

MINUTES OF CONVOCATION

Thursday, 29th January, 2009
9:00 a.m.

PRESENT:

The Treasurer (W.A. Derry Millar), Aitken (by telephone), Anand (by telephone), Backhouse (by telephone), Banack, Boyd, Braithwaite, Bredt, Campion, Caskey, Chahbar, Conway, Crowe, Dickson, Dray, Elliott, Epstein, Furlong, Go, Gold, Ground, Hainey, Hare, Hartman, Henderson, Lawrie, Legge, McGrath, Marmur (by telephone), Minor, Murphy, Murray, Pawlitza, Porter, Potter, Pustina, Rabinovitch, Robins, Ross (by telephone), Rothstein, Ruby, St. Lewis, Sikand, Simpson, Swaye, Symes and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

Congratulations were extended to bencher, Mary Louise Dickson, on her appointment to the Order of Ontario and to the Honourable Patrick Lesage, Q.C. and Professor Edward Ratushny on their appointments to the Order of Ontario.

Congratulations were also extended to Abdul Chahbar on his election for a fourth successive term as Chair of the London Police Services Board.

The Treasurer and benchers wished former Treasurer Laura Legge a belated happy birthday. Mrs. Legge celebrated her birthday on January 27.

The Treasurer advised that he had delivered the two-year report on paralegal regulation to the Attorney General.

The Treasurer announced that Convocation and Committees would not meet in March.

The Treasurer acknowledged the generosity of the Honourable Ian Cartwright and his wife, Pat Cartwright, for their donation of \$1,000,000 to the Association in Defence of the Wrongfully Convicted. The Treasurer also acknowledged and thanked Paul Pape and Harvey Strosberg and their firms, Richard Meretsky and the Bank of Nova Scotia for the cy-pres payment of \$1,000,000 to the Law Society Foundation for use by it for the Lawyers' Feed the Hungry Program at Osgoode Hall.

The Treasurer extended condolences to the families of W. Glen How, O.C., Q.C., LSM of Georgetown who passed away on December 30, 2008 and Angus McKenzie, Q.C., LSM of London who passed away on January 19, 2009.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of November 27, 2008 were confirmed.

MOTION – APPOINTMENTS

It was moved by Gerald Swaye, seconded by Laurie Pawlitza, –

THAT the following benchers be appointed to the Law Society Medal/Lincoln Alexander/Laura Legge Award Committees:

Larry Banack
Marion Boyd
Carol Hartman
William Simpson

THAT the following benchers be appointed to the LL.D. Advisory Committee:

Larry Banack
Marion Boyd
Carol Hartman
William Simpson
Bonnie Tough

THAT Raj Anand be appointed to the Finance Committee and cease to be a member of the Human Rights Monitoring Working Group.

THAT Carol Hartman be appointed Chair and Christopher Bredt be appointed Vice-Chair of the Finance Committee.

Carried

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 subsection 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, January 29, 2009.

ALL OF WHICH is respectfully submitted

DATED this 29th day of January, 2009

CANDIDATES FOR CALL TO THE BAR

January 29th, 2009

Michele Susan Balz
Elise Madeleine Currie Roberts
Jean-Daniel Joseph Yvon Dufour-Neyron
Kathryn Mary Helena Edmunds
Kenneth Egede
Marcus Lorne Jewett
Danny Lew
Jayden John MacEwan
Marvin Mikhail
Milena Lobo Mitraud
Sonal Modi
Ingrid Moise
Emily K. Moreau
Scott Mitchell Pasternack
Christopher Warwick Peirce
Sharna Leah Searle
Daphne Clara Ann Mary Williamson

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

Carried

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

Ms. Hare presented the Final Report of the Aboriginal Bar Consultation for information.

Report to Convocation
January 29, 2009

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones

Committee Members
Janet Minor, Chair
Raj Anand, Vice-Chair
Paul Copeland
Mary Louise Dickson
Avvy Go
Susan Hare
Doug Lewis
Rabbi Dow Marmur
Judith Potter
Linda Rothstein
Beth Symes

Purposes of Report: Decision and Information

Prepared by the Equity Initiatives Department
(Josée Bouchard, Equity Advisor - 416-947-3984)

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COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on January 15, 2009. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson, Avvy Go, Susan Hare and Linda Rothstein participated. Members of the Equity Advisory Group/Groupe consultatif en matière d'équité ("EAG") were invited to participate. The following members attended: Milé Komlen, Chair, Zahra Binbrek, Joseph Cheng, Amandi Esonwanne, Laurie Letheren, representative of the ARCH Disability Law Centre, Dania Majid, representative of the Arab Canadian Lawyers Association, Sandra Yuko Nishikawa, Victoria Romero, representative of the Hispanic Ontario Lawyers Association, and Frank Walwyn, representative of the Canadian Association of Black Lawyers. Staff members Josée Bouchard and Marisha Roman attended.

FOR INFORMATION

Final Report – Aboriginal Bar Consultation

BACKGROUND

23. In 2004, the Equity Initiatives Department initiated the Aboriginal Bar Consultation project. The Aboriginal Bar Consultation Project combined a mail-out survey and a face-to-face consultation with Aboriginal members of the bar. The survey instrument was developed in consultation with members of the Aboriginal Working Group (AWG) of the Committee. The consultation was conducted through face-to-face and telephone interviews with Aboriginal lawyers and gathered information about the experiences of Aboriginal lawyers in law school, the then Bar Admission Course (BAC) or the Licensing Process and post-Call.
24. The specific goals of the survey and consultation were to,
 - a. collect information about Aboriginal lawyers by identifying their experiences in law school, the Bar Admission Course (BAC) or the Licensing Process and since their calls, where they live, in general terms, where they are working, what type of work they are doing and who their clientele is to create a demographic profile of the Aboriginal bar;
 - b. identify the most common stressors among Aboriginal members in law school, the BAC or the Licensing Process and post-Call and how these stressors have influenced Aboriginal lawyers' career choices and views regarding the profession for the purpose of developing relevant Aboriginal programs and supports;
 - c. identify what Law Society services Aboriginal lawyers have used during the BAC or Licensing Process, post-Call and currently for the purpose of assessing those services;
 - d. identify what other sources of support Aboriginal lawyers have accessed in law school, the BAC or Licensing Process and post-Call and how these support sources have helped them for the purpose of developing relevant Aboriginal programs and supports; and

- e. identify how Aboriginal lawyers view the Law Society overall for the purpose of assessing current programs and initiatives for Aboriginal lawyers and the Aboriginal community.
25. Throughout 2005 and 2006, the Aboriginal Initiatives Counsel undertook the following steps toward the development and implementation of the project:
 - a. Completion of a database of Aboriginal members of the Law Society;
 - b. Promotion of the Consultation project to Aboriginal legal organizations and community groups, including the Rotiio>taties Aboriginal Advisory Group (Rotiio>taties)⁹, the Indigenous Bar Association¹⁰, the Aboriginal Advisory Group of Legal Aid Ontario, the Aboriginal Law Section of the Ontario Bar Association and the Aboriginal Employees Group of the Department of Justice; and
 - c. Consultation with the Aboriginal Working Group and the external consultant, The Strategic Counsel, to create the final version of the survey.
 26. On May 23, 2006, the survey was mailed out to 225 Aboriginal members of the bar. As of August 8, 2006, 68 respondents returned completed surveys and 33 respondents agreed to participate in further consultations.
 27. On August 27, 2006, The Strategic Counsel submitted a draft report entitled *Survey among Aboriginal Members of the Law Society of Upper Canada*. A summary of this report was presented to the Committee on November 9, 2006. The preliminary report was used by the Aboriginal Initiatives Counsel to identify the issues to be further explored through the consultation. The Aboriginal Initiatives Counsel developed consultation questions with the Aboriginal Working Group in June 2007.
 28. Consultations took place through one-on-one interviews and through written correspondence, as requested by the respondents, from August 2007 through March 2008. In total, 29 consultations were conducted either by telephone or in-person interviews or through written submissions.
 29. The Final Report is presented at Appendix 3 of this report.

PUBLIC EDUCATION EQUALITY SERIES CALENDAR 2009

30. The calendar for the Public Education Equality Series and for the Rule of Law Education Series is presented at Appendix 4.

⁹ Rotiio>taties is an Aboriginal non-profit volunteer organization comprised of Aboriginal lawyers, legal academics, law students and community members advising various bodies in Ontario on Aboriginal issues as they arise in law and the legal profession.

¹⁰ The Indigenous Bar Association is a national non-profit professional organization for First Nation, Inuit and Métis persons trained in the field of law. Its membership consists of Indigenous lawyers (practising and non-practising), judges, law professors, legal consultants and law students. The IBA plays an active role in promoting the development of Indigenous law and supporting Indigenous legal practitioners.

APPENDIX 3

Final Report –
Aboriginal Bar Consultation

January 15, 2009

Prepared by the Equity Initiatives Department
(Marisha Roman: (416) 947-3989)

BACKGROUND

1. The Aboriginal Bar has dramatically increased in number since the first Aboriginal lawyer was called to the bar almost 50 years ago. Until the early 1980s, the number of Aboriginal lawyers remained very low and difficult to verify. A variety of factors created a sharp increase in the number of Aboriginal people joining the profession.
2. According to Census data for 2001¹¹, “from 1901 to 2001, the Aboriginal ancestry population increased tenfold, while the total population of Canada rose by a factor of only six. However, the rate of growth was very different in the first half of the 20th Century compared with the second half.” The passing of Bill C-31 in 1985, which amended section 6 of the *Indian Act*, resulted in a large number of Aboriginal people regaining their status for themselves and their children.¹² These individuals and their children registered with the federal government and, where available, registered with First Nations communities. As a result, they became eligible to access post-secondary education funding available through the Department of Indian and Northern Affairs for Status Indians.¹³ Additionally, the growth rate for the Aboriginal community has recently outpaced that of the general populace, creating a large cohort under 40 years of age.

¹¹ Statistics Canada, Census 2001 Report, *Aboriginal peoples of Canada*, <http://www12.statcan.ca/english/census01/Products/Analytic/companion/abor/canada.cfm>

¹² Indian and Northern Affairs Canada, *The Indian Register*, http://www.ainc-inac.gc.ca/pr/info/tir_e.html

¹³ Indian and Northern Affairs Canada, Audit of Post-Secondary Student Support Program, June 2005, http://www.ainc-inac.gc.ca/pr/pub/ae/au/01-15/01-15_e.pdf

3. Further, the Law Society has enabled individuals applying for the Bar Admission Course and now the Licensing Process to self-identify as a member of an equality-seeking group since 2000¹⁴. As a result, the Equity Initiatives Department, through the Aboriginal Initiatives Counsel, has been able to establish contact with Aboriginal lawyers called since 2001. On average, for the last 8 years, between 18 and 24 Aboriginal lawyers have been called to the Bar each year. This number accounts for almost 65% of the total estimated number of Aboriginal lawyers in Ontario (as of September 2008, approximately 260).
4. The mandate of the Law Society is to regulate the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law. In the fulfillment of its mandate, the Law Society promotes diversity and equity in the legal profession and works to ensure access to legal services for a diverse population.
5. To address its mandate, the Law Society conducted the Aboriginal Bar Consultation project and interviewed Aboriginal lawyers to create a demographic baseline for the Aboriginal bar, identify the support initiatives in place for Aboriginal lawyers that are working well, and to determine what programs and initiatives could be adapted and/or developed to address gaps in support programs and initiatives for enhancing access to the profession for Aboriginal Licensing candidates and lawyers. The work of the Aboriginal Working Group and the results of the Aboriginal Bar Consultation led to the proposals for action outlined in this report.

INTRODUCTION

6. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* ["Bicentennial Report"]¹⁵. The Bicentennial Report reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays, lesbians and persons with disabilities in the profession and the initiatives the Law Society had taken to address the identified barriers. The report made sixteen recommendations that have since guided the Law Society as it seeks to advance the goals of equity and diversity within the legal profession.
7. On July 31, 2003, Convocation established the Bicentennial Report Working Group [Bicentennial Working Group] to review and report on the implementation status of the recommendations contained in the Bicentennial Report. Members of the Working Group were: Joanne St. Lewis (Chair), Andrea Alexander, Constance Backhouse, Thomas G. Heintzman, W. A. Derry Millar and Beth Symes.

¹⁴ For the purposes of the Licensing Process, the Law Society defines equality-seeking as those individuals who self-identify as Aboriginal, a Person with a Disability, Francophone, Gay/Lesbian/Bisexual/Transgendered, Mature, or a member of a Racialized Community. Candidates can self-identify in more than one category.

¹⁵ *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997).

8. On January 22, 2004, the Bicentennial Working Group presented its *Bicentennial Implementation Status Report and Strategy* ["Bicentennial Strategy Report"] to Convocation for information. The Bicentennial Strategy Report detailed the programs, services and policies created by the Law Society as a result of the recommendations of the Bicentennial Report, analyzed the implementation status of each recommendation and proposed strategies to be examined and further implemented.
9. The Bicentennial Strategy Report noted "there is very limited information about Aboriginal law students and lawyers". The Bicentennial Working Group proposed that, in consultation with the Aboriginal community, research be carried out to enable the Law Society to develop policies to address barriers faced by Aboriginal law students and lawyers.¹⁶ This proposal is consistent with Recommendation 2 of the Bicentennial Report, which reads "To facilitate the development of policies, programs, and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence."
10. In December 2004, Joanne St. Lewis, then Chair of the Equity and Aboriginal Issues Committee (EAIC), created the Aboriginal Working Group to develop strategies to,
 - a. address barriers faced by Aboriginal law students and lawyers in accessing and being successful in the legal profession;
 - b. provide an advisory role to the Equity and Aboriginal Issues Committee on emerging issues affecting Aboriginal lawyers and the Aboriginal community; and
 - c. ensure that the Law Society takes on a leadership role in providing high quality support services to Aboriginal Licensing candidates and lawyers.
11. The Aboriginal Working Group (AWG) consists of 29 Aboriginal lawyers practising within Ontario and represents a broad cross-section of the Aboriginal bar, including members of the First Nations, Métis and Inuit communities from First Nations, rural and urban centres. The current Chair of the AWG is Bencher Susan Hare.
12. From early 2005 to mid-2006, the AWG identified policy and program initiatives related to enhancing access and retention of Aboriginal lawyers in the profession and enhancing communication between the Law Society and the Aboriginal bar and community. These initiatives were considered and received support by the Equity and Aboriginal Initiatives Committee. Consequently, in June 2006, the "Integrated Aboriginal Communications Strategy for the Aboriginal Community and the Legal profession" was presented to Convocation. Promotion of the Aboriginal Bar Consultation project (originally the "Aboriginal Bar Survey") was a key initiative for the Communications strategy and the AWG.

¹⁶ *Bicentennial Implementation Status Report and Strategy* (Toronto: Law Society of Upper Canada, January 2004), page 41.

13. The AWG became the main advisory group for the purpose of creating the database of Aboriginal lawyers who became the focus group for the Consultation project. The AWG also acted as the advisory group for the development of the survey questions and consultation questions. The focus of the questions was on gathering empirical data about Aboriginal lawyers in Ontario and qualitative information on their common experiences as law students, Bar Admission Course/Licensing candidates and lawyers as well as their perceptions about the current Law Society programs to support access and retention of Aboriginal peoples in the legal profession.
14. The Strategic Counsel was retained to conduct the survey phase of the Consultation project. As of August 8, 2006, 228 surveys were mailed out, 68 respondents mailed in their surveys and 33 respondents agreed to participate in further consultations.
15. On August 27, 2006, The Strategic Counsel submitted a draft report entitled, "Survey Among Aboriginal Members of the Law Society of Upper Canada". A summary of this report was presented to the Committee for its November 9, 2006 meeting.
16. This summary report was used by the Aboriginal Initiatives Counsel to identify the issues to be further explored through the consultation phase. The Aboriginal Initiatives Counsel developed the consultation question form with the Aboriginal Working Group, which approved the final form in June 2007.
17. The consultations took place through face-to-face or telephone interviews and through written correspondence, as requested by the respondents, from August 2007 through until March 2008.
18. As of March 31, 2008, 29 consultations were completed.
19. This report provides an overview of the demographic profile of the Aboriginal bar in Ontario. It also discusses the assessment of services currently provided by the Law Society to support Aboriginal Licensing candidates and lawyers by the consultation respondents. Finally, this report provides the respondents' feedback on three initiatives that were developed by the Aboriginal Working Group under the direction of the Equity and Aboriginal Issues Committee.
20. The report is divided under the following headings:
 - a. Demographic Profile of the Aboriginal Bar in Ontario
 - b. Common Experiences of Aboriginal Lawyers
 - c. Survey Respondents' Assessment of Law Society Support Initiatives for Aboriginal Licensing Candidates and Lawyers
 - d. Analysis of Consultation Results for Proposed Initiatives and Programs for Aboriginal Lawyers
 - e. Analysis of Programs and Initiatives for Aboriginal Lawyers in Other Jurisdictions
 - f. Conclusions and Proposals for Action

DEMOGRAPHIC PROFILE FOR THE ABORIGINAL BAR IN ONTARIO

21. The survey questioned respondents about their general demographic statistics, work history, working lifestyles, incomes and composition of their clientele. The sample size of 68 respondents resulted in statistically reliable data for most questions, particularly for questions relating to respondents' current experiences in the profession. Because of the low sample number (228), questions relating to specific details such as age, year of law school graduation and year of call to the Bar in Ontario could have resulted in the identification of respondents. This factor and the range of dates of call of respondents (approximately 1980 to 2005) limit the statistical reliability of certain questions relating to historical data, such as questions about accumulation of law school student debt and income earned during articling. As a result, these responses cannot be compared to the current situation of law students and Licensing candidates.
22. Of the 68 respondents, 53% identified as female and 46% as male.
23. When asked to self-identify within one of the enumerated Aboriginal categories, the vast majority of respondents self-identified as Status Indians (62%). The respondents provided the following responses:

Aboriginal Group	Percentage of respondents
Status Indian	62
Non-status Indian	9
Métis	22
Inuit	0
Other	6
I do not self-identify as Aboriginal	1

24. When asked if whether they self-identified with another equality-seeking group, most (22%) responded that they also self-identified with another ethnic or cultural group. The respondents provided the following responses:

Equality-Seeking Group Factor	Percentage of respondents
Your Race	16
Your ethnicity or cultural background	22
Your disability	1
Your religion or creed	3
Your language	6
Your sexual orientation	6
Declined to answer	16
No answer provided	47

25. Eighty-four percent of respondents attended law school in Ontario and the highest proportion of these respondents attended the University of Toronto (26%). Attendance at other law schools was distributed as follows:

Law School	Percentage of respondents
University of Toronto	26
Osgoode Hall Law School	21
University of Ottawa	12
Queen's University	9
University of Windsor	9
University of Western Ontario	7
University of British Columbia	6
University of Saskatchewan	6
University of Manitoba	3
Dalhousie University	1
University of Alberta	1
Other	7

26. When asked to describe the factors that attracted them to the law school they attended, respondents identified that previous contact with the faculty or personnel at the law school, reputation of the law school as progressive in terms of entrance requirements, encouragement of Aboriginal applicants, hiring of Aboriginal faculty, and Aboriginal-oriented curriculum or courses, as well as the size of the school were the predominant reasons behind their choice.
27. The vast majority of respondents (62%) received Band funding to assist them with their law school fees. They identified the following sources of support or assistance:

Source of Funding for Law School	Percentage of respondents
Band funding	62
Summer job income	54
Income from part-time employment during school	43
Student loans	37
Support from parents, family and friends	31
Bursaries through your law school	26
Personal Savings	24
Support from spouse/partner	15
Scholarship	13
Income from full-time employment during school	7
Funding for Métis students	4
Other	3
No answer provided	3

28. Similarly, during the Bar Admission Course or Licensing Process, the majority of Aboriginal candidates (51%) indicated that they received funding from their First Nation. Other sources of funding were identified as follows:

Source of Funding for Bar Admission Course/Licensing Process	Percentage of respondents
Band funding	51
Articling firm/agency/organization	29
Student loans	22
Summer job income	18
Income from part-time employment during BAC/Licensing	13
Support from parents, family and friends	13
Personal Savings	10
Support from spouse/partner	9
Bursaries through the Law Society or law school	7
Income from full-time employment during BAC/Licensing	1
Funding for Métis students	1
Other	1
No answer provided	4

29. At the time of their graduation from law school, approximately one-third of the sample identified that they had accumulated between \$7,501 and \$25,000 in student debt during law school. Approximately one-quarter of the respondents identified that they had accumulated no student debt during law school. Given the range of the years in which the respondents were called to the Bar in Ontario (from approximately 1980 to 2005), the amount of accumulated student debt cannot be compared to the current situation of law students.

Total Amount of Student Debt Accumulated During Law School	Percentage of respondents
Zero	26
\$1 to \$2,500	7
\$2,501 to \$7,500	9
\$7,501 to \$15,000	16
\$15,001 to \$25,000	13
\$25,001 to \$35,000	7
\$35,001 to \$45,000	4
\$45,001 to \$55,000	3

\$55,001 to \$65,000	1
\$65,001 to \$75,000	3
\$75,001 to \$85,000	3
\$85,001 to \$95,000	-
More than \$95,000	3
No answer provided	2

30. The vast majority of respondents (57%) identified that their articling salary ranged between \$25,001 and \$49,999. Again, given the range of the years in which the respondents were called to the Bar in Ontario (from approximately 1980 to 2005), the amount of income earned during articling cannot be compared to the current situation of Ontario Licensing candidates.

Pre-Tax Income from Articling Position	Percentage of respondents
Zero	3
Less than \$24,999	28
More than \$25,000 but less than \$49,999	57
More than \$50,000 but less than \$74,999	9
More than \$75,000 but less than \$99,999	1
More than \$100,000	-
No answer provided	1

31. When asked to identify their category of membership with the Law Society, the largest proportion or 22% self-identified as sole practitioners, compared with 19% for all members for the 2005 Members Annual Report (MAR). Following closely, 19% self-identified as employed in Government in Ontario, compared with 12% for all lawyers. When asked whether they identified themselves as lawyers, "notwithstanding the MAR membership categories", 94% of respondents replied yes. The following table provides the complete responses in comparison with the responses with the 2005 Members' Annual Report:

Category of Membership with the Law Society	Percentage of respondents	2005 Members Annual Report results
Sole Practitioner in Ontario	22	19
Partner in Law Firm in Ontario	7	17
Employee in Law Firm in Ontario	3	3
Associate in Law Firm in Ontario	13	14
Employed in Education in Ontario	3	1
Employed in Government in Ontario	19	12
Otherwise Employed in Ontario	13	16
Not in Ontario	7	8
Not Working	9	9

32. When asked to identify their area of practice in accordance with the categories provided in the MAR, the top three areas of practice identified were Criminal/Quasi-Criminal Law (34%), Employment/Labour Law (27%), and Administrative Law (27%). The vast majority of respondents identified their area of practice as Other (42%). It should be noted that the MAR does not provide Aboriginal Law as an identified area of practice. Overall, the respondents provided the following responses:

Area of Practice as provided by the Members' Annual Report (MAR)	Percentage of respondents
ADR/Mediation Services	15
Administrative Law	27
Bankruptcy & Insolvency Law	-
Civil Litigation – Plaintiff	19
Civil Litigation – Defendant	11
Construction Law	6
Corporate/Commercial Law	21
Criminal/Quasi Criminal Law	34
Employment/Labour Law	27
Environmental Law	6
Family/Matrimonial Law	21
Immigration Law	-
Intellectual Property Law	3
Real Estate Law	8
Securities Law	-
Tax Law	5
Wills, Estates, Trusts Law	18
Workplace Safety & Insurance Law	3
Other	42
Not applicable	13

33. Respondents were asked to describe their clients and identify the proportions of Aboriginal versus non-Aboriginal clients. For those providing service to individual clients, 42% responded that they served Aboriginal clients compared with 53% non-Aboriginal clients. For those who provided service to Organizations, including not-for-profit, 19% served Aboriginal clients and 3% served non-Aboriginal clients. The responses were more closely matched for those lawyers serving Government clients (25% Aboriginal and 26% non-Aboriginal). Overall, the respondents provided the following responses:

Client	Percentage of Aboriginal Client	Percentage of non-Aboriginal Client
Individuals	42	53
Businesses	6	16
Organizations, including not-for-profit	19	3
Governments	25	26
Other	9	2

34. When asked to provide their projected 2006 income, a significant number of respondents (26%) indicated that they anticipated earning more than \$100,000 but less than \$199,999. The majority or 38% anticipated earning between \$50,000 and \$99,999. Overall, respondents provided the following estimates:

Anticipated 2006 Pre-Tax income	Percentage of respondents
Zero	0
Less than \$24,999	9
More than \$25,000 but less than \$49,999	9
More than \$50,000 but less than \$74,999	19
More than \$75,000 but less than \$99,999	19
More than \$100,000 but less than \$199,999	26
More than \$200,000 but less than \$399,999	10
More than \$400,000	0
No answer provided	7

35. When asked how many hours per week they spent working in their current role, 50% of respondents indicated they worked between 41 and 60 hours per week. Thirteen per cent indicated that they worked 36 to 40 hours per week and the same percentage indicated that they worked between 61 and 80 hours per week. Eight per cent responded that they worked more than 80 hours per week.
36. The survey also asked the participants about their employment history within their first three years of Call. Specifically, they were asked to describe the number of positions they held within the first three years of call where membership in the Law Society was required. Of those who indicated that membership was required, 44% of respondents indicated that they had held one position, 28% indicated that they had held two positions, and 10% indicated that they had held three positions. The majority of respondents (68%) indicated that, within their first three years of call, they did not hold a position where membership was a requirement of the job. This result seems to indicate that when an Aboriginal lawyer secured legal work post-Call, he/she maintained this position during the crucial early years of call. However, the vast majority were either unable or chose not to hold a position where membership in the Law Society was a job requirement. This factor may be an area of vulnerability for newly called Aboriginal lawyers.
37. Overall, the Aboriginal bar in Ontario consists of mostly recently called lawyers (according to the Aboriginal lawyer directory developed for this project, approximately 65% of self-identifying Aboriginal lawyers have been called since 2001). There are slightly more female Aboriginal lawyers than male lawyers. Almost 60% attended school at the University of Toronto, Osgoode Hall Law School or the University of Ottawa. The Aboriginal lawyer directory reveals that most Aboriginal lawyers are based in the following centres: Toronto/GTA, Ottawa, Windsor/Sarnia, Thunder Bay and the Sudbury region. Most are Status Indians who work primarily as sole practitioners, for government or as associates in law firms. Of those who practice law, the majority (42%) identified that they practice in an area of law outside the current categories identified by the

Members' Annual Report (MAR). Within the MAR practice categories, Aboriginal lawyers are most likely to practice Criminal/Quasi-Criminal law or Employment/Labour Law. For those in private practice, their individual clients are almost evenly split between Aboriginal and non-Aboriginal clients. For those lawyers who provide services to organizations and governments, most of their clients are Aboriginal non-profit organizations and Aboriginal government agencies. Most work less than 60 hours per week. Three-quarters of Aboriginal lawyers earn between \$50,000 and \$399,999 per year. The group is almost evenly split between those who earn between \$50,000 and less than \$99,999 (38%) and those who earn between \$100,000 and less than \$399,999 (36%).

COMMON EXPERIENCES OF ABORIGINAL LAWYERS

38. The survey focused on collecting statistical data about the experiences of Aboriginal lawyers in law school, during the Bar Admission Course (or Licensing Process) and post-Call. The survey also asked open-ended questions, which provided qualitative information about barriers to the profession faced by Aboriginal people. The majority of respondents (54%) indicated that they faced barriers during law school, the Bar Admissions Course/Licensing and post-Call. Specifically, the respondents,
 - a. experienced discrimination and lack of awareness of Aboriginal issues and the Aboriginal community among other students, faculty and staff at the law school;
 - b. identified a lack of Aboriginal content and/or misinformation about Aboriginal issues in the curriculum;
 - c. experienced difficulty in accessing summer and/or articling employment; and
 - d. experienced difficulty in reconciling their Aboriginal cultural background with the environment of law school.
39. For those respondents who indicated that their Aboriginal status was a positive influence on their law school experience, the majority stated that they found support and a social connection among their fellow Aboriginal students and with Aboriginal lawyers.
40. During the Bar Admission Course/Licensing Process, more respondents (24%) indicated that their status as an Aboriginal person was more of a negative factor on their experience than a positive influence (10% of respondents). The main reason cited was their perception that their Aboriginal status related in some way to their feelings of isolation and exclusion during the program. For those who indicated that their experience was positive, it was due to the connections that they made with other Aboriginal Bar Admission Course/Licensing students. The majority of respondents indicated that their status as an Aboriginal person was a positive influence during articling (29%) as opposed to a negative factor (19%). For the majority, the main reason cited was that they had secured an articling position with an Aboriginal lawyer or lawyers who were sensitive and/or positive to Aboriginal issues and who wanted to develop an Aboriginal practice. For those who felt their Aboriginal status was a negative factor, the main reason cited was their perception that they experienced racism from fellow articling students, lawyers and other members of the justice system during the interview process and during their articles.
41. When asked to describe their post-Call experiences, 34% of respondents indicated that their Aboriginal status was a positive factor and they tied it directly to their feelings of connection to other Aboriginal lawyers and their membership within a small group

(Aboriginal lawyers) within the legal community. Of the 26% of respondents who felt that their Aboriginal status was a negative factor in their experiences post-Call, the majority stated that they attributed their feeling to the racism and discrimination that they faced in their work experiences.

42. The survey also asked about the level of respondents' reliance on peer support and mentoring post-Call. Specifically, respondents identified lawyers, friends and family as their key sources of mentoring and support. When asked to identify whether their mentors and/or supporters were Aboriginal or non-Aboriginal, of those who identified friends as their mentors or supporters, more respondents indicated that their friends were Aboriginal (60%) than non-Aboriginal (54%). For those who identified lawyers as mentors or supporters, more identified non-Aboriginal lawyers (72%) as opposed to Aboriginal lawyers (57%). Overall, respondents provided the following responses:

Mentor or Peer Support	Percentage Aboriginal	Percentage Non-Aboriginal
Lawyers	57	72
Friends	60	54
Family (including spouse/partner)	49	49

43. The survey asked participants about their membership in organizations for Aboriginal law students, law graduates and/or lawyers. Of the 55 (out of 68 total respondents) who indicated that they had been or were members of such organizations, the top five reasons and the percentage of respondents (%) who ascribed to those reasons included the following:
- Opportunity to associate with other Aboriginal lawyers (82%);
 - Desire to remain up-to-date on legal issues for the Aboriginal community (75%);
 - Opportunity to advocate on Aboriginal issues within the profession (69%);
 - Opportunity to perform community service for the Aboriginal community (62%); and
 - A sense of belonging or to develop a sense of belonging in the profession (60%).

SURVEY RESPONDENTS' ASSESSMENT OF LAW SOCIETY SUPPORT INITIATIVES FOR ABORIGINAL BAR ADMISSION COURSE/LICENSING CANDIDATES AND LAWYERS

44. Both the survey and consultation asked respondents for their feedback on the support services offered to Aboriginal Bar Admission Course/Licensing candidates and to lawyers. Both instruments asked respondents to provide ideas for enhancing support services to Aboriginal Licensing candidates and lawyers.

Summary of Current Law Society Support Initiatives for Aboriginal Licensing Candidates and Lawyers

45. The following table summarizes the range of support services offered by the Law Society to Bar Admission Course/Licensing candidates since 2000:

Service	Brief Description ¹⁷
Aboriginal Initiatives Counsel (formerly Aboriginal Issues Coordinator)	The Aboriginal Initiatives Counsel is responsible for Law Society programming and policy relating to Aboriginal law students, Licensing candidates, lawyers and the community.
Elder Program	Provides Aboriginal and non-Aboriginal students in the Licensing Process, and Aboriginal members of the profession with various teachings and culturally-appropriate counseling services.
Equity and Diversity Mentorship Program	Program matches lawyers with high school, university, including law school, and Licensing Process students.
Tutoring	Program provides tutoring to candidates who have been unsuccessful in the Licensing Examinations.
Assistance with resume writing and job interviews	One-on-one and tutorial service available through the Aboriginal Initiatives Counsel and the Registrar's office.
Assistance finding articling placements	One-on-one and tutorial service available through the Aboriginal Initiatives Counsel and the Registrar's office.
Financial Aid applications	OSAP applications available through the Registrar's office for registered candidates.
Repayable Allowance Program (RAP)	Applications available through the Registrar's office for registered candidates to apply for up to \$5,000 per calendar year.

