.

31. No venture capital financing or non-conventional investments will be permitted without the prior written approval of the Finance Committee.

32. In the event any investment has no active market, the Investment Manager will advise of an appropriate course of action for the valuation of that investment.

Discretion

33. The Investment Manager is to have full discretion in the management of the assets of the Portfolios, selecting the appropriate asset mix, and the individual securities, within the guidelines set out herein.

Communications

34. The Communications process between the Investment Manager and Law Society Management is flexible, but at a minimum will include the following:
    - monthly transaction statements
    - a quarterly written summary listing of all portfolio transactions from the Investment Manager
    - a complete quarterly portfolio listing
    - a quarterly written assessment of the North American economies and the financial markets, and impact on the Portfolios
    - annual investment meetings with the Investment Manager. The agenda at these meetings would include an overview of the economy and the outlook for the financial markets, the current investment strategy, and a review of the performance results
    - an annual review of the Investment Policy and the Portfolios' quality and diversification guidelines.

35. Any time that the Investment Manager is not in compliance with this policy, they are required to advise the Chief Financial Officer of the Law Society immediately, detailing the breach and recommending a course of action to remedy the situation.

Securities Lending

36. No lending of securities is permitted.

Conflicts of Interest – Investment Policy

37. Conflict of interest standards apply to all members of Convocation, Law Society management and the Investment Manager, as well as to all Agents employed by the Law Society, in the execution of their fiduciary responsibilities.

38. An 'Agent' is defined to mean a company, organization, association or individual, as well as its employees, retained by the Law Society to provide specific services with respect to the administration and management of the Law Society's investment assets.

39. In carrying out their fiduciary responsibilities, these parties must act at all times in the best interests, and for the benefit, of the Law Society. All parties must act in the manner that a "prudent person" would in matters related to the investment strategy and portfolio management.

40. No affected person shall accept a gift or gratuity or other personal favour, other than one of nominal value, from an individual with whom the person deals in the course of performance of his or her duties and responsibilities.

41. In the execution of their duties, all of the parties listed in Section 37 above shall disclose any material conflict of interest relating to them, or any material ownership of securities, which could impair their ability to render unbiased decisions, as it relates to the administration of the investment assets.

42. Further, it is expected that none of the parties listed in Section 37 above shall make any personal financial gain (direct or indirect) because of their fiduciary position. However, normal and reasonable fees and expenses incurred in the discharge of their responsibilities are permitted if documented and approved by the Law Society.

43. It is incumbent on any party affected by this Policy who believes that he/she may have a material conflict of interest, or who is aware of any conflict of interest, to notify the CEO or the CFO of the Law Society. Disclosure should be made promptly after the affected person becomes aware of the conflict. The CEO or CFO, in turn, will decide what action is appropriate under the circumstances but, at a minimum, will table the matter at the next regular meeting of the Finance Committee.

44. No affected person who has or is required to make a disclosure as contemplated in this Policy shall participate in any discussion, decision or vote relating to any proposed investment or transaction in respect of which he or she has made or is required to make disclosure.

Changes to Policy

45. This Investment Policy may only be changed by Convocation on the specific recommendation of the Finance Committee.

FOR INFORMATION

2012 BUDGET PROCESS

22. Convocation is requested to review the suggested structure and timetable for the 2012 budget process and provide feedback.

23. Typically, Convocation adopts the annual budget at its October meeting (under the By-Laws the budget must be approved by Convocation prior to the end of November).

24. A comprehensive system of program reviews linked to the budget has been in place since the 2003 Budget Process. A recommendation for operations to be reviewed for the 2012 budget will presented to the Finance Committee in May.

25. The rotational review of activities has the benefits of:
- Allowing a more meaningful and focused analysis of revenues and expenditures relating to program activities under review
- Reducing the length of the budget process
- Increasing bencher understanding of a number of specific activities each year.
- Increasing the accountability of management for the programs underlying the financial information contained in the annual budget.

Operational Reviews for the 2012 Budget

26. A history of operational reviews since Convocation approved the process for the 2003 budget is set out below.

2011 Professional Regulation and Communications
2010 Professional Development & Competence and Information Systems
2009 Policy and Government Relations Departments and the Client Service Centre
2008 Professional Regulation and Communications
2007 Professional Development & Competence and Information Systems
2006 Compensation Fund and the Customer Service Centre
2005 Professional Regulation and Policy & Legal Affairs
2004 Professional Development & Competence and Communications
2003 Client Service Centre, Lawyers Fund for Client Compensation and Great Library

27. All significant Law Society programs have had previous reviews as the process works its way through a third cycle.

28. It is intended that the operational reviews for the 2012 budget be completed and presented to the Finance Committee in September 2011 as set out in the timetable below. Presentations on the LibraryCo budget would also be conducted in September.

Proposed 2012 Budget Timetable

DATE (2011)	PROCESS
April / May	The Senior Management Team (SMT) commences the budget process by considering individual and collective budget assumptions, variables and objectives. This review also includes how the proposed 2012 budget fits into longer-term plans for the organization and departments. Finance Committee and Convocation approve a process for preparing the 2012 budget that includes Standing Committee endorsement of operational reviews. Bencher's comments on the program reviews and budget process are invited
June July	SMT Budget Planning session – how each division will address the priorities of Convocation.
July August	The components reviewed and approved above are compiled into an operating budget for the Law Society. Facilities and Information Systems compile a capital budget with the assistance of user departments. Further assessments of LibraryCo operations.
September	Operational reviews for selected departments are presented to the Finance Committee and any other benchers who wish to attend. The Finance Committee reports results of the program reviews to Convocation and program review material is available to all benchers. Bencher's comments on the program reviews and budget process are invited. Preliminary operating budgets for lawyers and paralegals and a capital budget for 2012 are presented to the Finance Committee.

	A budget information session is held for all benchers to ensure a full exchange of information on the 2012 budget September 22. Bencher priority planning retreat September 25-27 LibraryCo submits preliminary submissions on 2011 activities and 2012 projections to the Finance Committee at this time. 2012 budget requests from external organizations such as CDLPA received by this time.
October/ November	Draft operating budgets for lawyers and paralegals and a capital budget for 2012 are presented to the Finance Committee, Paralegal Standing Committee, Compensation Fund Committee and Convocation for approval. The budget is typically approved by Convocation in October. If any of the recommendations and/or priorities from the bencher priority planning retreat are to be incorporated in the 2012 budget, approval by Convocation will have to be delayed until November.

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

Copy of a summary of the Society's portfolios and their performance for 2010.
(Appendix A, page 11)

Re: Investment Policy

It was moved by Ms. Rothstein, seconded by Ms. Potter, that the Law Society's Investment Policy be approved.

Carried

For Information
- 2012 Budget Process

ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Boyd presented the Report.

Report to Convocation
April 28, 2011

Access to Justice Committee

Access to Justice Committee
Marion Boyd, Co-Chair
William Simpson, Co-Chair
Bonnie Tough, Vice-Chair
Paul Dray
Mary Louise Dickson

Larry Eustace
Carl Fleck
Avvy Go
Michelle Haigh
Susan McGrath
Jack Rabinovitch
Catherine Strosberg

Purpose of Report: Decision

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

COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on April 6, 2011. Committee members Marion Boyd (Co-Chair), William Simpson (Co-Chair), Paul Dray, Mary Louise Dickson, Larry Eustace, Carl Fleck, Avvy Go, Michelle Haigh, Susan McGrath, and Catherine Strosberg participated. Staff members Marisha Roman, Josée Bouchard, Diana Miles, Terry Knott, Julia Bass, Sheena Weir, and Denise McCourtie attended.

FOR DECISION

PROPOSED SUBMISSION TO THE LAW COMMISSION OF ONTARIO ON THE INTERIM REPORT ON THE *PROVINCIAL OFFENCES ACT*

MOTION

2. That the Law Society make a submission to the Law Commission of Ontario in response to the release of the interim report: "Modernizing the Provincial Offences Act: A New Framework and Other Reforms", indicating that,

    a. the Law Society has no objection to the transferring of parking violations (Part II offences under the *Provincial Offences Act*) to the Administrative Monetary Penalty (AMP) process, and
    b. the Law Society opposes the transfer of *Provincial Offences Act* Part I offences to the AMP process, particularly offences under the *Highway Traffic Act* and other offences related to preserving public safety.

BACKGROUND

3. In November 2009, the Law Commission of Ontario ("LCO") launched its review of the *Provincial Offences Act* ("POA"). The purpose of the project is to review the operation of the POA, consult with the Ontario public on opportunities to modernize the POA and then formulate a report with recommendations for reform of the POA.

4. In the fall of 2009, the LCO released a consultation document, identifying issues for consideration, together with consultation questions. Consultations were conducted between November 2009 and February 2010. The LCO released its interim report in March, 2011. This report, entitled "Modernizing the Provincial Offences Act: A New Framework and Other Reforms, Interim Report" contains the results of the consultation as well as interim recommendations. The *Executive Summary* and *Section V. Administrative Monetary Penalties as an Alternative to the Court Process* are provided at Appendix 1. The full report, as well as the background consultation papers, is available on the LCO's website at http://www.lco-cdo.org/en/content/provincial-offences-act.

5. The next step for the LCO project will be further public consultation on the interim report's recommendations. Responses to this further consultation are due by April 29, 2011. The LCO will then present a final report to the LCO Board of Governors in the fall of 2011. Following approval by the LCO Board of Governors, the final report will then be publicly released.

THE ACCESS TO JUSTICE COMMITTEE'S REVIEW OF THE 2009 CONSULTATION REPORT

6. At its meeting on November 10, 2010, the Access to Justice Committee was asked to review the consultation materials to identify potential access to justice implications and develop a position on whether to recommend that the Law Society should comment. The consultation review document indicated that there were nineteen areas of review. The Committee focused its review on the use of Administrative Monetary Penalties ("AMPs").

7. An AMP is a penalty that is due once an infraction has been detected, unlike a fine, which is imposed only once a party has pleaded guilty to an offence or the court has convicted the defendant.

8. The LCO's 2009 consultation review document states that AMPs became available in Ontario following the implementation of the *Municipal Statute Law Amendment Act* in January 2007. This statute gives municipalities the authority to require a person to pay an administrative penalty when the municipality is satisfied that the individual has breached a by-law respecting offences under Part II of the POA, specifically offences related to parking, stopping and standing of vehicles ("Part II parking infractions"). If the municipality adopts this process, the POA does not apply. Under the POA, a person served with a parking ticket may pay the set fine or request a trial. The consequence of switching to an AMP regime is that the process for administering Part II parking infractions becomes an administrative process subject only to administrative review.

9. The 2009 consultation review report suggests that the AMPs could be "a better use of resources" than the traditional mode for processing Part II parking infractions through the courts. The 2009 report also suggests that there may be an opportunity to extend the use of AMP to minor speeding violations, included in Part I of the POA.

THE ACCESS TO JUSTICE AND PARALEGAL STANDING COMMITTEES' REVIEW

10. The recommendations in the Interim Report were reviewed by the Access to Justice at its April 6, 2011 meeting and by the Paralegal Standing Committee at its April 7, 2011 meeting. The recommendations specifically reviewed are contained in *Section V. Administrative Monetary Penalties as an Alternative to the Court Process*. The following recommendations are at page 101 of Section V:

The LCO recommends that:

12. Within two years, the POA be amended to remove the prosecution of Part II parking infractions in the Ontario Court of Justice.

13. Within two years, each municipality (or jointly with other municipalities or Municipal Partners) adopt and implement a by-law for administrative penalties to enforce by-laws relating to the parking, standing or stopping of vehicles, including by-laws relating to disabled parking.

14. Amend O. Reg. 333/07 under the Municipal Act to permit administrative penalties for the enforcement of by-laws establishing systems of disabled parking.

15. Increase the monetary limit for administrative penalties in section 6 of O. Reg 333/07 from $100 to $500, or such other amount as is necessary to permit enforcement of disabled parking by-laws through AMPS systems.

16. Each municipality and relevant government Ministries, including the Ministry of Transportation, immediately assess operational challenges to the successful implementation of an AMPS regime for parking enforcement (such as any required IT infrastructure), and put in place a plan to resolve those challenges within two years. Consultation with municipalities who have already implemented an AMP system may assist in overcoming any operational challenges.

17. The Ontario government conduct a review of minor provincial offences most typically commenced as Part I proceedings, and in particular, minor Highway Traffic Act offences currently prosecuted under Part I, to assess which offences may be better enforced under an AMPS system. This review should consider, among other legal, policy and operational considerations:

- the most common offences currently prosecuted under Part I, their volume, and associated court and judicial resources required to dispose of these offences as compared to an AMPS regime;
- the effectiveness of AMP regimes for other minor offences;
- the nature of the offence (i.e., whether it is a strict or absolute liability offence), and whether due diligence defences could or should be maintained in an AMPS regime through appropriate guidelines to the administrative hearing officer;
- the proposed penalty under an AMP regime and whether it would be punitive or give rise to the potential of imprisonment;
- whether the potential circumstances giving rise to the offence could potentially lead to allegations of infringements of Charter or other rights, and if so, how might those allegations be dealt with under an AMPS regime;

- operational issues that would hamper the ability to transition the offence into an AMPS regime; and

- the merits of maintaining two separate and distinct systems for the resolution of the same provincial offences currently prosecuted under Part I (e.g., an AMPS system and a POA court-based system).

18. The Ontario government, in consultation with First Nation communities, consider the legal and policy implications of expanding the definition of "municipality" within the Municipal Act to permit by-laws enacted by a First Nation band under the federal Indian Act to be enforced through an AMPS regime.

11. The Access to Justice and Paralegal Standing Committees considered the interim report's analysis of the policy arguments for and against AMPs generally, the current AMP system for Part II parking infractions and its use in the City of Vaughan, the application of the Charter to AMPs, the perception of fairness in the AMP system as well as recommendations for a further review by the Government of Ontario of whether Part I offences, including *Highway Traffic Act* offences ("Part I offences"), could be incorporated into an AMP system.

12. The LCO report argues that AMPs are more effective than imposition of fines through the court system under the POA, because they are quicker and less expensive. Consequently, the use of AMPs overcomes the "compliance deficit" that arises when a regulator does not enforce violations because it is too expensive for the regulator to do so.

13. In terms of negative aspects of AMPs, the interim report considers the concern raised in Saskatchewan about the perceived lack of fairness when the regulator both investigates and adjudicates violations. The interim report concludes that the regulatory scheme can include procedural protections to ensure fairness. Another concern cited was that reliance on AMPs would preclude use of the other existing tools in the regulatory kit, including prosecutions. Again, the report concludes that regulatory directives or guidelines related to certain categories of serious offences would counter this concern. Finally, the issue of effectively creating absolute liability offences where there are currently strict liability offences under the regulatory framework was addressed. The interim report concludes that this concern is important when significant penalties are at issue but is less important when AMPs apply to very minor offences, such as Part II parking infractions.

14. In describing the current AMP system for Part II parking infractions, the interim report outlines how a municipality may create an AMP system, and the limits that exist regarding maximum fines under AMPs. Under the current system, an AMP fine cannot be punitive in nature and cannot exceed $100. Procedurally, the person is entitled to receive notice of the penalty and may request to have the penalty reviewed by a screening officer. The screening officer may decide to affirm, cancel or vary the penalty.

The person may then request a review of the screening officer's decision before a hearing officer. The hearing officer may also decide to affirm, cancel or vary the penalty. There is no appeal from the hearing officer's decision. Under the AMP system, the individual as well as his/her lawyer or paralegal may attend at the screening officer and/or hearings officer stage (page 97 of the interim report).

15. The experience of the City of Vaughan is used to demonstrate the benefits of creating an AMP system for Part II parking violations. It is currently the only Ontario municipality using the AMP process (as of August 2009) although the City of Oshawa has made an application to adopt AMPs for parking infractions in 2011. According to the interim report, the benefits in Vaughan include the following:

    a. Matters are heard more quickly – on average a matter can heard by both a screening officer and a hearings officer within two months, compared to 10 months for the court system.
    b. Less time wasted by the public – a fixed time is now provided for a hearing.
    c. Savings in costs – hearings are scheduled within the municipal law enforcement officer's regular work hours and further costs are saved because there is no prosecutor.
    d. Overall reduction in hearings – approximately 1.5% of matters go to a hearings officer, which is fewer than the 3.5% of tickets that were challenged in court.
    e. Savings of time for POA Court and prosecutors – their time can be used to address more serious offences.
    f. Public satisfaction – City of Vaughan staff responded that they perceived that members of the public were more satisfied with the outcomes under the AMP system.
    g. Cost of Hearings Officer is not significant – The additional costs associated with hiring two Hearings Officers was recovered through the collection of penalties under the AMP.

16. The interim report discusses the various legal and operational concerns expressed by other municipalities related to the adoption of AMP systems. The strongest concern related to the perception of a lack of procedural fairness. For this reason, the report recommends a two-year transition period for the adoption of AMPs for Part II parking infractions to ensure that the unique issues relating to individual municipalities can be addressed in the planning and implementation phase.

17. The interim report considers the potential application of sections 7 and 11 of the *Charter of Rights and Freedoms* and concludes that the application of the AMP does not attract the protections of either section.

18. In considering the duty of fairness concerns with the AMP, the report concludes that,

    a. the procedures under the AMP are not like court procedures but rather are more administrative in nature and therefore do not require the same level of procedural protections used in trials;
    b. the purpose of the AMP system is to regulate traffic and not punish individuals;

c. the recommended ceiling for the fine of $100 for Part II parking infractions is not severe or punitive;
d. in relation to procedure, the legitimate expectations of persons who receive a parking AMP are not disturbed by the AMP process, which remains similar enough to the POA process; and
e. the AMP regulation protects members of the public by providing guidelines to prevent political interference and conflicts of interest and allows for individuals to be represented by lawyers or licensed paralegals.

19. In recommending amendments to the POA to the government of Ontario, the interim report supports a higher maximum penalty of $500 for infractions related to disabled parking because of the "strong social interest of accommodating persons with disabilities with appropriate parking" (page 93 of the interim report).

20. The recommended two-year implementation period for Part II parking infractions to be incorporated into an AMP system also acknowledges current technological gaps. The time period will allow for further consultation and consideration to be given to implementation issues related to the Information Technology (IT) capacities of municipalities and a system for direct communication between municipalities and the Ministry of Transportation (MTO).

PART I OFENCES

21. In considering whether minor offences under Part I of the POA could also be included in an AMP system, the interim report concludes that further consideration of legal, policy and constitutional arguments is warranted. Under the POA, proceedings related to Part I offences are commenced by way of a certificate of offence, typically with a set fine. The maximum penalty is $1,000 and imprisonment is not a permitted penalty. The defendant's options include paying the fine, disputing the penalty or requesting a trial.

22. POA procedures are used to adjudicate offences created through a broad range of regulatory statutes. Procedures under Part I of the POA relate to minor offences while procedures under Part III cover matters that must be brought forward to the courts for resolution. The statutes that fall within the jurisdiction of POA Part I and III procedures include the *Highway Traffic Act, Compulsory Automobile Insurance Act, the Occupational Health and Safety Act, Environmental Protection Act, the Clean Water Act, the Pesticides Act, the Liquor Licence Act, Smoke-Free Ontario Act, Trespass to Property Act, the Family Law Act* (specifically court-ordered restraining orders), *Fire Prevention and Protection Act*, the *Consumer Protection Act* and various municipal by-laws. According to the interim report, between 2007 and 2009, the three most common Part I offences resolved by court proceedings arose from charges under the *Highway Traffic Act* (approximately 80% each year), the *Compulsory Auto Insurance Act* (approximately 6% each year), and municipal by-laws (approximately 4% each year) (page 33 of the interim report).

23. Citing the complexity and broad range of statutes covered by procedures under the POA, the interim report recommends that the government of Ontario conduct a review to determine whether Part I offences could be transferred to an AMP system. For the purpose of the review, the interim report recommends seven criteria for the Government to apply if it agrees to review whether Part I offences could be processed using the AMP system. These criteria include the following:

a. Determination of which Part I offences could be included in an AMP, paying specific heed to making the decision in a consistent manner by applying a rationale and consistently applied threshold test to Part I offences;
b. Consideration for when to impose an AMP or commence a prosecution, based on the circumstances surrounding the commission of the offence;
c. Consideration for when due diligence defences to Part I offences are currently available to preserve the nature of the offence as either a strict or absolute liability offence;
d. Consideration of constitutional rights in the proposed penalty, especially when the penalty contemplates imprisonment or another punitive penalty;
e. Consideration of other legal and policy issues including protection of other constitutional rights and ensuring compliance with regulatory standards;
f. Given the volume of cases under the POA system, it is assumed that a significant caseload would be transferred to municipalities. Sufficient time for municipalities to develop and implement appropriate structures and staffing to accommodate expected case volume is required;
g. Consideration of the costs associated with maintaining both the AMP and the POA processes as two discrete systems.

24. A final issue was raised in the report but not developed. The consultation revealed that First Nation communities are not currently defined as municipalities under the Municipal Act. Further consideration of this issue by the Government of Ontario in consultation with First Nations communities is recommended by the interim report.

THE COMMITTEES' DELIBERATIONS

25. The Committees considered the interim report and recommend to Convocation that the Law Society provide a response to the Law Commission of Ontario by April 29, 2011.

26. Both Committees supported the report's recommendation to transfer the adjudication of Part II parking infractions to an AMP system, as they agreed with the interim report's findings that Part II parking infractions are minor offences that can be effectively processed using an administrative, as opposed to judicial, process. The outcome of receiving a parking ticket under either the current POA system or the proposed AMP system is essentially the same: payment of a fine or penalty. In addition, the City of Vaughan's experience demonstrates that Part II parking infractions can be resolved in a speedier and more cost-efficient manner, thus freeing up court resources, including judges, justices of the peace and prosecutors, to deal with more serious offences. Both Committees agreed that a more efficient, cost-effective and timely system for processing parking infractions will enhance access to justice for Ontarians.

27. In considering the report's recommendation of a review of Part I offences, for the purpose of including their adjudication in an AMP system, the Committees considered public safety and access to justice the most significant issues. For this reason, the Committees jointly recommend that the Law Society indicate that it opposes the inclusion of Part I offences within an AMP system.

28. The Committees expressed concern that what might be considered minor offences can have serious public safety implications, particularly in the context of the *Highway Traffic Act*, where serious injury or death can arise from the commission of seemingly minor offences. Further, the Committees concluded that, regardless of the outcome of the recommended review, a judicial process for resolving provincial offences will still be required. From an access to justice perspective, efficiency may not be achieved. Under a dual system, individuals may face a duplication of procedures to resolve offences whereas they may now proceed by way of a single court proceeding.

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

(1) Copy of Modernizing the Provincial Offences Act: A New Framework and Other Reforms, Interim Report, dated March 2011.

(Appendix 1, pages 13 – 66)

Re: Proposed Submission to the Law Commission of Ontario on the Interim Report on the *Provincial Offences Act*

It was moved by Ms. Boyd, seconded by Ms. Haigh, –

That the Law Society make a submission to the Law Commission of Ontario in response to the release of the interim report: "Modernizing the Provincial Offences Act: A New Framework and Other Reforms", indicating that,

a. the Law Society has no objection to the transferring of parking violations (Part II offences under the *Provincial Offences Act*) to the Administrative Monetary Penalty (AMP) process, and

b. the Law Society opposes the transfer of *Provincial Offences Act* Part I offences to the AMP process, particularly offences under the *Highway Traffic Act* and other offences related to preserving public safety.

A friendly amendment was accepted to add the following to paragraph a.:

"but the Law Society continues to have concerns about the independence of hearing and screening officers and the availability of multi-language translation in an AMP process."

The main motion as amended was adopted.

ROLL-CALL VOTE

Aaron	Against	Lewis	For
Anand	For	MacKenzie	For
Backhouse	Against	McGrath	For
Banack	Abstain	Marmur	Abstain
Boyd	For	Minor	Abstain
Braithwaite	For	Porter	For
Bredt	Abstain	Potter	For

Campion	For	Pustina	For
Caskey	For	Rabinovitch	For
Chilcott	For	Richer	For
Conway	For	Robins	For
Crowe	Against	Ross	Against
Dickson	For	Sandler	For
Epstein	Against	Schabas	For
Eustace	For	Sikand	For
Falconer	For	Silverstein	For
Fleck	For	Simpson	For
Go	For	C. Strosberg	For
Gold	For	Swaye	For
Gottlieb	For	Symes	For
Haigh	For	Wright	For
Halajian	Abstain		
Heintzman	For		

Vote: 34 For; 5 Against; 5 Abstentions

AUDIT COMMITTEE REPORT

Mr. Bredt presented the Report.

Report to Convocation
April 28, 2011

Audit Committee

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

Purpose of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on April 6, 2011. Committee members in attendance were Chris Bredt (chair), Susan Elliott, Seymour Epstein, Vern Krishna, Doug Lewis, Jack Rabinovitch, Heather Ross, and William Simpson.

2. Staff in attendance were Malcolm Heins, Wendy Tysall, Zeynep Onen, Fred Grady, Brenda Albuquerque-Boutilier, Michael Elliott and Andrew Cawse.

3. Also in attendance were Kathleen Waters and Steve Jorgensen of LAWPRO, Bruce Hutchison, Chair of LibraryCo Inc., Paula Jesty and Trevor Ferguson of Deloitte & Touche LLP.

FOR DECISION

LAW SOCIETY OF UPPER CANADA, AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2010

Motion

4. That Convocation approve the audited Annual Financial Statements for the Law Society of Upper Canada for the year ended December 31, 2010.

5. Representatives from our Auditor, Deloitte & Touche LLP, will be in attendance. Due to developments in generally accepted auditing standards, the Independent Auditor's Report has changed in title and format from previous years with the role of the auditor as independent from the Society clearly delineated. The Law Society continues to receive an unmodified audit opinion.

FOR DECISION

LAW SOCIETY AUDITOR

Motion

6. That Deloitte & Touche LLP be appointed as Law Society and LibraryCo Inc. auditor for the 2011 financial year.

7. Convocation appoints the Law Society auditor on the advice of the Audit Committee.

8. LAWPRO's auditors are appointed at their Annual General Meeting.

9. This is the ninth year for Deloitte & Touche as auditor.

FOR INFORMATION

LIBRARYCO INC. – AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2010

10. The Audit Committee recommends that the audited Annual Financial Statements for LibraryCo Inc. for the year ended December 31, 2010 be received by Convocation for information.

11. LibraryCo's Annual Financial Statements & Management Discussion and Analysis, approved by LibraryCo's board are attached.

12. The Message from The Chair of LibraryCo, Bruce Hutchison, included in LibraryCo's Annual Report is also provided for the information of Convocation.

FOR INFORMATION

FINANCIAL STATEMENTS OF LAWYERS' PROFESSIONAL INDEMNITY COMPANY FOR THE YEAR ENDED DECEMBER 31, 2010

13. The Audit Committee recommends that the audited financial statements for Lawyer's Professional Indemnity Company for the year ended December 31, 2010 be received by Convocation for information.

14. The Report to the Audit Committee along with a Key Point Summary and the financial statements of the Lawyers Professional Indemnity Company are attached. The financial statements have been approved by LAWPRO's board.

15. Kathleen Waters, President & CEO, and Steve Jorgensen, VP Finance & Treasurer, from LAWPRO will be in attendance.

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IN CAMERA

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IN CAMERA Content Has Been Removed

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IN PUBLIC

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FOR INFORMATION

INVESTMENT COMPLIANCE REPORTING

18. Compliance Statements for the investment portfolios as at December 31, 2010 are attached for information.

FOR INFORMATION

OTHER COMMITTEE WORK

Monitoring & Enforcement Receivables

19. The Committee received information about amounts receivable from lawyers and paralegals arising from discipline orders. In particular, the Committee reviewed particulars of when writs of seizure and sale have been issued and filed with respect to discipline orders.

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

(1) Copy of the Law Society of Upper Canada, Audited Financial Statements for the Year Ended December 31, 2010.

(pages 4 – 27)

(2) Copy of LibraryCo Inc. Audited Financial Statements for the Year Ended December 31, 2010.

(pages 30 – 41)

(3) Copy of the audited financial statements of the Lawyers' Professional Indemnity Company for the year ended December 31, 2010.

(pages 43 – 97)

(4) Copy of the Report from Deloitte & Touche LLP to the Audit Committee dated March 30, 2011. (*in camera*)

(pages 99 – 110)

(5) Copy of the Compliance Statements for the investment portfolios as at December 31, 2010.

(pages 112 – 116)

Re: Approval of Law Society Audited Financial Statements for the year Ended December 31, 2010

It was moved by Mr. Bredt, seconded by Ms. Ross, that the audited Annual Financial Statements for the Law Society of Upper Canada for the year ended December 31, 2010 be approved.

Carried

Re: Appointment of Law Society Auditor

It was moved by Mr. Bredt, seconded by Ms. Ross, that Deloitte & Touche LLP be appointed as Law Society and LibraryCo Inc. auditor for the 2011 financial year.

Carried

Mr. Bredt presented the audited Financial Statements for LibraryCo Inc. for the year ended December 31, 2010.

Mr. Caskey presented the LAWPRO Financial Statements for the year ended December 31, 2010.

Mr. Caskey and Kathleen Waters, President and CEO of LAWPRO, spoke to the LAWPRO Annual Report for 2010.

For Information

- LibraryCo Inc. Audited Financial Statements for the Year Ended December 31, 2010
- LAWPRO – Lawyers' Professional Indemnity Company Financial Statements for the Year Ended December 31, 2010
- 2010 Audit Report (in camera)
- Investment Compliance Reports
- Other Committee Work

TREASURER'S REPORT TO CONVOCATION

Mr. Wright presented the Report.

Treasurer's Report to Convocation
April 28, 2011

LAWPRO's Annual Meeting

Purpose of Report: Decision

Prepared by James Varro

FOR DECISION

Motion

1. That Convocation authorize the Treasurer to sign the proxy in favour of the proposed shareholder resolutions set out at Appendix 2.

Background

2. The Annual and General Meeting of Shareholders of the Lawyers' Professional Indemnity Company will be held the afternoon of May 4, 2011. The notice of the meeting is attached at Appendix 1.

3. At the meeting, the shareholder will be asked to vote on the proposed shareholder resolutions set out at Appendix 2.

4. Traditionally, the Treasurer has signed the proxy to vote the Law Society's shares in favour of the resolutions. The proxy is set out at Appendix 3.

5. The Treasurer seeks Convocation's authorization to sign the proxy on behalf of the Law Society of Upper Canada.

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

(1) Copy of the Lawyers' Professional Indemnity Company Notice of Annual & General Meeting of Shareholders on May 4, 2011.

(Appendix 1, page 3)

(2) Copy of the List of Draft Resolutions.

(Appendix 2, pages 4 - 7)

(3) Copy of the Lawyers' Professional Indemnity Company Proxy.

(Appendix 3, page 8)

Re: LAWPRO Proxy

It was moved by Mr. Wright, seconded by Mr. Silverstein, that Convocation authorize the Treasurer to sign the proxy in favour of the proposed shareholder resolutions set out at Appendix 2.

Carried

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Porter presented the Report.

Report to Convocation
April 28, 2011

Professional Regulation Committee

Committee Members
Julian Porter (Chair)
Carl Fleck (Vice-Chair)
Julian Falconer
Patrick Furlong
Avvy Go
Michelle Haigh
William Kaplan
Gavin MacKenzie
Ross Murray
Judith Potter
Susan A. Richer

Sydney Robins
Baljit Sikand
William Simpson
Roger Yachetti

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
(Sophie Galipeau – 416-947-3458)

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COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on April 7, 2011. In attendance were Julian Porter (Chair), Carl Fleck, Patrick Furlong, Avvy Go, Michelle Haigh, Ross Murray, Judith Potter, Susan Richer, Sydney Robins and William Simpson. Staff attending were Dan Abrahams, Cathy Braid, Naomi Bussin, Terry Knott, Zeynep Onen, Katie Rook, Roy Thomas, Jim Varro, and Sophie Galipeau.

FOR DECISION

AMENDMENTS TO SUBRULE 2.02(5) OF THE RULES OF PROFESSIONAL CONDUCT AND BY-LAW 9 (FINANCIAL TRANSACTIONS AND RECORDS) RESPECTING TRUST ACCOUNT REQUIREMENTS

Motion

2. That Convocation approve the amendments to By-Law 9 (Trust Account), as set out at Appendix 1, and to Subrule 2.02(5) of the *Rules of Professional Conduct* to implement Convocation's decision in February 2011 with respect to trust account requirements.

Introduction and Background

3. Over the past few years, the Law Society has made changes to enhance the accounting and record-keeping requirements for licensees, in recognition of the fact that licensees are responsible for the safekeeping of and must account for client funds.[1]

4. More recently, the Committee has examined the Law Society's trust account rules in light of the many frauds involving lawyers' trust accounts that have occurred over the past few years. These frauds involved licensees as active participants and licensees who were duped by dishonest clients. These acts have cost the Law Society millions of dollars in payments by the Compensation Fund, and staff and bencher resources.

5. In February 2011, the Committee recommended to Convocation certain changes to the rules governing the use of trust accounts to emphasize that the purpose for which a trust account can be used is limited to situations where there is a connection between the monies held in trust and the provision of legal services. On February 24, 2011, Convocation approved these changes in principle.

6. These changes provide additional guidance on the use of trust accounts for the provision of legal services and rules requiring a record for the purposes for which a licensee is receiving and withdrawing funds. They should help discourage the use of trust accounts to facilitate fraud or dishonesty by the licensee, the client or by some other party trying to shield unsavoury financial dealings from scrutiny. The changes should also discourage the use of trust accounts to lend legitimacy to dubious or fraudulent investment schemes.

7. Amendments to By-Law 9 and to Subrule 2.02(5) of the *Rules of Professional Conduct* are required to implement the changes.

Amendments to By-Law 9

8. The amendments to the By-Law, approved by the Committee and endorsed by the Paralegal Standing Committee, appear at Appendix 1. The official bilingual motion will be distributed at Convocation.

9. The following shows the amendments as they will appear in the first part of s. 18 of By-Law 9.

[1] Examples are the by-law provisions on cash transactions and client identification and verification

PART V
RECORD KEEPING REQUIREMENTS
REQUIREMENTS

Requirement to maintain financial records

18. Every licensee shall maintain financial records to record all money and other property received and disbursed in connection with the licensee's professional business, and, as a minimum requirement, every licensee shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the method by which money is received, the person from whom money is received, the amount of money received, the purpose for which money is received and the client for whom money is received in trust.

