MINUTES OF CONVOCATION

Friday, 30th April, 1999
9:00 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Angeles, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, Carter, Chahbar, Copeland, Cronk, Crowe, DelZotto, Eberts, Elliott, Epstein, Farquharson, Feinstein, Gottlieb, Harvey, Jarvis, Keenan, Krishna, Lamont, Lawrence, MacKenzie, Marrocco, Millar, Murphy, O'Brien, Ortved, Puccini, Ross, Ruby, Stomp, Swaye, Topp, Wardlaw, Wilson and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

REPORT OF THE ACTING DIRECTOR OF EDUCATION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Acting Director of Education asks leave to report:

B.

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, April 30, 1999:

Shellie Carol Anne Addley	Bar Admission Course
Joseph Alphonse Andre	Bar Admission Course
Robert Aubin	Bar Admission Course
Daniel Nathan Bloch	Bar Admission Course
Tara Mary Bracken	Bar Admission Course
Solange Lucie Brard	Bar Admission Course
Cynthia Carol Brown	Bar Admission Course
Rosa Campione	Bar Admission Course
Elizabeth Tanis French	Bar Admission Course
Patricia Ann King	Bar Admission Course
Mary Patricia Moore	Bar Admission Course
Jeffrey James Nicholson	Bar Admission Course
Samuel Joseph Steinberg	Bar Admission Course
Philip Ren Tsui Jr.	Bar Admission Course
Luigi Vadala	Bar Admission Course
Anita Wing Hsuen Wong	Bar Admission Course
Pauline Yat	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, April 30th, 1999:

Howard David Abrams	Province of Quebec
Mark Edward Austin	Province of Alberta
Carol Elizabeth Boire	Province of British Columbia

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

B.2.1.

Volker-Ulrich Hahn	Germany
Neerja Suri-Kumra	New York Hasris, Beach & Wilcox

B.2.2. Their applications are complete and each have filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 30th day of April, 1999

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

Carried

CALL TO THE BAR

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

Shellie Carol Anne Addley	Bar Admission Course
Joseph Alphonse Andre	Bar Admission Course
Robert Aubin	Bar Admission Course
Daniel Nathan Bloch	Bar Admission Course
Tara Mary Bracken	Bar Admission Course
Solange Lucie Brard	Bar Admission Course
Cynthia Carol Brown	Bar Admission Course
Rosa Campione	Bar Admission Course
Elizabeth Tanis French	Bar Admission Course
Patricia Ann King	Bar Admission Course
Mary Patricia Moore	Bar Admission Course
Jeffrey James Nicholson	Bar Admission Course
Samuel Joseph Steinberg	Bar Admission Course
Philip Ren Tsui Jr.	Bar Admission Course
Luigi Vadala	Bar Admission Course
Anita Wing Hsuen Wong	Bar Admission Course
Pauline Yat	Bar Admission Course
Howard David Abrams	Transfer, Province of Quebec
Mark Edward Austin	Transfer, Province of Alberta
Carol Elizabeth Boire	Transfer, Province of British Columbia

REPORT TO BE TAKEN AS READ

DRAFT MINUTES OF CONVOCATION

It was moved by Mr. DelZotto, seconded by Mr. Swaye that the Draft Convocation Minutes for February 15th, 18th, 25th and 26th and March 25th and 26th, 1999 be adopted.

Carried

(See Draft Minutes in Convocation file)

MOTIONS - APPOINTMENTS

It was moved by Mr. DelZotto, seconded by Mr. Swaye that Eleanore Cronk be appointed as the Summary Suspension Bencher pursuant to section 46 and section 47 of the Law Society Act.

Carried

It was moved by Mr. DelZotto, seconded by Mr. Swaye that the following individuals be approved as stand-by scrutineers in the event that any of the originally appointed scrutineers for the 1999 Bencher Election are unable to officiate: Katherine Corrick, Sophia Sperdakos, Jim Varro, Elliot Spears, Ian Lebane, Stephen Traviss, Felecia Smith and Susan Carlyle.

Carried

TREASURER'S REMARKS

The Treasurer advised Convocation that there was no substance to the claim made in the April 9th issue of Frank magazine alleging that the Law Society's Chief Executive Officer, Mr. John Saso contracted the production of a $200,000 web site from Integrated Communications and Entertainment Inc., a company with which his daughter was employed.

The Treasurer stated that he was satisfied that the matter was handled in a fair, appropriate and reasonable manner.

REPORT OF THE TECHNOLOGY COMMITTEE

Ms. Elliott presented the Report of the Technology Committee and described the concept of the Lawyers' Workbench and what services would be available to assist the profession through the use of technology.

Mr. Malcolm Heins, Director of the Lawyers Professional Indemnity Company and Mr. DelZotto presented the proposed Workbench business arrangement with Taranet.

Report to Convocation
April 29, 1999

REPORT OF THE TECHNOLOGY COMMITTEE

Purpose of Report: Decision

APRIL 1999 REPORT ON LAWYERS' WORKBENCH

TECHNOLOGY COMMITTEE

Chair - Neil Finkelstein

Benchers

Elvio L. DelZotto
Eleanore A. Cronk

LPIC

Malcolm L. Heins
Michelle L. M. Strom
Ross W. Murray

LSUC

John Saso
Gord Lalonde

Background

In February of 1998 Convocation discussed the concept of a "Lawyers' Workbench" (Workbench) to provide the profession with significant opportunities to improve its productivity and professionalism, while improving its service to the public through leveraging the cost of technology and information development across the profession. Workbench also presented the profession with the opportunity to set standards for practice and dictate content suitable to the practice of law in the rapidly emerging technology initiatives facing the profession.

Convocation authorized a market assessment and the results of that assessment were presented in June of 1998. Briefly, of the approximately 400 members of the profession who participated in the market research reaction to the concept of Workbench was quite favourable.

At the time of the June 1998 Convocation, your Committee asked for authority to enter into further discussions and investigations with respect to the Workbench proposal. At that time the concept was to promote the development of the Workbench by a separate company, to be owned 23.3% by LPIC, 10% by the Law Society, and 33.3% by Teranet. The remaining 33.3% of the company was to be owned by a fourth partner to be determined. It was proposed that all the partners to Workbench would proceed on the basis that Workbench would operate independently, its content and operating systems would be "best of breed" and tailored to meet lawyers' needs. Each partner would make appropriate commitments to use workbench exclusively.

Convocation instructed the Technology Committee to investigate the proposal further and return with a business plan, corporate structure and shareholders agreement. The Committee was provided with a budget for legal services to assist it in negotiating the shareholder and legal agreements.

Following the June, 1998 Convocation (which was held in camera) various articles appeared in legal publications talking about the Workbench, the concept of it, and mentioning various figures, expenses and negotiations which were either not happening or were exaggerated. The inaccuracy of various stories and commentaries about Workbench has distorted the original concept and caused an unnecessary amount of anxiety in the profession and among Benchers. Your Committee wishes to make a clear statement here of the current status of discussions concerning Workbench and the possible roles of LSUC, LPIC and the CBAO with respect to Workbench.

What is Lawyers Workbench?

Simply put, the Workbench is intended to be the lawyers' entry point to the world of electronic information, services and commerce. It is a portal. In its conception and design Workbench should assist and promote changes in lawyers' practices and procedures which are increasingly being required by the use of technology; whether by clients, government, the Courts or professional service competitors. Workbench is intended to be a proactive response to technology that is in all likelihood going to have a profound impact on the practice of law.

As currently envisioned, Workbench will proceed entirely as a private venture, entirely funded by Teranet, with a possible equity and board of directors participation by the Law Society, LPIC and the CBAO, should they choose to accept it.

> Most importantly, given the misinformation that has arisen, it is noted that Workbench will not require or involve any financial investment by either the Law Society or LPIC (or CBAO) and, it will not be mandatory for lawyers to use.

Importantly, the Law Society, LPIC an the CBAO would retain the right to develop and own the content and services they wish to provide and deliver through the Workbench. This is significant because it will mean that internal plans and strategies involving the use of information and computer technology by each organization will be impacted minimally. The ability for lawyers to interact with their organizations in traditional ways and means would be preserved.

Your Committee is pleased to report it has obtained commitments that Workbench will:

- Use open, internet-enabled technology
- Provide an opportunity to Ontario lawyers to have an active role in the design and selection of services to be supplied
- Commit to current "best of breed" technology
- Be competitively priced and optional

How is Workbench E-Commerce different than a Web Site?

Simply putting up a web site or series of web sites is no longer a challenge nor is it the future of e-commerce. While Workbench will provide access to various websites, it is much more than that - it is an e-commerce engine for the legal profession that provides a seamless technology integrating the various applications with which users must cope. This is not easy to achieve and requires sophisticated remote access and e-commerce features.

One of the problems facing the profession is that the number of suppliers of online and electronic legal products is proliferating. Each one requires a password or logon procedure; each one sends a separate invoice and requires different tracking mechanisms. Each one has different levels of security. Some are located on the Internet, others run their own private network for security purposes. The challenge of true e-commerce, as provided through Workbench, is to provide:

- single login to all applications
- single security credential recognized by all applications
- single desktop and administration system
- single point for financial management and billing
- integrated applications and content
- seamless, comprehensive technology packages

The idea is to allow lawyers to enter and navigate the entire panoply of electronic products, via the Internet or a private network, using a seamless interfact, one set of credentials and one billing mechanism while preserving to the individual suppliers control over their own systems and products.

To accomplish these objectives requires a desktop presence, a full-featured data utility, an account management, fee collection and disbursement system and network, systems and database management capabilities. Net work connectivity and management, technical and business operations, customer support and business partner accounting through project management and royalty distribution are all specialized services. Running a help desk, providing software support and supporting third party suppliers are also specialized services.

While some of these services can be acquired over the Internet through some web sites, the building and delivery of the management of the technical infrastructure on which the web sites reside and through which they are accessed is a separate part of the e=commerce solution that requires special skills that are technically complex and not generally available. Teranet possesses and is already delivering to lawyers all these services and skills.

Why Teranet?

During the preparation of the Workbench business case and discussions with Teranet as to the involvement of the Law Society and LPIC, the views as to the best roles to be played by each participant has evolved and sharpened. The expected participation by each party, their roles and responsibilities has also been clarified. What is clear is that the likelihood of success and the maximum impact of Workbench can best be achieved by all the parities co-operating and pooling their content and services.

Teranet is already a substantial player in the e-commerce business, particularly as it relates to lawyers; the Law Society is the governing body and regulatory authority over the legal profession; LPIC is the professional malpractice insurer; the CBAO is the professional, voluntary membership organization supporting the profession so it may render better service to its members and the public. Each organization has a particular aptitude, a range of member service needs and a general desire to provide information.

However, the only truly commercial enterprise of the organizations is Teranet. It has an existing, fully operational province-wide network and online service reaching lawyers. It already operates under a variety of partnerships based on risk/reward models and is organized to engage in joint venture agreements with others as part of its core business. For its own strategic reasons Teranet sees Workbench as important and is prepared to assume the financial risk of its creation and promotion.

As already indicated Teranet is already very involved with the legal profession in Ontario and will continue to deliver services to the profession. Presently, Teranet:

- provides services used by over 10,000 Ontario lawyers
- owns and operates POLARIS with perpetual right of access to the database;
- owns and operates Teraview gateway and related e-commerce software;
- owns and operates Writs of Execution systems with 50 year right of access to the database;
- is contracted to provide access to the Ministry of Consumer and Commercial Relations "Ontario Business Connects" databases, providing access for Business Names registration, Workplace Safety and Insurance Board registration, Provincial Sales Tax Registration and Employer Health Tax registration;
- is partnered with Cyberbahn who delivers online access to ONBIS Companies Branch records;
- is part of a consortium (SHL, DMR, KPMG, Teranet) that is designing and building the integrated Justice system for the Ontario government;
- has international experience, including projects in the Czech Republic, Puerto Rico, Lebanon, and the U.K.;
- has extensive experience partnering with lawyers and government; and
- is a partner with LPIC for the delivery of TitlePLUS.

As to Teranet's financial stability and expected longevity in the market place. It was incorporated in 1991 as a public/private partnership with the Ontario government. It won the first ever award for excellence presented by The Canadian Council for Public/Private Partnerships and has been directly responsible for creating 1,074 jobs. Currently, Teranet's profile is:

- over 750 employees;
- processed over 73 million online transactions since 1991;
- handled more than $5 million through its gateway in 1998;
- number of customers quadrupled in 1998 and gateway revenue tripled over the previous year.

Finally, Teranet's existing long term contracts to automate the land records and provide writs of execution access provide a secure revenue stream into the future. Of the parties with whom discussions have been held it has been the one most prepared to come to the table with concrete proposals and is the most dependant on the success of this venture and a positive relationship with the legal profession in Ontario.

The Proposed Workbench Business Arrangement

As a private commercial provider of services to the legal profession in Ontario, Teranet is prepared to shoulder the cost of implementing and delivering the Workbench as it is now conceived. No other party will be asked to make a financial investment in the creation of Workbench, other than for creating their own content and services for delivery over the Workbench.

Teranet agrees to build and operate at its expense Workbench and to provide the legal profession with significant, non-risk, non-mandatory and non-exclusive access plus a profit position without any financial investment or obligation being required through the following arrangement:

- An independent 8 person board of directors will oversee content, services and operations
- 4 directors will be appointed by Teranet and one by each of LPIC, LSUC and CBAO if they participate in the equity position; as will 1 independent director mutually agreed upon will be appointed to the Board
- LSUC/LPIC/CBAO will each be offered a 5% equity position in the holding company that will wholly own the Workbench operating company
- In return for the board representation and equity interest, LSUC, LPIC and CBAO would agree to use the Workbench portal as their preferred, but not only method of interaction and communication with their members.

- LSUC, LPIC and CBAO would each have full control over and ownership of any content and service they deliver through the Workbench and would retain control and ownership of their own web services
- The offer is being made to each of LSUC, LPIC and CBAO severally, not jointly
- The portal will support the technology platforms most commonly used by Ontario law firms
- If the operating company fails to meet its commitments, LSUC, LPIC or CBAO would be free to withdraw from participation

What is likely to be available through Workbench?

Your Committee is advised there are various kinds of services that will be delivered through the Workbench portal and made available to members of the bar. Essentially, the provision of services would fall into four broadly defined categories - utility services, network services, web hosting and e-commerce retail services:

Utility Services

- Title searching
- Land registration
- Execution search
- Execution filing
- Ontario Business Connects transactions
- Title insurance (TitlePLUS)

Website Hosting:

- LSUC
- LPIC
- CBAO

Network Services

- E-mail services
- Secure document delivery
- Management of distribution services
- Security credentials and access authorizations
- Customer administration and support
- Technical support and systems maintenance
- Accounting and billing services

E-Commerce Retail Services

- Conferencing and newsgroups
- E-commerce retail services
- Research and reference databases
- Software and hardware purchasing
- Electronic Funds Transfer and electronic cash

All of the services would be provided on a commercial basis, not mandatory, not exclusive and not interdependent. There would be no overlap between the utility/network services and the commercial business so that one is not required to obtain the other and they may be accessed either separately or together.

When will Workbench be Available?

The operating company and holding companies for Workbench should be set up as soon as possible, being the Spring of 1999. Teranet has already committed time, services and money to build the portal and begin the project.

Teranet is expecting to deliver to the operating company of Workbench a core produce in the Fall of 1999. Thereafter, it will continue to add services, based on recommendations and approvals by the Board of Directors, as quickly as possible. Other participants will control their own timetables and determine jointly with Workbench the best date to add services for their members.

Feedback from users (market demand) will determine the basic order in which services are made available and the method by which they are accessed such as the Internet or a secure private gateway. Technological advances will also determine the speed with which more content is added once the portal is established.

Conclusion and Recommendation

The proposal to proceed with Workbench does not require the participation of any of LSUC, LPIC or CBAO. However, the opportunity to obtain access to and influence over the services provided through this portal to lawyers is one which your Committee feels cannot be ignored. The other option is that each of LSUC, LPIC and CBAO could try to provide similar services directly to their members and find an e-commerce vendor to help with the delivery on fully commercial terms, simply buying the services and having no equity position. Whether any other company working with the legal profession possesses the full range of service competencies is doubtful.

With the financial and technology commitment of Teranet behind the venture, there is virtually no risk. If the services supplied are not desirable or are in some way inferior, the venture will fail. There is no obligation on any lawyer to participate. The profession is however being offered significant input into the control of the content and services delivered.

Your Committee believes that current proposal for Workbench provides the best opportunity for the greatest input by the profession for the least risk. But for its profile, prior conceptualization, and equity participation this matter perhaps need not be before Convocation as it would be a simple purchasing decision by the CEOs of LSUC and LPIC in carrying out their duties to find more efficient ways of dealing with the information needs of members. However, this is a project that will likely have a significant impact on lawyers in Ontario and therefore deserves the involvement of Convocation.

Teranet has now made a firm proposal to the Law Society, LPIC and CBAO to proceed with the Workbench project on the terms outlined in this report. Teranet's letter of April 27, 1999 confirms their offer to proceed with this project on the basis of the principles outlined herein.

Your Committee requests the authority to proceed and complete the negotiations to finalize the contractual arrangements so that the Law Society can participate in the proposal by Teranet.

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

(a) Copy of a letter from Charles De Peri, Vice President, Marketing and Business Development, Teranet to Mr. Malcolm Heins dated April 27, 1999 re: Lawyers Workbench.

A debate followed.

Convocation took a recess at 11:15 a.m. and continued with the debate on the Lawyers' Workbench.

It was moved by Mr. Carey, seconded by Ms. Puccini that any future contract or M.O.U. on the Lawyers' Workbench be finalized by Convocation in camera.

Lost

It was moved by Mr. DelZotto, seconded by Ms. Cronk that the Technology Committee be given the authority to proceed and complete the negotiations to finalize the contractual arrangements so that the Law Society can participate in the proposal by Teranet.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Angeles	Abstain
Arnup	Abstain
Backhouse	For
Bobesich	Against
Carey	Against
Carpenter-Gunn	For
Chahbar	For
Copeland	For
Cronk	For
Crowe	Against
DelZotto	For
Eberts	For
Elliott	Abstain
Epstein	For
Feinstein	For

Gottlieb	For
Harvey	Abstain
Keenan	For
Krishna	For
Mr. MacKenzie	For
Marrocco	For
Millar	For
Murphy	For
O'Brien	For
Puccini	For
Ross	For
Stomp	For
Swaye	For
Topp	For
Wilson	For
Wright	For

Vote 26 - 3, 4 Abstentions

It was moved by Mr. Wright, but failed for want of a seconder that in recognition of the contribution of the Law Society to the proposed new venture including without limitation:

a) the services the Society was prepared to supply to the membership through its website such as C.L.E.;

b) the ongoing input to the venture by the members of the Society whether as to the creation of the content of C.L.E. programs or otherwise; and

c) the Society's obligations to ensure that this venture ultimately serves the public interest;

the Technology Committee be directed to negotiate the equity position in the proposed venture to 50% to be shared by the Society, LPIC and CBA-O.

It was moved by Ms. Eberts, seconded by Mr. Wilson that the Law Society's experience with Workbench be monitored by a technological planning work group composed of Benchers and staff according to a set of expectations that will be developed by that work group and approved by Convocation and that regular reports be made to Convocation on how the participation in the Workbench satisfies the Law Society's expectations and the interest of those it serves and that the technology work group be asked to report on whether the Law Society should continue with its participation in the Workbench or whether it should be joined with or replaced by other technological initiatives.

Carried

The Technology Committee will report back to Convocation at an appropriate time.

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Mr. Krishna presented the Report of the Finance and Audit Committee for Convocation's approval.

Finance and Audit Committee
April 15, 1999

Report to Convocation

Purpose of Report: Decision Making

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on April 15, 1999. In attendance were V.Krishna (Chair), A.Chahbar, T.Cole, E.DelZotto, A.Feinstein, P.Furlong, T.Stomp, G.Swaye, B.Wright. Staff members in attendance were J.Saso, W.Tysall, F.Grady, R.White, R.Tinsley and G.Lalonde. Also in attendance were H.Willer, S.Bird and S.Pescador of Arthur Andersen LLP.

1. The Committee has two matters that require Convocation's approval:
   - Draft General Fund December 31, 1998 Audited Financial Statements, and
   - Draft Lawyers Fund for Client Compensation December 31, 1998 Audited Financial Statements

2. The General Fund and the Lawyers Fund for Client Compensation December 31, 1998 Draft Audited Financial Statements were presented to the Committee by the Society's Chief Financial Officer, W.Tysall, along with a financial highlights memorandum for both funds.

3. The Finance and Audit Committee recommends the approval of the December 31, 1998 Draft Audited Financial Statements for the General Fund

4. The Finance and Audit Committee recommends the approval of the December 31, 1998 Draft Audited Financial Statements for the Lawyers Fund for Client Compensation

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

   (a) Copy of a memorandum from Ms. Wendy Tysall to the Chair and Members of the Finance and Audit Committee dated April 14, 1999 re: Audited General Fund Financial Statement Highlights for the Year Ended December 31, 1998. (Pages 4 - 27)

It was moved by Mr. Krishna, seconded by Mr. DelZotto that the December 31st, 1998 Draft Audited Financial Statements for the General Fund be approved.

Carried

It was moved by Mr. Krishna, seconded by Mr. DelZotto that the December 31st, 1998 Draft Audited Financial Statements for the Lawyers Fund for Client Compensation be approved.

Carried

THE REPORT WAS ADOPTED

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IN PUBLIC

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TASK FORCE ON LIMITED LIABILITY PARTNERSHIPS IMPLEMENTATION

Mr. Krishna presented the Report of the Task Force for Convocation's approval.

Report to Convocation
April 30, 1999

Task Force on Limited Liability Partnerships Implementation

Purpose of Report: Decision

TABLE OF CONTENTS

Introduction and Background

1. On January 22, 1999 Convocation struck a Task Force to deal with the implementation of limited liability partnerships ("LLPs) for the practice of law. Amendments to the *Partnerships Act* in force in July 1998 permit professions to practice in the form of limited liability partnerships if certain requirements are met.

2. The Task Force considered the features of the governance scheme that should apply to lawyers practising law through LLPs and has drafted a by-law for Convocation's review. The Task Force proposes that the Law Society adopt the by-law to permit lawyers to practice as LLPs. The text of the by-law appears at Appendix 1.

3. The Task Force was chaired by Vern Krishna, Q.C. and its members were benchers Elvio DelZotto, Neil Finkelstein, Ron Manes, non-bencher lawyers Daphne MacKenzie, Barbara Wise, Donald Wright, and LPIC president Malcolm Heins. Jim Varro, Law Society staff, served as secretary. Richard Tinsley, the Society's Secretary, also participated.

What is an LLP?

4. The following text is taken from the explanatory notes to the *Partnerships Statute Law Amendment Act, 1998*, (attached as Appendix 2) which amended the *Partnerships Act* to permit LLPs for professions in Ontario:

> In a general partnership, the partners are liability for all of the partnership's debts and liabilities. By contrast, the partners in a limited liability partnership are not personally liable for the negligent acts of another partner or an employee who is directly supervised by another partner. However, the partnership continues to be liable for the negligence of its partners and employees.
>
> A limited liability partnership that is not an extra-provincial limited liability partnership is formed when the partners sign an agreement designating the partnership as such. An existing partnership may convert into a limited liability partnership that is not an extra-provincial limited liability partnership if all partners sign an amendment to the partnership agreement.

Overview of the Work of the Task Force

5. The Task Force met on two occasions, and reviewed relevant legislation, some background material which defined, generically, an LLP, and explanatory material and governing provisions prepared by Institute of Chartered Accountants of Ontario ("ICAO"), which was instrumental seeing the amendments to the *Partnerships Act* realized.

6. The Task Force also published in the *Ontario Reports* a call for input to the study (a copy of the notice appears at Appendix 3), which invited profession's comments or suggestions on a governance scheme for LLPs. While no specific comments were received, a number of lawyers contacted the Law Society for information on the statutory amendments and general questions about the work of the Task Force.

The Requirements

7. As noted above, the *Partnerships Act* establishes the requirements for professions wishing to practice as LLPs. That *Act* permits professions to practice as a LLP if the following requirements are met:

- the act governing the profession must expressly permit practice as an LLP;
- the partnership must register its firm name under the *Business Names Act*;
- the professional governing body must establish minimum liability insurance requirements for the LLP.

8. The *Law Society Act* as amended by the *Law Society Amendment Act, 1998* provides that lawyers may practice as limited liability partnerships pursuant to the *Partnerships Act*.[1] Thus, the first requirement indicated above has been fulfilled.

9. The second requirement, for registration of the business name of the firm as "LLP", is a statutory provision with which lawyers must comply and thus, in the Task Force's view, is not a requirement that must be codified by the Law Society in its governance scheme for LLPs.[2]

10. Third, the governing body of the profession must establish a requirement for a minimum level of insurance for LLPs. As this must be enacted by the Law Society and because the *Law Society Act* provides for by-law making authority with respect to LLPs, and specifically mentions the insurance requirement[3], this became the primary focus of the Task Force's work. The Task Force also considered whether it would be appropriate to ensure that lawyers disclose to clients of the LLP the nature of the limitation on liability of the partners.

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[1]Section 61 of the *Law Society Act* states: "Subject to the by-laws, two or more members may form a limited liability partnership or continue a partnership as a limited liability partnership within the meaning of the *Partnerships Act* for the purpose of practising law."

[2]The Task Force on Review of the Rules of Professional Conduct is reporting to Convocation on April 29, 1999 and has been apprised of the implementation of LLPs. The proposed redraft of the Rules contains amendments to the letterhead and firm name provisions in the Rules, to require LLPs to reflect this designation in their firm names, letterhead and other identifying signs.

[3]Paragraph 62(0.1)28 states: "[Convocation may make by-laws] governing the practice of law by limited liability partnerships, including requiring those partnerships to maintain a minimum amount of liability insurance for the purposes of clause 44.2(b) of the *Partnerships Act*, requiring the licensing of those partnerships, governing the issuance, renewal, suspension and revocation of licences and governing the terms and conditions that may be imposed on licences."

11. After carefully reviewing the legislative requirements and what, apart from those requirements, must appear in a by-law enacted by the Society, the Task Force concluded that the two matters above were the extent of what must appear in a by-law. As stated above, the enabling section in the *Law Society Act* incorporates the reference to the *Partnerships Act* and all its requirements. The by-law presented today essentially completes the governance scheme with two brief but important sections.

Text of the Proposed By-Law

12. The by-law is comprised of two parts. The first deals with insurance, as follows:

PROFESSIONAL LIABILITY INSURANCE

Insurance requirements

1. A limited liability partnership shall maintain professional liability insurance coverage for each partner in accordance with By-Law 16.

This section of the by-law establishes the minimum insurance required by a law firm practising as an LLP to be the coverage now maintained individually by each member who is a partner or associate of the firm or employed by the firm. This is currently in the amount of $1,000,000 per member. The Task Force determined that this would be sufficient coverage as there was no compelling policy reason to establish the minimum insurance requirement as anything other than the level of insurance presently carried by individual members. The Task Force noted the insurance by-law of the ICAO, which imposes coverage of the lesser of $250,000 for each member who is a partner, proprietor or employee and $1,000,000.