46. The following table summarizes the resources offered by the Law Society to lawyers that were included in the survey instrument¹⁸ :

¹⁷ More information on the support services is provided through the Law Society website:
<http://rc.lsuc.on.ca/jsp/licensingprocesslawyer/index.jsp?language=en> and
<http://www.lsuc.on.ca/about/b/equity/aboriginal-elders-program-and-student-supports/>

¹⁸ Respondents were also asked to indicate what other services they accessed. Seven percent indicated they accessed "Other" services and 3% indicated they did not access any of the resources listed.

Resource	Brief Description ¹⁹
Great Library in person/on-line	Resource library located at Osgoode Hall and also on-line.
Continuing Legal Education courses	Professional development program available at the Law Society and through webcasting for a fee.
Equity Public Legal Education events	Free professional development program offered through the Equity Initiatives Department.
Aboriginal Initiatives Counsel (formerly Aboriginal Issues Coordinator)	The Aboriginal Initiatives Counsel is responsible for Law Society programming and policy relating to Aboriginal law students, Licensing candidates, lawyers and the community.
Guidelines For Lawyers Acting in Cases Involving Claims of Aboriginal Residential School Abuse	Practice guidelines for lawyers passed by Convocation in October 2003.
Ontario Lawyers Gazette	Published by the Law Society to provide Ontario's lawyers and paralegals with a comprehensive package of news and features that can help them keep in touch with Law Society and professional matters.
Ontario Reports	Weekly publication by the Law Society providing case summaries and information for the profession.
Referred to Bar Admission Course materials	Applications available through the Registrar's office for registered candidates to apply for up to \$5,000 per calendar year.
Equity and Diversity Mentorship program	Program matches lawyers with high school, university, including law school, and Licensing Process students.
Lawyer Referral Service	Telephone service providing referrals to lawyers for a fee.
Member Resource Centre	On-line resource for lawyers available through the Law Society website and by telephone.
Law Society website	On-line resource.
Volunteering for a Law Society or benchers advisory group	For example, the Aboriginal Working Group.
Working towards or earned certification in the Certified Specialist Program	Program to assist lawyers in acquiring the requisite skills and knowledge to qualify for certification by the Law Society as a specialist in a given practice area.

¹⁹ More information on resources is provided through the Law Society website: www.lsuc.on.ca

Survey Responses

47. The survey asked respondents to identify which specific support services they had accessed as Bar Admission Course/Licensing candidates. The response rate was too low to be statistically valuable. However, respondents were also open-ended questions regarding options for adapting and improving current support services, based on their experiences as Bar Admission Course/Licensing candidates. The top suggestions were for the Law Society to,
 - a. encourage contact with Aboriginal lawyers and new calls to act as mentors and resources during the Licensing phase;
 - b. undertake more promotion of existing support programs in tutoring, exam practice, mentoring, securing articles and financial aid; and
 - c. provide more assistance to students to find articles.
48. When asked to identify the resources or support services of the Law Society that they had accessed post-Call, the respondents identified the following as the resources or services most frequently accessed (% of respondents):
 - a. Visited the Law Society website (88%);
 - b. Read the Ontario Reports (87%);
 - c. Attended Continuing Legal Education courses (75%);
 - d. Read the Ontario Lawyers Gazette (72%); and
 - e. Referred to Bar Admission Course materials (69%).
49. Forty-four percent (44%) of respondents indicated that they had been in contact with the Aboriginal Issues Coordinator (now the Aboriginal Initiatives Counsel) prior to the survey, placing this service in seventh place overall.
50. Respondents were asked to provide suggestions for services to better serve Aboriginal lawyers. Their top suggestions included the following:
 - a. Access Aboriginal members to act as a resource, contact and/or mentor for Aboriginal students and new lawyers and provide more networking opportunities.
 - b. Offer continuing legal education programs in Aboriginal law and offer them within and outside the GTA.
 - c. Undertake more outreach to Aboriginal communities to promote law as a career and the Law Society as a resource.
 - d. Create a Certified Specialist Program in Aboriginal Law.
 - e. Provide more assistance to new calls looking for work.

ANALYSIS OF CONSULTATION RESULTS FOR INITIATIVES AND PROGRAMS FOR ABORIGINAL LAWYERS

51. The consultation phase explored the themes that emerged from the survey. Of the 68 survey respondents, 33 initially agreed to participate in the consultation and 29 consultations were completed. The consultation focused on collecting qualitative information, as opposed to statistical data, about the experiences of Aboriginal lawyers. It also focused on asking for lawyers' feedback on the current initiatives of the Law Society to enhance access and retention of Aboriginal lawyers.

52. With feedback from the Aboriginal Working Group, a consultation interview guide was developed to ask respondents questions regarding,
- a. their perspective on the profession and the Law Society;
 - b. the current policies and programs for Aboriginal lawyers; and
 - c. the assignment of priority for policy development to support Aboriginal Licensing candidates and lawyers.

Lawyers' Perspectives on the Profession and the Law Society

53. Overall, the respondents to the consultation indicated that their impression of the profession and the Law Society ranged between neutral and positive. When asked how much impact the Law Society has in their professional lives, most respondents indicated that the Law Society has little impact on their professional lives unless they are contacted for an issue related to their membership or they attend a continuing legal education (CLE) program at the Law Society or through remote access on the internet. Those respondents who volunteered for initiatives or working groups with the Law Society felt a greater connection to it. They expressed that their experience of volunteering was positive and they felt that they helped the Law Society especially when "the Law Society listened."
54. When asked whether they felt successful as lawyers at their stage of their career, most respondents answered in the positive. There was a clear connection to their level of satisfaction and whether they were working in their preferred area of practice. Salary was not cited as the leading measure of career satisfaction. The reason most often cited was that respondents were working as lawyers in their field of choice and that they were providing competent and quality legal services for their clients. They also stated that, by and large, their expectations had been met in terms of their professional experiences as lawyers. The respondents identified the following as their most common professional challenges:
- a. Managing and developing their practice as a business, whether they are sole practitioners or lawyers within firms;
 - b. Keeping up with the changing law;
 - c. Developing their legal skills fast enough to provide service to clients; and
 - d. Finding a balance between their professional and personal lives.

Current Programs for Aboriginal Lawyers

55. The majority of respondents indicated that most of their contact with the Law Society was through the emails sent out by the Professional Development and Competence Department and the emails sent out by the Aboriginal Initiatives Counsel. Most agreed that email is the best mode of contact for keeping up-to-date on events and programs available through the Law Society. One respondent suggested that the emails be constructed to automatically link mailing list contacts to the Law Society website for updates and events. Another respondent strongly recommended that the Ontario Reports be offered in an electronic version.

56. A significant number of consultation respondents stated that the culture-based programs (i.e. the Elders Program) for Aboriginal Licensing candidates are important to Licensing candidates, in particular those Aboriginal candidates who have strong ties to their culture and/or communities.
57. The majority of respondents replied that they participated in the consultation because they had received information about this project from the Aboriginal Initiatives Counsel. They stated that the services provided by the Aboriginal Initiatives Counsel is a valuable program for connecting Aboriginal law students, Licensing candidates and lawyers to the Law Society.

Policy Development for Aboriginal Licensing Candidates and Lawyers

58. With feedback from the Aboriginal Working Group, the consultation primarily focused on the issue of policy development for Aboriginal Licensing candidates and lawyers. Specifically, respondents were asked to provide feedback on three policy initiatives that were identified as priorities by the Aboriginal Working Group and also through the survey process. As they were originally framed, the three future policy initiatives involved the development of:
 - a. networking and mentoring opportunities for Aboriginal law students, Licensing candidates and lawyers;
 - b. continuing legal education (CLE) course in Aboriginal law; and
 - c. a Certified Specialist program in Aboriginal law.
59. The majority of respondents supported networking and mentoring opportunities for Aboriginal law students, Licensing candidates and lawyers as a priority, followed closely by the development of CLE course(s) in Aboriginal law. Respondents placed the creation of a Certified Specialist program in Aboriginal law as an important future initiative for the Law Society. Most respondents agreed that CLE course(s) and a Certified Specialist program could not be developed unless there was a well-established and connected group of Aboriginal lawyers, which would result from effective mentoring and networking.
60. Respondents strongly recommended that, before any programs or initiatives could be effective, Aboriginal law must be a recognized area of practice on the Members' Annual Report (MAR). Adding this category to the MAR was perceived as a cost-effective way of demonstrating to Aboriginal and non-Aboriginal lawyers that this area of practice has credibility in the eyes of their regulator and the profession. Respondents expressed frustration at being forced to choose the category of "Other" to identify the lawyer's area of practice year after year.

Networking and Mentoring Opportunities for Aboriginal Law Students, Licensing Candidates and Lawyers

61. Overall, most of the respondents supported mentoring and networking as a top priority for the Law Society to continue and to develop for Aboriginal law students, Licensing candidates and lawyers. They cited that their own experiences in completing law school, the Bar Admission Course/Licensing Process and making the transition into working as a lawyer was more difficult because of their feelings of lack of connection to other Aboriginal students, Licensing candidates and lawyers. They identified that what helped

them most was contact with their Aboriginal law student peers and, more importantly, contact with experienced Aboriginal lawyers who could explain to them how to find work, how to run a practice as a business, how to deal with difficult situations in practice and other related issues. They stated that effective mentoring and networking fills the gap in professional legal education that is not currently offered by either law school or the Bar Admission Course/Licensing Process.

62. When asked to provide specific details about how to create an effective networking program, respondents identified the following factors:
- a. Face-to-face contact is most important in creating a successful networking event.
 - b. Frame networking as a social event and feature a compelling or high-profile Aboriginal lawyer, judge or leader to speak as a draw for a networking event.
 - c. Focus networking on the geographic location of Aboriginal law students, Licensing candidates and lawyers. Respondents stated that there is a large difference between Aboriginal people from urban and non-urban areas as well as from northern Ontario as opposed to southern Ontario. Even though students may attend law school in urban areas and/or the south, they often plan to return home. It would benefit those students to make contacts with lawyers back home while they are still in law school.
 - d. For a networking event or a mentoring program to be successful, it requires commitment on the part of lawyers and more importantly on the part of law students and Licensing candidates. Some respondents expressed that they felt some pressure to participate in Aboriginal events at school or through the Law Society and also felt there was an expectation that they were going to practice Aboriginal law or work in Aboriginal communities. Respondents stated that students could benefit from hearing that practising corporate law, for example, is a good career choice if doing so will enhance their personal satisfaction with the practice of law resulting in their staying in the profession.
 - e. A career fair focusing on Aboriginal law practitioners and Aboriginal law students is also an effective networking event.
 - f. Distributing a list of Aboriginal lawyers willing to be in contact with Aboriginal law students and Licensing candidates is a cost-effective way of creating a network.
 - g. CLE course(s) and the Law Society's equity public legal education events were cited as effective networking tools. In particular the equity public legal education events were lauded because they are free and open to the public, with a focus on including the Aboriginal community for the Aboriginal events. For this reason, some respondents suggested that "rush" seats for students, Licensing candidates and lawyers with less than 5 years of call be offered at low cost for CLE events.
 - h. Create more links between communities for the events to enhance the networking potential of the equity public legal education series. For example, create a linked event between the Aboriginal community and the Lesbian, Gay, Bisexual, Transgendered community to explore issues that affect both groups and thereby connect students and lawyers attending those events. Another respondent suggested that networking events could link with external organizations. For example, the Law Society could work with the Women Lawyers Association of Ontario (WLAO) to create a sub-group of Aboriginal women lawyers or host events for both groups.

- i. Leverage existing resources within the Aboriginal community and work with the Indigenous Bar Association for all networking and mentoring initiatives.
 - j. Recognize that there are a significant number of Aboriginal lawyers who are working as non-practising lawyers. Networking opportunities for Aboriginal lawyers pursuing non-traditional legal career paths creates opportunities for connecting those lawyers with students and lawyers pursuing traditional legal careers.
63. When asked to provide specific details about the components of an effective mentoring program, respondents offered the following feedback:
- a. Mentoring must start between Aboriginal lawyers and students in law school or even before. For example, the Law Society could contact the University of Saskatchewan Native Law Centre to provide information on mentoring opportunities between Ontario Aboriginal lawyers and Aboriginal students in that program.
 - b. Model a mentoring program after the Big Brothers program where mentors agree to a minimum 6-month commitment with mentees.
 - c. To enable Aboriginal students to get a practical perspective on the practice of law, mentoring should feature job shadowing.

Continuing Legal Education (CLE) Courses in Aboriginal Law

64. Respondents supported the development of a CLE course in which both Aboriginal lawyers and non-Aboriginal lawyers who provide legal services to Aboriginal clients receive training. Respondents expressed concern that there may be non-Aboriginal lawyers who provide legal services to Aboriginal individuals, government bodies, organizations and businesses without having access to resources to appreciate why the needs of Aboriginal clients are unique.
65. In terms of creating CLE course(s) designed for Aboriginal lawyers specifically, most respondents identified that the priority should be on the teaching of practical skills and not academic or theoretical issues. As well, the Indigenous Bar Association²⁰, Aboriginal lawyers and the community should be given the opportunity to participate in the development of programs and Aboriginal faculty should be hired for these programs wherever possible.
66. The consultation respondents also identified that there are many Aboriginal lawyers in sole and small practices. The rigours of this type of practice prevent individuals from taking time away from their legal work to attend events during the day when most CLE courses are offered. The cost of CLE courses was cited as another barrier for Aboriginal lawyers in small or sole practices. As well, some respondents also expressed that

²⁰ The Indigenous Bar Association is a national non-profit professional organization for First Nation, Inuit and Métis persons trained in the field of law. Its membership consists of Indigenous lawyers (practising and non-practising), judges, law professors, legal consultants and law students. The IBA plays an active role in promoting the development of Indigenous law and supporting Indigenous legal practitioners.

evening events are difficult because of childcare commitments, particularly for single parents. Those respondents suggested that the Law Society or other CLE providers provide on-site daycare for CLE courses and public legal education events held in the evening. Simultaneous webcasting was suggested as a means of dealing with cost and geographic barriers.

67. When asked to provide specific details about a CLE course in Aboriginal law and/or for lawyers providing services to Aboriginal clients, respondents offered the following suggestions for program content:
- a. How-to course on marketing for Aboriginal lawyers and/or to Aboriginal or remote clients;
 - b. How the Indian Act practically affects the day-to-day lives of Status Indians;
 - c. Information program in First Nations governance;
 - d. Professional ethics program for providing services to Aboriginal peoples;
 - e. Annual update on Aboriginal law from a practical perspective (similar to the Six-Minute series format offered in the Law Society's CLE program);
 - f. Land and resource management;
 - g. How-to course in running a general practice in a small town and/or for clients in remote communities;
 - h. Focus course on the intersection of constitutional law with criminal law for Aboriginal accused;
 - i. Perspectives course taught by Aboriginal community members and practitioners on the intersection of Aboriginal traditional law and common law as a way of learning how to provide legal services to Aboriginal clients;
 - j. How to negotiate with governments;
 - k. Perspectives course on options for Aboriginal legal issues post-Indian Act; and
 - l. Business and tax law course for transactions involving Aboriginal governments and businesses.

A Certified Specialist Program in Aboriginal Law

68. Most respondents supported a Certified Specialist program in Aboriginal Law, but expressed uncertainty about the focus of such a program. They identified that the practice area of Aboriginal law is too broad to create a single certified specialty in that area. For example, the work of a barrister who provides services related to Aboriginal law and/or for Aboriginal clients is vastly different from that of a solicitor. Similarly, there is a large difference between the work of private practice and public practice lawyers in providing services to Aboriginal clients.
69. Respondents generally agreed that more consultation and cooperation between the Law Society and the profession, in particular the Indigenous Bar Association and Aboriginal lawyers as well as the community, is required before a certified specialty could be created. In particular, a definition of what this practice specialty would entail is required before the program could be developed.
70. All respondents agreed that the focus of the selection criteria for a certified specialist in this category should be on the protection of Aboriginal clients to recognize their particular vulnerability as well as their overrepresentation in the justice system in Ontario. Consequently, selection criteria and professional development courses should

focus on the provision of competent services to Aboriginal clientele. The current selection criteria of 5 to 7 years in practice within the specific area that is common to most of the current Certified Specialist programs was viewed as a barrier by some respondents. They indicated that there is a lack of sustainable jobs available to lawyers trying to develop a practice in Aboriginal law and/or for Aboriginal clients.

71. The current lack of Aboriginal content in CLE course(s) was identified as a barrier to developing a Certified Specialist program in this category. Most respondents identified this initiative as a project with priority in the future.
72. Some respondents suggested that, as a beginning step to develop the Certified Specialty area, there could be an Aboriginal practice component combined with specific established Certified Specialty areas where lawyers would likely be serving Aboriginal clients. For example, criminal law and civil litigation are two areas where there are a significant number of Aboriginal clients. Another respondent suggested that a Certified Specialist program in Aboriginal governance modeled after the current Certified Specialist program in Municipal Law would be an appropriate starting point.

ANALYSIS OF PROGRAMS AND INITIATIVES FOR ABORIGINAL LAWYERS IN OTHER JURISDICTIONS

73. Research was undertaken to identify other studies and research projects that focused on the issue of access and retention of Aboriginal lawyers both within Canada and in other jurisdictions. Studies and research that have been undertaken on the experiences of Aboriginal law students and lawyers have focused on the proportionate under-representation of Aboriginal peoples in the legal profession and/or other professions; access/recruitment mechanisms into law schools; and the discriminatory barriers that Aboriginal people may face once they enter a profession.
74. The studies and research most relevant to the Aboriginal Bar Consultation are those that have looked at the discriminatory barriers faced by Aboriginal lawyers in the legal profession. The Law Society of British Columbia conducted a study on the discriminatory barriers facing Aboriginal lawyers in 2000.²¹ It found that 40% of Aboriginal lawyers experienced discrimination during articling and 66% had experienced discrimination as a lawyer. Experiences cited included racist slurs and demeaning remarks by staff, other articling students and lawyers, discrimination in work assignments, and the feeling of being restricted into areas of law that were not of interest or being dissuaded from areas of law that were of interest.²²

²¹ G. Ferguson and K. Foo, *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers* (Vancouver: Law Society of British Columbia, 2000) <online: http://www.lawsociety.bc.ca/publications_forms/report-committees/docs/AboriginalReport.pdf>.

²² Ferguson and Foo.

75. Other studies have looked at the barriers faced by women, particularly racialized women. According to the Multicultural Women Attorneys Network of Chicago, being a woman and a “person of colour” can be a double jeopardy in the legal profession²³ and women of colour often report that they face greater challenges based on race than on gender.²⁴
76. The research in other jurisdictions has focused on identifying barriers to law school and the profession as opposed to recommending policy initiatives and programs relating to retention of Aboriginal lawyers. The conclusions of the studies support the statistical results of the Aboriginal Bar Consultation but do not present solutions relevant to the experience of Aboriginal lawyers in Ontario.

CONCLUSIONS AND PROPOSALS FOR ACTION

77. The completion of the Aboriginal Bar Consultation culminated a four-year project for the Law Society. The Law Society had never compiled a directory of Aboriginal lawyers nor had it undertaken a focused consultation with members of the Aboriginal bar in Ontario. Developing the Consultation project created an incentive for Aboriginal lawyers to volunteer to participate and to add their names to a directory. As a result, a database of potential Aboriginal lawyer mentors has been created for future Aboriginal law students and Licensing candidates.
78. Many respondents expressed their appreciation for the Law Society in undertaking the consultation with them. They also expressed their appreciation that the survey and consultation questions had been developed with the guidance of the Aboriginal Working Group.
79. Most respondents felt that their experiences in law school and during the Bar Admission Course/Licensing Process would have been enhanced with greater contact with other Aboriginal students and Bar Admission Course/Licensing candidates and with Aboriginal lawyers. For those who completed their licensing since the creation of the position of Aboriginal Issues Coordinator/Aboriginal Initiatives Counsel, most identified that this resource constituted their main information source about support services and programs for Aboriginal Bar Admission Course/Licensing candidates and lawyers. Suggested improvements to the support program included more communication about the services and more opportunities for creating face-to-face interaction between Aboriginal students, candidates and lawyers.
80. Based on the feedback of the respondents to the survey and the consultation interviews of the Aboriginal Bar Consultation, it is suggested that the following initiatives be undertaken by the Aboriginal Initiatives Counsel in the context of the position’s mandate to create programs to enhance access and retention of Aboriginal lawyers within the

²³ Multicultural Women Attorneys Network, *The Burdens of Both, the Privileges of Neither* (Chicago: American Bar Association, 1999) at 9.

²⁴ Boston Bar Associations Task Force on Professional Fulfillment, *Expectations Reality and Recommendation for Change* (Boston: Boston Bar Association, 1999).

profession in Ontario. All proposed initiatives and resource requirements fall within the existing program budget for 2009. Further, given the Law Society's role as regulator for paralegals in Ontario, these initiatives should be expanded to include programs for enhancing access and retention of Aboriginal paralegals in Ontario.

81. Expanding the Members' Annual Report Practice Categories to include Aboriginal Law: To determine how many lawyers in Ontario self-identify as practising Aboriginal law, the Members' Annual Report (MAR) should be expanded to include a category for Aboriginal law as a practice area. The inclusion of this category will provide empirical data that could potentially be used to develop,
 - a. a listing of lawyers who could be contacted to be mentors for students and Licensing candidates interested in practising in Aboriginal law;
 - b. an approximate number of individual lawyers who could be interested in CLE courses in Aboriginal law or in the provision of services to Aboriginal clientele; and
 - c. data on the number of lawyers who could be potentially interested in applying to be a Certified Specialist in Aboriginal law and/or practice.
82. Mentoring and Networking Program: The Law Society's continued support and development of mentoring and networking programs for Aboriginal law students, Licensing candidates and lawyers, beginning in law school and continuing post-call to the Bar is of priority to enhancing access and retention of Aboriginal lawyers. Face-to-face and more interactive participation are key ingredients to the success of the program. The Law Society should continue to work with organizations such as the Indigenous Bar Association and law schools to develop a mentoring and networking program tailored to the needs of Aboriginal students and lawyers. The Aboriginal Initiatives Counsel will work to develop a mentoring and networking program for Aboriginal students, Licensing candidates and lawyers that would feature the following components:
 - a. Continuing the annual Aboriginal Law Student Career Symposium (already provided).
 - b. Continuing the implementation of the Integrated Aboriginal Communications Strategy for the Aboriginal Community and the Legal Profession (in development).
 - c. Continuing outreach initiatives to Aboriginal law students, Licensing candidates and lawyers (already provided).
 - d. Developing networking events to promote the Report of the Aboriginal Bar Consultation project.
 - e. Undertaking regular evaluation of the Mentoring and Networking program with Aboriginal Licensing candidates and new Calls.

83. Continuing Legal Education Course in Aboriginal Law and Issues: The development of a CLE course in Aboriginal law and issues for lawyers/paralegals who provide legal services to Aboriginal clientele is a priority second to the Mentoring and Networking program. The CLE course must focus on ensuring that participants receive practical training on providing legal services to meet the unique needs of Aboriginal clients in Ontario. The Aboriginal Initiatives Counsel would work with the professional development and Competence Department to develop a CLE course that includes the following:
- a. Program content would be developed in cooperation with the Indigenous Bar Association and Aboriginal lawyers/paralegals in the relevant practice areas.
 - b. Faculty for the programs would include Aboriginal lawyers and instructors where possible.
 - c. Alternate program delivery methods would be offered to enable lawyers working in remote or rural areas and/or with limited access to internet or technology to access the training.
 - d. Given that Aboriginal lawyers, in particular, are more likely to work as sole practitioners or in small practice early in their careers, when professional development with a practical focus is most crucial for the development of lawyering skills, an expanded bursary program or course fee reduction program should be considered for lawyers within 5 years of call and paralegals.
84. Certified Specialist Program in Aboriginal Law: The continued support of the Law Society for the development of a Certified Specialist program in Aboriginal Law and/or practice is a priority project for future development. The involvement of an Aboriginal organization for lawyers, such as the Indigenous Bar Association, the Aboriginal Working Group, and the Aboriginal community is essential to the development of such a program. In addition to the experience and CLE requirements for qualification, the selection criteria should provide for the assessment of the knowledge and competence of applicants in serving the unique legal needs of the Aboriginal community.

APPENDIX 4

PUBLIC EDUCATION EQUALITY SERIES CALENDAR
2009

Black History Month

In partnership with the Canadian Association of Black Lawyers

Topic: Professional Development Series: Best Practices in Practice Management

Date: February 5, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

International Women's Day

In partnership with the Women's Law Association of Ontario, the Feminist Legal Analysis Section of the OBA, the Barbra Schlifer Clinic, and the Legal Education Action Fund for Women

Topic: The Presence of Female Judges: Do They Make a Difference?

Date: March 2, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

Symposium Exploring the Government's Duty to Consult with the Métis

In partnership with the Métis Nation of Ontario

Date: March 27, 2009

Time: Presentations from 2 to 6 p.m.

Reception from 6 to 8 p.m.

National Holocaust Memorial Day

In partnership with B'nai Brith Canada

Topic: *Professionals as Perpetrators, Victims and Bystanders in the Holocaust – Lessons for the Future*

Date: April 21, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

Asian Heritage Month

In partnership with the Federation of Asian Canadian Lawyers, the South Asian Legal Clinic of Ontario, and the South Asian Bar Association

Topic: *Professional Development Series: Perspectives in Interjurisdictional Family Law Issues*

Date: May 5, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

National Access Awareness

In partnership with ARCH Disability Law Centre

Topic: *Access to Justice for Persons with Disabilities*

Date: May 25, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

National Aboriginal Day

In partnership with the Toronto Aboriginal City Celebration Committee, Aboriginal Legal Services of Toronto, the Aboriginal Law Section of the Ontario Bar Association and Rotiio>taties Aboriginal Advisory Group

Topic: *Perspectives in the Indian Residential Schools Resolution Process*

Date: June 11, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

Pride Week

In partnership with the Sexual Orientation and Gender Identity Section of the Ontario Bar Association

Topic: *Politics and Legal Rights: The Future of Gay, Lesbian, Bisexual, and Transgender Equality*

Date: June 25, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

RULE OF LAW EDUCATION SERIES CALENDAR 1009

Launch of Rule of Law event

Topic: TBD

Date: April 6, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

Luncheons

Topic: TBD

Date: September and December 2009

Item for Information

- Public Education Equality Series Calendar 2009

FINANCE COMMITTEE REPORT

Ms. Hartman presented the Report.

Report to Convocation
January 29, 2009

Finance Committee

Committee Members
Carol Hartman, Vice-Chair
Jack Braithwaite
Chris Bredt
Mary Louise Dickson
Jack Ground
Susan Hare
Janet Minor
Ross Murray
Judith Potter
Jack Rabinovitch
Paul Schabas
Gerald Swaye
Brad Wright

Purpose of Report: Decision

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

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COMMITTEE PROCESS

1. The Finance Committee (“the Committee”) met on January 15, 2009. Committee members in attendance were: Carol Hartman Vice-Chair, Jack Braithwaite, Mary Louise Dickson, Jack Ground, Janet Minor, Jack Rabinovitch, Paul Schabas, Gerald Swaye and Brad Wright.
2. Staff attending were: Wendy Tysall, Fred Grady and Andrew Cawse.

FOR DECISION

LAW COMMISSION OF ONTARIO

3. Motion
That Convocation approve the Law Commission of Ontario’s five year rolling budget (Appendix B), as required by the founding agreement, supporting payment of the Law Society’s second annual funding contribution of \$100,000.
4. The Law Commission of Ontario (“LCO”) has a mandate to recommend law reform measures to increase the legal system’s relevance, effectiveness and accessibility; to clarify and simplify the law; consider technology as a means to enhance access to justice; and stimulate critical debate about law and promote scholarly legal research.
5. In November 2006, Convocation approved “the Law Society’s participation in the proposal for a Law Commission of Ontario including making a \$100,000 contribution each year for five years”. Other LCO financial partners are the Law Foundation of Ontario, the Ministry of the Attorney General and Osgoode Hall Law School making annual contributions of \$485,000, \$150,000 and \$125,000 respectively. Other contributions are being made in kind.
6. The original funding arrangement was based on the LCO commencing operations on January 1, 2007. In fact the LCO was only launched in September 2007. The Law Society made its first \$100,000 contribution in July 2007.
7. Bencher, Christopher Bredt is the Law Society’s representative on the LCO board.
8. In the last half of 2008 the Law Society met frequently with the Executive Director of the LCO and also met with the other funders to ensure the financial administration was meeting everyone’s objectives.

Agreement between the Parties

9. A founding Agreement (Appendix A) governing the establishment and operation of the LCO was signed by the above financial partners and the Law Deans of Ontario in July 2007. The following provisions of the Agreement are relevant to this report:

Annual Budget

10. The Agreement states the board shall prepare a budget for the next fiscal year (ending April 30) and with projected expenses for the ensuing second and third fiscal years. This must be done by June 1 each year. A condition precedent to the continuation of the founding agreement is that the agreement signatories must approve the budget each year.
11. The LCO provided a proposed budget to the funders such as the Law Society when initial approval of the LCO funding was requested. The LCO board then approved an updated 2007/2008 budget used for the first year of operations. A budget for the 2008/2009 fiscal year (year 2) was approved by the LCO board in April 2008. A budget for the 2009/2010 year (year 3) was approved by the LCO board in December 2008 along with projected revenues and expenses for the final two years of the LCO's initial five year term. The budgets for this five year term are attached as Appendix B, titled 5-Year Rolling Budget.
12. The budgets appear reasonable although the LCO business model has changed. What was originally envisaged as project funding has been reallocated to salaries leading to a far more entrenched cost structure. The Executive Director says staffing is on a contractual basis and foresees no severance or employment related issues arising from the LCO hiring more staff than originally envisaged.

Annual Report

13. The founding agreement states the LCO must provide an annual report to the signatories of the agreement. The annual report must include financial statements and a summary statement of source and application of funds for the previous fiscal year. The financial statements must be certified by an OHLS financial officer. In December 2008, we received an analysis of revenues and expenses compared to budget for the LCO's first financial period ending April 30, 2008 signed by Richard Ooi, Executive Officer, Osgoode Hall Law School (Appendix C).
14. In June 2008, the Executive Director of the LCO presented a report on the LCO to Convocation but this primarily comprised the Strategic Plan, which while including some information on LCO activities, did not include a formal annual report.
15. The LCO's Executive Director has indicated an annual report for the two year period ended April 30, 2009 will be available in October 2009.
16. In meetings with the LCO and the other funders we have obtained other interim financial results. These are discussed below.

Financial Results to Date

17. The LCO's financial record keeping is being maintained by York University as part of the in-kind support provided by Osgoode Hall Law School. Primarily because of the delayed start of operations from January to September 2007, the LCO has spent significantly less than forecast during its existence to October 31, 2008. There are two issues arising from this underspending:

Unexpended Funds

18. In its first funding year, the LCO spent \$330,000 compared to the agreed funding contributions for the year totaling \$860,000. The LCO has requested that the unspent balance of \$530,000 not lapse, but be carried forward to future years to be spent as follows over the remaining four years of the LCO's initial mandated term:

Translation	\$225,000
Major Events	\$45,000
Projects	<u>\$260,000</u>
TOTAL	\$530,000

19. The Law Foundation of Ontario is the major funder of the LCO, committing \$485,000 of the annual funding of \$860,000. The LFO has agreed to the above plan for the unexpended funds and there is no indication that any of the other funders are objecting.
20. These unexpended funds means future Law Society funding for the LCO can be more weighted towards the end of the five year term.