2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed, the purpose for which money is disbursed and the client on whose behalf money is disbursed.

…

Amendments to Subrule 2.02(5) of the *Rules of Professional Conduct*

10. On February 24, 2011, Convocation approved in principle the following changes to Subrule 2.02(5):
    a. the addition of a requirement that lawyers make reasonable efforts to ascertain the purpose and objectives of retainers and obtain information about their clients necessary to fulfill this obligation.
    b. the addition of a prohibition for lawyers to use their trust accounts for purposes outside of the provision of legal services.
    c. additional commentary to the subrule to emphasize the purpose of the changes and provide awareness to lawyers about their professional duties and by-law requirements relating to trust accounts

11. After February Convocation, the Committee received from a law firm, LawPro and certain benchers some valuable feedback related to the projected rule amendments.

12. Taking into account this feedback, the Committee recommends to Convocation the following amendments to Subrule 2.02(5), as prepared by the Law Society's Rules drafter, Don Revell, which set out the substance of the proposed changes in clearer language. The clean version of this draft provided by the Rules drafter that Convocation is asked to approve is at Appendix 2.

Dishonesty, Fraud etc. by Client

(5) When acting for advising a client, a lawyer shall not

(a) knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct; or
(b) ~~instruct~~ advise the client on how to violate the law and avoid punishment.

(5.0.1) When retained by a client, a lawyer shall make reasonable efforts to ascertain the purpose and objectives of the retainer and to obtain information about the client necessary to fulfill this obligation.

(5.0.2) A lawyer shall not use his or her trust account for purposes not related to the provision of legal services.

Commentary

A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client or persons associated with such a client. A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in dishonest or criminal activity such as mortgage fraud or money laundering. Vigilance is required because the means for these and other criminal activities may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate. The requirement in subrule (5.0.1) is especially important where a lawyer has suspicions or doubts about whether he or she might be assisting a client in crime or fraud.

~~Before accepting a retainer or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the lawyer should make Reasonable inquiries t~~To obtain information about the client and about the subject matter and objectives of the retainer, ~~including~~ the lawyer may, for example, need to verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

A client or another person may attempt to use a lawyer's trust account for improper purposes, such as hiding funds, money laundering or tax sheltering. These situations highlight the fact that when handling trust funds, it is important for a lawyer to be aware of his or her obligations under these subrules and the Law Society's By-laws that regulate the handling of trust funds.

A *bona fide* test case is not necessarily precluded by subrule 2.02(5) and, so long as no injury to the person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 9
[FINANCIAL TRANSACTIONS AND RECORDS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 28, 2011.

MOVED BY

SECONDED BY

THAT By-Law 9 [Financial Transactions and Records], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, January 24, 2008 and February 21, 2008, be further amended as follows:

1. Paragraph 1 of section 18 of the By-Law is amended by adding ", the purpose for which money is received" after "the amount of money received".

2. Paragraph 2 of section 18 of the By-Law is amended by adding ", the purpose for which money is disbursed" after "the amount of money which is disbursed".

APPENDIX 2

Rules of Professional Conduct
Proposed amendments to Rule 2.02 – Trust Accounts
Draft Prepared by Donald L. Revell

Dishonesty, Fraud etc. by Client

(5) When acting for a client, a lawyer shall not

(a) knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct; or

(b) advise the client on how to violate the law and avoid punishment.

(5.0.1) When retained by a client, a lawyer shall make reasonable efforts to ascertain the purpose and objectives of the retainer and to obtain information about the client necessary to fulfill this obligation.

(5.0.2) A lawyer shall not use his or her trust account for purposes not related to the provision of legal services.

Commentary

A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client or persons associated with such a client. A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in dishonest or criminal activity such as mortgage fraud or money laundering. Vigilance is required because the means for these and other criminal activities may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate. The requirement in subrule (5.0.1) is especially important where a lawyer has suspicions or doubts about whether he or she might be assisting a client in crime or fraud. To obtain information about the client and about the subject matter and objectives of the retainer, the lawyer may, for example, need to verify who are the legal or beneficial owners of property and business entities, verify who has the control of business entities, and clarify the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

A client or another person may attempt to use a lawyer's trust account for improper purposes, such as hiding funds, money laundering or tax sheltering. These situations highlight the fact that when handling trust funds, it is important for a lawyer to be aware of his or her obligations under these subrules and the Law Society's By-laws that regulate the handling of trust funds.

A *bona fide* test case is not necessarily precluded by subrule 2.02(5) and, so long as no injury to the person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case.

POLICY RESPECTING THE PROHIBITION ON REPRESENTATION OF LICENSEES

Motion

13. That Convocation approve a policy that would prohibit Law Society benchers from acting as representatives of licensees who are the subject of an investigation by the Law Society.

Introduction

14. The Director, Professional Regulation Division, has reported to the Committee that occasionally benchers have been retained to represent licensees who are the subject of an investigation by the Law Society and respond to the Law Society on their behalf.

15. The Committee is of the view that, as a member of the Law Society's governing body, a bencher who represents a licensee of the Law Society in these circumstances may be perceived as acting in a conflict of interest. Such a representation may create a perception of undue influence on the outcome of an investigation. The Committee is also concerned that it is incompatible with the principles of self-regulation, which require the Law Society to act in a fair and transparent manner in carrying out its functions.

16. The Law Society's Bencher Code of Conduct and the Adjudicator Code of Conduct prohibit benchers and adjudicators respectively from acting in a conflict of interest.

17. The Bencher Code of Conduct refers to the policy regarding conflicts of interests adopted by Convocation on February 24, 1995. While this policy prohibits benchers from appearing as counsel on a discipline matter, it does not explicitly address the issue of benchers representing licensees who are involved in a Law Society investigation or in the complaint process.

18. The Adjudicator Code of Conduct also prohibits adjudicators from appearing as counsel before Law Society tribunals and from being retained as professionals or legal consultants in the preparation of a matter before the tribunals or in any matter relating to the work of the tribunals. However, the Code does not explicitly speak to the issue of representing licensees at the complaint or investigation stage, which may or may not lead to an appearance before the tribunals.

Policy Proposal

19. The Committee is of the view that an express provision prohibiting benchers from representing licensees under investigation by the Law Society is necessary because general conflict of interest provisions in place do not expressly prohibit this conduct.

20. A brief review of other Canadian law societies shows that Nova Scotia, New Brunswick and British Columbia all have similar policies or rules prohibiting conflicts of interest in general and benchers appearing as counsel before the tribunal, specifically.

21. The Committee recommends the following language to reflect the policy:

> 1. Bencher prohibited from acting as counsel
>
> Law Society benchers are prohibited from representing a licensee who is the subject of an investigation by the Society, or appearing as counsel before a Law Society tribunal or in any matter relating to the work of the tribunal.
>
> Law Society benchers may provide informational advice, without a fee, to licensees who may be the subject of an investigation or subject to disciplinary proceedings.
>
> 2. Members of a bencher's firm acting as counsel
>
> It is not a conflict of interest for a member of a bencher's firm to accept a retainer to represent a licensee who is the subject of an investigation by the Society, or to appear as counsel before a Law Society tribunal on a matter involving a licensee's rights and privileges, provided that:
>
> (a) the bencher in question does not in any way participate in the matter, and
> (b) the retainer does not result in a conflict of interest for any other reason.

22. The Tribunals and the Paralegal Standing Committees have approved this policy and propose that it be expanded to include all Law Society adjudicators. The Tribunals Committee's report will address this issue in relation to Law Society adjudicators.

PROFESSIONAL REGULATION DIVISION
QUARTERLY REPORT

23. The Professional Regulation Division's Quarterly Report (first quarter 2011), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period of January to March 2011.

24. The report also includes the following reports:

    a. Judicial Complaints (Appendix 1)
    b. Per Capita Rate of PRD Complaints, 2008-2010 (Appendix 2)
    c. Summary Hearings (Appendix 3)
    d. Unauthorized Practice (Appendix 4)

APPENDIX 1

PROFESSIONAL REGULATION

Report: Judicial Complaints

Prepared by: Zeynep Onen
Date: March 15, 2011

The following is an analysis of the judicial complaints received by the Law Society since the implementation of the new Civility Complaints Protocols between the Society and the Ontario Courts (the "Protocols").

The Protocols were developed by the Law Society in consultation with the Chief Justices of the Court of Appeal, the Superior Court of Justice and the Ontario Court of Justice. Formalized in September 2009, the Protocols set out a procedure for trial judges and justices of the peace to refer incidents of misconduct to the Law Society. They also provide for a new process whereby judges can request that lawyers receive mentoring from a panel of senior members of the bar.

Depending on the level of Court, the Protocol provides that complaints from judges are to be made through the Office of the Chief Executive Officer and/or the judge directly. The complaints are to be sent to the Law Society's Chief Executive Officer, who will acknowledge the complaint and forward it to the Professional Regulation Division. The Protocol requires that the Law Society provide periodic status reports to the judge and/or the Office of the Chief Justice, and that they be advised of the disposition of the matter.

Number of Complaints Received

While the Protocols were not finalized until in and around March 31, 2010, the Law Society and the Courts began following these Protocols in the late summer, early fall of 2009. Hence, complaints from judges which were received after September 1, 2009 are considered to be part of this process and are the focus of this memorandum.

Between September 1, 2009 and March 15, 2011, the Law Society received 42 complaints from judges in various courts ("judicial complaints"): 5 were received in 2009; 32 were received in 2010 and 5 have been received in 2011, as at March 15, 2011. The following chart sets out the number of judicial complaints received in Professional Regulation, by calendar year, since 2000.[1]

YEAR	NUMBER OF COMPLAINTS
2000	1
2001	3
2002	2
2003	3
2004	13
2005	10
2006	1
2007	3
2008	5
2009*	18
2010	32
2011**	5

* Note that 13 complaints were received prior to the implementation of the Protocols
** as at March 31, 2011

Analysis of the Judicial Complaints Received Post-Implementation of the Protocols

An analysis of the 42 judicial complaints received since September 1, 2009 reveals the following information.

(a) Types of Licensees:
- 28 complaints were made against 24 lawyers;
- 10 complaints were made against 10 paralegal licensees;
- 1 complaint was made against 1 paralegal applicant; and
- 3 complaints were made against 3 non-licensees.

[1] In and around September 2009, when the Protocols were developed, a unique way to identify these complaints was developed in IRIS. However, prior to that time, there was no ability to identify complaints received from judges. For this memorandum, IRIS complaints opened between January 1, 2000 and September 1, 2009 were identified as judicial complaints if the complainant or additional complainant in the case was identified as a judge. Those complaints which were lodged by someone on behalf of a judge have not been included as there is no way they could be identified.

(b) Originating Court

- 19 complaints were received from the Ontario Court of Justice:
  - 8 complaints came from Toronto; and
  - 11 complaints came from jurisdictions outside of Toronto.
- 20 complaints were received from the Superior Court of Justice:
  - 11 came from Toronto; and
  - 9 came from jurisdictions outside of Toronto.
- 1 complaint was received from the Superior Court of Justice – Divisional Court (sitting in Brampton).
- 1 complaint was received from the Court of Appeal for Ontario.
- 1 complaint was received from the Chief Justice of the Manitoba Court of Queen's Bench.

(c) Process Followed

- 24 complaints were received in the CEO's office, pursuant to the Protocols:
  - 7 complaints came from the Ontario Court of Justice;
  - 15 complaints came from the Superior Court of Justice;
  - 1 complaint came from the Court of Appeal for Ontario; and
  - 1 complaint came from the Manitoba Court of Queen's Bench.
- 18 complaints were received directly from the judges:
  - 12 complaints came from the Ontario Court of Justice;
  - 5 complaints came from the Superior Court of Justice; and
  - 1 complaint came from the Superior Court of Justice - Divisional Court

(d) Mentoring

- In 5 cases, a request was made for mentoring:
  - In 3 cases, it was determined that mentoring was not appropriate; and
  - In 2 cases, it was determined that mentoring was appropriate and the cases have been closed on that basis.

(e) Open/Closed

- As at March 15, 2011, 30 judicial complaints are open:
  - 19 cases are in Investigations;
  - 10 cases are in Discipline (involving 6 licensees);
  - of the 6 licensees currently in Discipline, 4 are subject to interlocutory suspension orders;
  - 1 case is in the Director's Office – Prosecutions (for UAP prosecution).

- 1 judicial complaint is in abeyance (in Investigations); and

- 12 judicial complaints have been closed:
  - 2 cases have been closed in Intake (referred for mentoring); and
  - 10 cases have been closed in Investigations.

i. Cases in Discipline

A number of the complaints have resulted in discipline proceedings. This is a much higher percentage of cases than usually result in discipline proceedings. Since September 1, 2009, 1 in 4 judicial complaints have been sent to Discipline. During the same period, 1 in 27 non-judicial complaints have been sent to Discipline. During the same period, 1 in 5 subjects receiving judicial complaints are or have been the subject of Discipline proceedings, as compared to 1 in 37 subjects receiving non-judicial complaints who are or have been the subject of Discipline proceedings.

There have been a number of motions for interlocutory suspension orders involving judicial allegations of misconduct. In these four cases, the Hearing Panel granted interlocutory suspensions to protect the public, based in part on judicial complaints[2] :

- Jennifer Bishop was alleged to have repeatedly been uncivil and disrespectful to the Court: *Law Society of Upper Canada v. Jennifer Ann Bishop*, 2010 ONLSHP 68.

- Kimberly Lynn Townley-Smith was alleged to have made public and persistent assertions of widespread corruption in various courts and to have undermined the integrity of the administration of justice and the integrity of the legal profession through her conduct in a prolonged campaign of litigation: *Law Society of Upper Canada v. Kimberly Lynn Townley-Smith*, 2010 ONLSP 77.

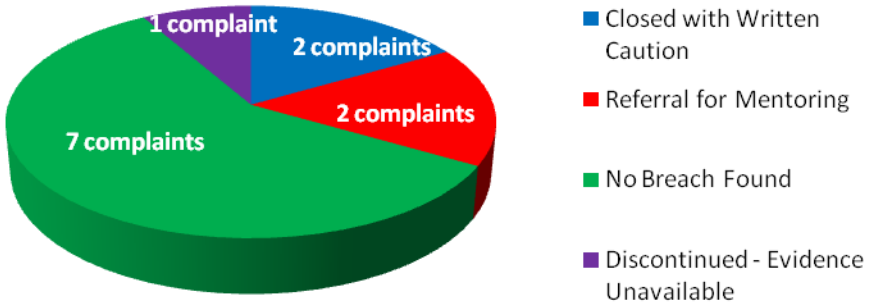
- An interlocutory suspension was granted against Ann Bruce on February 28, 2011. Reasons for decision have not yet been released.

- An interlocutory suspension was granted against Elsie Peters on March 2, 2011. Reasons for decision have not yet been released.

ii. Cases Closed

The following is a breakdown of the dispositions for the 12 complaints that have been closed:

[2] While there is only one complaint (i.e. the judicial complaint) that forms the basis of the prosecution against Bruce, the other three prosecutions in which interlocutory suspension orders have been granted involve complaints other than the judicial complaints



(f) Timeliness

The following information about timeliness demonstrates that judicial complaints have been handled expeditiously since the implementation of the Protocols.

With respect to the 12 judicial complaints that have been closed:

(a) The two closed in Intake were 5 months old at the time of closure. One was the first mentoring case, which took longer as the mentoring process had not been finalized. The second case also took about 5 months from initiation to closure by mentoring. The main reason for the delay was the need to request transcripts.

(b) The average age of the ten cases closed in Investigations was 6.375 months. The oldest case took 10 months from initiation to closure; the youngest took 3.5 months.

With respect to the active cases:

(a) There are 20 cases in Investigations (19 open and 1 in abeyance). The average age of these cases is 5.7 months (i.e. from date of case creation). The breakdown of these cases is as follows:

1 month - < 3 months = 5 cases
3 months - < 6 months = 5 cases
6 months - < 10 months = 6 cases
10 months - < 18 months = 4 cases

The oldest case in Investigations is currently 14 months old. The licensee was not cooperating and a summary hearing took place in January 2011. The licensee has provided the necessary information and the investigation is proceeding.

(b) There are 10 cases in Discipline (involving 6 licensees):

The average age of these cases (from date of case creation to today's date) is 13.5 months. The average length of the investigation of these matters is 5.5 months, which is extremely short. The likely reason for this is that, in most instances, there were already ongoing investigations when the judicial complaint came in.

With respect to the 6 matters in Discipline, notices have been issued in 4 of the matters. Hearing dates have been set in 3 of the matters.

(g) Area of Law

The following chart breaks down the 42 judicial complaints by area of law:

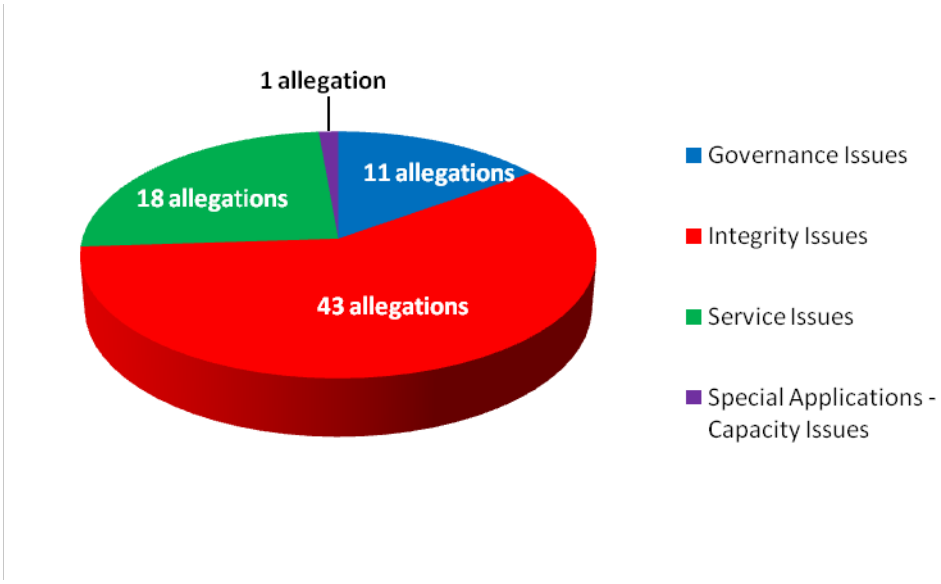
Area of Law	# of Complaints	% of Judicial Complaints
Matrimonial/Family Law	10	23.8%
Lawyers	9 (90%)	
Paralegal Licensees	1 (10%)	
Civil Litigation	15	35.7%
Lawyers	9 (60%)	
Paralegal Licensees	3 (20%)	
Paralegal Applicants	1 (7%)	
Non-Licensees	2 (13%)	
Criminal/Quasi-Criminal	17	40.5%
Lawyers	10 (59%)	
Paralegal Licensees	6 (35%)	
Non-Licensee	1 (6%)	

(h) Types of Complaints

In the 42 judicial complaints received, there have been a total of 73 allegations raised. The following chart sets out the case types (broken down by allegations) that have been received:

Type of Complaints	Total # of Allegations	% of Judicial Complaints
Governance	11	15.1%
Unauthorized Practice by Non-Licensee	5 (46%)	
Practising Under Suspension	2 (18%)	
Practise Outside Scope of Licence	2 (18%)	
Fail to Cooperate with Law Society	1 (9%)	

Type of Complaints	Total # of Allegations	% of Judicial Complaints
Practise without Insurance	1 (9%)	
Integrity	43	58.9%
Counselling/Behaving Dishonourably	29 (67%)	
Misleading	8 (19%)	
Breach of Undertaking, Order, Escrow	3 (7%)	
Civility	2 (5%)	
Conduct Unbecoming	1 (2%)	
Service Issues	18	24.7%
Fail to Serve	15 (83%)	
Withdrawal of Services/Abandonment	2 (11%)	
Fail to Follow Client Instructions	1 (6%)	
Special Applications	1	1.3%
Capacity	1 (100%)	



Conclusions & Observations

The Protocols have successfully created a path for timely and effective judicial reporting of lawyer and paralegal misconduct, which in turn supports timely and effective investigations and prosecutions. Also through the implementation of the Protocols, the Law Society improved its communications with the judiciary about the status and outcome of complaints.

In the Law Society's experience, most of the judicial complaints have included a letter from the Judge (or his/her assistant) that points to a specific behaviour or a series of behaviours, as well as a transcript of the proceedings, copies of endorsements, etc. These documents have been extremely helpful for Professional Regulation to quickly determine if the lawyer was appropriate for mentoring, and if not, what our regulatory response would be.

The following are additional steps that would assist the Law Society:

- Earlier reporting of misconduct could result in more referrals to mentoring. Some judges may still be reluctant to make complaints to the Law Society. In most cases, by the time the Law Society receives a complaint, the licensee is not eligible for mentoring. Earlier judicial referrals of inexperienced counsel in need of mentoring would lead to more mentoring referrals by the Law Society.

- Ensuring that the following information is provided with the letter of complaint, in every case:

    - The specific behaviour that the judge found objectionable, rather than simply forwarding transcripts to the Law Society's attention. This would assist in focusing the Law Society's investigation.

    - Details such as the court file number, parties, date of appearance, endorsement, transcripts and/or relevant exhibits, where applicable.

APPENDIX 2

PROFESSIONAL REGULATION

Report: Per Capita Rate of PRD Complaints Against Lawyers, 2008-2010

Prepared by: Zeynep Onen
Date: March 1, 2011

This memorandum analyzes the trend in per capita rate of complaints in the Professional Regulation Division ("PRD Complaints") involving lawyers, received in 2008 to 2010. The analysis commences in 2008 as this was the first year when a decline in the number of PRD complaints against lawyers was noted.

The definition applied to "Per Capita Rate of PRD Complaints" is as follows:

> The number of lawyers who received a PRD Complaint in a specific year
> divided by the total number of licensed lawyers or lawyers in private practice in that particular year.

Summary of Results:

- the total per capita rate has declined from 12.9 in 2008 to 12.1 in 2010.

- With respect to the types of complaints (allegations) involved,
  - there are 3 types of allegations for which a significant decrease is noted in 2010 (compared with 2008):
    - Civility ($p<0.01$);
    - Real Estate/Mortgage Schemes ($p<0.025$); and
    - Conduct Unbecoming outside Practice of Law ($p<0.05$);
  - There was only one type with a significant increase in 2010 (compared with 2008): Fail to Supervise Staff ($p<0.05$).

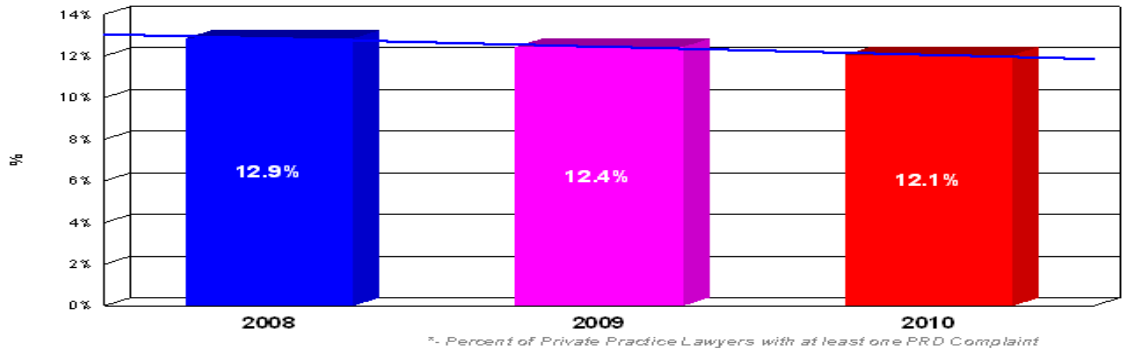
- With respect to the area of law involved in the complaints,
  - There were 3 areas for which a significant decrease was noted in 2010 (compared with 2008):
    - Matrimonial / Family ($p<0.01$);
    - Real Estate ($p<0.025$); and
    - Employment / Labour ($p<0.025$).
  - Only one area of law registered a significant increase: Administrative / Immigration Law ($p<0.05$).

A. *PER CAPITA RATE OF ALL PRD COMPLAINTS*

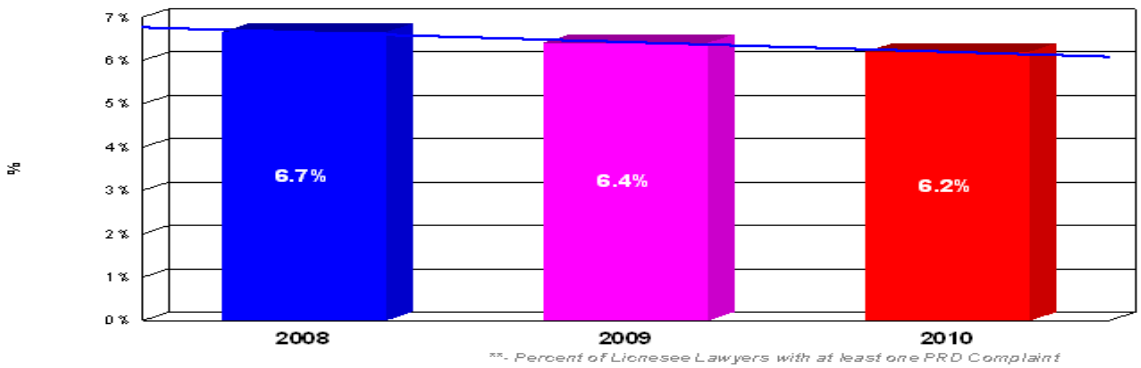
The following graphs demonstrate:

- a downward trend for the per capita rate for lawyers in private practice from 12.9% in 2008 to 12.1% in 2010.
- a downward trend for the per capita rate for all licensed lawyers from 6.7% in 2008 to 6.2% in 2010 , for all PRD Complaints and from 8.5% in 2008 to 8.0% in 2010 for all Law Society complaints

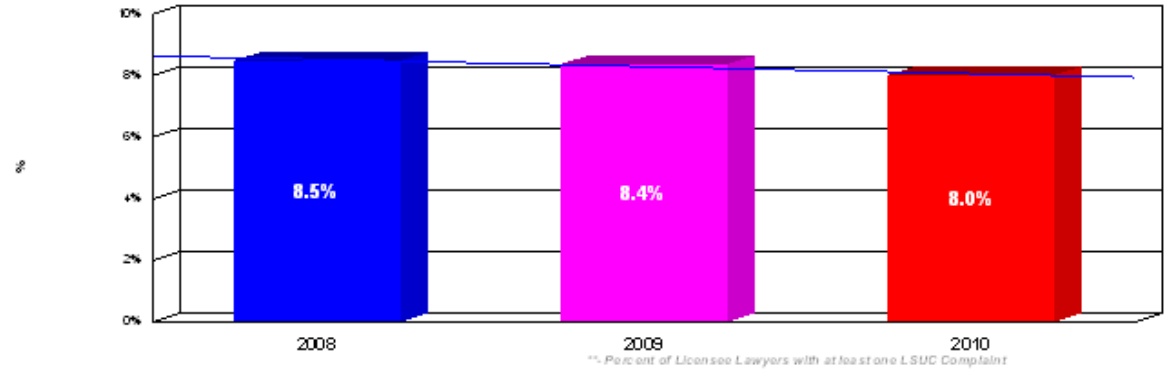
<u>Lawyers in Private Practice – All PRD Complaints</u>



Licensed Lawyers – All PRD Complaints



Licensed Lawyers – All LSUC Complaints



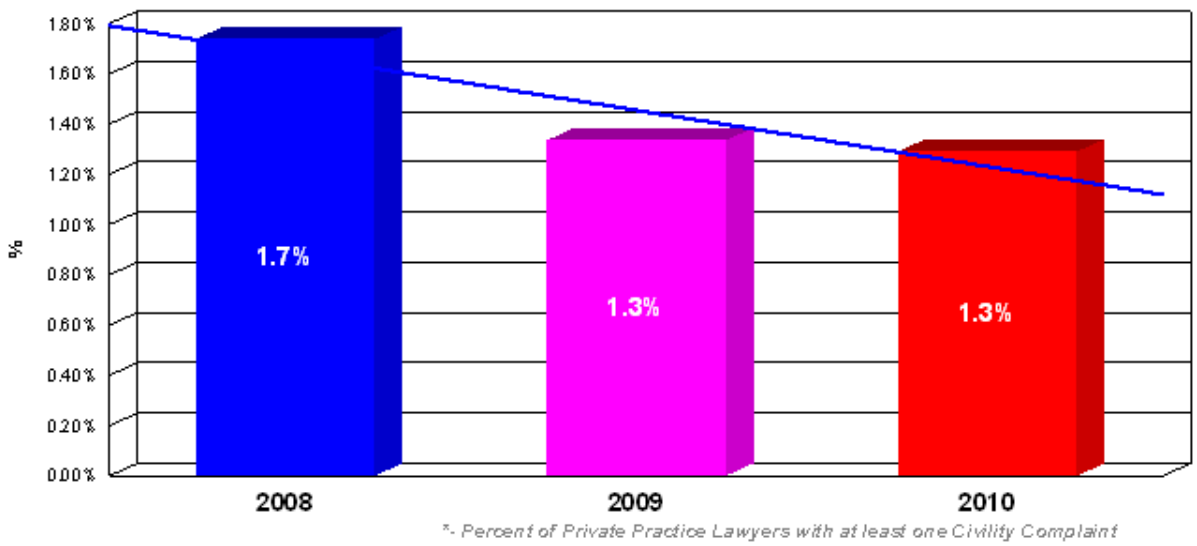
B. *PER CAPITA RATE OF PRD COMPLAINTS BY TYPES OF COMPLAINTS*

An analysis of all PRD complaints by type of allegation was conducted. (For reference, a complete list is attached as Appendix A to this memorandum.) Significant results were only found in relation to four allegations.

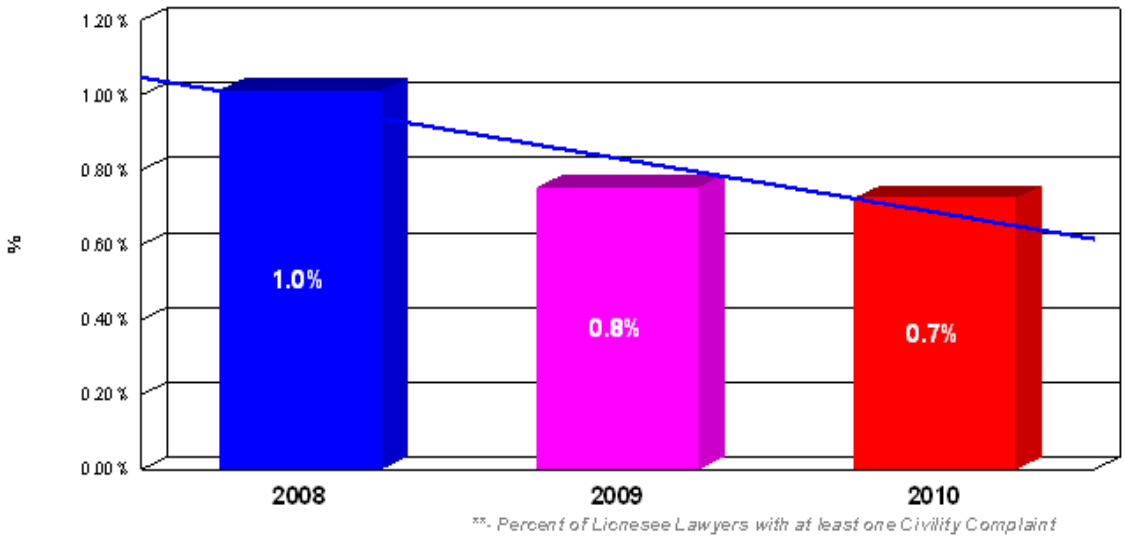
(a) *Civility*

The per capita rate of complaints raising an allegation of "Civility" registered the most significant decrease ($p<0.01$) in the three year period analyzed. The two graphs below show the per capita rate of these types of complaints involving lawyers in private practice and all licensed lawyers.