The Task Force decided that the requirements in s. 44.2(b) of the *Partnerships Act* would be met by requiring the LLP to maintain the coverage that members who are partners maintain pursuant to By-Law 16 on Professional Liability Levies (attached at Appendix 4). Section 1 of the draft by-law focuses on the fact that the partners are essentially the partnership and that it is the partnership's obligation, in the language of the *Partnerships Act*, to make sure that the insurance at the member level is maintained for each partner to satisfy the requirement. The reference to By-Law 16, which requires all members practising law to pay the insurance levy for professional liability coverage, effectively links the scheme to the level of insurance currently carried by members individually. This provision, notwithstanding that for LLPs it is the partnership that is required to maintain the coverage for the partners, in no way operates to derogate from the obligation of members individually to comply with the requirements of By-Law 16 to pay the insurance levy.

13. The next section of the by-law deals with disclosure requirements, as follows:

DISCLOSURE

Partnership continued as limited liability partnership

2. When a partnership is continued as a limited liability partnership, as soon as is reasonably practical after the continuance of the partnership as a limited liability partnership, the limited liability partnership shall disclose to each person who was a client immediately before the continuance and who remains a client after the continuance the liability of the partners of the limited liability partnership under the *Partnerships Act*.

While disclosure of the fact that a firm is a LLP and the effect of the limitation of partners' liability is not a legislative requirement that must be enacted by a profession, the Task Force believes it is appropriate as a matter of professional responsibility that at a minimum, clients be told of the nature of the limited liability of the partners resulting from the new practice structure. The Task Force recognized that although *public* notice is effectively accomplished through the registration as an LLP under the *Business Names Act*, clients, within the general public, maintain unique relationships with law firms. Accordingly the Task Force felt that clients at the time a firm continues as a LLP should be afforded disclosure of this information.

The form of disclosure was discussed, and in this respect, the texts of suggested letters which the ICAO prepared for its members disclosing certain information about a firm's status as a LLP and a letter of a law firm practising in a jurisdiction permitting LLPs were reviewed. The Task Force discussed whether it would be appropriate for the Law Society to prepare a standard form precedent of such a letter for use by law firms. It decided that while guidance in this respect would be given to firms, the firms themselves should design their own communications and customize them as they see fit for their particular clients. The Task Force, however, prepared a sample letter, attached at Appendix 5, which, if Convocation so approves, may be considered by firms as an example a communication on disclosure.

DECISION FOR CONVOCATION

14. Convocation is requested to:

a. Approve the by-law as drafted or amended as Convocation sees fit, in accordance with the motion provided in the Convocation Material under separate cover;
b. Endorse the nature of the disclosure information as drafted by the Task Force.

APPENDIX 1

BY-LAW 26

LIMITED LIABILITY PARTNERSHIPS

PROFESSIONAL LIABILITY INSURANCE

Insurance requirements

1. A limited liability partnership shall maintain professional liability insurance coverage for each partner in accordance with By-Law 16.

DISCLOSURE

Partnership continued as limited liability partnership

2. When a partnership is continued as a limited liability partnership, as soon as is reasonably practical after the continuance of the partnership as a limited liability partnership, the limited liability partnership shall disclose to each person who was a client immediately before the continuance and who remains a client after the continuance the liability of the partners of the limited liability partnership under the *Partnerships Act*.

APPENDIX 2

PARTNERSHIPS STATUTE LAW AMENDMENT ACT, 1998

APPENDIX 3

Notice to the Profession
TASK FORCE ON LIMITED LIABILITY PARTNERSHIPS IMPLEMENTATION
Call for Input

Amendments to the *Law Society Act* effective February 1, 1999 provide that lawyers may form limited liability partnerships ("LLPs") for the practice of law, in accordance with the requirements of the *Partnerships Act,* as amended.

Convocation has established an implementation task force, chaired by Vern Krishna Q.C., which will consider all aspects of the governance of LLPs. One of its first responsibilities will be to draft for Convocation's adoption a by-law setting out requirements for firms practising law as an LLP.

As this is a significant development for the profession, the task force is inviting submissions from members of the profession on issues they feel should be addressed in formulating provisions for the governance of LLPs.

Written submissions should be delivered to the Law Society no later than April 15, 1999 and may be faxed to the Law Society at (416) 947-7623, e-mailed to jvarro@lsuc.on.ca or sent to the following address:

Task Force on Limited Liability Partnerships Implementation
Policy Secretariat
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario M5H 2N6

For more information about the study, please contact Jim Varro, secretary to the task force, at the Law Society at (416)947-3434.

APPENDIX 4

BY-LAW 16

PROFESSIONAL LIABILITY LEVIES

APPENDIX 5

SAMPLE DISCLOSURE LETTER FOR LLPS

Dear Client:

Effective (date), the firm of ---- has become a limited liability partnership, as permitted by amendments enacted in 1998 to the *Partnerships Act* and the *Law Society Act*. The firm is now know as ----- LLP.

As the name suggests, the partnership carries on the practice of law with a degree of limited liability. The partners in a limited liability partnership are not personally liable for the negligent acts of another partner or an employee who is directly supervised by another partner. Each partner is personally liable for his or her own actions and for the actions of those he or she directly supervises and controls. The partnership continues to be liable for the negligence of its partners, associates and employees, and accordingly there is no reduction or limitation on the liability of the partnership. All of the firm's assets remain at risk.

Liability insurance protection for the members of the partnership continues, and minimum insurance requirements, as required by the *Partnerships Act*, have been established for LLPs by the Law Society. The Law Society has determined that the liability insurance coverage for an LLP is that maintained individually by the partners.

The limitation on liability is the only change to the partnership resulting from the legislative amendments and this change will not affect our firm's relationship with you as a client. We would be happy to answer any questions you have about our limited liability partnership.

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

(a) Copy of Appendix 2 - Partnerships Statute Law Amendment Act, 1999. (Pages 8 - 15)

(b) Copy of Appendix 4 - By-Law 16 re: Professional Liability Levies. (Pages 17 - 21)

It was moved by Mr. Krishna, seconded by Ms. Cronk that the Report and By-Law 26 on Limited Liability Partnerships be adopted.

Carried

By-Law 26

Limited Liability Partnerships

PROFESSIONAL LIABILITY INSURANCE

Insurance Requirements

1. A limited liability partnership shall maintain professional liability insurance coverage for each partner in accordance with By-Law 16.

DISCLOSURE

Partnership continued as limited liability partnership

2. When a partnership is continued as a limited liability partnership, as soon as is reasonably practical after the continuance of the partnership as a limited liability partnership, the limited liability partnership shall disclose to each person who was a client immediately before the continuance and who remains a client after the continuance the liability of the partners of the limited liability partnership under the Partnerships Act.

Mr. Krishna accepted an amendment by Messrs. DelZotto and Crowe that a notice in the local newspaper in the area in which a law firm operates is deemed sufficient notice for the purposes of the By-Law.

It was moved by Mr. Wilson, seconded by Mr. DelZotto that the membership be informed as soon as possible regarding the decision of Convocation relating to LLP's and that this information be augmented with as informed advice as may reasonably be obtained regarding any income tax consequences which might be reviewed before altering present partnerships arrangements.

Withdrawn

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Issues arising from Convocation's approval of the new regulatory scheme

Ms. Cronk presented the item on the issues relating to the new procedures following the approval of the new regulatory scheme.

Professional Regulation Committee
April 15, 1999

Report to Convocation

Purpose of Report: Decision and Information

TABLE OF CONTENTS

II. INFORMATION

TERMS OF REFERENCE/COMMITTEE PROCESS

8. The Professional Regulation Committee ("the Committee") met on April 15, 1999. In attendance were:

Eleanore Cronk (Chair)

Gavin MacKenzie (Vice-Chairs)
Niels Ortved

Paul Copeland
Marshall Crowe
Gary Gottlieb
Laura Legge

Staff: Jonathan Batty, Janet Brooks, Lesley Cameron, Scott Kerr, Michael Seto, Felecia Smith, Richard Tinsley, Jim Varro, and Jim Yakimovich.

9. This report contains the Committee's:

- policy reports on:
  - issues arising from Convocation's approval of the new regulatory scheme effective February 1, 1999;
  - *in camera* hearing issues; and
- information reports on:
  - issues arising from the Howie Report on outside counsel's accounts; and
  - review of issues relating to the Secretary's authority to compel a member to submit audited financial records (section 49.2 of the *Law Society Act*).

I. POLICY

ISSUE ARISING FROM CONVOCATION'S APPROVAL OF THE NEW REGULATORY SCHEME UNDER THE *LAW SOCIETY ACT*

A. INTRODUCTION AND BACKGROUND

3. At the January 28, 1999 Convocation, during the discussion which led to the adoption of certain by-laws and the rules of practice and procedure, a number of issues relating to the new procedures were identified for the Committee's review.

4. A working group of the Committee[1] was assigned to review the issues, which were identified as the following:

- The language of the notice to members whose suspensions pursuant to a summary order continue for 12 months, and who are subject to automatic disbarment;
- Consideration of guidelines on when the discretion to authorize automatic suspensions and disbarments pursuant to summary orders will be exercised;
- Whether the use of the word "disbarment" should be used when this occurs pursuant to a summary order;
- As a broadening of the issue immediately above, consideration of what penalties should be published; and
- Consideration of the appointment of an ombudsman to assist lawyers involved in the Law Society's regulatory process.

5. The first issue with respect to the notice was dealt with at the March 26, 1999 Convocation. At the Committee's April 15 meeting, the working group reported on the balance of the issues, which the Committee reviewed. The Committee's proposals with respect to these matters are set out below.

B. DISCUSSION OF PROPOSALS

(i) Consideration of Guidelines on When The Discretion to Authorize Automatic Suspensions and Disbarments Pursuant to Summary Orders Will Be Exercised

6. The Committee considered the opinion of discipline counsel Jonathan Batty on guidelines for the issuing of summary orders. The question that the memorandum addressed, and which the Committee felt was central to the issue of guidelines, was whether Convocation would breach the rule against fettering by articulating guidelines for the making of summary orders.

7. In summary, Mr. Batty's opinion was that should Convocation wish to articulate and approve guidelines in the making of summary orders, it would be appropriate for the policy to be directed at staff rather than the summary disposition bencher alone.

8. The opinion reflected the following positions and conclusions:

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[1] Gary Gottlieb and Paul Copeland (and staff).

- A tribunal fetters itself when it adopts an inflexible policy in its decision making;
- As long as the guidelines do not fetter the statutory discretion of the summary disposition bencher, such guidelines would likely be valid;
- Convocation, as a regulator, could adopt administrative guidelines with respect to when a summary order was sought. Such guidelines would be directed to staff, rather than the summary disposition bencher; when regulatory staff submit a member's name to a summary disposition bencher, they will only be recommending that a summary order be issued against the member. The decision whether or not to forward that name is at the *administrative* discretion of staff, thus Convocation could provide guidelines to staff as to when and how such names are to be put before the summary disposition bencher;
- It would also be legitimate for the summary disposition bencher to take into consideration the guidelines imposed on regulatory staff in this area; the jurisprudence in this area of law defends the right of a statutory decision maker to take into account the administrative policies adopted by a regulating body.

9. It is the view of the Committee that staff guidelines would be appropriate. The working group suggested, and the Committee agreed, that the first guideline should reflect consideration of financial or related difficulties that members may be encountering when the issue relates to the non-payment of a Law Society fee or levy.

10. The Committee determined that the following draft prepared by the working group should be proposed to Convocation for adoption:

> Revocation of membership should not be sought by staff for failure to pay fees or levies where a member provides satisfactory information of financial or other serious hardship.[2]

11. The subject of the second guideline discussed by the Committee related to the material that would be before the summary disposition bencher when he or she is reviewing a matter with respect to making a summary revocation order. The specific question was whether the member's representations may be placed before the summary disposition bencher, or whether the member should have a right to make oral statements to the bencher.

12. The Committee noted that a hearing is not held for the making of such orders, pursuant to the summary procedure, but that an appeal may be made from an order of the summary disposition bencher, or that a stay could be sought. Because of the legal implications relating to making of representations before the summary disposition bencher in the context of a procedure that is summary in nature and is not a hearing, the Committee decided to defer the issue of appearances or representations before the bencher to another meeting, pending legal research on the issue.

13. With respect to representations made by the member to staff respecting a summary revocation order, the Committee agreed that

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[2]The Committee noted, as reflected in the working group's material, that staff intend to send, in total, five notices to members advising of potential revocation of membership, among other things. These notices are two notices to be sent prior to seeking suspension pursuant to sections 46 and 47, the notice of suspension order pursuant to sections 46 and 47 and two notices prior to seeking revocation of membership. The Committee does not propose any guideline with respect to requirements for notice to members prior to seeking revocation of membership.

If the member makes representations to staff, these should be placed before the summary disposition bencher.

(ii) Whether The Term "Disbarment" Should Be Used When This Occurs Pursuant to a Summary Order

14. Section 48 of the *Law Society Act* provides that an order under that section will revoke membership, disbar the member as a barrister and solicitor and strike the member off the roll of solicitors. The explanatory title in the *Act* for section 48 is "Summary revocation".

15. Where membership is terminated pursuant to section 48 of the *Act*, the former member will be required to seek readmission. In appropriate cases, that proceeding could be a summary one by way of, for example, a written hearing.

16. The Committee proposes that the term "revocation of membership" be used to refer to a summary order made under section 48 of the *Act*.

(iii) Consideration of What Penalties Should Be Published

17. Currently the Society publishes a list of those members who are administratively suspended for non-payment of a fee or levy. The list appears in the *Ontario Lawyers' Gazette* under the title "Membership Suspensions and Reinstatements." The list commences with the following note:

> "Members whose names appear below have been suspended for administrative reasons (non-payment of annual fees, errors and omissions insurance levies, or late filing); or have been reinstated after previously being suspended...."

18. Members are then listed under a sub-title for either suspension or reinstatement, indicating the reason for the suspension.

19. The Committee agreed with the working group that it is important for the Law Society to give notice to the profession of those members who are no longer entitled to practice.

20. Accordingly, the Committee proposes that suspensions and revocations of membership be published in a fashion analogous to the current practice, that is, in the *Ontario Lawyers Gazette*, as set out above, with a preamble that indicates that the rights and privileges of the members whose names appear in the list have been suspended for administrative reasons, listing the reasons for suspension, or the membership of the members on the list has been revoked for administrative reasons, and listing the reasons for revocation of membership.

(iv) Consideration of the Appointment of an Ombudsman to Assist Lawyers Involved in the Law Society's Regulatory Process

21. The Committee noted the working group's consideration of the purpose of an ombudsman at the Law Society, and once the purpose is defined, the issue of whether the existing structure is adequate to address issues which might be put before such an officer.

22. While there are views that the term "ombudsman" might not be the appropriate term of art for the intended function, and that the term "advisor" may be more accurate, in the Committee's view the second question - whether the existing structure is adequate to address issues which might be put before an advisor - raised issues requiring further review.

23. One of the features of the current process which may affect direction on this issue is the *pro bono* program for duty counsel at hearings. The one year pilot project arranged through the Advocates Society for that program has now been completed, and representatives of the Law Society and the Advocates Society are scheduled to meet on April 20, 1999 to review the program and assess its efficacy. The meeting will address whether expansion of the program or movement to the second phase should be undertaken.

24. Accordingly, the Committee proposes that this issue be deferred pending the April 20, 1999 meeting with the Advocates Society in order to determine the role which it intends to take in the future in providing assistance to members.

Summary

25. The following are the proposals upon which the Committee is seeking Convocation's approval:

c. Guidelines for staff as follows:
   i. Revocation of membership should not be sought by staff for failure to pay fees or levies where a member provides satisfactory information of financial or other serious hardship;
   ii. If the member subject to a summary revocation order makes representations to staff, these should be placed before the summary disposition bencher;

d. The term "revocation of membership" should be used to refer to a summary order made under section 48 of the *Act*;

e. Suspensions and revocations of membership should be published in a fashion analogous to the current practice, that is, in the *Ontario Lawyers Gazette* with a preamble that indicates that the rights and privileges of the members whose names appear in the list have been suspended for administrative reasons, listing the reasons for suspension, or the membership of the members on the list has been revoked for administrative reasons, and listing the reasons for revocation of membership.

C. DECISION FOR CONVOCATION

26. Convocation is requested to approve the above-noted proposals, as stated or as amended as Convocation deems appropriate.

IN CAMERA MATERIAL INTRODUCED AT HEARINGS

A. NATURE OF THE ISSUE

27. A number of months ago, the Committee struck a working group[3] to consider policies with respect to the handling of materials entered into evidence at a hearing held in the absence of the public, that is, an *in camera* hearing.

28. The working group considered the following issues:

a. the practical consequences of a decision to hold all or part of a hearing *in camera*, and specifically, who can access the record of the proceedings and how should the documentary material be handled;

b. Once material is received in the absence of the public, the circumstances, if any, in which it can be used in subsequent proceedings, and, if so, what restrictions should apply;

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[3] The working group is comprised of Niels Ortved, bencher, and Glenn Stuart, staff member.

c. Whether a distinction should be drawn between how matters received in the absence of the public are treated and how matters which are "sealed" are treated;

d. If there is a distinction between *in camera* and sealed materials, whether Convocation or a Discipline Panel, now known as a Hearing Panel, has the jurisdiction to "seal" documents received at a hearing.

29. In addressing these issues, the working group reviewed the minutes of and policies adopted by Convocation over the last fifteen years in relation to holding hearings in the absence of the public, those decisions where Convocation in the last ten years ordered a portion of a record of a proceeding sealed and the relevant jurisprudence with respect to *in camera* hearings and the access to the record of such hearings.

30. The Committee reviewed the material prepared by the working group and is proposing that the policy positions discussed in this report be adopted by Convocation.

31. The Committee in its deliberations decided to defer two matters pending legal research to be conducted by staff. The issues relate to references to and publication respecting Law Society hearings held *in camera* prior to February 1986, and the jurisdiction of the Law Society to "seal" records.

B. BACKGROUND

Pre-February 1, 1999

32. As a general rule, discipline proceedings under the *Law Society Act* are to be heard in public pursuant to section 9 of the *Statutory Powers Procedure Act ("SPPA")*, absent a specific order to the contrary. Pursuant to s. 32 of the *SPPA*, this provision overrode section 33(4) of the *Law Society Act* as it existed prior to February 1, 1999, which directed that hearings be closed to the public. However, until February 27, 1986, the Law Society closed its discipline hearings to the public.[4]

33. A Discipline Committee could make an order under s. 9(1) of the *SPPA* to hold a particular hearing in the absence of the public where it was satisfied that

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

34. The concern that the conduct of a hearing in public, or the public disclosure of the fact that a Complaint has been issued against a solicitor, would be damaging to a solicitor's reputation was the basis for the provision in s. 33(4) of the *Law Society Act* that hearings be closed to the public. This concern, however, does not in itself satisfy the requirement in s. 9(1).

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[4] On February 27, 1986, Convocation adopted a report of the Discipline Policy Committee which relayed a legal opinion provided to the Law Society indicating that hearings should be held in public unless an order was made by the Hearing Panel under s. 9 of the *SPPA*. The report also recommended that Hearing Panels consider making non-publication orders, to have effect until the conclusion of the hearing. This process, briefly implemented, was rejected by the Divisional Court as being outside the statutory jurisdiction of the Law Society in *Canadian Newspapers Company Ltd.. V. Law Society of Upper Canada* [1986] O.J. No. 1384. Ultimately, on February 27, 1987, Convocation directed that hearings would be held in public except where there was an order under s. 9 of the *SPPA*.

35. Extenuating circumstances are required to justify an order under s. 9(1) of the *SPPA* to have all or part of a hearing conducted in the absence of the public. Where certain evidence is received *in camera*, all references to that evidence in the report and decision of the Discipline Committee are considered to also be *in camera*.

Current Process (as of February 1, 1999)

36. Amendments to the *Law Society Act* effective February 1, 1999 authorized the making of rules of practice and procedure. These rules were adopted by Convocation in January 1999, effective February 1, and have paramountcy over the *SPPA*. The rules deal specifically with hearings in the absence of the public and for the most part conform to the requirements of the SPPA - a presumption that hearings will be open to the public except in certain prescribed circumstances.[5]

Context in Which the Issues Are Considered

37. Consequently, there are two categories of proceedings, and decisions rendered in those proceedings, which may have been conducted, in whole or in part, in the absence of the public: first, reports from all hearings prior to February 27, 1986, except those which were expressly conducted in public; and, reports from hearings subsequent to that date where an order under s. 9 of the *SPPA* was made in relation to some part of the hearing.

38. A continuation of the second category of hearings above-noted are those which now occur pursuant to the process contained in the amended *Law Society Act* and the procedures adopted through the *Rules of Practice and Procedure*.

C. DISCUSSION OF ISSUES AND PROPOSALS

Practical Consequences of an *In Camera* Order

39. Two issues arise in relation to the immediate practical consequences of an order to hold a hearing in the absence of the public.

(i) Access by Law Society Staff

40. In most circumstances, Law Society staff are treated as being distinct from "the public" in cases where such a distinction has a significance. For instance, when the Law Society obtains information from a solicitor, the Law Society is considered to be the repository of the solicitor-client privilege. The Law Society is obliged to, and does, treat as confidential any information which it obtains through its investigative powers (pending a public hearing, if any).[6]

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[5] The two exceptions to the *SPPA* are capacity hearings which are presumed to be held in the absence of the public and the authority of Hearing Panels to conduct hearings in the absence of the public where "it is necessary to maintain the confidentiality of a privileged document or communication." Convocation will be considering imminently amendments to the Rules of Practice and Procedure which propose that competence hearings also be held *in camera*.

[6] The law in this regard was set down in *Law Society v. Parry-Jones* [1967] 3 All E.R. 248 (Ch. D.), affirmed [1968] 1 All E.R. 177 (C.A.). Lord Denning, M.R. summarized the principle as follows, at p. 179:

> In my opinion that rule [requiring solicitors to produce their books and records] is a valid rule which overrides any privilege or confidence which otherwise might subsist between solicitor and client. It enables the Law Society for the public good to hold an investigation, even if it involves getting information as to

41. The Committee discussed whether it was advisable to have access to *in camera* material subject to the approval of a specific individual (for example, the Secretary or senior discipline counsel). It was determined that such a process was not warranted, given the obligation of staff to maintain confidentiality and the assumed *bona fides* of staff in accessing material. Concerns were also expressed about creating a cumbersome process that would affect efficiencies within the investigatory and prosecutorial departments.

Proposal 1

42. It is proposed that Law Society staff with a legitimate need to know, for example, discipline counsel and those involved in the investigation or prosecution of a complaint against the solicitor or similar complaints against the solicitor or another solicitor, should be permitted to access the *in camera* proceedings, subject to their obligation to retain in confidence the information thereby obtained.[7]

(ii) Identification of and Access to *In Camera* Material in Record

43. The Committee discussed how materials received *in camera* have been handled by the administrative support staff to the Discipline Committee, and will be handled by the staff supporting the Hearing Panels, and how the *in camera* portions of reports and decisions are identified.

Proposal 2

44. It is proposed that *in camera* materials be retained in the Discipline Committee or Convocation file, or Hearing Panel or Appeal Panel file, as applicable, but segregated in an envelope which would be identified as containing *in camera* materials. This would avoid the possibility of inadvertent disclosure of this material.

Proposal 3

45. It is proposed that the *in camera* material be accessible to persons who were parties to the proceedings (including Law Society staff, subject to the conditions in Proposal 1 above), without the necessity of further order.

46. The rationale for this is that the parties would have had access to the material during the hearing in the absence of the public and, consequently, there is no gain in barring these parties from access to the material thereafter.

47. The designated material would not be released to the public absent a further order by the tribunal, upon proper notice to the affected parties. As there is no clear mechanism under the *Rules of Practice and Procedure* for a person to bring such a motion[8], an amendment to the *Rules* may be necessary to permit such an application.

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clients' affairs; but they and their accountant must themselves respect the obligation of confidence. They must not use it for any purpose except the investigation, and any consequential proceedings. If there should be subsequent application to the disciplinary committee, the information can be used for that purpose.

This case was applied in Canada in *Re Robertson-Stromberg* (1994), 119 D.L.R.(4th) 551 (Sask. Q.B.).

[7] Staff's obligation to retain in confidence information obtained by the Law Society in the course of its regulatory responsibilities is now entrenched in the *Law Society Act*, section 49.12.

[8] Rule 7 outlines the general procedures for motions; Rule 3.03 outlines the procedures regarding motions to have matters heard in the absence of the public.

Proposal 4

48. The Committee proposes that the *Rules of Practice and Procedure* be amended to provide that a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made under rule 3.03, and to require service of such a motion on all parties and persons who will be affected by the order sought.

49. These amendments could also be used to open those portions of a Report and Decision, or an order of a Discipline Panel or Hearing Panel, which may have initially been based on *in camera* proceedings.

(iii) Identification of *In Camera* Material in Reports and Decisions

50. The Reports and Decisions prepared by Discipline Panels present a unique challenge in the context of *in camera* proceedings. Other regulatory tribunals render their decisions without specific reference to evidence received in the absence of the public as the tribunal's decision concludes the matter, subject to judicial review or appeal. Any appellate court would have access to the entire record and could make such order as may be appropriate regarding the *in camera* evidence. However, the previous two-stage process before the Law Society required that at the first stage, the Discipline Panel summarize all of the relevant evidence for consideration at the second stage, before Convocation. This requirement meant that *in camera* material, to some extent, had to be detailed in the Report which was otherwise public.[9]

51. In keeping with the established practice, the *in camera* material in a Report and Decision, and in the new scheme in any written reasons, should be contained on blue paper so that it can be readily identified. This procedure has been effective to date; however, the issue arises as to how the Reports or decisions are to be maintained in the records of the Law Society after the matter has been concluded.

Proposal 5

52. The Committee proposes that two copies of the Report or reasons be kept on file: one containing the "blue pages" and one, for public dissemination, without those pages.

53. In the Committee's view, this arrangement will provide the greatest level of protection from inadvertent disclosures of *in camera* material.

(iv) Segregation of Argument

54. Whenever there is evidence which has been tendered in the absence of the public, it may be necessary for reference to that evidence to be made in be argument. The Committee decided that a similar approach as noted above respecting the Report or reasons should be followed.

Proposal 6

55. It is proposed that in order to ensure that the public is able to access as much of the proceedings as possible, it is necessary to separate oral argument so that the public will only be excluded for that portion relating to the *in camera* material.

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[9] This issue must be distinguished from the need for the public portion of the reasons (as with other tribunals) to indicate the nature and impact, but not the details, of the evidence received *in camera*.

Subsequent Use of *In Camera* Material

56. Given that *in camera* orders are typically made in discipline proceedings to protect information of a particularly personal nature, and that this sensitivity continues after the hearing, it is arguable that *in camera* orders made in Law Society proceedings would continue in effect in all but the most unusual circumstances.

(i) Future References to Reports Tendered *In Camera*

57. On May 27, 1983, Convocation adopted a policy in relation to the use of reports from previous discipline proceedings as precedents. At that time, effectively all reports were considered to have been received *in camera*. Convocation concluded that reports from discipline proceedings which had been considered by Convocation and published in the *Communique* should be available to solicitors in discipline and their counsel, without deletions. However, references to these cases would then be considered *in camera*.