Timing of Law Society Remittances

21. The Law Society's second funding contribution for the LCO's second financial year ending April 30, 2009 of \$100,000 was included in the Law Society's 2008 budget. It has not been remitted yet but was included in the Special Projects Fund at our 2008 year end for remittance in 2009 if the motion is approved. This payment will still fall within the LCO's second financial year and our third payment can still be made before April 30, 2010, the end of their third financial year.
22. Because of the LCO's delayed expenditures, the annual contribution to the LCO of \$100,000 was not included in the 2009 budget. If the LCO continues to comply with the founding agreement and provide satisfactory budgets and financial reporting our commitment of \$500,000 over five years is still in place, but remittances will now be weighted towards the end of the five year period, in line with the LCO's expenditures.

Conclusion

23. The budgets, structure and procedures for the LCO's financial administration now appear to be sufficiently in place and support the ongoing funding of the organization.

Attached to the original Report in Convocation file:

A Copy of a founding Agreement of the Law Commission of Ontario.

(Appendix A, pages 7 – 22)

Re: Law Commission of Ontario

It was moved by Ms. Hartman, seconded by Mr. Wright, that Convocation approve the Law Commission of Ontario's five year rolling budget, as required by the founding agreement, supporting payment of the Law Society's second annual funding contribution of \$100,000.

Carried

Re: J. Shirley Denison Fund Applications (in camera)

It was moved by Ms. Hartman, seconded by Mr. Wright, that Convocation approve:

- a \$3,000 grant from the J.S. Denison Trust Fund to Applicant 2008 – 28,
- a grant of \$5,000 (\$1,000 already paid at the discretion of the CFO) to Applicant 2008 – 30,
- a grant of \$7,000 (\$1,000 already paid at the discretion of the CFO) to Applicant 2008 – 31 and
- a grant of \$8,000 (\$1,000 already paid at the discretion of the CFO) to Applicant 2008 - 32.

Carried

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IN PUBLIC

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PARALEGAL STANDING COMMITTEE REPORT

Ms. McGrath presented the Report.

Report to Convocation
January 29th, 2009

Paralegal Standing Committee

Committee Members
Paul Dray, Chair
Susan McGrath, Vice-Chair
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Glenn Hainey
Paul Henderson

Brian Lawrie
 Douglas Lewis
 Margaret Louter
 Stephen Parker
 Cathy Strosberg

Purpose of Report: Decision
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Prepared by the Policy Secretariat
 Julia Bass 416 947 5228

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Investigation Policy for Benchers, Staff, and Members of PSC

Amendments to Paralegal Guidelines

Amendments to Rules Governing Client Identification and Verification

Paralegal Good Character Hearings

Quarterly Report on Complaints against Paralegal Licensees

COMMITTEE PROCESS

1. The Committee met on January 15th, 2009. Committee members present were Susan McGrath (Vice-chair), Marion Boyd, James Caskey (by telephone), Seymour Epstein, Michelle Haigh, Glenn Hainey, Paul Henderson (by telephone), Brian Lawrie, Doug Lewis, Margaret Louter (by telephone), Stephen Parker and Cathy Strosberg. Staff members in attendance were Malcolm Heins, Terry Knott, Zeynep Onen, Elliot Spears, Roy Thomas, Katherine Corrick, Naomi Bussin, Jim Varro, Arwen Tillman, Sheena Weir, Mark Andrew Wells and Julia Bass.

FOR DECISION

AMENDMENT TO BY-LAW 7.1: DELEGATION AT FSCO

Motion

2. That Convocation approve the wording of the amendment to By-law 7.1 shown at Appendix 1. (The official bilingual version of the By-law will be distributed at Convocation under separate cover).

Background

3. This by-law amendment implements the policy change approved by Convocation on November 27th, 2008. The amendment provides that lawyers handling claims that involve catastrophic impairment at the Financial Services Commission of Ontario ('FSCO') may delegate the mediation of subsidiary issues to licensed paralegals employed by their firm, once the determination of catastrophic impairment has been made.

The Committee's Deliberations

4. The Committee approved the draft.

AMENDMENTS TO BY-LAW 4

Motion

5. That Convocation approve the wording of the amendments to By-law 4 attached at Appendix 2. (The official bilingual version of the By-law will be distributed at Convocation under separate cover).

Background

6. These draft amendments implement policy changes previously approved by Convocation, as follows:
 - a. In section 10.01, the policy that a person with an P1 licence applying for an L1 licence must forfeit the P1 licence at the time that an L1 licence is issued;
 - b. In section 12, the policy that a person who has previously surrendered a P1 licence may apply for a new licence without repeating the educational and examination requirements;
 - c. In sections 23 to 26, that a paralegal may apply to surrender a licence in the same manner as a lawyer;
 - d. In section 30, the addition of the exemption for members of the Canadian Society of Professionals in Disability Management;
 - e. Also in section 30, the repeal of the subsection regarding the FSCO regulations, which have now been repealed, and
 - f. In section 32, the addition of the exemption for trade union representatives to enforce collective agreement benefits in Small Claims Court.

The Committee's Deliberations

7. The Committee approved the draft.

ADDITIONAL REPORTING REQUIRMENTS FOR PARALEGALS

Motion

8. That Convocation approve in principle the extension to paralegals of the requirement to submit a public accountant's report, in sections 6 to 8 of By-law 8.

Background

9. In reviewing By-law 8 in connection with the implementation of the PAR, sections 6 to 8 were reviewed in light of the Law Society's current information needs. Since it has been determined that these provisions should continue to apply to lawyers, the Committee considered whether similar provisions should apply to paralegals.

Sections 6 to 8

10. Sections 6 to 8 of By-law 8 provide that the Law Society can require members to submit a public accountant's report on their practice. This is in addition to the mandatory annual filing (the 'MAR' in the case of lawyers and the 'PAR' in the case of paralegals – the authority for these forms is found in section 4 of By-law 8¹).
11. Sections 6 to 8 are shown at Appendix 3.

The Committee's Deliberations

12. The Committee was of the view that this additional information could be useful in an investigation, audit or practice review.
13. If Convocation approves this policy change, a draft of the necessary wording will be prepared.

Appendix 3

Requirement to submit public accountant's report

6. (1) The Society may require any licensee who is required to submit a report under subsection 4 (1) to submit, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the licensee is required to submit a report to the Society under subsection 4 (1).

Contents of report and time for filing

(2) The Society shall specify the matters to be included in the report and the time within which it must be submitted to the Society.

¹ The extension of the reporting requirements in section 4 to paralegals was submitted to Convocation on October 30th.

Licensee's obligation to provide access to files, etc.

(3) For the purpose of permitting the public accountant to complete the report, the licensee shall,

- (a) grant to the public accountant full access, without restriction, to all files maintained by the licensee;
- (b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and
- (c) provide to the public accountant such explanations as the public accountant may require.

Authority to confirm independently particulars of transactions

(4) For the purpose of permitting the public accountant to complete the report, the public accountant may confirm independently the particulars of any transaction recorded in the files.

Cost

(5) The cost of preparing the report required under subsection (1), including the cost of retaining a public accountant, shall be paid for by the licensee.

Public accountant's duty of confidentiality

(6) When retaining a public accountant to complete a report required under this section, a licensee shall ensure that the public accountant is bound not to disclose any information that comes to his or her knowledge as a result of activities undertaken to complete the report, but the public accountant shall not be prohibited from disclosing information to the Society as required under this Part.

Period of default

7. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to file a report of a public accountant in accordance with section 6 is 60 days after the day the report is required to be submitted.

Reinstatement of licensee

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to file a report of a public accountant in accordance with section 6, for the purpose of subsection 47 (2) of the Act, the licensee shall file the report.

Failure to submit public accountant's report: investigation

8. (1) If a licensee fails to submit the report of a public accountant in accordance with section 4, the Society may require an investigation of the licensee's financial records to be made by a person designated by it, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

Investigation: application of subss. 6 (3) and (4)

(2) Subsections 6 (3) and (4) apply with necessary modifications to the investigation under this section.

Confidentiality

(3) A person designated to investigate a licensee's financial records under this section shall not disclose any information that comes to his or her knowledge as a result of the investigation except as required in connection with the administration of the Act or the by-laws.

Cost

(3) The cost of the investigation under this section shall be paid for by the licensee.

AMENDMENT TO PARALEGAL RULE 8: FINANCIAL OBLIGATIONS

Motion

14. That Convocation approve the change to the wording of Paralegal Rule 8 set out below.

Background

15. On December 4th, the Professional Regulation Committee approved an amendment to rule 6.01 (2) of the lawyers' *Rules of Professional Conduct*, governing lawyers' financial obligations, and will be submitting this amendment to Convocation. The Paralegal Standing Committee accordingly reviewed the corresponding Rule 8 (2) of the *Paralegal Rules of Conduct* with a view to determining if similar amendments are appropriate.

16. The current wording of Rule 8 (2) is as follows:

(2) A paralegal shall promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a liability insurance policy when properly called upon to do so.

17. The proposed revision of Rule 8 (2), based on the amendment to the lawyers' rule, is as follows:

(2) A paralegal shall promptly meet financial obligations incurred in the course of practice on behalf of clients unless, before incurring such an obligation, the paralegal clearly indicates in writing to the person to whom it is to be owed that it is not to be a personal obligation.

The Committee's Deliberations

18. Staff in Complaints Services and Professional Regulation, based on experience with complaints and enforcement, had raised the concern that the scope of the rule tends to create false expectations on the part of complainants that the Law Society will "collect" debts. While a complaint to the Law Society may sometimes prompt payment, this does not necessarily occur. Even where a matter proceeds to a disciplinary hearing, a finding and penalty does not guarantee that debts will be paid. Complainants have civil remedies available to them to enforce payment of legitimate debts, and the view is that the Law Society should not be seen as a collection agency.
19. Recently, the Proceedings Authorization Committee (PAC) has not authorized formal discipline proceedings on complaints where the failure to pay the financial obligation is the only issue and the debt has not crystallized into a court order. Formal discipline proceedings have been authorized where the failure to pay the financial obligation is part of a series of allegations.
20. Failure to fulfill a financial obligation has been treated more seriously where the financial obligation arises out of a court order, in which case the regulatory issue becomes failure to comply with a court order. As a result, since 2007, complaints in which the financial obligation is the only issue, and the debt has not become the subject of a court order, are handled by staff in the Client Service Centre. Such complaints are generally not forwarded to the Professional Regulation Division unless the lawyer fails to respond to the Law Society, in which case only the failure to respond is pursued.

Professional Regulation Committee Deliberations

21. The Professional Regulation Committee concluded that narrowing the application of the rule to practice-related matters would be appropriate. It is hoped that this will address the concerns on the part of complainants that the rule is not always enforced.
22. The objective in the redrafting of the rule has been to maintain the Society's ability to respond in cases where there are serious allegations regarding non-payment of a practice-related financial obligation, rather than involving the Law Society in such issues as unpaid photocopy costs.

Proposed Wording

23. The proposed redraft omits the reference to payment of the insurance deductible. This reference is regarded as unnecessary, since paralegals purchase insurance in the private market.

FOR INFORMATION

INVESTIGATION POLICY FOR BENCHERS, STAFF AND PARALEGAL MEMBERS OF PSC

24. The Committee considered the proposed policy for the investigation of public complaints involving benchers and staff, to be submitted to Convocation by the Professional Regulation Committee. The Committee approved the policy and determined that it would be appropriate for the policy to apply to paralegal members of the Paralegal Standing Committee.

AMENDMENTS TO THE PARALEGAL GUIDELINES

25. The Committee considered and approved the amendments to the *Paralegal Guidelines* attached at Appendix 4. These changes to the Guidelines reflect previously approved changes to the *Paralegal Rules of Conduct*.

AMENDMENTS TO THE RULES ON CLIENT IDENTIFICATION & VERIFICATION

26. The Committee considered and approved the amendments to the rules governing client identification and verification put forward by the Professional Regulation Committee.

REPORT FROM DIRECTOR OF PROFESSIONAL REGULATION

27. The Committee reviewed a report from the Director of Professional Regulation, concerning:
- a. The plan for the completion of the paralegal 'good character' hearings, and
 - b. The quarterly report on complaints against paralegals.
28. A copy of the chart on these topics is attached at Appendix 5.

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

- (1) Copy of the wording of the amendment to By-Law 7.1. (Appendix 1, pages 5 – 8)
- (2) Copy of the wording of the amendments to By-Law 4. (Appendix 2, pages 10 – 21)
- (3) Copy of amendments to the *Paralegal Guidelines*. (Appendix 4, pages 28 – 41)
- (4) Copy of a Report from the Director of Professional Regulation re: Regulatory Cases: Paralegal Good Character & Paralegal Licensees. (Appendix 5, pages 42 – 44)

Re: Amendments to By-Law 7.1: Delegation at FSCO

It was moved by Ms. McGrath, seconded by Mr. Dray, that Convocation approve the wording of the amendment to By-Law 7.1 set out at Appendix 1.

Carried

Re: Amendments to By-Law 4 to Reflect Previously Approved Policy Changes

It was moved by Ms. McGrath, seconded by Mr. Dray, that Convocation approve the wording of the amendments to By-Law 4 set out at Appendix 2.

Carried

Re: Additional Reporting Requirements for Paralegals

It was moved by Ms. McGrath, seconded by Mr. Dray, that Convocation approve in principle the extension to paralegals of the requirement to submit a public accountant's report, in sections 6 to 8 of By-Law 8.

Carried

Re: Amendment to Paralegal Rule 8: Financial Obligations

It was moved by Ms. McGrath, seconded by Mr. Dray, that Convocation approve the change to the wording of Paralegal Rule 8 set out below:

(2) A paralegal shall promptly meet financial obligations incurred in the course of practice on behalf of clients unless, before incurring such an obligation, the paralegal clearly indicates in writing to the person to whom it is to be owed that it is not to be a personal obligation.

The addition of the words "of the paralegal" at the end of Rule 8(2) was accepted as a friendly amendment.

The motion as amended was adopted.

Items for Information

- Investigation Policy for Benchers, Staff, and Paralegal Members of PSC
- Amendments to Paralegal Guidelines
- Amendments to Rules Governing Client Identification and Verification
- Paralegal Good Character Hearings
- Quarterly Report on Complaints Against Paralegal Licensees

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT

Ms. Pawlitza presented the Report.

Report to Convocation
January 29, 2009

Professional Development & Competence Committee

Committee Members
Laurie Pawlitza (Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)
Larry Banack
Jack Braithwaite
Thomas Conway
Marshall Crowe

Aslam Daud
 Jennifer Halajian
 Susan Hare
 Paul Henderson
 Laura Legge
 Dow Marmur
 Daniel Murphy
 Judith Potter
 Nicholas Pustina
 Jack Rabinovitch
 Heather Ross
 Catherine Strosberg
 Gerald Swaye

Purpose of Report: Decision

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

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DECISION

AMENDMENTS TO BY-LAW 4 REGARDING LAWYER

LICENSING

Motion

1. That Convocation approve amendments to sections 9, 16 and 18(2) of By-law 4 as set out at Appendix 1 of this Report and repeated in the official bilingual version of the By-law to be provided under separate cover.

Introduction and Background

2. In September 2008 Convocation approved changes to the licensing process for lawyers, specifically regarding the skills and professional responsibility program and aspects of the articling program.
3. Proposed amendments have been drafted to sections 9, 16 and 18(2) of By-law 4 to implement Convocation's policy. The relevant sections are set out at Appendix 1.

4. The official bilingual version of By-law 4 will be provided under separate cover to Convocation.

APPROVAL OF BY-LAW 6.1 REGARDING CONTINUING LEGAL EDUCATION REQUIREMENT

MOTION

5. That Convocation approve the introduction of By-law 6.1, set out at Appendix 2 of this Report and repeated in the official bilingual version of the By-law to be provided under separate cover, to implement the continuing legal education requirement for newly called lawyer licensees.

Introduction and Background

6. In September 2008 Convocation approved the introduction of a post-call education requirement for newly called lawyer licensees of 24 hours of accredited education during the first 24 months of their entry into a practice category.
7. Proposed By-law 6.1 implements Convocation's policy. The official bilingual version of By-law 6.1 will be provided under separate cover to Convocation.

Appendix 2

BY-LAW 6.1

CONTINUING LEGAL EDUCATION

Twenty-four hour requirement

1. A licensee to whom a class L1 license is issued after May 31, 2010 shall complete a minimum of twenty-four hours of continuing legal education that is accredited by the Society within twenty-four months of the day on which the licensee is issued a class L1 licence and is paying the full amount of the annual fee under subsection 2 (2) of By-Law 5 [Annual Fee].
2. The twenty-four month period described in section 1 includes only those whole or part calendar months during which the licensee pays the full amount of the annual fee under subsection 2 (2) of By-Law 5 [Annual Fee].
3. Section 1 does not apply to a licensee who, on the day on which the licensee is issued a class L1 licence, has practised law outside Ontario for a period of time exceeding twenty-four months

AMENDMENT TO BY-LAW 11 REGARDING PRACTICE MANAGEMENT REVIEWS

MOTION

8. That Convocation approve the amendment to section 27 of By-law 11, as set out in Appendix 3 of this Report and repeated in the official bilingual version of the By-law to be provided under separate cover, to specify in the practice review section the category of licensees who may be subject to practice management reviews.

Introduction and Background

9. In September 2006 Convocation approved the practice management review program to begin in 2007. In November 2008 Convocation approved changes to the criteria for selection.
10. Amendments to section 27 of By-law 11 are proposed to specify in the practice review section the category of licensees who may be subject to practice management reviews.

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

- (1) Copy of proposed amendments to sections 9, 16 and 18(2) of By-Law 4.
(Appendix 1, pages 4 – 8)
- (2) Copy of proposed amendments to section 127 of By-Law 11.
(Appendix 3, page 12)

Re: Amendments to By-Law 4 Regarding Lawyer Licensing

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation approve amendments to sections 9, 16 and 18(2) of By-Law 4 as set out at Appendix 1 of this Report.

Carried

Re: Approval of By-Law 6.1 Regarding Continuing Legal Education Requirement

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation approve the introduction of By-Law 6.1, set out at Appendix 2 of this Report, to implement the continuing legal education requirement for newly called lawyer licensees.

Carried

Re: Amendment to By-Law 11 regarding Practice Management Reviews

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation approve the amendment to section 27 of By-Law 11, set out in Appendix 3 of this Report to specify in the practice review section the category of licensees that may be subject to practice management reviews.

Carried

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Rothstein presented the Report.

Report to Convocation
January 29, 2009

Professional Regulation Committee

Committee Members
Linda Rothstein (Chair)
Julian Porter (Vice-Chair)
Bonnie Tough (Vice-Chair)
Bob Aaron
Melanie Aitken
Christopher Bredt
John Campion
Patrick Furlong
Gary Lloyd Gottlieb
Glenn Hainey
Brian Lawrie
Ross Murray
Sydney Robins
Baljit Sikand
Roger Yachetti

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
(Jim Varro – 416-947-3434)

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COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on December 4, 2008 and January 15, 2009.

In attendance on December 4 were Linda Rothstein (Chair), Julian Porter and Bonnie Tough (Vice-Chairs), Bob Aaron, Melanie Aitken, Christopher Bredt, Gary Gottlieb, Glenn Hainey, Brian Lawrie, Ross Murray, Sydney Robins and Baljit Sikand. Staff attending were Naomi Bussin, Hershel Gross, Terry Knott, Lisa Mallia, Lisa Osak, Zeynep Onen, and Jim Varro.

In attendance on January 15 were Linda Rothstein (Chair), Julian Porter and Bonnie Tough (Vice-Chairs), Christopher Bredt, Patrick Furlong, Glenn Hainey, Susan Hare, Brian Lawrie, Ross Murray, Sydney Robins and Baljit Sikand. Staff attending were Naomi Bussin, Caterina Galati, William Holder, Terry Knott, Zeynep Onen, Elliot Spears, Arwen Tillman, Jim Varro and Mark Wells.

AMENDMENTS TO BY-LAW 7.1

Motion

2. That Convocation approve the amendments to Parts III and IV of By-Law 7.1 as set out in Appendix 2.¹

Introduction and Background

3. At its April 2008 meeting, Convocation amended By-Law 7.1 to add requirements to identify and verify the identity of lawyers' and paralegals' clients. These provisions are based on a Model Rule adopted by the Federation of Law Societies of Canada, which has been implemented by each law society in Canada. Convocation decided that the amendments would come into force on October 31, 2008.
4. On October 30, 2008, as result of issues raised after April by the profession about the requirements, Convocation made further amendments to the By-Law to address some of these issues and clarify others, and extended the in force date to December 31, 2008.

¹ A formal motion to amend By-Law 7.1 will be distributed under separate cover.

5. In mid-October, the Federation of Law Societies established a process to deal with feedback from the profession in all Canadian jurisdictions², so that a consistent approach is taken across Canada on any further amendments to the requirements. The process includes regular meetings of a group of law society staff from British Columbia, Alberta, Ontario and Quebec to discuss issues raised about the requirements. Decisions from that group are referred to a committee of the chief executive officers (or equivalent) in the law societies and then as appropriate to the Federation's Executive Committee and Council, which, as part of the process, will decide on suggested amendments.
6. The Federation Executive and Council recently approved a number of amendments to the Model Rule and now, each law society is being asked to amend its requirements to maintain uniformity across Canada. A copy of the amended Model Rule appears at Appendix 1.
7. The Committee agreed with the proposed amendments to By-Law 7.1, based on the direction from the Federation, and recommends that Convocation adopt them. This recommendation is supported by the Paralegal Standing Committee.
8. These amendments, and other minor clarifying amendments, are discussed below as they appear chronologically in the By-Law with reasons for the amendments. Appendix 2 highlights the proposed amendments to By-Law 7.1.

Amendment # 1 - Amend the definitions section (s. 20) as follows:

- i. Add a definition of "electronic funds transfer"
9. A question was raised in connection with the exemption from the verification requirements in the By-Law for funds paid or received from a financial institution, namely, whether electronic funds transfers would fall within this exemption. The conclusion was that they would not. Discussion then turned to whether such transfers should be exempt.
10. The Federation concluded that that wire or electronic transfers should be exempt, on the basis that that there remain substantive differences between wire and paper transactions. Wire transfers are fundamentally controlled by the financial institutions and are subject to specific and detailed requirements in the federal regulations on money laundering. Paper transactions are facilitated by the banks, but not restricted in the same manner.
11. The Committee agreed with this recommendation. The addition of the definition would also necessitate a definition of "financial entity" (which is not the same as "financial institution") which is used in the definition.

² In Ontario, this included information obtained through calls and e-mails to the Society's Resource Centre and through dialogue with the informal consultative group of large firm lawyers. This group was very helpful with its technical advice on some of the proposed amendments.

- ii. Add to the definition of “financial institution” a paragraph that describes a subsidiary of a financial institution
- 12. The By-Law currently includes subsidiaries of public bodies and “reporting issuers” (the revised definition for publicly-traded bodies, discussed later in this report), where reference is made to these entities for the purpose of certain exemptions. The Federation determined that subsidiaries of financial institutions should also be included as there did not appear to be reason to exclude them. The Committee agreed with this proposal.
- 13. It is proposed that the definition of a subsidiary for all three entities now appear in the definitions section, rather than in the sections of the By-Law where they are discussed.
- iii. Delete the definition of “private company” and add a definition for “reporting issuer”
- 14. A lawyer notified the Law Society that the definition of “private company”, which term is used in the By-Law to define a public company for the purposes of an exemption from By-Law’s requirements, would only apply to private companies in Canada. This means that outside of Canada, many companies that are in fact private companies would be deemed to be public companies, and thereby not caught by the By-Law. This was not intended.
- 15. On referral of this matter to the Federation, it determined that rather than defining a publicly-traded company in terms of “not a private company”, as is currently the case, a definition of “public company” was preferable. In discussing an appropriate definition of “public company” with the assistance of lawyers from several large firms, the concept of including all publicly-traded entities, and not just corporations, was raised. This would include, for example, entities such as real estate investment trusts (REITs).
- 16. The Federation determined that this would be appropriate, as these entities are required to make certain public disclosures and are heavily regulated.
- 17. It was then determined that the definition should be that of “reporting issuer”. This term is used to define these entities in federal or provincial securities legislation, and it was decided that such legislation should be referenced in the By-Law’s definition. For entities outside of Canada, the definition is limited to corporations whose shares are traded on a designated stock exchange under relevant Canadian tax legislation and which are located in an FATF country.³ Subsidiaries of these entities are also referenced. This is similar to the treatment given to foreign publicly-traded corporations in the federal regulations.

³ Financial Action Task Force. This organization, whose membership includes 34 countries, including Canada, sets anti-money laundering policy, which is then implemented in country legislation.

18. The Committee agreed with this approach.
 - iv. Add a definition for “proceeding”
19. A number of questions were raised by lawyers about the scope of the exemption from the requirements in the By-Law for funds paid or received in settlement of a legal or administrative proceeding (section 22(3)(g)).
20. The Federation concluded that clarification was required and that a definition of “proceeding” should be added. The definition would make clear that a proceeding includes matters commenced before a court anywhere, matters commenced before a statutory tribunal in Canada, and arbitrations.
21. The Committee agreed with this recommendation. The new definition incorporates an “adjudicative body”, which is a defined term in the *Law Society Act*. The Act’s definition reads:
 1. (1) In this Act,

 “adjudicative body” means any body that, after the presentation of evidence or legal argument by one or more persons, makes a decision that affects a person’s legal interests, rights or responsibilities and, without limiting the generality of the foregoing, includes,
 - (a) a federal or provincial court,
 - (b) a tribunal established under an Act of Parliament or under an Act of the Legislature of Ontario,
 - (c) a commission or board appointed under an Act of Parliament or under an Act of the Legislature of Ontario to conduct an inquiry or inquest, and
 - (d) an arbitrator;
 - v. Amend the definition of “public body” to correct a typographical error, to include federally incorporated entities for a public purpose and to add a paragraph that describes a subsidiary of a public body (currently included elsewhere in the By-Law)
22. See paragraph 13 above with respect to the subsidiary issue.
23. In paragraph (e) of the definition, reference is made to “a body incorporated by or under an Act of a province or territory of Canada for a public purpose”. A lawyer pointed out that it would be reasonable to include federally incorporated bodies. As there does not appear to be a reason to exclude them, the Committee agreed that the paragraph should be amended to reference federal bodies.

Amendment #2 – Amend s. 22(2) to exempt from the requirements licensees who serve as duty counsel through legal aid or non-profit entities.

24. In October 2008, informal discussions with Legal Aid Ontario (LAO) (and similar discussions in other provinces) about the possible exemption from the By-Law's requirements for duty counsel culminated in a written request from LAO and, nationally, from the office of Legal Aid Plans of Canada, to exempt duty counsel under legal aid plans and through non-profit providers of legal services.
25. The Federation carefully considered this issue and concluded that given the nature of the services and purpose of the By-Law, duty counsel should be exempt from the identification requirements. If duty counsel's services for a client involve a financial transaction, the By-Law's provisions would apply, as applicable.

Amendment #3 – Amend s. 22(3)(a) to replace "private company" with "reporting issuer" (and in other locations in the By-Law as applicable)

26. See paragraphs 14 through 18 above.

Amendment #4 – Amend s. 22(3) by deleting paragraph (b)

27. In the course of reviewing the funds exemptions in this subsection, the Federation reconsidered the exemption for funds paid to another lawyer or paralegal on the direction of the client.
28. While the exemption was presumably based on the control the paying lawyer or paralegal would exercise over the funds to be paid in trust to another lawyer or paralegal, it was determined that this in itself was not sufficient to exempt this transfer. To the contrary, it seemed that in some circumstances, this would be a way for rogue clients to move illicit funds (e.g. a cheque from the client paid in trust to another lawyer or paralegal).
29. The Committee agreed with the proposal to delete this type of transfer as an exemption.

Amendment #5 – Amend s. 22(3) to exclude electronic funds transfers from funds transactions that trigger the licensee's client verification requirements

30. See paragraphs 9 through 11 above.

Amendment #6 – Amend s. 22 to exempt a licensee from the requirement to verify the identity of clients which are financial institutions, public bodies and reporting issuers

31. Many of the current exemptions in the By-Law focus on funds paid to or received from financial institutions, public bodies and reporting issuers. This is because these entities are subject to their own rigorous regulation, oversight and public accountability. This is similar to the treatment of these entities in the federal regulations, although the focus in the regulations is on the entity itself rather than funds transactions in connection with the entity.

32. This concept was considered in the context of the Federation's Model Rule and the Law Society's By-Law. It was determined that a licensee should be exempt from the identity verification requirements when the client is one of these three entities, or a subsidiary thereof. The licensee would also be exempt from the requirements to obtain identifying information about the owners or directors of these entities under s. 23(2).

Amendment #7 – Amend s. 23(1)4 to exclude from client identification requirements the requirement to obtain an incorporation/business identification number where the client is a financial institution, public body or reporting issuer

33. The basic identification requirements in the By-Law for all clients include obtaining information on an organizational client's incorporation or business identification number. Given the nature of financial institutions, public bodies and reporting issuers, there did not appear to be a good reason to require a licensee to obtain this information from these entities.

Amendment #8 – Amend s. 23(1)7 to clarify the authorized, instructing party for an organization

34. Information primarily from large firm lawyers about this requirement indicated that some clarity was needed around the individual or individuals who would need to be identified. The Law Society learned that in the organizational setting, there can be a number of people who are authorized to and instruct the lawyer in the course of a transaction.
35. As the Federation agreed that it was not the intention that all these individuals must be identified, it was decided that the paragraph should be amended to narrow the requirement to each individual (or as applicable, individuals) who is giving instructions to the licensee on the matter, and who, as the instructing party, would be understood to have the authority to instruct. The Committee agreed with this proposal.

Amendment #9 – Amend s. 23(1)8 to delete "beneficiary or principal" after "third party" (and in other locations in the By-Law as applicable)

36. Many questions were raised by lawyers about the meaning of "beneficiary or principal" as descriptors of the third party who is instructing the client who engages the lawyer. For example, in the testamentary trust situation, the question was whether each beneficiary was required to be identified where the trustee has engaged the lawyer on the estate matter (the answer is no).
37. The Federation examined more closely the intent of this requirement, and determined that a third party is an individual or an entity other than the client who conducts the transaction and who gives instructions with respect to the matter.
38. On this basis, the proposal is to use the phrase "third party" and delete the other words which tend to confuse an understanding of the requirement.
39. The Committee agreed with this approach.

Amendment #10 – Amend s. 23 to provide that a licensee complies with the client identification and verification requirements when they are fulfilled by any licensee member, associate or employee of the licensee's firm, wherever located.

Amendment #11 – Amend s. 23(7)2 to clarify certain requirements around verification of an organizational client

40. The purpose of these amendments is to
 - a. include registration of an entity, in addition to creation of the entity pursuant to legislative authority, and
 - b. delete the reference to obtaining information about officers, as many provincial statutes and the federal business corporations legislation does not require this information.

The Committee agrees with these amendments.

Amendment #12 – Amend s. 23(9)1.ii to add three persons to the list of those authorized to provide an attestation for non-face-to-face verification of identity

41. The Federation proposes that three additional occupations be added to list of individuals who may provide an attestation under the By-Law for the purposes of non-face-to-face identity verification. The three individuals are a police officer, a nurse and a school principal.
42. The reason for the expansion of the list is to include those individuals who are likely to be found in more remote communities in which some of the individuals currently on the list may not serve. The Committee agreed with this recommendation.

Amendment #13 – Amend s. 24 and 27 to change the test for withdrawal from “reasonably suspects” to “knows or ought to know”

43. A number of law societies noted that the current standard of “reasonably suspects” for the purpose of withdrawal in the Model Rule (and in By-Law 7.1) is higher than that included in rules or codes of professional conduct on this subject, which use the “knows or ought to know” test. The view was that for consistency's sake, the Model Rule (and law societies' instruments that implement it) should match the rules or codes of conduct on the standard to be applied.
44. The Law Society's *Rules of Professional Conduct* reference the knowledge standard in subrules 2.02(5) and (5.1):

2.02 (5) When advising a client, a lawyer shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct, or instruct the client on how to violate the law and avoid punishment.