Lawyers in Private Practice –Civility PRD Complaints



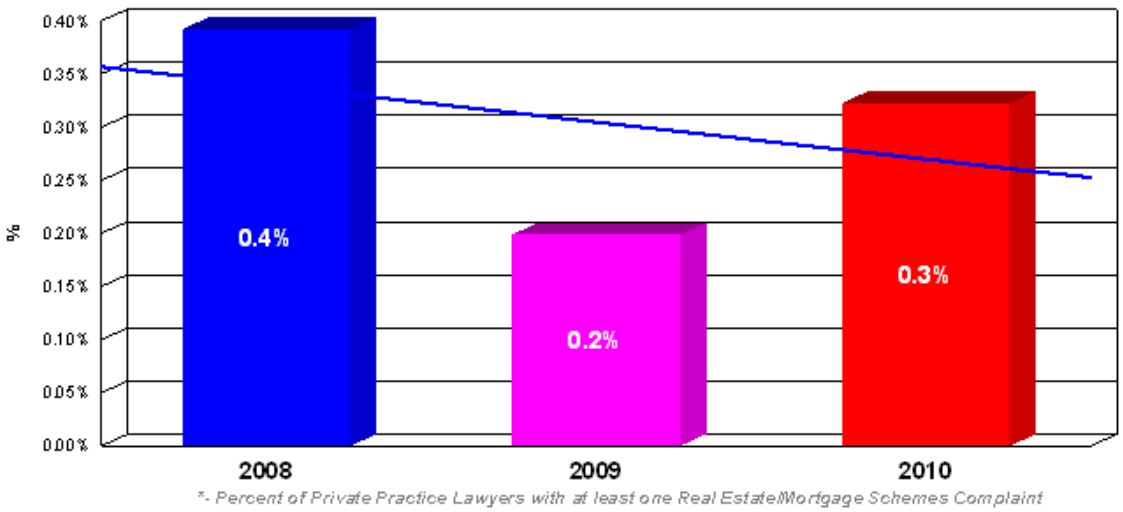
Licensed Lawyers –Civility PRD Complaints



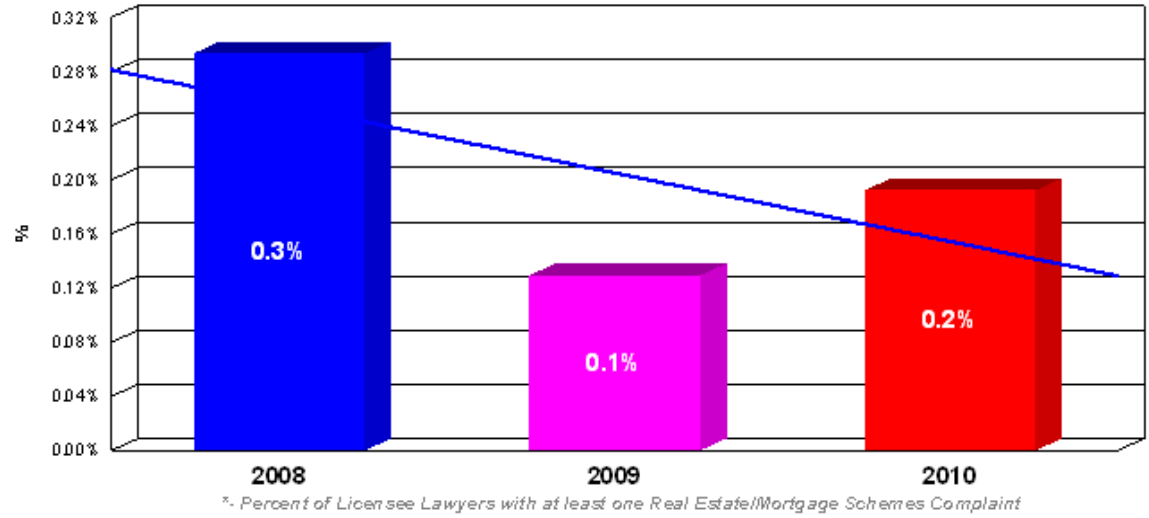
(b) *Real Estate/Mortgage Schemes*

The per capita rate of complaints raising allegations of "Real Estate/Mortgage Schemes" tested as the second most significant rate of decrease ($p<0.025$) in the three years analyzed. While the decrease does not appear very dramatic, it tested significant at the 0.025 level of error (2.5 % type I error). The two graphs below show the per capita rate of these types of complaints involving lawyers in private practice and all licensed lawyers.

Lawyers in Private Practice – Real Estate/Mortgage Schemes PRD Complaints



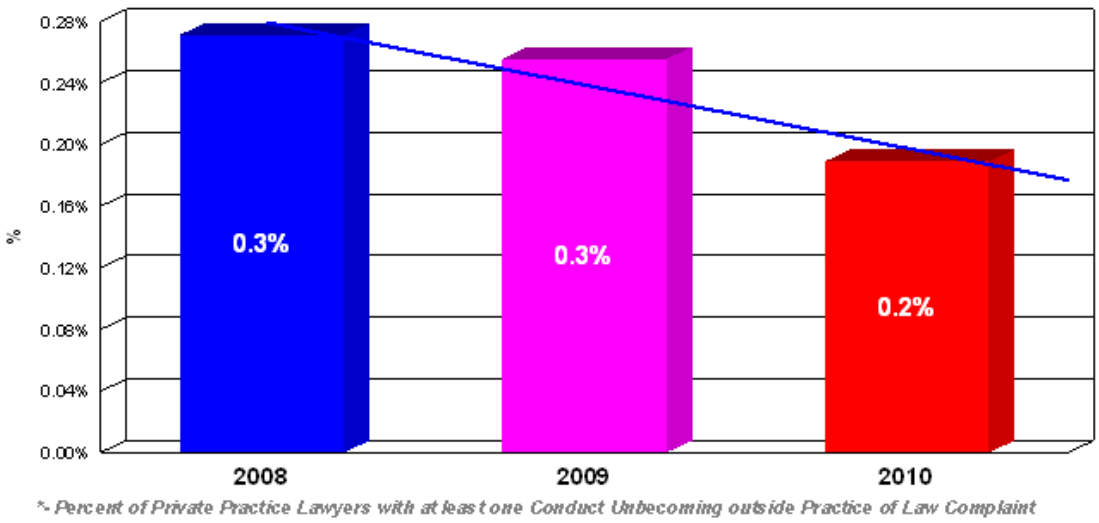
Licensed Lawyers – Real Estate/Mortgage Schemes PRD Complaints



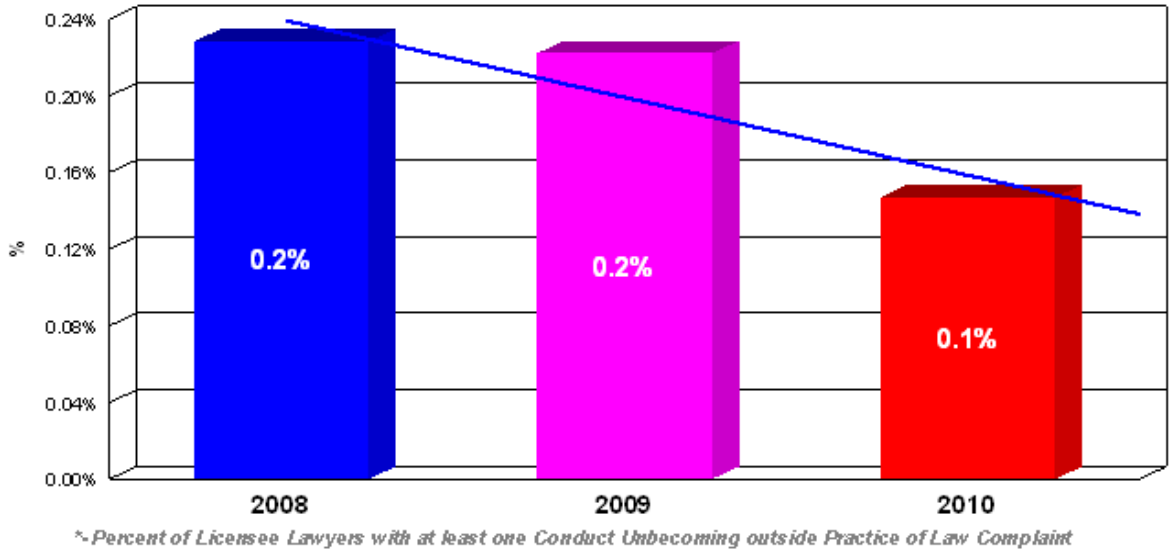
(c) *Conduct Unbecoming Outside Practice of Law*

The per capita rate of complaints raising an allegation of "Conduct Unbecoming Outside Practise of Law" registered the third most significant decrease ($p<0.05$) from 2008 to 2010. The two graphs below show the per capita rate of these types of complaints involving lawyers in private practice and all licensed lawyers. The decrease noted for both groups was tested as significant decrease with a 0.05 level of error.

Lawyers in Private Practice - Conduct Unbecoming Outside Practice of Law PRD Complaints



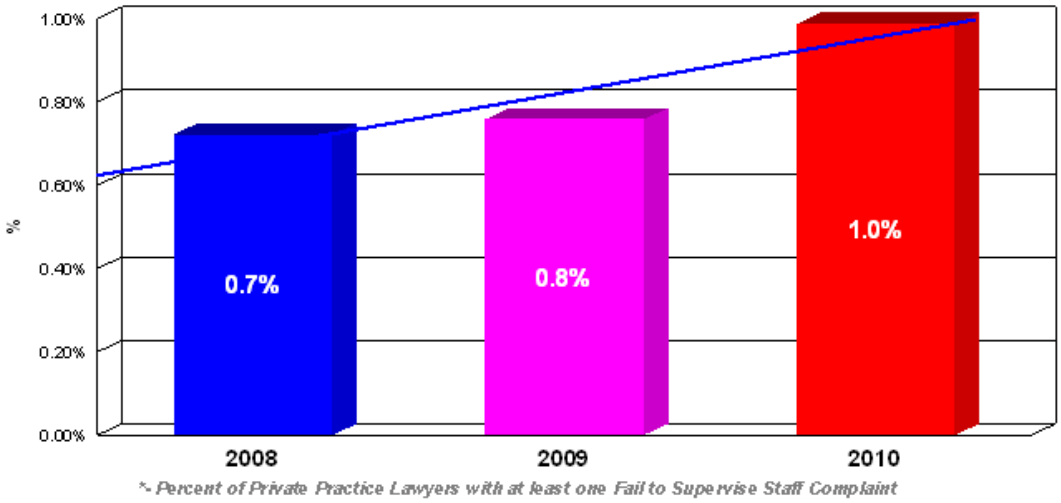
Licensed Lawyers – Conduct Unbecoming Outside Practice of Law PRD Complaints



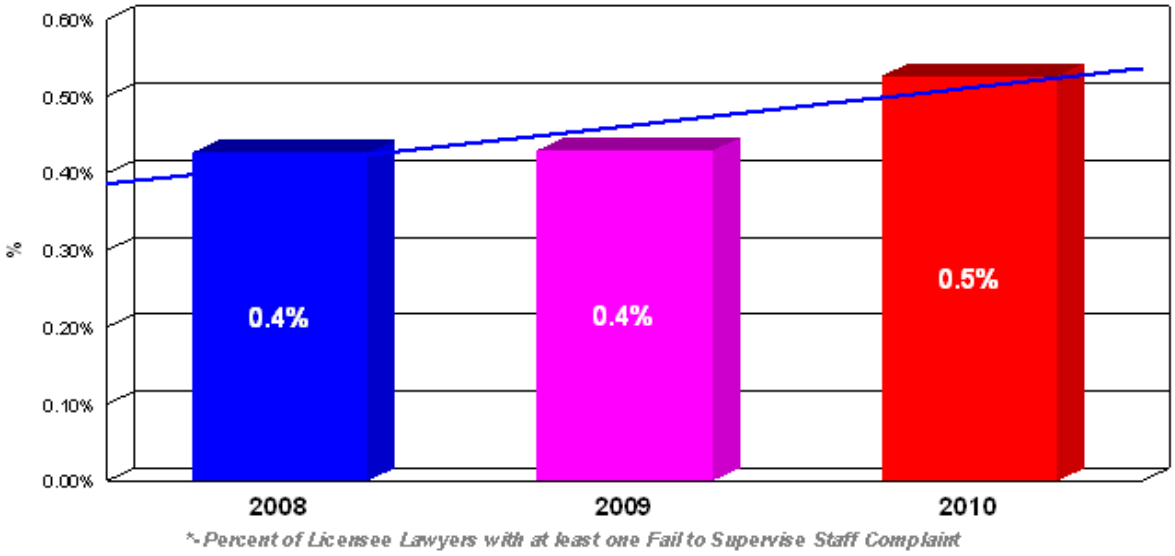
(d) *Fail to Supervise Staff*

The only type of allegation that was found to increase significantly in the 2008 -2010 period was the allegation of "Fail to Supervise Staff". The two graphs below show the per capita rate of these types of complaints involving lawyers in private practice and all licensed lawyers. The increase noted in both groups was tested as significant with a 0.05 level of error.

Lawyers in Private Practice - Fail to Supervise Staff PRD Complaints



Licensed Lawyers – Fail to Supervise Staff PRD Complaints



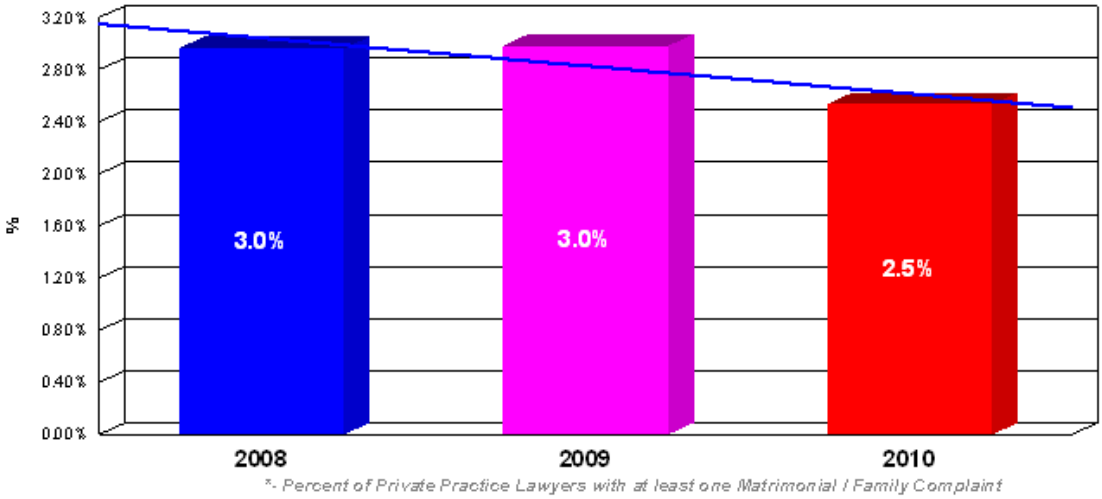
C. *PER CAPITA RATE OF PRD COMPLAINTS BY AREA OF LAW*

An analysis of all PRD complaints by area of law was conducted. Significant results were only found in relation to four areas: Matrimonial/Family law; Real Estate law; Employment/Labour and Administrative/Immigration law.

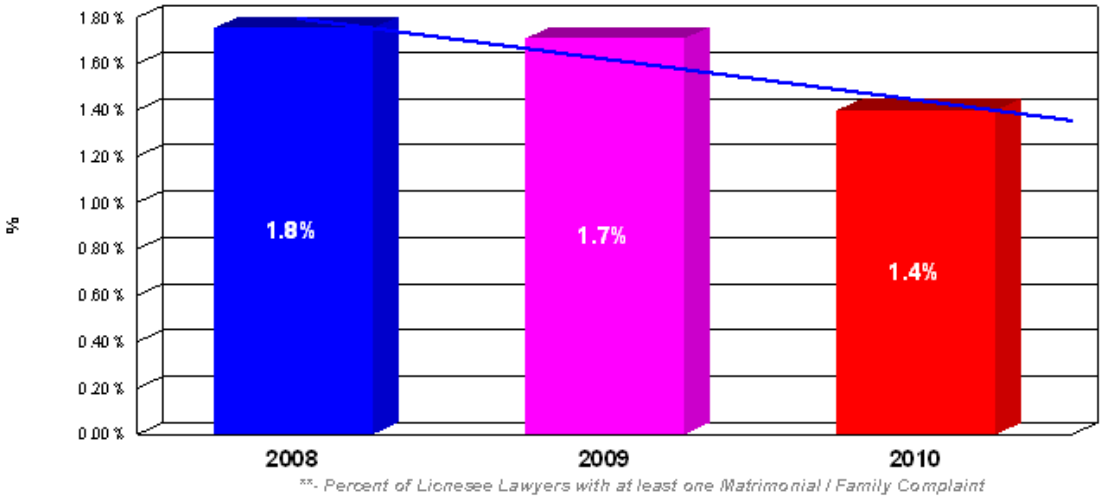
(a) *Matrimonial / Family*

The per capita rate of complaints raised in the area of Matrimonial/Family Law registered the most significant decrease (p<0.01) from 2008 to 2010 of all areas of law. This is consistent with the finding noted above concerning civility complaints as civility complaints are cited more often in the area of Matrimonial/Family Law. The two graphs below show the per capita rate of these types of complaints involving lawyers in private practice and all licensed lawyers.

Lawyers in Private Practice– Matrimonial / Family PRD Complaints



Licensed Lawyers – Matrimonial / Family PRD Complaints

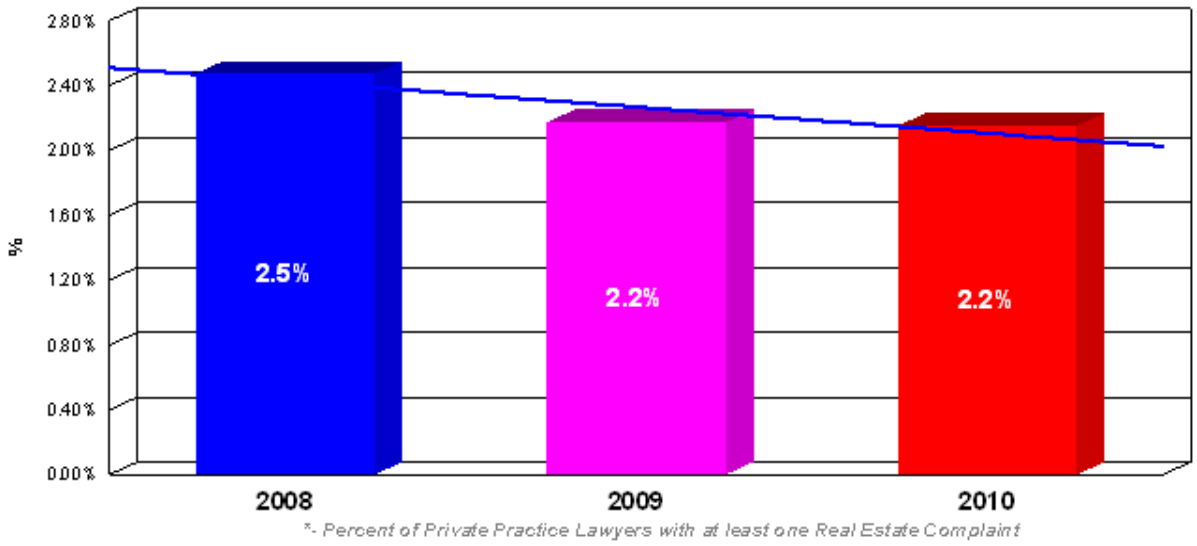


(b) *Real Estate*

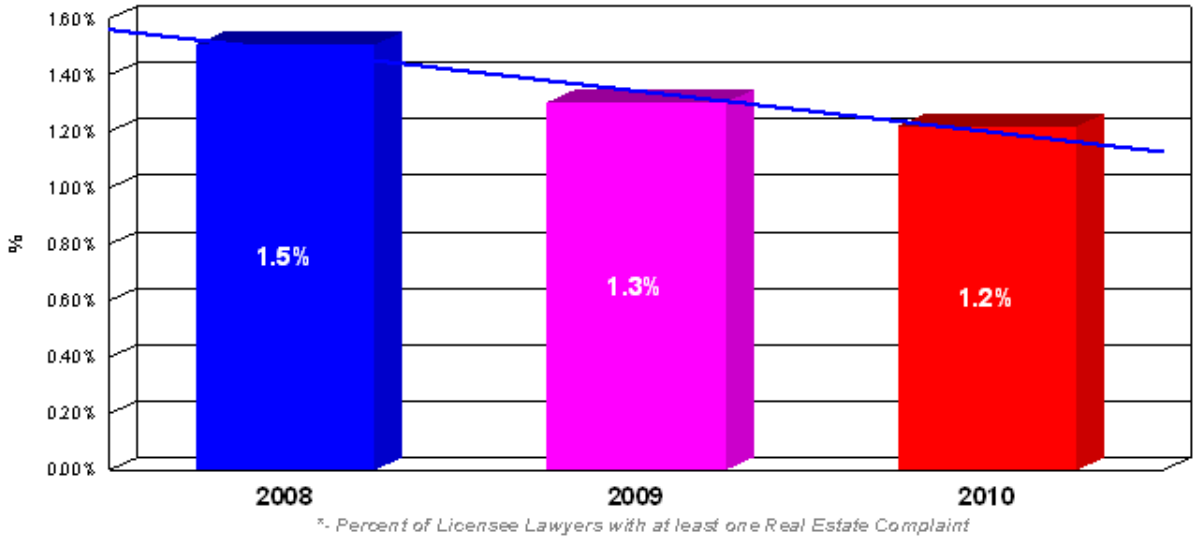
The per capita rate of complaints raised in the area of Real Estate law registered as the second most significant decrease (p<0.025) from 2008 to 2010 of all areas of law. This is consistent

with the finding noted above that complaints raising the allegation of "Real Estate/Mortgage Schemes" registered the second most significant decrease in relation to all types of allegations. The two graphs below show the per capita rate of complaints in this area of law involving lawyers in private practice and all licensed lawyers.

Lawyers in Private Practice – Real Estate PRD Complaints



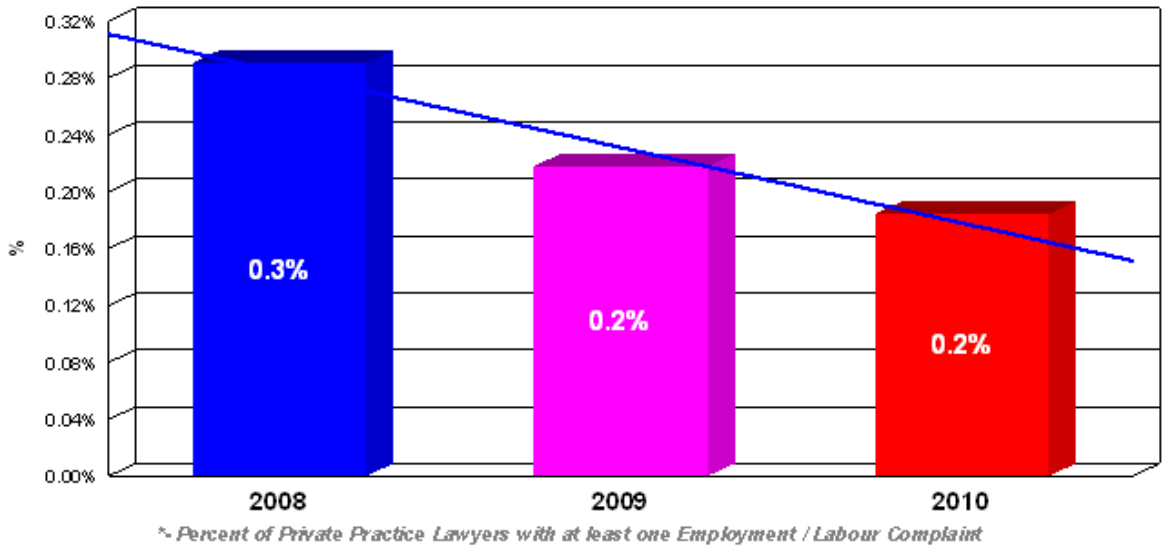
Licensed Lawyers – Real Estate PRD Complaints



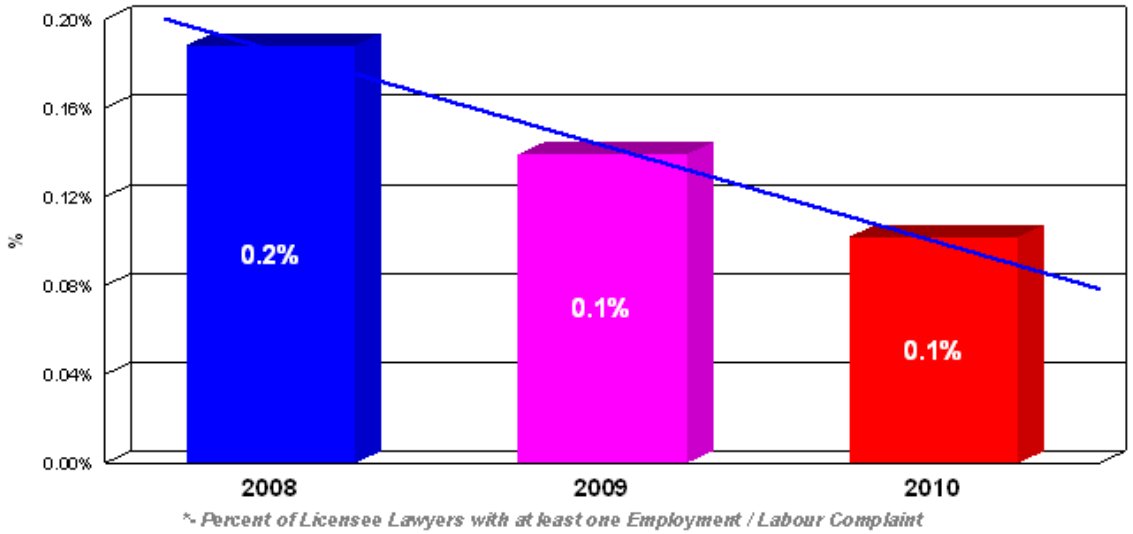
(c) *Employment / Labour*

The per capita rate of complaints raised in the area of Employment/Labour law registered the third most significant decrease ($p<0.05$) from 2008 to 2010 of all areas of law. The two graphs below show the per capita rate of complaints in this area of law involving lawyers in private practice and all licensed lawyers.

Lawyers in Private Practice – Employment / Labour PRD Complaints



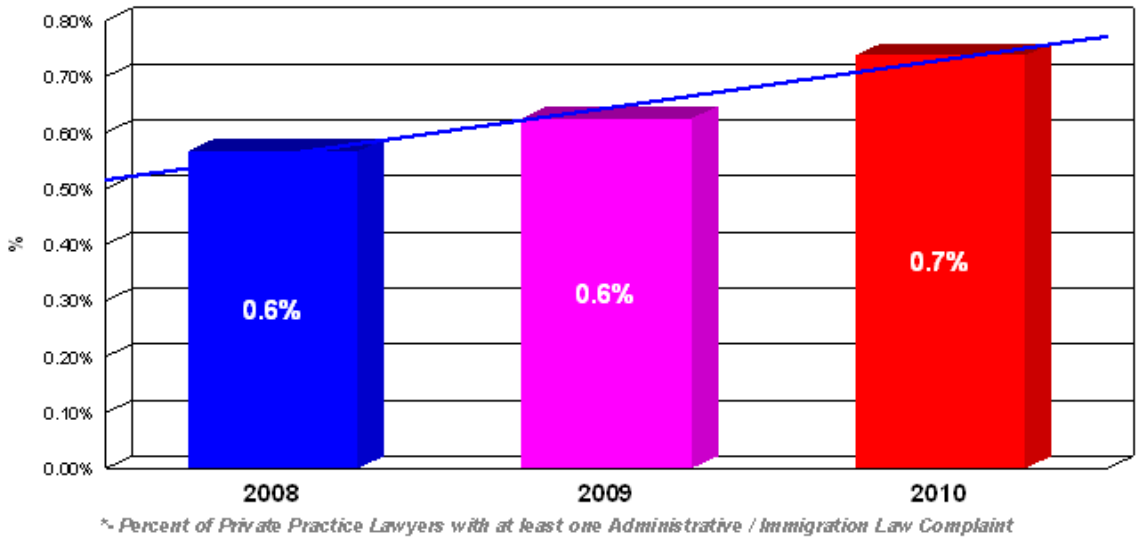
Licensed Lawyers – Employment / Labour PRD Complaints



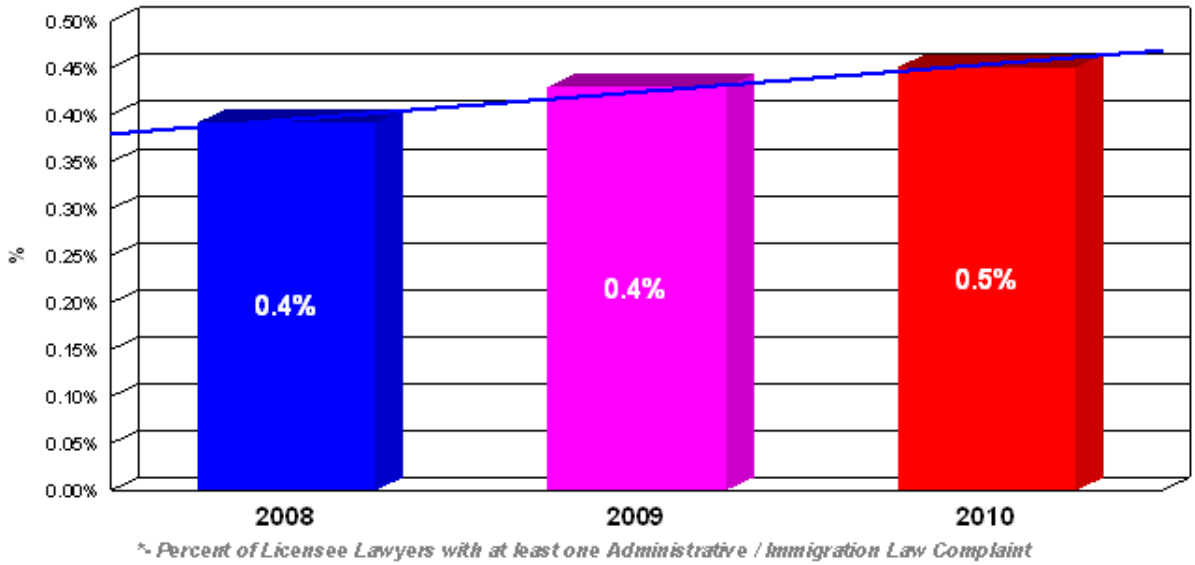
(d) *Administrative / Immigration Law*

The only area of law that was found to increase significantly in the 2008 -2010 period was Administrative/Immigration law. The two graphs below show the per capita rate of complaints in this area of law involving lawyers in private practice and all licensed lawyers.

Lawyers in Private Practice – Administrative / Immigration Law PRD Complaints



Licensed Lawyers – Administrative / Immigration Law PRD Complaints



APPENDIX A – CASE TYPES AND ALLEGATIONS

Case Type Name	*Allegations*
Conflicts	Licensee in a Position of Conflict Business / Financial Relations with Client
Financial	Estate / Power of Attorney Real Estate / Mortgage Schemes Misapplication Misappropriation Pre-Taking Co-mingling / Mishandling Trust Accounts Breach of No Cash Rule
Governance	Fail to Maintain Books & Records Practice by Former / Suspended Licensee Relations Prohibited Persons / Fail Prevent UAP Unauthorized Practice (UAP) Relations/Prohibited Persons/Fail Prevent Practise Outside Scope of Licence Practising Outside Scope of Licence Fail to Report Misconduct / Error / Omission Fail to Cooperate with LSUC Practising without insurance / Fee Category Student Investigations Improper Advertising Operating Trust Account while Bankrupt
Integrity	Conduct Unbecoming outside the Practice of Law/Provision of Legal Services Criminal Charges Counselling / Behaving Dishonourably Discriminatory Conduct Sexual Misconduct Direct Communications with Represented Parties Misleading Breach of Orders, Undertaking or Escrow Civility
Service Issues	Fail to Provide Client Report Fail to Follow Client Instructions Fail to Communicate Fail to Preserve Client Property Fail to Serve Client Withdrawal of Services / Abandonment Fail to Supervise Staff Fail to Account Fail to Pay Financial Obligations Breach of Confidentiality / Fiduciary Duty
Special Applications	Readmission Admission Reinstatement – Variation of Order Reinstatement – Order Fulfilled

Case Type Name	*Allegations*
	Restoration Competency from PD&C Interlocutory Suspension
Other Issues	Other Issues

APPENDIX 3

PROFESSIONAL REGULATION

Report: Summary Hearings

Prepared by: Zeynep Onen
Date: March 15, 2011

The statistics reported in this memorandum focus on the summary hearing applications that have been issued and the summary hearings that have been held since the summary hearing process was initiated until December 31, 2010.

Summary Hearing Applications Issued

The first summary hearing application was issued on February 10, 2006. Since that date, a total of 155 summary hearing applications have been issued, broken down by calendar year as follows:

Year	Applications Issued		
	Total	Lawyers	Paralegals
2006	20	20	0
2007	35	35	0
2008	34	34	0
2009	27	25	2
2010	39	35	4
Total	155	149	6

Of the 155 applications issued
- 2 applications were abandoned prior to hearing;
- 1 application was closed prior to hearing, pursuant to PAC authorization; and
- 14 applications were still awaiting hearing as at December 31, 2010.

Hence, 138 applications have proceeded to hearing since the summary process was initiated until the end of December 2010.

Summary Hearings Completed

The 138 issued applications have resulted in a total of 133 summary hearings[1] to date. The following chart sets out the number of hearings held in each of the 5 calendar years:

Year	Summary Hearings Completed
2006	15
2007	28
2008	27
2009	28
2010	35
Total	133

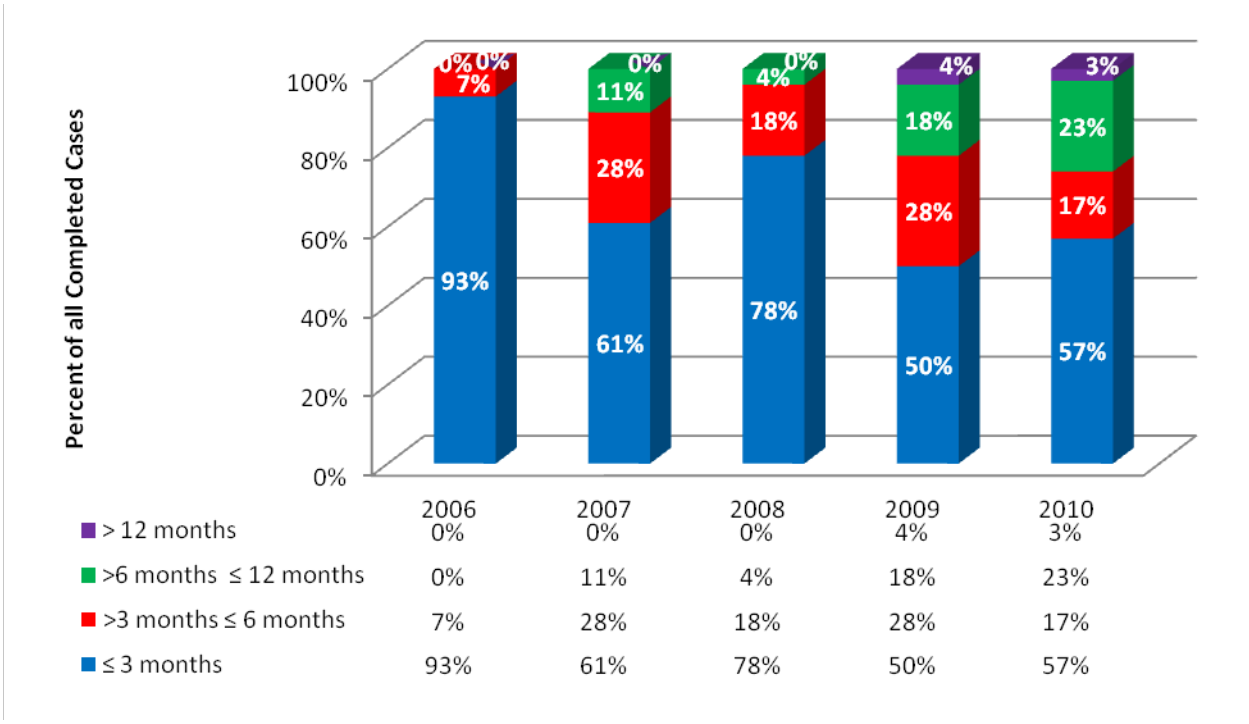
The 133 hearings involved 108 lawyers and 4 paralegal licensees: 19 lawyers have had 2 separate summary hearings; 1 lawyer has had 3 separate summary hearings.