58. This decision reflects a careful balancing of public interest concerns (in this situation, the need for fair and consistent decisions in similar matters, in addition to the strong presumption in favour of public hearings) and the privacy concerns which led to the decision to exclude the public from the hearing at first instance.

59. The test in s. 9 of the *SPPA* and as reflected in the Law Society's *Rules of Practice and Procedure* relies on a balancing of competing interests, namely, the public interest in hearings being accessible to the public and the individual's right to a fair hearing and expectation of privacy. In this regard, there is a strong presumption in favour of public hearings, a presumption which will only be rebutted in the clearest of cases.

60. The same interests are balanced in the *Charter* jurisprudence, noted by the Committee, relating to the publication of proceedings in criminal matters.

61. The Committee discussed at length the suggestion of the working group that by undertaking the same balancing of interests, all reports resulting from hearings where an order was made to exclude the public from all or part of the hearing should also be available to counsel where the previous reports involve similar issues as arise in a later case. The working group felt that the limitation to this latitude is that references to the *in camera* portions would be made *in camera* - effectively extending the *in camera* protection of the former proceeding to the latter proceeding.[10].

62. The Committee was concerned that parties to an *in camera* hearing likely do not contemplate that *in camera* information or reports related to the hearing may subsequently be made available to another party. Further, the greater the number of people to whom the information is disclosed, the greater the risk that it will not remain confidential.

63. The Committee noted that synopses of cases have been published with Convocation's approval in Stephen Traviss's compilation of discipline decisions, up to 1986.[11] Although the synopses do not contain details of any portion of the proceedings which would be held *in camera* under section 9 of the *SPPA* in a particular matter, all synopses, whether relating to *in camera* proceedings or not, identify the member and the issue(s) in the case. Effectively, this information currently is in the public realm.

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[10] In practice, when reports of this nature are provided to counsel in a proceeding, discipline counsel advise counsel of the *in camera* restriction on further references to the report and require that the reports be returned to the Law Society at the conclusion of the proceeding.

[11] Convocation adopted this position on September 28, 1984, based on a legal opinion.

Proposal 7

64. The Committee proposes that the following approach be adopted:

a. If a synopsis of a case which was held *in camera* in whole or in part is recorded in Stephen Traviss's compilation, it may be provided to counsel or a member for the purposes of precedent relating to the issues arising in a current case;

b. If a synopsis is not available and the public portion of the report is not adequate, the Law Society may, if practicable, provide a copy of the entire report or reasons, including the blue pages containing the *in camera* portion of the hearing with all identifying words or language deleted;

c. If a. or b. are not satisfactory to counsel, the member, the Law Society or the Hearing Panel, a motion may be made to the Hearing Panel, with appropriate notice to the parties to the original hearing and persons affected, for disclosure of the requested *in camera* information, but the information shall be heard *in camera* if it is to be considered.

Other Avenues for Protecting Privacy

65. In light of the need for proportionality between the measures invoked to protect privacy interests and the nature of the interests to be protected, the Committee agreed with the working group's suggestion that counsel and Hearing Panels be encouraged to consider other options when faced with privacy concerns. There are other mechanisms which are significantly less intrusive than holding the hearing in the absence of the public but which may, in certain circumstances, adequately protect the privacy interests in issue.

Proposal 8

66. The Committee proposes that measures such as identifying witnesses only by initials or pseudonyms or editing materials to remove identifying references to certain persons be explored as alternatives to holding all or part of a proceeding *in camera*.

Communication of Directives

67. With one exception, the Committee's proposals do not require amendments to the *Rules of Practice and Procedure*. However, there is a need to convey to the profession and counsel how *in camera* matters will be treated by the Law Society in the hearing process.

Proposal 9

68. The Committee proposes that if the proposals in this report, or others as may be deemed appropriate, are adopted by Convocation, Convocation should revoke all previous directives and promulgate a single comprehensive directive regarding *in camera* procedures.

D. SUMMARY OF PROPOSALS

69. The following are proposed by the Committee:

Proposal 1

It is proposed that Law Society staff with a legitimate need to know, for example, discipline counsel and those involved in the investigation or prosecution of a complaint against the solicitor or similar complaints against the solicitor or another solicitor, should be permitted to access *in camera* proceedings, subject to their obligation to retain in confidence the information thereby obtained.

Proposal 2

It is proposed that *in camera* materials be retained in the Discipline Committee or Convocation file, or Hearing Panel or Appeal Panel file, as applicable, but segregated in an envelope which would be identified as containing *in camera* materials. This would avoid the possibility of inadvertent disclosure of this material.

Proposal 3
It is proposed that the *in camera* material be accessible to persons who were parties to the proceedings (including Law Society staff, subject to the conditions in Proposal 1 above), without the necessity of further order.

Proposal 4
The Committee proposes that the *Rules of Practice and Procedure* be amended to provide that a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made under rule 3.03, and to require service of such a motion on all parties and persons who will be affected by the order sought.

Proposal 5
The Committee proposes that two copies of the Report or reasons be kept on file: one containing the "blue pages" and one, for public dissemination, without those pages.

Proposal 6
It is proposed that in order to ensure that the public is able to access as much of the proceedings as possible, it is necessary to separate oral argument so that the public will only be excluded for that portion relating to the *in camera* material.

Proposal 7
The Committee proposes that the following approach be adopted:

a. If a synopsis of a case which was held *in camera* in whole or in part is recorded in Stephen Traviss's compilation, it may be provided to counsel or a member for the purposes of precedent relating to the issues arising in a current case;
b. If a synopsis is not available and the public portion of the report is not adequate, the Law Society may, if practicable, provide a copy of the entire report or reasons, including the blue pages containing the *in camera* portion of the hearing with all identifying words or language deleted;
c. If a. or b. are not satisfactory to counsel, the member, the Law Society or the Hearing Panel, a motion may be made to the Hearing Panel, with appropriate notice to the parties to the original hearing and persons affected, for disclosure of the requested *in camera* information, but the information shall be heard *in camera* if it is to be considered.

Proposal 8
The Committee proposes that measures such as identifying witnesses only by initials or pseudonyms or editing materials to remove identifying references to certain persons be explored as alternatives to holding all or part of a proceeding *in camera.*

Proposal 9
The Committee proposes that if the proposals in this report, or others as may be deemed appropriate, are adopted by Convocation, Convocation should revoke all previous directives and promulgate a single comprehensive directive regarding *in camera* procedures.

E. DECISION FOR CONVOCATION

70. Convocation should decide whether to:

a. adopt the proposals in this report respecting *in camera* procedures;
b. amend or add to the proposals;
c. direct that appropriate work be done to implement the proposals, including publication and communication initiatives.

II. INFORMATION

POLICY ISSUES ARISING FROM THE HOWIE REPORT ON OUTSIDE COUNSEL ACCOUNTS

A. BACKGROUND AND NATURE OF THE ISSUES

71. On September 25, 1998, Convocation reviewed the report of Kenneth Howie on the audit of accounts of outside counsel in the Eagleson discipline matter. Convocation received the report and directed that the Committee review the policy issues identified by Mr. Howie in the report.

72. Mr. Howie raised the following issues:

a. Should complex, time-consuming and labour-intensive investigations of members be limited in any way?

b. Once undertaken, should portions of such investigations ever be abandoned where the resources of the Law Society are not sufficient for the undertaking?

c. Should the Law Society retain lawyers to do what is in effect largely investigative work? Related questions are whether the Law Society should:
   - have its own investigative staff,
   - employ outside staff,
   - retain outside resources to supervise investigations, or
   - arrange for private investigative work to be done;

d. Should outside counsel take the responsibility for being the spokesperson for the Law Society (e.g. media issues)? The broad question is whether the Society should deal with media issues, including discipline issues, through the Society itself, whether it involves discipline counsel, the communications department, or otherwise;

e. Should the Law Society have in place a system of constant review of accounts with a view to determining on an ongoing basis what should and should not be done in the investigation and prosecution of complaints in light of the size of the accounts being incurred?

f. Should outside counsel retained by the Society have an obligation to deal with this issue and provide advice to the Society on a regular basis as the size of the accounts become apparent?

g. Should the Law Society require constant forecasts from outside counsel with respect to fees and disbursements so that the Law Society can make decisions as to the route that should be pursued in the work being done by outside counsel?

h. Should there be a policy with respect to delegation of certain tasks from lawyers to capable but less costly staff (e.g. law clerks), and if so, how would this be accomplished?

i. Is it necessary for the Law Society to review the propriety of discipline Hearing Panels directing or purporting to direct a part of the investigation of outside counsel, or commenting to such counsel in such a manner that it is perceived by counsel that the panel is directing a part of the investigation?

73. At the Committee's February 11, 1999 meeting, the Committee had a preliminary discussion about these policy issues, and at that time it was noted that the *Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society of Upper Canada in Professional Regulation Matters* adopted by Convocation in May 1998 dealt with a number of the issues. With respect to those that required further consideration, it was agreed at the February 11 meeting that the Chair and the Secretary, Mr. Tinsley would prepare material for review by the Committee and ultimately for Convocation, in response to the issues.

74. That material was reviewed by the Committee at its April 15, 1999 meeting, and forms this part of the Committee's report to Convocation. For the purposes of this report, the key issues have been organized under five general headings:

- Investigation of Complex Matters
- Investigations Generally
- Spokesperson for the Society
- Cost Containment and Monitoring
- Role of Hearing Panels

B. DISCUSSION

Investigation of Complex Matters

a. *Should complex, time-consuming and labour-intensive investigations of members be limited in any way?*

b. *Once undertaken, should portions of such investigations ever be abandoned where the resources of the Law Society are not sufficient for the undertaking?*

75. The Committee acknowledged that these issues ultimately go to the heart of the mandate of the Law Society as a self-regulating body responsible for the protection of the public. The Committee's view was that to preserve public confidence and the efficacy of self-governing status, the answer to question b. must be no.

76. The Committee, however, recognized that certain factors may have to be balanced to determine how best to pursue an investigation. This involves qualitative decisions by staff regarding the interests of the public and the Society's role as against the practical restraints of time and budget. In more serious cases, or where there is an element of doubt about the steps in an investigation, staff will seek the direction of the Proceedings Authorization Committee or its Chair for guidance on whether a decision to not proceed or to limit an investigation or prosecution impairs or interferes with the Society's obligation to govern.

77. In an effort to ensure that there are procedures, guidelines and checks and balances in place so that issues are raised in a timely fashion and appropriate decisions can be made, the Society has already taken the step of adopting the *Guidelines* noted above, which also include a standard Agreement for Performance of Legal Services. The *Guidelines* and Agreement codify many of the procedures which Mr. Howie discussed in his report.

Investigations Generally

c. *Should the Law Society retain lawyers to do what is in effect largely investigative work? Related questions are whether the Law Society should:*
   - *have its own investigative staff,*
   - *employ outside staff,*
   - *retain outside resources to supervise investigations, or*
   - *arrange for private investigative work to be done;*

78. In reviewing these issues, the Committee noted the following:
- the *Guidelines* and Agreement referenced above require counsel to make a preliminary assessment of the matter and identify what special investigative efforts are required, including work that may be performed by in-house Society staff or persons other than counsel;
- the Society has affirmed its willingness to explore the use of specialist investigative firms which are less costly than counsel, where purely investigative work is performed by trained investigators;

- on occasion, outside counsel retained on a matter have been paired with Society counsel who acts as junior counsel on the case, which not only reduces costs but provides staff the opportunity to work with more experienced counsel;
- the implementation of the regulatory redesign through Project 200 and the integration of investigative functions and development of investigative strategies will permit decisions on the most appropriate investigative approach and the expertise required to be made at an earlier stage;
- A key component of the redesign is development of a comprehensive case tracking system, with some functionality expected to be in place in the fall of 1999, to monitor the progress of cases. This will include production of exception reports whenever defined mileposts are not met or costs reach a predetermined level. The design of the system is based on "case plans" and envisages that all major steps, or milestones, of the regulatory processes will be identified, earmarked with performance expectations and supported with enhanced automation, for example, with respect to reminders and document/report generation.

Spokesperson for the Society

d. *Should outside counsel take the responsibility for being the spokesperson for the Law Society (e.g. media issues)? The broad question is whether the Society should deal with media issues, including discipline issues, through the Society itself, whether it involves discipline counsel, the communications department, or otherwise;*

79. With reference once again to the *Guidelines*, the Committee noted that they specify that outside counsel "...should not respond to any media inquiries, or initiate same, without first consulting with the Secretary of the LSUC, or, in urgent situations and in the absence of the Secretary, with the Chair of the PRC [Professional Regulation Committee]." Thus, the general rule is that outside counsel will not respond to or initiate media contact.

80. Where circumstances arise where the Society wishes to have counsel deal directly with the media, the Guidelines now ensure that designated persons at the Society will be involved in making those decisions.

Cost Containment and Monitoring

e. *Should the Law Society have in place a system of constant review of accounts with a view to determining on an ongoing basis what should and should not be done in the investigation and prosecution of complaints in light of the size of the accounts being incurred?*

f. *Should outside counsel retained by the Society have an obligation to deal with this issue and provide advice to the Society on a regular basis as the size of the accounts become apparent?*

g. *Should the Law Society require constant forecasts from outside counsel with respect to fees and disbursements so that the Law Society can make decisions as to the route that should be pursued in the work being done by outside counsel?*

h. *Should there be a policy with respect to delegation of certain tasks from lawyers to capable but less costly staff (e.g. law clerks), and if so, how would this be accomplished?*

81. While some of these issues relate to matters already discussed above, the Committee specifically noted that the *Guidelines* include the following requirements respecting the reporting of costs:

i. General requirement to report to and take instructions from the Treasurer, Secretary or Chair of the Professional Regulation Committee ("PRC");

ii. A schedule of maximum hourly rates, and extensive comment and instruction on billing procedures, including disbursement accounts;

iii. Specific requirements for:
   - approval of accounts by the Secretary or the Chair of the PRC;
   - obtaining prior consent of the Treasurer, Secretary or Chair of the PRC before undertaking major expenditures;

- accounts to be rendered monthly to the Secretary;
- prior approval of the Treasurer or the Secretary for changes in staffing, hourly rates or other significant expenses;
- prior approval of the Secretary for delegation of work to associate counsel, other counsel or law clerks;
- counsel's provision of an initial assessment with 30 days of being retained;
- written status reports to be delivered to the Secretary on a quarterly basis;

iv. Provision for audits of accounts, "where there is a substantial variance from the fees projected";

v. A request that outside counsel provide proposals and suggestions for reducing the costs of the proceeding.

82. The Committee recognized that the *Guidelines* are only a first step in dealing with the primary concern expressed by Mr. Howie, namely, that a system be established to monitor ongoing matters in a comprehensive way in terms of time and cost to provide those making case management decisions with a complete historical picture of the matter and an understanding of the ramifications of any decision for the future conduct of the case.

83. The next step, in the Committee's view, is the development of internal procedures setting out guidelines for the monitoring of the progress of a case and when matters should be reported to the Chair of the PRC. To this end, the Chairs of both the PRC and the Litigation Committee, upon which these issues also impact, have had preliminary discussions with the Secretary.

84. It was noted that the new case tracking system discussed earlier in this report will allow for tracking of expenses associated with both internal and external counsel. Features such as time docketing and disbursement recording on a case by case basis will assist in cost analysis, recovery and control. Linking external counsel's progress to milestones, with automatic alerts and reports, will provide early warning when cases appear to be departing from expectations, allowing for a timely response.

Role of Hearing Panels

i. Is it necessary for the Law Society to review the propriety of discipline Hearing Panels directing or purporting to direct a part of the investigation of outside counsel, or commenting to such counsel in such a manner that it is perceived by counsel that the panel is directing a part of the investigation?

85. The Committee acknowledged that historically and for sound policy and legal reasons, the Society has maintained and must continue to maintain the separation of the investigative, prosecutorial and adjudicative (i.e. bencher) functions within the hearing process.

86. The Committee felt that benchers sitting on Hearing Panels must be alert to this fact and while they may request that counsel provide information on a specific matter, they cannot direct counsel in the conduct of the investigation.

87. The *Guidelines* and Agreement discussed herein require counsel to take directions only from the Secretary, the Chair of the PRC or the Treasurer.

ISSUES RELATING TO THE SECRETARY'S DISCRETION TO COMPEL MEMBERS TO SUBMIT AUDITED FINANCIAL STATEMENTS

88. An issue reported to March 26, 1999 Convocation by the Lawyers' Fund for Client Compensation Committee ("the Compensation Fund Committee") was referred to the Committee for review. The issue relates to the Secretary's discretion in s. 49.2 of the *Law Society Act* to compel a member to produce audited financial records and consideration of the development of guidelines respecting the exercise of that authority. This issue arose in the context of the focussed audit program.

89. The Committee, after reviewing material prepared by the Compensation Fund Committee, directed James Yakimovich, Manager, Investigations, to prepare an analysis of the issue, with appropriate statistical information, for review by the Committee at a future meeting.

90. It was also determined that consideration of the legal ramifications of establishing guidelines for the purposes of the exercise of a statutory authority must be undertaken in tandem with the review of this issue.

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that proposals b. and c. set out on page 25 of the Report be approved.

Carried

Proposals

"b. The term "revocation of membership" should be used to refer to a summary order made under section 48 of the Act;

c. Suspensions and revocations of membership should be published in a fashion analogous to the current practice, that is, in the Ontario Lawyers Gazette with a preamble that indicates that the rights and privileges of the members whose names appear in the list have been suspended for administrative reasons, listing the reasons for suspension, or the membership of the members on the list has been revoked for administrative reasons, and listing the reasons for revocation of membership."

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:15 P.M.

CONVOCATION RECONVENED AT 2:45 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carey, Chahbar, Cronk, Crowe, Eberts, Elliott, Epstein, Feinstein, Gottlieb, Lawrence, MacKenzie, Millar, Murphy, Ortved, Puccini, Ross, Scott, Stomp, Swaye, Wilson and Wright.

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IN PUBLIC

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CONTINUATION OF REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that proposal a. set out on page 25 be approved.

Carried

Proposal

"a. Guidelines for staff as follows:

i. Revocation of membership should not be sought by staff for failure to pay fees or levies where a member provides satisfactory information of financial or other serious hardship;

ii. If the member subject to a summary revocation order makes representations to staff, these should be placed before the summary disposition bencher;"

Re: In camera hearing issues

Mr. Ortved presented the proposals respecting in camera procedures for Convocation's approval.

It was moved by Mr. Ortved, seconded by Mr. MacKenzie that the 9 proposals set out on pages 19 through 21 of the Report be adopted.

Carried

AMENDMENT TO BY-LAW 26 - LIMITED LIABILITY PARTNERSHIPS

It was moved by Mr.Swaye, seconded by Mr. Murphy that the following 2 new paragraphs be added to By-Law 26 under the heading "Disclosure"

(2) A limited liability partnership satisfies the disclosure requirement under subsection (1) if it publishes in a local newspaper notice of the matters set out in subsection (1)

(3) In subsection (2), "local newspaper" means any newspaper distributed in the area in which the limited liability partnership carries on business.

Carried

The "Futures" Task Force - REPORT OF THE WORKING GROUP ON MULTI-DISCIPLINE PARTNERSHIPS IMPLEMENTATION PHASE

The Treasurer informed Convocation of a letter received from Mr. Peter Griffins on behalf of Ernst & Young and Mr. Scott addressed the issue.

Mr. Scott presented the Report on Multi-Discipline Partnerships - Implementation Phase.

Report to Convocation
April 30, 1999

The "Futures" Task Force -
Report of the Working Group on Multi-Discipline Partnerships
Implementation Phase

Purpose of Report: Decision

TABLE OF CONTENTS

Introduction and Background

1. On September 28, 1998 Convocation adopted a model for the practice of law that would permit the partnering or association of lawyers and non-lawyers. The following excerpt from the report of the Futures Task Force Working Group on Multi-Discipline Partnerships ("the Working Group") to September 28 Convocation explains the basis for the model:

> Multi-Discipline Partnerships Offering Legal Services Only With the Partnership in the Effective Control of Lawyers

> In the opinion of the Working Group, this is the model which should be accepted and developed by Convocation. In the first place, all of the concerns with respect to privilege, conflicts of interest, independence, public duty, etc., would be eliminated as the service offering would be confined to the delivery of legal services. Furthermore, adherence to required professional norms in the delivery of such services would be guaranteed by the controlling influence of lawyers. It is a reasonable expectation that this model could well deliver services on a more efficient basis and at lower costs while at the same time contributing, within the framework of a law practice, to a broadening of the traditional service base.
>
> ...Such partnerships would be premised on the responsibility of the lawyer for adherence to professional standards by non-legal partners (as is presently done in the case of staff) and would undoubtedly lead to a regime of adherence by partnerships as well as individuals to professional standards for discipline purposes. The distinction with this model would be that...professionals and para-professionals would be engaged in supporting the delivery of legal services only and would thus not be in an environment likely to attract conflicting standards and duties which might otherwise arise in the conduct of their own professional practices.

2. In accepting the recommendation of the Working Group, Convocation directed that the Working Group facilitate the implementation of multi-discipline practices.

3. The *Law Society Act*, as amended, provides that Convocation may make by-laws, *inter alia*,

> governing the provision of legal services by any person, partnership, corporation or other organization that also practices another profession, including requiring the licensing of those persons, partnerships, corporations and other organizations, governing the issuance, renewal, suspension and revocation of licences and governing the terms and conditions that may be imposed on licences.

4. To that end, a reconstituted working group of the Futures Task Force focussed on the implementation of the model and is presenting this report to Convocation with a proposed by-law for the governance of multi-discipline practices ("MDPs") as approved by Convocation. The members of the implementation working group are David W. Scott, Q.C. and Robert P. Armstrong, Q.C., co-chairs, non-benchers J. Rob Collins, Carrol Dizenbach and W. Ormond Murphy, and staff member Jim Varro.[1]

5. The implementation working group also reviewed the Rules of Professional Conduct to determine what changes would be required to properly instruct the profession ethically and professionally on matters relevant to an MDP. The results of that review have been finalized and referred to the Task Force on Review of the Rules of Professional Conduct, which is scheduled to report to Convocation in April 1999. Accordingly, the report presented today deals only with a proposed by-law.

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[1]The implementation working group wishes to thank staff member Elliot Spears, who was instrumental in drafting the proposed by-law.

Overview of the Proposed By-Law

6. Because there are very few jurisdictions in the world which permit the partnering or association of lawyers and non-lawyers for the provision of professional or other services, the implementation working group essentially began with a blank slate in structuring a by-law. The two jurisdictions where MDP models have been implemented, New South Wales and Washington D.C., were of limited assistance, as neither jurisdiction has formulated any detailed regulatory scheme for the provision of services through an MDP.

7. The implementation working group, however, to the extent that they were of use, borrowed some concepts in its drafting exercise from each jurisdiction with respect to the nature of the MDP services. In Ontario, similar to Washington D.C., the model is for a "practice of law". The "control by lawyers" feature mirrors the model in New South Wales.

8. In brief, the by-law, the full text of which appears at Appendix 1, provides for the following:

f. Only persons, as opposed to partnerships or corporations, may join with lawyers in an MDP;
g. The relationship between individuals within the MDP may be a partnership or an association;
h. Non-lawyers in an MDP must be actively involved in the provision of services within their areas of expertise;
i. The MDP is a law practice, in which the services of non-lawyers support or enhance the delivery of the legal services in the practice;
j. Effective control of the practice rests with the lawyers;
k. Lawyers are responsible for ensuring non-lawyers' compliance with the Law Society regulatory scheme and that non-lawyers' services are provided with the appropriate level of skill and competence;
l. An approval scheme applicable only to MDPs which are partnerships between lawyers and non-lawyers is established, requiring a lawyer to:
    - apply for approval of the practice as an MDP;
    - within the application, provide information about the good character or standing of non-lawyer partners sufficient to satisfy the Law Society that the practice may be approved as an MDP partnership;
    - notify the Law Society of any new non-lawyer partners after approval is granted and provide the same information about the non-lawyer(s) in the same manner as an application for approval;
    - notify the Law Society of any changes in the status of the non-lawyer partners as they may affect the designation of the practice as an MDP;

9. Further,

- the Society's Secretary may require dissolution of the partnership if certain provisions of the by-law are breached;
- the terms "multi-discipline practice" and "multi-discipline partnership" may be used to describe entities which form such practices and partnerships pursuant to the by-law; and
- a multi-discipline partnership is required to maintain professional liability insurance for the practice which would effectively cover the non-lawyer(s).

Dissenting Views

10. While generally there was agreement among the implementation working group members on most issues relating to the by-law, dissenting views were expressed on some issues. A brief submission authored by Rob Collins, a member of the working group, expressing his views on issues relating to certain sections of the by-law will be provided as an addendum to this report prior to or at Convocation on April 30.

Text of the Proposed By-Law and Explanatory Information

11. This portion of the report discusses each section of the by-law.

12. Section 1

Interpretation: "member"

1. (1) In this By-Law, "member" includes a partnership of members.

Interpretation: practice of law

(2) For the purposes of this By-Law, the practice of law means the giving of any legal advice respecting the laws of Canada or of any province or territory of Canada or the provision of any legal services.

The implementation working group included these definitions to clarify certain terms used throughout the by-law. The definition of practice of law is taken from By-Law 15 respecting the annual fee.

13. Sections 2 and 3

Prohibition against providing services of non-member

2. A member shall not, in connection with the member's practice of law, provide to a client the services of a person who is not a member except in accordance with this By-Law.

Permitted provision of services of non-member

3. A member may, in connection with the member's practice of law, provide to a client only the services of an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law.

These sections of the by-law establish the permitted associations which may comprise a multi-discipline practice under the model approved by Convocation. The language of section 3 makes it clear that non-lawyers support or supplement the practice of law, but are not themselves practising law. The by-law requires that only individuals, and not corporate or other such entities, may join in a multi-discipline practice with lawyers. This reflects the current regime for those who partner or associate in the practice of law.

14. Section 4

Partnership, etc. with non-member

4. (1) Subject to subsection (2) and subsection 6 (1), a member may enter into a partnership or association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice law for the purpose of permitting the member to provide to clients the services of the individual.

Same

(2) A member shall not enter into a partnership or an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law unless the following conditions are satisfied:

1. The individual is qualified to practise a profession, trade or occupation that supports or supplements the practice of law.

2. In the case of entering into a partnership with the individual, the individual is of good character.

3. The individual agrees with the member that the member shall have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the partnership or association.

4. The individual agrees with the member that, in partnership or association with the member, the individual will not practise his or her profession, trade or occupation except to provide services to clients of the partnership or association.

5. The individual agrees with the member that, outside of his or her partnership or association with the member, the individual will practise his or her profession, trade or occupation independently of the partnership or association and from premises that are not used by the partnership or association for its business purposes.

6. The individual agrees with the member that, in respect of the practice of his or her profession, trade or occupation in partnership or association with the member, the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

7. In the case of entering into a partnership with the individual, the individual agrees with the member in writing to comply with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the partnership.