2.02 (5.1) When a lawyer is employed or retained by an organization to act in a matter and the lawyer knows that the organization intends to act dishonestly, fraudulently, criminally, or illegally with respect to that matter, then in addition to his or her obligations under subrule (5), the lawyer for the organization shall [report “up the ladder” or withdraw]

45. The Federation's view is that for law societies who have implemented the "reasonably suspects" standard, the proposed amendment need not be made if that standard is desired.
46. The Committee agreed that the amendment was appropriate.

APPENDIX 1

FEDERATION OF LAW SOCIETIES OF CANADA
MODEL RULE ON CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS

APPENDIX 2

PARTS III AND IV OF BY-LAW 7.1
WITH PROPOSED AMENDMENTS HIGHLIGHTED

PROPOSAL TO END THE NOTICE REQUIREMENT FOR A LAWYER'S FISCAL YEAR

Motion

47. That Convocation end the requirement for a lawyer to provide notice to the Law Society of the lawyer's fiscal year, pursuant to s. 1 of By-Law 8.
48. By-Law 8 (Reporting and Filing Requirements) includes the authority for the Member's Annual Report (MAR) and the Paralegal Annual Report (PAR). When the By-Law was reviewed for the purpose instituting the requirement for the PAR for the year 2008, questions arose about the requirement in section 1 and whether the requirement should also apply to paralegals. The discussion then turned to whether section 1 should continue to apply to lawyers.
49. Section 1 requires a lawyer to provide the Law Society with notice of the termination of the lawyer's fiscal year and any change in that information, and whether that section should also apply to paralegals. The section reads:

Notice of fiscal year

1. Every licensee who holds a Class L1 licence and engages in the private practice of law in Ontario shall inform the Society in writing of the termination date of his or her fiscal year, and shall file with the Society written notice of any change in the fiscal year within one month after the change is made.

50. This section is based on a similar section in repealed sections of Regulation 708 under the *Law Society Act*.⁴ This requirement was linked to the lawyer's obligation at the time to file the report of a public accountant six months after the lawyer's fiscal year end (Form 3) together with the lawyer's certificate about his or her practice (Form 2).
51. The Committee learned that the Law Society does not request or require information about a lawyer's fiscal year end, and no questions on the current reporting form for lawyers, the MAR, relate to the lawyer's fiscal year end. The questions related to trust accounts reference the calendar year for the MAR.
52. As there does not appear to be a need for information about the lawyer's fiscal year end, the Committee is requesting that the requirement be ended.
53. If Convocation agrees, the appropriate amendment to By-Law 8 will be prepared for Convocation's consideration.

POLICY FOR LAW SOCIETY INVESTIGATIONS OF LICENSEE BENCHERS AND STAFF
AND PARALEGAL MEMBERS OF THE PARALEGAL STANDING COMMITTEE

Motion

54. That Convocation approve the policy at paragraph 68 that establishes a process for the investigation of regulatory complaints against licensee benchers and staff and paralegal members of the Paralegal Standing Committee.

Introduction and Background

55. Prior to the 2006 amendments to the *Law Society Act*, the Act included requirements for the investigation of complaints against benchers and staff. The Treasurer was required to instruct the investigation which had to be conducted by an outside investigator. The 2006 amendments repealed these requirements.
56. Since then an informal protocol has been in place to provide a process for these investigations. At the request of the Treasurer, the Committee was asked to formalize the protocol. This report includes the formal policy based on the protocol which the Committee, with the support of the Paralegal Standing Committee, is requesting that Convocation approve.

⁴ Subsection 16(1) of Regulation 708 read: "Every member who engages in the private practice of law in Ontario shall inform the Secretary in writing of the termination date of his or her fiscal year, and shall file the Secretary written notice of any change in the fiscal year within one month after the change is made."

Legislative History and the Current Process

57. Under the pre-2006 *Law Society Act*, section 49.5 required the Treasurer to instruct investigations of benchers and staff.⁵ Section 49.5 also required that these investigations be conducted by an outside investigator rather than Law Society staff⁶. Outside counsel was also mandated (under section 49.53) for disciplinary proceedings regarding benchers and staff lawyers.
58. Section 49.5 was revoked when the Act was amended in 2006. Section 49.3 is the current section for the authorization of conduct investigations.⁷ Section 49.53, regarding discipline proceedings.
59. Revocation of section 49.5 had two important consequences:
- a. There is no longer any reference in the Act to the Treasurer instructing investigations. Convocation approved By-law 11, which authorizes the Director of Professional Regulation and Senior Counsel, Professional Regulation to instruct all investigations, and by implication this includes bencher and staff investigations⁸; and

⁵ All other investigations were instructed by the Secretary of the Law Society (Director of Professional Regulation)).

⁶ 49.5 (1) A reference in section 49.3 to the Secretary shall be deemed, with respect to any matter that concerns the conduct or capacity of a bencher or employee of the Society, to be a reference to the Treasurer.

(2) The Treasurer shall appoint a person who is not a bencher or employee of the Society to conduct any investigation under section 49.3 that concerns the conduct or capacity of a bencher or employee of the Society.

⁷ [49.3 \(1\)](#) The Society may conduct an investigation into a licensee's conduct if the Society receives information suggesting that the licensee may have engaged in professional misconduct or conduct unbecoming a licensee.

Powers

[\(2\)](#) If an employee of the Society holding an office prescribed by the by-laws for the purpose of this section has a reasonable suspicion that a licensee being investigated under subsection (1) may have engaged in professional misconduct or conduct unbecoming a licensee, the person conducting the investigation may,

- (a) enter the business premises of the licensee between the hours of 9 a.m. and 5 p.m. from Monday to Friday or at such other time as may be agreed to by the licensee;
- (b) require the production of and examine any documents that relate to the matters under investigation, including client files; and
- (c) require the licensee and people who work with the licensee to provide information that relates to the matters under investigation.

⁸ By-Law 11:

Exercise of powers, etc.

23. The holders of the following offices may exercise the powers and perform the duties under subsection 49.3 (2) and 49.3 (4) of the Act:

1. The office of Director, Professional Regulation.
2. The office of Senior Counsel, Professional Regulation.

- b. There is no longer a requirement that investigations of benchers or Law Society staff lawyers or paralegals be conducted by outside investigators.
60. Following the amendments to the Act, a transitional protocol was implemented by (then) Treasurer Gavin MacKenzie, Chief Executive Officer Malcolm Heins and Director of Professional Regulation, Zeynep Onen. It permitted minor matters to be resolved by Law Society staff. More serious matters were to be instructed for investigation by the Director, and outside counsel would be retained in consultation with the Treasurer. The Treasurer received regular reports of all bencher and employee investigations.
 61. The Committee learned that operationally, the process has worked well. The majority of complaints were minor matters, and no outside counsel was required. As a result, generally, they were resolved faster and with a reduced cost per case.
 62. The Committee was informed that like all complaints, these cases are closed at different points in the process. Some were closed at the intake stage (review and assessment) and some were closed after investigation. The primary difference in the treatment of cases before and after the legislative amendments is that prior to May 2007, outside counsel were generally retained even at the intake stage. This increased the time it took to complete even simple cases that resolved with little difficulty.
 63. At any given time, there are approximately 10 open bencher complaints. Generally, there are fewer complaints against staff, totaling 10 complaints since 2004. All except one were resolved without the need for outside counsel.
 64. The Committee noted that under the transitional policy, there is still a requirement for outside counsel in certain cases and the cost of outside counsel will not be eliminated.

The Proposal

65. For the purpose of enhancing clarity and transparency around this investigative process, the Committee has prepared a policy under which the current process will continue. Once the policy is formally adopted, it may be included in a by-law to the extent that that is appropriate. Discussions in this respect at the Committees are ongoing.
66. The policy applies to all benchers who are lawyers or paralegals and all Law Society staff who are lawyers or paralegals. It also applies to the paralegal members of the Paralegal Standing Committee. These individuals are not benchers or staff, but are licensees who fulfill a specific regulatory role at the Law Society. Given the intent of the policy, the Committees' view is that the policy should apply to them.
67. The policy also addresses what occurs in the event of a conflict on the part of the Director, Professional Regulation (see paragraph 8 of the policy).

68. The proposed policy is as follows:

**PROPOSED POLICY FOR THE INVESTIGATION OF COMPLAINTS AGAINST LAWYER AND
PARALEGAL BENCHERS AND EMPLOYEES AND PARALEGAL MEMBERS OF THE
PARALEGAL STANDING COMMITTEE**

1. All complaints under the *Law Society Act* against lawyer and paralegal benchers and employees of the Law Society and paralegal members of the Paralegal Standing Committee ("PSC paralegal members") are transferred to Professional Regulation Intake for assessment.
2. Where the complaint is not serious and is unlikely to result in formal or informal sanction, with the Director's investigation instruction, the complaint should be transferred to Complaints Resolution for processing in the normal course.
3. Where in the course of resolution a less serious matter changes in character and may result in a "found"⁹ complaint, the Director is to be consulted to determine whether outside counsel should be retained. The Director may decide to retain outside counsel to continue the investigation in consultation with the Treasurer.
4. Where it is determined that the complaint raises more serious allegations which, if supported by the evidence would lead to a "found"¹⁰ complaint requiring formal proceedings, or a referral to the Proceedings Authorization Committee (PAC), the Director will retain an outside investigator in consultation with the Treasurer.
5. On completion of his or her investigation, the outside investigator is required to provide a report to the Treasurer and the Director of Professional Regulation. If the recommendation is that the matter should close without referral to the PAC, and the Treasurer and the Director both agree, the case will be closed. Where any one of the investigator, the Treasurer or the Director are of the view that the case should be reported to the PAC, the investigator is required to prepare and present a report to the PAC.
6. The Director will provide the Treasurer with a regular report on all ongoing bencher, employee and PSC paralegal member investigations and their resolution.
7. In the appropriate case, the Director may also refer a complaint to the Complaints Review Commissioner for resolution where the matter concerns a complaint of a less serious nature.
8. All persons involved in the application of this policy must be mindful of conflicts of interest and shall not act in the event of a conflict. If a complaint is received about the Director, Professional Regulation, the Chief Executive Officer will take over the role of the Director, Professional Regulation for the purpose of instructing the investigation under By-Law 11.

⁹ "Found" complaints are complaints in which a breach was found as a result of an investigation, and the file was closed by a disposition such as an undertaking or a caution letter.

¹⁰ See above.

AMENDMENTS TO RULES 5.03, 5.04, 6.01, 6.08 AND 6.09 OF THE *RULES OF PROFESSIONAL CONDUCT*

Motion

69. That Convocation approve the amendments to rules 5.03, 5.04, 6.01, 6.08 and 6.09 of the *Rules of Professional Conduct* as set out in Appendix 3.

Introduction

70. The Committee is proposing amendments to several rules, which include amendments of substance and some housekeeping amendments.

Rules 5.03 and 5.04 (Sexual Harassment and Discrimination)

71. The Committee received advice from the Law Society's Equity Advisor, Josee Bouchard, that amendments should be made to the commentary to these rules to reflect current human rights legislation and caselaw. The Committee agreed with the amendments, which are set out below with explanatory notes.

5.03 SEXUAL HARASSMENT

Definition

5.03 (1) In this rule, sexual harassment is one incident or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature

(a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the recipient(s) of the conduct,

(b) when submission to such conduct is made implicitly or explicitly a condition for the provision of professional services,

(c) when submission to such conduct is made implicitly or explicitly a condition of employment,

(d) when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of files, matters of promotion, raise in salary, job security, and benefits affecting the employee), or

(e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

Commentary

Types of behaviour that constitute sexual harassment include, but are not limited to,

- (a) sexist jokes causing embarrassment or offence, ~~told or carried out after the joker has been advised that they are embarrassing or offensive, or~~ that are by their nature clearly embarrassing or offensive,

Explanation for change:

Human rights jurisprudence does not require a victim of sexual harassment to raise his or her objection of the inappropriate comment or behaviour for it to constitute sexual harassment. The criterion is whether or not a reasonable person in the victim's shoes would be offended by the comment. By suggesting that there is sexual harassment after the joker has been advised that the comments are embarrassing or offensive is misleading.

- (b) leering,
- (c) the display of sexually offensive material,
- (d) sexually degrading words used to describe a person,
- (e) derogatory or degrading remarks directed towards members of one sex or one's sexual orientation,
- (f) sexually suggestive or obscene comments or gestures,
- (g) unwelcome inquiries or comments about a person's sex life,
- (h) unwelcome sexual flirtations, advances, or propositions,
- (i) persistent unwanted contact or attention after the end of a consensual relationship,
- (j) requests for sexual favours,
- (k) unwanted touching,
- (l) verbal abuse or threats, and
- (m) sexual assault.

Sexual harassment can occur in the form of behaviour by men towards women, between men, between women, or by women towards men.

Prohibition on Sexual Harassment

- (2) A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.

5.04 DISCRIMINATION

Special Responsibility

- 5.04 (1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or

disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

[Amended – June 2007]

Commentary

The Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

Rule 5.04 will be interpreted according to the provisions of the Ontario Human Rights Code and related case law.

The Ontario Human Rights Code defines a number of grounds of discrimination listed in rule 5.04. For example,

Age is defined as an age that is eighteen years or more.~~except in subsection 5(i) where age means an age that is eighteen years or more and less than sixty five years.~~

Explanation:

The Ontario Human Rights Code was amended on December 12, 2006 to abolish mandatory retirement in Ontario. This proposed change to the Rule is consistent with that amendment.

~~The term disability is not used in the Code, but discrimination on the ground of handicap is prohibited. Handicap~~ Disability is broadly defined in s. 10 of the Code to include both physical and mental disabilities.

Explanation: The term “handicap” is no longer used in the Ontario Human Rights Code. It has been replaced by “disability”.

Family status is defined as the status of being in a parent-and-child relationship.

Marital status is defined as the status of being married, single, widowed, divorced, or separated and includes the status of living with a person ~~of the opposite sex~~ in a conjugal relationship outside marriage.

*Explanation for change:**This reflects the wording of the Ontario Human Rights Code.**[Amended – June 2007]*

Record of offences is defined such that a prospective employer may not discriminate on the basis of a pardoned criminal offence (a pardon must have been granted under the Criminal Records Act (Canada) and not revoked) or provincial offences.

The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

There is no statutory definition of discrimination. Supreme Court of Canada jurisprudence defines discrimination as including

- (a) Differentiation on prohibited grounds that creates a disadvantage. Lawyers who refuse to hire employees of a particular race, sex, creed, sexual orientation, etc. would be differentiating on the basis of prohibited grounds.

Explanation

Not all differentiation on prohibited grounds are discriminatory. Differentiation on prohibited grounds that have a negative impact or that create disadvantages are discriminatory. The way the paragraph is presently worded would not allow for special programs, which are recognized in the Ontario Human Rights Code.

- (b) Adverse effect discrimination. An action or policy that is not intended to be discriminatory can result in an adverse effect that is discriminatory. If the application of a seemingly "neutral" rule or policy creates an adverse effect on a group protected by rule 5.04, there is a duty to accommodate. For example, while a requirement that all articling students have a driver's licence to permit them to travel wherever their job requires may seem reasonable, that requirement should only be imposed if driving a vehicle is an essential requirement for the position. Such a requirement may have the effect of effectively excluding from employment persons with disabilities that prevent them from obtaining a licence. ~~In such a case, the law firm would be required to alter or eliminate the requirement in order to accommodate the student unless the necessary accommodation would cause undue hardship~~

Explanation

The change is more consistent with human rights jurisprudence.

Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Ontario Human Rights Code requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

A lawyer should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the lawyer's direction or control.

Ontario human rights law excepts from discrimination special programs designed to relieve disadvantage for individuals or groups identified on the basis of the grounds noted in the Code.

In addition to prohibiting discrimination, rule 5.04 prohibits harassment on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or ~~handicap~~ disability. Harassment by superiors, colleagues, and co workers is also prohibited.

Explanation

This is consistent with the Ontario Human Rights Code.

[Amended – June 2007]

Harassment is defined as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome" on the basis of any ground set out in rule 5.04. This could include, for example, repeatedly subjecting a client or colleague to jokes based on race or creed.

Services

(2) A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

Employment Practices

(3) A lawyer shall ensure that his or her employment practices do not offend this rule.

Commentary

Discrimination in employment or in the provision of services not only fails to meet professional standards, it also violates the Ontario Human Rights Code and related equity legislation.

In advertising a job vacancy, an employer may not indicate qualifications by a prohibited ground of discrimination. However, where discrimination on a particular ground is permitted because of an exception under the Ontario Human Rights Code, such questions may be raised at an interview. For example, an employer may ask whether an applicant has been convicted of a criminal offence for which a pardon has not been granted. An employer may ask applicants not yet called in Ontario about Canadian citizenship or permanent residency. If an employer has an anti-nepotism policy, the employer may inquire about the applicant's possible relationship to another employee as that employee's spouse, child or parent. This is in contrast to questions about applicant's marital status by itself. Since marital status has no relevance to employment within a law firm, questions about marital status should not be asked.

Explanation

The first example in the struck out text is not a good illustration of this point.

The second example is not permissible. Not only are citizenship and permanent residency no longer criteria in the Law Society Act, the Supreme Court of Canada decided in Andrews that the requirement of citizenship to be admitted to a bar in Canada is unconstitutional (it violates section 15 of the Charter). Although the example refers to employment prior to being called to the bar, it would be in rare cases that an employer would be allowed to ask about citizenship. Permanent residency may be an acceptable question to ask as a requirement of the position, but the Law Society should not use this example here.

An employer should consider the effect of seemingly "neutral" rules. Some rules, while applied to everyone, can bar entry to the firm or pose additional hardships on employees of one sex or of a particular creed, ethnic origin, marital or family status, or on those who have (or develop) disabilities. For example, a law office may have a written or unwritten dress code. It would be necessary to revise the dress code if it does not already accept that a head covering worn for religious reasons must be considered part of acceptable business attire. The maintenance of a rule with a discriminatory effect breaches rule 5.04 unless changing or eliminating the rule would cause undue hardship.

If an applicant cannot perform all or part of an essential job requirement because of a personal characteristic listed in the Ontario Human Rights Code, the employer has a duty to accommodate. Only if the applicant cannot do the essential task with reasonable accommodation may the employer refuse to hire on this basis. A range of appropriate accommodation measures may be considered. An accommodation is considered reasonable unless it would cause undue hardship.

The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the application of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in rule 5.04.

The nature of accommodation as well as the extent to which the duty to accommodate might apply in any individual case are developing areas of human rights law. However, the following principles are well established.

If a rule, requirement, or expectation creates difficulty for an individual because of factors related to the personal characteristics noted in rule 5.04, the following obligations arise:

The rule, requirement or expectation must be examined to determine whether it is "reasonable and *bona fide*." If the rule, requirement, or expectation is not imposed in good faith and is not strongly and logically connected to a business necessity, it cannot be maintained. There must be objectively verifiable evidence linking the rule, requirement, or expectation with the operation of the business.

If the rule, requirement, or expectation is imposed in good faith and is strongly logically connected to a business necessity, the next step is to consider whether the individual who is disadvantaged by the rule can be accommodated.

The duty to accommodate operates as both a positive obligation and as a limit to obligation. Accommodation must be offered to the point of undue hardship. Some hardship must be tolerated to promote equality; however, if the hardship occasioned by the particular accommodation at issue is "undue," that accommodation need not be made.

Rule 6.01(2) (Meeting Financial Obligations)

72. Rule 6.01(2) requires a lawyer to promptly meet financial obligations in relation to his or her practice:

Meeting Financial Obligations

- (2) A lawyer shall promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability insurance policy when properly called upon to do so.

Commentary

In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed, or undertaken on behalf of clients unless, before incurring such an obligation, the lawyer clearly indicates in writing that the obligation is not to be a personal one.

When a lawyer retains a consultant, expert, or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided, and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, the lawyer should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

If there is a change of lawyer, the lawyer who originally retained a consultant, expert, or other professional should advise him or her about the change and provide the name, address, telephone number, fax number, and e-mail address of the new lawyer.

Concerns About the Current Rule

73. Based on experience with complaints and enforcement of the rule, the Director of Professional Regulation requested that the Committee reconsider the scope of the rule. The following are the issues:
 - a. Information from the Professional Regulation Division is that the rule tends to create false expectations on the part of a complainant that the Law Society will “collect” the debt that is the subject of a complaint. While a complaint may prompt payment, this does not necessarily occur. Even where a matter proceeds to a disciplinary hearing, a finding and penalty does not guarantee that funds will be paid;
 - b. In the last few years, the Proceedings Authorization Committee (PAC) has not authorized formal discipline proceedings on these types of complaints where the failure to pay the financial obligation is the only issue in the complaint and the debt has not crystallized into a court order. Formal discipline proceedings have been authorized where the failure to pay the financial obligation is part of a series of allegations. Failure to fulfill a financial obligation has also been treated more seriously where the financial obligation arises out of a court order, in which case the regulatory issue was failure to comply with a court order.
 - c. As a result, since 2007, staff in the Client Service Centre handle the complaints in which the financial obligation is the only issue in the complaint and the debt has not become the subject of a court order. These matters are generally not escalated to the Professional Regulation Division unless the lawyer fails to respond to the Law Society. In these cases, only the failure to respond is pursued.

74. The Committee was also aware that one particular financial obligation, payment of the LawPRO deductible, is now specifically required by section 11 of By-Law 6.
75. The chart below shows the number of financial obligation complaints and their disposition from 2003 to 2008. A very small number of the total complaints are pursued beyond the initial handling phase, and as noted above, this is primarily because the lawyer did not respond to the Society's request for information.

Year	Total Cases	Open	Closed	Closed in Complaints Services	Total Lawyers
2003	226	0	226	0	202
2004	210	1	209	0	183
2005	174	2	172	0	150
2006	171	0	171	15	157
2007	89	2	87	65	80
2008	19	10	9	0	19
Total	889			80	

76. In March 2008, the Proceedings Authorization Committee authorized disciplinary proceedings against a lawyer for failure to fulfill a financial obligation (to a process server), failure to comply with a court order and failure to respond to the Law Society. All other prosecutions on this issue over the last number of years have involved a series of allegations, of which the failure to fulfill the financial obligation was just one.
77. The rule appears to have a long history in the Law Society's *Rules of Professional Conduct*.¹¹ Over 10 years ago, the financial obligation rule was the subject of review by a working group of the Committee, and one of the questions considered was whether the rule should be maintained. Based on the working group's report, the Committee reported to May 1998 Convocation that the rule should remain, but at that time, noted concerns about the rule similar to those raised earlier in this report. Excerpts from the 1998 report read:

In part, the issues which prompted the review of the financial obligation rule arose from concern that the Law Society was essentially being used as a collection agency for those whose accounts or invoices had not been honoured by lawyers.

...

The large majority of financial obligation complaints are dealt with by the Complaints Departments' Telephone Complaints Resolution (TCR) staff, who attempt to resolve the matter. If unresolvable, matters may eventually be referred to the discipline authorization committee for consideration... In many cases, the complaints are advised to pursue legal remedies.

¹¹ The subject appeared in the 1987 version of the Rules, and likely in versions before that, as commentary to Rule 13 on maintaining the integrity of the legal profession.

...The bulk of those complaints are resolved at the TCR level. In 1996, only five cases were authorized for disciplinary action for failure to honour financial obligations.

Other Law Societies' Rules

78. The Committee reviewed the rules of conduct of other law societies to determine if similar rules existed and the how the law societies dealt with breaches of the rules.
79. The law societies of British Columbia, Alberta and Manitoba and the Nova Scotia Barristers' Society were used as the sample. All have a rule or commentary on the subject, similar to the Law Society¹², and all have prosecuted lawyers for breaches of the rule, most notably in British Columbia.
80. A number of the cases involved other charges of professional misconduct, and one case resulted in withdrawal of the charge on the financial obligation issue after a civil remedy was exercised. The findings of misconduct in the cases resulted in penalties ranging from fines and reprimands to permission to resign.

Discussion and the Committee's Proposal

81. Based on the above information, the Committee's concern was that if the Law Society maintains rule 6.01(2) in its current form, there will continue to be dissatisfaction on the part of complainants that the rule is not enforced except in the circumstances described earlier.
82. The Committee acknowledged that complainants have civil remedies available to them to claim and enforce payment of legitimate debts, and that it is not the role of the Law Society to effectively act as a collection agency.
83. However, the Committee determined that it would be important to maintain the Society's ability to respond in cases where there are serious allegations against a lawyer for non-payment of a *practice-related* financial obligation.
84. To that end, the Committee agreed that amendments should be made to rule 6.01(2) to require a lawyer to promptly meet financial obligations but narrow the application of the rule to matters related to a client engagement. This, it is hoped, will help to address the concerns of complainants noted above.
85. The proposed amendments to the rule and commentary, followed by an explanation of the changes, are as follows¹³:

¹² See **Appendix 4** for the text of these rules.

¹³ These amendments have been prepared with the assistance of the Law Society's Rules drafter, Donald Revell.

Meeting Financial Obligations

Rule 6.01(2)

A lawyer shall promptly meet financial obligations ~~in relation to his or her practice incurred in the course of practice on behalf of clients unless, before incurring such an obligation, the lawyer clearly indicates in writing to the person to whom it is to be owed that it is not to be a personal obligation including payment of the deductible under a professional liability insurance policy when properly called upon to do so.~~

Commentary

In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed, or undertaken on behalf of clients ~~unless, before incurring such an obligation, the lawyer clearly indicates~~ otherwise in advance. ~~in writing that the obligation is not to be a personal one.~~

When a lawyer retains a consultant, expert, or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided, and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, the lawyer should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

If there is a change of lawyer, the lawyer who originally retained a consultant, expert, or other professional should advise him or her about the change and provide the name, address, telephone number, fax number, and e-mail address of the new lawyer.

86. The following explains the key features of this redraft:

- a. Language was borrowed from similar provisions in other law societies' rules on financial obligations. British Columbia, Manitoba and Nova Scotia use the phrase "in the course of practice", which, it is suggested, provides a better description of the focus of the rule than "in relation to...practice";
- b. Some of the language in the redrafted rule includes language from the current commentary. The commentary was then simplified.
- c. The language about payment of the insurance deductible has been removed from this rule and added to commentary under rule 6.09(2) which outlines the lawyer's duties in respect of the insurer. Even though By-Law 6 includes the obligation, as noted earlier, the Committee felt it should be mentioned in the Rules. Minor edits were also made to the introductory paragraph of this commentary:

Commentary

~~The introduction of compulsory insurance has imposed additional obligations upon a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client.~~

Compulsory insurance imposes obligations on a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. The insurer's rights must be preserved.

There may well be occasions when a lawyer believes that certain actions or the failure to take action have made the lawyer liable for damages to the client when, in reality, no liability exists. Further, in every case a careful assessment will have to be made of the client's damages arising from the lawyer's negligence. Many factors will have to be taken into account in assessing the client's claim and damages. As soon as a lawyer becomes aware that an error or omission may have occurred, that may reasonably be expected to involve liability to the client for professional negligence, the lawyer should take the following steps:

1. Immediately arrange an interview with the client and advise the client that an error or omission may have occurred, that may form the basis of a claim by the client against the lawyer.
2. Advise the client to obtain an opinion from an independent lawyer and that, in circumstances, the first lawyer might no longer be able to act for the client.
3. Subject to rule 2.03 (Confidentiality), inform the insurer of the facts of the situation.
4. Co-operate fully and as expeditiously as possible with the insurer in the investigation and eventual settlement of the claim.
5. Make arrangements to pay that portion of the client's claim that is not covered by the insurance immediately upon completion of the settlement of the client's claim. This would include payment of the deductible under a policy of insurance in accordance with By-Law 6 (Professional Liability Insurance)

87. The Committee believes that these amendments more appropriately reflect the duties of lawyers with respect to financial obligations and recommends that Convocation approve the amendments.

Rule 6.08 (Retired Judges Returning to Practice)

88. The Law Society was advised by a government lawyer in Ottawa that rule 6.08¹⁴ uses pre-2002 language to describe the Federal Court and the Federal Court of Appeal. In 2002, the *Federal Courts Act* was amended and the Federal Court of Canada with its Trial and Appeal Divisions was constituted as separate courts, namely, the Federal Court of Appeal and the Federal Court. The Committee recommends following amendments:

¹⁴ This rule generally prohibits former judges, after returning to practice, from appearing before the court in which they were judges without the approval of a Committee of Convocation.

RETIRED JUDGES RETURNING TO PRACTICE

Definitions

- 6.08 (1) In this rule, “retired appellate judge” means a lawyer
- (a) who was formerly a judge of the Supreme Court of Canada, the Court of Appeal for Ontario, or the Federal Court of ~~Canada~~, Appeal ~~Division~~,
 - (b) who has retired, resigned, or been removed from the Bench, and
 - (c) who has returned to practice.
- (2) In this rule, “retired judge” means a lawyer
- (a) who was formerly a judge of the Federal Court of ~~Canada~~, Trial ~~Division~~, the Tax Court of Canada, the Supreme Court of Ontario, Trial Division, a County or District Court, the Ontario Court of Justice, or the Superior Court of Justice,
 - (b) who has retired, resigned, or been removed from the Bench, and
 - (c) who has returned to practice.

Rule 6.09(2) (Errors and Omissions)

89. See paragraph 86(c) above.

APPENDIX 3

AMENDMENTS TO LAW SOCIETY OF UPPER CANADA *RULES OF THE PROFESSIONAL CONDUCT*

5.03 SEXUAL HARASSMENT

Definition

5.03 (1) In this rule, sexual harassment is one incident or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature

- (a) when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the recipient(s) of the conduct,
- (b) when submission to such conduct is made implicitly or explicitly a condition for the provision of professional services,

- (c) when submission to such conduct is made implicitly or explicitly a condition of employment,
- (d) when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of files, matters of promotion, raise in salary, job security, and benefits affecting the employee), or
- (e) when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

Commentary

Types of behaviour that constitute sexual harassment include, but are not limited to,

- (a) sexist jokes causing embarrassment or offence, ~~told or carried out after the joker has been advised that they are embarrassing or offensive~~, or that are by their nature clearly embarrassing or offensive,
- (b) leering,
- (c) the display of sexually offensive material,
- (d) sexually degrading words used to describe a person,
- (e) derogatory or degrading remarks directed towards members of one sex or one's sexual orientation,
- (f) sexually suggestive or obscene comments or gestures,
- (g) unwelcome inquiries or comments about a person's sex life,
- (h) unwelcome sexual flirtations, advances, or propositions,
- (i) persistent unwanted contact or attention after the end of a consensual relationship,
- (j) requests for sexual favours,
- (k) unwanted touching,
- (l) verbal abuse or threats, and
- (m) sexual assault.

Sexual harassment can occur in the form of behaviour by men towards women, between men, between women, or by women towards men.

Prohibition on Sexual Harassment

(2) A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.

5.04 DISCRIMINATION

Special Responsibility

5.04 (1) A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.

[Amended – June 2007]

Commentary

The Society acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.

This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

Rule 5.04 will be interpreted according to the provisions of the Ontario Human Rights Code and related case law.

The Ontario Human Rights Code defines a number of grounds of discrimination listed in rule 5.04. For example,

Age is defined as an age that is eighteen years or more. ~~except in subsection 5(i) where age means an age that is eighteen years or more and less than sixty-five years.~~

~~The term disability is not used in the Code, but discrimination on the ground of handicap is prohibited.~~ Handicap Disability is broadly defined in s. 10 of the Code to include both physical and mental disabilities.

Family status is defined as the status of being in a parent-and-child relationship.

Marital status is defined as the status of being married, single, widowed, divorced, or separated and includes the status of living with a ~~person of the opposite sex~~ in a conjugal relationship outside marriage.

[Amended – June 2007]

Record of offences is defined such that a prospective employer may not discriminate on the basis of a pardoned criminal offence (a pardon must have been granted under the Criminal Records Act (Canada) and not revoked) or provincial offences.

The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant.