Of the 133 completed hearings, 86 hearings (65%) proceeded to hearing (and were completed) within 3 months of the date of issuance. The following chart sets out the number of hearings completed in each of the 5 calendar years, broken down by the length of time that elapsed between the date of issuance and the date the case was completed (i.e. the date of the Decision and Order of the Hearing Panel).

Age from issuance to completion	2006	2007	2008	2009	2010
≤ 3 months	14	17	21	14	20
> 3 months ≤ 6 months	1	8	5	8	6
>6 months ≤ 12 months	0	3	1	5	8
>12 months	0	0	0	1	1
Total Hearings Completed	15	28	27	28	35

[1] Two applications were dealt with in each of 5 hearings.

The following graph provides a break-down of the time between issuance of the application and the completion of the hearing by calendar year. The graph sets out the percentage of completed cases by length of time it took to complete the case. For example, in 2010, 57% of cases were initiated and completed in less than or equal to 3 months.



The following chart breaks down the average time spent in the hearing stage into two portions: (1) the average time after the issuance of the Notice of Application but prior to the start of the hearing and (2) the average time after the hearing has commenced. For example, in 2010, the average time for a summary hearing to start after the Notice was issued was 98 days while the average time for a hearing to be completed was 51 days.

	2006	2007	2008	2009	2010
Date Notice Issued to Start of Hearing	46 days	72 days	80 days	49 days	98 days
Start of Hearing to Date of Final Decision	8 days	33 days	13 days	0 days	51 days

Analysis of Summary Hearings that did not complete in expected time frame:

The following charts analyze the delays noted in summary hearings held between 2006 and the end of 2010. A summary hearing was considered “delayed” if it took longer than 2 months between issuance of the Notice of Application and completion of the hearing. Based on this definition, some sort of delay was noted in:

- 4 of the 15 hearings completed in 2006;
- 13 of the 28 hearings completed in 2007;
- 9 of the 27 hearings completed in 2008;
- 16 of the 28 hearings completed in 2009; and
- 16 of the 35 hearings completed in 2010.

The analysis was based on endorsements on the Notices of Application and reasons provided by the Hearing Panels, where available. Note that reasons for adjournments and other delays were not always provided in the endorsements and that, in some cases, the noted delay was caused by more than one reason.

(1) Delays in time period between Issuance and Start of Hearing

	2006	2007	2008	2009	2010
Counsel (retaining counsel; newly retained counsel's need to review disclosure/prepare)	2	6	2	4	0
Medical Issues (including illness, medical evaluation; preparation of medical report)	0	1		5	3
Further time provided to comply with outstanding Law Society request	0	2	2	5	0
Availability					
Availability of Hearing Panel					1
Availability of Licensee: In custody			1		1
Involved in work				2	
Other (travelling)				1	

(2) Delays in time period between start of hearing and completion (i.e. date of Decision and Order)

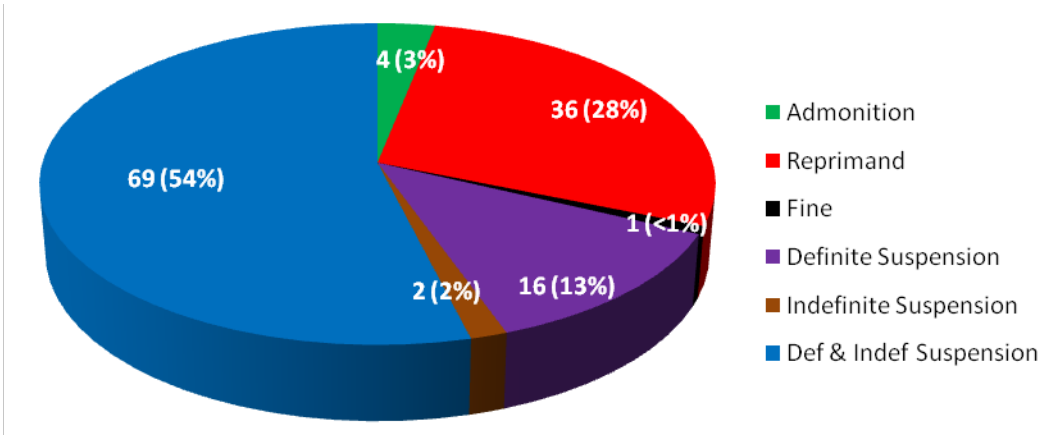
	2006	2007	2008	2009	2010
Finding made; adjourned for penalty phase	2	2	4	1	4
Reserved on Finding		3	1	2	4
Reserved on Penalty		1	1	3	4
Medical Issues (including illness, medical evaluation; preparation of medical report)		1	1	1	
Availability of Hearing Panel					1

<u>Findings Made and Penalties Imposed</u>

Of the 133 summary hearings held to date, findings of professional misconduct have been made in 128 matters. Of the 5 remaining matters:

- 1 was dismissed by a Hearing Panel;
- 3 were converted to invitations to attend; and
- 1 finding was overturned on appeal and sent back for a new hearing. The Law Society subsequently abandoned the application.

With respect to the penalties imposed, in 69 of the 128 cases (54%), licensees were given a definite period of suspension which was to continue indefinitely until the licensees fully cooperated with the Law Society. The graph on the following page sets out the various penalties imposed in the 128 hearings held to date where a finding of professional misconduct was made:



In addition to the penalties imposed above, costs were awarded against the licensee in 123 hearings (96% of the hearings held) and have ranged from $500 to $15,000.

Cooperation – Pre and Post Hearing

In 57 of the 128 hearings, licensees cooperated with the Law Society in the period after the application was issued but before the date of the summary hearing. In these situations, a lesser penalty was imposed at the hearing – usually a reprimand or a definite period of suspension.

In 55% of the cases (71 cases), licensees did not cooperate or only partially cooperated with the Law Society prior to hearing, resulting in a more severe penalty (usually a definite followed by an indefinite period of suspension as noted above). These 71 cases relate to 68 licensees.

A review of the 68 licensees who had not cooperated at the time of the hearing (and, therefore, received an indefinite suspension as part or all of the penalty imposed) reveals that:

- 15 licensees (22%) had their licensees revoked or were given permission to surrender their licences in subsequent discipline hearings.

- 19 licensees (28%) subsequently cooperated with the Law Society:
  - ☐ 6 of the licensees cooperated and were reinstated within 3 months of the summary hearing;
  - ☐ 5 of the licensees cooperated and were reinstated 3-6 months after the summary hearing;
  - ☐ 3 licensees cooperated and were reinstated 6-12 months following the summary hearing; and
  - ☐ 5 licensees cooperated and were reinstated 12-24 months after the summary hearing.

- 34 licensees (50%) have not cooperated with the Law Society to date and remain suspended:
  - ☐ 9 licensees have been suspended for less than 3 months following the summary hearing;
  - ☐ 4 licensees have been suspended for 6- 12 months following the summary hearing;
  - ☐ 5 licensees have been suspended for 12 to 24 months following the summary hearing; and
  - ☐ 16 licensees have been suspended for more than 24 months following the summary hearing.

APPENDIX 4

PROFESSIONAL REGULATION

Report: Unauthorized Practice of Law/Provision of Legal Services

Prepared by: Zeynep Onen
Date: March 15, 2011

Introduction

The incidence of unauthorized practice reported to the Law Society has increased significantly since 2008. I have reported on the increased numbers of complaints and their dispositions in my Quarterly Report as well as in other ad hoc reports. To address the increase, we have developed strategies to address the issue of unauthorized practice and the unauthorized provision of legal services (referred to collectively as "UAP"). These strategies include more robust response through enforcement in court, a graduated, resolution based strategy in which more serious matters are escalated for more formal response, and a coordinated communications strategy to the public to alert potential clients of unauthorized practitioners to the need to check that their representative is licensed. As discussed throughout the report, we have made significant progress in addressing UAP and in my view, the issue of UAP is under control.

Overview of UAP Process

As set out in the *Law Society Act* (relevant provisions are attached as Appendix A to this report), the Society's mandate includes the prevention of UAP. The Society has processed an increasing number of complaints regarding these activities, particularly in the wake of paralegal regulation.

The Society has interpreted its mandate as being focused on the prevention of UAP rather than, necessarily, its prosecution. Many UAP complaints have been effectively addressed without initiating costly court proceedings. Professional Regulation takes an escalating approach with allegations of UAP.

- In many cases, the Society sends a cease and desist letter to the subject of a complaint. This alone often brings the alleged UAP to a halt.

- In other cases, particularly where the subject of a complaint is persistent, is placing the public directly at risk, or is resistant to the Law Society's intervention, the Society conducts a full investigation, establishes that UAP has probably occurred and then asks the subject to agree to an undertaking not to continue or resume the proscribed behaviour. The undertaking includes an acknowledgement of UAP and can be used as evidence if future court proceedings are necessary.

- In cases where an undertaking is not agreed to, or where more overt measures are required, the Law Society will initiate proceedings. Even here, it is not infrequent for the subject to agree to a court order, thereby avoiding the need for a hearing on the application and supporting materials in Superior Court, or a trial to prove the factual allegations in that court, or a trial on the merits in Provincial Offences Court.

- Where UAP matters appear to justify prosecution, they are always brought to the Proceedings Authorization Committee for authorization, even though neither the Act nor the By-Laws specifically requires this process step. If PAC authorizes further action in a UAP, the Law Society recruits qualified external counsel. Such counsel will prosecute in POA court or seek orders in the nature of permanent injunctions, under the direction of the Director of Professional Regulation and Senior Counsel.[1]

Addressing UAP through the Courts

As noted, the Act provides for two alternative mechanisms for addressing UAP in the courts:

- Section 26.2 permits a prosecution for a breach of section 26.1 of the Act – the section prohibiting UAP – as a provincial offence or in the Ontario Court of Justice. If it succeeds, such a prosecution will typically result in a fine, up to a maximum of $25,000 for a first offence and $50,000 for a subsequent offence.

- Section 26.3 entitles the Society to seek an order in the nature of a permanent injunction from the Superior Court of Justice. The Law Society will enforce such an order by way of civil contempt proceedings, as required.

Both mechanisms have been used effectively by the Law Society in the recent past. Where formerly most UAP matters requiring prosecution were dealt with under the *Provincial Offences Act* (POA), in the past couple of years the majority of such matters have been addressed in the Superior Court.

[1] In the future the recruitment of such external counsel will be assisted by the Expressions of Interest that the Law Society has generated as a result of recent advertising in the *Ontario Reports* and on its website.

This has been facilitated by changes to the Act, as part of the 2006 amendments, which repealed former section 50 and replaced it with ss.26.1-26.3: Under the new regime, it is no longer required that the subject of a UAP injunction application be either a disbarred lawyer who has continued to practise OR someone who has been previously convicted of UAP under the POA. The other advantage of using the injunctive approach is that it is not subject to the two-year limitation which applies to prosecutions for UAP under the POA. It is also somewhat faster. The primary disadvantage of using the Superior Court route provided for by s.26.3 is its perceived cost, particularly if the facts at issue are heavily contested and it becomes necessary to convert an application based on affidavit evidence into a full-blown trial. This has not happened frequently, however, in our experience to date.

UAP Complaint Case Types

The *Law Society Act* clearly prohibits non-licensees from practising law and providing legal services, as well as holding themselves out or representing themselves as persons able to provide legal services[2] .

The Act also prohibits similar activities by lawyers and paralegals whose licences are suspended and in addition prohibits P1 licensees from providing legal services in areas not permitted by the by-laws. As a matter of practice, however, such infractions (in the paralegal context, referred to as "scope of practice" issues) are dealt with internally as conduct matters, rather than as UAP before the courts.

(i) UAP in courts & administrative tribunals

Based on the anecdotal experience of our investigators, most recent UAP cases requiring prosecution have involved the provision of legal services by an unlicensed individual, operating in Small Claims Court, in Provincial Offences Court or before administrative tribunals such as the Landlord and Tenant Board. These are areas where licensed paralegals, as well as lawyers, are entitled to appear. Many complaints about UAP in these areas have in fact originated with licensees.

(ii) UAP in family law

The Law Society has also dealt with complaints about paralegals continuing to advertise and/or provide legal services in the area of Family Law. Some such services are offered under the pretext of "mediation", but without affording the parties the opportunity to have the mediated agreement, typically drafted on the spot by the mediator himself or herself, reviewed independently by each party's lawyer. Even before the Law Society Act contained a definition of "legal services", the case law was clear that this constituted UAP: see *Law Society of Upper Canada v. Boldt*, 2006 CanLII 9142 (Ont. S.C.) and, previously, *Law Society of Upper Canada v. Boldt* (Ont. S.C., September 1, 2000).

[2] In the future, the Law Society may be better able to distinguish between specific types of UAP in its statistical reporting – for instance, which cases involve holding out, which cases involve the actual provision of services, etc.

(iii) Other

Other complaints attracting the Society's attention have involved paralegals who claim to be licensed when in fact they are not; individuals who purport to be lawyers who are not; individuals who (falsely) advertise their own ability to provide legal services and then find someone else to provide those services, collecting a fee in the process, and whether or not the service is actually provided; and individuals who attempt to rely on the so-called "friends and family" exemption in By-Law 4, s.30(1)5, when in fact they do not qualify for this exemption. (The By-Law provision is set out in Appendix B to this report.)

Emerging Issues and Communications Strategy

The Society has increasing concerns about the targeting of certain ethnic or multicultural communities by unscrupulous UAP practitioners. Such individuals attempt to exploit a community's lack of familiarity with the Society's regulatory role, or take advantage of an ingrained reluctance to report perceived misconduct by a member of one's own community to "outsiders". Hence the limited number of complaints that originate with certain societal groups may not reflect the full extent of UAP that occurs within those groups.

The Professional Regulation Division has been working with the Society's Communications Department to develop an overall strategy for dealing with UAP more proactively. Such a strategy would include outreach to ethnic media and multicultural communities, among other groups, to ensure that they are aware of both the benefits of dealing only with licensed practitioners – lawyers or paralegals – and the risks of dealing with those who are unlicensed, unqualified, and uninsured. In the short term, the Communications Department expects to target consumers of multicultural news media, in particular, with advice on how to consult the lawyer and paralegal member directory, to confirm that the person with whom they are dealing is in fact licensed by the Society.

More generally, the UAP-related communications strategy currently under development will feature the following elements:

- a paragraph about UAP for both the "Protecting the Public" and the "Finding a Lawyer or Paralegal" pages on the public website, briefly describing the issue of unauthorized practice and including a link that would take the reader to a UAP home page.

- a UAP home page containing a more detailed description of what constitutes UAP, together with a summary of ten or twelve selected UAP convictions, plus a description of typical situations in which UAP is likely to occur.

- a new template for the *Ontario Reports*, similar to the one used for Regulatory Meetings, that will summarize each UAP case that is concluded by court proceedings pursuant to either s.26.2 or s.26.3 of the Act.

- a similar notice on each completed UAP case on our website (in Latest News, together with other regulatory notices), and also contained in an email to our media distribution list, that is reporters and editors who have asked us for the weekly Tribunals information about orders and decisions emanating from Hearing and Appeal Panels.

UAP Caseload Statistics

The statistics included here illustrate what has happened to UAP complaints, and to the subjects of UAP complaints, between 2007 and 2010. There has been a noticeable increase (more than 100%) in complaints during this period. As a result of the increase, and consistent with a mandate to prevent UAP rather than necessarily prosecute every infringement, the Law Society has adopted a triage approach to dealing with less-serious violations (for example, an advertisement that suggests an ability to provide a service that cannot be provided, a one-off appearance before a tribunal, etc.). Such cases are addressed initially through a "cease and desist" type of letter, typically at the Intake stage. If the recipient of the letter is resistant to ceasing his or her activities, or if the UAP conduct in question persists, then the matter is likely to be escalated.

(a) UAP Complaints Received in PRD, by year

Year	Number of Cases alleging UAP	Number of Subjects
2007	143	134
2008	337	281
2009	445	385
2010	330	268

(b) UAP Cases Closed, by department and year (including complaints deemed to be low risk and closed through triage project)

Department		2007 (# closed in triage)	2008 (# closed in triage)	2009 (# closed in triage)	2010 (# closed in triage)
Intake:	Cases	18 (0)	97 (56)	139 (131)	120 (111)
	Subjects	18 (0)	95 (55)	138 (129)	111 (104)
Complaints Resolution	Cases	40 (0)	58 (10)	46 (1)	28 (2)
	Subjects	39 (0)	56 (10)	42 (1)	23 (2)
Investigations	Cases	44 (0)	118 (40)	101 (2)	162 (2)
	Subjects	43 (0)	96 (38)	84 (2)	125 (2)
TOTAL	Cases	102 (0)	273 (106)	286 (134)	310 (115)
	Subjects	100 (0)	247 (103)	264 (132)	259 (108)

(c) Cases Referred for Prosecution/Injunctive Relief

Year	for prosecution as a provincial offence (LSA s.26.2)	for Injunctive Relief (LSA s.26.3)	Total
2007	16 subjects (20 complaints)	0	16 subjects
2008	3 subjects (3 complaints)	0	3 subjects
2009	1 subject (3 complaints)	1 subject (1 complaint)	2 subjects
2010	4 subjects (11 complaints)*	9 subjects (32 complaints)	13 subjects

UAP-Matters Authorized by the Proceedings Authorization Committee from September 2007 to March 2011

The following are matters authorized by PAC from September 2007 to March 2011, in which proceedings are now concluded. In addition to the cases listed here, a number of other matters are still ongoing.

The category described as "Order" refers to whether the Society sought a permanent injunction under section 26.3 of the Act, or brought a prosecution under section 26.2 of the Act.

Case	PAC Date	Allegations	Order	Result
Paul Caroline	September 5, 2007	Mr. Caroline, a disbarred lawyer, plead guilty to one count of acting as a barrister and solicitor.	Prosecution	May 4, 2009-Found guilty, fined $2500.00, plus victim surcharge.
Julia Torres and Dynamica Inc.	September 5, 2007	Each plead guilty to one count of acting as a barrister and solicitor	Prosecution	May 30, 2010. Found guilty and fined $3500 including victim surcharge
G. Jonathan Franko	October 18, 2007	Plead guilty to one count of acting as a barrister and solicitor.	Prosecution	July 3, 2008- Court imposed $4000.00 fine plus victim surcharge.
Patrick Daley	March 31, 2008	Plead guilty to one count of unlawfully representing himself as a person who may practice law.	Prosecution	August 27, 2009 –Court imposed $5000 fine and subject signed undertaking to not commit breaches of s.26.1 of the Law Society Act.
Lee Fingold	June 9, 2009	Disbarred lawyer charged with four counts apiece of	Prosecution	September 2, 2010 - Subject found guilty of all 12 counts, but five were stayed in

Case	PAC Date	Allegations	Order	Result
		providing legal services, representing himself as authorized to provide legal services and holding himself out as authorized to provide legal services.		accordance with the Kineapple principle. December 6, 2010-Fined $4000 per count for total fine of $20,000.00, also received probation for 2 years and also as a term of probation was prohibited from contravening section 26.1 of the Law society Act
Ken Miller	October 15, 2009	Improper Advertising, holding himself out and representing himself as a person authorized to provide legal services.	Injunction	March 16, 2010-Obtained order prohibiting Mr. Miller from contravening sections 26.1 of the Law Society Act.
Jennifer Smith	February 11, 2010	Charged with 6 counts of providing legal services, mainly in the form of Landlord and Tenant Board services to landlord, holding out as a person authorized to provide legal services and 3 counts of representing herself as a person authorized to provide legal services	Prosecution	Found guilty on 11 counts with a fine of $8,000 per count for a total fine of $88,000, plus victim surcharge of a further $22, 000. Subject also placed on probation for a period of 2 years with a condition that she not breach section 26.1.
Lee Fingold	April 15, 2010	Disbarred lawyer continued to provided legal services.	Injunction	September 2, 2010-Order prohibiting Mr. Fingold from contravening section 26.1 of the Law Society Act.
Stephen Kuz	April 15, 2010	Provided legal services, held himself out as authorized to provide legal services	Injunction	September 21, 2010-Order prohibiting subject from contravening section 26.1 of the Law Society Act
Joan Raymond	April 15, 2010	Provided legal services.	Injunction	Order prohibiting unauthorized practice of law

Case	PAC Date	Allegations	Order	Result
				obtained on consent on April 13, 2011..
John Wilson	April 15, 2010	Provided legal services, held himself out as authorized to provide legal services.	Injunction	November 23, 2010 received an order prohibiting Mr. Wilson from appearing in Small Claims court or advertising that he is able to appear in Small Claims Court.
Michael Harmidarow	April 15, 2010	Provided legal services, held himself out as authorized to provide legal services.	Injunction	January 5, 2011-received order prohibiting the unauthorized practice of law and prohibiting holding out as able to practice law.
David Matheson	July 27, 2010	Former P1 applicant, provided legal services, held himself out as authorized to provide legal services in a variety of areas, particularly highway traffic matters	Injunction	March 4, 2011-Order, on consent, prohibiting the unauthorized practice of law and prohibiting holding out as able to practice law. Costs payable to the Law Society ordered in the amount $9,929.53

APPENDIX A

Excerpts from the *Law Society Act*, R.S.O. 1990, c.L.8, as am., S.O. 2006 c.21, Sched. C

1. DEFINITION OF LEGAL SERVICES: SS.1(5), (6), (7), (8)

Provision of legal services
1(5) For the purposes of this Act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person. 2006, c. 21, Sched. C, s. 2 (10).

Same

(6) Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person.

2. Selects, drafts, completes or revises, on behalf of a person,

i. a document that affects a person's interests in or rights to or in real or personal property,

ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person,

iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other entity, such as a document that relates to the formation, organization, reorganization, registration, dissolution or winding-up of the entity,

iv. a document that relates to a matter under the *Bankruptcy and Insolvency Act* (Canada),

v. a document that relates to the custody of or access to children,

vi. a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v, or

vii. a document for use in a proceeding before an adjudicative body.

3. Represents a person in a proceeding before an adjudicative body.

4. Negotiates the legal interests, rights or responsibilities of a person. 2006, c. 21, Sched. C, s. 2 (10).

Representation in a proceeding

(7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:

1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.

2. Conducting an examination for discovery.

3. Engaging in any other conduct necessary to the conduct of the proceeding. 2006, c. 21, Sched. C, s. 2 (10).

Not practising law or providing legal services

(8) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:

1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.

2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.

3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.

4. An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.

5. A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws. 2006, c. 21, Sched. C, s. 2 (10).

2. PROHIBITIONS AND OFFENCES: SS.26.1, 26.2, 26.3

Prohibitions

Non-licensee practising law or providing legal services

26.1 (1) Subject to subsection (5), no person, other than a licensee whose licence is not suspended, shall practise law in Ontario or provide legal services in Ontario. 2006, c. 21, Sched. C, s. 22.

Non-licensee holding out, etc.

(2) Subject to subsections (6) and (7), no person, other than a licensee whose licence is not suspended, shall hold themself out as, or represent themself to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario. 2006, c. 21, Sched. C, s. 22.

Licensee practising law or providing legal services

(3) No licensee shall practise law in Ontario or provide legal services in Ontario except to the extent permitted by the licensee's licence. 2006, c. 21, Sched. C, s. 22.

Licensee holding out, etc.

(4) No licensee shall hold themself out as, or represent themself to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario, without specifying, in the course of the holding out or representation, the restrictions, if any,

(a) on the areas of law that the licensee is authorized to practise or in which the licensee is authorized to provide legal services; and

(b) on the legal services that the licensee is authorized to provide. 2006, c. 21, Sched. C, s. 22.

Exception, non-licensee practising law or providing legal services

(5) A person who is not a licensee may practise law or provide legal services in Ontario if and to the extent permitted by the by-laws. 2006, c. 21, Sched. C, s. 22.

Exception, non-licensee holding out, etc.

(6) A person who is not a licensee may hold themself out as, or represent themself to be, a person who may practise law in Ontario, if,

(a) the by-laws permit the person to practise law in Ontario; and

(b) the person specifies, in the course of the holding out or representation, the restrictions, if any, on the areas of law that the person is authorized to practise. 2006, c. 21, Sched. C, s. 22.

Same
(7) A person who is not a licensee may hold themself out as, or represent themself to be, a person who may provide legal services in Ontario, if,

(a) the by-laws permit the person to provide legal services in Ontario; and
(b) the person specifies, in the course of the holding out or representation, the restrictions, if any,

(i) on the areas of law in which the person is authorized to provide legal services, and

(ii) on the legal services that the person is authorized to provide. 2006, c. 21, Sched. C, s. 22.

Agent
(8) This section applies to a person, even if the person is acting as agent under the authority of an Act of the Legislature or an Act of Parliament. 2006, c. 21, Sched. C, s. 22.

Offences
Contravening s. 26.1
26.2 (1) Every person who contravenes section 26.1 is guilty of an offence and on conviction is liable to a fine of,

(a) not more than $25,000 for a first offence; and

(b) not more than $50,000 for each subsequent offence. 2006, c. 21, Sched. C, s. 22.

Giving foreign legal advice
(2) Every person who gives legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws is guilty of an offence and on conviction is liable to a fine of,

(a) not more than $25,000 for a first offence; and

(b) not more than $50,000 for each subsequent offence. 2006, c. 21, Sched. C, s. 22.

Condition of probation order: compensation or restitution
(3) The court that convicts a person of an offence under this section may prescribe as a condition of a probation order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence. 2006, c. 21, Sched. C, s. 22.

Condition of probation order: not to contravene s. 26.1
(4) The court that convicts a person of an offence under subsection (1) may prescribe as a condition of a probation order that the person shall not contravene section 26.1. 2006, c. 21, Sched. C, s. 22.

Condition of probation order: not to give foreign legal advice
(5) The court that convicts a person of an offence under subsection (2) may prescribe as a condition of a probation order that the person shall not give legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws. 2006, c. 21, Sched. C, s. 22.

Order for costs
(6) Despite any other Act, the court that convicts a person of an offence under this section may order the person to pay the prosecutor costs toward fees and expenses reasonably incurred by the prosecutor in the prosecution. 2006, c. 21, Sched. C, s. 22.

Deemed order
(7) A certified copy of an order for costs made under subsection (6) may be filed in the Superior Court of Justice by the prosecutor and, on filing, shall be deemed to be an order of that court for the purposes of enforcement. 2006, c. 21, Sched. C, s. 22.

Limitation
(8) A prosecution for an offence under this section shall not be commenced more than two years after the date on which the offence was alleged to have been committed. 2006, c. 21, Sched. C, s. 22.

Order prohibiting contravention, etc.
26.3 (1) On the application of the Society, the Superior Court of Justice may,

(a) make an order prohibiting a person from contravening section 26.1, if the court is satisfied that the person is contravening or has contravened section 26.1;

(b) make an order prohibiting a person from giving legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws, if the court is satisfied that the person is giving or has given legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws. 2006, c. 21, Sched. C, s. 22.

No prosecution or conviction required
(2) An order may be made,

(a) under clause (1) (a), whether or not the person has been prosecuted for or convicted of the offence of contravening section 26.1;

(b) under clause (1) (b), whether or not the person has been prosecuted for or convicted of the offence of giving legal advice respecting the law of a jurisdiction outside Canada in contravention of the by-laws. 2006, c. 21, Sched. C, s. 22.

Order to vary or discharge
(3) Any person may apply to the Superior Court of Justice for an order varying or discharging an order made under subsection (1). 2006, c. 21, Sched. C, s. 22.

APPENDIX B

Excerpt from By-Law 4: "Friends and Family Exemption"

Providing Class P1 legal services without a licence

30. (1) Subject to subsection (2), the following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

….

Acting for friend or neighbour

5. An individual
i. whose profession or occupation is not and does not include the provision of legal services or the practice of law
ii. who provides the legal services only for and on behalf of a friend or a neighbour,
iii. who provides the legal services in respect of not more than three matters per year, and
iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

Acting for family

5.1. An individual,
i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
ii. who provides the legal services only for and on behalf of a related person, within the meaning of the *Income Tax Act* (Canada), and
iii. who does not expect and does not receive any compensation, including a fee, gain or

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

Copy of the Professional Regulation Division Quarterly Report January – March 2011.
(pages 14 – 48)

Re: Amendments to Rule 2.02 of the *Rules of Professional Conduct* and By-Law 9 (Financial Transactions and Records) Respecting Trust Account Requirements

It was moved by Mr. Porter, seconded by Mr. Fleck, that Convocation approve the amendments to By-Law 9 as set out in the motion distributed under separate cover and to subrule 2.02(5) of the *Rules of Professional Conduct* set out at Appendix 2 of the Report.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 9
[FINANCIAL TRANSACTIONS AND RECORDS]

THAT By-Law 9 [Financial Transactions and Records], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, January 24, 2008 and February 21, 2008, be further amended as follows:

1. Paragraph 1 of section 18 of the English version of the By-Law is amended by adding ", the purpose for which money is received" after "the amount of money received".

2. Paragraph 1 of section 18 of the French version of the By-Law is amended by adding ", l'usage de ces fonds" after "le montant des fonds reçus".

3. Paragraph 2 of section 18 of the English version of the By-Law is amended by adding ", the purpose for which money is disbursed" after "the amount of money which is disbursed".

4. Paragraph 2 of section 18 of the French version of the By-Law is amended by adding ", l'usage du décaissement" after "le montant du décaissement".

Re: Policy on Prohibition on Representation of Licensees

It was moved by Mr. Porter, seconded by Mr. Fleck, that Convocation approve the policy that Law Society benchers are prohibited from acting as representatives of licensees who are the subject of an investigation by the Law Society.

Carried

For Information

- Professional Regulation Division Quarterly Report

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT

Mr. Conway presented the Report.

Report to Convocation
April 28, 2011

Professional Development & Competence Committee

COMMITTEE MEMBERS

Thomas Conway (Chair)
Mary Louise Dickson (V-Chair)
Alan Silverstein (V-Chair)
Constance Backhouse
Larry Banack
Jack Braithwaite
Marshall Crowe
Aslam Daud
Paul Dray
Lawrence Eustace
Gary Lloyd Gottlieb

Jennifer A. Halajian
Susan Hare
Thomas Heintzman
Dow Marmur
Susan McGrath
Janet Minor
Daniel Murphy
Nicholas Pustina
Heather Ross
Catherine Strosberg
Bonnie Tough

Purpose of Report: Decision
Information

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

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COMMITTEE PROCESS

1. The Committee met on April 7, 2010. Committee members Tom Conway (Chair), Mary Louise Dickson (Vice-Chair), Constance Backhouse, Jack Braithwaite, Marshall Crowe, Paul Dray, Larry Eustace, Jennifer Halajian, Susan Hare, Tom Heintzman, Susan McGrath, Janet Minor, Nicholas Pustina, and Cathy Strosberg attended. Bencher Julian Falconer also attended the meeting. The Treasurer, Laurie Pawlitza, and the CEO, Malcolm Heins, attended part of the meeting. Staff members Lisa Hall, Diana Miles, Elliot Spears, Sophia Sperdakos and Sybila Valdivieso also attended.

FOR DECISION

LAKEHEAD UNIVERSITY (ONTARIO) AND THOMPSON RIVERS UNIVERSITY (BRITISH COLUMBIA) APPLICATIONS

MOTION

2. That Convocation approve Lakehead University's proposed academic program leading to the conferral of a common law law degree that would entitle its holders to apply for admission to the Law Society of Upper Canada on the following conditions:

   i. issuance by the appropriate governmental authority of such approvals as are necessary for the Lakehead University Law Degree Program to come into existence;

   ii. full implementation to the satisfaction of the Federation of Law Societies of Canada's Ad Hoc Committee ("the Ad Hoc Committee") until such time as a successor body is established pursuant to the implementation of the Federation of Law Societies of Canada Task Force Report on the Canadian Common Law Degree ("the Task Force Report"), of the undertakings and representations made by the applicant in its submissions to the Ad Hoc Committee as set forth in Appendix B of the Committee Report including, without limitation, those with respect to the securing of financial resources necessary to operate the program as described; and

   iii. ongoing compliance with such measures as may be established by the Federation pursuant to the implementation of the Task Force Report for the purpose of ensuring that the Lakehead University Law Degree Program continues to meet the National Requirement.

3. That Convocation approve Thompson Rivers University's proposed academic program leading to the conferral of a common law law degree that would entitle its holders to apply for admission to the Law Society of Upper Canada on the following conditions:

   i. issuance by the appropriate governmental authority of such approvals as are necessary for the Thompson Rivers University Law Degree Program to come into existence;

   ii. full implementation to the satisfaction of the Ad Hoc Committee until such time as a successor body is established pursuant to the implementation of the Task Force Report, of the undertakings and representations made by the applicant in its submissions to the Ad Hoc Committee as set forth in Appendix C of the Committee Report including, without limitation, those with respect to the securing of financial resources necessary to operate the program as described; and

   iii. ongoing compliance with such measures as may be established by the Federation pursuant to the implementation of the Task Force Report for the purpose of ensuring that the Thompson Rivers University Law Degree Program continues to meet the National Requirement.

Introduction and Background

4. The Federation of Law Societies of Canada's Ad Hoc Committee on Approval of New Canadian Law Degree Programs ("the Ad Hoc Committee")[1] recently completed its report on whether to recommend approval of two new Canadian LL.B/JD academic programs for the purposes of entry of those schools' graduates to law societies admission programs in Canadian common law jurisdictions.[2]

5. Law societies have delegated to the Federation of Law Societies of Canada responsibility to consider new law program applications in the first instance and make recommendations to the Federation and law societies on whether they should be approved. This approach ensures a consistent approval process and consideration across the country in support of portability of law degrees.