Interpretation: "effective control"

(3) For the purposes of subsection (2), the member has "effective control" over the individual's practise of his or her profession, trade or occupation if the member may, without the agreement of the individual, take any action necessary to ensure that the member complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Interpretation: "good character"

(4) For the purposes of subsection (2), the individual is of "good character" if there is a reasonable expectation, based on the individual's record of integrity and professionalism in the practice of his or her profession, trade or occupation and on the individual's reputation in the community, that the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

This section essentially defines the requirements that must be met for and restrictions on the activities of non-lawyers within a multi-discipline practice. In particular, non-lawyers must be qualified to provide services within the practice that relate to the provision of legal services. It is the compatibility of the services with the practice of law and their attributes as adjuncts to the law practice that will determine compliance with this part of the by-law. Given this feature, the by-law would permit professionals and non-professionals joining with lawyers in the practice.

Non-members in the practice must also be of good character, defined in subsection 4(4).

Membership of non-lawyers in multi-discipline practices is limited to persons who are actually providing services in the practice. This is consistent with the philosophical basis of the model, where enhancements to the provision of legal services by non-lawyers qualified to contribute their expertise are realized through their service or skill offerings in the practice.

This section also establishes that non-lawyers cannot provide services within their professional or vocational calling, separate from the services of the firm, from the firm's premises. Such services may be performed from an office established outside the firm. The implementation working group felt this was necessary given that the model approved by Convocation describes a limited type of practice, dedicated to the practice of law, and did not envisage an integrated professional services type of arrangement.

The section also requires that in a partnership, the non-lawyers must agree in writing (for example, in the partnership agreement or in some other written document) that they are bound by the lawyer's conflicts regime, both inside the practice and outside the practice where the non-lawyers may service clients who are also clients of the firm.

In keeping with the model, this section provides that effective control, defined in subsection 4(3), rests with the lawyers in the multi-discipline practice. As noted above, this is an essential element of the model, and ensures that all decisions relevant to the practice and compliance with the regulatory scheme for lawyers are made in the final instance by lawyers.

15. Section 5

Responsibility for actions of non-member

5. Despite any agreement between a member and an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall be responsible for ensuring that, in respect of the individual's practice of his or her profession, trade or occupation in partnership or association with the member,

(a) the individual practises his or her profession, trade or occupation with the appropriate level of skill, judgement and competence; and

(b) the individual complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

As the Law Society has no jurisdiction over non-members, a key part of the regulatory scheme for multi-discipline practices is clearly establishing the obligation of lawyers within these practices to ensure compliance by non-members with the regulatory scheme of lawyers. This section makes the member responsible for the non-member's compliance and also extends to ensuring that competent services are provided by the non-member.

16. Section 6 through 13

Application by member forming partnership with non-member

6. (1) Before a member enters into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall apply to the Society for approval to enter into the partnership.

Application fee

(2) An application under subsection (1) shall be in Form 26A and shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Partnership agreement

7. At the time that a member makes an application under section 6, the member shall file with the Society a copy of so much of the agreement or agreements that will govern the member's partnership with the individual as may be required by the Society.

Consideration of application by Secretary

8. (1) The Secretary shall consider every application made under section 6, and the Secretary shall approve the member's entering into a partnership with the individual if the Secretary is satisfied that,

(a) the conditions set out in subsection 4 (2) have been satisfied; and

(b) the member has made arrangements that will enable the member to comply with sections 5, 14 , 15, 16 and 19.

Requirements not met

(2) If the Secretary is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the Secretary shall notify the member who may meet the requirement or appeal to the committee of benchers appointed under section 10 if the member believes that the requirement has been met.

Time for appeal

9. An appeal under subsection 8 (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that a requirement has not been met.

Committee of benchers

10. (1) Convocation shall appoint a committee of at least three benchers to consider appeals made under subsections 8 (2) and 17 (2).

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of appeal: quorum

11. Three benchers who are members of the committee appointed under section 10 constitute a quorum for the purposes of considering an appeal made under subsection 8 (2) or subsection 17 (2).

Procedure: application of rules of practice and procedure

12. (1) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2) as if the consideration of the appeal were the hearing of an application under section 27 of the Act.

Procedure: *SPPA*

(2) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2).

Decision of committee of benchers

13. (1) After considering an appeal made under subsection 8 (2), the committee appointed under section 10 shall,

(a) if it determines that the requirement has been met, approve the member's entering into a partnership with the individual; or

(b) if it determines that the requirement has not been met, notify the member that the requirement has not been met and that the member may not enter into a partnership with the individual.

Decisions final

(2) The decision of the committee appointed under section 10 on an appeal made under subsection 8 (2) is final.

In considering the ambit of the governance scheme, the implementation working group determined that a means for the Law Society to obtain information about and monitor the constituency involved in multi-discipline practices was needed. The group also felt that as this is a new practice structure and essentially untested in this or any other Canadian jurisdiction, it was appropriate to implement a scheme that set a strict test for the partnering of lawyers and non-lawyers, requiring that the Law Society be the arbiter of whether the practice should be approved. Such a scheme also recognizes the fact that non-lawyers in these practices are only governed through members, and that there is a need to structure a scheme that inspires public confidence in the Society as a regulator.

Accordingly, the proposal is to create a system, as outlined above, requiring members to complete prescribed forms[2] setting out the information required of the by-law, applicable to partnerships only. This will serve to effectively create a register of multi-discipline practices which are partnerships, and give the Society the authority to approve the requested relationships.

This section will also apply to situations where after approval has been granted for the practice, a non-lawyer joins the partnership. The information required by a member about the non-member is the same as that required through an approval application. This is to ensure that if a non-lawyer joins the partnership at any time, the same test and standard is applied to that addition to the partnership.

A process is established beginning with section 8 for approvals and appeals from decisions of the Secretary where approval is not granted because the requirements have not been met. Essentially, the appeal process involves a hearing before a panel of benchers, whose decision is final. The implementation working group determined that this type of procedural protection was required given the regulatory structure to which lawyers are subject through the by-law.

17. Section 14

Filing requirements: partnerships

14. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall submit to the Society for every full or part year that the partnership continues a report in respect of the partnership.

Form 26B

(2) The report required under subsection (1) shall be in Form 26B.

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[2]The two forms referenced in the by-law are currently being drafted and may be available for review by Convocation on April 30, 1999. With respect to the fee described in subsection 6(2) of the by-law, subparagraph 62.(0.1)14.viii of the *Law Society Act* authorizes the making of by-laws respecting such fees.

Due dates

(3) The report required under subsection (1) shall be submitted to the Society by January 31 of the year immediately following the full or part year in respect of which the member is submitting a report.

An annual filing is required for each multi-discipline practice that is a partnership on a form prescribed in the by-law.

18. Section 15

Changes in partnership

15. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall immediately notify the Secretary when,

(a) the individual is expelled from the partnership;

(b) the individual ceases or for any reason is unable to practise his or her profession, trade or occupation;

(c) the term of the partnership has expired, if the partnership was entered into for a fixed term;

(d) the partnership is dissolved under the *Partnerships Act*; or

(e) any agreement that governs the partnership has been amended.

Dissolution of partnership

(2) If an event mentioned in clause (1) (b), (c) or (e) occurs, the Secretary may require the member to dissolve the partnership.

Amendment of partnership agreement

(3) At the time that the member notifies the Secretary under subsection (1) that an agreement that governs the partnership has been amended, the member shall file with the Secretary a copy of the amended agreement.

To ensure that the Society has notice of any changes affecting the status of non-lawyers in multi-discipline partnerships, and especially those changes which effectively end the status of the practice as a multi-discipline practice (i.e. where there was only one non-lawyer), this section of the by-law requires that members provide notice of these events. The Society through the Secretary is given the authority to require the dissolution of the partnership if certain events as described above occur. The implementation working group felt that this was a necessary element of control, as a flow through of the responsibility exercised by the Society through the approval process.

19. Sections 16 and 17

Dissolution of partnership: breach of By-Law

16. If a member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law breaches section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, the Secretary may require the member to dissolve the partnership.

Notice to member of requirement to dissolve partnership

17. (1) If the Secretary requires a member to dissolve a partnership under subsection 15 (2) or section 16, the Secretary shall so notify the member and, subject to subsection (2), the member shall dissolve the partnership.

Appeal

(2) If the Secretary requires a member to dissolve a partnership under section 16, the member may appeal the requirement to dissolve the partnership to the committee of benchers appointed under section 10 if the member believes that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19.

Time for appeal

(3) An appeal under subsection (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that the partnership is to be dissolved.

Procedure

(4) The rules of practice and procedure apply, with necessary modifications to the consideration by the committee appointed under section 10 of an appeal made under subsection (2) as if the consideration of the appeal were the hearing of an application under subsection 34 (1) of the Act.

Decision of committee of benchers

(5) After considering an appeal made under subsection (2), the committee appointed under section 10 shall,

(a) if it determines that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, cancel the requirement to dissolve the partnership; or

(b) if it determines that there has been a breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, take any of the following actions:

(i) Confirm the requirement to dissolve the partnership.

(ii) Permit the partnership to continue, subject to such terms and conditions as the committee may impose.

(iii) Any other action that the committee considers appropriate.

Decisions final

(6) The decision of the committee appointed under section 10 on an appeal under made subsection (2) is final.

Stay

(7) The receipt by the Secretary of the notice of appeal from the requirement to dissolve the partnership stays the requirement until the disposition of the appeal.

These sections set out the consequences of a breach of certain sections of the by-law, more specifically, the supervisory, annual filing, notification of change and insurance provisions respecting the partnering of lawyers and non-lawyers. In these events, the Society through the office of the Secretary may require the dissolution of the partnership. This action is not exclusive as a response to the breach, and such conduct, or other breaches of the by-law, may also warrant investigation by the Law Society on an allegation of misconduct.

An appeal process, similar to that set out in section 9 of the by-law with respect to an application to the Society for the formation of a partnership, is described in subsection 17(2) and following.

20. Section 18

Association with non-member: multi-discipline practice.

18. (1) A member who, under subsection 4 (1), has entered into an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the association as a multi-discipline practice.

Partnership with non-member: multi-discipline practice or partnership

(2) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the partnership as a multi-discipline practice or multi-discipline partnership.

This section provides for use of the terms "multi-discipline practice" and "multi-discipline partnership" by those entities which form such practices or partnerships in accordance with the by-law. The implementation working group decided that a partnership could be referred to as either a practice or partnership, as a practice may generally be understood to include arrangements which encompass the partnership structure.

These terms are also used in the proposed draft Rules of Professional Conduct, which include amendments relating to the practice of law in such practices or partnerships.

21. Section 19

Insurance requirements: members

19. A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall maintain professional liability insurance coverage for the individual in an amount determined by Convocation from time to time.

The implementation working group consulted with the Lawyers Professional Indemnity Company ("LPIC") on the insurance question. LPIC's view was that if non-lawyers in MDPs are not directly regulated by the Law Society - and this is the basis on which the by-law has been drafted, where members are responsible for non-lawyers in the firm - there should be an obligation on the firm to purchase firm coverage from LPIC under a separate claims made and reported form. This would insure the MDP itself, as well as present and former non-lawyer partners and associates, for legal liabilities associated with the MDP.

Accordingly, section 19 reflects this position, and requires that the firm maintain liability insurance for each non-lawyer partner. The insurance requirement is restricted to partnerships, on the basis that the law respecting partnerships dictates that partners share obligations and liabilities associated with the partnership, and on the understanding that in associations of members and non-members, the exposure is effectively insured under the current Law Society program, in a manner similar to that which operates as a result of the lawyer's role as principal and supervisor of non-lawyer staff.

Other Issues

22. Apart from the by-law, the implementation working group determined that it would be appropriate to publish in the *Ontario Reports* a list of practices which have applied for registration as a multi-discipline practice, similar to the notice now published for members applying for specialist certification designations. This would ensure that the profession has an opportunity to review at a practical level the developments taking place in the profession respecting this practice structure.

DECISION FOR CONVOCATION

23. Convocation must decide whether:

a. to approve the by-law as drafted, or amended as it deems appropriate, in accordance with the subject motion (included under separate cover in this Convocation Material);

b. if the by-law is approved, to instruct the Professional Regulation Committee to hereinafter deal with any implementation issues that may arise, either by way of guidance to appropriate staff or for further review by Convocation;

c. further study into the governance scheme should be undertaken, with appropriate direction, by the implementation working group.

APPENDIX 1 6-AES

BY-LAW 25

MULTI-DISCIPLINE PRACTICES

Interpretation: "member"

1. (1) In this By-Law, "member" includes a partnership of members.

Interpretation: practice of law

(2) For the purposes of this By-Law, the practice of law means the giving of any legal advice respecting the laws of Canada or of any province or territory of Canada or the provision of any legal services.

Prohibition against providing services of non-member

2. A member shall not, in connection with the member's practice of law, provide to a client the services of a person who is not a member except in accordance with this By-Law.

Permitted provision of services of non-member

3. A member may, in connection with the member's practice of law, provide to a client only the services of an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law.

Partnership, etc. with non-member

4. (1) Subject to subsection (2) and subsection 6 (1), a member may enter into a partnership or association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice law for the purpose of permitting the member to provide to clients the services of the individual.

Same

(2) A member shall not enter into a partnership or an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law unless the following conditions are satisfied:

1. The individual is qualified to practise a profession, trade or occupation that supports or supplements the practice of law.

2. In the case of entering into a partnership with the individual, the individual is of good character.

3. The individual agrees with the member that the member shall have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the partnership or association.

4. The individual agrees with the member that, in partnership or association with the member, the individual will not practise his or her profession, trade or occupation except to provide services to clients of the partnership or association.

5. The individual agrees with the member that, outside of his or her partnership or association with the member, the individual will practise his or her profession, trade or occupation independently of the partnership or association and from premises that are not used by the partnership or association for its business purposes.

6. The individual agrees with the member that, in respect of the practice of his or her profession, trade or occupation in partnership or association with the member, the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

7. In the case of entering into a partnership with the individual, the individual agrees with the member in writing to comply with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the partnership.

Interpretation: "effective control"

(3) For the purposes of subsection (2), the member has "effective control" over the individual's practise of his or her profession, trade or occupation if the member may, without the agreement of the individual, take any action necessary to ensure that the member complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Interpretation: "good character"

(4) For the purposes of subsection (2), the individual is of "good character" if there is a reasonable expectation, based on the individual's record of integrity and professionalism in the practice of his or her profession, trade or occupation and on the individual's reputation in the community, that the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Responsibility for actions of non-member

5. Despite any agreement between a member and an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall be responsible for ensuring that, in respect of the individual's practice of his or her profession, trade or occupation in partnership or association with the member,

(a) the individual practises his or her profession, trade or occupation with the appropriate level of skill, judgement and competence; and

(b) the individual complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Application by member forming partnership with non-member

6. (1) Before a member enters into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall apply to the Society for approval to enter into the partnership.

Application fee

(2) An application under subsection (1) shall be in Form 26A and shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Partnership agreement

7. At the time that a member makes an application under section 6, the member shall file with the Society a copy of so much of the agreement or agreements that will govern the member's partnership with the individual as may be required by the Society.

Consideration of application by Secretary

8. (1) The Secretary shall consider every application made under section 6, and the Secretary shall approve the member's entering into a partnership with the individual if the Secretary is satisfied that,

(a) the conditions set out in subsection 4 (2) have been satisfied; and

(b) the member has made arrangements that will enable the member to comply with sections 5, 14 , 15, 16 and 19.

Requirements not met

(2) If the Secretary is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the Secretary shall notify the member who may meet the requirement or appeal to the committee of benchers appointed under section 10 if the member believes that the requirement has been met.

Time for appeal

9. An appeal under subsection 8 (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that a requirement has not been met.

Committee of benchers

10. (1) Convocation shall appoint a committee of at least three benchers to consider appeals made under subsections 8 (2) and 17 (2).

Term of office

(2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of appeal: quorum

11. Three benchers who are members of the committee appointed under section 10 constitute a quorum for the purposes of considering an appeal made under subsection 8 (2) or subsection 17 (2).

Procedure: application of rules of practice and procedure

12. (1) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2) as if the consideration of the appeal were the hearing of an application under section 27 of the Act.

Procedure: *SPPA*

(2) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2).

Decision of committee of benchers

13. (1) After considering an appeal made under subsection 8 (2), the committee appointed under section 10 shall,

(a) if it determines that the requirement has been met, approve the member's entering into a partnership with the individual; or

(b) if it determines that the requirement has not been met, notify the member that the requirement has not been met and that the member may not enter into a partnership with the individual.

Decisions final

(2) The decision of the committee appointed under section 10 on an appeal made under subsection 8 (2) is final.

Filing requirements: partnerships

14. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall submit to the Society for every full or part year that the partnership continues a report in respect of the partnership.

Form 26B

(2) The report required under subsection (1) shall be in Form 26B.

Due dates

(3) The report required under subsection (1) shall be submitted to the Society by January 31 of the year immediately following the full or part year in respect of which the member is submitting a report.

Changes in partnership

15. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall immediately notify the Secretary when,

(a) the individual is expelled from the partnership;

(b) the individual ceases or for any reason is unable to practise his or her profession, trade or occupation;

(c) the term of the partnership has expired, if the partnership was entered into for a fixed term;

(d) the partnership is dissolved under the *Partnerships Act*; or

(e) any agreement that governs the partnership has been amended.

Dissolution of partnership

(2) If an event mentioned in clause (1) (b), (c) or (e) occurs, the Secretary may require the member to dissolve the partnership.

Amendment of partnership agreement

(3) At the time that the member notifies the Secretary under subsection (1) that an agreement that governs the partnership has been amended, the member shall file with the Secretary a copy of the amended agreement.

Dissolution of partnership: breach of By-Law

16. If a member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law breaches section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, the Secretary may require the member to dissolve the partnership.

Notice to member of requirement to dissolve partnership

17. (1) If the Secretary requires a member to dissolve a partnership under subsection 15 (2) or section 16, the Secretary shall so notify the member and, subject to subsection (2), the member shall dissolve the partnership.

Appeal

(2) If the Secretary requires a member to dissolve a partnership under section 16, the member may appeal the requirement to dissolve the partnership to the committee of benchers appointed under section 10 if the member believes that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19.

Time for appeal

(3) An appeal under subsection (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that the partnership is to be dissolved.

Procedure

(4) The rules of practice and procedure apply, with necessary modifications to the consideration by the committee appointed under section 10 of an appeal made under subsection (2) as if the consideration of the appeal were the hearing of an application under subsection 34 (1) of the Act.

Decision of committee of benchers

(5) After considering an appeal made under subsection (2), the committee appointed under section 10 shall,

(a) if it determines that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, cancel the requirement to dissolve the partnership; or

(b) if it determines that there has been a breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, take any of the following actions:

(i) Confirm the requirement to dissolve the partnership.

(ii) Permit the partnership to continue, subject to such terms and conditions as the committee may impose.

(iii) Any other action that the committee considers appropriate.

Decisions final

(6) The decision of the committee appointed under section 10 on an appeal under made subsection (2) is final.

Stay

(7) The receipt by the Secretary of the notice of appeal from the requirement to dissolve the partnership stays the requirement until the disposition of the appeal.

Association with non-member: multi-discipline practice.

18. (1) A member who, under subsection 4 (1), has entered into an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the association as a multi-discipline practice.

Partnership with non-member: multi-discipline practice or partnership

(2) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the partnership as a multi-discipline practice or multi-discipline partnership.

Insurance requirements: members

19. A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall maintain professional liability insurance coverage for the individual in an amount determined by Convocation from time to time.

It was moved by Mr. Scott, seconded by Mr. Armstrong that the Report and the proposed By-Law 25 for the governance of multi-discipline practices be adopted.

Carried

ROLL-CALL VOTE

Aaron	Against
Armstrong	For
Arnup	For
Backhouse	For
Banack	For
Carey	For
Cronk	For
Crowe	For
Eberts	For
Elliott	For
Epstein	For
Gottlieb	For
MacKenzie	For
Millar	For
Murphy	For
Ortved	Abstain
Puccini	For
Ross	For
Scott	For
Stomp	For
Swaye	For
Wilson	Against
Wright	Abstain

Vote: 19 - 2, 2 Abstentions

30th April, 1999

REPORT OF THE ADMISSIONS & EQUITY COMMITTEE

Re: Identification Card

Ms. Backhouse presented the item on the recommendation that identification cards be made available to Law Society members.

Admissions & Equity Committee
April 30, 1999

Report to Convocation

Purpose of Report: Decision and Information

TABLE OF CONTENTS

A. POLICY

Identification Cards

1. Convocation is requested to consider the Committee's recommendation that the Law Society make available photo identification cards to its members on a voluntary basis.

Background

2. The issue of identification cards at the Law Society has been discussed in the past when occasions arose in which lawyers had difficulty and/or were denied access to correctional institutions. As well, there have been some cases of persons seeking entry to correctional institutions by stating they were lawyers, when, in fact, they were not.

3. Member identification cards were not issued because it was felt at that time that the number of lawyers experiencing problems was insufficient to warrant the costs. There was additional concern that clients, trade creditors and correctional institutions would begin to require such a document.

Recent events

4. An incident last year where a lawyer was denied access to his client at the Metro West Detention Centre was brought to the Law Society's attention by the African Canadian Legal Clinic. The Admissions and Equity Committee discussed the issue of identity cards, gathered new information on costs, and voted on September 10, 1989 to approve the cards in principle.

5. The Committee considered the issuing of membership-wide identification cards as part of the fee billing administration as other societies do. This was not possible because our flexible billing arrangements would entail multiple mailings that would make it too financially onerous ($31,317). Therefore, it was decided that the card not be linked to the members' payment of fees.

6. Staff was directed to present an option for identification cards that were voluntary rather than distributed routinely to all members and that were financially feasible.

Costs

7. A proposal was submitted that considered the use of the Law Society's photo ID card equipment composed of a computer, digital camera and specialized printer. It has the capacity to produce a small plastic card the size of a credit card, with a photo, in about five minutes. The cost of supplies per card is negligible. The photo ID card can be made available to the membership, in English or French, initially for $12.00 which includes GST and staff time costs.

8. Bencher Tom Carey worked with staff to produce a prototype. It was based on the Criminal Lawyers' Association card. (See Appendix 1). To mitigate against misuse by disbarred or suspended members, it is recommended that the card state that it is the property of the Law Society, that it may only be used by members in good standing, and must be returned on demand or termination of the membership.

Request to Convocation

9. The Committee recommends that Convocation approve the issuing of photo ID cards to the membership as proposed, on a voluntary basis and for an initial fee of $12.00.

10. The Committee recommends that Convocation direct that all members be notified of the availability of the photo ID card. It also recommends that appropriate governmental institutions and other organizations be clearly notified that this non-mandatory card is being made available to members as a courtesy only, not as a requirement.

BAC Appeal Proposal

11. The Committee has approved the Education Department's draft BAC Appeal Proposal found at Appendix 2.

Request to Convocation

12. That Convocation approve the draft BAC Appeal Proposal submitted by the Education Department.

Accommodations for BAC Students

13. The Committee appointed a working group to prepare a proposal for policy and procedures for accommodations for BAC students. Its report is found at Appendix 3.

Request to Convocation

14. That Convocation approve the proposed policy on BAC student accommodations.

B. INFORMATION

Liaison with Law Deans

15. The Report on Bar Admission Course Reform approved by Convocation on March 26, 1999 recommended that the Law Society initiate a dialogue with Ontario law schools in order to ensure that the Bar Admission Course is not repetitive of the learning that is common to the LLB programs within the province.

16. In order to comply with this recommendation, the Committee has instructed the Chair and Vice-Chair to establish regular twice yearly meetings with all the law school Deans. Since this initiative is a direct consequence of the Bar Admissions Reform Report, funds to cover the expenses for the meetings will be sought within the current educational budget which includes the cost of the Report's recommendations. If the funds are not available within the current budget, then a recommendation for funds will be made to Convocation with the approval of the Finance Committee..

17. The following terms of reference have been approved for these meetings:

> The purpose of the twice yearly meetings of the Chair and Vice-Chair of the Admissions and Equity Committee with the law school Deans is to establish a permanent consultation process for the interchange of information between law schools and the Law Society that leads to improvement in the quality of the continuum of legal education in Ontario. In order to achieve this purpose, these meetings should provide mutual feedback on the following issues:
>
> 1. Identification of commonality within the programs at the law schools and the BAC.
> 2. Exchange of information on changes relating to curriculum development, teaching and evaluation methods that may be pertinent.
> 3. Provide mutual feedback on student needs.
> 4. Interchange of ideas that may improve coordination between law schools and the Law Society and enhance legal education in general.

Working Group on Articling

18. The Committee formed a Working Group on Articling with the mandate to review the articling program with the purpose of improving access, equity and quality in the articling process and ensure that articling recommendations of the following reports have been addressed:

a. The recommendation in "Proposals for Articling Reform " (updated 1994)
b. The Bar Admission Reform Report (1999)

18. On the basis of this review, the Working Group is directed to develop a timely strategic plan and include a policy to deal with unsuccessful articling experiences. The Working Group will include bencher Tom Carey, Mimi Hart, Acting Articling Director, Wendy Johnson Martin, as well as representatives from firms, law schools, and students among others.

APPENDIX 3

Prepared for the Working Group on Accommodation
by Roman Woloszczuk, Registrar, and J. Keene, Member of Committee

Policy and Procedures for Accommodations for Students-at-law
in the Bar Admission Course (BAC) - Department of Education

Rationale

As the governing body of a profession concerned with justice, the Law Society of Upper Canada (LSUC) has both a legal obligation under the Ontario Human Rights Code and a strong interest in ensuring that all of its operations reflect principles of equity. In a number of its publications, most recently in its Bicentennial Report and Recommendations on Equity Issues in the Legal Profession[1], the Law Society has undertaken measures to put its commitment to equity into everyday practice.

The Bicentennial Convocation of May 1997 accepted a number of recommendations, including the following:

The Law Society should continue to ensure that Bar Admissions:

(a) includes material designed to increase the profession's understanding of diversity/equity issues;

(b) encourages the participation of equality-seeking groups in its design, development and presentation;

(c) uses material that is gender neutral;

(d) uses audio-visual material that includes the faces and voices of equality-seeking groups;

(e) is administered so that its demands do not impact disproportionately on the basis of personal characteristics noted in Rule 28.

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[1] May 1997 LSUC

In doing so, the LSUC has acknowledged that treating people identically is not synonymous with treating them equally. Substantive equality requires the accommodation of differences that arise from the personal characteristics cited in the Human Rights Code. If a rule, requirement or expectation of the BAC creates difficulty for an individual because of factors related to the personal characteristics listed in the Code[2], the duty to accommodate arises.

There has been an increasing demand from students (clients) to accommodate requests related, for the most part, to disabilities, pregnancy, language issues, and needs arising from their responsibilities as parents. Past practices for accommodating students have been considered on an ad-hoc basis and on many occasions, have proven to be unreliable, inconsistent and inequitable. With increasing demands for special accommodations of varying degree and types, there is now a strong need to identify specific roles and responsibilities of students, faculty/instructors, and the Bar Admission Course (BAC) administration in the provision of such services.

Policy

It is the policy of the Department of Education that the Bar Admission Course must have a strong interest in ensuring that its requirements are directly and logically connected to competence to practice law, and that persons who wish to practice law in Ontario are not effectively barred from qualifying because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance.

Assessing whether accommodation is needed and what accommodation may be appropriate is an ongoing responsibility of the BAC. In carrying out its responsibility, the BAC must be prepared to respond to the need for both system-wide accommodation and individualized, short-term or experimental accommodation.