There is no statutory definition of discrimination. Supreme Court of Canada jurisprudence defines discrimination as including

- (a) Differentiation on prohibited grounds that creates a disadvantage. Lawyers who refuse to hire employees of a particular race, sex, creed, sexual orientation, etc. would be differentiating on the basis of prohibited grounds.
- (b) Adverse effect discrimination. An action or policy that is not intended to be discriminatory can result in an adverse effect that is discriminatory. If the application of a seemingly "neutral" rule or policy creates an adverse effect on a group protected by rule 5.04, there is a duty to accommodate. For example, while a requirement that all articling students have a driver's licence to permit them to travel wherever their job requires may seem reasonable, that requirement should only be imposed if driving a vehicle is an essential requirement for the position. Such a requirement may have the effect of effectively excluding persons with disabilities that prevent them from obtaining a licence. ~~In such a case, the law firm would be required to alter or eliminate the requirement in order to accommodate the student unless the necessary accommodation would cause undue hardship~~

Human rights law in Ontario includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Ontario Human Rights Code requires that the affected individuals or groups must be accommodated unless to do so would cause undue hardship.

A lawyer should take reasonable steps to prevent or stop discrimination by any staff or agent who is subject to the lawyer's direction or control.

Ontario human rights law excepts from discrimination special programs designed to relieve disadvantage for individuals or groups identified on the basis of the grounds noted in the Code. In addition to prohibiting discrimination, rule 5.04 prohibits harassment on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status, or ~~handicap~~ disability. Harassment by superiors, colleagues, and co workers is also prohibited.

[Amended – June 2007]

Harassment is defined as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome" on the basis of any ground set out in rule 5.04. This could include, for example, repeatedly subjecting a client or colleague to jokes based on race or creed.

Services

(2) A lawyer shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule.

Employment Practices

(3) A lawyer shall ensure that his or her employment practices do not offend this rule.

Commentary

Discrimination in employment or in the provision of services not only fails to meet professional standards, it also violates the Ontario Human Rights Code and related equity legislation.

In advertising a job vacancy, an employer may not indicate qualifications by a prohibited ground of discrimination. However, where discrimination on a particular ground is permitted because of an exception under the Ontario Human Rights Code, such questions may be raised at an interview. For example, ~~an employer may ask whether an applicant has been convicted of a criminal offence for which a pardon has not been granted. An employer may ask applicants not yet called in Ontario about Canadian citizenship or permanent residency.~~ If an employer has an anti-nepotism policy, the employer may inquire about the applicant's possible relationship to another employee as that employee's spouse, child or parent. This is in contrast to questions about applicant's marital status by itself. Since marital status has no relevance to employment within a law firm, questions about marital status should not be asked.

An employer should consider the effect of seemingly "neutral" rules. Some rules, while applied to everyone, can bar entry to the firm or pose additional hardships on employees of one sex or of a particular creed, ethnic origin, marital or family status, or on those who have (or develop) disabilities. For example, a law office may have a written or unwritten dress code. It would be necessary to revise the dress code if it does not already accept that a head covering worn for religious reasons must be considered part of acceptable business attire. The maintenance of a rule with a discriminatory effect breaches rule 5.04 unless changing or eliminating the rule would cause undue hardship.

If an applicant cannot perform all or part of an essential job requirement because of a personal characteristic listed in the Ontario Human Rights Code, the employer has a duty to accommodate. Only if the applicant cannot do the essential task with reasonable accommodation may the employer refuse to hire on this basis. A range of appropriate accommodation measures may be considered. An accommodation is considered reasonable unless it would cause undue hardship.

The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the application of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in rule 5.04.

The nature of accommodation as well as the extent to which the duty to accommodate might apply in any individual case are developing areas of human rights law. However, the following principles are well established.

If a rule, requirement, or expectation creates difficulty for an individual because of factors related to the personal characteristics noted in rule 5.04, the following obligations arise:

The rule, requirement or expectation must be examined to determine whether it is "reasonable and *bona fide*." If the rule, requirement, or expectation is not imposed in good faith and is not strongly and logically connected to a business necessity, it cannot be maintained. There must be objectively verifiable evidence linking the rule, requirement, or expectation with the operation of the business.

If the rule, requirement, or expectation is imposed in good faith and is strongly logically connected to a business necessity, the next step is to consider whether the individual who is disadvantaged by the rule can be accommodated.

The duty to accommodate operates as both a positive obligation and as a limit to obligation. Accommodation must be offered to the point of undue hardship. Some hardship must be tolerated to promote equality; however, if the hardship occasioned by the particular accommodation at issue is "undue," that accommodation need not be made.

Rule 6.01 RESPONSIBILITY TO THE PROFESSION GENERALLY

Meeting Financial Obligations

(2) A lawyer shall promptly meet financial obligations ~~in relation to his or her practice incurred in the course of practice on behalf of clients unless, before incurring such an obligation, the lawyer clearly indicates in writing to the person to whom it is to be owed that it is not to be a personal obligation including payment of the deductible under a professional liability insurance policy when properly called upon to do so.~~

Commentary

In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed, or undertaken on behalf of clients ~~unless, before incurring such an obligation, the lawyer clearly indicates otherwise in advance. in writing that the obligation is not to be a personal one.~~

When a lawyer retains a consultant, expert, or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided, and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, the lawyer should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

If there is a change of lawyer, the lawyer who originally retained a consultant, expert, or other professional should advise him or her about the change and provide the name, address, telephone number, fax number, and e-mail address of the new lawyer.

6.08 RETIRED JUDGES RETURNING TO PRACTICE

Definitions

6.08 (1) In this rule, “retired appellate judge” means a lawyer

(a) who was formerly a judge of the Supreme Court of Canada, the Court of Appeal for Ontario, or the Federal Court of Canada, Appeal Division,

(b) who has retired, resigned, or been removed from the Bench, and

(c) who has returned to practice.

(2) In this rule, “retired judge” means a lawyer

(a) who was formerly a judge of the Federal Court of Canada, Trial Division, the Tax Court of Canada, the Supreme Court of Ontario, Trial Division, a County or District Court, the Ontario Court of Justice, or the Superior Court of Justice,

(b) who has retired, resigned, or been removed from the Bench, and

(d) who has returned to practice.

6.09 ERRORS AND OMISSIONS

Notice of Claim

(2) A lawyer shall give prompt notice of any circumstance that the lawyer may reasonably expect to give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

Commentary

~~The introduction of compulsory insurance has imposed additional obligations upon a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client.~~

Compulsory insurance imposes obligations on a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. The insurer's rights must be preserved.

There may well be occasions when a lawyer believes that certain actions or the failure to take action have made the lawyer liable for damages to the client when, in reality, no liability exists. Further, in every case a careful assessment will have to be made of the client's damages arising from the lawyer's negligence. Many factors will have to be taken into account in assessing the client's claim and damages. As soon as a lawyer becomes aware that an error or omission may have occurred, that may reasonably be expected to involve liability to the client for professional negligence, the lawyer should take the following steps:

1. Immediately arrange an interview with the client and advise the client that an error or omission may have occurred, that may form the basis of a claim by the client against the lawyer.
2. Advise the client to obtain an opinion from an independent lawyer and that, in circumstances, the first lawyer might no longer be able to act for the client.
3. Subject to rule 2.03 (Confidentiality), inform the insurer of the facts of the situation.
4. Co operate fully and as expeditiously as possible with the insurer in the investigation and eventual settlement of the claim.
5. Make arrangements to pay that portion of the client's claim that is not covered by the insurance immediately upon completion of the settlement of the client's claim. This would include payment of the deductible under a policy of insurance in accordance with By-Law 6 (Professional Liability Insurance)

APPENDIX 4

OTHER LAW SOCIETIES' RULES ON FINANCIAL OBLIGATIONS

ALBERTA

CHAPTER 8
THE LAWYER AND THE BUSINESS ASPECTS OF PRACTICE
STATEMENT OF PRINCIPLE

Except where a higher standard is imposed by this Code, a lawyer in conducting the business aspects of the practice of law must adhere to the highest business standards of the community.

RULES

- 1.....
2. A lawyer is personally responsible for financial commitments incurred by the lawyer on behalf of clients unless the lawyer has expressly disclaimed responsibility to the relevant party beforehand.
3. A lawyer having personal responsibility for a financial commitment incurred in the business aspects of practice must ensure that such commitment is fulfilled unless there is reasonable justification for the lawyer's failure to do so.

R.2 lawyer is personally responsible for financial commitments incurred by the lawyer on behalf of clients unless the lawyer has expressly disclaimed responsibility to the relevant party beforehand.

C.2 The efficacies and time restraints of practice often require that lawyers incur financial obligations to others on behalf of clients. Such obligations include charges for medical reports; disbursements payable to government registries; fees charged by expert witnesses, sheriffs, special examiners, registrars, reporters and public officials; and the accounts of agents retained in other jurisdictions. A firm, as well as each firm member, is responsible for an obligation incurred by the firm to a third party unless the third party is advised otherwise in advance.

Particularly in dealings with solicitor agents in other jurisdictions, it is common for a lawyer to forward the third party's statement of account to the client for payment. While this practice is not in itself unethical, it does not divest the lawyer of responsibility for ensuring that the account is paid when due and seeking reimbursement from the client, if necessary.

In the event of a good-faith dispute regarding the proper amount of a fee or other charge, Rule #2 does not require payment before an appropriate resolution of that issue.

R.3 A lawyer having personal responsibility for a financial commitment incurred in the business aspects of practice must ensure that such commitment is fulfilled unless there is reasonable justification for the lawyer's failure to do so.

C.3 Trade debts incurred in the practice of law are an example of financial commitments for which a partner or sole practitioner has personal responsibility. These commitments constitute ethical as well as legal obligations of the lawyer. Reasonable justification for failure to meet such an obligation would normally be limited to the following:

- (a) inability to pay created by insolvency of which the lawyer was not aware at the time the obligation was incurred:
- (b) the existence of a legitimate and bona fide defence to the obligation. In this regard, see Rule #1 and accompanying commentary.

Rule #3 is not intended to apply to debts for which the lawyer has no personal responsibility that have been incurred by a management company or similar corporate entity other than a professional corporation.

BRITISH COLUMBIA

CHAPTER 2 INTEGRITY

Duty to meet financial obligations

2. The lawyer has a professional duty, quite apart from any legal liability, to meet professional financial obligations incurred or assumed in the course of practice, such as agency accounts, obligations to members of the profession, fees or charges of witnesses, sheriffs, special examiners, registrars, reporters and public officials when called upon to do so

MANITOBA

CHAPTER 19
AVOIDING QUESTIONABLE CONDUCT

RULE

The lawyer should observe the rules of professional conduct set out in the Code in the spirit as well as in the letter.¹

Commentary

Duty to Meet Financial Obligations

7. The lawyer has a professional duty, quite apart from any legal liability, to meet financial obligations incurred or assumed in the course of practice when called to do so. The lawyer is deemed to have accepted the obligation to pay such accounts personally unless, at the time the request is made, the lawyer advises the other party in writing that he or she is not prepared to pay the account personally and that the other party must look to the lawyer's client for payment. Examples are medical reports, agency accounts, obligations to members of the profession, fees or charges of witnesses, sheriffs, special examiners, registrars, reporters and public officials as well as the deductible under a governing body's errors and omissions insurance policy.

NOVA SCOTIA

Chapter 18 – Duties to the Profession Generally

Rule

A lawyer has a duty to uphold the integrity of the profession and to promote the reputation of the profession for fairness, justice and honesty.

Commentary

Duty to meet financial obligations 18.7 The lawyer has a duty, quite apart from any legal liability, to meet financial obligations incurred in the course of practice, such as agency accounts, obligations to members of the profession and fees or charges of witnesses, sheriffs, special examiners, registrars, reporters and public officials. Where the lawyer incurs an obligation on behalf of a client that the lawyer is not prepared to pay personally, the lawyer has a duty to make his or her position clear in writing at the time the obligation is incurred.

EXPANSION OF THE SUMMARY HEARING PROCESS

Motion

90. That Convocation approve an expansion of the summary hearing process to include the following new case types on the basis of grounds currently permitted by Ontario Regulation 167/07:

- a. The practise of law in Ontario by a lawyer whose license is suspended;
- b. The provision of legal services in Ontario by a paralegal whose license is suspended;
- c. Breach of an undertaking to the Law Society;
- d. Failure to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel; and
- e. An application under subsection 45 (1) of the *Law Society Act*.

Introduction

91. The *Law Society Act*, section 49.21(2) states:

The Hearing Panel shall consist of at least three persons appointed by Convocation, of whom at least one shall be a person who is not a licensee.

92. Ontario Regulation 167/07 (at Appendix 5) provides an exception to the requirement for a three member Hearing Panel. Section 2(1) states that applications pertaining to nine case types may be heard by a single member of the Hearing Panel. Matters currently permitted to proceed under the Summary Hearing Process, as set out in Rule 9 of the *Rules of Practice and Procedure*, are:

- a. Failing to maintain financial records according to the by-laws;
- b. Failing to respond to inquiries from the Society; and
- c. Failing to cooperate with a person conducting an audit, investigation or review, search or seizure under Part II of the *Law Society Act*.

93. The Committee is recommending that the summary hearing process be expanded to include the additional case types described in the motion at paragraph 90.

Background

94. On June 22, 2005, Convocation approved the Summary Hearings Process policy and supporting *Rules of Practice and Procedure*. Under that policy, where the application concerned three of the case types listed under O. Reg. 167/07, the case may be heard by a single member of the Hearing Panel. The policy also provided that cases proceeding under the Summary Hearing Process proceed directly to hearing rather than Hearings Management Tribunal (HMT).¹⁵

95. Matters heard under the Summary Hearing Process are formal hearings, but the process differs from the regular hearing stream in certain ways. Professional Regulation staff have implemented a process to follow at the investigation stage to ensure matters proceed quickly. The Proceedings Authorization Committee authorizes a proceeding for either the regular hearing process or the Summary Hearing Process. Once authorized, the matter is not heard by the HMT but is scheduled directly for hearing. Witnesses are generally Law Society staff. Matters are scheduled for one-half day hearings before a regularly appearing bench. Orders are often made at the hearing.

¹⁵ See **Appendix 6** for the text of Rule 9.01 of the *Rules of Practice and Procedure*.

96. The Committee learned that with respect to the three types of cases currently permitted to proceed under the Summary Hearing Process, the process has proven to be effective. It provides an efficient process for addressing cases where the issues are narrowly defined and focused, and where revocation of a licence is not sought as a remedy.
97. Since its implementation in 2006, 74 applications have proceeded to hearing under the Summary Hearing Process and 70 hearings have been held. A memorandum from the Professional Regulation Division on the Law Society's experience with summary hearings is attached at Appendix 7.
98. As noted in Appendix 7, findings of professional misconduct have been made in 69 of the 70 summary hearings held to date. In 39 cases (56%), lawyers were given a definite period of suspension, which was to continue indefinitely until the lawyers fully cooperated with the Law Society. A reprimand was imposed in 19 (28%) of the cases and costs were awarded against the lawyer in 64 (93%) of the hearings.

Proposal to Expand the Case Types

99. The Committee believes that there are additional types of cases that are suitable for the Summary Hearing Process. These types of applications would benefit from a form of summary hearing and from a more streamlined approach both prior to, and at the hearing.
100. As reported in the June 22, 2005 report to Convocation, the Committee agreed with the merits of a summary process for Law Society conduct matters which are time-sensitive, are straightforward or otherwise lend themselves to such a process. The current case types eligible for a summary hearing process were initially selected for a number of reasons, including their clear relationship to effective regulation. Issues of failure to respond to the Society, or failure to maintain books and records are fundamentally important to the Society's ability to regulate and to contain risk once a problem is identified. Lawyers who will not respond to or engage with the Society or who fail to maintain books and records cannot be allowed to frustrate the Law Society's mandate to regulate them and address public complaints. These are matters of both specific and general deterrence and harm reduction.
101. O.Reg. 167/07 currently permits additional matters to be heard by a single bench Hearing Panel. The Committee recommends that the Summary Hearing Process be expanded to include the following additional matters:
 - a. practising law or providing legal services while suspended;
 - b. breaching an undertaking to the Society;
 - c. failing to pay costs awarded to the Society by the Hearing Panel or Appeal Panel; and
 - d. failing to comply with an order of the Hearing Panel (an application under s. 45(1) of the Act).

Reasons Supporting the New Case Types

102. To retain the efficacy of the Summary Hearing Process, any additional matters added to the Summary Hearing Process must be analogous to the current matters and not delay the process.

103. The Committee believes that important similarities exist between the current matters under the Summary Hearing Process and the proposed additional matters. All of the proposed new matters are issues of compliance with the Society's regulatory authority. All are generally proven through the evidence of the lawyer and Law Society staff rather than clients or other witnesses.
104. Expanding the Summary Hearing Process will have resource and other benefits for the Law Society. Although these matters are potentially serious and are currently the subject of regular discipline hearings, they are generally straightforward from an evidentiary perspective.
105. Due to the complexity and resource intensive nature of the current hearing process, the Law Society would not necessarily proceed on the matters proposed for a single bench hearing as single issues, but would likely wait to proceed on a group of allegations. This is on occasion the appropriate way to proceed, but it may have the following effects:
 - a. increasing the investigation time, as the investigator is required to keep adding new complaints to his or her investigation as they arrive;
 - b. expanding the focus of the investigation which makes it harder to conclude;
 - c. expanding the overall age of investigations for the reasons above;
 - d. increasing the amount of time required to negotiate the agreed statement of facts; and
 - e. increasing the length of the hearing, thereby increasing the amount of bench hearing time (e.g. a three day hearing rather than a one day hearing).
106. For these reasons, the Committee recommends that Convocation agree to expand the current range of cases for summary hearings to include those listed in the motion.

Implementing the Proposal

107. To expand the summary hearing process to include the additional matters described above, the policy must first be approved by Convocation. Once that has happened, an amendment to Rule 9(3) of the *Rules of Practice and Procedure* would be required.

For Future Consideration

108. The Committee plans to consider whether additional matters might benefit from a proceeding before a single bench hearing panel under a process similar to the Summary Hearing Process. O. Reg. 167/07 would require amendment in order to effect this. For example, it may be appropriate to hold a single bench hearing for a breach of By-law 8 (filing and reporting requirements), failing to report to LawPRO, criminal convictions, incivility (where the facts underlying the alleged act of incivility are admitted by the lawyer), and failing to respond to communications from a fellow solicitor or paralegal.
109. Creating a single bench hearing panel for these matters would build upon the resource benefits described above. Moreover, while proceeding on two or three single issue hearings rather than one larger hearing would increase the number of hearings, they would be shorter, more focused hearings. They would only require the time of a single bench rather than three benches and as is the case for current summary hearings, a single bench could be regularly scheduled to hear these matters.

APPENDIX 5

ONTARIO REGULATION 167/07
HEARINGS BEFORE THE HEARING AND APPEAL PANELS

HEARINGS BEFORE THE HEARING PANEL

Proceedings to be heard by one member

2. (1) Subject to subsection (2), the chair or, in the absence of the chair, the vice-chair, shall assign either one member or three members of the Hearing Panel to a hearing to determine the merits of any of the following applications:

1. An application under subsection 34 (1) of the Act for a determination of whether a licensee has contravened section 33 of the Act by one or more of the following means (but not by other means):
 - i. Practising law in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may practise law in Ontario while his or her license is suspended.
 - ii. Providing legal services in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may provide legal services in Ontario while his or her license is suspended.
 - iii. Breaching an undertaking to the Society.
 - iv. Failing to honour a financial obligation to the Society.
 - v. Failing to maintain an investment authority or a report on an investment as required by the by-laws.
 - vi. Failing to maintain financial records as required by the by-laws.
 - vii. Failing to respond to inquiries from the Society.
 - viii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act.
 - ix. Failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel.
2. An application under subsection 34 (1) of the Act, if the parties to the application consent, in accordance with the rules of practice and procedure, to the application being heard by one member of the Hearing Panel.
3. An application under subsection 45 (1) of the Act.
4. An application under subsection 49.42 (1) of the Act, if the order giving rise to the application was made by one member of the Hearing Panel.
5. An application under subsection 49.42 (3) of the Act.
6. An application under subsection 49.43 (1) of the Act. O. Reg. 167/07, s. 2 (1).

APPENDIX 6

RULE 9

PRE-HEARING PROCEDURES

Tribunal to Which Proceeding is First Returnable

9.01 (1) A proceeding shall be first returnable before the HMT to set a date for a hearing on its merits.

(2) Despite subrule (1), a proceeding which originates by notice of application may be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where the hearing of the merits of another application involving the same parties has already been scheduled.

(3) Despite subrule (1), a proceeding which originates by notice of application shall be first returnable before the Hearing Panel for the purpose of proceeding with a hearing on the merits of the application where,

(a) the application is for a determination of whether a licensee has contravened section 33 of the Act by one or more of the following:

- i. Failing to maintain financial records as required by the by-laws.
- ii. Failing to respond to inquiries from the Society.
- iii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act; or

(b) the nature of the application requires that the hearing of the merits of the application be expedited.

(4) When the originating process is served, the Society shall give notice of the time when and the place at which the proceeding shall be returnable before the HMT or the Hearing Panel.

APPENDIX 7

MEMORANDUM

TO: Zeynep Onen, Director, Professional Regulation Division

FROM: Cathy Braid, Manager, Case Management

DATE: December 31, 2008

SUBJECT: Summary Hearings

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 the date of this memorandum.

Summary Hearing Applications Issued

The first summary hearing application was issued on February 10, 2006. Since that date, a total of 88 summary hearing applications have been issued, broken down by calendar year as follows:

Year	Applications Issued
2006	20
2007	34
2008	34
Total	88

Of the 88 applications issued

- one application was abandoned prior to hearing;
- one application was closed prior to hearing, pursuant to PAC authorization; and
- 12 applications are still awaiting hearing.

As a result, 74 applications have proceeded to hearing since the summary process was initiated.

Summary Hearings Completed

The 74 issued applications have resulted in a total of 70 summary hearings¹⁶ to date. The following chart depicts the number of hearings held in each of the 3 calendar years:

Year	Summary Hearings Completed
2006	15
2007	27
2008 ¹	28
Total	70

The 70 hearings involved 64 lawyers: six lawyers have had two separate summary hearings.

¹⁶ Two applications were dealt with in each of four hearings.

Of the 74 applications which went to hearing, 55 applications (74%) proceeded to hearing (and were completed) within 3 months of the date of issuance. The following chart provides a breakdown of the time between issuance of the application and the completion of the hearing:

(see chart in Convocation Report)

Of the 55 applications that were completed within 3 months:

- 10 were completed within one month of issuance;
- 27 were completed between one and two months of issuance; and
- 18 were completed between two and three months of issuance.

Findings Made and Penalties Imposed

Of the 70 summary hearings held to date, findings of professional misconduct have been made in 69 cases (99%).

With respect to the penalties imposed, in 39 of the 69 cases (56%), lawyers were given a definite period of suspension which was to continue indefinitely until the lawyers fully cooperated with the Law Society. The following graph depicts the various penalties imposed in the 69 hearings held to date where a finding of professional misconduct was made:

(see chart in Convocation Report)

In addition to the penalties imposed above:

- costs were awarded against the lawyer in 64 hearings (93% of the hearings held); and
- other conditions were imposed in 49 cases (71% of the hearings held).

Cooperation – Pre and Post Hearing

In 28 of the 69 hearings, lawyers 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.

In 59% of the cases (41 cases), lawyers did not cooperate or only partially cooperated with the Law Society prior to hearing, resulting in a more serious penalty (usually a definite followed by an indefinite period of suspension as noted above). A review of the lawyers 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 the lawyers subsequently cooperated in only eight cases (i.e. 17%). In these cases:

- two of the lawyers cooperated and were reinstated within three months of the summary hearing;
- three of the lawyers cooperated and were reinstated three to six months after the summary hearing;
- one lawyer cooperated and was reinstated six to twelve months following the summary hearing; and
- two lawyers cooperated and were reinstated 12 to 24 months after the summary hearing.

In the remaining 33 cases (in which the lawyers have not cooperated with the Law Society to date):

- the lawyers' licences remain suspended in 30 cases;
- in three instances, the lawyers' licences were revoked/surrendered as a result of subsequent conduct hearings.

INFORMATION

PROFESSIONAL REGULATION DIVISION QUARTERLY REPORT

110. The Professional Regulation Division's Quarterly Report (third quarter 2008), 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 July to September 2008.

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

- (1) Copy of the Model Rule on Client Identification and Verification Requirements.
(Appendix 1, pages 14 – 22)
- (2) Copy of the proposed amendments to By-Law 7.1 as highlighted.
(Appendix 2, pages 24 – 34)
- (3) Copy of the Professional Regulation Division Quarterly Report (third quarter 2008).
(pages 80 – 125)

Re: Amendments to By-Law 7.1

It was moved by Ms. Rothstein, seconded by Mr. Hainey, that Convocation approve the amendments to Parts III and IV of By-Law 7.1 as set out in Appendix 2.

Carried

Re: Proposal to End the Notice Requirement for a Lawyer's Fiscal Year

It was moved by Ms. Rothstein, seconded by Mr. Hainey, that Convocation end the requirement for a lawyer to provide notice to the Law Society of the lawyer's fiscal year, pursuant to s. 1 of By-Law 8.

Carried

Re: Policy for Law Society Investigations of Licensee Benchers and Staff and Paralegal Members of the Paralegal Standing Committee

It was moved by Ms. Rothstein, seconded by Mr. Hainey, that Convocation approve the policy at paragraph 68 that establishes a process for the investigation of regulatory complaints against licensee benchers and staff and paralegal members of the Paralegal Standing Committee.

Carried

Re: Amendments to Rules 5.03, 5.04, 6.01, 6.08 and 6.09 of the *Rules of Professional Conduct*

It was moved by Ms. Rothstein, seconded by Mr. Hainey, that Convocation approve the amendments to rules 5.03, 5.04, 6.01, 6.08 and 6.09 of the *Rules of Professional Conduct* as set out in Appendix 3.

The addition of the words “of the lawyer” at the end of Rule 6.01(2), set out on paragraph 85 was accepted as a friendly amendment.

The motion as amended was adopted.

Re: Expansion of the Summary Hearing Process

It was moved by Ms. Rothstein, seconded by Mr. Hainey, that Convocation approve an expansion of the summary hearing process to include the following new case types on the basis of grounds currently permitted by Ontario Regulation 167/07:

- a. The practise of law in Ontario by a lawyer whose license is suspended;
- b. The provision of legal services in Ontario by a paralegal whose license is suspended;
- c. Breach of an undertaking to the Law Society;
- d. Failure to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel; and
- e. An application under subsection 45 (1) of the *Law Society Act*.

Carried

Item for Information

- Professional Regulation Division Quarterly Report

PRIORITY PLANNING COMMITTEE REPORT

Mr. Simpson presented the Report.

Report to Convocation
January 29, 2009

Priority Planning Committee

Committee Members
Derry Millar (Chair)
Marion Boyd
Malcolm Heins
Heather Ross
Linda Rothstein
Bill Simpson

Purpose of Report: Decision

Prepared by the Policy Secretariat
(Katherine Corrick 416.947.5210)

FOR DECISION

CONVOCATION'S PRIORITY PLANNING

MOTION

1. That Convocation approve the work plan set out at Appendix 1 to achieve the priorities identified and approved by Convocation
2. That Convocation approve the process for adding new issues to the work plan described in paragraphs 16 to 18.

Introduction and Background

3. In March 2007, Convocation approved the following recommendations of the Governance Task Force with respect to prioritizing and planning Convocation's policy agenda:
 - a. Convocation shall institute a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term; and
 - b. Convocation shall establish a standing committee called the Priority Planning Committee to assist Convocation in planning its priorities. In particular,
 - i. The Treasurer shall recommend members of the Committee for Convocation's approval, in accordance with the By-Laws;
 - ii. Convocation shall appoint the chair and any vice-chairs of the Committee, in accordance with the By-Laws;

- iii. In addition to the benchers members of the Committee, the Chief Executive Officer shall be a non-voting member of the Committee;
 - iv. The mandate of the Committee is to
 - A. recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation in the process described in a. above,
 - B. periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future, and
 - C. report annually to Convocation on the status of Convocation's priorities.
4. A Planning Session was held in Huntsville on September 23 – 25, 2007. In advance of the Planning Session, a survey was sent to all (73) benchers – elected, appointed, paralegal and *ex officio*. The survey sought the views of benchers on the mandate of the Law Society, and the priorities the Law Society should focus on. Fifteen benchers responded – 13 elected benchers, one life bencher and one response was sent anonymously.
5. At the Planning Session, benchers identified nine priority areas that the Law Society should focus on for the next four years. The nine priority areas identified are as follows:
- Discipline
 - Access to justice
 - Regulation of paralegals
 - Small firms and sole practitioners
 - Governance structure
 - Strategic communications
 - Maintenance of high standards and ensuring effective competence
 - Diversity within the profession
 - Licensing and accreditation
6. At its meeting on November 22, 2007, Convocation approved the nine priority areas, and the following process to move forward:
- a. The Committee will review the priorities as determined by Convocation.
 - b. The Committee will consult extensively with staff responsible for the day-to-day management of the priority areas identified and with benchers who deal with the priority areas in the committees on which they serve.
 - c. The Committee will establish goals to be achieved within each of the priority areas for Convocation's consideration.
 - d. The Committee will develop concrete recommendations for the achievement of the goals for Convocation's consideration during the first half of 2008.
7. The priority identified as Licensing and Accreditation has been subsumed into the priority identified as "Maintenance of high standards and ensuring effective competence," leaving a total of eight priority areas.

8. The Priority Planning Committee has consulted extensively with members of the senior management team who are responsible for the management of the identified priority areas, and with the chairs of the standing committees and major task forces.
9. On April 16, 2008, the former Priority Planning Committee met with the chairs to discuss the priorities, the initiatives underway, and those to be undertaken within each of the priority areas. The then Chair of Professional Regulation, Clay Ruby, wanted the opportunity to discuss the priority document with the Professional Regulation Committee. The other chairs agreed that the priority document before them accurately set out the priorities of their committees, subject to some minor amendments, all of which have been made.
10. The Professional Regulation Committee reviewed the section of the priority document related to its work at its May meeting and agreed with it.
11. The newly constituted Priority Planning Committee met on September 24, 2008 to consider the steps already taken, and review the priority document once again. It intended to present the document to Convocation in November after the 2009 budget had been set in October. Given the delay in setting the budget, the Committee met again on December 5 to reconsider the document in light of the approved 2009 budget.
12. Attached at Appendix 1 is a document that sets out three things:
 - a. The priorities approved by Convocation.
 - b. A work plan related to each of the priorities.
 - c. An update on the implementation of initiatives that have been carried out by the Law Society to address the approved priorities and implement the work plan.

The Committee's Deliberations

13. The Committee reviewed the priority document following the approval of the 2009 budget. It considered whether the budget affected either the priorities Convocation approved, or the work plan that committee chairs agreed to in April 2008. It also reviewed the document in light of recent events, particularly the release of the Code/LeSage Report, to ensure that it was flexible enough to allow the Law Society to adequately respond to unplanned external events.
14. The Committee also discussed the process by which new priorities can be added to the document, either as distinct priorities or as part of the work plan developed for a priority that has already been approved.
15. The Committee is of the view that it is vital that the Law Society be in a position to act quickly to respond to external events that affect the reputation of the Law Society or its ability to govern lawyers and paralegals. The best way to accomplish this is to ensure that the Treasurer can act on behalf of Convocation in situations that require immediate action.
16. Depending on the nature of the issue that arises, the Treasurer may discuss it with the chair of the relevant committee and the Chief Executive Officer to determine whether the issue can be accommodated within the current work plan. If it can be accommodated, the work plan will be amended and reported to Convocation for information.

17. If the issue cannot be accommodated within the current work plan, the issue will have to be scoped out, and the financial and resource implications determined. The Priority Planning Committee will then present the issue to Convocation for its decision on whether to add it to the work plan.
18. To fulfill its mandate, the Priority Planning Committee must stay apprised of the work being undertaken in committees. It is impossible for Convocation to set priorities if individual committees set their own priorities. Chairs of committees that want to undertake work on issues that are not contemplated by the work plan ought to communicate that to the Priority Planning Committee, which will examine the issue's impact on the current plan. This process will allow the Priority Planning Committee to stay apprised of the work in progress at the Law Society, review Convocation's priorities periodically, and report with recommendations to Convocation.