6. In 2009 the Federation of Law Societies of Canada's Task Force on the Approved Common Law Degree made recommendations for national requirement ("the national requirement") to be met by those seeking entry to the licensing or bar admission programs of Canadian law societies in common law jurisdictions. These would apply equally to the programs of established and new schools. The Federation then established an Implementation Committee, which Tom Conway chairs, to implement the Task Force recommendations. That Committee will submit its report to the Federation by September 2011.

7. Because the two applications respecting new law programs were received before the Implementation Committee was established, the Federation established the Ad Hoc Committee to consider applications for new law school programs in light of the national requirement and to make recommendations to the Federation Council.

8. The two applications are from Lakehead University in Ontario and Thompson Rivers University in British Columbia. The Ad Hoc Committee considered the applications and made the following recommendations on each application to Federation Council:

   a. Lakehead

   That the Federation accept the application by Lakehead University for approval of a new academic program leading to the conferral of a common law law degree which would entitle its holders to apply for admission to Canadian law societies (the "Lakehead Law Degree Program"), such approval being granted on the following conditions:

   (i) issuance by the appropriate governmental authority of such approvals as are necessary for the Lakehead Law Degree Program to come into existence;

[1] The members of the Ad Hoc Committee are Ronald J. MacDonald, Q.C. (chair), President of the Federation, Marilyn Billinkoff, Deputy CEO of the Law Society of Manitoba, Dean Philip Bryden, Faculty of Law - University of Alberta, Tom Conway, Federation Council member for Law Society of Upper Canada, Graeme Mitchell, Q.C., Federation Council Member for the Law Society of Saskatchewan, Stephanie L. Newell, Q.C., Federation Council Member for the Law Society of Newfoundland and Labrador.

[2] Law societies do not have authority over the establishment of law schools in Canada. Their authority is to determine whether graduates from Canadian law schools will be entitled to enter their licensing processes.

(ii) full implementation to the satisfaction of the Committee until such time as a successor body is established pursuant to the implementation of the Task Force Report, of the undertakings and representations made by the applicant in its submissions to the Committee as set forth in Appendix B of the Committee Report including, without limitation, those with respect to the securing of financial resources necessary to operate the program as described; and

(iii) ongoing compliance with such measures as may be established by the Federation pursuant to the implementation of the Task Force Report for the purpose of ensuring that the Lakehead Law Degree Program continues to meet the National Requirements; and

b. Thompson Rivers

(b) That the Federation accept the application by Thompson Rivers University for approval of a new academic program leading to the conferral of a common law law degree which would entitle its holders to apply for admission to Canadian law societies (the "Thompson Rivers Law Degree Program"), such approval being granted on the following conditions:

(i) issuance by the appropriate governmental authority of such approvals as are necessary for the Thompson Rivers Law Degree Program to come into existence;

(ii) full implementation to the satisfaction of the Committee until such time as a successor body is established pursuant to the implementation of the Task Force Report, of the undertakings and representations made by the applicant in its submissions to the Committee as set forth in Appendix C of the Committee Report including, without limitation, those with respect to the securing of financial resources necessary to operate the program as described; and

(iii) ongoing compliance with such measures as may be established by the Federation pursuant to the implementation of the Task Force Report for the purpose of ensuring that the Thompson Rivers Law Degree Program continues to meet the National Requirements.

9. The Federation Council has now considered the Ad Hoc Committee recommendations and approved them. Ultimate authority for entitling holders of Canadian common-law law degrees to seek entry to law society admission programs rests with the law societies themselves. Accordingly, law societies across the country have been asked to consider whether to accept the Council's recommendations.

10. The President of the Federation has sent a letter to each law society setting out the background and possible approach to considering the Ad Hoc Committee recommendations. The letter to Treasurer Laurie Pawlitza is set out at APPENDIX 1. It reflects law societies' commitment to a national approach to approval of new law programs to ensure ongoing portability of law degrees and as illustrative of the value of harmonized approaches to standards across the country, wherever possible, in the public interest.

11. The Ad Hoc Committee's mandate, membership and methodology, the nature of each university's proposal, the material filed in support of the applications and the approved national requirement against which the applications were assessed are set out in the Ad Hoc Committee's report.

Lakehead University Application

12. The Law Society is already familiar with Lakehead University's ("Lakehead") application. Lakehead first brought its application to the Law Society for its consideration in 2007. After the PD&C Committee had provided some comments on the application it was advised that, in fact, all law societies had delegated the responsibility for making a recommendation concerning applications for new law programs to the Federation of Law Societies of Canada in order to ensure that portability of common law degrees continued across the country. Because there had been no applications for new law programs in approximately 27 years, this fact was initially overlooked. The Law Society advised Lakehead of the appropriate process for considering new law program applications.

13. Despite the fact that the Federation Committee was to take over the formal consideration of the application, the Law Society and Lakehead felt that the Law Society could usefully provide additional input to Lakehead on its application, which it did, including in a face-to-face meeting with representatives in May 2007.

14. Lakehead considered the Law Society's comments and over a number of months revised its application, including obtaining an external review of its proposal and seeking input from the Council of Canadian Law Deans.

15. In April 2008 the PD&C Committee's Report to Convocation included the following motion, which Convocation approved:

> *The Law Society recognizes that Lakehead University's proposal for the establishment of a Faculty of Law must be considered by the National Committee on Accreditation (a subcommittee of the Federation of Law Societies of Canada that will assess the proposal and make recommendations), and by the Ontario Ministry of Training, Colleges and Universities.*
>
> *Convocation wishes to express to those bodies its view that the proposal is an important initiative. The proposal appears to have sound and persuasive objectives. It is worthy of careful consideration.*
>
> *That Convocation approve providing this Report to the National Committee on Accreditation and the Ministry of Training, Colleges and Universities for their information.*

16. The Law Society's motion made it clear that in its view the Lakehead University proposal was a valuable one. The Committee's report to Convocation at that time is set out at APPENDIX 2. (The separate volume of material provided at that time is not included, but is available on request.)

17. Between the time that the Law Society approved the April 2008 motion and the Ad Hoc Committee took on the task of considering the application, the Federation approved the national requirement referred to above. Lakehead revised its application to address the national requirement and to respond to further inquiries and requests for information that the Ad Hoc Committee made.

18. The Ad Hoc Committee's Report on Lakehead University is part of its report on both applications. It is set out at APPENDIX 3 and includes Lakehead's supporting materials.

Thompson Rivers University Application

19. In February 2009 the Government of British Columbia announced plans for a new law school to be established at Thompson Rivers University. It will be a three year program of study at a new Faculty of Law at the Kamloops campus leading to a J.D. degree.

20. Thompson Rivers University has entered into a Licence Agreement with the University of Calgary through which its J.D. degree will be offered in conjunction with the University of Calgary. Further details of the proposed program are set out in the Ad Hoc Committee's report.

21. The Ad Hoc Committee's Report on Thompson Rivers University is set out at APPENDIX 3 and includes Thompson Rivers' supporting materials.

22. The Ad Hoc Committee has considered both applications thoroughly and obtained detailed information in response to its request for additional information. The Federation Council agrees with the Ad Hoc Committee's recommendations.

23. Law Societies are asked to consider the Ad Hoc Committee's recommendation and, if appropriate, approve them. It is important to remember that law societies' authority is only on whether the applications meet the national requirement for the purposes of entry to licensing and bar admissions processes.

24. The Committee has considered both applications, the recommendations of the Ad Hoc Committee and the Federation Council and agrees with them. It is of the view that the applications should both be approved, in accordance with the motion in paragraphs 2 and 3 above.

APPENDIX 2

Report to Convocation
April 24, 2008

Professional Development & Competence Committee

EXCERPT

Committee Members
Laurie Pawlitza (Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)
Robert Aaron
Jennifer Halajian
Susan Hare
Laura Legge
Daniel Murphy
Judith Potter
Nicholas Pustina
Heather Ross

Purposes of Report: Decision

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

COMMITTEE PROCESS

1. The Committee met on April 10, 2008. Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice Chair), Mary Louise Dickson (Vice Chair) Alan Silverstein (Vice Chair), Jennifer Halajian, Susan Hare, Laura Legge, Judith Potter, Nicholas Pustina and Heather Ross attended. Staff members Leslie Greenfield, Lisa Mallia, Diana Miles, Nancy Reason, Sophia Sperdakos and Sheena Weir also attended.

LAKEHEAD UNIVERSITY PROPOSAL FOR THE ESTABLISHMENT OF A FACULTY OF LAW

[SEPARATE VOLUME REFERRED TO NOT IS PROVIDED WITH THIS EXCERPT]

MOTION

2. That Convocation approve the following motion:

   The Law Society recognizes that Lakehead University's proposal for the establishment of a Faculty of Law must be considered by the National Committee on Accreditation (a subcommittee of the Federation of Law Societies of Canada that will assess the proposal and make recommendations), and by the Ontario Ministry of Training, Colleges and Universities.

   Convocation wishes to express to those bodies its view that the proposal is an important initiative. The proposal appears to have sound and persuasive objectives. It is worthy of careful consideration.

3. That Convocation approve providing this Report to the National Committee on Accreditation and the Ministry of Training, Colleges and Universities for their information.

Background

4. In January 2007 the Law Society received Lakehead University's ("Lakehead") proposal for the establishment of a law school. The PD&C Committee reviewed the material and raised some concerns about the proposal as well as concerns that the 1957 (slightly amended in 1969) requirements for the approved law degree were outdated and in need of review and reform. It advised Convocation of the proposal and made a number of recommendations as follows, which Convocation approved:

    1. That Convocation defer the decision respecting the Lakehead University proposal for a law school at this time.

    2. That the Law Society advise Lakehead University of its concerns with the proposal as set out in paragraph 16[3] of this report.

    3. That Convocation direct the Committee to review the 1957 (1969) requirements for a law program with a view to establishing modern, relevant criteria for the 21st century.

    4. That any ultimate recognition of the Lakehead University proposal should be subject to the understanding that if the requirements for a law program change, it will be expected to meet the new requirements.

    5. That the Law Society communicate with the Ministry of Training, Colleges and Universities to explain its decision to review the 1957(1969) criteria and advise it that the Law Society will not consider any new proposals for law programs until such time as it completes its review.

    6. That the Law Society should advise the Federation of Law Societies of Canada of the review it is undertaking.

5. Subsequently, the Committee was advised that, in fact, the responsibility for making a recommendation concerning applications for new law programs had been delegated by member law societies to the Federation of Law Societies of Canada in order to ensure that portability of common law degrees continued across the country. This means that the National Committee on Accreditation (NCA) will assess applications and make recommendations to the Federation of Law Societies and its member law societies.

6. In May 2007 the Chair and some members of the Committee and staff met with the President of Lakehead and the Lakehead committee to discuss the university's application and some of the concerns the Professional Development & Competence Committee had raised about the proposal. At that time the Committee confirmed with Lakehead the role of the NCA as the body that would make recommendations on the proposal. The Committee suggested to Lakehead that it contact the NCA at that time to set that process in motion.

[3] The text of paragraph 16 is set out at Appendix 1.

7. In January 2008, Lakehead advised the Law Society that it had completed a revised proposal. Lakehead's revised proposal (dated January 28, 2008), the complete text of the external review conducted for Lakehead by Professor Roderick A. Macdonald, F.R. Scott Professor of Constitutional and Public Law from the Faculty of Law at McGill University (dated January 1, 2008), the University's response to the external review, and the University's further addendum to its proposal (dated February 15, 2008) are set out in a volume under separate cover. The Law Society has also been provided with a number of letters respecting the Lakehead proposal, which are contained in the volume under separate cover.

8. Lakehead also met with the Council of Ontario Law Deans. Lakehead's February 15, 2008 addendum contained in the volume under separate cover seeks to address some of the issues raised during that meeting. Through correspondence with Dean Monahan, the Law Society asked for the Ontario Law Deans' comments on their meeting with Lakehead. Dean Monahan's reply, the Treasurer's letter to President Gilbert seeking his comments on the Dean's letter and President Gilbert's reply are contained with Lakehead's materials in the volume under separate cover

Discussion

9. In considering the Lakehead proposal the Committee first reviewed the decision making hierarchy on this issue, as follows:

    a. In the early 1990s, law societies in Canada agreed that a Committee of the Federation of Law Societies of Canada should assess and recommend to law societies the recognition of new full-time, part-time and joint degree law school programs. The Committee charged with this role since 1994 is the National Committee on Accreditation.

    b. Once the National Committee makes its recommendations to the Federation and its member law societies, each of the law societies must determine whether its governing body approves that recommendation.

    c. This means that once the National Committee on Accreditation does its assessment of the Lakehead proposal and makes its recommendations, the Law Society of Upper Canada will, along with all the other member law societies, be entitled to vote in its Convocation on whether it agrees with that recommendation.

    d. The National Committee on Accreditation's and law societies' roles are confined to determining whether a law program is such that its graduates will be entitled to enter provincial bar admission programs without having to satisfy any additional requirements.

    e. Before a new law faculty can be established in Ontario, the Ministry of Training, Colleges and Universities must also give its approval. This is separate and apart from any recommendation from the National Committee on Accreditation and any approval by the Law Society of that recommendation. The Ministry's criteria for approval are not the same as those of the Federation and member law societies.

10. Next the Committee considered the issue of the status of the 1957 requirements (as amended in 1969), which describe the Law Society of Upper Canada's requirements pertaining to the approval of law faculties for the purpose of admission of their graduates to the bar admission course (now licensing process). These requirements have been determined to be out of date and do not reflect a modern, national approach and given that they are under review by a Federation of Law Societies of Canada Task Force and a Law Society of Upper Canada Task Force. The Committee is of the view that commenting on the Lakehead proposal in the context of those requirements would be of little assistance to Lakehead, the National Committee on Accreditation or the Ministry of Training Colleges and Universities. This is particularly true given that the requirements are likely to change following the reporting of the Task Forces.

11. The Committee has carefully reviewed Lakehead's revised proposal and all the supporting material it received. In the period between its first and its revised proposal, Lakehead sought out an external reviewer, Professor Roderick A. Macdonald, F.R. Scott Professor of Constitutional and Public Law from the Faculty of Law at McGill University. His detailed report, set out in the volume under separate cover, concludes that the proposal is academically sound, that the rationales given for the school's establishment persuasive, that the curriculum design and course proposals are well thought out, that resource issues are carefully considered and that the governance structure appears workable.

12. It is important to note that the Committee has considered the *content* of the proposal, not issues such as whether there is a need for additional law schools in Ontario to meet certain objectives.

13. The Committee is impressed with the work Lakehead has done since its original proposal to flesh out its objectives and the goals and to address issues related to curriculum and resources for the school. The proposal is an important initiative. The proposal appears to the Committee to have sound and persuasive objectives. The Committee is of the view that it is worthy of careful consideration. It believes this view should be communicated to the NCA and the Ministry of Training, Colleges and Universities.

14. The Committee wishes to make two additional comments. The first is to point out that it is not yet known what will emerge from the two Task Forces' work on the approved law degree. Lakehead's proposal as currently described would have to be adapted to conform to any new requirements that emerge from that review. This would apply to all established Canadian common law faculties as well.

15. The second comment relates to the component of Lakehead's proposal that addresses articling positions and its co-operative program. The Committee previously raised concerns with Lakehead about difficulties that have existed in finding articling placements in northern Ontario and elsewhere in the province outside of metropolitan areas. In doing so it made it clear to Lakehead that this issue is not part of any law society criteria relating to program approval, but rather an attempt to impress upon Lakehead the efforts that will be necessary to meet the objectives of sufficient articling and co-op positions in the north for Lakehead's students and the Law Society's continuing concern that insufficient commitments have been obtained to date to

implement a co-op program and between 45-55 articling jobs. In expressing this concern, the Committee acknowledges that it is no doubt difficult to obtain commitments when the Faculty has not yet been established. Further, the Committee acknowledges that its concern is not unique to Lakehead, as established Law Faculties will have to consider more significant efforts to assist their students to obtain positions, given the likely shortage of positions in the future.

Appendix 1

Excerpt from PD&C Committee Report to Convocation (January 2007)

16. In particular, the Committee notes the following:

a. It would not appear that Lakehead has engaged in any meaningful discussions with the other law schools or the Council of Law Deans to gain insight into how to ensure the viability of a northern law school. The proposal is very general and basic. In the letter from Neil Gold, Vice-President, Academic, University of Windsor, he discusses the significant changes that have occurred in legal education and the importance of a law school structure that affords students the greatest opportunities for development. He notes:

> We would be very pleased to convene a group with which you might wish to discuss your proposal. Such a group would be comprised of individuals who have experience in modern legal education and have thought about these profound changes that have occurred in the legal academy. I believe that the Council of Law Deans' members would be a good choice, among others. Such discussions would no doubt assist your planning and the filling out of your proposal.

The Committee considers this to be a very helpful and important suggestion for Lakehead to consider.

b. One of the central features of the proposal is the idea that graduates will obtain cooperative placements and articling positions in the north. Yet the Committee has serious concerns about whether the research into northern articling placements and law firm commitment to taking cooperative students has been through enough. The proposal states that Lakehead sent surveys to 123 firms in Northwestern Ontario. Approximately one-third of the questionnaires were returned and the proposal says that the results demonstrated significant support. However this conclusion is based on support for 10-15 placements from those who responded to the survey and another 20-30 positions if "a similar ratio is assumed for the approximately two-thirds not returning the surveys."

The Committee questions whether any interest can be imputed to those who did not respond to the survey. Moreover, given the focus on a cooperative program, each student would be seeking two placements, one for the co-op placement and one for articling, thereby doubling the number of positions that must be found.

c. Given that Lakehead does not appear to have had detailed consultations with law schools it is not clear how it can state that unmet faculty needs "will be fulfilled by teaching arrangements with other Ontario law schools."

LICENSING EXAMINATION PROCESS

MOTION

25. That Convocation approve the following proposal respecting Law Society of Upper Canada licensing examinations:

    a. to qualify for a Class L1 licence, candidates would have three years from the time of registering with the Law Society as licensing candidates to pass the licensing examinations and would be limited in the number of total attempts they would have to pass the licensing examinations;

    b. Initially, licensing candidates would only have a total of three attempts to pass the licensing examinations. However, there would a "right" for candidates who failed the licensing examinations after three attempts to seek a waiver of the "three attempt rule" from the Director, Professional Development and Competence.

    c. A request for a waiver could only be made once, and the Director, Professional Development and Competence, could only permit one further attempt at the licensing examinations.

    d. Licensing candidates who failed the licensing examinations after three attempts and did not seek permission to make a fourth attempt, candidates who failed the licensing examinations after three attempts and are not permitted by the Director, Professional Development and Competence to make a fourth attempt or candidates who fail the licensing examinations after four attempts would have their registration with the Law Society cancelled.

    e. Thereafter, the (now former) licensing candidates would be permitted to re-register with the Law Society only after a year had passed (from the time registration was cancelled) and only after demonstrating to the Director, Professional Development and Competence a change in circumstances.

26. That Convocation direct the amendment of Law Society by-laws to reflect the proposal in paragraph 25, such proposed amendments to be provided to Convocation for approval.

Introduction and Background

27. The Law Society of Upper Canada is a participant in the Federation of Law Societies of Canada's project to develop national law society admission standards for all lawyer candidates in Canada. Considerations such as,

a. a commitment to national competency standards and national mobility;
b. required compliance with the provisions of the Agreement on Internal Trade; and
c. Competition Bureau comments respecting the need for greater consistency in licensing on a national level;

have increased the need for law societies to harmonize their bar admission/licensing requirements. The National Standards Project is developing a proposed harmonized approach that law societies will be asked to consider.

28. Given the existence of the project, it is timely for the Law Society to revisit its licensing examination writing process to reflect on whether revision is appropriate.

The Law Society Process

29. The Law Society's current Licensing By-Law sets out the time frames within which lawyer or paralegal licensing candidates are required to complete the licensing examinations:

By-Law 4
Class L1 License
s. 9(1)2: The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

Class P1 License
s. 13(1)2: The applicant must have successfully completed the applicable licensing examination or examinations set by the Society by not later than two years after the end of the licensing cycle into which the applicant was registered.

30. The Law Society offers licensing examinations three times per licensing year for lawyers and for paralegals. Lawyer candidates must write the Barrister Examination and the Solicitor Examination. Writing sessions are offered in June, November and March. Paralegal candidates write only one examination. Writing sessions are offered in August, October and February.

31. Because the current by-law provisions do not limit the number of times a lawyer or paralegal candidate can attempt each examination in the three years they have to complete the licensing process, candidates can potentially write each examination nine times in an effort to achieve a passing score. No prior permission is required.[4]

32. The majority of lawyer and paralegal candidates write their examinations in the first available examination session following registration into their respective licensing processes. Most candidates who are required to write the examinations more than once usually take a break between examination dates, and opt to write in alternating sessions.

[4] The Law Society has never, in the history of the bar admission course or the Licensing Process, had a candidate write an examination nine times. The maximum number of attempts has been the writing of the lawyers' examinations eight times (two candidates).

Some lawyer candidates also split their examination writing efforts, writing the barrister examination and the solicitor examination in different examination scheduling periods. Most of those rewriting an examination or splitting examination writings still do so within one year.

33. All candidates who fail a Law Society of Upper Canada licensing examination are provided with,
    a. a profile outlining areas of weakness so that they can address those areas as they prepare to write the examination again; and

    b. the opportunity to obtain tutoring immediately after the first failed examination. All costs of tutoring and the organization of the tutoring sessions are supported by the Law Society.

34. Candidates may also request special consideration for further attempts over and above the provisions set out above. Requests are considered on a case-by-case basis. Additional attempts may be granted when the candidate has been faced with exceptional circumstances that would have negatively affected his or her ability to properly focus on the task of preparing for and writing an examination, such as a documented disruption to their physical or mental well-being at the time.

Other Canadian Law Societies

35. The chart at APPENDIX 4 sets out the examination writing/bar admission attempt opportunities in Canadian law societies, lawyer licensing in some international jurisdictions and in other regulated professions in Canada (accounting).

36. The majority of regulators for the legal profession in Canada provides two attempts for candidates to write and pass examinations. Seven out of 10 law societies that set their own examinations for their jurisdiction or support other provinces or territories provide only two attempts. Two law societies provide three attempts. Ontario is the only jurisdiction to allow nine attempts.

Discussion

Examination Attempts

37. The focus of the Licensing Process is to ensure that candidates have demonstrated the required competencies at an entry level to provide legal services effectively and in the public interest. While it is important that any process be flexible enough to accommodate the diverse needs of the candidates in terms of time within which to satisfy the requirements and a reasonable opportunity to attempt failed examinations again, the process's credibility as a licensing tool must also be kept in mind.

38. As has been illustrated, most law societies provide two or three opportunities for rewriting examinations as an appropriate balancing of the criteria described above. Arguably permitting nine attempts undermines the credibility of the L1 licensing process. Moreover, the Law Society's own statistics suggest that it has not proven necessary to allow L1 candidates so many opportunities to write. APPENDIX 5 sets out the results of multiple examination attempts for both lawyer and paralegal licensing since the Lawyer Licensing process began in 2006.

39. The statistics suggest that only a handful of candidates might be affected by a decision to reduce the number of examination writing opportunities to three times. Greater use of the Law Society's tutoring opportunities by candidates who have failed examinations might further reduce that small number.

40. Maintaining the current time frame within which to complete the licensing process would continue to provide candidates with the opportunity to schedule examination writing to suit their needs and, in the event they fail an examination, provide the opportunity to use the tutoring opportunities afforded them.

41. Any decision to reduce the number of writing attempts to three times for each examination would apply on a going forward basis. If approved it would apply to those lawyer and paralegal licensing candidates entering the process in May 2012(lawyers) and June 2012 (paralegals). Candidates would be advised of the change of policy prior to finalizing their registration into the licensing process in March 2012. Candidates currently registered in the licensing processes would be governed by the existing policies.

Re-registration

42. The current policy also permits a candidate who has failed all the available supplemental examinations and exhausted the three year period within which to complete the licensing process to automatically register to do the entire licensing process again.

43. The Law Society has authority to limit the number of attempts a candidate for a Class L1 or P1 licence may have to pass licensing examinations. This stems from its authority to govern the licensing of persons to practise law or provide legal services in Ontario, to prescribe the qualifications and requirements for the various classes of licence that it may establish and to govern applications for a licence. The central operative provisions are contained in paragraph 4.1 of subsection 62 (0.1) of the Law Society Act:

> 62. (0.1) Convocation may make by-laws,
>
> 4.1 governing the licensing of persons to practise law in Ontario as barristers and solicitors and the licensing of persons to provide legal services in Ontario, including prescribing the qualifications and other requirements for the various classes of licence and governing applications for a licence;

44. Where there is a limitation on the number of times licensing examinations may be written it is appropriate to include a discretionary provision relieving against the limitation. The Law Society's licensing process already addresses fairness considerations where exceptional circumstances warrant the use of discretion. This would continue in the proposed approach. Jurisprudence also supports the approach to discretion that the proposal set out below includes.

45. The proposal respecting licensing examinations is as follows:
    a. to qualify for a Class L1 licence, candidates would have three years from the time of registering with the Law Society as licensing candidates to pass the licensing examinations and would be limited in the number of total attempts they would have to pass the licensing examinations;

b. Initially, licensing candidates would only have a total of three attempts to pass the licensing examinations. However, there would a "right" for candidates who failed the licensing examinations after three attempts to seek a waiver of the "three attempt rule" from the Director, Professional Development and Competence.

c. A request for a waiver could only be made once, and the Director, Professional Development and Competence, could only permit one further attempt at the licensing examinations.

d. Licensing candidates who failed the licensing examinations after three attempts and did not seek permission to make a fourth attempt, candidates who failed the licensing examinations after three attempts and are not permitted by the Director, Professional Development and Competence to make a fourth attempt or candidates who fail the licensing examinations after four attempts would have their registration with the Law Society cancelled.

e. Thereafter, the (now former) licensing candidates would be permitted to re-register with the Law Society only after a year had passed (from the time registration was cancelled) and only after demonstrating to the Director, Professional Development and Competence a change in circumstances.

46. A consideration that arises from the proposal is whether the Director's refusal to grant a waiver from the requirement is an event that would be considered the refusal of a licence, thereby triggering the requirement in section 27(4) of the Law Society Act that "[a]n application for a licence may be refused only by the Hearing Panel after holding a hearing." Given that the provisions of section (d) are tempered by the provisions of section (e) a refusal of the waiver is not a refusal to grant the licence, but rather part of the Law Society's authority to control the integrity of its licensing examination process by controlling access to it.

47. The Paralegal Standing Committee considered this issue at its meeting in April 2011 and agrees that the recommended approach apply to P1 candidates for licence. The Paralegal Standing Committee Report to Convocation includes a motion for Convocation's approval.

APPENDIX 4

Jurisdiction	Program/Exam Name	No. of Attempts	Time Limits	Right to Repeat Program
LS of Alberta	CPLED	2	Within 2 years of enrollment or a longer period approved by the Exec. Director or Committee	Yes - once
LS of British Columbia	PLTC	3	Before end of articles	Yes, on application and as directed by Credentials Committee
LS of Manitoba	CPLED	2	Within 2 years of start of CPLED or articles, whichever comes first	Yes, with permission of CEO (and may only repeat twice)
LS of New Brunswick	BAC	2 (3 under circumstances outlined under "Right to Repeat Program")	Before end of articles	Yes, on application and as directed by the Bar Ad Committee. To be eligible to write exams a 3rd time, articling students must complete additional 44 weeks of articles; transfer candidates must wait 1 year before the 3rd attempt.
LS of Newfoundland & Labrador	BAC	2	Before end of BAC	Yes, with permission of the Bar Ad Committee. May have to repeat BAC or articles to retake exams
Nova Scotia Barristers' Society	BAC	3 (unless Bar Ad Committee otherwise permits)	Before end of BAC	Yes, with permission of Bar Ad Committee. May have to complete all or portion of BAC and extend articles up to 12 months
LS of Upper Canada	Lawyer Licensing Process	9 (Note: 9 for Paralegal Licensing Process)	Within 3 years of admission into process	n/a
Barreau du Québec	PTP (Prof. Training Program)	2	Before end of PTP	Yes, with permission of PTP Committee. Must register for prep. courses before being allowed to re-register in PTP
LS of Saskatchewan	CPLED	2	Before end of articles	Yes, once – with

				permission of Executive Director
Jurisdiction	Program/Exam Name	No. of Attempts	Time Limits	Right to Repeat Program
LS of Yukon	BAC	2 (more with permission of Executive)	Before end of BAC and articles	Yes, as directed by Executive. May be required to extend articling term
England and Wales	Legal Practice Course (Solicitors)	3	Within 5 years of first attempt at assessment	Yes
England and Wales	Bar Professional Training Course (to replace Bar Vocational Course in 2010-11) (Barristers)	2	Within 2 years (3 years for part-time students)	Yes
New South Wales, Australia	Bar Practice Course	No limit	Must commence practice within 10 months of passing exams. Repeated failure could lead to loss of currency of previously passed exams.	n/a
United States Bar Examiners	Bar Exams	No limit in 36 states and territories (including California and New York). Limits in remaining 20 jurisdictions range from 2 – 6.	n/a	n/a
Chartered Accountants – Ontario	Uniform Evaluation (UFE)	4 (Note: 3 in some provinces)	Must take within 7 years of registration and pass within 10 years	Yes, former students of ICAO may re-register in the CA training program.

Certified General Accountants – Ontario	CGA Program	4	Ranges from 3-10 years, depending on number of transfer credits	Yes, may re-enroll in one or more courses

APPENDIX 5

Results of Multiple Examination Attempts: Lawyer Licensing

1. The current Lawyer Licensing Process began in 2006 with the first set of examinations written in June of 2006.

2. Since the inception of these examinations, of the 6188 candidates who have written examinations 92 candidates have requested and received the opportunity to write one or both of the examinations more than three times. This represents 1.5% of the candidates that have entered the process since 2006.[1]

3. Of the 92 candidates, 46 of those candidates have since been licensed or are about to be licensed in 2010. Ten of the candidates have withdrawn.

4. The remaining 36 candidates continue in the process in an attempt to pass the examinations. Of those 36 candidates, eight candidates are in the licensing process for the second time, having exhausted the three-year period of completion and reapplied to begin the process again. These candidates will once again be entitled, under the current policies, to three years within which to complete the licensing process and as many as nine attempts at each of the Barrister and Solicitor examinations.

5. Of the 36 candidates, only 12 have availed themselves of the Law Society's tutoring. Those 12 candidates have received an average of 22.85 hours of tutoring in preparation for additional attempts at the examinations – ranging from a high of 105.75 hours provided to one candidate, to a low of 1 hour, with a median of 6.8 hours.

6. A breakdown of the remaining 36 individuals is as follows:

    - 13 of the 36 candidates entered the Licensing Process with a Certificate of Accreditation from the National Committee on Accreditation (NCA) and obtained their law degree from the following jurisdictions:
        - 6 of 13 – India
        - 2 of 13 – Australia
        - 1 of 13 – Sri Lanka
        - 1 of 13 – Pakistan
        - 1 of 13 – Nigeria
        - 1 of 13 – Liberia
        - 1 of 13 – U.S.A.
    - 13 of 15 candidates self-designated as members of one or more equality seeking groups as follows:
        - 5 of 15 – Racialized Community
        - 5 of 15 – Francophone
        - 3 of 15 – Aboriginal
        - 2 of 15 – Racialized/Francophone

    - 10 of 36 candidates were not candidates entering the process through the NCA nor did they self-designate as a member of an equality seeking community.

[1] 2006, 2007, 2008 and 2009 and up to and including the June 2010 examination writing session.

Results of Multiple Attempts: Paralegal Licensing Examinations

7. The Paralegal Licensing Process began in 2008 with the first set of examinations held in April 2008 for the grandparent candidates. However, grandparent and transitional candidates were not allowed to write more than three times. Only college graduates are affected by the current policies.

8. Since the inception of the licensing examination for college candidates, 1686 candidates have written.[2] Of those, eight candidates have written the examination three times and failed all three times. A policy change to allow only three attempts to pass the examination would have impacted 8 candidates or .4% of those who have written to date.

9. One of the eight candidates self-identified as a member of a Racialized Community.

AMENDMENT TO BY-LAW 6.1 (CONTINUING PROFESSIONAL DEVELOPMENT)

MOTION

48. That Convocation approve the following amendment to By-Law 6.1:
THAT By-Law 6.1 [Continuing Professional Development], made by Convocation on October 28, 2010, be amended as follows:

    1. Subsection 2 (8) of the English version of the By-Law is amended by adding “in Canada” before “outside Ontario”.

    2. Subsection 2 (8) of the French version of the By-Law is amended by adding “au Canada” before “hors de l’Ontario”.

Introduction and Background

49. In October 2010 Convocation approved by-laws to implement the CPD requirement for lawyers and paralegals approved in February 2010. Section 2(1) of By-law 6.1 provides that,

> a licensee who after May 31, 2010 is licensed to practise law in Ontario as a barrister and solicitor or licensed to provide legal services in Ontario shall complete twenty-four hours of eligible activities that are accredited by the Society, of which at least twenty-five percent shall consist of eligible activities that are accredited by the Society covering ethics, professionalism or practice management topics, within a period of twenty-four months.

50. Section 2(8) of By-law 6.1 provides,

> This section does not apply to a licensee who, on the day on which he or she is licensed to practise law in Ontario as a barrister and solicitor, has practised law outside Ontario for a period of time exceeding twenty-four months.

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[2] 2008, 2009 and 2010 up to and including August 2010.

51. This exemption was intended to address mobile lawyers from other Canadian jurisdictions whose practice experience in the Canadian context makes meeting the new licensee CPD requirement redundant. It was not intended to allow those with practice experience outside Canada to avoid the new licensee CPD requirement. This is because the requirement will provide additional support for these lawyers as they begin practice in the Canadian context.

52. The proposed amendment better reflects the goal of the original policy.

INFORMATION

CPD BURSARY PROGRAM

Background

53. The joint report of the PD&C Committee and the Paralegal Standing Committee that recommended the introduction of a CPD requirement also included a recommendation that the Law Society further investigate the issue of CPD registration bursaries.