Purpose

The purpose of this policy and the procedures are threefold:

1) to identify the issues that arise in developing accommodation strategies;

2) to set the principles and the practice guidelines in respect of accommodation;

3) to set out in written form the procedures and strategies for accommodation for the BAC that have been developed over the past years.

Scope

This policy and the procedures will be applicable to all the Bar Admission Course locations, which are presently located in London, Ottawa and Toronto. The nature of the specific accommodations may vary from site to site, and some forms of accommodation may be extendable to those involved in distance education.

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[2] In respect of the provision of a service such as the BAC, the relevant grounds are: race,ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation,age, marital status, family status or handicap.

Procedures:

1.0 Identify Issues that Arise in Developing Accommodation Strategies

1.1 A need for system-wide accommodation, and the nature of accommodation that would be appropriate, is often obvious and foreseeable, allowing orderly planning, consultation and budgeting processes. An example of this type of accommodation is making structural changes, such as door-widening, ramps and elevators, to physical space to accommodate persons with mobility disabilities.

1.2 A need for individualized accommodation can come up at any time, is often unforseen by the BAC and may be unforeseeable even by the student requiring the accommodation, and may involve ad-hoc, temporary or experimental strategies. Arriving at an appropriate strategy requires a thorough grounding in the relevant legal obligations, the ability and willingness to collaborate with the affected student(s) and a readiness to act quickly (since the individual(s) ideally need to finish the BAC in a timely fashion).

1.3 Some types of accommodation have no resource implications. Others can be expensive. Costs can be contained and unforseen contingencies minimized as the BAC becomes more adept at the identification of barriers and knowledgeable concerning accommodation strategies. The BAC should take full advantage of any resources, from available literature to the views of individual students and members of the Law Society, in its planning. Budget planning should be conducted on an ongoing basis. The BAC should maintain detailed written records concerning both its annual short, medium and long-term planning sessions and its experiments in various accommodation strategies, their success or failure, and points to be learned therefrom.

1.4 Accommodation will not be provided if it imposes undue hardship on the program. This determination will be made on a case-by-case basis by the Registrar. If accommodation is refused, the refusal can be brought to the Director of Education (see Appeal Procedure - 4.0). Considerations that may influence this determination include substantial economic hardship on the LSUC, the unavailability of persons with appropriate expertise, a significant adverse impact on learning opportunities for other students, a significant alteration of the fundamental nature of the program or service or undue disruption of the institution's program operations.

1.5 The accommodation policy will be operated within the overall mandate of the Law Society to ensure that entrants to the profession are competent to practice law and present no risk to the public.

2.0 Establish Principles and Practice Guidelines in Respect to Accommodations

2.1 The BAC will undertake a review of its practices, on a regular basis, to identify barriers that might affect students identified by the personal characteristics listed in s.2 of the Human Rights Code.

2.2 The BAC will maintain a confidential accommodation-related information-collection process, through the Student Success Centre.

2.3 The BAC will brief faculty/instructors concerning its policy and procedures, in recognition of their importance to the success of the BAC and to promote appropriately their response to students' needs.

2.4 The BAC will inform all students of its accommodation policy, of the information-collection and planning service, and of the nature of available accommodations prior to the commencement of the course. The BAC will encourage students to identify personal characteristics that might involve a need for accommodation, and to bring to the attention of the BAC, as soon as possible, barriers that might affect students because of the personal characteristics listed in the policy.

2.5 If a student asserts that a requirement or practice operative in the BAC constitutes such a barrier, the BAC will undertake the following procedure, with a view to assessing the need for and the nature of one or more suitable accommodation strategies:

2.5.1 Unless the link between the perceived barrier, which results from a BAC requirement or practice, and race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance is clear to the Registrar (or designated BAC representative), the Registrar will meet with the student and undertake any research necessary to satisfy the BAC of the link. The student will be expected to provide suitable verifiable information concerning the personal characteristic at issue, (eg: appropriate documentation and assessment of a disability), if this information is necessary.

2.5.2 The requirement or practice will be examined to determine whether it is "reasonable and bona fide." There must be objectively verifiable evidence linking the rule, requirement or expectation with the essential objectives of the BAC. If the requirement or practice is not imposed in good faith or is not necessary to the BAC, it will be altered or dispensed with.

2.5.3 If the requirement or practice is imposed in good faith and is strongly logically connected to an essential objective of the BAC, the next step is to consider whether the individual(s) who experience disadvantage because of the rule can be accommodated.

2.5.4 A number of accommodation strategies may be used to fulfil the BAC's obligations. In the interest of both prompt attention to the needs of a particular student, and the need to explore the utility of various accommodation strategies, an interim or experimental strategy may be implemented. The BAC will consult with the requesting student(s), and consider any suggestion offered by the requesting student(s), in arriving at a timely individual-based strategy. The BAC may consult more widely in attempting to devise the most suitable strategy for any accommodation that may be offered more generally.

2.5.5 Accommodation will be offered to the point of undue hardship. If the BAC asserts that a requested accommodation imposes undue hardship, it will prepare a written report setting out the nature of the accommodation refused, and the factors that support its view that undue hardship would ensue.[3]

3.0 Current Assistance Initiatives and Procedures Developed for Accommodation to the Bar Admission Course

3.1 Student Success Centre and the Services
3.1.1 Ensures "fair, equal, and non-discriminatory" access to all courses.

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[3] In Central Alberta Dairy Pool v Alberta (Human Rights Commission) Madame Justice Wilson provided a list of factors to be considered, that included financial cost, disruption of a collective agreement, size of employer's operation, safety risks and who bears risk, and problems of morale of other employees. She stressed that the list was not a closed one. Accommodations in employment that have been considered reasonable by court and tribunals have included paid absence to fulfil religious obligations, flexibility in work schedules, and modification of job requirements.

The onus of establishing that a particular accommodation causes undue hardship rests with the party alleging undue hardship.

3.1.2 Coordinates and provides supports that improve the learning environment of students, such as case management, assessment services (when required), access to technical aids and a support centre built around students, faculty/instructors and staff.

3.1.3 Seeks to improve the awareness and support of the legal community through consultation and coordination of professional development activities for internal and external members.

3.1.4 Provides accommodation for students who are unable to comply with the conditions or requirements of the course, by adapting the conditions or requirements or by providing alternative ways for the individual to meet the conditions or requirements.

3.2 Exam Assistance Accommodations (Examples)*

3.2.1 Extended time to complete examinations.

3.2.2 Use of special equipment such as a personal computer.

3.2.3 Use of private rooms.

3.2.4 Examinations in alternative forms such as audio tape, Braille, text to speech.

3.2.5 Use of readers, scribes in the examination setting.

3.2.6 Alternative methods of examination and evaluation.

3.2.7 Provide appropriate invigilation through the Student Success Centre.

3.3 Tutoring*

3.3.1 Upon request, provides course-based assistance to a student who has been unsuccessful with any examinations including supplementals. (Note: Such tutoring may be denied where students have not attended the lectures and/or seminars or where significant self study has not been demonstrated).

3.3.2 There is no cost to the student for the first five hours of tutoring for any course and where financial difficulty exists further hours can be arranged at no cost to the student.

3.4 Mentoring*

3.4.1 Provided upon request during Phase Three by lawyers who were recent Calls to the Bar to any student-at-law requiring advice and assistance on study or examination strategies, information on course experiences and expectations, or simply someone to listen.

3.4.2 No charge to any student-at-law.

3.5 Preparatory Programming Prior to Phase Three*

3.5.1 Provides an orientation week of course seminar presentations, examination preparation and study strategies using previous exams, followed with the writing of an exam, then marking and reviewing answers with the instructor.

3.6 Self-directed Learning

3.6.1 Provides accommodations for students-at-law to take the courses in Phase Three away from the three central locations (Toronto, London, Ottawa) and complete the Bar Admission Course through self-directed study arrangements.

3.7 Student Accommodation and Assistance for the Call to the Bar

3.7.1 Provided at the call to the Bar as requested by students:

i) accessible seating
ii) mobility assistance
iii) oral and visual interpreters
iv) FM systems

3.7.2 Requests for special services must be made by the student at least one month prior to the Call to the Bar.

3.7.3 Provides financial relief through bank loans, LSUC loans or the BAC bursary program to students at risk of delaying their call to the Bar due to outstanding BAC fees.

*denotes services offered by the Student Success Centre

4.0 Procedure for Requesting an Accommodation or Appeal

4.1 Requests for accommodation in the majority of cases are worked out with the Student Success Centre.

4.2 A description of the problem at issue, the accommodation being sought, and any appropriate documentation of past accommodation for this problem (where applicable) must accompany the request. Verification to support disability requests for accommodation may be required if not previously documented.

4.3 If the accommodation cannot be made or is unsatisfactory, the student may:

4.3.1 discuss the request with the Registrar.

4.3.2 If unresolved, discuss the request with the Director of Education.

4.3.3 If unresolved, file an appeal to the Admissions and Equity Committee (A&E).

4.3.4 The decision on an appeal by the A&E Committee is final.

Appendix 1

Human Rights Code Revised Statutes of Ontario, 1990, Chapter H.19, as amended

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 1.

...

6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O.

1990, c. H.19, s. 6.

...

10 (1)

...

"family status" means the status of being in a parent and child relationship;

...

"because of handicap" means for the reason that the person has or has had, or is believed to have or have had,

(i)any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a dog guide or on a wheelchair or other remedial appliance or device,

(ii)a condition of mental retardation or impairment,

(iii)a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(iv)a mental disorder, or

(v)an injury or disability for which benefits were claimed or received under the Workers' Compensation Act.

...

"marital status" means 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;

"record of offences" means a conviction for,

(a) an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or

(b) an offence in respect of any provincial enactment;

...

(2) 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.
R.S.O. 1990, c. H.19, s. 10 (2).

...

Constructive discrimination

11. (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right. R.S.O. 1990, c. H.19, s. 11 (1).

Idem

(2) The Commission, the board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and bona fide in the circumstances unless it is satisfied

that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 11 (2); 1994, c. 27, s. 65 (1).

Idem

(3) The Commission, the board of inquiry or a court shall consider any standards prescribed by the regulations for assessing what is undue hardship. R.S.O. 1990, c. H.19, s. 11 (3); 1994, c. 27, s. 65 (2).

...

Special programs

14. (1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.

...

Handicap

17. (1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap. R.S.O. 1990, c. H.19, s. 17 (1).

Accommodation

(2) The Commission, the board of inquiry or a court shall not find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. R.S.O. 1990, c. H.19, s. 17 (2); 1994, c. 27, s. 65 (2).

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

(1) Copy of a prototype of an Identification card based on the Criminal Lawyers' Association card. (Appendix 1)

(2) Copy of the BAC Appeal Proposal. (Appendix 2)

It was moved by Ms. Backhouse, seconded by Mr. Carey that the issuance of identification cards be approved as set out on pages 3 and 4 of the Report.

Carried

A correction was made in paragraph 4 on page 2 of the Report by changing the date in line 4 from September 10, 1989 to September 10, "1998".

Re: BAC Appeal Process

It was moved by Ms. Backhouse, seconded by Ms. Ross that the BAC Appeal Proposal set out at Appendix 2 of the Report be approved.

Not Put

It was moved by Ms. Cronk, seconded by Mr. Ortved that the item on the BAC Appeal Proposal be tabled until the September Convocation.

Carried

Re: Accommodation for BAC Students

It was moved by Mr. Epstein, seconded by Ms. Cronk that the item on Accommodation for BAC Students be tabled.

Carried

AMENDMENTS TO BY-LAW 16

Mr. Malcolm Heins spoke to the amendments to By-Law 16 regarding Professional Liability Insurance Levies.

It was moved by Ms. Cronk, seconded by Mr. Crowe that the following amendments to By-Law 16 be adopted:

"Section 3 [insurance premium levies]

That section 3 of By-Law 16 be amended by adding after "innocent party surcharge levy" in the second line "a claims history surcharge levy".

Subsection 4 (1) [time for payment of insurance premium levies]

That subsection 4 (1) of By-Law 16 be amended by striking out "every year" at the end and substituting "of the year in which the coverage applies".

Subsection 5 (2) [payment plan: deemed date of failure to pay]

That subsection 5 (2) of By-Law 16 be amended by adding, after "Society" in the first line, "or the insurer of the Society's insurance plan".

Subsection 5 (2) [payment plan: deemed date of failure to pay]

That subsection 5 (2) of By-Law 16 be amended by adding to the end of subsection "of the year in which the coverage applies".

Section 6

That section 6 of By-Law 16 be struck out and the following substituted:

Refund of unearned portion of insurance premium levy

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

Section 9

That section 9 of By-Law 16 be amended by adding the following subsection:

Same

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

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

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

Carried

The Treasurer noted that Mr. Epstein received a standing ovation on his departure from Convocation.

REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Professional Development & Competence Committee
April 30, 1999

Report to Convocation

Purpose of Report: Decision Making
Information

TABLE OF CONTENTS

FOR INFORMATION

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on April 15, 1999. Committee members in attendance were Mary Eberts (Chair), Rich Wilson (Vice-Chair), Larry Banack (Vice-Chair), Mike Adams, Kim Carpenter-Gunn, Susan Elliott, Helene Puccini, and David Scott. Staff in attendance were Scott Kerr, Sue McCaffrey, Janine Miller, Felecia Smith, Elliott Spears, Sophia Sperdakos, and Paul Truster.

2. The Committee is reporting on the following matters:

   For Decision

   - Phase II Report of the Library Working Group on Delivery of Library Services
   - Deferral of Implementation Date for the Requalification Program
   - Amendments to the Rules of Practice and Procedure relating to Competence Hearings

   For Information

   - Report of the CLE Advisory Group
   - Extension of Term of the Current Specialist Certification Working Group

FOR DECISION

PHASE II REPORT OF THE WORKING GROUP ON LONG-TERM DELIVERY OF COUNTY AND DISTRICT LIBRARY SERVICES

1. In October 1998 Convocation approved the Phase I report of the working group on the long-term delivery of county and district library services entitled *Beyond 2000: The Future Delivery of County Library Services to Ontario Lawyers.* Appendix 1 contains the recommendations and policy direction approved by Convocation to guide the working group's Phase II report.

2. The working group has completed its Phase II report, which is provided to Convocation under separate cover.

3. The Professional Development and Competence Committee has considered the working group's recommendations and endorses them.

Request to Convocation

4. Convocation is requested to consider the report of the working group, and if appropriate, approve the report and its recommendations.

DEFERRAL OF IMPLEMENTATION DATE FOR THE REQUALIFICATION PROGRAM

1. In March 1994 Convocation approved a policy requiring lawyers to requalify if they have "not made substantial use of their legal skills on a regular basis" for five years or more and wish to engage in the private practice of law. The policy is not retroactive. Pursuant to the 1994 policy each member is required to provide the Law Society with information concerning his or her "qualification status", so the Society can assess whether the member is, or is not, making substantial use of his or her legal skills on a regular basis.

2. In accordance with Convocation's policy, the *Law Society Act* provides in section 49.1 that a member may be prohibited from engaging in the private practice of law if it has been determined, in accordance with the by-laws, that the member has not made substantial use of legal skills on a regular basis for such continuous period of time as is specified by the by-laws. It is anticipated that the draft requalification by-law will be provided to Convocation in May. The requalification educational materials are currently being designed.

3. According to the policy, the earliest point in time at which members would have to meet requalification requirements is July 1999. Members have been advised that July 1, 1999 is the implementation date. This means that anyone who seeks to return to private practice after that date, but has not made substantial use of their legal skills for five years or more, will be required to requalify.

4. When the policy was approved by Convocation, the Law Society's fiscal and reporting year was July 1 to June 30. Members were required to report their status annually, calculated from July to June.

5. The Law Society's current fiscal and reporting year is January 1 to December 31. If the Law Society's requalification policy becomes effective July 1, 1999, it will be difficult to accurately assess when the five year time limit [1] has been reached, because the information the Society collects concerning members now runs from January to December, not July to June.

Request to Convocation

6. The Committee recommends that Convocation move forward the implementation date for the requalification program to January 1, 2000. The Committee further recommends that the new time frame apply to all members, including those members who would otherwise have reached the five year time limit on July 1, 1999.

7. The Committee further recommends that, if the implementation date is moved forward to January 1, 2000, a Notice be placed in the *Ontario Reports* and the *Ontario Lawyers Gazette* advising members of the change. In particular the notice will indicate that anyone who seeks to return to private practice on or after January 1, 2000, and who has not made substantial use of their legal skills on a regular basis for five years or more on that date, will be required to meet requalification requirements.

8. Convocation is requested to consider these recommendations and, if appropriate, approve them.

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[1] The date beyond which members who have not been making substantial use of their legal skills on a regular basis must requalify if they seek to return to private practice.

AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE RELATING TO COMPETENCE

1. On January 28, 1999 Convocation approved Rules of Practice and Procedure, subject to certain amendments. The Rules of Practice and Procedure as originally approved did not address competence hearings. This was done intentionally to permit the Professional Development and Competence Committee to consider what rules would best apply to the competence hearings.

2. The Committee has now reviewed the Rules of Practice and Procedure and is proposing that they be amended in accordance with the proposals contained in Appendix 2 to apply to competence hearings under section 43 of the *Law Society Act*, which provides:

> *(1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Hearing Panel for a determination of whether a member is failing or has failed to meet standards of professional competence.*

Request to Convocation

3. Convocation is requested to review the proposed amendments to the Rules of Practice and Procedure set out in Appendix 2 and, if appropriate, approve them.

FOR INFORMATION

REPORT OF CLE ADVISORY GROUP

1. In January 1997 the MCLE Subcommittee, which had been considering issues related to both mandatory CLE and enhanced CLE, reported to Convocation in a report entitled *Post-Call Learning for Lawyers.* The report provided Convocation with 4 recommendations and 30 action plans concerning the enhancement of continuing legal education across the province, as well as reporting on the issue of mandatory CLE. One of the steps in the report's action plans for enhancing CLE involved the Law Society assembling,

> *an advisory group whose short term goal is to define planning needs for post-call education and the means to meet those needs, and whose long term goal is to oversee their realization.*

2. In November 1997 a liaison group, on which not-for-profit CLE providers and other interested parties were to be represented, was established to define planning needs for post-call education across the province. A number of meetings were held, first with a large number of delegates, and subsequently by a smaller advisory group that has continued to meet.

3. The advisory group has now completed its report, a copy of which is set out in Appendix 3 for Convocation's information.

4. The Committee has reviewed the advisory group's report and considered it, while keeping in mind the recommendations for enhancing voluntary CLE that Convocation approved in *Post-Call Learning for Lawyers.*

5. Many of the "factual and philosophical underpinnings" set out in the advisory group report mirror those embraced by *Post-Call Learning for Lawyers.* Similarly the report's conclusions that technology and local live CLE are critical features of the enhancement of voluntary CLE delivery throughout the province, reflect many of the action plans reported on in *Post-Call Learning for Lawyers.*

6. The overlap of the advisory group's views with those of the report on *Post-Call Learning for Lawyers* confirms the Committee's view that much still remains to be done to enhance delivery of voluntary CLE throughout the province. Convocation clearly recognized this in its approval of the 30 action plans set out in *Post-Call Learning for Lawyers*. The action plans contained in the 1997 report provide a level of detail that the Committee continues to feel best reflect the complexity of issues that must be addressed in enhancing voluntary CLE. The advisory group's report complements these but should not replace them.

7. The Director of Continuing Legal Education is in the process of undertaking the investigations recommended in many of the action plans contained in *Post-Call Learning for Lawyers* with a view to prioritizing and implementing those recommendations that the report directed were to be undertaken by the Law Society. The Professional Development and Competence Committee will monitor the progress of the action plans, including any budgetary issues that must be directed to the Finance Committee and Convocation.

8. The Committee expresses its thanks to the advisory group for its efforts in furthering the dialogue on the issue of enhancing voluntary CLE throughout the province. Lawyers' efforts to improve their post-call competence are rendered that much more effective if CLE opportunities are affordable, accessible, and relevant to their needs.

EXTENSION OF CERTIFICATION WORKING GROUP

1. At its meeting on April 15, 1999 the Professional Development and Competence Committee extended the term of the certification working group beyond June until new committee membership is determined following the bencher election. The current membership of the working group, with the exception of those members not returning as benchers, will continue to meet as necessary until the new membership is established by the Committee.

APPENDIX 1

On October 23, 1998 Convocation approved the following steps be adopted pursuant to the Libraries Working Group Phase I Report:

(a) Recommendations i. to iv. (Pages 128 - 129 of the Libraries Working Group Phase I Report)

i. That libraries engage in a planned and systematic training and education of the legal profession, starting with users of library services, about:
   1. the electronic and on-line library products available;
   2. how to consult library staff for reference matters;
   3. basic library research concepts and techniques.

ii. That libraries examine their role as providers of legal information and consider:
   (a) what role to play, either alone or in conjunction with CLE providers, in the continuing legal education of the profession;
   (b) whether to become more active in the dissemination of legal information (for example by becoming publishers of legal information) and move away from the traditional distribution role of a library.

iii. That libraries consider various ways to market all library services, both traditional and emerging non-traditional services, with a view to bettering:

(a) the competence of the legal profession;
(b) the administration of justice;
(c) service to the public of Ontario, by lawyers in Ontario

and, implement the most appropriate methods.

iv. That better financial and management information records be designed for use by the libraries to permit both funders and librarians to make better decisions about resources, collections and budgets. In addition to improving financial reporting mechanisms to the Law Society, libraries need to acquire financial management skills appropriate to their level of funding and responsibility.

v. That standardized financial reporting and accounting methods be adopted by each of the County Libraries that incorporates suitable management information to permit future analysis of all library revenues and expenses.

(b) Policy Options (Pages 129- 130 of the Working Group Report)
That

(i) the County libraries should be formed into a library system;
(ii) in the development of a system an appropriate administrative model will be required to address local concerns and others which may be identified in the course of designing the delivery model and developing the system;
(iii) every library of the County Libraries should be able to provide access to each of the seven types of research as described at page 14 of the report; and
(iv) County libraries should try to meet the needs of all three kinds of knowledge (technical, craft, and systematic) as described at page 19 of the report;

(c) Design Principles (Pages 130 - 131 of the Working Group Report)

That Convocation adopt the design principles set out in paragraphs 546 (i) and (ii), and paragraph 548 of the report, as follows:

546. ...that a deliberate change to the County libraries in which "less is received for less" *at a provincial level*, is not an acceptable outcome of change.

ii. When designing a system of county libraries sufficient resources will be required at a system-wide level, to:

- promote and facilitate competence in the profession
- provide access to current and historic legal information for all members of the Law Society, throughout the province
- recognize the uniqueness and diversity of the province, particularly the north and its huge geographical distances
- facilitate the flow of research in the profession
- support the administration of justice in the province
- support and encourage collegiality in the profession

548. ...different levels of service are acceptable within individual libraries but, if a system approach is adopted, all services would be available by some means to users.

(d) Delivery Models

Convocation approves and directs the working group to develop in greater detail what is referred to as the "Blended System" with the understanding that in developing that model the working group consider the relevance of factors and considerations that come under the model referred to as Electronic Library - Single Library.

APPENDIX 2

PROPOSED AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE TO INCORPORATE PROFESSIONAL COMPETENCE PROCEEDINGS

The proposed amendments to Rules 1, 3, 4 and 14 of the Rules of Practice and Procedure to incorporate professional competence hearings are set out below and noted by underlining. Issues considered by the Professional Development and Competence Committee are summarized in footnotes.

RULE 1 GENERAL RULES

Application

1.01 Rules 1 through 15 apply to hearings before tribunals under sections 27, 28.1, 30, 31, 32, 34, 38, 43,[1] 45, 49.1, 49.32(1), 49.32(2), 49.42, and 49.43 of the *Law Society Act* (hereinafter "the Act").

RULE 3 ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

Proceedings other than Capacity and Professional Competence Proceedings

3.01 Subject to rule 3.04 and 3.04.1, hearings shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed;

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(c) it is necessary to maintain the confidentiality of a privileged document or communication.

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[1] Section 43(1) of the *Law Society Act* provides that with the authorization of the Proceedings Authorization Committee, the Society may apply to the Hearing Panel for a determination of whether a member is failing or has failed to meet standards of professional competence.

Reasons and Order of the Tribunal

3.02 (1) Subject to subrule (2), the order and reasons of a tribunal, including any written disposition, are a matter of public record.

(2) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal may order that all or part of its reasons, except for those referred to in subrule (3), are not to be made public.

(3) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal shall issue with its decision a written statement of the reasons for holding the proceeding, or applicable part of the proceeding, in the absence of the public but shall do so without disclosing any matters which, in the opinion of the tribunal, ought not to be disclosed.

...

Capacity Proceedings

3.04 (1) A proceeding shall, subject to subrule (2), be held in the absence of the public if it is a proceeding in respect of a determination of incapacity.

(2) At the request of the person subject to the proceeding, the tribunal may order that the proceeding be open to the public.

(3) An application for a determination of incapacity shall not be made public by the Society except as required in connection with a proceeding, except as provided for in the Act, or unless the proceeding before the tribunal is open to the public as provided by subrule (2).

(4) Where the hearing of an application for a determination of incapacity has been open to the public in accordance with subrule (2), the decision, order and reasons of the tribunal are a matter of public record.

(5) Where the hearing of an application for a determination of incapacity has been closed to the public, and where the tribunal has made an order suspending or limiting the member or student member's rights and privileges, the order is a matter of public record but the tribunal's reasons shall not be made public.

Professional Competence Proceedings

3.04.1 (1) A proceeding shall, subject to subrule (2), be held in the absence of the public if it is a proceeding in respect of a determination of whether a member is failing or has failed to meet standards of professional competence. [2]

(2) At the request of the person subject to the proceeding, the tribunal may order that the proceeding be open to the public.

(3) An application for a determination of professional competence shall not be made public by the Society except as required in connection with a proceeding [3], except as provided for in the Act, or unless the proceeding before the tribunal is open to the public as provided by subrule (2).

(4) Where the hearing of an application for a determination of professional competence has been open to the public in accordance with subrule (2), the decision, order and reasons of the tribunal are a matter of public record.

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2 The general rule, based on section 10 (page 6) of the second Report of the Reforms Implementation Committee (1992), is that notwithstanding s. 9 of the *Statutory Powers Procedure Act*, professional competence hearings are to be *in camera*. This was incorporated in the legislative package approved by Convocation in March 1996.

3 The Professional Development and Competence Committee considered the effect of the clause "*except as required in connection with a proceeding*" in subrule 3.04.1(3) and determined that it was appropriate that it be included in the subrule. The clause is also used in subrule 3.04(3) for capacity hearings. The effect of the clause is to permit disclosure of the application in both the competence proceeding and other proceedings. In the proceeding, the Society would be required, for example, to disclose the application to potential witnesses. The use of the terms "**a** proceeding" rather than "**the** proceeding" also permits the Society to disclose the application in another proceeding, subject of course to the qualification that it is "required". Another proceeding in which disclosure could be required could be, for example, a subsequent competence proceeding against the member.

(5) Where the hearing of an application for a determination of professional competence has been closed to the public, and where the tribunal has made an order suspending the member's rights and privileges, the order, the decision and the reasons of the tribunal are a matter of public record. [4]

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[4] The Professional Development and Competence Committee considered the issue of whether there should be a distinction, for publication purposes, between competence orders which suspend a member's rights and privileges and those which limit rights and privileges, given that no such distinction is made in respect of capacity orders.