Appendix 1

PRIORITIES FOR CONVOCATION'S 2007 - 2011 TERM

1. MAINTAIN HIGH STANDARDS AND ENSURE EFFECTIVE COMPETENCE

A. ENTRY-LEVEL COMPETENCE

The Law Society has focused on entry-level competence for the past 18 years. The Bar Admission Course has undergone major changes as a result of two major reviews. The Licensing and Accreditation Task Force and the Federation of Law Societies' Task Force on the Canadian Common Law Degree are continuing to focus on entry-level competence.

Work to be undertaken:

- o Examination of the accreditation of the Canadian common law degree
- o Examination of the licensing process, including the skills and professional responsibility program and articling
- o Examination of the National Committee on Accreditation

- o Examination of the accreditation of the Canadian common law degree

The Federation of Law Societies of Canada established a Task Force in June 2007 to review the criteria in place for the approved common law degree, and make recommendations concerning a national standard for entry into provincial and territorial bar admission/licensing programs. The Task Force published a consultation paper in September 2008 to seek input on a number of issues, including a framework of competencies that graduates seeking to enter a law society bar admission program or licensing process should have acquired in law school. The Task Force also invited comments on institutional requirements that should form part of the standard for entry into law society bar admission programs as well as how law societies should monitor law school compliance once standards have been established.

The consultation document was distributed nationally. The deadline to receive written comment was December 15, 2008. The final report and recommendations are scheduled to go before the Federation Council in the spring of 2009 for consideration. Convocation approved the Law Society's submission to the Task Force in November 2008.

The Law Society of Upper Canada has a bench member on the Federation Task Force and is providing policy support to it.

- o Review of the licensing process, including the skills and professional responsibility program and articling

In March 2007 Convocation established the Licensing and Accreditation Task Force to consider issues related to the licensing of lawyers in Ontario. The Task Force completed an extensive review of the licensing process, including the skills and professional responsibility program and articling program.

In September 2008 Convocation approved the Licensing and Accreditation Task Force report. The Task Force recommended an integrated approach to professional responsibility and practice management. The Licensing Process will include a new online Professional Responsibility and Practice Course integrated with the articling program. This new course will replace the current in-person Skills and Professional Responsibility Program. Successful completion of the articling requirement, including the new online program, and the licensing examinations are the requirements to be called to the Bar in Ontario. Convocation also approved a post-call professional development requirement that will require newly called lawyers to take 24 hours of continuing legal education within the first two years of practice. The new Licensing Process will be introduced for the 2009/2010 licensing year.

The Task Force also made a number of recommendations relating to articling. Convocation approved the retention of the 10-month articling period as well as a number of initiatives, including the development of an online Articling Registry, in an effort to increase the number of articling placements. The Task Force also made recommendations regarding the articling requirement for internationally-trained lawyers to permit candidates who are called to the bar in common law jurisdictions with a minimum of 10 months of practice experience to be exempted from the articling requirement. Also, Convocation approved a voluntary bridging program for internationally-trained candidates to support their integration into the Ontario legal profession.

- o Review of the National Committee on Accreditation

The NCA Futures Committee of the Federation of Law Societies is conducting a full examination of the National Committee on Accreditation (NCA). Western Management Consultants has been hired to complete an audit of NCA processes and procedures and make recommendations to the Federation Council. The objective is to establish a more transparent and efficient foreign legal accreditation process.

The Committee is scheduled to report to the Federation Council in the spring of 2009. The Committee will present options to Council on accreditation reform and options for a new corporate structure for the operation of the NCA program.

B. QUALITY ASSURANCE (POST-LICENSING COMPETENCE)

Once lawyers are licensed to practise law, the Law Society must ensure that they remain competent throughout their career.

Work to be undertaken:

- o Review of the Private Practice Refresher Program
- o Increase the number of spot audits to ensure that all firms are audited every five years in accordance with the original plan. Currently the Law Society audits all firms every 8.5 to 9 years. The necessity for re-audits was not accounted for in the original plan, and the number of firms has increased by 19% since the original plan was approved. To attain the goal of auditing all firms every five years (1700 firms/year), additional staffing is necessary at an additional cost of \$1.43 million.
- o Focus the practice management review program to make the most effective use of resources. A random practice management review program ought to focus on sole and small firm practitioners within the first eight years of practice. Experience shows that this is where the problems are. Firms would continue to be reviewed based on complaints or referrals from the Professional Regulation Department.

- o Review of the Private Practice Refresher Program (PPRP)

In April 2008, Convocation terminated the PPRP. Lawyers who, for 80 percent or more of the five years immediately preceding private practice, were not in private practice and now intend to return to practice in firms of five or fewer lawyers are now subject to re-entry review requirements or a practice management review within the first 12 months of practice. Re-entry reviews began in the fall of 2008.

- o Increase the number of spot audits to ensure that all firms are audited every five years in accordance with the original plan. Currently the Law Society audits all firms every 8.5 to 9 years. The necessity for re-audits was not accounted for in the original plan, and the number of firms has increased by 19% since the original plan was approved. To attain the goal of auditing all firms every five years (1700 firms/year), additional staffing is necessary at an additional cost of \$1.43 million.

In June 2008, Convocation approved in principle the increase in the number of spot audits to achieve a five-year audit cycle to ensure that all firms are audited within five years in accordance with the original plan approved in 1997. In the 2009 budget, \$320,000 was allocated to this initiative.

- o Focus the practice management review program to make the most effective use of resources. A random practice management review program ought to focus on sole and small firm practitioners within the first eight years of practice. Experience shows that this is where the problems are. Firms would continue to be reviewed based on complaints or referrals from the Professional Regulation Division.

In November 2008, Convocation approved risk-based selection criteria for the program (moving away from a completely random selection process). By adopting risk-based criteria the Law Society makes the most effective use of resources and enhances the Law Society's quality assurance and improvement efforts.

C. QUALITY IMPROVEMENT

The Law Society must continue to support lawyers in their own efforts to maintain their competence.

Work to be undertaken:

- o Develop and improve continuing legal education products and programs.
- o Maintain and improve current supports such as the Practice Management Helpline, Guidelines and Resource Centre tools and resources.
- o Consider mandatory continuing legal education in the first five years of practice. The Law Society could develop programs specific to practice areas or particular demographic groups. The Law Society could accredit other providers of continuing legal education.

- o Develop and improve continuing legal education products and programs.

The Professional Development and Competence Department continues to develop innovative and relevant CLE programming for the legal profession. The live webcast option has increased in popularity. As of September 30, 2008, more than 29% of the 12,000 plus registrants attended via webcast. This is an increase of 9% compared to 2007.

The Teleseminar Plus is a new program format that allows registrants from all over the province to listen to an audio presentation and view a dynamic visual presentation over the web. The visual component may include a PowerPoint presentation, annotated documents, visual charts and checklists, and other visual teaching aids.

The first CLE programs developed for paralegals have been presented. The programs will be launched in the "Best Practices" series:

- Best Practices for Paralegals - An Introduction to Accident Benefits Cases at FSCO (November 4, 2008)
- Best Practices for Paralegals before WSIB and WSIAT (December 5, 2008)
- Best Practices for Paralegals Appearing Before the Ontario Court of Justice -- Provincial Offences and Summary Conviction Offences (to be presented April 4, 2009)

AccessCLE was launched in September 2008. AccessCLE is an electronic library of CLE material allowing users to perform a full-text search through several years of seminar papers and select for purchase only the content they prefer from each program.

- o Maintain and improve current supports such as the Practice Management Helpline, Guidelines and Resource Centre tools and resources.

The Professional Development and Competence Department continues to maintain and improve current supports for lawyers. The Resource Centre is a dedicated section on the Law Society's website that provides tools and resources to assist lawyers in their day-to-day practice. The site provides easy access to a wide array of resources such as the Practice Management Guidelines, practice portals for family law, real estate, and estates and trusts (with more portals to come). The Knowledge Tree, research guides, real estate practice resources and a host of other supports are available through the Resource Centre.

The Law Society continues to provide assistance through the Practice Management Helpline. The Practice Management Helpline now assists paralegals with respect to the Paralegal Code of Conduct, Law Society by-laws, and practice management issues.

- o Consider compulsory continuing legal education in the first five years of practice. The Law Society could develop programs specific to practice areas or particular demographic groups. The Law Society could accredit other providers of continuing legal education.

A post-call compulsory professional development component was approved in September 2008 as part of the new Licensing Process. The new licensing system will require newly called lawyers to attend 24 hours of accredited professional development programs within the first 24 months of their entry into practice. The objective of this requirement is to ensure that candidates receive the practical training they need to better serve their clients and manage their practice, and to reinforce the concept that legal education is critical to maintaining their competence, and an essential component of professional responsibility.

The post-call professional development requirement will come into effect after the first group of candidates for the new Licensing Process is called to the bar in June 2010.

Over the course of 2009, the Professional Development & Competence Department will be developing a process for the accreditation of providers of the compulsory professional development programs. It is expected that the Law Society will be in a position to consider applications for accreditation in the fall of 2009.

2. DISCIPLINE

I. PROFESSIONAL REGULATION

A. GENERAL

Work to be undertaken:

- o Creation of a database and resultant reports that illustrate the wide range of decisions on findings and penalty made by Law Society tribunals to assist the Law Society to achieve consistency in decisions. This will assist counsel in the preparation of cases and facilitate pre-hearing discussions.
- o Development of new rules regarding the responsibilities of lawyers involved in real estate transfers.
- o Development of a model rule on client identification.
- o Develop standard documents (case book) for counsel to be made available in Hearing Rooms. Casebooks would contain specific types of processes, standard case law and authority.
- o Develop standard submissions and orders, including templates for tribunals.
- o Arrange meetings of defence counsel, prosecution counsel and tribunal members.
- o Develop training sessions for prosecutors.
- o Develop standards on file retention for lawyers and paralegals.

- o Creation of a database and resultant reports that illustrate the wide range of decisions on findings and penalty made by Law Society tribunals. This will assist counsel in the preparation of cases and facilitate pre-hearing discussions.

Discipline history information (including scanned copies of documents) is now in an organized database that was created during 2006 and 2007. This data now needs to be placed in a software environment that will facilitate accessibility. Information in this database is used to provide the public and the Society with information about a lawyer's discipline history in the context of managing current regulatory issues. The information is also largely public and is provided on inquiry. Finally, this data is being analyzed to provide reports on Law Society regulatory outcomes. Reports on these analyses have been provided to the Professional Regulation Committee on issues including adjournments, civility and mortgage fraud.

- o Development of new rules regarding the responsibilities of lawyers involved in real estate transfers.

Since 2007, Convocation has approved a number of rule amendments on the recommendation of the Law Society's Real Estate Working Group, to assist in the prevention of fraud.

The Real Estate Working Group is considering further rule amendments. Options under consideration include a positive obligation to provide a specific set of information to the lender, and to amend the *Rules of Professional Conduct* to specifically state that a lawyer is professionally responsible for the contents of a document registered under his or her supervision.

- o Development of a model rule on client identification.

By-law 7.1 was amended in April 2008. This by-law amendment is in response to Bill C-25 and is part of an initiative undertaken by the Federation of Law Societies to combat money laundering and terrorist financing. The new client identification and verification requirements were scheduled to come into effect on October 31, 2008. However, some issues with regard to complex transactions have arisen and Convocation delayed implementation until December 31, 2008.

The Professional Development and Competence Department in consultation with Professional Regulation has published a package of information to assist lawyers to comply with the new identification and verification requirements and incorporate client identification procedures into their day-to-day practice procedures.

Implementation issues are being monitored at a national and provincial level.

- o Improve resources available in Hearing Rooms.

The Hearing Panel binders containing commonly referred to cases are being updated. A new binder for the Appeal Panel is being created for the use of adjudicators in Hearing Rooms. This will be completed by the end of 2008.

- o Develop standard particulars, penalty disposition charts by particular, and a discipline counsel handbook.

The Discipline department is currently working on these projects. A standardized format for commonly occurring particulars is complete. Penalty charts will be complete by the end of 2008. A draft discipline counsel handbook will be completed by the end of 2008.

- o Arrange meetings of defence counsel, prosecution counsel and tribunal members.

Discipline and defence counsel who regularly appear before Tribunals have many issues in common. The Director, Professional Regulation, is arranging the first in a series of meetings for them to provide a forum for professional education and informal discussion. Leaders of the profession will be invited to speak on relevant topics, for example, access to justice at Hearing Panels. The first meeting is currently being arranged for early 2009.

- o Continued professional development of discipline counsel.

Specific courses are now being provided on topics such as Preparation for a Discipline Hearing and Advocacy in a Discipline Hearing, to be taught by leading practitioners.

- o Develop standards on file retention for lawyers and paralegals.

Staff in the Professional Development and Competence Department has prepared a draft guideline and toolkit for file retention. The toolkit contains the following items:

- Steps involved in file closure, retention and destruction
- Information regarding ownership of documents in the file
- Dealing with the file content when closing a file
- Sample retainer agreement provisions
- A sample file retention policy for the sole practitioner or small firm

Staff is working on developing the policy requirements for retention matters in light of the *Limitations Act* requirements.

B. EFFICIENCY OF DISCIPLINE PROCESS

Work to be undertaken:

- o Examine current process for admission and readmission hearings with a view to streamlining it.
- o Develop second type of summary hearing for certain types of issues, such as service complaints
- o Re-examine process for obtaining interlocutory suspension.
- o Develop internal processes and templates for mortgage fraud including templates from similar cases.

- o Examine current process for admission and readmission hearings with a view to streamlining it.

Staff is currently reviewing the good character process for admission. The current process results in a good character review at the end of the licensing process with the result that hearing panels rarely refuse an admission. This is an inefficient use of resources and puts students and staff through what amounts to an unnecessary process. A report is currently being prepared on the process and will propose some possible solutions for the Professional Regulation Committee's consideration.

- o Develop second type of summary hearing for certain issues, such as service complaints.

Professional Regulation staff is preparing a proposal for the Committee's consideration that will expand the Summary Hearing Process to include additional types of allegations. The matter is scheduled to be brought to the Professional Regulation Committee in December 2008.

- o Re-examine process for obtaining interlocutory suspension.

Obtaining an interlocutory suspension or restriction on practice is an important regulatory tool for the Law Society to move quickly in the event a significant risk of harm to the public is identified. The Director, Professional Regulation and Senior Counsel, Discipline recently analyzed the requirements and process for obtaining interlocutory suspensions. They have concluded it is too soon to determine whether any amendments are required. A decision was made to make greater use of this tool where appropriate, and reassess when further jurisprudence has developed. The result is that there have been five interlocutory suspension applications so far in 2008 as compared to two in all of 2007.

- o Develop internal processes and templates for mortgage fraud including templates from similar cases.

New strategies have been implemented to improve the regulatory efficiency of mortgage fraud cases including

- Creation of a standard document book for counsel
- Development of tools to support counsel in cross-examination of the lawyer
- Greater standardization in the management of cases where expert reports are required

C. TRANSPARENCY

- o Improve website directory of licensed lawyers and paralegals to include detailed current status information and discipline history.

Currently, the public information on the Society's website about the regulatory history of a lawyer or licensed paralegal is limited. The Society's website should include information about practice restrictions, discipline history and other status issues such as bankruptcy and trusteeship. Amendments were made to By-Law 8 in April 2008 to allow for the publication of information on the website. The Professional Regulation Department has developed a discipline history database, from which information can be placed on the Society's website about lawyers' regulatory histories. This will be enabled once Information Systems completes a data warehouse to manage this information.

Information Systems is working with Discipline on the development of a prototype for demonstration to Convocation, which will be presented together with the rules for the inclusion of discipline history.

D. QUALITY ASSURANCE INITIATIVES

- o Addressing risk factors in sole practice – a small working group has been struck composed of Clay Ruby, Beth Symes, Janet Minor and Raj Anand to examine the factors that lead sole practitioners to become involved in the Law Society's regulatory processes

The Risk Factors Working Group has been consulted on numerous projects and other activities in support of the issues of managing the risk in sole and small practices and other high-risk groups or areas. Quality assurance and improvement initiatives implemented by Professional Development and Competence staff, and the recommendations in the Retention of Women in Private Practice report, the Soles and Small Firm Task Force and the newly approved licensing scheme are intended to address these factors.

E. HEARING PANEL

- o The Audit Committee and Finance Committee are reviewing benchers remuneration for decision writing and travel time

In June 2008 Convocation approved an amendment to By-Law 3 to remunerate benchers for reasonable reason writing and travel time.

II. LAW SOCIETY TRIBUNALS

Work to be undertaken:

- o Ongoing adjudicator education sessions to maintain quality and consistency of adjudication.
- o Provision of adjudicator resources through up-dates to Adjudicator Education Binder.
- o Redraft the Rules of Practice and Procedure to increase the efficiency of the hearing process.
- o Ongoing revisions to the Current Hearings and Tribunal Decisions sections of the Law Society website to provide real time updates to information, and to better organize the information to make these sections more user friendly.
- o Examine possible rule amendments to facilitate hearings where member has not engaged with the Law Society's process.
- o Consider establishing full-time dedicated hearing panel for mortgage fraud cases.

- o Ongoing adjudicator education sessions to maintain quality and consistency of adjudication

Mark Sandler conducts adjudicator education sessions at Convocation, when time permits.

In September 2008 the Tribunals Committee agreed that it would be beneficial to seek time for an education session on committee day (full or half day) in addition to the sessions done at Convocation. Tribunals Committee members would conduct this session.

- o Provision of adjudicator resources through up-dates to Adjudicator Education Binder

New information and up-dates to the binder are provided to the Hearing Panel. Summaries of Adjudicator Education presentations are also distributed for inclusion in the binder. An Appeal Panel and Divisional Court Jurisprudence Binder has been created containing all Appeal Panel and related Divisional Court decisions since January 2004. This binder has been made available to all members of the Hearing Panel on request.

- o The Rules of Practice and Procedure have been redrafted with a view to increasing the efficiency of the hearing process.

The Tribunals Committee is currently working on revisions to the Rules of Practice and Procedure with a view to increasing the efficiency of the hearing process. The Committee has received input from the profession on the proposed amendments, which it is considering. Some examples of the changes being considered are as follows:

- The Tribunals Office may schedule a hearing on the merits and thereby "fast-track" a matter past Proceedings Management (currently the HMT) where the parties agree on a hearing date that is not more than 90 days after the date on which the originating process is deemed served - draft Rule 10 (2) - Scheduling.
- The Tribunals Office may grant adjournment requests for motions made on consent. This prevents adjudicator resources, party time and hearing costs from being wasted - draft Rule 13.01 (c).
- A motion for an electronic hearing can now be made in writing. This prevents adjudicator resources, party time and hearing costs from being wasted - draft Rule 15.03(1).
- The request to admit process allows a party who has not engaged in the proceeding to be deemed to admit the truth of the facts or authenticity of the documents mentioned in the request to admit - draft Rule 18.1 - Admissions.
- Mandatory pre-hearing conferences where a party estimates the hearing will be longer than two days, a panelist directs or the parties consent. This encourages issues to be narrowed prior to the hearing - draft Rule 20.02.
- o Ongoing revisions to the Current Hearings and Tribunal Decisions sections of the Law Society website to provide real time updates to information, and to better organize the information to make these sections more user friendly.

The following improvements have been made to the Current Hearings web page:

- Landing page information was revised to enhance transparency of the hearing process and include paralegals.
- Real time updates on hearing dates and particulars are done usually on a daily basis to reflect adjournments and shortened hearings.
- "Definitions" were updated to reconcile proceeding types with *Law Society Act* amendments.
- Notice of hearings posted two to four weeks in advance of hearing date.

- Notice of hearings posted for maximum of one month.
- "More details" link to individual matter as opposed to entire listing.

The following improvements have been made to the Tribunal Decisions web page:

- Renamed "Tribunal Orders and Dispositions" to accurately reflect that orders of the Panels are posted here, not reasons.
 - Landing page information revised to enhance transparency of the hearing process and include paralegals.
 - "Definitions" updated to reconcile proceeding outcomes with *Law Society Act* amendments.
 - Orders posted by order date, as opposed to posted date.
 - Search to be organized alphabetically and multiple postings for a single lawyer to be listed chronologically in one place/sequence.
 - Updates to decisions reflected where status of a lawyer or paralegal is affected by a decision of a court.
- o Examine possible rule amendments to facilitate hearings where member has not engaged with the Law Society's process.

Amendments to Rule 18.1 Admissions and 20.2 Prehearing Conferences set out above are intended to address this issue.

- o Consider establishing full-time dedicated hearing panel for mortgage fraud cases.

Determined to not be possible at this time given the available adjudicator resources.

3. ACCESS TO JUSTICE

Work to be undertaken:

- o Needs analysis – The Access to Justice Committee to examine the idea of conducting a needs assessment of the public.
- o Civil Justice Reform/Osborne Report – The Access to Justice Committee is examining the role of the Law Society in contributing to civil justice reform. Convocation has committed to work with the Attorney General to implement the recommendations of the Osborne Report.
- o Family Law – The entire issue of how the justice system deals with family matters requires examination. This area of law features a high number of unrepresented litigants. The Law Society receives many complaints from unrepresented litigants. This is a significant access to justice issue for members of the public, particularly women.
- o Legal Aid – Trebilcock Report – requires examination and possible response.
- o Examine means to attract more lawyers to smaller towns.

- o Needs Analysis – The Access to Justice Committee to examine the idea of conducting a needs assessment of the public.

In June 2008, Convocation approved the Ontario Civil Legal Needs Project, a study aimed at identifying the civil legal needs of low and middle income Ontarians. The project will include a survey of low and middle income Ontarians to assess their legal and social service needs and examine how service providers can best meet these needs. The Law Society is partnering with Pro Bono Law Ontario (PBLO) and Legal Aid Ontario (LAO) in this project. The Law Society has applied to the Law Foundation of Ontario for partial funding. The Law Foundation approved funding in the amount of \$60,000 in November 2008.

A Steering Committee chaired by Justice McMurtry, and including benchers Marion Boyd (representative for the Law Society), Professor Lorne Sossin (representative for PBLO) and President of LAO John McCamus has been struck. Project partners hope to release a Request for Proposal (RFP) at the beginning of 2009.

- o Civil Justice Reform/Osborne Report – The Access to Justice Committee is examining the role of the Law Society in contributing to civil justice reform. Convocation has committed to work with the Attorney General to implement the recommendations of the Osborne Report.

The Access to Justice Committee is monitoring the implementation of the recommendations in the Osborne Report, published in November 2007. In response to the recommendations, the provincial government struck the Justice Partners Advisory Committee. The Chief Executive Officer sits on the Justice Partners Advisory Committee.

The work of this Committee is now complete. The Law Society will be asked to consider implementation of certain recommendations of the Osborne Report. The recommendations will have to be considered by the Professional Regulation Committee and Access to Justice Committee.

- o Family Law – The entire issue of how the justice system deals with family matters requires examination. This area of law features a high number of unrepresented litigants. The Law Society receives many complaints from unrepresented litigants. This is a significant access to justice issue for members of the public, particularly women.

The Law Commission of Ontario is in the course of scoping a project to deal with family law reform. The Law Society needs to determine a role for itself in this project and generally with respect to this important issue.

- o Legal Aid – Trebilcock Report requires examination and possible response.

The Trebilcock report was released in July 2008 and outlines a series of recommendations in the area of legal aid. The report is being reviewed by the Access to Justice Committee and the Government Relations Committee.

- o Examine means to attract more lawyers to smaller towns.

The Access to Justice Committee is considering the development of strategies to attract lawyers to regions of the province where legal service demands are high and lawyers and paralegals are needed. This is an ongoing matter on the Access to Justice Committee agenda.

- o Amendment to By-Law 5 and By-Law 4 respecting pro bono legal services and exemption from the payment of the Law Society's full annual fee.

In June 2008, Convocation approved amendments to By-Law 5 and By-Law 4 to permit a lawyer who is in the 50% or 25% fee category (not practising law) who wishes to provide pro bono services to be exempt from the requirement to pay the full fee.

4. DIVERSITY WITHIN THE PROFESSION

Work to be undertaken:

- o Retention of Women Initiative
- o Internationally Trained Lawyers (FARPA) – The Equity Advisor co-chairs the Ontario Regulators for Access Consortium, a group with which the Fairness Commissioner regularly consults. The Law Society is developing support programs for internationally - trained lawyers that will inform them of the articling and licensing process, and provide them with networking opportunities.
- o Aboriginal Bar Consultation – the Law Society has been consulting with the Aboriginal bar to determine the supports Aboriginal lawyers would like from the Law Society. A report will be prepared on the consultation process and its findings.
- o Career Choice Study – Licensing Process candidates and lawyers called to the bar within the last two years were surveyed to study the impact of high tuition fees and the effectiveness of debt relief programs.
- o Benchers Election Campaign Study – Candidates in the 2007 benchers election were surveyed about their election expenses and campaign practices. A report will be prepared setting out the findings and proposing means to ensure that the office of benchers is accessible to all lawyers.
- o Implementation of the Disability Working Group Report – Convocation approved a number of recommendations in December 2005 to help lawyers with disabilities access the legal profession.
- o Demographic Information – An examination of whether and how the Law Society should gather reliable demographic information about the lawyers and paralegals it regulates.

- o Retention of Women Initiative

In May 2008, Convocation approved nine recommendations of the Retention of Women in Private Practice Report. Implementation is well underway for many of the recommendations. More than 45 firms have committed to participating in the Justicia Think Tank initiative. Committed firms are from across the province and include small, medium and large firms. The first meeting and launch of the project was held on November 17, 2008.

Staff in the Professional Development and Competence Department has developed a plan for the implementation of the Women's Leadership and Professional Development Institute. The Institute will provide direct supports to women in private practice in collaboration with other legal associations. An annual symposium designed for women will be held under the Institute. The agenda and format for the symposium has been developed and presented to the Co-Chairs of the Working Group for consideration.

Staff members in the Professional Development and Competence Department are also working on the implementation of the practice locum initiative. They are currently focusing on the development of precedents and supporting documents, as well as policy issues related to managing the locum portal.

Planning for the Women in Law On-line Resource Centre is also underway. The Resource Centre will house literature and practical tools on the issues identified as critical to the retention and advancement of women in private practice. The site is scheduled to be launched in the fall of 2009.

Work has begun to develop a Change of Status Survey for lawyers who inform the Law Society that they have changed their professional status. The objective of the survey is to compile longitudinal information about reasons for changes of status to identify trends in the profession. Questions about reasons for change, membership in a Francophone, Aboriginal and equality-seeking community, and the impact of family responsibilities on the changes will be asked. It is anticipated that the survey will be launched in January 2009.

Implementation is being finalized for the parental leave program.

- o Internationally Trained Lawyers (FARPA) – The Equity Advisor co-chairs the Ontario Regulators for Access Consortium, a group with which the Fairness Commissioner regularly consults. The Law Society is developing support programs for internationally-trained lawyers that will inform them of the articling and licensing process, and provide them with networking opportunities.

The work on this initiative is ongoing. The Equity Advisor is continuing as Co-chair on the Ontario Regulators Access Consortium (ORAC) for the third consecutive year. ORAC is a group of approximately 25 regulatory bodies that work together to exchange information about best practices to assist internationally-trained professionals. In response to the issues identified, the Law Society created a career map for lawyers that has been published online on the Law Society, the Federation of Law Societies and the Ministry of Citizenship and Immigration websites. The Law Society has also published on its website a career map for paralegals. Convocation also approved the development, by a third party service provider, of a bridging program for internationally-trained lawyers. In addition, the Federation of Law Societies is undertaking a full review of the National Committee on Accreditation. The Law Society is also working in close collaboration with Global Experience Ontario, an office that provides information to internationally-trained professionals, and the Office of the Fairness Commissioner.

- o Aboriginal Bar Consultation – the Law Society has been consulting with the Aboriginal bar to determine the supports Aboriginal lawyers would like from the Law Society. A report will be prepared on the consultation process and its findings.

The final report of the Aboriginal Bar Consultation Project is currently before the Equity and Aboriginal Issues Committee for its consideration. The consultation included a survey of Aboriginal members of the bar and students, followed by one-on-one interviews. The final report and recommendations are scheduled to proceed to Convocation in the winter of 2009.

- o Career Choice Study– Licensing Process candidates and lawyers called to the bar within the last two years were surveyed to study the impact of high tuition fees and the effectiveness of debt relief programs. A report was presented to Convocation setting out the findings.

In 2007-2008, the Law Society surveyed approximately 5000 members of the bar and candidates in the Licensing Process to identify the factors that affect their career choices. The response rate to the survey was around 25%. In June 2008, the Equity and Aboriginal Issues Committee presented the study and its findings to Convocation for information. The Law Society will continue to survey lawyers at the end of their first year of call to the bar on an annual basis to gather longitudinal information about the profession. The benchmark report and longitudinal findings will be used to inform the work of the Law Society.

- o Benchers Election Campaign Study – Candidates in the 2007 benchers election have been surveyed about their election expenses and campaign practices. A report will be prepared setting out the findings and proposing means to ensure that the office of benchers is accessible to all lawyers.

In 2007-2008, the Law Society surveyed candidates in the 2007 benchers election to identify campaign strategies and financial expenditures. The purpose of the study was to identify strategies to level the playing field in the next benchers election. The 2007 Benchers Election Survey report was released to Convocation for information in October 2008. The Equity and Aboriginal Issues Committee will consider the results of the study once the Governance Task Force has reported on its strategies.

- o Implementation of the Disability Working Group Report – Convocation approved a number of recommendations in December 2005 to help lawyers with disabilities access the legal profession.

Most of the recommendations of the Disability Working Group Report have been implemented. The Disability Resource Centre has been established and provides the legal profession with information and resources as well as recruitment guidelines. The Disability Mentoring Program was launched in March 2008.

- o Demographic Information – An examination of whether and how the Law Society should gather reliable demographic information about the lawyers and paralegals it regulates.

There are a number of initiatives underway that will provide more demographic data to the Law Society on lawyers and paralegals. The Equity Initiatives Department will be conducting an analysis of 2006 Census data to examine the demographic profile of the legal profession. In addition the Law Society will be conducting the Status Change survey through the Retention of Women project, and Fiona Kay will likely be conducting the fourth longitudinal study of women in the legal profession in 2009 if funding is approved.

5. SMALL FIRMS AND SOLE PRACTITIONERS

Many of the initiatives noted under other priorities will have an impact on small firms and sole practitioners. For example, the recommendations of the Retention of Women Working Group will affect small firms and sole practitioners, as will the examination of risk factors in sole practice noted under Discipline. In addition, most of the day-to-day activities of the Professional Development and Competence Department, such as maintaining the tools and resources on the website and staffing the Practice Management Helpline focus on the small firm and sole practitioner.

Work to be undertaken:

- The Small Firm and Sole Practitioner Working Group is reviewing the Task Force Report to determine key priorities to focus on. Some items of discussion include,
 - graying of the bar – means to encourage young people to come to regional areas to practise law– working with local law associations to try to connect regional lawyers with younger lawyers – going out to law schools to let students know what it is like to work in sole practice or small firms in small towns.
 - creating opportunities for networking – soles and smalls are too busy running their practices to get out and see colleagues, which results in isolation – work with local law associations to set up opportunities for soles and smalls to network.
 - reducing costs – overhead costs are high for soles and smalls – reduction of fees and dues – develop means of assisting soles and smalls to transition life cycles – some of the recommendations from the Retention of Women Working Group will assist with this, *i.e.*, locums, parental leave plan.
 - Succession planning – assist soles and smalls with succession planning of their law practices to ensure continued access to legal services in smaller centers.

There are a number of initiatives underway at the Law Society, the Ontario Bar Association (OBA) and the County and District Law Presidents' Association (CDLPA) to address these issues.

The Law Society, together with the OBA, hosts a Solo and Small Firm Conference Expo annually. The program provides an opportunity for sole practitioners and small firm lawyers to obtain the latest information on practice management and technology as well as a number of other topics such as retirement planning, work-life balance and disaster planning. Delegates are invited to attend the Treasurer's dinner providing those who attend with an opportunity to meet and network with registrants from across the province and speakers headlining the program.