54. The Law Society of Upper Canada has had a CPD bursary program in place since 1986 to assist those lawyers (and, since 2007, paralegals) whose after tax income is not more than a specified amount with reduced CPD registration fees. While the history of the program's introduction is not well documented, it appears to be as follows:

    a. The bursary discount was put into place in March 1986 with an income limit of $25,000 or less, after tax.

    b. This bursary limit was approved for the 1987/88 year through the then Legal Education Committee. There does not appear to be any supporting documentation to suggest how the income level was determined.

    c. The first mention of an income limit of $35,000 or less, after tax, appears to have been in a notice published in the Ontario Reports in February of 1995.

    d. Convocation does not appear to have approved that increase. The decision appears to have been made at an operational level. The maximum income for the bursary has been the same since approximately 1995.

    e. Currently the maximum income for paralegals is the same as the one for lawyers.

55. There is no evidence that the original amount of $25,000 and the increased amount of $35,000 were based on actuarial or other analysis of need.

56. The Law Society bursary currently in place for lawyers or paralegals who have an after tax income of not more than $35,000 is a 50% discount on the registration fee for CPD programs. There is no limit on the number of programs an applicant for the bursary may take. The existence of the bursary program is included on all Law Society CPD advertising and marketing.

57. Bursary requests have been at between 150 and 243 annually since 2002, as the following table illustrates. To place these requests in some context, in 2010 the Law Society had over 19,500 attendees at its programs. Included in the total requests are 16 bursaries provided to paralegals in 2009 and 28 in 2010.[3]

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010
Applicants	209	243	217	161	183	150	161	199	172
Approved	209	243	215	161	182	150	161	199	172

58. As a percentage of practising lawyers or paralegals, these figures represent requests from approximately .08% of paralegals and approximately .06% of lawyers.

Discussion

59. Currently, the Law Society remains one of the lowest priced providers of CPD programs in the province. A lawyer who wishes to participate in live lawyer programming (in situ or webcast) for all nine of the 12 hours of substantive learning required under the CPD requirement would pay, at most, $630 in total. Similarly a paralegal would pay a total in the range of $450 - $500. If lawyers or paralegals satisfy all or even some of their nine hours through the myriad other no-cost CPD eligible activities available their CPD costs could be from zero dollars to only several hundred a year. It is important to consider the bursary issue in this context.

60. To date, the Law Society has not received lawyer/paralegal requests to increase the amount of after tax income. The increase in 1995 appears to have been at the behest of staff, not the profession.

61. The Committees' discussion concerning the bursary arose in the context of the CPD requirement. Since there has not been an increase in the maximum after tax income amount in 15 years and since the Committees considered that the financial implications of the CPD requirement might be greater for some than others, they recommended a review of the CPD bursary.

62. The PD&C Committee has considered when such a review should take place. If done now, before the CPD requirement has been in operation for at least a year, there would be no evidence of the actual implications of the requirement on lawyers and paralegals. The actual extent of any increased requests for bursaries would be unknown.

[3] The Ontario Bar Association maintains a bursary program with a limit of $35,000 **pre-tax.** The program provides "registration at reduced prices to OBA members in good standing." Applicants complete an application. They must indicate their year of call and that their pre-tax income is less than the pre-tax threshold of $35,000. The Advocates Society also maintains a bursary program using the same threshold as the Law Society. Their eligibility states: "The Advocates' Society bursary program provides a 50% discount off the regular registration fee of one program for a maximum of 2 successful applicants per program per year. Bursaries do not apply to certain programs. Successful applicant will be notified in writing. Bursaries are non-transferable. Bursary discounts cannot be combined with other special offers or discounts. Bursaries are valid only for the TAS calendar year in which they are awarded."

63. The Committee is of the view that it would be premature to consider the bursary policy now since the CPD requirement has only just begun. It is more appropriate to evaluate the bursary issue after the CPD requirement has been in operation for some time, so as to be able to determine,

    a. whether there has been a significant increase in bursary requests and approvals and the budgetary implications to the Law Society of these;

    b. whether there have been requests to increase the income eligibility level;

    c. the income levels of those seeking an increase; and

    d. the proportion of lawyers and paralegals seeking bursaries.

64. Moreover the Committee is of the view that any review should also consider whether there should continue to be a CPD bursary given that,

    a. The bursary program was originally introduced in a non-mandatory CPD environment to try to encourage people to attend CPD who otherwise might not;

    b. meeting the CPD requirement is now a condition of the continued right to practise or provide legal services and therefore, arguably, as with membership fees, should not be eligible for subsidy; and

    c. under the CPD requirement, because of the wide array of options by which it may be satisfied, it is possible to acquire all 12 hours of the CPD requirement from the Law Society free of registration costs.

65. The Paralegal Standing Committee has also considered this issue and agrees that deferring consideration along the lines set out in this information report is the appropriate approach.

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

(1) Copy of a letter from Ronald J. MacDonald, Q.C., President, Federation of Law Societies of Canada to Laurie H. Pawlitza, Treasurer dated March 11, 2011 re: Approval by the Federation of Law Societies of Canada of proposed Law Degree Programs at Lakehead University and Thompson Rivers University (copy of Appendix "A" Model Resolution attached).

(Appendix 1, pages 11 – 15)

(2) Copy of New Law Degree Programs – Amended Resolution January 26, 2011.

(Appendix 3, pages 24 – 25)

(3) Copy of the Ad Hoc Committee on Approval of New Canadian Law Degree Programs Report on Applications by: Lakehead University and Thompson Rivers University dated January 2011.

(pages 26 – 470)

Re: Amendment to By-Law 6.1 (Continuing Professional Development)

It was moved by Mr. Conway, seconded by Ms. Dickson, –

That Convocation approve the following amendment to By-Law 6.1:

1. Subsection 2 (8) of the English version of the By-Law is amended by adding "in Canada" before "outside Ontario".

2. Subsection 2 (8) of the French version of the By-Law is amended by adding "au Canada" before "hors de l'Ontario".

Carried

Re: Licensing Examination Process

It was moved by Mr. Conway, seconded by Ms. Dickson, that:

1. Convocation approve the following proposal respecting Law Society of Upper Canada licensing examinations:

   a. to qualify for a Class L1 licence, candidates would have three years from the time of registering with the Law Society as licensing candidates to pass the licensing examinations and would be limited in the number of total attempts they would have to pass the licensing examinations;

   b. Initially, licensing candidates would only have a total of three attempts to pass the licensing examinations. However, there would a "right" for candidates who failed the licensing examinations after three attempts to seek a waiver of the "three attempt rule" from the Director, Professional Development and Competence.

   c. A request for a waiver could only be made once, and the Director, Professional Development and Competence, could only permit one further attempt at the licensing examinations.

   d. Licensing candidates who failed the licensing examinations after three attempts and did not seek permission to make a fourth attempt, candidates who failed the licensing examinations after three attempts and are not permitted by the Director, Professional Development and Competence to make a fourth attempt or candidates who fail the licensing examinations after four attempts would have their registration with the Law Society cancelled.

e. Thereafter, the (now former) licensing candidates would be permitted to re-register with the Law Society only after a year had passed (from the time registration was cancelled) and only after demonstrating to the Director, Professional Development and Competence a change in circumstances; and

2. Convocation direct the amendment of Law Society by-laws to reflect the proposal set out above, such proposed amendments to be provided to Convocation for approval.

Carried

Re: Lakehead University (Ontario) and Thompson Rivers University (British Columbia) Applications Respecting Proposed LL.B./JD Degree Programs

It was moved by Mr. Conway, seconded by Ms. Dickson, –

That Convocation approve Lakehead University's proposed academic program leading to the conferral of a common law law degree that would entitle its holders to apply for admission to the Law Society of Upper Canada on the following conditions:

i. issuance by the appropriate governmental authority of such approvals as are necessary for the Lakehead University Law Degree Program to come into existence;

ii. full implementation to the satisfaction of the Federation of Law Societies of Canada's Ad Hoc Committee ("the Ad Hoc Committee") until such time as a successor body is established pursuant to the implementation of the Federation of Law Societies of Canada Task Force Report on the Canadian Common Law Degree ("the Task Force Report"), of the undertakings and representations made by the applicant in its submissions to the Ad Hoc Committee as set forth in Appendix B of the Committee Report including, without limitation, those with respect to the securing of financial resources necessary to operate the program as described; and

iii. ongoing compliance with such measures as may be established by the Federation pursuant to the implementation of the Task Force Report for the purpose of ensuring that the Lakehead University Law Degree Program continues to meet the National Requirement.

That Convocation approve Thompson Rivers University's proposed academic program leading to the conferral of a common law law degree that would entitle its holders to apply for admission to the Law Society of Upper Canada on the following conditions:

i. issuance by the appropriate governmental authority of such approvals as are necessary for the Thompson Rivers University Law Degree Program to come into existence;

ii. full implementation to the satisfaction of the Ad Hoc Committee until such time as a successor body is established pursuant to the implementation of the Task Force Report, of the undertakings and representations made by the applicant in its submissions to the Ad Hoc Committee as set forth in Appendix C of the Committee Report including, without limitation, those with respect to the securing of financial resources necessary to operate the program as described; and

iii. ongoing compliance with such measures as may be established by the Federation pursuant to the implementation of the Task Force Report for the purpose of ensuring that the Thompson Rivers University Law Degree Program continues to meet the National Requirement.

Carried Unanimously

For Information

- CPD Bursary Program

PARALEGAL STANDING COMMITTEE REPORT

Ms. Corsetti presented the Report.

Report to Convocation
April 28, 2011

Paralegal Standing Committee

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

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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COMMITTEE PROCESS

1. The Committee met on April 7th, 2011. Committee members present were Cathy Corsetti (Chair), William Simpson (Vice-Chair), Marion Boyd, Robert Burd, James Caskey (by telephone), Paul Dray, Seymour Epstein, Michelle Haigh, Doug Lewis, Susan McGrath, Ken Mitchell and Alan Silverstein. Staff members in attendance were Zeynep Onen, Roy Thomas, Terry Knott, Jim Varro, Elliot Spears, Naomi Bussin, Sophie Galipeau, Marisha Roman and Julia Bass.

FOR DECISION

AMENDMENT TO BY-LAW 4: EDUCATIONAL EQUIVALENCY

Motion

2. That By-law 4 be amended as shown at Appendix 1, to provide for educational equivalency for members of adjudicative tribunals with five years of full time work experience.

Issue

3. On February 24th, Convocation approved in principle the Committee's recommendation that persons with five years of full-time work experience as adjudicators on certain Ontario tribunals should be given education equivalency for their experience, for the purpose of the paralegal licensing requirements.

4. The necessary wording to effect this change to By-law 4 has now been prepared, and is attached for Convocation's consideration. A bilingual version of the amendments will be distributed at Convocation.

The Committee's Deliberations

5. The Committee approved the draft and recommends it to Convocation.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 4
[LICENSING]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 28, 2011

MOVED BY

SECONDED BY

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009, June 29, 2010, September 29, 2010 and October 28, 2010, be further amended as follows:

1. Clause 13 (2) (d) of the By-Law is amended by deleting “or” at the end.

2. Clause 13 (2) (e) of the By-Law is amended by deleting the period at the end and substituting “; or”.

3. Subsection 13 (2) of the By-Law is amended by adding the following clause:

(f) for an aggregate of at least 5 years, the applicant has, on a full-time basis, exercised the powers and performed the duties of a member of one or more of the following entities:

(i) Agriculture, Food and Rural Affairs Appeal Tribunal,

(ii) Animal Care Review Board,

(iii) Assessment Review Board,

(iv) Board of negotiation continued under subsection 27 (1) of the *Expropriations Act*,

(v) Board of negotiation established under subsection 172 (5) of the *Environmental Protection Act*,

(vi) Building Code Commission,

(vii) Child and Family Services Review Board,

(viii) Chiropody Review Committee,

(ix) Consent and Capacity Board,

(x) Conservation Review Board,

(xi) Criminal Injuries Compensation Board,

(xii) Crown Employees Grievance Settlement Board,

(xiii) Custody Review Board,

(xiv) Dentistry Review Committee,

(xv) Environmental Review Tribunal,

(xvi) Fire Safety Commission,

(xvii) Health Professions Appeal and Review Board,

(xviii) Health Services Appeal and Review Board,

(xix) Human Rights Tribunal of Ontario,

(xx) Landlord and Tenant Board,

(xxi) Licence Appeal Tribunal,

(xxii) Medical Eligibility Committee formed under subsection 7 (1) of the *Health Insurance Act*,

(xxiii) Normal Farm Practices Protection Board,

(xxiv) Ontario Civilian Police Commission,

(xxv) Ontario Labour Relations Board,

(xxvi) Ontario Municipal Board,

(xxvii) Ontario Parole Board,

(xxviii) Ontario Review Board,

(xxix) Ontario Special Education Tribunal (English),

(xxx) Ontario Special Education Tribunal (French),

(xxxi) Optometry Review Committee,

(xxxii) Pay Equity Hearings Tribunal,

(xxxiii) Physician Payment Review Board,

(xxxiv) Public Service Grievance Board,

(xxxv) Social Benefits Tribunal,

(xxxvi) Workplace Safety and Insurance Appeals Tribunal.

4. Subsection 13 (2.1) of the By-Law is amended by adding "except clause (2) (f)," after "For the purposes of subsection (2),".

AMENDMENTS TO RULE 3.02 OF THE PARALEGAL RULES - TRUST ACCOUNTS

Motion

6. That Convocation approve the amendments to Rule 3.02 of the *Paralegal Rules of Conduct* shown in paragraph 10, below.

Background

7. On February 24th, Convocation approved in principle recommendations from the Paralegal Standing Committee and the Professional Regulation Committee that the provisions governing trust accounts should be strengthened. Implementing the changes will require amendments to By-law 9, the *Paralegal Rules*, and the Paralegal Guidelines.

By-law 9

8. The necessary amendments to By-Law 9 govern both lawyers and paralegals, and will be presented to Convocation by the Professional Regulation Committee. These amendments were approved by the Paralegal Standing Committee at the April meeting.

Paralegal Rules

9. Rule 3.02 (3) currently reads as follows:

3.02 ADVISING CLIENTS … Dishonesty, Fraud, etc. by Client (3) A paralegal shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct when advising a client and he or she shall not instruct the client on how to violate the law and avoid punishment.

10. The necessary changes to the *Paralegal Rules*, to reformat subrule (3) and add subrules (3.1) and (3.2), have now been prepared by the Law Society's outside consultant; the proposed Rule now reads as follows:

Rule 3.02 ADVISING CLIENTS
Dishonesty, Fraud etc. by Client
. . .
(3) When acting for a client, a paralegal shall not
(a) knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct; or
(b) advise the client on how to violate the law and avoid punishment.

(3.1) When retained by a client, a paralegal shall make reasonable efforts to ascertain the purpose and objectives of the retainer and to obtain information about the client necessary to fulfill this obligation.

(3.2) A paralegal shall not use his or her trust account for purposes not related to the provision of legal services.

Paralegal Guidelines

11. The necessary wording for the change to Guideline 7 of the *Paralegal Guidelines* has been prepared and is shown below for Convocation's information:

2. ~~Before accepting a retainer or during a retainer, if a paralegal has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the paralegal should make reasonable inquiries to obtain information about the client and about the purpose of the retainer.~~ The requirement in subrule (3.1) is especially important where a paralegal has suspicions or doubts about whether he or she might be assisting a client in crime or fraud. For example, if a paralegal is consulted by a prospective client who requests the paralegal to deposit an amount of cash into the paralegal's trust account but is vague about the purpose of the retainer, the paralegal has an obligation to make further inquiries about the retainer. (The paralegal should also have regard to the provisions of By-Law 9 regarding cash transactions). The paralegal should make a record of the results of these inquiries.

3. A client or another person may attempt to use a paralegal's trust account for improper purposes, such as hiding funds, money laundering or tax sheltering. These situations highlight the fact that when handling trust funds, it is important for a paralegal to be aware of his or her obligations under the Rules and the Law Society's By-laws regulating the handling of trust funds.

LAW SOCIETY AWARDS

Motion

12. That the Treasurer appoint a Working Group to develop appropriate criteria for the creation of a Law Society Paralegal Professional Achievement Award.

Background

13. Over the more than 200 years when the Law Society only regulated lawyers, a number of ways of recognizing outstanding professional achievement were developed. These include,

a. the Law Society Medal;
b. the Honorary Doctor of Laws;
c. the Lincoln Alexander Award, created in 2002, for commitment to the public interest and the pursuit of community service, and
d. the Laura Legge Award, created in 2007, for women lawyers who have exemplified leadership in the profession.

14. Now that the Law Society has assumed the responsibility for regulating paralegals, it is appropriate to consider whether there should also be an award recognizing outstanding achievement by paralegals.

The Committee's Deliberations

15. Since the regulated paralegal profession has only existed in its current form for a few years, rather than revisit the criteria for the existing Law Society Medal or other awards, it is appropriate to develop an award based on different criteria, emphasizing adherence to best practices and contributions to the development of the new profession.

16. It would be appropriate that the words "Law Society" appear in the title of the award. There are a number of options as to the details of such an award; accordingly the Committee favoured asking the Treasurer to establish a working group to develop appropriate criteria for a Law Society Paralegal Professional Achievement Award, recognizing a licensed paralegal who has made an outstanding contribution to the development of the profession.

LICENSING EXAMINATIONS PROCESS

Motion

17. That Convocation approve the following proposal respecting Law Society of Upper Canada licensing examinations:

a. to qualify for a Class P1 licence, candidates would have three years from the time of registering with the Law Society as licensing candidates to pass the licensing examinations and would be limited in the number of total attempts they would have to pass the licensing examinations;

b. Initially, candidates would only have a total of three attempts to pass the licensing examinations. However, there would a "right", for candidates who failed the licensing examinations after three attempts, to seek a waiver of the "three attempt rule", from the Director, Professional Development and Competence.

c. A request for a waiver could only be made once, and the Director, Professional Development and Competence could only permit one further attempt at the licensing examinations.

d. Candidates who fail the licensing examinations after three attempts and do not seek permission to make a fourth attempt, candidates who fail the licensing examinations after three attempts and are not permitted by the Director, Professional Development and Competence to make a fourth attempt or candidates who fail the licensing examinations after four attempts would have their registration with the Law Society cancelled.

e. Thereafter, such (now former) licensing candidates would be permitted to re-register with the Law Society only after a year had passed (from the time registration was cancelled) and only after demonstrating to the Director, Professional Development and Competence a change in circumstances.

18. That Convocation direct the amendment of Law Society by-laws to reflect the proposal in paragraph 17, such proposed amendments to be provided to Convocation for approval.

Background

19. The Committee considered the matter reported by the Professional Development and Competence Committee concerning the number of times an applicant for a Law Society licence is permitted to take a licensing examination, shown at TAB 7.

20. While the licensing process for paralegals is relatively new, meaning that there has not been the same experience with candidates taking the licensing examination up to nine times, it is appropriate for the policy to be the same for both lawyers and paralegals.

The Committee's Deliberations

21. Accordingly, the Committee was of the view that the same policy should be adopted for paralegal applicants.

FOR INFORMATION

ELECTION OF PARALEGAL STANDING COMMITTEE CHAIR

22. By-law 3 provides for the annual election of the Chair of the Paralegal Standing Committee in sections 130.1 to 130.13, and requires the election of the Chair to be the first item of business at the meeting one year from the last election. Since the first election was held in April 2010, the election of the Chair was required to be the first item of business at the meeting in April 2011.

23. In accordance with the provisions of By-law 3, the Committee elected Ms Cathy Corsetti as Chair of the Paralegal Standing Committee.

BILL C-35, AMENDING IMMIGRATION AND REFUGEE PROTECTION ACT

24. Bill C-35, *An Act to amend the Immigration and Refugee Protection Act*, received Royal Assent on March 23rd, 2011. The Act will authorize paralegals licensed by the Law Society to appear at the Immigration and Refugee Appeal Board without having to become a member of any other body. The Act comes into effect on a date to be proclaimed. The government has also announced plans for a new regulatory body in this field, to be called the Immigration Consultants of Canada Regulatory Council, to be in existence by this summer. The press release and legislative summary are at Appendix 2.

PROHIBITION ON REPRESENTATION OF LICENSEES

25. Subsequent to the deliberations of the Professional Regulation Committee and the Tribunals Committee, the Committee approved the proposal that there be an express prohibition on all members of the Law Society Hearing and Appeal Panels from representing licensees who are the subject of an investigation by the Law Society.

LAW COMMISSION REPORT ON THE PROVINCAL OFFENCES ACT

26. The Committee approved the proposal from the Access to Justice Committee to request Convocation's approval to make a submission to the Law Commission of Ontario regarding its report on the *Provincial Offences Act*.

EXPANSION OF THE LAWYER REFERRAL SERVICE

27. The Committee was briefed by the Director of Client Services on the processes associated with a possible expansion of the Law Society's Lawyer Referral Service to include paralegals.

QUARTERLY REPORT ON PROFESSIONAL REGULATION

28. The Director of Professional Regulation presented the Quarterly Report from her department for the first quarter of 2011.

APPENDIX 2

Legislation Targeting Crooked Immigration Consultants Receives Royal Assent

Wed Mar 23 2011, 5:10pm ET OTTAWA, ONTARIO -- Marketwire

Citizenship, Immigration and Multiculturalism Minister Jason Kenney welcomed today the final passage of legislation to crack down on crooked immigration consultants. Bill C-35, originally introduced as the *Cracking Down on Crooked Consultants Act*, has now received Royal Assent and is expected to come into force in the coming months. "Once in force, this legislation will make it an offence for anyone other than an authorized immigration consultant, lawyer, other representative or authorized entity to conduct business at any stage of an application or proceeding," said Minister Kenney. "We are targeting undeclared "ghost" consultants as well as other unscrupulous immigration representatives who are engaging in unacceptable activity." The Act strengthens the rules governing those who charge a fee for immigration advice or representation; closes certain loopholes; increases penalties for unauthorized representation; and allows for more government oversight in order to improve the way in which immigration consultants are regulated.

"Crooked immigration consultants pose a threat not only to their victims, but also to the integrity of our immigration system," said Minister Kenney. "This new legislation will help us protect people wanting to immigrate to or stay in Canada, as well as the integrity of Canada's immigration system." In response to issues raised by stakeholders and members of the House of Commons Standing Committee on Citizenship and Immigration, amendments to the Bill were made during the Committee's study of Bill C-35. Among key amendments are measures to:
-- Double maximum fines for the offence of providing unauthorized immigration advice from $50,000 to $100,000 and summary convictions from $10,000 to $20,000; -- Amend the offence provision to capture both direct and indirect representation and advice; and – Recognize paralegals regulated by a Law Society as being exempted from prohibition on providing representation and advice. Once in force, the Act will impose penalties on unauthorized representatives who provide, or offer to provide, advice or representation for a fee, at any stage of an immigration application of proceeding. This includes the period before a proceeding begins or an application is submitted. In addition, the legislation authorizes the disclosure of information on the ethical or professional conduct of an immigration consultant to those responsible for governing or investigating that conduct. Bill C-35 received Royal Assent this afternoon after it was approved in the Senate on March 21, 2011. It was unanimously adopted at third reading in the House of Commons on December 7, 2010, after being introduced on June 8th. This process is part of a broader strategy to protect people wanting to immigrate to or stay in Canada from immigration fraud. Minister Kenney raised the issue of immigration consultant fraud in meetings with officials in China, India and the Philippines last fall and more recently in Pakistan. He has urged those governments to protect their citizens from exploitation and abuse by crooked immigration consultants.

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FOR FURTHER INFORMATION PLEASE CONTACT:
Citizenship and Immigration Canada Minister's
Office Alykhan Velshi
Or
Citizenship and Immigration Canada Communications Branch
Media Relations 613-952-1650 CIC-Media-Relations@cic.gc.ca

BILL C-35 LEGISLATIVE SUMMARY

This enactment amends the *Immigration and Refugee Protection Act* to change the manner of regulating third parties in immigration processes. Among other things it

(*a*) creates a new offence by extending the prohibition against representing or advising persons for consideration — or offering to do so — to all stages in connection with a proceeding or application under that Act, including before a proceeding has been commenced or an application has been made, and provides for penalties in case of contravention;

(*b*) exempts from the prohibition

(i) members of a provincial law society or notaries of the Chambre des notaires du Québec, and students-at-law acting under their supervision,

(ii) any other members of a provincial law society or the Chambre des notaires du Québec, including a paralegal,

(iii) members of a body designated by the Minister of Citizenship and Immigration, and
(iv) entities, and persons acting on the entities' behalf, acting in accordance with an agreement or arrangement with Her Majesty in right of Canada;

(*c*) extends the time for instituting certain proceedings by way of summary conviction from six months to 10 years;

(*d*) gives the Minister of Citizenship and Immigration the power to make transitional regulations in relation to the designation or revocation by the Minister of a body;

(*e*) provides for oversight by that Minister of a designated body through regulations requiring the body to provide information to allow the Minister to determine whether it governs its members in the public interest; and

(*f*) facilitates information sharing with regulatory bodies regarding the professional and ethical conduct of their members.

Re: Amendment to By-Law 4 (Licensing) on Tribunal Members' Educational Equivalency

It was moved by Ms. Haigh, seconded by Mr. Simpson, that By-Law 4 be amended as set out in the motion distributed under separate cover.

Carried

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 4
[LICENSING]

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, June 26, 2008, January 29, 2009, June 25, 2009, June 29, 2010, September 29, 2010 and October 28, 2010, be further amended as follows:

1. Clause 13 (2) (d) of the English version of the By-Law is amended by deleting "or" at the end.

2. Clause 13 (2) (e) of the English version of the By-Law is amended by deleting the period at the end and substituting "; or".

3. Subsection 13 (2) of the English version of the By-Law is amended by adding the following clause:

(f) for an aggregate of at least 5 years, the applicant has, on a full-time basis, exercised the powers and performed the duties of a member of one or more of the following entities:

(i) Agriculture, Food and Rural Affairs Appeal Tribunal,

(ii) Animal Care Review Board,

(iii) Assessment Review Board,

(iv) Board of negotiation continued under subsection 27 (1) of the *Expropriations Act*,

(v) Board of negotiation established under subsection 172 (5) of the *Environmental Protection Act*,

(vi) Building Code Commission,

(vii) Child and Family Services Review Board,

(viii) Chiropody Review Committee,

(ix) Consent and Capacity Board,

(x) Conservation Review Board,

(xi) Criminal Injuries Compensation Board,

(xii) Crown Employees Grievance Settlement Board,

(xiii) Custody Review Board,

(xiv) Dentistry Review Committee,

(xv) Environmental Review Tribunal,

(xvi) Fire Safety Commission,

(xvii) Health Professions Appeal and Review Board,

(xviii) Health Services Appeal and Review Board,

(xix) Human Rights Tribunal of Ontario,

(xx) Landlord and Tenant Board,

(xxi) Licence Appeal Tribunal,

(xxii) Medical Eligibility Committee formed under subsection 7 (1) of the *Health Insurance Act*,

(xxiii) Normal Farm Practices Protection Board,

(xxiv) Ontario Civilian Police Commission,

(xxv) Ontario Labour Relations Board,

(xxvi) Ontario Municipal Board,

(xxvii) Ontario Parole Board,

(xxviii) Ontario Review Board,

(xxix) Ontario Special Education Tribunal (English),

(xxx) Ontario Special Education Tribunal (French),

(xxxi) Optometry Review Committee,

(xxxii) Pay Equity Hearings Tribunal,

(xxxiii) Physician Payment Review Board,

(xxxiv) Public Service Grievance Board,

(xxxv) Social Benefits Tribunal,

(xxxvi) Workplace Safety and Insurance Appeals Tribunal.

4. Subsection 13 (2) of the French version of the By-Law is amended by adding the following clause:

f) pour un total d'au moins 5 ans, le requérant ou la requérante a assumé les fonctions et exécuté les tâches d'un membre à plein temps d'au moins une des entités suivantes :

(i) Tribunal d'appel de l'agriculture, de l'alimentation et des affaires rurales,

(ii) Commission d'étude des soins aux animaux,

(iii) Commission de révision de l'évaluation foncière,

(iv) Commission de négociation maintenue en vertu du paragraphe 27 (1) de la *Loi sur l'expropriation*,

(v) Commission de négociation créée en vertu du paragraphe 172 (5) de la *Loi sur la protection de l'environnement*,

(vi) Commission du code du bâtiment,

(vii) Commission de révision des services à l'enfance et à la famille,

(viii) Comité d'étude de la podologie,

(ix) Commission du consentement et de la capacité,

(x) Commission des biens culturels,

(xi) Commission d'indemnisation des victimes d'actes criminels,

(xii) Commission de règlement des griefs des employés de la Couronne,

(xiii) Commission de révision des placements sous garde,

(xiv) Comité d'étude de la dentisterie,

(xv) Tribunal de l'environnement,

(xvi) Commission de la sécurité-incendie,

(xvii) Commission d'appel et de révision des professions de la santé,

(xviii) Commission d'appel et de révision des services de santé,

(xix) Tribunal des droits de la personne de l'Ontario,

(xx) Commission de la location immobilière,

(xxi) Tribunal d'appel en matière de permis,

(xxii) Comité d'admissibilité médicale constitué en vertu du paragraphe 7 (1) de la *Loi sur l'assurance-santé*,

(xxiii) Commission de protection des pratiques agricoles normales,

(xxiv) Commission civile de l'Ontario sur la police,

(xxv) Commission des relations de travail de l'Ontario,

(xxvi) Commission des affaires municipales de l'Ontario,

(xxvii) Commission ontarienne des libérations conditionnelles,

(xxviii) Commission ontarienne d'examen,

(xxix) Tribunal de l'enfance en difficulté de l'Ontario (anglais),

(xxx) Tribunal de l'enfance en difficulté de l'Ontario (français),

(xxxi) Comité d'étude de l'optométrie,

(xxxii) Tribunal de l'équité salariale,

(xxxiii) Commission de révision des paiements effectués aux médecins,

(xxxiv) Commission des griefs de la fonction publique,

(xxxv) Tribunal de l'aide sociale,

(xxxvi) Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail.

5. Subsection 13 (2.1) of the English version of the By-Law is amended by adding "except clause (2) (f)," after "For the purposes of subsection (2),".

6. Subsection 13 (2.1) of the French version of the By-Law is amended by adding "à l'exception de l'alinéa (2) f)," after "Pour l'application du paragraphe (2),".

Re: Amendments to Rule 3.02 of the *Paralegal Rules of Conduct*

It was moved by Ms. Haigh, seconded by Mr. Simpson, that the amendments to Rule 3.02 of the *Paralegal Rules of Conduct* as shown in paragraph 10 of the Report be approved.

Carried

Re: Paralegal Awards

It was moved by Ms. Haigh, seconded by Mr. Simpson, that the Treasurer appoint a Working Group to develop appropriate criteria for the creation of a Law Society Paralegal Professional Achievement Award.

Carried

Re: Licensing Examination Writing Process

It was moved by Ms. Haigh, seconded by Mr. Simpson, that:

1. Convocation approve the following proposal respecting Law Society of Upper Canada licensing examinations:

a. to qualify for a Class P1 licence, candidates would have three years from the time of registering with the Law Society as licensing candidates to pass the licensing examinations and would be limited in the number of total attempts they would have to pass the licensing examinations;

b. Initially, candidates would only have a total of three attempts to pass the licensing examinations. However, there would a "right", for candidates who failed the licensing examinations after three attempts, to seek a waiver of the "three attempt rule", from the Director, Professional Development and Competence.

c. A request for a waiver could only be made once, and the Director, Professional Development and Competence could only permit one further attempt at the licensing examinations.

d. Candidates who fail the licensing examinations after three attempts and do not seek permission to make a fourth attempt, candidates who fail the licensing examinations after three attempts and are not permitted by the Director, Professional Development and Competence to make a fourth attempt or candidates who fail the licensing examinations after four attempts would have their registration with the Law Society cancelled.

e. Thereafter, such (now former) licensing candidates would be permitted to re-register with the Law Society only after a year had passed (from the time registration was cancelled) and only after demonstrating to the Director, Professional Development and Competence a change in circumstances; and

2. Convocation direct the amendment of Law Society by-laws to reflect the proposal set out above, such proposed amendments to be provided to Convocation for approval.

Carried

For Information

- Election of Paralegal Standing Committee Chair
- Law Commission of Ontario Invitation for Submissions on the Interim Report: "Modernizing the *Provincial Offences Act*: A New Framework and Other Reforms"
- Bill C-35 – Federal Regulation of Immigration Consultants
- Policy on Prohibition on Representation of Licensees
- Quarterly Report from the Professional Regulation Division
- Paralegal Referral Service

TRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Report.

Report to Convocation
April 28, 2011

Tribunals Committee

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

Purposes of Report: Decision
Information

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

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COMMITTEE PROCESS

1. The Committee met on April 7, 2011. Committee members Mark Sandler (Co-Chair), Raj Anand, Jack Braithwaite, Christopher Bredt, Paul Dray, Jennifer Halajian, Tom Heintzman, Paul Schabas and Beth Symes attended. Malcolm Heins also attended. Staff members Helena Jankovic, Grace Knakowski, Elliot Spears, Sophia Sperdakos and Denise McCourtie also attended or participated.

FOR DECISION
AMENDMENT TO RULE 18 OF THE RULES OF PRACTICE AND PROCEDURE RESPECTING PROHIBITION AGAINST PHOTOGRAPHY, ETC. IN HEARINGS

MOTION

2. That Convocation approve the following amendment to Rule 18 of the Rules of Practice and Procedure:

THAT the rules of practice and procedure applicable to proceedings before the Law Society Hearing Panel, made by Convocation on February 26, 2009 and amended by Convocation on June 25, 2009, June 29, 2010 and January 27, 2011, (the "Rules") be amended as follows:

1. Rule 18 is amended by adding the following rule:

Prohibition against photography, *etc*. at hearing

18.07 (1) Subject to subrules (2) and (3), no person shall,

(a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,

(i) at a hearing,

(ii) of any person entering or leaving the room in which a hearing is to be or has been convened, or

(iii) of any person in the building in which a hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;

(b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or

(c) broadcast or reproduce an audio recording made as described in clause (2) (b).

Exceptions

(2) Nothing in subrule (1),

(a) prohibits a person from unobtrusively making written notes or sketches at a hearing; or

(b) prohibits a party, a party's representative or a journalist from unobtrusively making an audio recording at a hearing, in the manner that has been approved by the panel presiding at the hearing, for the sole purpose of supplementing or replacing written notes.