By way of background, the legislative package adopted by Convocation made a distinction between competence orders which suspended the rights and privileges of members and those which limited rights and privileges. The distinction is, in summary, as follows: Where a suspension order is made, the order, decision and reasons are a matter of public record. However, where an order is made imposing limitations, the Hearing Panel determines what aspects of the order can be made public and therefore could order that the order not be published. No specific provision is made for the publication of the reasons of the panel.

Non-publication of aspects of orders limiting members' rights and privileges, raises the issue of the Society's obligation to inform the public of limitations on members' rights and the ability of the Society to monitor orders which are not public.

The provisions regarding the publication of suspension orders were approved by Convocation on the recommendation of the Reforms Implementation Committee (1992). The provision regarding the publication of limiting orders was in the text of the Reforms Implementation Committee Report. Note that these provisions differ from the provisions for capacity orders, which make no distinction between suspension and limitation of rights and privileges.

The Committee determined that for publication purposes a distinction should be made between competence orders that suspend rights and privileges and those that limit them. The Committee determined that the standard or test to be applied in determining whether to publish an order which limited rights and privileges should be the protection of the public and further determined that this test should be included in the subrule as set out in subrule 3.04.1(6).

(6) Where the hearing of an application for a determination of professional competence has been closed to the public, and where the tribunal has made an order limiting the member's rights and privileges, the tribunal shall determine what aspects of the order shall be made public in order to protect the public interest.

Application to Appeals

3.05 (1) Where an appeal arises from a decision, order or reasons of a tribunal in respect of a conduct, admission, or readmission proceeding, the provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications, to the decision, order and reasons of the Appeal Panel.

(2) Where an appeal arises from a decision, order or reasons of a tribunal in respect of a capacity or professional competence proceeding, the provisions of rules 3.04 and 3.04.1 apply, with necessary modifications, to the decision, order and reasons of the Appeal Panel.

RULE 4 COMMENCEMENT OF PROCEEDINGS

Conduct, Capacity, Professional Competence and Non-Compliance Proceedings

4.01 (1) A notice of application shall be issued by the Society in Form 4A in respect of conduct, capacity, professional competence and non-compliance proceedings.

(2) A copy of the notice of application shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

Abandonment of a Proceeding

4.03 (1) Prior to the hearing of a conduct, capacity, professional competence or non-compliance proceeding on its merits, the Society may abandon a notice of application by delivering a notice of abandonment in Form 4C.

(2) Prior to the hearing of an admission or restoration proceeding on its merits, the Society may abandon the requirement of a hearing by delivering a notice of abandonment in Form 4C.

(3) Prior to the hearing of an admission, restoration, requalification, reinstatement or readmission proceeding on its merits, the person subject to the proceeding may abandon his or her application by delivering a notice of abandonment in Form 4C.

RULE 14 COSTS

Security for Costs

14.01 (1) In admission, readmission, reinstatement, restoration or requalification proceedings, or an appeal arising from any of these proceedings, the tribunal, on motion by the Society, may make such order for security for costs as is just where it appears that,

(a) the person subject to the proceeding has an order for payment of costs made against him or her in the same or another proceeding under the Act which remains unpaid in whole or in part; and

(b) there is good reason to believe that the proceeding is unwarranted and the person subject to the proceeding has insufficient assets in Ontario to pay the costs of the Society where ordered.

(2) A person subject to a proceeding against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding except with leave of the tribunal.

(3) Where a person subject to a proceeding defaults in giving the security required by an order, the tribunal, on motion by the Society, may dismiss the proceeding and any stay obtained no longer applies.

Motions for Costs

14.02 A request for costs shall be made by motion to the tribunal which heard the proceeding on its merits or where otherwise appropriate.

Costs against the Society

14.03 In admission, conduct, capacity, professional competence [5] or non-compliance proceedings, where it appears that the proceedings were unwarranted, the tribunal may order that such costs as it considers just be paid to the person subject to the proceeding by the Society and any other party to the proceeding.

Costs to the Society [6]

14.04 (1) In appropriate cases, where a tribunal has made a determination in a proceeding that is adverse to a party other than the Society, the tribunal may make an order requiring that party to pay all or part of,

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[5] The Professional Development and Competence Committee considered whether professional competence proceedings should be added to the list of proceedings in which members may obtain costs against the Society and determined that they should be included. Convocation has interpreted the term "unwarranted" to be "without reasonable justification, patently unreasonable, malicious, taken in bad faith, or for a collateral purpose" (*Re Speciale*, Report of the Special Committee of Convocation dated February 25, 1994).

[6] The Professional Development and Competence Committee noted with approval that subrule 14.04 would apply to professional competence proceedings.

(a) the Society's legal costs and expenses;
(b) the Society's costs and expenses incurred in investigating the matter; and
(c) the Society's costs and expenses incurred in conducting the proceeding.

(2) In awarding costs and expenses, the tribunal shall apply any tariff which may be approved by Convocation from time to time.

Wasted or Unreasonable Costs [7]

14.05 (1) Where a party or non-party participant has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the tribunal may make an order awarding such costs as are just.

(2) An order under subrule (1) may be made by the tribunal on its own motion or on the motion of any party in the proceeding.

APPENDIX 3

Enhancing CLE in Ontario:
Report of the CLE Advisory Group

FEBRUARY 1999

CONTENTS

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[7] The Professional Development and Competence Committee noted with approval that subrule 14.05 would apply to professional competence proceedings.

Background

1. In 1995 the Law Society undertook a two-month consultation process throughout Ontario to gather information "about lawyers' attitudes to learning, the role of continuing legal education in professional development, the need for improvements to delivery and cost of CLE and attitudes to mandatory continuing education" [note 1]. The consultations and their findings were extensively described in a Consultation Report of November 1995, and discussed and analyzed in a December 1996 report on *Post-Call Learning For Lawyers.*

2. On January 24, 1997, Convocation accepted certain recommendations made in *Post-Call Learning For Lawyers*, including one that read in part:

> The Law Society should...assemble an advisory group whose short term goal is to define planning needs for post-call education and the means to meet those needs, and whose long term goal is to oversee their realization.

3. Later in 1997 the Canadian Bar Association–Ontario, one of the bodies to be represented in the advisory group, was planning a summit of County & District representatives to canvass issues including possible improvements to the overall framework for CLE design and delivery. After some discussion with CBAO it was agreed that the projected session would become a "CLE brainstorming session" underwritten by LSUC, with extensive support from CBAO. This event was held January 31 - February 1, 1998, and brought together some 40 delegates, mostly CLE Liaisons from County and District Law Associations and also representatives of bodies such as the Women's Law Association, Criminal Lawyers' Association and the Advocates Society.

4. Presentations by representatives of other professions outlined how they have grappled with professional development issues. This was followed by both small-group and plenary discussions which were marked by a wealth of insightful and imaginative suggestions for CLE enhancement. These suggestions have been drawn on by the advisory group–all members of which also participated in the brainstorming session--as part of its terms of reference. In effect, the advisory group identified the essential themes underlying the various suggestions, and used these to inform its discussions. [note 2].

5. Currently, the advisory group members are:

Nicola Edmundson-Mosher - Lanark Law Association
Lawrence Eustace - District of Rainy River/County and District Law Presidents' Association
Greg Goulin - Essex County Law Association
Todd Hoffman - Durham Law Association
Heather McArthur - Director, Continuing Legal Education, Canadian Bar Association--Ontario
Peter Mrowiec - a director of the Criminal Lawyers' Association
Robert Nelson - County of Carleton Law Association
James O'Brien - Hastings Law Association
Penelope Price - Shades Mill Law Association
Paul Truster - Director, Continuing Legal Education, Law Society of Upper Canada
Peter Wilson - Member, CLE Committee, Canadian Bar Association--Ontario

6. The advisory group met on a number of occasions in 1998-99. To further inform its discussions it reviewed documents including the 1995 Consultation Report, the 1996 *Post-Call Learning For Lawyers,* the paper "The Regulation of Competence in the Legal Profession" by University of Toronto law professor Michael Trebilcock.

Factual and philosophical underpinnings

7. The members of the advisory group share a number of convictions which they see as central to any serious attempt to enhance the overall framework of CLE design and delivery:

a) CLE contributes meaningfully to the achievement and maintenance of lawyer competence.

b) Competence is a larger issue than mere loss prevention.

c) While any attempt to define competence invites debate, it is surely self-evident that learned lawyers are more competent than ignorant lawyers. If this were not so, there would be little point in requiring candidates for admission to the bar to pass any kind of examination or even to hold LL.B's. Empirically, one does not encounter many lawyers who deny the utility and importance of lifelong learning, whether through private study, seminars and workshops, mentoring or other means. Moreover, both the province-wide consultations of 1995 and the 1998 brainstorming session (which, again, drew on practitioners from across Ontario, from large and small firms and sole practices) revealed widespread and deeply-felt support for CLE enhancement. Accordingly, the fact that the impact of CLE on competence has not been scientifically quantified should not be made a pretext for neglecting opportunities to enhance CLE.

d) The enhancement of competence by all available means, including CLE, is critical to the profession's future, and, in some practice areas, its survival in all but name. It is no longer adequate to rely on a statutory prerogative or a visibly eroding monopoly; the status and role of the profession depend on its relevance to public needs. This depends, in turn, on the profession's ability to provide superior, cost-effective and essential services--in competition, increasingly, with C.A.s, C.G.A.s, trust companies, paralegals and others. When the public asks why lawyers alone should be permitted to do certain kinds of work, credible and sufficient answer must be made. If the profession fails to ensure that its members maintain and enhance their competence throughout their careers, the credibility and sufficiency of that answer are undermined. Challenges from other disciplines will not simply go away, they are not something the profession can "wait out". The advisory group expressed serious concern that it is the latest of several groups which have examined the role of CLE over the last few years, yet little progress has so far resulted.

e) The pursuit of lifelong learning should be seen not as a merely desirable "extracurricular activity", but as an indispensable responsibility both of individual lawyers and of the profession collectively. The interests of the public and the profession are congruent, as it is lawyers' ability to meet the needs of the public that is to be maintained and enhanced.

f) Technology is an undeniably useful tool in achieving swifter, more economical and equitable delivery of CLE, but it is not a cure-all; effective education has a face-to-face and sometimes even a social dimension which ensures the ongoing importance of live CLE. In particular, locally-generated CLE is an invaluable part of Ontario's legal culture, helping to maintain excellence across the province, and assuring that local variations in practice or practice standards are given due weight.

g) A diversity of methods for delivering continuing education should continue to exist, so that different learning styles and preferences are addressed, and varying kinds of information communicated in the manner most appropriate to each. For example, methods of delivery which emphasize interactivity can be particularly valuable and can most closely approximate the benefits of one-on-one mentoring; while, on the other hand, discussions of CLE issues too often underestimate the importance of publications.

h) Any measures which have the effect of raising the quality of CLE, lowering its cost or making access to it more convenient, can be expected to increase the numbers participating.

i) Every CLE provider should retain its full freedom to serve its market as it sees fit. Each provider has its distinct corporate culture and strengths to contribute. At the same time, the bar would be best served by closer co-operation between providers who demonstrate a commitment to accessible and affordable CLE. Such co-operation would involve an ongoing exchange of information, for example, on technological and delivery issues and perhaps also in the area of market needs assessment. As developments in information delivery affect both CLE providers and law libraries in serving their common audience, the libraries should be invited and encouraged to join this exchange.

j) There was also agreement that while budgetary pressure will continue to spur providers to identify short-term opportunities and "hot" areas, an enhanced approach to CLE should also involve co-operating providers in a more long-term, principle-driven, "curricular" approach. On this view, CLE would be viewed as part of a seamless continuum of learning that begins with law school and Bar Admissions, then leads upward through successive "tiers" of expertise.

8. The group acknowledges that many of these points, far from being revolutionary, can be found in the documents it reviewed--suggesting, again, that the challenge of CLE enhancement lies less in discovering new solutions, than in summoning the collective will to do what it is already generally agreed should be done.

The measures proposed

9. The brainstorming session and the meetings of the advisory group made clear that there is no shortage of appealing *ad hoc* suggestions for CLE enhancement. Broadly speaking, however, the most urgently needed measures can be grouped under two headings, namely, (1) better use of technology, and (2) expanding local live CLE. Each is examined below.

Better use of technology

10. It is already a cliché that innovations in broadcasting, desktop publishing and the Internet have revolutionized information delivery, to a fair extent rendering geography irrelevant and elevating consumer demand for "just what's needed, just in time". Accordingly, the advisory group proposes that the in-office or in-home delivery of CLE be achieved by all appropriate technological means. The basic concept is of information packages delivered to your door for use at a time convenient to you. These should also provide, where appropriate, opportunities for interactivity and mentoring.

11. All this presumably involves linking Ontario's lawyers to each other through the use of appropriate computer technology. This would have to be economical enough to be within reach of most if not all of the bar. Instruction would have to be made widely available to lawyers and support staff to assist them in acquiring and taking full advantage of it.

12. The advisory group emphasizes that this concept should not be equated with the "Lawyers' Workbench" proposal under discussion by Convocation. The group has not been party to any of the working-group discussions or investigations regarding the Workbench and is not in any position to evaluate it. The advisory group notes that there are a number of existing resources for the technological delivery of CLE, including the Web sites of the Law Society, CBAO, Advocates' Society, Criminal Lawyers Association, etc., and such tools as Amicus Attorney and QuickLaw. These may prove sufficient for CLE enhancement, rendering the introduction of some elaborate new system superfluous.

13. The group endorsed the idea of making the Bar Admission course materials available to the whole profession on-line or on CD-ROM at a far lower price than the $320 currently charged for the set in hard copy. The materials could be frequently augmented and supplemented by information useful to practitioners--for example, the "practice alert and management publication" which, as noted in the Consultation Report and in *Post-Call Learning*, numerous lawyers across the province believe the Law Society should provide to its members as a matter of course [note 3]. The following passage from the Consultation Report is pertinent:

> Perhaps more than any other comment on delivery issues the participants [in the County and District consultations] spoke of the need for more and better written educational materials. They emphasized their view that reading practice material is a legitimate and integral part of continuing legal education and should be part of any delivery system in far greater degree than is currently the case... [note 4]

14. The use of Web sites to further supplement this material with chat rooms for practice groups, mentoring groups, and so on, deserves serious consideration by co-operating providers and may in time come to be seen as an essential resource.

Boost local live CLE

15. The group's support for computer technology should not be taken as reflecting any simplistic belief in it as the exclusive or even dominant answer to CLE enhancement. The group believes that, ultimately, the bar will have the kind of legal culture it favours; and the bar is unlikely to favour a culture of isolated individuals linked only by modem and wholly dependent on a centralized, monopolistic, electronic CLE provider. Live CLE, with its opportunities for face-to-face interaction and networking, will remain extremely important for the foreseeable future. The challenge, increasingly, will be to make participation in it more accessible to lawyers outside major centres, both as registrants and as instructors. Live CLE obviously includes not only the traditional lecture-based program, but also interactive small-group workshops such as those currently offered by the Law Society and the Ontario Centre For Advocacy Training. Such programming probably has an assured future in Toronto, where it is potentially revenue-generating; it is critical, however, that the whole province likewise has access to it. And while Toronto-based "travelling road shows" may have their place, the group believes it absolutely critical to boost the development of locally-generated CLE throughout Ontario. One way of encouraging this is to set up a network for ongoing needs assessment and curricular development across the province. Another is to identify a network of appropriate practitioners in each County and District who are willing to participate in CLE delivery (a database could be assembled with preferred areas of practice or expertise indicated).

Implementation; next steps

16. With this report, the advisory group has fulfilled the short-term function assigned to it by Convocation, namely, the identification of planning needs for an enhanced approach to CLE. The advisory group's second or long-term function (again, as defined by Convocation), is to oversee the implementation of this approach.

17. Accordingly, the advisory group proposes that Convocation approve this report and authorize the advisory group–perhaps reconstituted as the "joint committee on continuing legal education"--to proceed to the second stage and develop a detailed implementation plan.[note 5]

Notes

1. *Post-Call Learning For Lawyers* (December 14, 1996), tab 3, p. 2.

2. The participants in the brainstorming session (apart from those who are also on the advisory group) are:
Karen Bell - Risk Management Consultant, The Lawyers' Professional Indemnity Company
Catharine Blastorah - Peterborough Law Association
Marc Bode - Thunder Bay Law Association
Irene Boland - Renfrew Law Association
James Boll - Norfolk Law Association
Murray Borndahl - Oxford Law Association
Brian Bucknall - Canadian Bar Association--Ontario
Alexandra Chyczij - The Advocates Society
John Claydon - Osgoode Hall Law School/Osler, Hoskin & Harcourt
Joseph Colangelo - Medico-Legal Society of Toronto
Selma Colvin - Nipissing Law Association
Ross Davis - Chair, CBAO CLE Committee, Canadian Bar Association--Ontario
Gordon Good - Middlesex Law Association
Serge Hamel - Temiskaming Law Association
Holly Harris - County of Carleton Law Association
Barbara Hendrickson - Women's Law Association of Ontario
Peter Hustler - Northumberland Law Association
John Jones - Brant County Law Association
Lanny Kamin - Frontenac Law Association
Rick Leroy - Stormont, Dundas & Glengarry Law Association
Peter Murray - Haldimand Law Association
Victoria Ramsay - Middlesex Law Association
Robert Rankin - Kent Law Association
Mark Reid - Muskoka Law Association
Sharon Seenath - Women's Law Association
Carol Shamess - Algoma Law Association
Shem Singh - Local CLE Co-ordinator, Canadian Bar Association--Ontario
Larry Steacy - Leeds & Grenville Law Association
William Thorn - Perth Law Association
Alan Treleaven - [then] Executive Director, Education, Law Society of Upper Canada
Peter Wilson - Canadian Bar Association--Ontario

3. Consultation Report, p. ; see also *Post-Call Learning*, pp. 18-19.

4. Post-Call Learning also proposed investigating the feasibility of selling CLE materials on a paper-by-paper basis (see tab 7, p. 30), and indeed, with the "box", both papers and programs have the potential to become accessible in modular or "bite-size" components.

5. In accepting certain recommendations in *Post-Call Learning*, Convocation endorsed the "Action Plans" in Appendix A (Tab 7) of that report. The Action Plans--proposed measures for CLE enhancement--overlap to a considerable degree with the measures proposed above. However, in certain cases the Action Plans have been overtaken by events, while in others, the aims they seek to achieve are (the group believes) otherwise addressed in this report. Accordingly, the group recommends that the measures proposed in this report be adopted in place of the Action Plans.

Re: Phase II Report of the Working Group on Long-Term Delivery of County and District Library Services

Ms. Eberts requested that the Phase II Report of the Working Group be deferred.

Re: Deferral of Implementation Date for the Requalification Program

It was moved by Ms. Eberts, seconded by Ms. Elliott that the recommendation set out on page 4 of the Report that the implementation date for the requalification program be moved forward to January 1st, 2000 be adopted.

Carried

Re: Amendments to the Rules of Practice and Procedure Relating to Competence

It was moved by Ms. Eberts, seconded by Ms. Elliott that the proposed amendments at Appendix 2 relating to competence hearings be approved with the exception that the words "and reasons" be deleted from subrule 3.04.1 (5).

Carried

COMPETENCE TASK FORCE - FINAL REPORT

Mr. Armstrong presented the Report of the Competence Task Force and recommendations relating to professional competence.

Competence Task Force
April 30, 1999

Final Report

TABLE OF CONTENTS

INTRODUCTION

1. In November 1998 Convocation approved the interim report of the Competence Task Force, which set out the components of the Task Force's approach to a competence blueprint, as follows:

i) The Law Society should clarify the competence-related obligations of members under the Law Society Act and in particular, the competence sections of Part II of the Act.
ii) The Law Society should support lawyers in their efforts to meet their responsibility to maintain competence.
iii) The Law Society should take an interest in members of the public having a satisfactory way to locate lawyers who can address their needs.
iv) The Law Society should assess the efficacy of its range of activities, programs, and initiatives that have a substantial competence component.

2. Convocation approved a number of principles to underlie the Law Society's approach to competence. Briefly summarized these are:

a) Quality of service should be a major element of the Law Society's interest in competence.
b) Lawyers are primarily responsible for their own competence.
c) The profession as a whole has a stake in the competence of each member.
d) The Law Society's mandate should and does include a responsibility to ensure that the public is served by competent lawyers.
e) The Law Society's approach to its competence mandate should be proactive and wide-ranging.
f) The clear articulation of competence standards is an essential component of the Law Society's mandate.
g) The competence definition underlies the development of standards and competence-related activities.

3. The Task Force proposed to do further work on the blueprint and report to Convocation in early 1999. In the months since its interim report the Task Force has considered each of the components set out above in greater detail.

4. The purpose of this report is to provide Convocation with the Task Force's conclusions and recommendations for a competence blueprint that staff may then implement and future Convocations may monitor.

5. The Task Force has met a total of 12 times. Current members of the Task Force are Robert Armstrong (Chair), Nancy Backhouse, Karen Bell, Eleanore Cronk, Elvio Del Zotto, Mary Eberts, Malcolm Heins, Vern Krishna, and John Saso. The Task Force has also been assisted by Bob Bernhardt, Scott Kerr, Gord Lalonde, Sue McCaffrey, Felecia Smith, Elliot Spears, and Richard Tinsley. Staff to the Task Force are Sophia Sperdakos and Jim Varro of the Policy Secretariat.

BACKGROUND TO THE FINAL REPORT

6. There is a significant amount of competence-related work currently being done within the Law Society at a staff level and in committees and Convocation. Some of it is linked to Project 200 and the implementation of the competence provisions of the *Law Society Act*, but there is, as well, much work being done in departments and in other task forces.

7. It has become increasingly apparent to the Task Force that its main purpose should be to make recommendations about broad policy directions, but that from a practical perspective it must lie with other committees and staff with specific task-based and policy mandates to flesh out and implement the policies and the goals that will make competence a central theme of the organization's work.

8. It is critical to the realization of the competence blueprint that the Law Society embrace the implementation of the proactive and wide-ranging approach approved by Convocation.

9. This report elaborates on the Task Force's interim report and recommendations by articulating a number of policy directions that should frame the Society's approach to competence. Appendix 1 reproduces the recommendations discussed in this report.

IMPLEMENTING THE COMPETENCE PRIORITY

10. The successful implementation of the components of the competence blueprint, which the Task Force outlined in its interim report and upon which it elaborates in this report, is dependent upon there being systems in place to integrate the competence priorities of the Law Society into its policies and operations.

11. This integration must take place at both the bencher and staff levels. It must apply to the policy-making benchers undertake, the goal setting, development, and evaluation of Law Society programs for which staff is responsible, and the communication that occurs between both branches of the organization, at all levels within the organization, and with the public and the profession.

12. Convocation has already taken an important first step in this regard by including in the mandate of the Professional Development and Competence Committee, set out in By-law 9, the following provisions:

> *14. (1) The mandate of the Professional Development and Competence Committee is to develop for Convocation's approval policy options on all matters relating to the professional competence of members.*
>
> *(2) Subject to the approval of Convocation, the Professional Development and Competence Committee may prepare guidelines for professional competence.*

13. Having a bencher committee charged with overseeing and developing a coherent policy mandate on competence is essential. The Task Force has considered what this mandate should mean from the practical perspective of the Law Society's operations and has concluded and recommends the following:

a) All policy matters related to the competence scheme in Part II of the *Law Society Act* will be developed through the Professional Development and Competence Committee and then brought to Convocation. This includes, but is not limited to, the development of all competence-related by-laws.

b) In particular, as staff begins to apply the competence provisions of the *Law Society Act*, policy guidance must be sought from the Professional Development and Competence Committee. Policy direction related to practice reviews (sections 42(1) and 49.4), consent competence matters (section 42(6)), and competence hearings (sections 43 and 44), comes within the purview of the Professional Development and Competence Committee, not the Professional Regulation Committee.

c) Because it is likely that the same staff counsel will represent the Society in conduct, capacity, and competence hearings, it is particularly important that the different approaches and purposes behind each of the schemes within the legislation be visible in the processes that are developed and followed. The discipline perspective must not overshadow the more remedial perspective envisioned by the competence scheme.

d) All post-call competence-related policies beyond those legislatively mandated by the *Law Society Act* should also continue to be developed by the Professional Development and Competence Committee, but with greater emphasis on the inter-relationship between all competence matters within the Society. So, for example, where the Committee is aware of policy issues arising under the competence provisions of the *Act* it should consider how those may be applied to other competence-related programs or activities within the Society, such as the advisory section of Advisory and Compliance Services, or pre-call education.

14. The Task Force has concluded and recommends that there should be a staff committee to liaise with the Professional Development and Competence Committee on issues of competence. The objective of the staff committee would be to facilitate the implementation, throughout the organization, of the competence blueprint and the policy directives from the Professional Development and Competence Committee and Convocation, with a view to avoiding duplication or inconsistency between functions and departments. The staff committee would also facilitate the integration of those aspects of the competence blueprint that are related to Project 200.

15. The Task Force recommends that, at a minimum, the staff positions that should be represented on the committee are the Secretary, the Manager of Advisory and Compliance Services, the Director of Education, a representative of LPIC, and the Policy Secretariat Advisor to the Professional Development and Competence Committee. This provides input from all the competence-related strands of the Society and ensures that no area will be omitted from the discussions and actions.

16. The Task Force recommends that the staff committee choose a chair from among its members. This will be essential to facilitate communication between the Professional Development and Competence Committee and the staff committee. Further, the Task Force recommends that the staff committee meet with the Professional Development and Competence Committee soon after its establishment to discuss issues of common concern and to develop the framework of their relationship.

17. To round out the process the Task Force recommends that the staff committee regularly report the progress of the implementation of policies to the Professional Development and Competence Committee and that it ensure that all standing committees are aware of the work being done by it so that they may have input into issues relevant to them.

18. Finally, the Task Force recommends that the Chair of the Professional Development and Competence Committee report to Convocation in the fall of 1999, and thereafter on a regular basis, on the progress and adequacy of the implementation of the competence provisions of the legislation. This will be important so that the new bench will be kept apprised of the extent to which the operational priorities reflect the bencher priorities in this area.

COMPONENTS OF THE COMPETENCE BLUEPRINT

19. The Task Force's interim report set out four main components of the competence blueprint upon which the Task Force now elaborates. The recommendations concerning the roles of the Professional Development and Competence Committee and the staff committee, set out above, will be particularly relevant to implementing the recommendations set out in the balance of this report.

a) The Law Society should clarify the competence-related obligations of members under the Law Society Act and in particular, the competence sections of Part II of the Act.

20. Section 41 of the *Law Society Act states:*

A member fails to meet standards of professional competence for the purposes of this Act if

(a) there are deficiencies in,
- *(i) the member's knowledge, skill, or judgment,*
- *(ii) the member's attention to the interests of clients,*
- *(iii) the records, systems or procedures of the member's practice, or*
- *(iv) other aspects of the member's practice; and*

(b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

21. The Task Force has examined the framework of the legislation in greater detail in the months since the interim report and has concluded that, as the legislation is framed, the Law Society has authority to publish "guidelines" for professional competence. By-law 9, approved by Convocation on January 28, 1999, gives the authority to the Professional Development and Competence Committee to prepare such guidelines for Convocation's approval.