The Law Society Practice Management mentoring program not only serves to provide advice to lawyers on substantive law issues but also serves as a means for lawyers to network and connect with other lawyers. The County and District Law President's Association has expressed an interest in developing a mentoring program for young lawyers and articling students at a regional level across the province.

In addition, the Law Society is developing an online locum registry for sole and small firm lawyers who are either looking for short-term contract work or who need someone to take over their practice while they take leave. The development of the locum registry is in response to the recommendations both of the Sole and Small Firm Task Force as well as the Task Force on the Retention of Women in Private Practice.

The Law Society is also developing an articling placement registry to match law graduates who are looking for articling positions with potential articling principals. In 2009 the Law Society plans to incorporate guest speakers from sole and small firms in the annual law school circuit to provide perspective and information to law students on what it is like to practise as a sole practitioner or in a small firm setting in an effort to encourage law students to work in smaller communities.

The Law Society provides a whole spectrum of resources for sole practitioners and small firm lawyers to assist them in their day-to-day practice. There is a dedicated section for sole practitioners and small firm lawyers on the on-line Resource Centre. This section provides easy access to all the tools and information the Law Society offers to assist lawyers. Since 2006, staff in the Professional Development and Competence Department has published "Practice Tips" on current issues and frequently asked questions to the Practice Management Helpline. As well, an e-bulletin to lawyers is published monthly to keep them informed on current practice management issues and other Law Society matters that may affect their practice.

The Working Group continues to focus on developing initiatives to deal with the following issues facing soles and small firms:

- a. Creating improved opportunities for networking or relationship building to minimize the isolation that is pervasive in this target group that leads to a deterioration of quality of service and quality of life;
- b. Exploring options to decrease overhead costs for this target group;
- c. Engaging in succession planning activities that will promote the integration of new lawyers into smaller communities across the province.

6. PARALEGAL REGULATION

Work to be undertaken:

- o Accreditation of diploma-granting college programs (ongoing through 2010).
- o Preparation for licensing hearings based on good character issues.
- o Three further sittings of the licensing examination.
- o The Paralegal Standing Committee continues to consider a variety of policy issues arising from the implementation of paralegal regulation
- o In addition to the ongoing policy work of the Committee and the implementation work of the staff, the Law Society will be required to prepare a report for the Attorney General by January 2009 on the extent to which the Law Society's by-laws related to paralegal regulation are consistent with the principles set out in the 2004 Paralegal Task Force Report.

- o Accreditation of diploma-granting college programs (ongoing through 2010)

The college accreditation application packages were sent out to colleges across the province in November and December of 2007. The Law Society has accredited nine paralegal education programs as follows:

- Algonquin Careers Academy, Paralegal Program
- Algonquin College, Paralegal Program
- Durham College, Court and Tribunal Agent Program (Certificate)
- Durham College, Court and Tribunal Agent Program
- Humber Institute of Technology and Advanced Learning, Paralegal Program
- Humber Institute of Technology and Advanced Learning, Paralegal Studies (Degree)
- Seneca College of Applied Arts and Technology, Court and Tribunal Agent Program
- Sheridan College Institute of Technology and Advanced Learning, Court and Tribunal Agent
- Westervelt College, Paralegal Studies

- o Preparation for licensing hearings based on good character issues.

Given the substantially larger number of paralegal applicants, the number of good character matters is higher than originally contemplated. Three hundred and eighty-one applicants have had to be reviewed, of which 222 have been closed.

There are 13 paralegal good character applications ready for hearing and many more in the final stages of proceeding to the Proceedings Authorization Committee for consideration.

- o Three further sittings of the licensing examination.

The first two paralegal licensing examinations for the 2008 licensing year were held on August 26, 2008 and October 29, 2008. The final examination is scheduled for January 27, 2009.

- o The Paralegal Standing Committee continues to consider a variety of policy issues arising from the implementation of paralegal regulation.

The Paralegal Standing Committee continues to consider requests for exemptions and issues relating to scope of practice and various by-law amendments required to implement the regulatory scheme. Other matters that were before the committee in 2008 include the following:

- Operating budget and annual fee for 2008 and 2009
- Paralegal Compensation Fund
- Permitted business structures
- Composition of the Proceedings Authorization Committee
- Request for equivalency by Justices of the Peace
- Paralegal Professional Conduct Guidelines
- Supervision rules for paralegals
- Client identification and verification requirements
- Rules governing advertising and firm names
- Bill C-2 The Tackling Violent Crime Act
- Paralegals as commissioners for taking affidavits
- Impaired driving offences under the Criminal Code
- Practice Audits
- Paralegal Annual Report
- Paralegal exemption from jury duty
- Election of paralegal members of the Paralegal Standing Committee
- Paralegal regulation two year review
- Paralegal licensing ceremony

7. STRATEGIC COMMUNICATIONS

A. MEDIA RELATIONS

Work to be undertaken:

- o Monitor media coverage – Media opinion software acquired in December 2007 and implemented in January 2008. This software allows the Law Society to track tone and reach of media coverage of the Law Society and lawyers in general. First results will be circulated at the end of the first quarter (March 2008).
 - o Challenge media errors – Law Society is maintaining a more assertive approach to challenging inaccuracies and misrepresentations in media coverage.
 - o Shape media coverage – Law Society is more aggressively pursuing opportunities to shape media coverage of the Law Society and lawyers, and to build the public profile of the Law Society.
 - o Consistent key messages – Communications Department is working with other departments to build consistent key messages and explore additional opportunities to deliver those messages to our intended audiences.
-
- o Monitor media coverage – Media opinion software acquired in December 2007 and implemented in January 2008. This software allows the Law Society to track tone and reach of media coverage of the Law Society and lawyers in general. First results will be circulated at the end of the first quarter (March 2008).

Media reports are prepared on a quarterly basis. This report provides the Law Society with a high level analysis of the media issues and trends that affect the Law Society. The information provided in the report has been very useful in developing media and communication strategies on the numerous issues that the Law Society has been dealing with over the past year.

- o Challenge media errors – Law Society is maintaining a more assertive approach to challenging inaccuracies and misrepresentations in media coverage.
- o Shape media coverage – Law Society is more aggressively pursuing opportunities to shape media coverage of the Law Society and lawyers, and to build the public profile of the Law Society.
- o Consistent key messages – Communications Department is working with other departments to build consistent key messages and explore additional opportunities to deliver those messages to our intended audiences.

This is the current media strategy that the Law Society follows when dealing with the media. Over the past year, the Law Society has taken on a more assertive approach when dealing with the media. The Law Society has responded to inaccuracies and misrepresentations in the media, such as the inaccuracies printed in the Law Times in an article by Marshall Yarmus on paralegal regulation in May 2008, and a Globe and Mail story about the Code Lesage report on lawyer civility issues in criminal court.

In our daily dealings with the media we are able to pursue opportunities to shape the coverage of the key issues and to raise the profile of the organization. We have been quite successful in attracting media coverage of the Law Society's initiatives focused on the retention of women in private practice. The major public dailies and the legal press have carried stories of various aspects of this project.

B. MEASURING PUBLIC OPINION AND ATTITUDES

Work to be undertaken:

- o In consultation with an outside advisor, review previous studies and survey results and develop recommendations for quantitative and qualitative research to be undertaken in 2008. Results of the research will permit the Law Society to trend attitudes and perceptions among audience groups and refine messaging appropriate for each group. The same research will support policy development and help inform priority setting.

The firm Navigator was hired as a consultant on this project. Four focus groups and a quantitative study were completed between July and September of 2008. The focus groups were held in London and in Scarborough. Participants discussed their perceptions of lawyers, their understanding of lawyer regulation and governance, and their response to test messages relating to lawyers and lawyer regulation and governance. The quantitative research was done by phone as part of a national omnibus survey. Questions in the quantitative research complemented the focus groups. The questions were designed to measure the degree of support for self-regulation of professions and to gather data about the perceived usefulness of services that a professional regulatory body might provide to the public. The results have been analysed and are being used to build specific messaging for the public, lawyers, paralegals and other stakeholder groups.

C. PROACTIVE COMMUNICATIONS

Work to be undertaken:

- o Develop a series of information pieces that focus on the public service aspects of the Law Society's mandate for circulation to smaller newspapers and community press. Pieces will highlight the kinds of legal services and legal service providers available to citizens of Ontario, how to access them, and how the Law Society can assist.
- o Collaborate with other legal organizations to institute positive messaging around the work of lawyers to improve access to justice.

- o Develop a series of information pieces that focus on the public service aspects of the Law Society's mandate for circulation to smaller newspapers and community press. Pieces will highlight the kinds of legal services and legal service providers available to citizens of Ontario, how to access them, and how the Law Society can assist.

The first set of information pieces will include one describing and promoting the lawyer referral service, and another describing the kinds of legal services that the newly licensed paralegals in Ontario can provide. We will also direct the public to the services offered on our public website, including the lawyer and paralegal directories and the guide for filing a complaint about a lawyer or paralegal.

- o Create and maintain a database on Benchernet of communications plans and issue management summaries to improve the consistency and timeliness of communications support for major Law Society initiatives and projects.

This initiative has been implemented. Communication plans are now being published on Benchernet as part of the policy planning and implementation process.

- o Develop a series of narratives based on the research findings described above. Tailor these narratives for specific stakeholder groups and use multiple communications channels to distribute and reinforce them.

We are now beginning to incorporate these narratives into messaging around Society initiatives and events. As an example, we underline the value of public protection inherent in the Law Society's regulation of paralegals. Alternately we demonstrate the openness of our disciplinary process by adding pages in the *Ontario Reports* with details of Regulatory Meetings with lawyers – details that were previously not made public.

- o Collaborate with other legal organizations to institute positive messaging around the work of lawyers to improve access to justice.

The Law Society has collaborated with a number of other legal organizations to promote positive messaging on the work of lawyers. We are placing two articles per issue in the Ontario Bar Association's magazine *Briefly Speaking*. To date we have placed articles on the Discrimination and Harassment Counsel, the Lawyers Feed the Hungry program, paralegal regulation, and the retention of women initiatives. We are also placing an article on the new Client Identification rules in the OBA real estate section newsletter. The Canadian Association of Paralegals recently ran a feature on the start up of paralegal regulation in Ontario. CDLPA is

working with us to promote the implementation of the recommendations of the Working Group on the Retention of Women in Private Practice. We are meeting with the office of the Attorney General to plan a public event to mark the first two years of paralegal regulation. We are working with LawPRO and the OBA to update the public guide to buying a home. Forty-six medium and large law firms have committed to participate in the Justicia project for three years. We have posted their names and the nature of their commitment on the public website. We will continue to work with them, and any additional firms that choose to join, to promote the goals of the project.

8. GOVERNANCE STRUCTURE

Work to be undertaken:

- o Governance Task Force is examining benchers term limits, and the participation of *ex officio* and life benchers, and former Treasurers.
- o Priority Planning Committee is developing a mechanism for establishing Convocation's priorities for the next four years.

Convocation approved a plan for consultation on the principles of governance in September 2008. The consultation process is scheduled to commence before the end of 2008.

It was moved by Mr. Simpson, seconded by Ms. Boyd, that Convocation approve the work plan set out at Appendix 1 to achieve the priorities identified and approved by Convocation.

That Convocation approve the process for adding new issues to the work plan described in paragraphs 16 to 18.

Carried

TRIBUNALS COMMITTEE REPORT

Mr. Gold presented the Report.

Report to Convocation
January 29, 2009

Tribunals Committee

Committee Members
Mark Sandler (Chair)
Alan Gold (Vice-Chair)
Raj Anand
Thomas Conway
Jennifer Halajian
Tom Heintzman

Paul Schabas
Joanne St. Lewis
William J. Simpson

Purposes of Report: Decision

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

COMMITTEE PROCESS

1. The Committee met on January 16, 2009. Committee members Mark Sandler (Chair), Alan Gold (Vice-Chair), Thomas Conway, Jennifer Halajian, Thomas Heintzman, Paul Schabas, and Joanne St. Lewis, attended. Bencher Larry Banack attended part of the meeting. Staff members Lesley Cameron, Katherine Corrick, A.K. Dionne, Grace Knakowski, Lisa Mallia, Elliot Spears, Sophia Sperdakos, and Mark Wells also attended.

FOR DECISION APPOINTMENT OF NON-BENCHER ADJUDICATORS

MOTION

2. That Convocation invite the people recommended by the Tribunals Committee (listed under separate cover) to become members of the Hearing Panel.

Introduction and Background

3. Convocation approved the appointment of four non-bencher lawyer adjudicators and four non-bencher, non-lawyer adjudicators. The Law Society placed advertisements in the *Ontario Reports* for lawyer applicants. For non-lawyer applicants, it wrote to previous lay benchers and solicited from other regulators the names of lay adjudicators who might meet the Law Society's appointment criteria.

Lawyer Applicants

4. The Law Society received 229 applications from lawyers and 13 applications from non-lawyers. Of these, 133 applications were from lawyers inside Toronto and 96 were from lawyers outside of Toronto. There were 153 male applicants, and 76 female applicants.
5. The Director, Policy and Tribunals read every lawyer resumé. Only those applicants with prior adjudicator experience were selected for further review. This reduced the number to 70.
6. The Director and other designated staff then reviewed the 70 lawyer applicants against the criteria set out in the advertisement, and selected a short list of 27 lawyers.

7. In June 2008, the Director provided the names of all 229 lawyers, including the 70 with adjudicator experience, and the short list and resumés of the 27 short-listed applicants to a benchers working group of Alan Gold, Larry Banack and Bonnie Warkentin.
8. The Working Group met on July 8, 2008 to review the applicants. It selected a short list of 6 lawyers (three from within Toronto and three from outside Toronto).
9. The shortlisted applicants were then vetted for any Law Society regulatory issues, and their references were checked. The remaining members of the working group, Alan Gold and Larry Banack reviewed the shortlist.

Non-Lawyer Applicants

10. The Law Society received 13 applications from non-lawyers. The Director reviewed the applicants and provided their resumés to the Working Group in June 2008. The Working Group discussed these applicants at its July 8 meeting, and selected a short list of five applicants. The references of the five applicants were checked.
11. Alan Gold and Larry Banack reviewed the applicants following the reference and regulatory checks, and recommended four lawyer and four non-lawyer adjudicators to the Committee for appointment to the Hearing Panel. The Committee reviewed the names and information about their experience and recommends that Convocation invite them to become members of the Hearing Panel.
12. The proposed names will be provided to Convocation under separate cover.

Non-Benchers Adjudicators

It was moved by Mr. Gold, seconded by Mr. Banack, that Convocation invite the people recommended by the Tribunals Committee (listed under separate cover) to become members of the Hearing Panel.

Carried

MOTION – AMENDMENTS TO BY-LAWS 4, 6.1, 7.1 AND 11

It was moved by Ms. Pawlitza, seconded by Mr. Swaye, that the bilingual versions of the amendments to By-Laws 4, 6.1, 7.1 and 11 be approved.

Carried

**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 on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008, April 24, 2008, May 22, 2008, and June 26, 2008 be further amended as follows:

- 1. Subparagraph 1 i of subsection 9 (1) of By-Law 4 is amended by adding “or juris doctor/ ou un doctorat” after “bachelor of laws/ baccalauréat” and before “degree from a law school/ en droit”.**
- 2. Paragraph 3 of subsection 9 (1) of the By-Law is revoked.**
- 3. Paragraph 4 of subsection 9 (1) of the By-Law is amended by adding “other than the applicant described in paragraph 4/ qui n’est pas visé à la disposition 4” after “The applicant/ la requérante” and before “must have/ doit”, by revoking the word “and” at the end of subparagraph i, by revoking subparagraph ii, and by adding the following subparagraphs and paragraph after subparagraph i:**

<p>ii. successfully completed all other requirements, as determined by the Society, that must be completed during the time of service under articles of clerkship, and</p>	<p>ii. avoir satisfait à toutes les autres exigences fixées par le Barreau auxquelles il doit être satisfait pendant le temps de service prévu en vertu de la convention de stage,</p>
<p>iii. if service under articles of clerkship was completed more than three years prior to the application for licensing, successfully completed the additional education and obtained the additional experience that the Society determines is necessary to ensure that the applicant is familiar with current law and practice.</p>	<p>iii. si le service prévu par la convention de stage précède de plus de trois ans la demande de permis, avoir réussi la formation complémentaire et obtenu l'expérience supplémentaire que le Barreau juge nécessaire pour s'assurer que les connaissances du requérant ou de la requérante sont à jour en ce qui a trait au droit et à son exercice.</p>

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| <p>4. An applicant who is exempt from the requirements mentioned in paragraph 3 because of clause (3)(e) must have successfully completed a professional conduct course conducted by the Society.</p> | <p>4. Le requérant ou la requérante qui est dispensé des exigences mentionnées à la disposition 3 en raison de l'alinéa (3) e) doit avoir réussi un cours de déontologie donné par le Barreau.</p> |
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4. Clause 9 (2) (d) of English version of the By-Law is amended by striking out “practice” and substituting “practise”.

5. Subsection 9 (3) of the By-Law is amended by striking out “and skills and professional responsibility program/ et du programme d’habiletés et de responsabilité professionnelle” in the marginal note, striking out “practice” and substituting “practise” in clause (d), by adding “or” at the end of clause (d) and by adding the following clause after clause (d):

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| <p>(e) the applicant has practised law in a common law jurisdiction outside Canada for a minimum of ten months and the Society reasonably believes such practice compares to the requirements in paragraph 3.</p> | <p>e) le requérant ou la requérante a exercé le droit dans un ressort de common law hors du Canada pendant au moins dix mois et le Barreau estime de façon raisonnable que cet exercice est comparable aux exigences de la disposition 3.</p> |
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6. The By-Law is amended by adding the following section after section 10:

Forfeiture of Class P1

10.01. If an applicant for a Class L1 licence holds a Class P1 licence, the Class P1 licence is forfeited to the Society at the time the class L1 licence is issued.

Déchéance du permis de catégorie P1

10.01. Le permis de catégorie P1 que détient le titulaire d’un permis de catégorie L1 est déchu en faveur du Barreau au moment de la délivrance du permis de catégorie L1.

7. Section 12 of the By-Law is amended by revoking subsection (2) and substituting the following:

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

- (a) for an aggregate of at least 3 years, the applicant has exercised the powers and

Dispense de l’exigence de formation

(2) Le requérant ou la requérante est dispensé de l’exigence prévue à la disposition 1 du paragraphe (1) si, selon le cas :

- a) pour un total d’au moins 3 ans, il ou elle a assumé des fonctions et exécuté les tâches d’un juge

performed the duties of a justice of the peace in Ontario on a full-time basis; or

de paix en Ontario à plein temps;

- (b) the applicant was previously licensed to provide legal services in Ontario and applied for that licence prior to November 1, 2007.

- b) il ou elle a déjà été titulaire d'un permis de fournir des services juridiques en Ontario, qu'il ou elle a demandé avant le 1^{er} novembre 2007.

Exemption from examination requirement

(3) An applicant is exempt from the requirement mentioned in paragraph 2 of subsection (1) if the applicant was previously licensed to provide legal services in Ontario.

Dispense de l'exigence d'examen

(3) Le requérant ou la requérante est dispensé de l'exigence prévue à la disposition 2 du paragraphe (1) s'il ou si elle a déjà été titulaire d'un permis de fournir des services juridiques en Ontario.

8. Section 13 of the By-Law is amended by revoking subsection (2) and substituting the following:

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if,

- (a) for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis; or

Dispense de l'exigence de formation

(2) Le requérant ou la requérante est dispensé de l'exigence prévue à la disposition 1 du paragraphe (1) si, selon le cas :

- a) pour un total d'au moins 3 ans, il ou elle a assumé des fonctions et exécuté les tâches d'un juge de paix en Ontario à plein temps;

(b) the applicant was previously licensed to provide legal services in Ontario and applied for that licence prior to July 1, 2010.

b) il ou elle a déjà été titulaire d'un permis de fournir des services juridiques en Ontario, qu'il ou elle a demandé avant le 1^{er} juillet 2010.

Exemption from examination requirement

(3) An applicant is exempt from the requirement mentioned in paragraph 2 of subsection (1) if the applicant was previously licensed to provide legal services in Ontario.

Dispense de l'exigence d'examen

(3) Le requérant ou la requérante est dispensé de l'exigence prévue à la disposition 2 du paragraphe (1) s'il ou si elle a déjà été titulaire d'un permis de fournir des services juridiques en Ontario.

9. Paragraph (3) of subsection 16 (1) of the By-Law is revoked.

10. Subsections 16 (2) and (3) of the By-Law are revoked.

11. Subsection 18 (2) of the By-Law is amended by striking out "skills and responsibility program/ programme d'habiletés et de responsabilité professionnelle" and substituting "professional conduct course/ cours de déontologie".

12. The By-Law is amended by striking out the heading "SURRENDER OF LICENCE TO PRACTISE LAW/ REMISE DU PERMIS D'EXERCICE DU DROIT" before section 23.

13. Subsection 23 (1) of the By-Law is amended by striking out "to practise law in Ontario as a barrister and solicitor/ d'exercer le droit en Ontario à titre d'avocat ou d'avocate".

14. Clause 23 (2) (a) of the By-Law is amended by striking out "to practise law in Ontario as a barrister and solicitor/ d'exercer le droit en Ontario à titre d'avocat ou d'avocate" and by adding "or provided legal services in Ontario/ ou fourni des services juridiques en Ontario" after "that the applicant has practiced law in Ontario/ pendant lesquelles le requérant ou la requérante a exercé le droit en Ontario" and before "and the reasons why the applicant/ , le cas échéant,".

15. Subsection 23 (2) of the By-Law is amended by revoking clause (c) and substituting the following:

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| <p>(c) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other appropriate licensee or, alternatively, that the applicant,</p> | <p>c) que les dossiers de tous les clients ont été réglés et fermés ou que des dispositions ont été prises à la satisfaction des clients pour que leurs documents leur soient rendus ou soient transmis à un autre ou à une autre titulaire de permis pertinent, ou bien que le requérant ou la requérante :</p> |
| <p>(i) has not practised law in Ontario as a barrister and solicitor or has not provided legal services in Ontario, or</p> | <p>(i) soit n'a pas exercé le droit en Ontario à titre d'avocat ou d'avocate ou n'a pas fourni des services juridiques en Ontario,</p> |
| <p>(ii) has practised law in Ontario as a barrister and solicitor or has provided legal services in Ontario, but only in circumstances in which he or she is permitted under the Act to do so without a licence;</p> | <p>(ii) soit a exercé le droit en Ontario à titre d'avocat ou d'avocate ou a fourni des services juridiques en Ontario, mais seulement dans des circonstances où il ou elle est autorisé, dans le cadre de la Loi, à ce faire sans permis;</p> |

16. Clause 23 (2) (d) of the English version of the By-Law is amended by adding “or provision of legal services in Ontario” after “his or her practice of law in Ontario” and before “and”.

17. Clause 23 (2) (d) of the French version of the By-Law is amended by striking out “ou dans le cadre de l'exercice de sa profession en Ontario” and substituting “à l'égard de la façon dont il ou elle exerce le droit en Ontario ou fournit des services juridiques en Ontario”.

18. Subsection 24 (1) of the By-Law is amended by striking out “to practise law in Ontario as a barrister and solicitor/ d'exercer le droit en Ontario à titre d'avocat ou d'avocate”.

19. Subclause 26 (1) (a) (ii) of the By-Law is revoked and the following substituted:

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| <p>(ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other appropriate licensee or, alternatively, that the applicant,</p> <ol style="list-style-type: none"> 1. has not practised law in Ontario as a barrister and solicitor or has not provided legal services in Ontario, or 2. has practised law in Ontario as a barrister and solicitor or has provided legal services in Ontario, but only in circumstances in which he or she is permitted under the Act to do so without a licence; | <p>(ii) les dossiers de tous les clients ont été réglés et fermés ou des dispositions ont été prises à la satisfaction des clients pour que leurs documents leur soient rendus ou soient transmis à un autre ou à une autre titulaire de permis pertinent, ou bien le requérant ou la requérante :</p> <ol style="list-style-type: none"> 1. soit n'a pas exercé le droit en Ontario à titre d'avocat ou d'avocate ou n'a pas fourni des services juridiques en Ontario, 2. soit a exercé le droit en Ontario à titre d'avocat ou d'avocate ou a fourni des services juridiques en Ontario, mais seulement dans des circonstances où il ou elle est autorisé, dans le cadre de la Loi, à ce faire sans permis; |
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20. Subclause 26 (1) (a) (iii) of the English version of the By-Law is amended by adding "or provision of legal services in Ontario" at the end.

21. Subclause 26 (1) (a) (iii) of the French version of the By-Law is amended by striking out "ou avec son exercice du droit en Ontario" and substituting "ou à l'égard de la façon dont il ou elle exerce le droit en Ontario ou fournit des services juridiques en Ontario".

22. Subclause 26 (1) (a) (iv) of the By-Law is amended by adding "if the applicant has practised law in Ontario/ s'il ou si elle a exercé le droit en Ontario," after "that" and before "the applicant has paid all insurance premiums/ le requérant ou la requérante a payé toutes les contributions au titre des assurances".

23. Clause (c) of the definition of "law firm/ cabinet d'avocats" in section 29 of the By-Law is revoked and the following substituted:

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| <p>(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class L1 licence.</p> | <p>c) d'un cabinet multidisciplinaire ou d'une société de personnes visés à l'article 17 du Règlement administratif n° 7 [Entreprises] où le titulaire de permis visé à cet article est titulaire d'un permis de catégorie L1.</p> |
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24. Clause (c) of the definition of “legal services firm/ cabinet de services juridiques” in section 29 of the By-Law is revoked and the following substituted:

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| <p>(c) a multi-discipline practice or partnership described in section 17 of By-Law 7 [Business Entities] where the licensee mentioned therein is a licensee who holds a Class P1 licence.</p> | <p>c) d’un cabinet multidisciplinaire ou d’une société de personnes visés à l’article 17 du Règlement administratif n° 7 [Entreprises] où le titulaire de permis visé à cet article est titulaire d’un permis de catégorie P1.</p> |
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25. Subparagraph 7 iv of subsection 30 (1) of the By-Law is amended by striking out “or” at the end of subparagraph C, by adding “or” at the end of subparagraph D, and by adding the following subparagraph after subparagraph D:

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| <p>E. the Canadian Society of Professionals in Disability Management.</p> | <p>E. de la <i>Canadian Society of Professionals in Disability Management</i>.</p> |
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26. Subsection 30 (3) of the By-Law is revoked.

27. The definition of “dependants” in subsection 32 (1) of the English version of the By-Law is amended by striking out “as were” and substituting “who were”.

28. Subsection 32 (3) of the By-Law is amended by adding the following paragraph after paragraph 2:

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| <p>3. Despite paragraph 2, act on behalf of the person in enforcing benefits payable under a collective agreement before the Small Claims Court.</p> | <p>3. Malgré la disposition 2, agir au nom d’une personne relativement à l’obtention d’avantages payables dans le cadre d’une convention collective devant la Cour des petites créances.</p> |
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29. Form 4A of the By-Law is revoked and the following substituted:

Form 4A

Notice of Intention to Surrender Licence

(Name of licensee applying to surrender his or her licence, in capital letters)

Pursuant to section 28 of the *Law Society Act* and By-Law 4 made under subsection 62 (0.1) of the *Law Society Act*, the above named hereby gives notice of *(his/her)* intention to surrender *(his/her)* licence.

The above named has practised law or provided legal services in Ontario at *(identify where the above named has practised law or provided legal services in Ontario)* (or has not

practised law or provided legal services in Ontario since *(date)*) (or has never practised law or provided legal services in Ontario).

Dated at *(place)*

(Date)

(Full name of licensee applying to surrender his or her licence)

Formule 4A

Avis d'intention de remise de permis

(Nom du ou de la titulaire de permis demandant de remettre son permis, en majuscules)

Conformément à l'article 28 de la *Loi sur le Barreau* et au Règlement administratif n° 4 établi suivant le paragraphe 62 (0.1) de la *Loi sur le Barreau*, la personne susmentionnée annonce par la présente son intention de remettre son permis.

La personne susmentionnée a exercé le droit ou a fourni des services juridiques en Ontario à *(indiquer l'endroit où la personne susmentionnée a exercé le droit ou a fourni des services juridiques en Ontario)* (ou n'a pas exercé le droit ni fourni de services juridiques en Ontario depuis *(date)* (ou n'a jamais exercé le droit ni fourni de services juridiques en Ontario).

Fait à *(lieu)*.

(Date)

(Nom complet du ou de la titulaire demandant de remettre son permis)

BY-LAW 6.1 [CONTINUING LEGAL EDUCATION]

THAT the following By-Law 6.1 [Continuing Legal Education] be made:

BY-LAW 6.1**RÈGLEMENT ADMINISTRATIF N° 6.1****CONTINUING LEGAL EDUCATION****FORMATION JURIDIQUE PERMANENTE****Twenty-four hour requirement****Exigence de vingt-quatre heures**

1. A licensee to whom a class L1 licence is issued after May 31, 2010 shall complete a minimum of twenty-four hours of continuing legal education that is accredited by the Society within twenty-four months of the day on which the licensee is issued a class L1 licence and is paying the full amount of the annual fee under subsection 2 (2) of By-Law 5 [Annual Fee].

1. Un titulaire de permis à qui un permis de catégorie L1 est délivré après le 31 mai 2010 fait un minimum de vingt-quatre heures d'éducation juridique permanente qui est accréditée par le Barreau dans les vingt-quatre mois à partir du jour où le titulaire de permis reçoit un permis de catégorie L1 et paye le montant entier de la cotisation annuelle conformément au paragraphe 2 (2) du Règlement administratif n° 5 [La cotisation annuelle].

2. The twenty-four month period described in section 1 includes only those whole or part calendar months during which the licensee pays the full amount of the annual fee under subsection 2 (2) of By-Law 5 [Annual Fee].

2. La période de vingt-quatre mois décrite à l'article 1 comprend seulement les mois civils entiers ou partiels durant lesquels le titulaire de permis paye le montant entier de la cotisation annuelle conformément au paragraphe 2 (2) du Règlement administratif n° 5 [La cotisation annuelle].

3. Section 1 does not apply to a licensee who, on the day on which the licensee is issued a class L1 licence, has practised law outside Ontario for a period of time exceeding twenty-four months.

3. L'article 1 ne s'applique pas à un titulaire de permis qui, le jour où il reçoit un permis de catégorie L1, a exercé le droit à l'extérieur de l'Ontario pendant plus de vingt-quatre mois.

BY-LAW 7.1**[OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]**

THAT By-Law 7.1 [Operational Obligations and Responsibilities], made by Convocation on October 25, 2007 and amended on November 22, 2007, January 24, 2008, April 24, 2008, June 26, 2008 and October 30, 2008 be further amended as follows:

1. Subsection 1 (1) of By-Law 7.1 is struck out and the following substituted:

Interpretation

“non-licensee” means an individual who,

- (a) in the case of the assignment of tasks and functions by a licensee who holds a Class L1 licence, is not a licensee who holds a Class L1 licence and, in the case of the assignment of tasks and functions by a licensee who holds a Class P1 licence, is not a licensee,
- (b) is engaged by a licensee to provide her or his services to the licensee, and
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual's provision of services to the licensee;

“catastrophic impairment” means a catastrophic impairment within the meaning of the *Statutory Accident Benefits Schedule*;

“claim” means a claim for statutory accident benefits within the meaning of the *Insurance Act*;

“impairment” means an impairment within the meaning of the *Statutory Accident Benefits Schedule*;

“law firm” means a law firm within the meaning of section 29 of By-Law 4 [Licensing], except the reference to clause 61.0.1 (a) in that definition shall be read as a reference to clauses 61.0.1 (a) and (c);

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

Interprétation

« non-titulaire de permis » Particulier qui, à la fois :

- a) dans le cas de l'assignation de tâches et de fonctions par un ou une titulaire de permis de la catégorie L1, n'est pas titulaire d'un tel permis et, dans le cas de l'assignation de tâches et de fonctions par un ou une titulaire de permis de la catégorie P1, n'est pas un ou une titulaire de permis;
- b) est embauchée par un ou une titulaire de permis pour lui fournir des services;
- c) convient formellement avec le ou la titulaire de permis que celui-ci ou celle-ci contrôlera efficacement les services qu'il lui rend.