Exceptions

(3) Subrule (1) does not apply to a photograph, motion picture, audio recording or record made with the authorization of the panel presiding at a hearing,

(a) where required for the presentation of evidence or the making of a record or for any other purpose of the hearing; or

(b) with the consent of the parties and witnesses, for such educational, instructional or other purposes as the panel approves.

Introduction and Background

3. The 2009 new Rules of Practice and Procedure ("the Rules") do not include a provision respecting the use of visual or audio proceedings in hearings.

4. The Committee agreed that a provision along the same lines as was in the earlier Rules and modelled on the language of s.136 of the *Courts of Justice Act* is sensible and appropriate and should be added to the current Rules.

5. APPENDIX 1 contains current Rule 18. The Committee recommends the English version of Rule 18 be amended as set out in the motion above. The official bilingual version of the proposed amendment will be provided under separate cover at Convocation.

APPENDIX 1

RULE 18 ACCESS TO HEARING
Hearing to be public

18.01 Subject to rule 18.02, every hearing in a proceeding shall be open to the public.

Hearing in the absence of the public

18.02 On the motion of a party, an order may be made that a hearing or a part of a hearing in a proceeding shall be held in the absence of the public where,

(a) matters involving public security may be disclosed;

(b) it is necessary to maintain the confidentiality of a privileged document or communication;

(c) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(d) in the case of a hearing or a part of a hearing that is to be held as an electronic hearing, it is not practical to hold the hearing or the part of the hearing in a manner that is open to the public.

Attendance at hearing held in the absence of the public

18.03 Where a hearing or a part of a hearing is held in the absence of the public, unless otherwise ordered by the Hearing Panel, the hearing may be attended by,

(a) subject to rule 24.01, any witness the nature of whose testimony gave rise to the order that the hearing or the part of the hearing be held in the absence of the public;

(b) the parties and their representatives;

(c) the non-party participants who have been permitted to participate in the hearing or the part of the hearing and their representatives; and

(d) such other persons as the panel considers appropriate.

Non-disclosure of information: hearing held in the absence of the public

18.04 (1) Subject to subrule (2), where a hearing or a part of a hearing is held in the absence of the public, no person shall disclose, except to his, her or its representative or to another person who attends at or participates in the hearing or the part of the hearing that is held in the absence of the public,

(a) any information disclosed in the hearing or the part of the hearing that is held in the absence of the public; and

(b) if and as specified by the panel, the panel's reasons for a decision or an order arising from the hearing or the part of the hearing that is held in the absence of the public, other than the panel's reasons for an order that a subsequent hearing or a part of the subsequent hearing be held in the absence of the public.

Order for disclosure: hearing held in the absence of the public

(2) On the motion of a person, an order may be made permitting a person to disclose any information mentioned in subrule (1).

Order for non-disclosure: hearing open to the public

18.05 On the motion of a party, or on a panel's own motion, if any of clauses 18.02 (a), (b) and (c) apply, an order may be made prohibiting a person who attends at or participates in a hearing or a part of a hearing that is open to the public from disclosing, except to his, her or its representative or to another person who attends at or participates in the hearing or the part of the hearing, any information disclosed in the hearing or the part of the hearing.

Review of order

18.06 If an order is made in respect of any matter dealt with in this Rule, on the motion of a person, the Hearing Panel may at any time review all or a part of the order and may confirm, vary, suspend or cancel the order.

PROHIBITION ON REPRESENTATION OF LICENSEES

MOTION

6. That upon Convocation approving the Professional Regulation Committee's motion respecting a prohibition on *benchers* representing licensees in an investigation, it

   a. approve the policy as applicable to *all* members of the Hearing and Appeal Panels and,
   b. authorize an amendment to the Adjudicators Code of Conduct to include such a prohibition.

Introduction and Background

7. At its meeting in April 2011 the Professional Regulation Committee ("PRC") approved a proposal to prohibit benchers from representing licensees in a Law Society investigation. It is necessary to address the issue because there have been instances in which benchers have undertaken such representation. PRC's proposal is set out in a motion in its Report to Convocation.

8. The Tribunals Committee considered the PRC proposal and is of the view that it is appropriate that it apply to all members of the Hearing and Appeal Panels, bencher and non-bencher alike, since the issues respecting the integrity of the Law Society processes and transparency are the same for all adjudicators.

9. The Tribunals Committee is also of the view that it would be appropriate to reflect the prohibition in the Adjudicators Code of Conduct. It would provide Convocation with the proposed language of an amendment at a future date.

INFORMATION

Tribunals Office 2010 Fourth Quarter Report and 2010 Annual Summary and Trends

10. The Tribunals Office 2010 fourth quarter report and its 2010 annual summary and trends report are set out at APPENDICES 2 and 3 for information.

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

(1) Copy of the Tribunals Office 2010 fourth quarter report and 2010 annual summary and trends report.

(pages 10 – 33)

Re: Amendment to the *Rules of Practice and Procedure* Respecting Prohibition Against Photography Et Cetera at Hearings

It was moved by Mr. Sandler, seconded by Mr. Anand, that the amendment to Rule 18 of the *Rules of Practice and Procedure* set out in the motion distributed under separate cover be approved.

Carried

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE
(applicable to proceedings before the Law Society Hearing Panel)

MADE UNDER
SECTION 61.2 OF THE *LAW SOCIETY ACT*

THAT the rules of practice and procedure applicable to proceedings before the Law Society Hearing Panel, made by Convocation on February 26, 2009 and amended by Convocation on June 25, 2009, June 29, 2010 and January 27, 2011, (the "Rules") be amended as follows:

1. Rule 18 of the English version of the Rules is amended by adding the following rule:

Prohibition against photography, *etc.* at hearing

18.07 (1) Subject to subrules (2) and (3), no person shall,

(a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,

(i) at a hearing,

(ii) of any person entering or leaving the room in which a hearing is to be or has been convened, or

(iii) of any person in the building in which a hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;

(b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or

(c) broadcast or reproduce an audio recording made as described in clause (2) (b).

Exceptions

(2) Nothing in subrule (1),

(a) prohibits a person from unobtrusively making written notes or sketches at a hearing; or

(b) prohibits a party, a party's representative or a journalist from unobtrusively making an audio recording at a hearing, in the manner that has been approved by the panel presiding at the hearing, for the sole purpose of supplementing or replacing written notes.

Exceptions

(3) Subrule (1) does not apply to a photograph, motion picture, audio recording or record made with the authorization of the panel presiding at a hearing,

(a) where required for the presentation of evidence or the making of a record or for any other purpose of the hearing; or

(b) with the consent of the parties and witnesses, for such educational, instructional or other purposes as the panel approves.

2. Rule 18 of the French version of the Rules is amended by adding the following rule:

Interdiction de prendre des photographies, etc. à l'audience

18.07 (1) Sous réserve des paragraphes (2) et (3), nul ne peut,

a) faire ou tenter de faire une reproduction susceptible de donner, par procédé électronique ou autre, des représentations visuelles ou sonores, notamment par photographie, par film ou par enregistrement sonore,

(i) à une audience,

(ii) d'une personne qui entre dans la salle où se tient ou doit se tenir l'audience, ou en sort,

(iii) d'une personne qui se trouve dans l'édifice où se tient ou doit se tenir l'audience, s'il existe des motifs valables de croire que la personne se rend à la salle d'audience ou la quitte;

b) publier, diffuser, reproduire ou distribuer autrement les photographies, les films ou les enregistrements sonores ou autres reproductions faits contrairement à l'alinéa a);

c) diffuser ou reproduire un enregistrement sonore fait de la manière décrite à l'alinéa (2) b).

Exceptions

(2) Le paragraphe (1) n'empêche pas,

a) une personne de prendre discrètement des notes par écrit ou de faire des croquis discrètement, à l'audience;

b) une partie, le représentant d'une partie ou un journaliste de faire, discrètement et de la manière approuvée par le comité d'audition, un enregistrement sonore au cours de l'audience destiné uniquement à compléter ou à remplacer des notes manuscrites.

Exceptions

(3) Le paragraphe (1) ne s'applique pas à la photographie, au film, à l'enregistrement sonore ni à l'autre reproduction établie avec l'autorisation du comité d'audition,

a) aux fins de l'audience, et notamment pour la présentation de la preuve ou pour servir d'archives;

b) aux fins éducatives ou autres approuvées par le comité, avec le consentement des parties et des témoins.

Re: Policy on Prohibition on Representation of Licensees

It was moved by Mr. Sandler, seconded by Mr. Anand, –

That Convocation approve the policy which it approved as set out in the Professional Regulation Committee's April 28, 2011 Report to Convocation on Policy on Prohibition on Representation of Licensees as applicable to *all* members of the Hearing and Appeal Panels, and authorize an amendment to the Adjudicator Code of Conduct to include such a prohibition.

Carried

For Information

- Tribunals Office 2010 Fourth Quarter Report and 2010 Annual Summary and Trends

Re: Federation of Law Societies of Canada

The Treasurer introduced Ronald J. MacDonald, Q.C., President of the Federation of Law Societies of Canada.

Mr. MacDonald addressed Convocation.

REPORTS FOR INFORMATION

Federation of Law Societies of Canada Report (in camera)

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Government and Public Affairs Committee Report (in camera)

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IN PUBLIC

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

- Return to Practice Working Group Report
- Monitoring Group Response to Monitoring Group Intervention
- Equity Public Education Series Calendar 2011

Report to Convocation
April 28, 2011

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

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

Thomas Heintzman
Dow Marmur
Judith Potter
Heather Ross
Paul Schabas
Baljit Sikand
Beth Symes

Purpose of Report: Information

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

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COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (Equity Committee) met on April 6, 2011. Committee members Janet Minor, Chair, Constance Backhouse, Avvy Go, Susan Hare, Thomas Heintzman, Judith Potter, and Beth Symes participated. Bencher Julian Falconer also attended. Milé Komlen, Chair of the Equity Advisory Group (EAG), and Julie Lassonde, representative of the Association des juristes d'expression française de l'Ontario (AJEFO), attended. Staff members Josée Bouchard and Mark Andrew Wells attended.

FOR INFORMATION

RETURN TO PRACTICE WORKING GROUP REPORT

2. In the spring of 2009, the Return to Practice Working Group (Working Group) was created as part of the Retention of Women in Private Practice Project. The Working Group is co-chaired by bencher Beth Symes and lawyer Connie Reeve. Working Group members also include bencher Janet Minor, Chair of the Equity Committee, and bencher Judith Potter, a member of the Equity Committee.

3. The mandate and objectives of the Working Group are to identify strategies and develop resources to facilitate the return of women lawyers into practice. The identified strategies are meant to be applicable to women lawyers who wish to re-enter the practice of law in non-private and private practice work environments.

4. The report of the Working Group is presented at Appendix 1 for information. The Report was considered by the Equity Committee and the Priority Planning Committee. It was decided that the first two recommendations (recommendations 1 and 2a) do not require approval, as matters of policy are not involved and no additional budget or resources are required for 2011. The Report also includes two other recommendations (recommendation 2b and 3) that have more significant financial and resource implications. Those recommendations are not for consideration at this time. The Equity Committee and the Priority Planning Committee decided that those recommendations would be considered along with other proposals as part of the overall strategic planning discussion at the benchers' priority planning session in the fall 2011.

RESPONSE TO MONITORING GROUP INTERVENTION

5. The Law Society of Upper Canada received a response to its letter dated February 4, 2011 to Colombian President Juan Manuel Santos regarding the attempted assassination of human rights lawyer William Cristancho Duarte. The response, dated March 18, 2011 indicates that the matter has been sent to the Ministry of Foreign Affairs for their consideration.

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES 2011

6. The calendar of Public Education Equality and Rule of Law Series is presented at Appendix 2.

Appendix 1

Return to Practice Working Group Report

Working Group Members
Beth Symes – Co-chair
Connie Reeve – Co-chair
Janet Minor
Judith Potter

Purpose of Report: Decision

Prepared by the Equity Initiatives Department
(Mark Andrew Wells – 416-947-3425)

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EXECUTIVE SUMMARY

Request to the Committee

The Committee is asked to,

a. consider the following recommendations of the Working Group;
b. approve the recommendations;
c. if appropriate, present the following recommendations to Convocation for its consideration:

i. That the Law Society make available online informational resources for lawyers and paralegals focused on the departure from and return to the practice of law.

ii. That the Law Society explore ways to provide or augment educational initiatives currently available for women who are transitioning back into practice,
   A. by partnering with external associations to promote and assist in the delivery of their programs; and
   B. providing financial assistance to women lawyers, in the form of a repayable loan, who want to attend an external program.

iii. That the Law Society contract the use of one or more professional career counsellors and provide access of up to six hours of career counselling and/or coaching services to women lawyers who work as sole practitioners or in firms of five lawyers or less who are taking a leave from the practice of law for maternity, parental and/or compassionate reasons.

The mandate and objectives of the Return to Practice Working Group were to identify strategies and develop resources to facilitate the return of women lawyers into practice after an extended absence. In this regard, the work of the Working Group is consistent with the *Retention of Women in Private Practice Report*. In developing its recommendations, the Working Group considered the findings of focus groups with women who had left the practice of law, distilled the suggestions of the participants and identified initiatives that could be implemented by the Law Society.

The Working Group is of the opinion that the best use of resources is to provide initiatives to assist women in making informed decisions before they leave the practice of law and resources to assist them in making the transition back to the practice of law. As such, it favours a multi-faceted, proactive/preventative approach to assist women before they leave the practice of law as opposed to a reactive/restorative approach which might only address the challenges that women face when returning to practice. However, the Working Group was also conscious of the assistance that women who have been away from the practice of law for an extended period may require.

The Working Group provides recommendations that fall into the following distinct categories:

Online Informational Resources – The Working Group noted that returning to practice after an extended period is often analogous to initial entry into the profession. As such, it concluded that providing readily accessible information about the Law Society's requirements for resuming one's practice and other useful information would help women make informed professional decisions before leaving the practice of law and when returning to the practice of law.

Educational Initiatives – The Working Group determined that partnering with existing educational programs available for women who are transitioning back into practice would provide valuable opportunities for women who are returning to the practice of law. This option can provide an educational initiative that is specifically tailored to meet the needs of women who have left the practice of law for an extended period of time. The Working Group also recommends providing financial assistance in the form of a loan to make these programs accessible to women.

Career Counselling Resources – The Working Group concluded that access to individual career counselling before leaving, during a leave and post return to practice could provide the necessary knowledge and insight to facilitate decisions about leaving and re-entering the profession. The Working Group learned that career counselling is one feature of the mentoring paradigm that can be invaluable in helping a lawyer appreciate the realities of leaving practice and returning to practice after an extended absence.

It should be noted that the identified recommendations have been conceptualized on a spectrum, with information resources representing the minimum requirement that women must have to facilitate leaving and re-entering the profession. Moreover, the Working Group proposes that after a period of five years of implementation of the educational financial assistance and the career counselling programs, the Law Society assess these programs to determine their take-up rate and effectiveness.

REPORT OF THE RETURN TO PRACTICE WORKING GROUP

INTRODUCTION

1. In 2008, 155 women left the practice of law. Many of these women took extended leaves, based on the assumption that returning to practice can be done easily and effortlessly.[1] These numbers are typical for women lawyers exiting practice. However, the research conducted by the Return to Practice Working Group (Working Group) demonstrates the challenges that many of these women will face when attempting to re-establish their professional legal careers.

2. Simply said, women who have left the practice of law for an extended period of time face significant challenges when returning or attempting to return to work. These challenges include a lack of information about the options when leaving practice and the requirements to return, loss of self-confidence, a sense of isolation, loss of legal networks, having to return to a different practice area, learning a new area of law, adjusting to new technology and needing advice and mentoring about career planning. Moreover, there are additional external challenges that these women must confront. A firm may not be receptive to women seeking to return to practice for reasons related to age, perceived lack of flexibility or commitment and a preference for recently call and therefore more malleable lawyers.

3. Notwithstanding, some women are able to overcome the challenges and return to practice after an extended absence. Returning to practice can be a necessity following the death of a spouse or the breakdown of a relationship. This report outlines the challenges faced by women who leave the practice of law for an extended period of time and makes a number of recommendations.

[1] Statistics were compiled by the Membership Services Department of the Law Society. The statistics provide a breakdown of lawyers leaving and returning to the practice of law from 1990 to 2008 by age group and year of call.

BACKGROUND

4. The *Retention of Women in Private Practice Report* noted that women lawyers leave private practice in larger numbers than their male counterparts and face gender based challenges when they return to private practice, particularly when the absence has been for a significant period.[2]

5. Studies have also shown that there are gender differences in the types of activities undertaken during job interruptions. Women are more likely than men to interrupt their legal position and more likely to report child care as the primary activity during the interruption. Men are more likely to travel or to undertake educational and professional development activities that are seen to be related to their legal career development and advancement.[3]

6. In May 2008, Convocation adopted the *Retention Report* that addressed in part the issue of women's return to private practice. For example, the Justicia Project includes the implementation of programs to assist women lawyers when they return to their firm after a parental leave. However, the recommendations did not focus on the issue of women reintegrating into the legal workforce in a different practice area or place of employment than the one left following an extended period of absence.

7. In the spring of 2009, the Return to Practice Working Group (Working Group) was created as part of the Retention of Women in Private Practice Project. The Working Group is co-chaired by bencher Beth Symes and lawyer Connie Reeve. Working Group members also include the Chair of the Equity and Aboriginal Issues Committee (Equity Committee), bencher Janet Minor and bencher Judith Potter, a member of the Equity Committee.

8. The mandate and objectives of the Working Group are to identify strategies and develop resources to facilitate the return of women lawyers into practice. The identified strategies are meant to be applicable to women lawyers who wish to re-enter the practice of law in non-private and private practice work environments.

9. This report provides an overview of the work of the Working Group, including the following:
   a. Law Society of Upper Canada Data;
   b. Methodology;
   c. Focus Group findings;
   d. Observations of the Working Group – Other Issues and Consideration; and
   e. Recommendations.

LAW SOCIETY OF UPPER CANADA DATA

10. Information gathered from the Law Society's database on lawyers who have left and returned to the practice of law in Ontario for the period from 1990 to 2008 indicates that the total percentage of lawyers, both male and female who left the practice of law ranged from 0.3% to 2.5%.

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[2] Law Society of Upper Canada, *Final Report – Retention of Women in Private Practice Working Group* (Toronto: Law Society of Upper Canada, May 2008) [*Retention Report*]
[3] *Ibid.*

11. A breakdown of the number of years away from the practice of law before returning highlights that 46% of women are away from the practice of law for between 2 and 8 years, whereas 37% of men are away for that period. In addition, 53% of men who leave the practice of law are away for a period of less than two years, compared to 38% of women who are away for two years or less.

12. With respect to the lawyers who did not return to practice, 41% of women lawyers who surrendered their license did not return, where only 24% of male lawyers in similar positions did not return. Moreover, where 29% of men who did not return to the practice of law retired, only 5% of women lawyers retired. In other words, women lawyers who surrender their license are also less likely to return to the profession of law and/or practice than their male counterparts, in addition to being less likely to retire.

13. This data suggests that while the proportion of men and women leaving and returning to practice in the various post-call cohorts are similar, women tend to be away for longer periods. The exodus of men lawyers is largely driven by retirement. While women lawyers are less likely to return to practice, they are also not retiring in the same rates as their male counterparts.

14. It should be noted that the statistics gathered from the Law Society database do not capture lawyers who attempted to return to the practice of law, but were unsuccessful. It is suggested that given that women lawyers are away from the practice of law for longer periods, less likely to have returned to practice after surrendering their license and less likely to have retired than men, the challenges of returning to practice may have a more profound impact on women lawyers than their male counterparts. This report outlines those challenges and recommends initiatives to assist women in navigating those challenges.

METHODOLOGY

15. The Working Group based its work on the premise that women and men leave the practice of law for different reasons and the issues related to returning to practice differ along gender lines.[4] This premise helped to identify a discreet group of women within the legal profession who also face common challenges in seeking to reintegrate into the profession after an extended absence.

16. The Working Group defined an “extended absence” or “extended leave” from the practice of law as 5 years or more. It collected anecdotal evidence and compiled information to discern the experiences of these women through a series of focus groups

[4] In *Turning Points and Transitions: Women’s Careers in the Legal Profession* (2004), Fiona Kay analyzed the results of a third longitudinal study of 1500 male and female lawyers who were called to the bar in Ontario between 1975 and 1990. The results indicate that for women, a desire to balance career and family/personal life was the most common reason for leaving the practice of law. Results further indicated that men and women fall along fairly traditional gender lines with women spending almost three times as many hours per week on child care than men, despite working the same number of hours.

and individual interviews with lawyers throughout the province. The Working Group also met with senior women at large law firms in Ottawa, other senior women in the profession and outplacement and career counsellors from the Toronto area. In addition, the Working Group spoke with outplacement and career counsellors in Ottawa and London and spoke with representatives from Women in Transition[5] and ReConnect[6] programs.

17. The Working Group selected focus groups as the methodology to conduct its research because they allowed for an open discussion of challenges that women may encounter when returning to practice. Participants were able to relate their experiences with other participants and make observations and comparisons in a group context.

18. The names of lawyers who left or were thought to have left the practice of law for an extended period of time, were provided to the Working Group through colleagues, contacts, various associations, individual benchers, judges, County and District Law Presidents Association (CDLPA) presidents, members of the Equity Advisory Group (EAG) and Women's Equality Advisory Group (WEAG) and lawyers from all the cities where focus groups were held.

19. Participating lawyers were invited to attend a focus group session. The locations of the focus groups were selected to ensure fair representation of all regions of the province and, as much as possible, diverse communities.

20. The Working Group held 8 focus groups in all; three in Ottawa, two in Toronto and one focus group in London, Sudbury and Thunder Bay. The Working Group elicited information through the Focus Groups on initiatives that the Law Society might consider implementing to assist women who would like to return to practice. In all, 55 people participated in the focus groups (See Appendix A for information about the focus groups).

[5] The Women in Transition Executive Education Program co-sponsored by the University of Toronto and the Law Society is designed to help women who are returning to practice understand the changes in the legal market place and provide practice tools and tips for career and job searches. The two-day program is geared towards practicing lawyers considering a transition to non-traditional legal work, women who have left the practice of law and wish to return to legal practice or a non-traditional law-related job and women interested in part-time work starting their own practice of exploring shared work arrangements. The most recent session was held in October 2010.

[6] Founded by Canadian Imperial Bank of Commerce, ReConnect is designed to assist professional women who have been out of the workforce for extended periods (two to six years) prepare to return to their professional careers. The program is offered once a year in the form of two modules that span seven days (five days in London, two days in Toronto). The cost of the program to participants is $3500 (including meals and accommodation). CIBC and Ivey underwrite the additional cost of $9000 per participant. This program is not exclusive to lawyers.

21. The Working Group developed the focus group questions and topics for discussion with the assistance of the Equity Initiatives Department (Equity Department). They were designed to reflect the objectives and mandate of the Working Group. Where possible, the questions were distributed to the participants prior to the meeting (See Appendix B for a list of the questions). At least one member of the Working Group and a Law Society staff member from the Equity Department attended the Focus Groups.

22. In circumstances where a lawyer's experience was within the mandate of the Working Group, but was unavailable to participate in a focus group, the Working Group or a Law Society staff member conducted individual interviews. There were approximately 15 individual interviews conducted.

23. In July 2010 the Working Group met with outplacement and career counsellors in the Toronto area to discuss their experiences and observations with lawyers who have left the practice of law for an extended period and then sought to return and the benefits of their programs. The Working Group identified these career counsellors because of their extensive experience working with lawyers who required outplacement and counselling services in all facets of the legal profession. The services offered by the career counsellors include career coaching, transition counselling and consulting services to law firms and individual lawyers.

24. The Working Group also had discussions with outplacement and career counsellors in Ottawa and London. These counsellors aided the Working Group in determining the time and cost that would be required to assist women return to practice after an extended absence.

FOCUS GROUP FINDINGS

25. The Focus Groups led to general observations that many women who leave the practice of law for an extended period of time, do so for child care reasons and/or are able to do so because they have a spouse whose income is sufficient to support the needs of the family. Other reasons for leaving practice include care-giving responsibilities for a special needs child, an ill parent or spouse.

26. The Working Group observed that for some women the primary reason for returning to practice was the death of a spouse or the breakdown or dissolution of a relationship. Another reason for returning to practice was the lessening of family responsibilities when their children had reached school age and desired intellectual stimulation and engagement outside of the home. In deciding to re-enter the legal profession most women indicated that they sought professional opportunities that would complement their family life as opposed to readjusting their life to accommodate the professional opportunity.

27. The following challenges were identified:
    a. there is a lack of information about the options of leaving practice and the requirements to return;

    b. women on extended leaves lose their self-confidence;

    c. extended leaves lead to a sense of isolation and loss of legal networks;

d. women are often forced or want to return to a different practice area or environment, including starting one's own practice;

e. women often need to update their knowledge of substantive law and/or learn a new area of law;

f. the institutional culture of law firms and the client-focused model of private practice can lead to challenges when reintegrating;

g. mastering and adjusting to new technology, including computer based legal research is often a challenge; and

h. need for advice and mentoring to develop a career plan is often necessary.

Lack of Information about Options when Leaving and Requirements when Returning

28. Some focus group participants noted that the initial challenge of the re-entry to practice of law was the lack of information or misinformation about the Law Society's requirements for returning to practice. The myths about re-entry ranged from having to re-attend law school and rewriting examinations in the licensing process to re-articling and taking legal refresher courses. The Working Group also observed that some participants had incorrect information about the requirements of returning to practice from the Law Society and from practising and retired lawyers.

29. Further, participants noted that the attempts to juggle their legal practice with child care responsibilities was overwhelming and resulted in decisions that may not have been in their best interest. With regards to professional decision making, many focus group participants noted that it was while they were navigating the challenges of returning to practice that they became aware that they could have made different choices if they had been informed of the alternatives to a complete departure from the practice of law. Many did not explore other options in law outside of the full service firm scenario including in-house counsel, tribunals and teaching positions.

Isolation, Loss of Self Confidence and Legal Networks

30. The focus group participants overwhelmingly agreed that loss of self-confidence was a serious obstacle to returning to practice after an extended absence. It was observed that there was a direct correlation with the loss of self confidence that was experienced and the amount of time a participant was away from the practice of law. Moreover, the barriers experienced were magnified by the length of time one has spent away from practice.

31. A sense of isolation was also a barrier to returning to practice. Most participants felt that their experiences were unique, unaware of the reality that there were other women who were navigating the same challenges. The sense of isolation felt by the participants was exacerbated by the fact that most had lost all contact with the legal networks that they had established when they were practising law.

Changes in Practice Area and Environment

32. Many of the focus group participants expressed concerns that upon re-entering the practice of law, their substantive knowledge in an area of law was out of date. Moreover, many participants who had returned to practice, returned to a different practice environment or different practice area of law than what they had left. These new practice environments included in-house counsel positions, sole practice, and tribunal positions.

33. Another observation was that those participants who had not yet returned to practice were pursuing options that included working on contract or teaching law related subjects. Other participants sought out new and expanding areas of law such as e-discovery and estate litigation.

New Technology

34. Advances in and access to new technology while competing with more technically-savvy lawyers was also identified as a barrier for those seeking to return to practice. For many participants, returning to practice has meant embracing a technological revolution. Some participants had never engaged in computer based research, document management and creation and the new forms of communication with courts, tribunals, opposing counsel and clients such as electronic mail.

Insufficient Institutional Support

35. Many participants noted that the reality of law as a business and the client-focused model of private practice along with insufficient institutional support for leaves makes it a challenge for women to leave the private practice of law for an extended period of time. While most participants left private practice, others tried strategies that would allow them to remain in private practice. For example, moving to non-equity partner status or working part-time.

36. Some participants discussed the policies in the federal, provincial and municipal governments where it is possible for a women lawyer to extend a parental leave beyond a year and to return to her own position or a comparable one, after an extended leave. The Working Group observed that in Ottawa, such policies attracted woman lawyers to the Federal Government when they made a decision to have children.

Advice and Mentoring

37. Many focus group participants expressed frustration with respect to determining the initial steps of getting back to practice. Many needed assistance in determining the best path to re-entering the practice of law and finding employment and were unaware of career coaching and courses that could be of assistance to them in re-entering practice. Participants suggested that having a coach or mentor would have been helpful in making these transitions.

OBSERVATIONS OF THE WORKING GROUP: OTHER ISSUES AND CONSIDERATIONS

Gender Based Issues

38. While the Working Group focused on the challenges that women face when attempting to return to practice, the Working Group made inquiries about the challenges that men experience when attempting to return to the practice of law after an extended absence.

39. The Working Group observed that men have different experiences while they are away from the practice of law, but nevertheless face challenges when they return to practice. It was often difficult for men lawyers to return to their former firm as the clients that they had were being served by other partners and associates of the firm.

40. However, the Working Group observed that men were able to acquire positions at other firms and were given a finite period, usually two years, to build a book of business and establish a practice. While not all men were successful, the perception of men as "rainmakers" afforded them lateral hire opportunities that were not afforded or available to similarly positioned women. As such, women were not given the same two-year opportunity to affirm their value to a firm and were therefore not able to re-establish their legal careers in the same way as their male counterparts.

Women from Racialized Communities

41. The Working Group found it challenging to locate women from equality-seeking communities, in particular women from racialized communities, who met the criteria. However, the Working Group was able to gather experiences from racialized women who attended some of the focus groups or were individually interviewed.

42. The Working Group believes that while more investigation is required to draw any definitive conclusions on racialized women that are returning to practice after an extended absence, it suggests that at the very least these women may be more vulnerable when they return to practice after an extended absence.

Geographic Location

43. The Working Group observed that the challenges of returning to practice after an extended absence from the profession are particularly difficult in larger cities such as Toronto, Ottawa and London. In smaller centres such as Sudbury and Thunder Bay, most focus group participants had no difficulty in returning to work and were approached or recruited by firms, legal clinics or lawyers with offers of employment. This occurred even when focus group participants had not contemplated returning to practice or at the time had no intention of returning to practice.

44. While the Working Group observed that focus group participants in these areas may not have necessarily been offered employment in the areas of law that they had practised, it was apparent that the shortage of and demand for lawyers in smaller centres resulted in firms being prepared to accept lawyers with a hiatuses in their professional experience. This included women who have been away from the practice of law for an extended period of time.

Returning to Practice after a Maternity Leave

45. The Working Group noted that many of the focus group participants experienced challenges related to their pregnancy, but in particular after returning to work following a maternity leave. Some participants suggested that they faced accommodation issues for their individuals needs when returning to work, while others described the diminishment of professional opportunities that were available before their maternity leave. These experiences are consistent with the reports of the Discrimination and Harassment Counsel.[7]

46. While these women fell outside the mandate of the Working Group as their absence from the practice of law was less than five years and while these issues are being addressed through the policies developed by the Retention of Women in Private Practice Project, the Working Group decided to mention the experiences of these women in its report.

Payment of Law Society Fees

47. Some participants also noted that a part-time fee category would have been helpful upon their return as they were unable to afford the 100% fee paying category when they were only working part-time or a few hours per month. Other participants indicated that they may have attempted to return to practice sooner had a part-time fee paying category been available.

RECOMMENDATIONS

48. In addition to identifying issues that they encountered, the focus group participants used their personal experiences to suggest many possible solutions to assist women overcoming the challenges associated with returning to practice. In developing its recommendations, the Working Group considered the findings of the focus groups, distilled the suggestions of the participants and identified initiatives that could be implemented by the Law Society (See Appendix C for a list of current Law Society Initiatives that can assist women in returning to practice).

49. The Working Group is of the opinion that the best use of resources is to assist women to stay in the profession, or to provide resources to assist women in making informed decisions before they leave the practice of law. As such, it favours a multi-faceted, proactive/preventative approach to assist women before they leave the practice of law as opposed to a reactive/restorative approach in addressing the challenges that women face when returning to practice. However, the Working Group was also conscious of the assistance that women who have been away from the practice of law for an extended period may require.

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[7] Discrimination and Harassment Counsel, *Report on the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada: For the Period from January 1, 2010 to June 20, 2010* (Toronto: Law Society of Upper Canada, 2010). The Discrimination and Harassment Counsel Reports provide a summary of the discrimination and harassment complaints received. These include complaints against lawyers and law students from members of the Bar, complaints against lawyers by the public, complaints against lawyers by paralegals and complaints against paralegals. The reports also provide a list of services offered to complainants and summary of all general inquiries.

50. The Working Group provides recommendations that fall into three distinct categories. The categories are described as follows:

    a. Online Informational Resources – The Working Group noted that returning to practice after an extended period is often analogous to initial entry into the profession. As such, being aware of the Law Society's requirements for resuming one's practice and other useful information would help women make informed professional decisions before leaving the practice of law and when returning to the practice of law.

    b. Educational Initiatives –The Working Group is of the view that partnering with existing educational programs available for women who are transitioning back into practice would provide valuable opportunities for women who are returning to the practice of law. This option can provide an educational initiative that is specifically tailored to meet the needs of women who have left the practice of law for an extended period of time. The Working Group also proposes providing repayable loans to make these programs accessible to women.

    c. Career Counselling Resources – The Working Group discerned that access to career counselling could provide the necessary knowledge and insight to facilitate leaving and re-entering the profession. Career counselling is one feature of the mentoring paradigm and can be invaluable in helping a lawyer appreciate the realities of leaving practice and returning to practice after an extended absence.

51. It should be noted that the identified recommendations have been conceptualized on a spectrum, with information resources representing the minimum requirement that women must have to facilitate leaving and re-entering the profession.

52. Although the recommendations are geared towards women, the Working Group noted that men also take extended periods away from the practice of law and may encounter similar challenges as women when they attempt to return to practice.

RECOMMENDATION 1 – ONLINE INFORMATION RESOURCES

That the Law Society make available online informational resources for lawyers and paralegals focused on the departure from and return to the practice of law.

53. Some focus group participants indicated that they had conflicting information or were misinformed about the requirements necessary for returning to practice and reactivating their member status with the Law Society.