22. The development of guidelines to assist the members in their efforts to maintain standards of professional competence will be an ongoing process that should be undertaken incrementally, following the approach the Task Force outlined in its interim report.

23. Specifically, guidelines should be general rather than composed of detailed checklists. Particularly initially, guidelines should not focus on substantive law so much as on practice skills, particularly what is meant by "the member's attention to the interests of clients" and "the records, systems, or procedures of the member's practice".[1] Guidelines should be widely published so that through reference to them members are able to monitor their own skills, enhancing them where necessary.

24. The Task Force recommends that a variety of resources be used in developing competence guidelines, including consultation with the profession and drawing on what is learned and observed through practice reviews, competence hearings, the complaints and discipline process, and the LPIC experience.

25. The Professional Development and Competence Committee has undertaken the drafting of the first competence guideline to provide an overview for the profession of the new competence scheme, the inter-relationship of the competence scheme with the Rules of Professional Conduct, and the general approach members should take to maintain and enhance their competence.

26. The Professional Development and Competence Committee undertook the development of the by-law necessary to implement the competence provisions of the *Law Society Act*. By-law 24, approved by Convocation on March 26, 1999 sets out the circumstances under which mandated practice reviews will be directed and the procedures for obtaining a consent competence order. These are both processes through which the Law Society can address the competence-related needs of specific members with a remedial, rather than punitive focus.

27. To further the competence mandate, the Task Force recommends that:

a) The Law Society provide the membership with an overview to the competence provisions and by-laws and the operation of the competence scheme. As the scheme unfolds the Law Society should provide any additional information to the members. It is essential that members understand the difference between practice reviews, consent competence orders, and competence hearings, and between the competence stream and the discipline stream of the Society's regulatory functions. The first competence guideline should begin the process of regular communication.

b) The distinction between the competence and discipline streams must also be clear at an operational level so that members can trust the information they receive from the Law Society. The Project 200 staff and the staff of the regulatory division must develop processes for distinguishing between the two streams, particularly if the same staff are handling competence and discipline hearings.

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[1] In its interim report the Task Force stated that "at least initially, [the Law Society should] refrain from articulating standards for each practice area, continuing to rely instead on the well-developed common law standard that has been articulated in case law. This is because the profession is fairly well versed in the common law standards applicable in their practice areas, whereas the Society may provide useful guidance to elaborate on what is meant by some of the other components of section 41 of the *Law Society Act*."

28. The Task Force further recommends that to bolster the preventive and remedial focuses of the competence scheme there must be regular communication with the profession on the information that has been gleaned from practice reviews, competence hearings, the complaints and discipline process, and the LPIC experience that would be useful to their maintenance of standards of competence. The *Ontario Lawyers' Gazette* may be the most expeditious forum for communicating regularly, but the Law Society may choose to develop another. The critical part of the recommendation is that the communication be regular, systematic, consistent, and practical.

b) The Law Society should support lawyers in their efforts to meet their responsibility to maintain competence

29. In its interim report the Task Force spoke of three broad areas under this heading, namely education, technology, and a practice advisory service. The post-call efforts of the profession to maintain and enhance its competence span a broad range of approaches, but virtually all of them engage education, whether it be through experiential learning, continuing legal education, self-study, or the pursuit of advice and mentoring. Pre-call learning is the foundation upon which a career long commitment to learning is constructed.

(i) Education

30. The "legal education continuum" is a term used frequently in discussions of the various stages of professional learning and their inter-relationship, but there are few systemic indicia of that continuum in Ontario. The content of undergraduate legal education is often contrasted with the learning that is necessary to "practise law", but there have been few recent examinations of what is actually taught in Ontario law schools, what proportion of students take practice skills, how those skills are evaluated, or whether they complement or contradict what is taught in the bar admission course. Similarly, the Law Society has had recent but, only limited discussions with the law schools on the rationale underlying what is taught at the bar admission course level. Thus each group relies, to at least some degree, on anecdotal evidence and memory in evaluating and judging the other.

31. Appreciating the historic division between the Law Society and the law schools and understanding that it is not in the interest of either group to "force" a relationship, the Task Force is nonetheless convinced that the two groups must find a better way to draw on the strengths each has in educating the profession. There will continue to be political and philosophical differences about whose responsibility certain functions are, why certain choices are made by either group, and who is better equipped to undertake certain approaches, but the lack of meaningful interaction that currently exists benefits no one.

32. The Task Force recommends that the Law Society make every effort to develop a formal structure of discussion and debate with the law schools of Ontario and that it invite the law school deans, or their representatives, to participate in a series of meetings to explore how that structure might best unfold. The discussions should not be confined only to pre-call learning, but should embrace post-call learning as well.

33. This recommendation has been made on previous occasions by other Task Forces and subcommittees. This Task Force urges the Law Society to make this a priority and to document the process.

34. The Law Society engages in many activities with an educational focus, ranging from the bar admission course to continuing legal education to the soon to be implemented requalification program. Other working groups, committees, and task forces are analyzing pieces of the Law Society's educational work and in some cases making recommendations. It is not the mandate of this Task Force to go behind that work or duplicate it. But the Task Force takes this opportunity to re-iterate what it has set out above.

35. With respect to post-call educational matters the Professional Development and Competence Committee must be responsible for looking at the broad policies that underlie these efforts to ensure that there is coherence to the Law Society's approach.

36. If the Society is committed to a proactive approach to competence, then it must take a direct interest in the means available to members to maintain standards of professional competence. Within the Law Society itself there are the makings of a rich educational continuum that must be examined, evaluated, and fostered as such. The wide range of activities that come within that continuum include the bar admission course, articling, CLE programs and publications, practice advisory service, the advisory section of the new Advisory and Compliance Services, the *Ontario Lawyers' Gazette* and the *Ontario Reports*, the Great Library and county and district libraries, the new requalification program, proposed Project 200 remedial education initiatives, and in a related area, LPIC's *practicePRO*.

37. The Law Society's traditional approach to its programs has been to develop, examine, and evaluate each program individually. That must change if the Society is to truly integrate competence across the organization in a meaningful developmental approach.

38. The Task Force recommends that the staff committee, discussed above, assist the Professional Development and Competence Committee in developing policy strategies for enhancing the educational continuum within the Law Society.

(ii) Practice Advice

39. Relevant to the educational continuum is the existence of a strong practice advisory service within the Law Society. As part of its commitment to embrace a preventive approach to competence, the continued and enhanced existence of a practice advisory service is an essential function the Law Society should undertake. Attached as Appendix 2 is an outline describing the advisory section of the Advisory and Compliance Services department that is part of the Project 200 redesign. As described, the advisory section seeks to bring together the various advisory functions within the Law Society in a coherent and proactive approach, with which the Task Force wholeheartedly agrees. The development of the advisory part of the Law Society's mandate is crucial to the acceptance by the profession that the new competence authority under the *Law Society Act* is not a further way to "discipline" lawyers under another name. The strands of the Law Society's competence involvement must reflect a commitment to assisting the profession with the tools that support their efforts.

40. The Task Force recommends that as the Advisory and Compliance Services department develops the advisory section, with policy guidance from the Professional Development and Competence Committee, the following features should be emphasized:

a) the goals of the advisory section of Advisory and Compliance Services should be clearly articulated as soon as possible, including what the nature of the services should be;[2]
b) the tools or methods by which the accomplishment of those goals will be evaluated should be designed at the same time;
c) the time frame for evaluation should be set out at the same time; and
d) the role of the service should be communicated to the profession.[3]

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[2] In this context it will be important to determine how in-depth the advice the unit provides should be. At what stage does a member need more or different support than the unit is intended to serve? This will be an important consideration.

[3] Many members use the current advisory services, but this is an opportunity to acquaint the profession with an important feature of the competence scheme. There should be discussion by the staff committee on whether communications should be done on all aspects of the competence scheme or in "small-bite" portions.

(iii) Technology

41. The role of technology in the future of the profession is the subject of constant discussion. As the role expands, so do the possibilities for further exploration into technological ways in which the profession can be effectively supported in its efforts to maintain and enhance competence.

42. As the possible uses of technology in the practice of law expand there are at least two specific aspects of the issue that should interest the Law Society. The first relates to the manner in which technology can be used as a delivery mechanism for the tools members need to maintain and enhance their competence. The second, which will be discussed below in the fourth component of the blueprint, relates to regulatory issues relevant as technology becomes a more pervasive presence in the practice of law.

43. In 1997 the Mandatory Continuing Legal Education Subcommittee discussed the important role for technology in enhancing continuing legal education in all of its facets ranging from individual research to programs and printed materials. In a report summarizing the Committee's research on technology the following commentary was made:

> *What is technology? Is it simply the physical hardware and software used to deliver information, or has it opened up a different manner in which to communicate ideas? Unfamiliarity with the hardware and software may account for some of the reluctance to integrate it into the process of supporting lawyers in their learning. Clearly, the hardware and software have cost consequences that affect decisions to use them at all, let alone as an integral part of a CLE operation. At the same time, however, the technology can be a valuable vehicle for enhancing access and approaches to education and should be explored in this light.*
>
> *The...Subcommittee is very clear that one of the key factors to improving the ability of lawyers to maintain their competence through education is to deliver it literally to their doorstep. Technology makes this a real possibility...*[4]

44. The Committee believed, however, that education should drive the technology, not the reverse.

> *Focusing on technology, not as an end, but as a means for accomplishing a particular objective or set of goals for any given program or approach to learning would properly integrate learning goals with delivery goals.*[5]

45. The Task Force agrees with these comments. Recognizing that it has not been part of its mandate to explore the specific uses to which technology can best be put by the Law Society, the Task Force recommends that as the Law Society develops its proactive approach to competence, it actively consider and, where appropriate to its mandate, make use of technology to enhance the competence of the profession.

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[4]Sperdakos, Sophia (MCLE Project Director). "CLE Delivery Mechanisms", (January 1997), p.21.

[5]Ibid. p.8.

(iv) Wellness

46. In its interim report the Task Force stated that competence is not only about the proficient application of legal knowledge and practice skills, but also about developing resources to manage personal and professional stress. The Law Society's experience with complaints and discipline demonstrates all too clearly the impact of personal difficulties and stress on the professional lives of some of its members.

47. As the Law Society develops the mechanisms to fulfil its commitment to adopt a proactive approach to competence it must ensure that consideration of the impact of stress on competence is part of the developmental template.

48. The Task Force recommends that as the Law Society develops the competence scheme set out in Part II of the *Law Society Act*, the alternate dispute resolution mandate of the regulatory division, and the advisory services unit of the Society, it pay particular attention to issues related to the "wellness" of members and to mechanisms by which to support members in their approaches to their professional lives.

c) The Law Society should take an interest in members of the public having a satisfactory way to locate lawyers who can address their needs

49. In its interim report the Task Force stated:

> *Part of the Law Society's mandate is to ensure that the pubic is served by lawyers who meet high standards of learning, competence, and professional development. The Task Force considers an aspect of that mandate to ensure that members of the public have effective mechanisms by which to locate lawyers who can address their particular needs in given circumstances.*

50. At a general policy level the Task Force has considered the main tools the Law Society currently has for providing such guidance to the public, namely the Lawyer Referral Service, the "practice restricted to" designation described in Rule 12 of the current Rules of Professional Conduct, and the Specialist Certification Program.

51. Each of these initiatives has developed within its own framework and goals. There has been little, if any, sense that each is part of a continuum. No inquiry has been made to assess whether they should be thought of, developed, and evaluated as such. Over the years there have been divergent views of the merits of the lawyer referral program and the specialist certification program. Proponents of these programs suggest that both represent an important public service that should be expanded and enhanced. Others have criticized the programs for different reasons. Some are of the view that the current Lawyer Referral Program has little, if any, competence-related foundation underlying it. Some consider the certification program to be relevant to too small a proportion of the profession to be a valuable tool for the public.

52. Without attempting to consider each of the programs in any depth the Task Force believes that any analysis of them would benefit from a discussion of the principles that should underlie such programs. There is no reliable information on what the public needs by way of referrals and what it thinks of the Society's current efforts in this regard. The Task Force believes that such information is important if the Society is to be able to assess the value of what it currently does. A number of questions need addressing, including:

- What is the level of understanding of the term "practice restricted to" or specialist certification?
- Does the public rely on these designations?
- When members of the public seek a lawyer through the lawyer referral service do they think the Law Society is providing any assertion as to quality of representation?

- Does the public really need a lawyer referral service or are the Yellow Pages sufficient?
- What should the role of the Law Society be with respect to referral programs? Should the Society be most concerned with assisting the public to find high-end referrals (certification), middle-range (practice restricted to) or basic(lawyer referral)?
- By what benchmarks should such programs be assessed?
- Are they consumer protection measures or a means for lawyer advertising?
- Who is the market for the service and is the market being reached?
- How should the Law Society assess the success or failure of such programs?

53. The Task Force recommends that a working group of the Professional Development and Competence Committee be established to do an analysis of the issue of referral/specialist programs. The purpose of the working group would be to consider first principles, along the lines generally outlined in this report, to assess what the appropriate role of referral/specialist programs should be, and to consider what role the current programs play in the analysis.

54. Without attempting to define or limit the mandate of such a working group, this Task Force is of the view that a meaningful analysis will require a survey of public awareness, needs, expectations, and evaluation and recommends that such a survey be conducted. The working group would develop a budget to be brought to the Finance Committee for input and to Convocation for approval.

55. The Task Force recommends that the current programs continue to operate while such working group is analyzing the issue. Although there are many views about the merits of each program, much evaluation is based on anecdotal evidence both positive and negative, not on the type of information upon which to base change or improvement.

d) The Law Society should assess the efficacy of its range of activities, programs, and initiatives that have a substantial competence component

56. In its interim report the Task Force catalogued the wide range of competence-related work in which the Law Society is currently, or soon will be, engaged. The Task Force indicated that the Law Society should examine the nature of this work with an eye to assessing the efficacy of its approach.

(i) Evaluating the current landscape

57. In the course of adopting a proactive approach to competence the Law Society should take the opportunity to ask itself whether its current approach covers the continuum that the competence blueprint and Project 200 envision and, if not, how it could improve its approach.

58. The Task Force recommends that the Law Society should look to its competence-related activities and that its assessment should include consideration of:

a) what aspects of the competence definition are being addressed in each program;
b) where gaps in coverage exist;
c) the objectives of the various competence-related activities;
d) how effectively the mandate, design, or operation of a program contributes to the accomplishment of its objectives;
e) how the ongoing effectiveness of programs should be measured; and
f) the extent and manner to which the Law Society should interact with other organizations to ensure a comprehensive range of competence enhancing tools.

59. The Task Force does not envision that this analysis needs to involve a separate task force or working group. The Professional Development and Competence Committee will provide policy guidance to the staff committee in the design of a template for use in evaluating the competence-related work. The purpose of the activity is to develop a coherent approach to looking at what the Law Society does and can do and integrating ongoing evaluation into all the competence-related activities the Society undertakes.

(ii) Future Considerations

60. The Task Force also considers it essential for the Law Society to look ahead and consider what competence-related issues are on the horizon that should be of interest to the Law Society as regulator of the legal profession. The Task Force believes that the Law Society must ask itself how developments in technology will drive the profession and how those influences will affect competence. It must not wait for developments to force it to regulate reactively, since such an approach may be detrimental to the profession in Ontario. The Law Society should examine this issue from the perspective of the Ontario lawyer.

61. Without trying to catalogue all the detail that might be examined, the Task Force points to the following broad issues.

- How will standards of practice, ethics, privacy, and security of information be affected by information technology, and how will the Law Society's regulatory role be affected?
- How will business and professional relationships be affected by the electronic commerce?
- What impact will technology have on cross-boundary issues?

62. The Task Force recommends that a Technology Task Force be established with the specific mandate of examining the impact of technology on the practice of law and the role the Law Society should play in leading the profession into the future.

CONCLUSION

63. The approach adopted by the Task Force in both its interim report and this report reflects the conviction that the commitment to competence is multi-layered.

> *...the competence of the profession is the combined responsibility of individual lawyers, the profession as a whole, and the Law Society as the regulator that governs the profession in the public interest. Although the governing body has ultimate responsibility to ensure that those called to the bar are competent and that the public is served by competent lawyers, members of the profession, both individually and collectively, must make a fundamental commitment throughout their careers to quality service and ethical conduct. The governing body should set the standards for the profession, take a proactive role in the development, maintenance, and enhancement of competence, and intervene with remedial efforts or, if necessary, discipline when lawyers fail to meet the responsibility to maintain competence. A successful approach to competence is one in which the voluntary acceptance and compliance with standards is significantly higher than the requirement to enforce them.*

64. Through the recommendations discussed in this report, and reproduced together at Appendix 1, the Task Force seeks to provide the framework for facilitating a successful collaboration among the Law Society, individual lawyers, and the profession as a whole in the pursuit of competence and quality service.

CONVOCATION'S CONSIDERATION

65. Convocation is requested to consider the report and recommendations and, if appropriate, to approve the recommendations set out in Appendix 1 to this report.

APPENDIX 1: SUMMARY OF RECOMMENDATIONS

The Task Force recommends the following:

1. All policy matters related to the competence scheme in Part II of the *Law Society Act* will be developed through the Professional Development and Competence Committee and then brought to Convocation. This includes, but is not limited to, the development of all competence-related by-laws.

2. In particular, as staff begins to apply the competence provisions of the *Law Society Act*, policy guidance must be sought from the Professional Development and Competence Committee. Policy direction related to practice reviews (section 42(1) and 49.4), consent competence matters (section 42(6)), and competence hearings (sections 43 and 44), comes within the purview of the Professional Development and Competence Committee, not the Professional Regulation Committee.

3. Because it is likely that the same staff counsel will represent the Society in conduct, capacity, and competence hearings, it is particularly important that the different approaches and purposes behind each of the schemes within the legislation be visible in the processes that are developed and followed. This discipline perspective must not overshadow the more remedial perspective envisioned by the competence scheme.

4. All post-call competence-related policies beyond those legislatively mandated by the *Law Society Act* should also continue to be developed by the Professional Development and Competence Committee, but with greater emphasis on the inter-relationship between all competence matters within the Society. So, for example, where the Committee is aware of policy issues arising under the competence provisions of the *Act* it should consider how those may be applied to other competence-related programs or activities within the Society, such as the advisory section of Advisory and Compliance Services, or pre-call education.

5. There should be a staff committee to liaise with the Professional Development and Competence Committee on issues of competence. The objective of the staff committee would be to facilitate the implementation, throughout the organization, of the competence blueprint and the policy directives from the Professional Development and Competence Committee and Convocation, with a view to avoiding duplication or inconsistency between functions and departments. The staff committee would also facilitate the integration of those aspects of the competence blueprint that are related to Project 200.

6. At a minimum the staff positions that should be represented on the committee are the Secretary, the Manager of Advisory and Compliance Services, the Director of Education, a representative of LPIC, and the Policy Secretariat Advisor to the Professional Development and Competence Committee. This provides input from all the competence-related strands of the Society and ensures that no area will be omitted from the discussions and actions.

7. The staff committee should choose a chair from among its members. This will be essential to facilitate communication between the Professional Development and Competence Committee and the staff committee. The staff committee should meet with the Professional Development and Competence Committee soon after its establishment to discuss issues of common concern and to develop the framework of their relationship.

8. To round out the process the staff committee should regularly report the progress of the implementation of policies to the Professional Development and Competence Committee and that it also ensure that all standing committees are aware of the work being done by it so that they may have input into issues relevant to them.

9. The Chair of the Professional Development and Competence Committee should report to Convocation in the fall of 1999, and thereafter on a regular basis, on the progress and adequacy of the implementation of the competence provisions of the legislation. This will be important so that the new bench will be kept apprised of the extent to which the operational priorities reflect the bencher priorities in this area.

10. A variety of resources should be used in developing competence guidelines, including consultation with the profession and drawing on what is learned and observed through practice reviews, competence hearings, the complaints and discipline process, and the LPIC experience.

11. The Law Society should provide the membership with an overview to the competence provisions and by-laws and the operation of the competence scheme. As the scheme unfolds the Law Society should provide any additional information to the members. It is essential that members understand the difference between practice reviews, consent competence orders, and competence hearings, and between the competence stream and the discipline stream of the Society's regulatory functions. The first competence guideline should begin the process of regular communication.

12. The distinction between the competence and discipline streams must also be clear at an operational level so that members can trust the information they receive from the Law Society. The Project 200 staff and the staff of the regulatory division must develop processes for distinguishing between the two streams, particularly if the same staff are handling competence and discipline hearings.

13. To bolster the preventive and remedial focuses of the competence scheme there must be regular communication with the profession on the information that has been gleaned from practice reviews, competence hearings, the complaints and discipline process, and the LPIC experience that would be useful to their maintenance of standards of competence. The *Ontario Lawyers' Gazette* may be the most expeditious forum for communicating regularly, but the Law Society may choose to develop another. The critical part of the recommendation is that the communication be regular, systematic, consistent, and practical.

14. The Law Society should make every effort to develop a formal structure of discussion and debate with the law schools of Ontario and should invite the law school deans or their representatives to participate in a series of meetings to explore how that structure might best unfold. The discussions should not be confined only to pre-call learning, but should embrace post-call learning as well.

15. The staff committee, discussed above, should assist the Professional Development and Competence Committee in developing policy strategies for enhancing the educational continuum within the Law Society.

16. As the Advisory and Compliance Services department develops the advisory section, with policy guidance from the Professional Development and Competence Committee, the following features should be emphasized:

    a) the goals of the advisory section of Advisory and Compliance Services should be clearly articulated as soon as possible, including what the nature of the services should be;
    b) the tools or methods by which the accomplishment of those goals will be evaluated should be designed at the same time;
    c) the time frame for evaluation should be set out at the same time; and

d) the role of the service should be communicated to the profession.

17. As the Law Society develops its proactive approach to competence, it should actively consider and, where appropriate to its mandate, make use of technology to enhance the competence of the profession.

18. As the Law Society develops the competence scheme set out in Part II of the *Law Society Act*, the alternate dispute resolution mandate of the regulatory division, and the advisory services unit of the Society, it should pay particular attention to issues related to the "wellness" of members and to mechanisms by which to support members in their approaches to their professional lives.

19. A working group of the Professional Development and Competence Committee should be established to do an analysis of the issue of referral/specialist programs. The purpose of the working group would be to consider first principles along the lines generally outlined in this report, to assess what the appropriate role of referral/specialist programs should be, and to consider what role the current programs play in the analysis.

20. Without attempting to define or limit the mandate of such a working group, this Task Force is of the view that a meaningful analysis will require a survey of public awareness, needs, expectations, and evaluation. Such a survey should be conducted.

21. The current programs should continue to operate while such working group is analyzing the issue.

22. The Law Society should look to its competence-related activities and its assessment should include consideration of:
    a) what aspects of the competence definition are being addressed in each program;
    b) where gaps in coverage exist;
    c) the objectives of the various competence-related activities;
    d) how effectively the mandate, design, or operation of a program contributes to the accomplishment of its objectives;
    e) how the ongoing effectiveness of programs should be measured; and
    f) the extent and manner to which the Law Society should interact with other organizations to ensure a comprehensive range of competence enhancing tools.

23. A Technology Task Force should be established with the specific mandate of examining the impact of technology on the practice of law and the role the Law Society should play in leading the profession into the future.

APPENDIX 2: ADVISORY SERVICES

Outline Of Advisory Section of P200
Prepared by Scott Kerr
Manager of Advisory and Compliance Services

There is an advisory component of P200.

At an earlier stage of the Project, it was determined that advice to members was being provided by a number of departments, including Practice Advisory. The redesign calls for advisory services currently provided in Practice Advisory, Professional Conduct, Complaints, the Staff Trustee's office and Professional Standards to be re-assigned to a single operating unit - the Advisory Services section of the Advisory and Compliance Services Department.

It was also determined that a number of matters were being raised so frequently that it was both possible and advisable for the Law Society to standardize the response and delegate this task to the new Customer Service Centre. The higher skill/training level of the Regulatory Customer Service Reps combined with IT upgrades such as the Intranet will help to make this possible.

Another new feature will be the Ethics Hotline - a separate, dedicated line that members can call for confidential ethics advice. Advisory Counsel will respond to all Ethics Hotline calls.

A key element of the redesign as it relates to the Society's role in providing advice to members is to become more outward-looking, pro-active and accessible. In part, this means getting more information out to members without them having to ask for it.

Current thinking is that Advisory Services should be an information "clearing house" or conduit for information that is either produced by the Law Society, for the Law Society, or that it identifies as being noteworthy. Collaboration and consultation with individual members and other organizations will be essential to performing such a role. Making better use of technology is another key "enabler". For example, much of the information either migrated onto or created for the Intranet in this area should be accessible by members as well, either via the Law Society web site or in other format.

Being more outward-looking and accessible speaks directly to the responsibility the Society has assigned for itself in assisting members to maintain and enhance their competence. Advisory Services will focus more on the membership generally and on widespread compliance with competence standards. Involvement in the development of self assessment tools for use by members is one example of how this could be done.

The fact that competence is a "shared field" of interest with members individually and other legal organizations will make it important that the Society establish constructive relationships with all interested groups.

While it is expected that this section will be involved in the development and refinement of remedial programs, it will not be involved with individual members who require remedial assistance in order to achieve compliance with standards.

Establishing performance measures for the Advisory Services section is another "early days" priority. Information gathered from member consultations and from Advisory staff input (once they've been hired) will be a couple of important inputs, not only at the outset, but also on a continuous basis in the future.

One of my early priorities as the Manager of Advisory and Compliance Services is to determine what a "service" orientation in the Advisory Services area should look like. A survey of members has already been conducted in order to establish service benchmarks and consultations with various lawyer interest groups will be undertaken during 1999 to identify member needs and priorities.

It was moved by Mr. Armstrong, seconded by Ms. Eberts that the recommendations set out on pages 21 through 23 at Appendix 1 be approved.

Carried

BY-LAW 6 - TREASURER

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS
made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 30, 1999

By-Law 6 [Treasurer]

I MOVE that By-Law 6 [Treasurer] be made as follows:

BY-LAW 6

TREASURER

ELECTION OF TREASURER

Time of election
1. (1) There shall be an election of Treasurer every year on the day on which the regular meeting of Convocation is held in June.

First matter of business
(2) Despite subsection 6 (1) of By-Law 8, the election of Treasurer shall be the first matter of business at the regular meeting of Convocation in June.

Nomination of candidates
2. (1) A candidate for election as Treasurer shall be nominated by two benchers who are entitled to vote in Convocation.

Nomination in writing
(2) The nomination of a candidate shall be in writing and signed by the candidate, to indicate his or her consent to the nomination, and the two benchers nominating the candidate.

Time for close of nominations
(3) Subject to subsection (4), the close of nominations of candidates shall be 5 p.m. on the second Thursday in May.

Exception
(4) In a year in which there is an election of benchers under section 3 of By-Law 5, the close of nominations of candidates shall be 5 p.m. on the fourth Friday in May.

Withdrawal of candidates
3. A candidate may withdraw from an election of Treasurer at any time before 5 p.m. on the Friday immediately preceding the first day of the advance poll by giving the Secretary written notice of his or her withdrawal.