« déficience invalidante » S'entend au sens de l'*Annexe sur les indemnités d'accident légales*.

« demande » Demande d'indemnité d'accident légale au sens de la *Loi sur les assurances*.

« déficience » S'entend au sens de l'*Annexe sur les indemnités d'accident légales*.

« cabinet d'avocats » S'entend au sens de l'article 29 du Règlement administratif n° 4 [Octroi de permis], sauf que la mention de l'alinéa 61.0.1 a) dans cette définition vaut mention des alinéas 61.0.1 a) et c).

« *Annexe sur les indemnités d'accident légales* » S'entend au sens de la *Loi sur les assurances*.

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

Assignment of tasks, functions: mediation of ancillary issues relating to catastrophic impairment claims

Assignation de tâches et de fonctions : médiation portant sur des questions accessoires liées à des demandes découlant d'une déficience invalidante

5.1 (1) Despite clause 6 (1) (c), a licensee who holds a Class L1 licence may permit a non-licensee who holds a Class P1 licence to participate in mediation of ancillary issues relating to a claim of an individual who has or appears to have a catastrophic impairment, but only if the non-licensee is employed by the licensee or by the law firm of which the licensee is a member.

5.1 (1) Malgré l'alinéa 6 (1) c), un ou une titulaire de permis de la catégorie L1 peut permettre à un ou à une non-titulaire de permis qui est titulaire d'un permis de la catégorie P1 de participer à la médiation portant sur des questions accessoires liées à une demande d'un particulier qui souffre ou qui semble souffrir d'une déficience invalidante, mais seulement si le ou la non-titulaire est engagé par le ou la titulaire ou par le cabinet d'avocats dont celui-ci ou celle-ci est membre.

(2) For the purposes of subsection (1), ancillary issues do not include issues relating to the determination of whether an impairment is a catastrophic impairment.

(2) Pour l'application du paragraphe (1), les questions liées à la qualification d'une déficience comme invalidante ne constituent pas des questions accessoires.

3. Section 20 of the By-Law is amended by adding the following definitions:

“electronic funds transfer” means the transfer of funds from one financial institution or financial entity to another initiated by the transmission, through any electronic, magnetic or optical device, telephone instrument or computer, of instructions for the transfer of funds, where the record of the transfer includes a reference number, the name of the financial institution or financial entity sending the funds, the name of the financial institution or financial entity receiving the funds, the date of the transfer of the funds, the amount of funds transferred, the currency of the funds transferred, the name of the holder of the account from which the funds transferred are drawn and the name of the holder of the account to which the funds transferred are deposited;

« virement électronique » S’entend du virement de fonds entre établissements financiers ou entités financières par l’intermédiaire de la transmission, par des moyens électroniques, magnétiques ou optiques, par téléphone ou par ordinateur, d’instructions demandant le virement, lorsque la consignation du virement comprend un numéro de référence, la dénomination de l’établissement financier ou de l’entité financière qui vire les fonds, celle de l’établissement financier ou de l’entité financière qui les reçoit, la date du virement, le montant du virement, la monnaie dans laquelle se fait le virement, le nom du titulaire du compte d’où les fonds virés sont tirés et celui du titulaire du compte dans lequel ils sont déposés.

“financial entity” means a financial entity headquartered and operating in a country that is a member of the Financial Action Task Force on Money Laundering;

« entité financière » Entité financière ayant son siège social et exploitant ses activités dans un pays membre du Groupe d’action financière sur le blanchiment des capitaux.

4. The definition of “financial institution/ établissement financier” in section 20 of the By-Law is amended by deleting “or” at the end of clause (f), adding “, or” at the end of clause (g) and adding the following clause:

(h) a subsidiary of an entity mentioned in clauses (a) to (g) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;

h) d’une filiale d’une entité visée aux alinéas a) à g) si les états financiers de la filiale sont consolidés avec ceux de l’entité.

5. The definition of “private company/ compagnie privée” in section 20 of the By-Law is revoked.

6. Section 20 of the By-Law is amended by adding the following definition:

“proceeding” means a proceeding before an adjudicative body;

« instance » Instance dont est saisi un organisme juridictionnel.

7. The definition of “public body/ organism public” in section 20 of the By-Law is revoked and the following substituted:

“public body” means,

« organisme public » S’entend, selon le cas :

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| (a) a ministry, department or agent of the government of Canada or of a province or territory of Canada, | a) d’un ministère, d’un service ou d’un mandataire du gouvernement du Canada ou d’une province ou d’un territoire du Canada; |
| (b) a municipality incorporated by or under an Act of a province or territory of Canada, including a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality, any other incorporated municipal body and an agent of any of them, | b) d’une municipalité constituée sous le régime d’une loi d’une province ou d’un territoire du Canada, notamment une cité, une ville, un village, une municipalité de communauté urbaine ou régionale, un canton, un district, un comté, une municipalité rurale, tout autre organisme municipal constitué en personne morale et leurs mandataires; |
| (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada, including any local board as defined in the <i>Municipal Act</i> and any similar body incorporated under the law of another province or territory, | c) d’un conseil local d’une municipalité constituée en personne morale sous le régime d’une loi d’une province ou d’un territoire du Canada, notamment un conseil local au sens de la <i>Loi sur les municipalités</i> et tout autre organisme similaire constitué en personne morale en vertu d’une loi d’une autre province ou d’un territoire; |
| (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the <i>Excise Tax Act</i> (Canada) or an agent of the organization, | d) d’un organisme qui exploite un hôpital public et qui est désigné comme administration hospitalière par le ministre du Revenu national en application de la <i>Loi sur la taxe d’accise</i> (Canada) ou ses mandataires; |

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| (e) | a body incorporated by or under an Act of Canada or of a province or territory of Canada for a public purpose, or | e) | d'une entité constituée en personne morale sous le régime d'une loi du Canada ou d'une province ou d'un territoire du Canada à des fins d'intérêt public; |
| (f) | a subsidiary of an entity mentioned in clauses (a) to (e) where the financial statements of the subsidiary are consolidated with the financial statements of the entity; | f) | d'une filiale d'une entité visée aux alinéas a) à e) si les états financiers de la filiale sont consolidés avec ceux de l'entité. |

8. Section 20 of the By-Law is amended by adding the following definition:

“reporting issuer” means,

« émetteur assujetti » S'entend, selon le cas :

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| (a) | a reporting issuer within the meaning of an Act of a province or territory of Canada in respect of the securities law of the province or territory, | a) | d'un émetteur assujetti au sens d'une loi d'une province ou d'un territoire du Canada à l'égard du droit des valeurs mobilières de la province ou du territoire, |
| (b) | a corporation whose shares are traded on a stock exchange designated under section 262 of the <i>Income Tax Act</i> (Canada) and that operates in a country that is a member of the Financial Action Task Force on Money Laundering, or | b) | d'une personne morale dont les actions sont négociées sur une bourse désignée en vertu de l'article 262 de la <i>Loi de l'impôt sur le revenu</i> (Canada) et qui exploite ses activités dans un pays membre du Groupe d'action financière sur le blanchiment des capitaux, |
| (c) | a subsidiary of an entity mentioned in clause (a) or (b) where the financial statements of the subsidiary are consolidated with the financial statements of the entity; | c) | d'une filiale d'une entité visée à l'alinéa a) ou b) si les états financiers de la filiale sont consolidés avec ceux de l'entité. |

9. Subsection 22 (1) of the By-Law is amended by striking out “subsections (2) and (3)/ paragraphes (2) et (3)” in the portion before clause (a) and substituting “subsections (2), (3) and (4)/ paragraphes (2), (3) et (4)”.

10. Subclause 22 (1) (b) (ii) of the English version of the By-Law is amended by adding “client” before “verification”.

11. Subclause 22 (1) (b) (ii) of the French version of the By-Law is amended by striking out “exigences d’identification des clients” and substituting “exigences de vérification de l’identité des clients”.

12. Subsection 22 (2) of the By-Law is amended by striking out “or” at the end of clause (b), adding “or” at the end of clause (c) and adding the following clause:

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| (d) the licensee is engaged in the activities described in subsection (1), other than the activities described in clause (1) (b), as a duty counsel under the <i>Legal Aid Services Act, 1998</i> , as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or as a provider of legal aid services through the provision of summary advice under the <i>Legal Aid Services Act, 1998</i> . | d) s’ils prennent part aux activités visées au paragraphe (1), sauf celles visées à l’alinéa (1) b), en qualité d’avocats de service dans le cadre de la <i>Loi de 1998 sur les services d’aide juridique</i> , en qualité d’avocats de service qui fournissent des services professionnels dans le cadre d’un programme d’avocats de service parrainé par un organisme sans but lucratif ou à titre de fournisseurs de services d’aide juridique en donnant des conseils sommaires dans le cadre de la <i>Loi de 1998 sur les services d’aide juridique</i> . |
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13. Subsection 22 (3) of the By-Law is revoked and the following substituted:

Exemptions re certain funds

(3) A licensee is not required to comply with the client identification requirements set out in subsection 23 (2) or the client verification requirements set out in subsection 23(4) in respect of funds,

- (a) paid to or received from a financial institution, public body or reporting issuer;
- (b) received from the trust account of another licensee or a lawyer;
- (c) received from a peace officer, law enforcement agency or other public official acting in an official capacity;
- (d) paid or received pursuant to a court order;
- (e) paid to pay a fine or penalty;
- (f) paid or received as a settlement in a proceeding;
- (g) paid or received for professional fees, disbursements, expenses or bail; or

Exemptions relatives à certains fonds

(3) Les titulaires de permis ne sont pas tenus de se conformer aux exigences relatives à l'identification des clients visées au paragraphe 23 (2) ou aux exigences relatives à la vérification de l'identité des clients visées au paragraphe 23(4) à l'égard des fonds qui sont, selon le cas :

- a) versés à ou reçus d'un établissement financier, d'un organisme public ou d'un émetteur assujetti;
- b) reçus du compte en fiducie d'autres titulaires de permis ou avocats;
- c) reçus d'un agent de la paix, d'un organisme chargé de l'application de la loi ou de tout autre agent public dans l'exercice officiel de ses fonctions;
- d) versés ou reçus conformément à une ordonnance judiciaire;
- e) versés pour payer une amende ou une sanction;
- f) versés ou reçus à titre de règlement d'une instance;
- g) versés ou reçus pour des honoraires professionnels, débours, dépenses ou cautions;

(h) paid, received or transferred by electronic funds transfer.

h) versés, reçus ou virés par virement électronique.

Exemptions re certain clients

(4) A licensee is not required to comply with the client identification requirements set out in subsection 23 (2) or the client verification requirements set out in subsection 23 (4) in respect of any of the following clients:

1. A financial institution.
2. A public body.
3. A reporting issuer.

Exemptions relatives à certains clients

(4) Les titulaires de permis ne sont pas tenus de se conformer aux exigences relatives à l'identification des clients visées au paragraphe 23 (2) ou aux exigences relatives à la vérification de l'identité des clients visées au paragraphe 23(4) à l'égard des clients suivants :

1. Les établissements financiers.
2. Les organismes publics.
3. Les émetteurs assujettis.

14. Paragraph 4 of subsection 23 (1) of the By-Law is amended by adding “other than a financial institution, public body or reporting issuer,/ qui n’est ni un établissement financier, ni un organisme public ni un émetteur assujetti” after “organization/ organisme”.

15. Paragraphs 6, 7 and 8 of subsection 23 (1) of the By-Law are revoked and the following substituted:

6. If the client is an organization, other than a financial institution, public body or reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client.

6. si le client est un organisme qui n’est ni un établissement financier, un organisme public ou un émetteur assujetti, la nature générale de ses affaires ou de ses activités;

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| <p>7. If the client is an organization, the name, position and contact information for each individual who gives instructions with respect to the matter for which the licensee is retained.</p> <p>8. If the client is acting for or representing a third party, information about the third party as set out in paragraphs 1 to 7, as applicable.</p> | <p>7. si le client est un organisme, le nom, le titre et les coordonnées de chaque particulier qui donne des directives quant aux affaires pour lesquelles les services du titulaire de permis sont retenus;</p> <p>8. si le client est le mandataire d'un tiers, les renseignements concernant le tiers visés aux paragraphes 1 à 7, s'il y a lieu.</p> |
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16. Subsection 23 (2) of the By-Law is amended by,

- (a) adding “or any third party that the client is acting for or representing/ lui-même ou tout tiers dont il est mandataire” after “client/ client” the first time it appears in the portion before paragraph 1; and**
- (b) adding “and the third party/ et du tiers” at the end of the portion before paragraph 1.**

17. Section 23 of the By-Law is amended by adding the following subsection:

Client identification, identification by others in licensee’s firm

(2.1) A licensee complies with the identification requirements set out in subsections (1) and (2) if an employee of the licensee’s firm or another licensee who practises law or provides legal services through the licensee’s firm, acting on behalf of the licensee, complies with the requirements.

Identification des clients par d’autres personnes du cabinet du titulaire de permis

(2.1) Les titulaires de permis se conforment aux exigences d’identification des clients visées aux paragraphes (1) et (2) si s’y conforme un employé de leur cabinet ou d’un ou d’une autre titulaire de permis qui exerce le droit ou qui fournit des services juridiques par l’intermédiaire de ce cabinet, cet employé étant leur mandataire.

18. Paragraph 1 of subsection 23 (2) of the French version of the By-Law is amended by striking out “une maison de courtage de valeurs” and substituting “un courtier en valeurs mobilières”.

19. Subsection 23 (3) of the By-Law is amended by deleting “Same/ Idem” in the marginal note and substituting “Client identification/ Identification des clients”.

20. Subsection 23 (3) of the English version of the By-Law is amended by adding “or another individual acting on behalf of the licensee under subsection (2.1)” after “licensee” the second time it appears.

21. Subsection 23 (3) of the French version of the By-Law is amended by striking out “s’ils se sont déjà conformés” and substituting “si eux-mêmes et tout tiers qui est leur mandataire dans le cadre du paragraphe (2.1) se sont déjà conformés”.

22. Subsection 23 (4) of the By-Law is amended by striking out “, where appropriate, the third party beneficiary or principal,/ et, lorsque la situation s’y prête, du tiers bénéficiaire ou du mandant,” and substituting “any third party that the client is acting for or representing/ et de tout tiers dont il est le mandataire,”.

23. Paragraph 1 of subsection 23 (7) of the English version of the By-Law is amended by deleting “beneficiary or principal”.

24. Paragraph 1 of subsection 23 (7) of the French version of the By-Law is amended by striking out “, le tiers bénéficiaire ou le mandant” and substituting “ou le tiers”.

25. Paragraph 2 of subsection 23 (7) of the By-Law is revoked and the following substituted:

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| <p>2. If the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, which includes the names of the organization’s directors, if applicable, such as,</p> | <p>2. si le client ou le tiers est un organisme, tel qu’une personne morale ou une société formée ou enregistrée conformément à une disposition législative habilitante, une confirmation écrite provenant d’un registre du gouvernement quant à l’existence, au nom et à l’adresse de l’organisme, incluant le nom de ses administrateurs, s’il y a lieu, telle que :</p> |
| <p>i. a certificate of corporate status issued by a public body,</p> | <p>i. un certificat de constitution émis par un organisme public,</p> |
| <p>ii. a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or</p> | <p>ii. une copie, obtenue d’un organisme public, d’un document qu’il est tenu de déposer annuellement aux termes de la loi,</p> |
| <p>iii. a copy of a similar record obtained from a public body that confirms the organization’s existence.</p> | <p>iii. une copie, obtenue d’un organisme public, d’un document semblable qui confirme son existence.</p> |

26. Paragraph 3 of subsection 23 (7) of the By-Law is amended by deleting “beneficiary or principal/ bénéficiaire ou le mandant”.

27. Subparagraph 1 ii of subsection 23 (9) of the By-Law is amended by adding the following sub-subparagraphs:

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| O. | a police officer, | O. | un agent ou une agente de police, |
| P. | a nurse, | P. | un infirmier ou une infirmière, |
| Q. | a school principal. | Q. | un directeur ou une directrice d'école. |

28. Paragraph 2 of subsection 23 (9) of the By-Law is amended by deleting “subsection (11)/ au paragraphe (11)” and substituting “clause (11) (b)/ à l’alinéa (11) b)”.

29. Subsection 23 (11) of the By-Law is revoked and the following substituted:

Client verification, use of agent, etc.

Vérification de l’identité des clients, recours à des mandataires

(11) A licensee complies with the verification requirements set out in subsection (4) if,

(11) Les titulaires de permis se conforment aux exigences de vérification du paragraphe (4) si, selon le cas :

- (a) an employee of the licensee’s firm or another licensee who practises law or provides legal services through the licensee’s firm, acting on behalf of the licensee, complies with the requirements; or
- (b) an individual who is not an individual mentioned in clause (a), acting on behalf of the licensee, complies with the requirements, provided that the licensee and the individual, prior to the individual acting on behalf of the licensee, enter into a written agreement specifying the steps that the individual will be taking on behalf of the licensee to comply with the verification requirements.

- a) s’y conforme un employé de leur cabinet ou d’un ou d’une autre titulaire de permis qui exerce le droit ou qui fournit des services juridiques par l’intermédiaire de ce cabinet, cet employé étant leur mandataire;
- b) un particulier qui n’est pas visé à l’alinéa a), mais qui est leur mandataire, s’y conforme, à la condition qu’eux-mêmes et ce particulier signent, avant que ce dernier ne devienne leur mandataire, une entente dans laquelle sont précisées les mesures qu’il prendra en leur nom en vue de s’y conformer.

30. Clause 23 (12) (b) of the English version of the By-Law is amended by adding “or an individual acting on behalf of the licensee under subsection (11)” after “the licensee”.
31. Clause 23 (12) (b) of the French version of the By-law is amended by striking out “s’ils se sont déjà conformés” and substituting “si eux-mêmes ou un particulier qui est leur mandataire dans le cadre du paragraphe (11) se sont déjà conformés”.
32. Subsection 23 (13) of the By-Law is amended by deleting “a person/ une personne physique” and substituting “an individual/ un particulier”.
33. Section 24 of the English version of the By-Law is amended by,
- (a) striking out “information” in the portion before clause (a) and substituting “identification”;
 - (b) striking out “reasonably suspects” in the portion before clause (a) and substituting “knows or ought to know”; and
 - (c) striking out “dishonesty, fraud, crime or illegal conduct” wherever it occurs and substituting “fraud or other illegal conduct”.
34. Section 24 of the French version of the By-Law is amended by,
- (a) striking out “ont des raisons valables de soupçonner” in the portion before clause (a) and substituting “savent ou devraient savoir”;
 - (b) striking out “à un acte malhonnête, à une fraude, à un crime ou à la conduite illégale d’un client” in the portion before clause (a) and substituting “à la commission d’une fraude par un client ou à toute autre conduite illégale de sa part”; and
 - c) striking out “à l’acte malhonnête, à la fraude, au crime ou à la conduite illégale en question” in clause (a) and substituting “à la commission de la fraude ou à la conduite illégale”.
35. Section 27 of the English version of the By-Law is amended by,
- (a) striking out “reasonably suspects” in the portion before clause (a) and substituting “knows or ought to know”; and
 - (b) striking out “dishonesty, fraud, crime or illegal conduct” wherever it occurs and substituting “fraud or other illegal conduct”.
36. Section 27 of the French version of the By-Law is amended by,

- (a) striking out “ont des raisons valables de soupçonner” in the portion before clause (a) and substituting “savent ou devraient savoir”;
- (b) striking out “à un acte malhonnête, à une fraude, à un crime ou à la conduite illégale ” in the portion before clause (a) and substituting “à la commission d’une fraude ou à toute autre conduite illégale ”; and
- (c) striking out “à l’acte malhonnête, à la fraude, au crime ou à la conduite illégale en question” in clause (a) and substituting “à la commission de la fraude ou à la conduite illégale”.

BY-LAW 11

[REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE]

THAT By-Law 11 [Regulation of Conduct, Capacity and Professional Competence], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, February 21, 2008, April 24, 2008 and October 30, 2008, be further amended as follows:

1. Clauses 27 (1) (b) and (c) of By-Law 11 are revoked and the following substituted:

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| (b) the licensee holds a Class L1 licence and has held the licence for not more than eight years; | b) le titulaire de permis détient un permis de catégorie L1 depuis un maximum de huit ans; |
| (c) the licensee holds a Class L1 licence and, | c) le titulaire de permis détient un permis de catégorie L1 et, |
| (i) is required to pay the full amount of the annual fee under subsection 2 (2) of By-Law 5 [Annual Fee], and | (i) doit payer le montant entier de la cotisation annuelle conformément au paragraphe 2 (2) du Règlement administratif n° 5 [La cotisation annuelle], |
| (ii) is required to pay insurance premium levies under subsection 2 (1) of By-Law 6 [Professional Liability Insurance]; or | (ii) doit payer une cotisation d’assurance conformément au paragraphe 2 (1) du Règlement administratif n° 6 [Assurance responsabilité professionnelle]; |
| (d) the licensee holds a Class P1 licence. | d) le titulaire de permis détient un permis de catégorie P1. |

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Stéphane Rivard, President of the Federation of Law Societies of Canada addressed Convocation.

REPORTS FOR INFORMATION ONLY

Access to Justice Committee Report

- Update on Legal Expense Insurance
- Summary of the McMurtry Report on Roots of Youth Violence
- Update on Civil Legal Needs Project

Report to Convocation
January 29, 2009

Access to Justice Committee

Access to Justice Committee
Marion Boyd, Co-Chair
Paul Schabas, Co-Chair
Avvy Go, Vice-Chair
Paul Dray
Susan Elliott
Glenn Hainey
Susan McGrath
Julian Porter
Jack Rabinovitch
William Simpson
Catherine Strosberg
Bonnie Tough

Purpose of Report: Information

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 January 14, 2009. Committee members Marion Boyd, Chair, Avvy Go, Vice-Chair, Susan Elliott, Glenn Hainey, Susan McGrath, Catherine Strosberg and Bonnie Tough participated. Staff members Julia Bass, Malcolm Heins, Marisha Roman and Sheena Weir also attended.

FOR INFORMATION
RESEARCH INTO LEGAL EXPENSE INSURANCE

2. Following the release of the Legal Aid Review 2008 by Professor Michael Trebilcock on July 25, 2008, the Committee agreed at its September 10 meeting to include the issue of Legal Expense Insurance as a priority item for 2008 and 2009. The Committee is considering this issue as part of its mandate to explore options for addressing public confidence in the profession and barriers to access to justice.

3. At its January 14, 2009 meeting, the Committee reviewed a summary of the research into legal expense insurance previously conducted for the Committee in 2004 and 2005 as well as an update on the legal expense insurance program currently available in Quebec.
4. The Committee decided to continue researching legal expense insurance programs in Canada and internationally as well as the feasibility of a legal expense insurance program in Ontario. As part of this research, the Committee will consult with current legal expense insurance providers in the province. If appropriate, the Committee will present recommendations to Convocation.

ONTARIO CIVIL LEGAL NEEDS PROJECT - UPDATE

5. On June 26, 2008, Convocation approved the Law Society's participation in the Ontario Civil Legal Needs Project, as well as the contribution of funds and staff resources to manage the project. The Law Society is providing \$120,000 in financial support. This financial support was confirmed at the November 27, 2008 meeting of Convocation.
6. Pro Bono Law Ontario is contributing \$75,000 to the Project.
7. On July 31, 2008, Legal Aid Ontario sent a letter of support and intention to partner with the Law Society and Pro Bono Law Ontario for the Project. The Board of Legal Aid Ontario approved a financial contribution of \$50,000 at its October 3, 2008 meeting.
8. Further project funding was sought through the Law Foundation of Ontario. The Law Foundation's Major Grants Committee met in November and approved the Law Society's application for a grant of \$60,000.
9. The total budget for the Project is \$305,000.
10. The Project will be completed in three phases. Phase I is a province-wide telephone survey of low and middle-income Ontarians. Phase II is a series of focus groups with legal service and information providers as well as social service providers throughout the province. Phase III is a mapping project of legal information and service providers throughout Ontario. The Project will culminate in the preparation of a final report. The anticipated date of completion and release of the Project's final report is January 2010.
11. The Law Society and Pro Bono Law Ontario conducted a consultation with participants at the Community Legal Education Ontario (CLEO) "Learn, Grow, Connect" Conference on October 6, 2008. The consultation and the report from the conference facilitator, Dr. Julie Macfarlane of the University of Windsor, provided insight into issues to consider in the conduct of the project.
12. Members of the staff of the Law Society, Pro Bono Law Ontario and Legal Aid Ontario met on October 10, 2008 to review the status and work plan of the Project. The Project staff will meet on a monthly basis throughout the Project to manage the work plan.

13. The Project Steering Committee was struck in October. Its members include Marion Boyd as representative of The Law Society, Lorne Sossin as representative of Pro Bono Law Ontario, and John McCamus as representative for Legal Aid Ontario. The Honourable Roy McMurtry will chair. The Steering Committee's first met on December 19, 2008 and approved the Request for Proposals (RFP) for the data collection phases (Phases I and II) of the Project. The Steering Committee also approved the Memorandum of Understanding (MOU) for the Project partners. The MOU sets out the respective responsibilities and contributions of the Project partners.
14. The RFP was issued on December 30, 2008. Responses are due January 30, 2009. The Steering Committee will meet during the week of February 23, 2009 to consider presentations by shortlisted consulting firms.

THE REVIEW OF THE ROOTS OF YOUTH VIOLENCE REPORT - SUMMARY

15. The Committee considered the Review of the Roots of Youth Violence Report and provides the following summary of the report to Convocation. The Committee makes no recommendations for further action by the Law Society on this report.

BACKGROUND

16. On June 11, 2007, the Ontario government appointed The Honourable Roy McMurtry and former Speaker of the Legislature Alvin Curling to conduct a review of the Roots of Youth Violence. The co-chairs released the final report of the review to the public on November 14, 2008.
17. The goal of the review was to help identify the factors that contribute to youth violence and provide recommendations to continue building safer, stronger communities.
18. Throughout 2007 and 2008, the review visited eight neighbourhoods in five cities across Ontario, consulted with provincial organizations and commissioned research papers. The review met with or received submissions from more than 750 individuals during its consultations - approximately 400 residents participated in the neighbourhood insight sessions and more than 350 met with or provided written submissions to the co-chairs. The review also received more than 5,000 responses to its online survey.

SUMMARY

19. As a result of the consultations and research undertaken, the report sets out four goals or "pillars" that describe the outcomes that need to be in place in order to address the roots of youth violence. The pillars are,
 - a. a repaired social context: social opportunity and anti-racism;
 - b. a youth policy framework;
 - c. a neighbourhood capacity and empowerment focus; and
 - d. integrated governance.
20. The report offers thirty major recommendations for government. It specifically recommends that the government start the process by adopting the recommendations associated with Pillar 4, integrated governance.

21. To implement Pillar 4, the co-chairs recommend that the government,
 - a. establish a means of coordinating the efforts of its ministries, other orders of government and communities;
 - b. create a Cabinet Committee on Social Inclusion and Anti-Racism (or equivalent body), supported by a Cabinet Office secretariat and Premier's advisory council, to lead the government's action; and
 - c. publish, by summer 2009, an integrated plan describing how ministries will collectively respond to this report.
22. To repair the social context and address social opportunity and racism (Pillar 1), the co-chairs recommend the government:
 - a. reduce both the levels and concentrations of poverty by increasing the supply of affordable housing, enhancing the quality of government services and otherwise improving living standards in disadvantaged neighbourhoods;
 - b. articulate more effectively its commitment to address racism, and require all public bodies to develop anti-racism plans;
 - c. develop a methodology to collect race-based statistics in all key areas, including education and the youth criminal justice system;
 - d. fund race-relations training for front-line officers working in disadvantaged neighbourhoods, as well as youth-police liaison committees in those same communities;
 - e. develop an education curriculum that is racially and culturally inclusive; recruit teaching and school administration staff that are more representative of local communities; and address remaining concerns about the Safe Schools Act;
 - f. retain outside experts to develop universal, community-based child mental health services;
 - g. fund the delivery of after school programs in the critical 3 p.m. to 6 p.m. period, when youth are most at risk, and invest more generally in space for youth programming;
 - h. provide training, standards and supports for mentors across the province, so that every young person has access to a caring adult;
 - i. ensure accessible sports and arts programs are available in all disadvantaged neighbourhoods;
 - j. work with the private sector to develop a broad strategy that would prepare disadvantaged youth for work, including the creation of sustained, meaningful employment opportunities;
 - k. find ways to reduce the over-criminalization of Ontario youth, compared with other large jurisdictions;
 - l. invest more in community-based strategies to reintegrate offenders; and
 - m. appoint a Youth Justice Advisory Board to better coordinate the work of the three ministries responsible for the youth justice system (Attorney General, Children and Youth Services, Community Safety and Correctional Services).
23. Adoption of a youth policy framework under Pillar 2 would require that the government establish, within a year, a youth policy framework that is developed in consultation with stakeholders and includes a guiding vision, a set of principles and specific outcomes.

24. To implement Pillar 3, community capacity, the co-chairs recommend that the government:
- a. adopt a place-based approach for government investments that address the roots of violence involving youth by concentrating on the most disadvantaged communities;
 - b. use the Index of Relative Disadvantage, described in the report, to identify the most disadvantaged communities for priority action;
 - c. designate a lead ministry for community building, and have that ministry engage municipalities to help define the boundaries of priority areas;
 - d. work with the community sector to develop a way of providing streamlined and stable funding to those agencies that meet community needs;
 - e. fund the establishment of community hubs in under-served neighbourhoods, with such hubs to be located in or close to schools and operated by organizations with experience in community programming;
 - f. encourage the creation of Neighbourhood Strategic Partnerships that would allow the province, other governments, community residents and service providers to develop and implement local solutions to violence involving youth;
 - g. commit to provide additional funding that supports families, including enhanced prenatal care and early years programming;
 - h. fund at least one youth-led organization in each of the province's most disadvantaged neighbourhoods; and
 - i. recognize the critical role played by youth workers by promoting stable employment and salaries to attract and retain skilled staff.
25. With specific reference to the justice system in Ontario, the report outlines the co-chairs' concerns that Ontario's youth justice system does not have an overall strategy for youth justice in Ontario. The report states that three ministries operate parts of it, with no ministry in charge, no overall policy direction, and no ministry with the mandate to look across the whole system to identify the best way to allocate the \$850 million spent each year on youth justice.
26. The full report is available on-line at <http://www.rootsofviolence.on.ca/english/index.asp>.

Audit Committee Report

- LAWPRO Financial Statements for the Nine Months Ended September 30, 2008
- LibraryCo Inc. Financial Statements for the Nine Months Ended September 30, 2008

Report to Convocation
January 29, 2009

Audit Committee

Committee Members
Beth Symes (Chair)
Ab Chahbar (Vice Chair)
Melanie Aitken
Larry Banack
Marshall Crowe
Seymour Epstein
Glen Hainey
Doug Lewis

Purpose of Report: Information

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

COMMITTEE PROCESS

1. The Audit Committee (“the Committee”) met by e-mail to discuss the two information items in December 2008.

FOR INFORMATION
LAWPRO FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED
SEPTEMBER 30, 2008

2. The Audit Committee recommends the combined third quarter financial statements for the Errors & Omissions Insurance Fund and the Lawyers’ Professional Indemnity Company be received by Convocation for information.
3. LAWPRO’s Report to the Audit Committee for the third quarter is attached.

FOR INFORMATION
LIBRARYCO INC. – FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED
SEPTEMBER 30, 2008

4. The Audit Committee recommends the third quarter financial statements for LibraryCo Inc. be received by Convocation for information.
5. The third quarter financial statements for LibraryCo with accompanying management analysis are attached.
Attached to the original Report in Convocation file, copies of:
 - (1) Copy of LAWPRO's Report to the Audit Committee for the nine months ended September 30, 2008.
(pages 3 – 17)
 - (2) Copy of LibraryCo's third quarter financial statements for the nine months ended September 30, 2008.
(pages 22 – 31)

CONVOCATION ROSE AT 1:05 P.M.

Confirmed in Convocation this 26th day of February, 2009.

Treasurer