54. As a result, the Law Society's Membership Services developed a "fact sheet" to address some of the concerns identified by the Working Group. The fact sheet was immediately prepared and was subsequently distributed at focus groups sessions. Since the development of the fact sheet and through subsequent focus group meetings, the Working Group identified additional information resources that could be developed and made available online.

55. For example, helpful resources could include a centralized list of programs, substantive law courses, refresher courses and career counsellors available for lawyers who are leaving or returning to the practice of law. This section of the website could also include relevant guides that are available through Professional Development and Competence on topics such as setting up one's practice. There could also be links to courses, such as Master of Law programs or courses offered by the Ontario Bar Association or Advocates' Society.

56. The Law Society already has an extensive website, which includes a Women's Online Resource Centre, professional development resources and resources in the area of equity and diversity. The return to practice resources would build on existing online resources by offering information dedicated specifically to the issues associated with leaving the practice of law for an extended period of time and returning to the practice of law after an extended absence. It is suggested that the resources relating to returning to practice be centralized in a user-friendly format on the Law Society website and made readily accessible.

Resource Implications

57. It is anticipated that the development of the online resources would require some additional human resources for preparation. However, it is also anticipated that resource implications for updating and maintaining the site would not be as high once the online resources have been created.

Recommendation	Staffing	Program Expense	Other	Projected Annual Budget
Development of online resources	0.1 full-time equivalent position ($5,000)	Updating/maintaining will require less resources once the online resources have been created	Information Systems (IS) human resources may be required to assist in the creation of the website	$5,000

RECOMMENDATION 2 - EDUCATIONAL INITIATIVES

That the Law Society explore ways to provide or augment educational initiatives currently available for women who are transitioning back into practice, by

a. partnering with external associations to promote and assist in the delivery of their programs; and
b. providing financial assistance to women lawyers, in the form of a repayable loan, who want to attend an external program.

58. Many focus group participants suggested that one of the biggest challenges of returning to practice was determining how to proceed. The Working Group observed that some women require more than the Law Society's online informational resources, such as access to specialized programming. These courses, created for women who have left the practice of law for an extended period and are returning to practice offer invaluable assistance.

59. With respect to exploring educational initiatives, the following options were considered: partnering with existing external programs and associations to assist in the delivery of their programs; designing and delivering a Law Society program and providing financial assistance to women who want to attend an external program.

Partnering with Existing Programs

60. The Working Group determined that working in partnership with external stakeholders to deliver programs to women is the most feasible and practical option. There are a number of existing programs and initiatives in Ontario specifically designed for women who are returning to the workforce. These include the Women in Transition Program, Ivey ReConnect Program and the Rotman Back to Work Program. There are also programs outside of Ontario, such as the Minerva Foundation Program in British Columbia. (See Appendix D for a description of programs).

61. The Working Group noted that the Women in Transition program offered by the University of Toronto, the ReConnect program offered by the University of Western Ontario and the Rotman Back to Work Program, offered by the University of Toronto are excellent resources with proven track records of success. In the case of the ReConnect Program, all of the lawyers who enrolled in the program have returned to practice.

62. In considering partnering with existing organizations, the Law Society would not assume a lead in organizing the programming and would have varying degrees of influence, if any, on the program's content, delivery and cost. However, the Law Society would always be in a position to withdraw its support from the external program, if it was deemed appropriate.

Designing and Delivering its Own Program

63. The Working Group also considered the development of a Law Society program. The advantage of delivering its own program is that the Law Society could control all the elements of the program such as content, quality, delivery, cost, duration and frequency. The course could be designed and tailored to meet the specific needs of lawyers who are leaving and returning to practice. This could include the administrative elements of returning to practice, such as job search tips, résumé writing and interviewing skills. Maintaining the ownership of the course would allow the Law Society to manage the course on a cost-recovery basis.

64. While a Law Society developed and managed course has its advantages, the Working Group was also cognizant of its inherent disadvantages. The duplication of existing courses or programs was raised as a concern. It was also noted that a Law Society developed and managed course would have to compete with other programs for participants.

65. The Working Group felt that it should not duplicate effective existing programs, but should instead, when possible, partner with an external organization. In the opinion of the Working Group, as long as there are effective programs available to women transitioning back into the legal workforce, it is not necessary for the Law Society to become involved in the marketplace.

Providing Financial Assistance for External Programs

66. In addition to or in lieu of partnering with an existing program, the Working Group is of the view that the Law Society could offer financial assistance to those women who want to attend one of the available programs. The financial assistance could either come in the form of a loan or bursary. The Working Group noted that the Law Society currently has three models that could be used as a template for offering financial assistance.

67. The Law Society offers bursaries to some of its licensees for Continuing Professional Development programs[8] and provides financial assistance under the Parental Leave Assistance Program (PLAP) to sole practitioners or lawyers who are partners in a firm of five lawyers or less[9] and under the Repayable Allowance Program (RAP) to assist candidates in the Licensing Process.[10]

68. In considering offering financial assistance to lawyers who are returning to the practice of law after an extended absence, the Working Group favoured a loan repayment structure as opposed to a bursary. The Working Group was of the opinion that providing a loan, as opposed to a bursary, ensures that the financial resources will be accessed by women who are in great need of financial assistance to help return to practice and are committed to returning to the practice of law.

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[8] Bursaries are available to lawyers and paralegals to attend Continuing Professional Develop programs. Legal services providers with annual net incomes below $35,000 can qualify for a 50% reduction off the regular price of most Law Society CPD programs, and reductions of up to 50% off the regular price of most Law Society CPD publications. To be eligible for a reduction in price, applications must be submitted a minimum of 10 days before the date of any CPD program for which a bursary is sought. Bursary is awarded on annual basis, to lawyers and paralegals, based on a calendar year.

[9] The Parental Leave Assistance Program (PLAP) of the Law Society is a business income replacement program that assists in defraying some of the overhead costs during a lawyer's leave from practice. To be eligible for the benefits under the PLAP the applicant must be a birth parent or adoptive parent, a member in good standing, a sole practitioner or lawyer who is a partner in a firm of five lawyers or fewer and have no access to other maternity, parental or adoption financial benefits under any public or private plans including not being eligible to receive Employment Insurance. The lawyer must also cease to engage in remunerative work and to practise law during the leave from which he or she is receiving payments under the program.

[10] The Repayable Allowance Program (RAP) is a program that offers financial assistance to candidates enrolled in the Licensing Process who demonstrate need and have exhausted all other sources of funds. The RAP is a program of last resort for candidates who are struggling to pay their tuition and/or meet their living expenses during the Licensing Process. To be eligible for the Repayable Allowance Program a person must be currently enrolled in the Licensing Process, either sitting the examinations of the Licensing Process, or completing articles. Candidates are not eligible while seeking articles; must have exhausted all other sources of funding available to them including student loan programs, and the Bank of Montreal Student Line of Credit for Professionals; and, must be a citizen or permanent resident of Canada. In RAP, a person signs a pledge to repay the money borrowed within 3 years of being called to the bar.

69. The Working Group proposes a five year pilot program where financial assistance would be made conditional on a minimum time away from the practice of law, on acceptance into one of the designated programs and on demonstrating that the applicant has exhausted all other avenues.[11]

70. Similar to the RAP, it is suggested that the loan be interest-free for six months after the course has been completed and that interest would accrue at the prime lending rate plus one percent after the six-month non-interest period has passed. Applicants would sign a promissory note and be required to repay the loan within a fixed time period of three years. Moreover, loan recipients would have the option of repaying the loan in instalments. It is suggested that, as a 5 year pilot program, the loan program would be evaluated after that period of time to assess how effective the financial assistance has been in helping women return to practice.

71. The financial assistance could only be used for courses designed exclusively for training and preparation of women transitioning back into the legal workforce. Degree granting programs, such as Master of Laws programs where the Ontario Student Assistance Program (OSAP) is available, would fall outside of the eligibility criteria for financial assistance.

72. The Working Group was mindful of the varying costs of the available programs and the additional expenses that would be incurred by attending the course. For example, the Women in Transition program costs $695 per participant, the ReConnect program costs $3500 per participant and the Back to Work program costs $1950. A participant attending one of these programs may have travel and child care expenses as a result of attending the course. Therefore, the Working Group proposes that a one-time maximum loan allowance of $5000 be available.

73. The Working Group was also cognizant that there may be instances where an applicant may be unable to repay the loan or to repay the loan in the designated fixed time period. However, given the need for these women to return to practice, it is anticipated that the default rate on loans would be less than 10%.

74. The Working Group also acknowledges that additional criteria would have to be developed on the terms and conditions of repayment and the selection of courses and programs that the Law Society would provide financial assistance towards.

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[11] To be admitted into the ReConnect program, the applicant must be a professional woman. Applicants are carefully screened for educational background and managerial work experience. CIBC provides an annual fund for financial assistance. To receive financial assistance, an applicant must provide a letter indicating the basis of their need and is required to pay a minimum of $500 of the total $3500 course fee. The ReConnect program is not eligible for the Ontario Student Assistance Program and two lawyers have participated in the programs for the last three years. To be admitted into the Women in Transition program, the general guidelines include practicing lawyers who are considering transitioning to non-traditional legal work and women who have left the practice of law and now want to return. Like the ReConnect program, the Women in Transition program does offer financial assistance to women with a demonstrated financial need and applicants must provide a letter outlining the basis of their financial needs. The Women in Transition program is also not OSAP eligible. In June 2009, the program had 42 participants and in October 2010 has 30 participants.

Resource Implications

75. It is anticipated that the management of partnering with existing courses or programs and designing and delivering a Law Society course would require some additional human resources.

76. Human resources would also be required to manage and administer the financial assistance program. The management of the program would include reviewing and assessing applications, maintaining statistics and writing reports. In addition to the initial cost of the program, there would also be start up costs of the program, which would include establishing, marketing and promotion of the program, website design and translation.

77. The cost projection of the financial assistance program was calculated using Law Society data and statistics about its membership. Between 2003 and 2008, an average of 15 women returned to the practice of law each year. Using the average number of women who returned to the practice of law during this period as the projected uptake of the program and assuming that all of these women qualified for the program and were eligible to receive the proposed maximum loan allowance of $5000, the Law Society would have to allocate $75,000 each year for the first three years of the program. It is anticipated that this amount could be lessened once loan recipients commenced repayment.

Option	Staffing	Program Expense	Other	Projected Annual Budget
Option 1- Partnering with existing courses or programs	0.1 full-time equivalent position ($5,000)		Financial contribution, costs or promotion ($10,000)	$15,000
Option 2 - Designing and delivering a Law Society course.	0.1 full-time equivalent position ($5,000)		Cost recovery	$5,000
Additional proposal - Loans for an existing course or program.	0.3 full-time equivalent position ($15,000)	15 participants x $5000 (maximum allowance) = $75,000	It is anticipated that 90% of loans would be repaid in 3 years	$90,000 (2011 – 2013) $22,500 (2014 – 2015)

RECOMMENDATION 3 - CAREER COUNSELLING RESOURCES

That the Law Society contract the use of one or more professional career counsellors and provide access of up to six hours of career counselling and/or coaching services to women lawyers who work as sole practitioners or in small firms of five lawyers or less who are taking a leave from the practice of law for maternity, parental and/or compassionate reasons.

78. The Working Group observed that many focus group participants left the practice of law for child care, including parental leaves and family responsibility reasons. These participants initially thought that they were going to be away from the practice of law for a shortened period, but ultimately took an extended absence. Many focus group participants suggested that they would have made other choices had they been informed of the difficulties of returning to practice once they made a decision to take an extended absence. This led the Working Group to conclude that, not only did women not appreciate the challenges that would be involved in returning to practice, but some had unrealistic expectations about what returning to practice would entail.

79. To bridge these observations, while taking into account the need for some women to have more focused individualized guidance options available, the Working Group identified career counselling as a format that should be accessible to women who are leaving. In most cases, it was observed that a woman who is leaving and returning to practice would benefit from coaching services on career development.

80. In the case of a lawyer leaving practice, the coaches would provide career advice and address the realities and challenges of leaving one's practice for an extended period of time. This would enable a lawyer to make a more informed decision at the time of departure. When the lawyer would return to practice, further coaching would be provided in the form of generating personalized options and offering suggestions to assist the lawyer re-enter practice. A career counsellor can also assist in developing marketing strategies that are consistent with the needs of the marketplace at the time of re-entry into the profession.

81. From its discussions with the career counsellors, the Working Group learned that a critical component of the career counselling relationship is the guarantee of complete confidentiality. The confidential nature of the relationship results in career counsellors providing blunt and candid information on the challenges of returning to practice, while at the same time helping to manage expectations that may be unreasonable and unrealistic.

82. Moreover, with regards to women who are leaving the practice of law, the Working Group discerned that the greatest need for career counselling was women lawyers who work as sole practitioners or in small firms of five lawyers or less who are taking a leave from the practice of law for maternity, parental and/or compassionate reasons. The Working Group believed that these women do not have resources available to make informed decisions about an extended departure from the practice of law when compared to their counterparts working in large firms. The Working Group observed that counselling resources are available at large firms and that medium firms can also afford to purchase counselling services. Therefore, the Working Group recommends that the career services should be limited to women in firms of five or fewer lawyers.

83. In providing coaching services to these women, as a model, the Working Group considered the work of the Parental Support Program of the Law Society of Manitoba.[12] In this model, lawyers going on parental leave may access counselling/coaching services to help them prepare for parenthood and career and professional responsibilities. Lawyers are provided with a total of six sessions; two sessions before they take the parental leave, two sessions while they are on the parental leave and two sessions after they return from the parental leave. Given the effectiveness and success of this program in Manitoba, a modification of this model could be used to provide guidance to lawyers who are considering leaving the profession for any period of time.[13]

84. As stated earlier, many focus group participants suggested that they would have made different and more informed choices had they been aware of the challenge of returning to practice after an extend absence. This may have allowed an easier transition back to the practice of law. The Working Group also noted that many focus group participants discussed their sense of isolation when they were away from the practice of law. This sense of isolation stemmed partly from the belief that the issues that they were facing when returning to practice were unique.

85. Most focus group participants commented how invaluable mentoring was or would have been. Many suggested that it would be helpful to develop/enhance the ways of connecting with women who have successfully returned to the practice of law after an extended absence or who understand the issues and challenges with respect to returning to the practice of law after an extended absence.

86. In this regard, career counselling can also assist lawyers to explore the consequences of a given course of action, help the lawyer make decisions that can facilitate returning to practice in the future and advise that person on how to develop and manage their career effectively. For example, it is not uncommon for some lawyers returning to practice to think that they can resume the same practice that they left. However, the passage of time away from practice may mean that the lawyer will be faced with returning to a very different practice. A career counsellor can help a lawyer accept this reality and appreciate that there are other opportunities available.

87. The Working Group noted that the delivery of the career counselling could take various forms, including contracting the use of a professional career counsellor, expanding career counselling services within the mandate of the Discrimination and Harassment

[12] The Parental Support Program provides coaching sessions to lawyers and their spouses/partners to help them plan for maternity and parental leave and meet the challenges of becoming new parents. The coaching sessions are provided by the Equity Ombudsperson of the Law Society of Manitoba and consist of six in-person sessions. The sessions focus on issues such as how to discuss leave options and transition issues with the lawyer's firm, the dynamics of having a family and successful re-integration into practice while juggling career and home life. Sessions are free, completely confidential and supported by the additional resources of Blue Cross Manitoba. < http://www.lawsociety.mb.ca/for-lawyers/equity-ombudsperson/about-the-equity-ombudsperson>.

[13] On April 7, 2010, the Working Group held a teleconference with Brenlee Carrington Trepel, Equity Ombudsperson at the Law Society of Manitoba to discuss their Parental Leave Support Program. She provided an overview and benefits of the program and described how successful the program has been.

Counsel or creating a counselling services position at the Law Society. Notwithstanding the implementation of this recommendation, the Working Group agreed that the Law Society should also make available a list of career counsellors to be included in the informational resources.

Contracting the use of a Professional Career Counsellors

88. The Working Group proposes that of all the coaching options presented in this report, contracting with experienced career counsellors is the preferred option. The advantage of contracting the use of a professional career counsellor stems from the extensive experience and expertise in career coaching. From its discussion with the career counsellors, the Working Group learned that each counsellor had provided counselling services to hundreds of professionals, including dozens of lawyers. The career counsellors also frequently engaged in continuing professional development initiatives and activities to augment and enhance their skills.

89. Based on its discussions with career counsellors, the Working Group is of the view that one-on-one counselling is preferable. However, offering this type of service across the province would require a high level of resources, both financially and administratively. As a result, the Working Group recommends that this five-year pilot program be provided in three regions, Toronto, Ottawa and London. For other regions, counselling services will be available by telephone or, in exceptional circumstances, in person.

90. Staffing/human resources would be required to manage the program and a budget to retain professional career counsellors. The Working Group also noted that career counsellors offer services at $150 to $300 an hour. For budgeting purposes, the Working Group estimates that the services would be offered at a rate of $225.

Expanding the mandate of the Discrimination and Harassment Counsel (DHC)

91. The Working Group considered whether it should recommend instead that the mandate of the Discrimination and Harassment Counsel (DHC) be expanded to include career coaching. However, the Working Group noted that the DHC is not a counsellor and was not appointed to have expertise in offering counselling services. Therefore, if the Law Society decides that the DHC's mandate should be expanded to include counselling responsibilities, it would be necessary to provide training to the DHC in career counselling and coaching or to retain a counsel with this expertise. The Working Group decided that this is not the preferred option.

Creating a Counselling Position at the Law Society

92. An alternative to expanding the mandate of the DHC would be to create a counselling position at the Law Society. This option could potentially lower the cost of the program, as the Law Society could create a salaried part-time position, as opposed to contracting a career counsellor at an hourly rate. However, when employee benefits are assessed, the cost implications may be neutral. A disadvantage of this option is that the take up rate is uncertain, especially in the first years of the program, and therefore the staff person may be underutilized.

Providing a List of Career Counsellors

93. Notwithstanding whether the Law Society chooses not to contract the use of a professional career counsellor, expand the mandate of the DHC, or create a counselling position at the Law Society, it could nevertheless, make available a list of regional services on its online information resources.

Resource Implications

94. Services offered by career coaches' range from $150 to $300 an hour. If women lawyers who work as sole practitioners or in small firms of five lawyers or less who are taking a leave from the practice of law are eligible for 6 hours of career coaching (2 hours of pre-departure counselling, 2 hours of counselling while on leave and 2 hours of post-return counselling) using an hourly rate of $225, the cost per lawyer would be $1350. It is expected that, if the project is approved by Convocation, it would become effective at the earliest in September 2011. As a result, the projected take up rate for the last quarter of 2011 would be approximately 20 women and they would likely be able to use the service for 2 hours, for a total amount of $9,000. In addition, it is estimated that a 0.2 full-time equivalent position would be required to set up the program. As a result, the required budget for 2011 would be $19,000.

95. The cost projection for 2011 of the counselling program was calculated using Law Society statistics on the take up rate of the Parental Leave Assistance Program. In 2009, for a period beginning in March and ending in December, 50 lawyers including 8 female lawyers who worked in small firms and 27 sole practitioners accessed the Parental Leave Assistance Program of the Law Society of Upper Canada. In 2010, by the end of October 2010, 57 applications had been approved for an estimate of 60 applications per year. If all 60 lawyers accessed the counselling services per year, the cost of the program would be $81,000 per year.

96. The Law Society of Manitoba's Parental Support Program is open to all members and its eligibility criteria is much broader than the one proposed by the Working Group. As a result, that program does not provide an accurate basis to estimate the cost of the Working Group's proposed program.[14]

97. A more accurate cost projection involves using fertility rate statistics from the report written for PLAP. Using the average fertility rates per 1000 by age band in 2004, the average number of live births between the ages of 20-39 is 70. Given that there are 1091 women lawyers who work in small firms of five lawyers or less, including sole

[14] From October 2008 to December 2009, 14 lawyers accessed the Law Society of Manitoba's Parental Support Program. There are approximately 1800 lawyers in Manitoba. Therefore, less than 1% accessed the program. It is suggested that if the Law Society's career counselling program was open to all its members, then it is expected that 420 lawyers (42,000 x 1%) would use the career counselling services.

practitioners, who are under the age of 40, it is projected that there would be approximately 70 live births among the number of women lawyers who are under the age of 40 and who would fall within the proposed criteria of the Working Group.[15]

98. Therefore, it is possible that more than 60 lawyers would take advantage of this program, as eligible applicants would include associates, which are not eligible for PLAP. In addition, it is expected that a 0.1 full-time equivalent position would be required to manage the program. The total projected annual budget would be $86,000, beginning in 2012.

Option	Staffing	Program Expense	Other	Projected Annual Budget
Option 1 - Contracting with one or more professional career counsellors	2011 0.2 full-time equivalent position to set up the program ($10,000) Annual 0.1 full-time equivalent position to manage the program ($5,000)	2011 $225 x 2 sessions x 20 participants = $9,000 Annual $225 (flat fee) x 6 hours (capped) = $1350 $1350 x 60 participants = $81,000	Administrative expenses and travel and accommodation expenses in exceptional circumstances	2011 $19,000 Annual $86,000
Option 2 - Expanding the mandate of the DHC	2011/Annual 0.1 full-time equivalent position to manage the program ($5,000)	2011 $250 x 2 sessions x 20 participants = $10,000 Annual $250 (flat fee) x 6 hours (capped) = $1500 $1500 x 60 (estimated	Training required, administrative expenses and travel and accommodation expenses in exceptional circumstances	2011 $15,000 Annual $95,000

[15] The average number of live births in the age band of 20-24 is 42.9. The average number of live births in the age band of 25-29 is 92.5. The average number of live births in the age band of 30-34 is 101.5. The average number of live births in the age band of 35-39 is 44.4. Therefore, the average number of live births in the age bands from 20 – 39 is equal to (42.9 + 92.5 + 101.5 + 44.4)/4 = 70.32.

Option	Staffing	Program Expense	Other	Projected Annual Budget
		participants) = $90,000 DHC rate $250/ hour		
Option 3 - Creating a Law Society counselling position	0.5 full-time equivalent position ($40,000)		Training required, administrative expenses and travel and accommodation expenses in exceptional circumstances	$40,000
Option 4 – Online list of career counsellors	Nominal.	Nominal.		Nominal

99. Given the extensive experience and expertise of career counsellors and their availability for face-to-face counselling, combined with the steps required to expand the mandate of the Discrimination and Harassment Counsel or to create a counselling position at the Law Society, the Working Group recommends contracting the use of a professional career counsellor.

TOTAL FINANCIAL IMPLICATIONS OF PROPOSED RECOMMENDATIONS

		2011	2012 and 2013 Annual costs	2014 – 1015 Annual costs
Recommendation 1 On-Line Resources	Financial	Nominal	Nominal	Nominal
	Staffing	$5,000	$5,000	$5,000
Recommendation 2 Partnering with external program and loan	Partnering Financial	$10,000	$10,000	$10,000
	Partnering - staffing	$5,000	$5,000	$5,000
	Loan Financial	$15,000	$75,000	$22,500[16]
	Loan staffing	$15,000	$15,000	$15,000
Recommendation 3	Financial	$9,000	$81,000	$81,000
	staffing	$10,000	$5,000	$5,000
Total		**$69,000**	**$196,000**	**$143,500**

[16] As it is anticipated that 90% of the loans would be repaid in 3 years, the cost of the program will decrease once loans are repaid.

CONCLUSION

100. The Working Group believes that these recommendations provide a balanced approach between lawyers who require information that they need to make an informed decision when they are considering taking an extended leave from the practice of law and lawyers who have been away from the practice of law for an extended period and need assistance to return to the practice of law. This balanced approach, in conjunction with the implementation of these recommendations, not only facilitates the retention of women in the legal profession, but is also consistent with the equity and diversity mandate of the Law Society.

Appendix A

TABLE OF FOCUS GROUP MEETINGS

Meeting	Date	City/ Region	# People Attended	Notes
Focus Group #1	April 27, 2009	Toronto	13	The meeting was with women, most of whom have been litigators at large or medium firms in Toronto before their departure from practice. Most of the women had left the practice of law for child care or family responsibility reasons.
Focus Group #2	July 7, 2009	Toronto	5	The meeting was with women who had been among the 42 women who had attended the Women in Transition program co-hosted by the University of Toronto and the Law Society on June 17-18, 2009.
Focus Group #3	September 30, 2009	Ottawa	7	The meeting was with women from the Ottawa area.

Meeting	Date	City/ Region	# People Attended	Notes
Focus Group #4	October 1, 2009	Ottawa	6	The meeting was held with senior women in law firms in order to determine ways that law firms can assist women in overcoming the barriers of returning to practice.
Focus Group #5	February 5, 2010	Ottawa	11	While there were 11 participants, only two participants were within the criteria of the Return to Practice Working Group.
Focus Group #6	April 1, 2010	London	6	The meeting was with women from the London area.
Focus Group #7	April 30, 2010	Sudbury	3	The meeting was with women from the Sudbury area.
Focus Group #8	May 7, 2010	Thunder Bay	4	The meeting was with women from the Thunder Bay area.

Appendix B

FOCUS GROUP QUESTIONS

1. Please discuss the following:
   a. What position/work environment and practice area your were in;
   b. Why you left;
   c. How long you were gone for;
   d. The type of position/work environment and practice area you re-entered or wish to re-enter.

2. What are, from your perspective, the most significant barriers for your return to practice?

3. Are the challenges that racialized women or women from equity-seeking groups face different from those of other women?

4. What programs or initiatives would assist you in returning to practice?

5. The Law Society of Upper Canada regulates the legal profession in the interest of the public. The Law Society can provide tools to assist lawyers and law firms, but the Law Society does not have the mandate to impose the adoption of those tools. All lawyers in Ontario are members of the Law Society. The Law Society provides a series of support programs and education programs for its members to enhance their competence in offering legal services to the public. What programs or initiatives could the Law Society implement?

Appendix C

CURRENT INITIATIVES OF THE LAW SOCIETY OF UPPER CANADA

1. Over the years, the Law Society has developed initiatives and supports that facilitate returning to practice. These include changes to the fee payment structure for lawyers, who have been away from the practice of law, fact sheets about the requirements of re-entry, mentoring, networking, practice helpline, practice review and the contract lawyers' registry.

2. Currently in Ontario, former members of the Law Society of Upper Canada whose license to practice law has been revoked, who have surrendered their license or who have been permitted to surrender[17] their license may apply to be licensed in accordance with *Law Society Act*,[18] and By-Law 4 Part II. In this case, the former lawyer must file the appropriate application and pay the $300 administrative fee.

3. In cases where a lawyer was administratively suspended, the lawyer must pay an additional $150 reinstatement fee and any fees that are in arrears prior to 1993. Applications from inactive lawyers who were permitted to surrender their licence or whose licence was revoked must also appear before the Law Society's Hearing Panel to have their licensing application considered.

[17] A lawyer whose license is revoked or who surrender's his or her license must cease the practice of law and is also prohibited from providing legal services as defined by the *Law Society Act*, as only those persons licensed by the Law Society to provide legal services may do so.

[18] R.S.O. 1990, c. L.8, s. 27.

4. The Law Society does not require the completion of courses, the rewriting of exams under the licensing process or re-articling, as is the case in other provinces, for example, Alberta[19] and British Columbia.[20] The requirements for reactivating one's status with the Law Society are outlined on the Return to Practice Fact Sheet that is located on the website.[21]

5. Other supports related to returning to practice include mentoring and networking. The Law Society facilitates networking and mentorship opportunities through its Equity and Diversity Mentorship Program, Articling Mentorship Program, Practice Mentorship Program and its Public Legal Education events. Lawyers that are returning to practice or in the process of returning to practice can participate in some of these programs and be paired with a mentor while Public Legal Education events are free.

6. The Practice Review Program and the Practice Management Helpline can also assist lawyers who have recently returned to practice. The Practice Review program provides both focused practice reviews and practice management reviews to lawyers, while the Practice Management Helpline is a confidential telephone service that provides lawyers with assistance in interpreting the *Rules of Professional Conduct,* Law Society legislation and by-laws as well as ethical and practice management issues that the lawyer might be facing.

7. The Law Society also produces a series of Practice Guides, such as the Bookkeeping Guide and Guide to Opening Your Practice, and offers Continuing Legal Education and Professional Development programming that can act as resources and assist lawyers that are returning to practice.

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[19] For example, former members of the Law Society of Alberta who wish to resume membership must apply for reinstatement of their membership. Once received, the Executive Director may refer the application to the Education and Credentials Committee, if he/she is of the opinion that the applicant's current knowledge of law and practice should be reviewed. The Education and Credentials Committee may approve or reject the reinstatement application or may approve the applications with conditions. Such conditions can include completing a course or courses of study specified by the Committee or passing any examinations prescribed by the Committee. See 115 -118 of Rules of Law Society of Alberta at: http://www.lawsocietyalberta.com/resources/rulesOfTheLawSociety_Y2R gvP.cfm.

[20] In British Columbia, the conditions of returning to practice relate to the lawyer's recent practice history, specifically, the length of time the lawyer has engaged in the practice of law or "equivalent practice," and the length of time you have been absent from practice. Depending on the practice history of the applicant, the applicant may have to fulfill return to practice requirements. If the applicant was called to the bar at least 7 years ago and has not practiced law within the last 7 years, the applicant must apply to the Credentials Committee and comply with any conditions it imposes. Conditions can include the completion of the Law Society Admission Program, completion of all or part of the Professional Legal Training Course and/or restrictions on practice. The applicant may also be asked to complete the Law Society Admission Program, which is a 12-month training program supervised by the Credentials Committee. It consists of nine months of articling and 10 weeks of full-time attendance at Professional Legal Training Course. Full details on return to practice requirements are available from the Law Society of British Columbia's website at: http://www.lawsociety.bc.ca/licensing_membership/returning_to_practice.html.

[21] <http://rc.lsuc.on.ca/pdf/membershipServices/returnToPracticeFactSheet.pdf>.

8. Continuing Legal Education programs include the New Lawyer Practice Series which covers various areas of law, Opening Your Law Practice, Running a Virtual Law Office and Effective Writing for Legal Professionals. The Law Society also co-sponsors the Women in Transition program offered by the Faculty of Law at the University of Toronto. Moreover, the Knowledge Tree is a custom-designed resource for lawyers in Ontario. This is a comprehensive on-line listing of the most common practice management questions that lawyers have asked and the responses that are given.

Appendix D

DESCRIPTION OF EXTERNAL PROGRAMS

Women in Transition Program: Returning to Legal Practice or Considering an Alternative Career in Law

1. The Women in Transition Executive Education Program co-sponsored by the University of Toronto and the Law Society is designed to help women who are returning to practice understand the changes in the legal market place and provide practice tools and tips for career and job searches. It provides insights and practical knowledge into alternative careers in law firms, business, regulatory bodies, the public interest, community organizations, government, academia and the university, as well as a range of part-time and full-time options and share arrangements in more traditional practice areas.

2. The two-day intensive program is geared towards practicing layers considering a transition to non-traditional legal work, women who have left the practice of law and wish to return to legal practice or a non-traditional law-related job and women interested in part-time work, starting their own practice or exploring shared work arrangements. The most recent session was held in October 2010.

Ivey ReConnect Program

3. Founded by Canadian Imperial Bank of Commerce, ReConnect is designed to assist professional women who have been out of the workforce for extended periods (two to six years) prepare to return to their professional careers. The program is offered once a year in the form of two modules that span seven days (five days in London, two days in Toronto). The cost of the program to participants is $3500 (including materials, meals and accommodation). CIBC and Ivey underwrite the additional cost of $9000 per participant. This program is not exclusive to lawyers and financial assistance is available for those who qualify.

4. The benefits of ReConnect include assisting participants to, understand the current global business environment and explore how new trends are changing firms' strategies and tactics; renew analysis, planning and strategic skills; refresh business knowledge in financial management, information, technology and marketing; update leadership and communication skills; define an achievable career vision and strategy to execute a successful job search; learn how to leverage professional and personal networks to build career search connections; and build a strong and enduring peer-network with fellow participants.

Back To Work Program

5. The Back to Work Program at the Rotman School of Management at the University of Toronto sponsored by TD Bank Financial Group (TD) is for women who are returning to business after an extended time away. The program runs in three modules of three program days over a three month period. The first module was in October 2010. During the in-class portion of the Back to Work Program, Rotman faculty members and instructors, as well as TD senior executive guest speakers, help participants refresh their business knowledge on topics like leadership, strategy and business and people performance. Between in-class sessions, participants receive one-to-one coaching and engage in business-related assignments between modules offered by TD and the other supporting organizations.

6. The cost of the program is $1,950 +HST and includes program materials and meals. As lead program sponsor, TD Bank and the Rotman School of Management underwrite the cost of the program to lower tuition fees for participants. The value of the program per participant, excluding the value of in-kind childcare services, is $13,500. Applicants may also qualify for one of four full scholarships, funded by TD.

Minerva Foundation for British Columbia Women

7. The Minerva Foundation for British Columbia Women was initiated in 1999 to provide funds for projects that will assist women to realize their potential and to create a safe place for them to live and work in British Columbia. The work of the Minerva Foundation is carried out through a series programs. The Minerva Helping Women Work Program was established in 2004 to aid women returning to work after an extended absence with the assistance of career counsellors, industry mentors and coaches.

8. The program takes up to 20 participants (referred to as protégés) on a specific career-planning journey, delivered by a team of qualified professional career counsellors, to improve their re-employment skills and define their goals. Mentors offer protégés advice, direction, and contacts. They are drawn from the business, academic, government and non-profit community. The mentors help the protégé determine which positions are the most feasible from a personal and industry outlook, and from a labour-market perspective. Each protégé is partnered with a personal career coach who will guide and support the protégé for 8 weeks through the critical job-search process.

Appendix 2

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES
2011

HOLOCAUST MEMORIAL DAY
May 2, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 7:30 p.m.)

ASIAN AND SOUTH ASIAN HERITAGE MONTH
May 24, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

ACCESS AWARENESS - DISABILITY ISSUES AND LAW FORUM
June 8, 2011
Lamont Learning Centre (4:00 p.m. – 8:00 p.m.)

NATIONAL ABORIGINAL DAY
June 9, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

PRIDE WEEK
June 23, 2011
Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)
Convocation Hall (6:00 p.m. – 8:00 p.m.)

CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this 26th day of May, 2011

Treasurer