Election by acclamation
4. If after the close of nominations, or the time for the withdrawal of candidates from the election has passed, there is only one candidate, the Secretary shall declare that candidate to be elected as Treasurer.

Poll

5. (1) If after the time for the withdrawal of candidates from the election has passed, there are two or more candidates, a poll shall be conducted to elect a Treasurer.

Secret ballot

(2) A poll to elect a Treasurer shall, in so far as possible, be conducted by secret ballot.

[Subsection (2) is worded to accommodate voting by fax. If voting by fax is not permitted, then subsection (2) will read:

Secret ballot

(2) A poll to elect a Treasurer shall be conducted by secret ballot.]

Treasurer is candidate in election

6. If the Treasurer is a candidate in an election of Treasurer, the Treasurer shall appoint a bencher who is a chair of a standing committee of Convocation and who is not a candidate in the election for the purpose of performing the duties and exercising the powers of the Treasurer under this By-Law.

Right to vote

7. Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

Announcement of candidates

8. (1) Subject to subsection (3), if a poll is to be conducted to elect a Treasurer, the Secretary shall, at the regular meeting of Convocation in May, announce the candidates and the benchers who nominated each candidate.

List of candidates to be sent to benchers

(2) Subject to subsection (3), immediately after the regular meeting of Convocation in May, the Secretary shall send to each bencher entitled to vote in an election of Treasurer a list of the candidates.

Announcement of candidates in year in which there is election of benchers

(3) In a year in which there is an election of benchers under section 3 of By-Law 5, the Secretary shall, as soon as practicable after the close of nominations, send to each bencher entitled to vote in an election of Treasurer a list of the candidates that identifies the benchers who nominated each candidate.

Advance poll

9. (1) For the purpose of receiving the votes of benchers entitled to vote in an election of Treasurer who expect to be unable to vote on election day, an advance poll shall be conducted beginning on the second Thursday in June and ending on the fourth Thursday in June.

Methods of voting at advance poll

(2) A bencher may vote at the advance poll by,

(a) attending at the office of the Secretary on any day that is not a Saturday or Sunday between the hours of 9 a.m. and 5 p.m. to receive a ballot and to mark the ballot in accordance with subsection (3); or

(b) requesting a voting package from the Secretary and returning the voting package to the Secretary by regular lettermail to an address specified by the Secretary.

[Subsection (2) could also include voting by fax.

Methods of voting at advance poll

(2) A bencher may vote at the advance poll by,

(a) attending at the office of the Secretary on any day that is not a Saturday or Sunday between the hours of 9 a.m. and 5 p.m. to receive a ballot and to mark the ballot in accordance with subsection (3);

(b) requesting a voting package from the Secretary and returning the voting package to the Secretary by regular lettermail to an address specified by the Secretary; or

(c) requesting a ballot from the Secretary and returning to the Secretary, by fax to a fax number specified by the Secretary, the ballot marked in accordance with subsection (3).]

Marking a ballot

(3) A bencher voting at the advance poll shall mark the ballot in accordance with subsection (4) or (5).

Two candidates

(4) If there are no more than two candidates, a bencher shall vote for one candidate only and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

More than two candidates

(5) If there are three or more candidates, a bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

Ballot box

(6) If a bencher is voting at the advance poll under clause (2) (a), after the bencher has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into a ballot box.

Same

(7) If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 9.1 (3) and (4), the Secretary shall remove the ballot envelope from the return envelope and put the ballot envelope into a ballot box.

Ballots not to be opened

(8) Ballots received at the advance poll shall not be opened until the ballots cast on election day are opened.

[If voting by fax is included, subsection (8) will be struck out and the following subsections substituted:

Same

(8) If a bencher is voting at the advance poll under clause 2 (c), after complying with subsections 9.2 (3) and (4), the Secretary shall fold the ballot so that the names of the candidates do not show and put the ballot into a ballot box.

Ballots not to be opened

(9) Ballots received at the advance poll shall not be opened until the ballots cast on election day are opened.]

Special procedures: voting by mail

9.1 (1) If a bencher requests a voting package from the Secretary under clause 9 (2) (b), the Secretary shall send to the bencher a voting package that includes a ballot, a ballot envelope and a return envelope and shall specify the address to which the voting package must be returned.

Same

(2) If a bencher is voting at the advance poll under clause 9 (2) (b), the bencher shall,

(a) in accordance with subsection 9 (3), mark the ballot received from the Secretary;

(b) after complying with clause (a), place the marked ballot inside the ballot envelope and seal the ballot envelope;

(c) after complying with clause (b), place the sealed ballot envelope inside the return envelope and seal the return envelope;

(d) after complying with clause (c), sign the return envelope; and

(e) after complying with clause (d), send to the Secretary, by regular lettermail to the address specified by the Secretary, the voting package, that includes the ballot, the ballot envelope and the return envelope, so that it is received by the Secretary not later than 5 p.m. on the fourth Thursday in June.

Receipt of return envelopes

(3) When the Secretary receives a voting package at the specified address, the Secretary shall check to see if the return envelope bears the signature of a bencher to whom a voting package was sent.

Discarding ballots

(4) The Secretary shall discard a voting package that the Secretary receives,

(a) at an address other than the specified address;

(b) that does not bear the signature of a bencher to whom a voting package was sent; and

(c) after 5 p.m. on the fourth Thursday in June.

[If voting by fax is included, the following section will be added to the By-Law:

Special procedures: voting by fax

9.2 (1) If a bencher requests a ballot from the Secretary under clause 9 (2) (c), the Secretary shall send to the bencher a ballot which bears a specific ballot number and shall specify the fax number to which the ballot must be returned.

Deadline for receipt of ballots

(2) If a bencher is voting at the advance poll under clause 9 (2) (c), the bencher shall return to the Secretary the ballot which the Secretary sent to the bencher marked in accordance with subsection 9 (3) so that the ballot is received by the Secretary not later than 5 p.m. on the fourth Thursday in June.

Receipt of ballot with ballot number

(3) When the Secretary receives at the specified fax number a ballot that bears a ballot number, the Secretary shall confirm with the bencher to whom a ballot with that ballot number was sent that the bencher returned the ballot.

Discarding ballots

(4) The Secretary shall discard a ballot that the Secretary receives,

(a) fax number other than the specified fax number;

(b) that does not bear a ballot number;

(c) the return of which is not confirmed by the bencher to whom the ballot was sent; and

(d) after 5 p.m. on the fourth Thursday in June.

[If voting by fax and voting by mail are not included, the By-Law will only include section 9 as follows:

Advance poll

9. (1) For the purpose of receiving the votes of benchers entitled to vote in an election of Treasurer who expect to be unable to vote on election day, an advance poll shall be conducted beginning on the second Thursday in June and ending on the fourth Thursday in June.

Procedure at advance poll

(2) A bencher voting at the advance poll shall attend at the office of the Secretary on any day that is not a Saturday or Sunday between the hours of 9 a.m. and 5 p.m. to receive a ballot

Marking a ballot

(3) If there are no more than two candidates, the bencher shall vote for one candidate only and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

More than two candidates

(4) If there are three or more candidates, the bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

Ballot box

(5) After the bencher has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into a ballot box.

Ballots not to be opened

(6) Ballots received at the advance poll shall not be opened until the ballots cast on election day are opened.]

Procedure for voting on election day: first ballot

10. (1) On election day, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a first ballot listing the names of all candidates.

Second ballot

(2) On election day, if a Treasurer is not elected as a result of the votes cast at the advance poll and on the first ballot, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a second ballot listing the names of the candidates remaining in the election at the time of that ballot.

Application of subs. (2) to second and further ballots

(3) Subsection (2) applies, with necessary modifications, to the second ballot and any further ballots in an election of Treasurer.

Marking ballot

(4) Each bencher shall vote for one candidate only on each ballot and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

Ballot box

(5) After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into the ballot box.

Same

(6) If a bencher is voting under section 10.1, after complying with subsections 10.1 (4) and (5) , the Secretary shall fold the ballot so that the names of the candidates do not show and put the ballot into a ballot box.

Voting by fax on election day

10.1 (1) If on election day a bencher entitled to vote in an election of Treasurer is participating in the meeting of Convocation by telephone, the Secretary shall send each ballot required to the bencher by fax to a fax number provided by the bencher to the Secretary in advance of the meeting.

Ballot numbers

(2) Each ballot sent to a bencher under subsection (1) shall bear a specific ballot number.

Marking and returning ballot

(3) When a bencher receives a ballot by fax, he or she shall mark the ballot in accordance with subsection 10 (4) and return the ballot by fax to a fax number specified by the Secretary.

Receipt of ballot with ballot number

(4) When the Secretary receives at the specified fax number a ballot that bears a ballot number, the Secretary shall confirm with the bencher to whom a ballot with that ballot number was sent that the bencher returned the ballot.

Discarding ballots

(5) The Secretary shall discard a ballot that the Secretary receives,

(a) at a fax number other than the specified fax number;

(b) that does not bear a ballot number; and

(c) the return of which is not confirmed by the bencher to whom the ballot was sent.

[If voting by fax is not included, subsection 10 (6) and section 10.1 will be struck out.]

Appointment of proxy

10.2 (1) Where a bencher entitled to vote in an election of Treasurer has reason to believe that he or she will be unable to vote at the advance poll or on election day, the bencher may appoint another bencher entitled to vote in an election of Treasurer as his or her voting proxy.

Not more than one voting proxy

(2) Not more than one bencher shall be appointed a voting proxy on behalf of another bencher.

Voting proxy: limitation

(3) A bencher may not act as voting proxy for more than two benchers.

Notice to Secretary

(4) A bencher who appoints a voting proxy shall before 5 p.m. on the day immediately preceding election day notify the Secretary in writing of the appointment.

Cancellation of appointment

(5) A bencher who has appointed a voting proxy may cancel the appointment by notifying the voting proxy and the Secretary of the cancellation before the first ballot is distributed on election day.

[Note that there is no requirement to cancel the appointment of a voting proxy in writing. Is this okay?]

Voting proxy: application of s. 10

(6) Section 10 applies, with necessary modifications, to a voting proxy voting on behalf of the bencher who appointed him or her.

Voting proxy: application of s. 10.1

(7) Section 10.1 does not apply to a voting proxy voting on behalf of the bencher who appointed him or her.

[If voting by proxy is not included, section 10.2 will be struck out.]

Counting votes

11. (1) On election day, after all benchers entitled to vote in an election of Treasurer have voted or declined on a ballot, the Secretary shall, in the absence of all persons but in the presence of the Treasurer,

(a) open the ballot box used on election day, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate; and

(b) open the ballot box used at the advance poll, remove all the ballots and any ballot envelopes from the ballot box, remove the ballots from any ballot envelopes, open the ballots and count the votes cast for each candidate.

[If voting by mail is not permitted at the advance poll, clause (b) will read:

(b) open the ballot box used at the advance poll, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.]

Counting votes cast at advance poll

(2) If at the advance poll votes were cast for candidates by rank of preference, in counting the votes cast for each candidate at the advance poll, the Secretary shall assume that a bencher's candidate of choice was the candidate on the ballot given the highest rank by the bencher.

Application

(3) This section applies to the count of votes on the first ballot in an election of Treasurer and, with necessary modifications, to the count of votes on the second ballot and any further ballots in an election of Treasurer.

Report of results: two candidates

12. (1) If on any ballot there are no more than two candidates, immediately after counting the votes cast for each candidate, the Secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

Report of results: three or more candidates

(2) If on any ballot there are three or more candidates and, after counting the votes, the Secretary determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the Secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the largest number of votes.

Same

(3) If on any ballot there are three or more candidates and, after counting the votes, the Secretary determines that no candidate received more than 50 percent of all votes cast for all candidates, the Secretary shall report to Convocation that no candidate received more than 50 percent of all votes cast for all candidates and that a further ballot will be required in order to elect a Treasurer.

Further ballot required

(4) If a further ballot is required under subsection (3), the Secretary shall report to Convocation the candidate on the previous ballot who received the smallest number of votes and that candidate shall be removed as a candidate in the election.

[If the Treasurer is not given a "casting vote" under section 13, then subsection 12 (1) will be struck out and the following substituted:

Report of results: two candidates

(1) If on any ballot there are no more than two candidates and, after counting the votes, the Secretary determines that one candidate received a larger number of votes, the Secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

Same

(1.1) If on any ballot there are no more than two candidates and, after counting the votes, the Secretary determines that an equal number of votes has been cast for the two candidates, the Secretary shall report to Convocation that there has been a tie vote and that a further ballot will be required in order to elect a Treasurer.

As well, section 12 will include the following subsection:

Same

(5) Despite subsection (4), if two or more candidates have the smallest number of votes, no candidate shall be removed as a candidate in the election.

If the Treasurer is not given a "casting vote" under subsection 13 (1), but is given a "casting vote" under subsection 13 (2), then subsection 12 (1) will be struck out and only new subsections (1) and (1.1) included. If the Treasurer is not given a "casting vote" under subsection 13 (2), but is given a "casting vote" under subsection 13 (1), then section 12 will include new subsection (5).]

Casting vote

13. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall give the casting vote.

Same

(2) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one or more of them to remain in the election, the Treasurer shall randomly select the candidate to be removed as a candidate from the election.

[If the Treasurer is not given a "casting vote" under either subsection 13 (1) or (2), then section 13 will be struck out and the remaining sections renumbered accordingly.

If the Treasurer is not given a "casting vote" under subsection 13 (1), but is given a "casting vote" under subsection 13 (2), then section 13 will be struck out and the following substituted:

Equal number of votes

13. If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one or more of them to remain in the election, the Treasurer shall randomly select the candidate to be removed as a candidate from the election.

If the Treasurer is not given a "casting vote" under subsection 13 (2), but is given a "casting vote" under subsection 13 (1), then section 14 will be struck out and the following substituted:

Casting vote

13. If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall give the casting vote.]

TERM OF OFFICE

Taking office

14. (1) In an election of Treasurer under section 1,

(a) a bencher elected as Treasurer by acclamation shall take office at the regular meeting of Convocation in June following his or her election; and

(b) a bencher elected as Treasurer by poll shall take office immediately after his or her election.

Term of office

(2) Subject to any by-laws providing for the removal of a Treasurer from office, the Treasurer shall remain in office until his or her successor takes office.

HONORARIUM

Treasurer's entitlement to receive honorarium

15. The Treasurer is entitled to receive from the Society an honorarium in an amount determined by Convocation from time to time.

VACANCY IN OFFICE

Vacancy

16. If a Treasurer resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect an elected bencher to fill the office of Treasurer until the next election of Treasurer under section 1.

ACTING TREASURER

Acting Treasurer

17. If a Treasurer for any reason is temporarily unable to perform the duties or exercise the powers of the Treasurer during his or her term in office, or if there is a vacancy in the office of Treasurer under section 16, the chair of the Finance and Audit Committee, or if he or she for any reason is unable to act, the chair of the Admissions and Equity Committee, shall perform the duties and exercise the powers of the Treasurer until,

(a) the Treasurer is able to perform the duties or exercise the powers of the Treasurer; or

(b) a Treasurer is elected under section 16 or 1.

Section 3. - Withdrawal of candidates

It was moved by Ms. Cronk, seconded by Mr. Crowe that section 3 be approved.

Carried

Section 9. (1) - Advance Poll

It was moved by Mr. Swaye, seconded by Ms. Cronk that section 9 (1) be approved

Carried

Voting by Mail

It was moved by Ms. Cronk, seconded by Mr. Swaye that the words "to an address specified by the Secretary" be deleted in paragraph (2) (c) under section 9. and paragraph (2) (e) under section 9.1 and the words "or otherwise" be inserted.

Carried

Voting by Fax on Election Day and the Advance Poll

It was moved by Ms. Cronk, seconded by Mr. Swaye that there be no voting by fax on election day or at the advance poll.

Carried

Voting by Proxy

It was moved by Ms. Cronk, seconded by Mr. Swaye that there be no voting by proxy.

Carried

Casting Vote

It was moved by Ms. Cronk, seconded by Ms. Backhouse that it be maintained that the Treasurer shall give the casting vote.

Carried

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 6 as amended by adopted.

Carried

UPDATED GOVERNANCE POLICY MANUAL

POLICY SECRETARIAT

MEMORANDUM

To: Benchers
From: Katherine Corrick
Subject: Governance Policy Manual
Date: April 18, 1999

Attached is an updated copy of the Governance Policy Manual for your consideration and approval.

The Manual was originally approved by Convocation in June 1996. I have incorporated all of the policy changes approved by Convocation since that time. In addition, I have made some minor word changes to reflect amendments to the *Law Society Act*, changed the paragraph numbering system to make future updating easier, and made a number of punctuation changes (such as changing commas to semi-colons).

All of the changes I have made appear in italics. The explanation for the change appears in a shaded area following the change.

I would like to raise one substantive issue with Convocation. Section H, which outlines the standing committees and their mandates, is for the most part, a duplicate of By-law 9. Only the policy examples set out under the Admissions and Equity, Professional Development and Competence, Professional Regulation and Finance and Audit Committees do not appear in the by-law. It is far simpler administratively to maintain the currency of a single policy. I am asking Convocation to consider deleting Section H from the Governance Policy manual for this reason.

Table of Contents

III. Bencher-Staff Relations
A. Chief Executive Role
B. Delegation to the Chief Executive Officer
C. Chief Executive Officer Job Description
D. Monitoring Executive Performance

IV. Executive Limitations
A. Budgeting
B. Asset Administration and Acquisition of Services
C. Financial Condition
D. Human Resources Principles
E. Compensation and Benefits
F. Communication and Support to Convocation

I. Mission and Ends

A. Mission

1. The Law Society of Upper Canada exists to govern the legal profession in the public interest by,
   a. ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct; and
   b. upholding the independence, integrity and honour of the legal profession,

   for the purpose of advancing the cause of justice and the rule of law.

B. Ends

Discrimination, Equity & Diversity in the Legal Profession

1. The Law Society is committed to the elimination of discriminatory practices in the legal profession.

2. The Law Society is committed to the achievement of equity and diversity within the legal profession.

3. Major components of these commitments are the following:
   a. Law Society policies that,
      i. are directed at the elimination of discriminatory practices within the legal profession, and
      ii. promote the achievement of equity and diversity within the legal profession.
   b. Demonstrable results both internally, at the organizational and bencher level, and in relation to the legal profession.
   c. Support for the legal profession's own pursuit of equity and diversity goals, through cooperation and consultation with other organizations to develop and maintain the tools to function as a resource for the profession.
   d. Inclusion of wide and diverse representation of groups within the legal profession in Law Society governance structures and mechanisms, to be achieved by,
      i. a systematic process for ensuring that appointment to committees, Task Forces, working groups, and other appointments do not result in barriers to participation on the basis of personal characteristics noted in Rule 28,
      ii. analysis of the extent to which demands on benchers hinder full participation of equality-seeking groups as benchers including,
         (1) time commitments,
         (2) travel commitments, and

(3) financial impact,

iii. policies to encourage participation of equality-seeking groups as benchers.

e. Inclusion of provisions designed to eliminate discriminatory practices in Law Society regulatory structures.

This Ends policy was approved by Convocation in May 1997 as part of the Bicentennial Report.

II. Governance Process

A. Governance Commitment

1. Convocation will govern as a self-regulating body so as to ensure that the Law Society of Upper Canada is accountable to the Ontario public and the legal profession by establishing and delivering appropriate goals and avoiding unacceptable outcomes.

B. Governing Approach

1. In governing, the benchers will emphasize strategic leadership, policy making, and the creation of effective accountability mechanisms. They will define values, and plan, looking outward and forward. They will be proactive while preserving the capacity to react appropriately to unforeseen challenges and issues. The benchers will clearly distinguish between their role and that of staff allocating to the staff responsibility for implementation of policies developed by Convocation and for administrative matters.

C. The Role of Convocation

1. Convocation is the only body charged with the responsibility of making policy relating to the governance of the legal profession in Ontario.

2. The responsibility of Convocation is to ensure the achievement of the Law Society's Mission and Ends and carry out its legal obligations.

3. Convocation shall,
   a. govern the affairs of the Society effectively and efficiently, guided by long-term objectives;
   b. establish policies for the governance of the legal profession in Ontario and the Law Society of Upper Canada.;
   c. consult with appropriate stakeholders in establishing policies;
   d. focus on long-term goals rather than the methods of achieving them;
   e. impose upon itself whatever discipline is needed to govern with excellence;
   f. at each regular sitting, monitor its own performance; and
   g. receive the report of the Treasurer regarding the performance of the Chief Executive Officer and direct the Treasurer accordingly.

D. Treasurer's Job Description

1. The Treasurer is the president and head of the Law Society.

2. The Treasurer shall adhere to the Policy Governance Model.

3. The responsibilities of the Treasurer shall be,

a. to be the public and ceremonial representative of the Law Society of Upper Canada and the only person authorized to speak for Convocation;
b. to chair meetings of Convocation in accordance with the Policy Governance Model;
c. to prepare Convocation's agenda on the advice of Convocation;
d. to develop for Convocation's approval, priorities for the Law Society for the upcoming year in consultation with benchers and senior staff;
e. to coordinate, in consultation with staff and committee chairs, the work and responsibility of committees and to ensure policy issues are assigned to appropriate committees;
f. to appoint chairs and vice-chairs and members of committees subject to ratification by Convocation;
g. to be an ex-officio member of all committees and task forces; and
h. to provide such reports and evaluations as Convocation may request, including an evaluation of the performance of the Chief Executive Officer.

E. Bencher Job Description

1. A bencher's role is to participate in Convocation by,
a. formulating policy; and
b. *deciding those matters considered by the hearing panel.*

Previously, the wording was "deciding discipline, admissions and competence matters." The new wording is more consistent with the new legislation.

2. A bencher's role is to act as a member of,
a. committees;
b. task forces;
c. working groups;
d. related boards;
e. *the hearing panel; and*
f. *the appeal panel.*

The new wording incorporates changes from the new legislation. Previously this section enumerated, "discipline panels, practice review panels, admissions and competency hearings."

3. Benchers participate in external organizations on behalf of the Law Society as authorized or directed by the Treasurer or Convocation.

4. Benchers must be familiar with,

a. Law Society structure, mission and governance policies; and
b. relevant legislation and jurisprudence.

F. Bencher Code of Conduct

1. The benchers commit themselves to ethical conduct.

2. Benchers must declare conflicts of interest and act in accordance with Convocation's policy on conflicts of interest.

3. Benchers must not use their positions to obtain employment or preferential treatment for themselves, family members, friends or associates.

4. No bencher shall purport to speak for Convocation or the Law Society unless designated by the Treasurer.

5. When exercising adjudicative powers, benchers shall behave in a judicial manner.

6. Benchers shall observe Convocation's policy regarding confidentiality.

7. Benchers sitting *as members of the* hearing panel must adhere to the provisions set out in the guidelines for applications to proceed in camera and must strictly maintain the confidentiality of all matters subsequently heard in camera.

This language reflects the new discipline process.

G. Convocation Committee and Task Force Principles

1. Committees, task forces and working groups must adhere to the Policy Governance Model.

2. Convocation should not establish more committees and task forces than it needs to further its mission.

3. The role of committees and task forces is not to establish policy but to assist Convocation in doing so. Accordingly, committees and task forces shall identify all reasonable policy options and implications to inform Convocation's decisions.

4. Committees shall assist Convocation in setting policy on ongoing matters which further the core mandate and responsibilities of the Law Society.

5. Task forces shall assist Convocation in setting policy on specific matters on a time-limited basis. All task forces must have clearly articulated terms of reference and a sunset clause.

6. Convocation, on the recommendation of the Treasurer, shall establish committees and task forces and appoint members to committees including their chairs and vice-chairs. The Treasurer appoints members of task forces and their chairs and vice-chairs.

7. Chairs and vice-chairs of committees and task forces must be benchers.

8. All committee and task force members are equal and may vote. Subject to *s. 7*, membership on committees and task forces is not restricted to benchers. Benchers may attend meetings of any committee or task force, but voting is restricted to members of committees only.

The section number has been changed to reflect the new numbering scheme.

9. The results of committee and task force proceedings are public unless the committee or task force determines otherwise in accordance with Convocation's provisions regarding confidentiality.

"as set out in 1.7 of Section F: Bencher Code of Conduct" has been deleted as no section 1.7 was ever enacted.

10. Committees shall,

a. adhere to their mandates and/or terms of reference as established by Convocation and vary same only with the approval of Convocation;
b. report regularly to Convocation regarding all work in progress;
c. be constituted so as to ensure broad representation;
d. in their reports to Convocation, ensure that a range of options for each matter recommended for approval has been considered by the committee and has been identified for Convocation, together with the implications thereof; and
e. not perform staff/administrative work.

11. Task forces shall,

a. adhere to their mandates and/or terms of reference as established by Convocation and vary same only with the approval of Convocation;
b. in cases where their mandate affects the work or responsibilities of committees or other task forces, consult with those committees or task forces before submitting their final report to Convocation;
c. report to Convocation as directed;
d. be constituted so as to ensure broad representation;
e. in their reports to Convocation, ensure that a range of options for each matter presented for approval has been considered by the task force and has been identified for Convocation, together with the implications thereof; and
f. not perform staff/administrative work.

12. Working groups,

a. shall carry out such discrete and time limited functions and duties as are assigned to them by the committee to which they report;
b. may be composed of non-benchers at the discretion of the committee chair; and
c. may be chaired by non-benchers.

13. Chairs of committees shall,

a. ensure that a plan and timetable for the work of their committee is established on an annual basis in consultation with committee members, staff and the Treasurer;
b. strike working groups where necessary to perform the work of the committee as set out in its mandate;
c. consult regularly with other committee chairs and the Treasurer about the work of their committee;
d. report regularly on work in progress to the Treasurer and Convocation;
e. on a monthly basis, prepare agendas in consultation with staff; and
f. ensure that the content of committee reports conforms to the guidelines established by Convocation.

H. Committee Structure

This section on the committee structure is reproduced from By-law 9. Only the policy examples set out under the Admissions and Equity Committee, Professional Development and Competence Committee, Professional Regulation Committee and Finance and Audit Committee are not part of By-law 9. It is suggested that this section be eliminated from the Governance Policies as it is merely a duplicate of By-law 9.

Admissions and Equity Committee

1. The mandate of the Admissions and Equity Committee is to develop for Convocation's approval,
   a. requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;
   b. listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;
   c. policies to govern the transfer to the Society of persons qualified to practise law in any province or territory of Canada;
   d. policies to ensure that the accreditation process operates in a reliable, fair, open and equitable manner; and
   e. policies to promote equity in legal education and practice.

Policy examples:

- parameters/standards for admission to the bar admission course
- conditions for admission to the Ontario bar
- good character guidelines for admission
- prescribe those foreign legal training credentials that will be recognized in Ontario

Finance & Audit Committee

2. Not primarily a policy making committee. Performs a due diligence function on behalf of Convocation. Its primary purpose is to monitor performance on behalf of Convocation. The mandate of the Finance and Audit Committee is,

   a. to receive and review interim and annual financial statements for the Society and the Lawyers' Professional Indemnity Company;
   b. to review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Society;
   c. to recommend the appointment of the external auditor and to review the proposed audit scope, audit fees and the annual auditor's management letter;
   d. to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item; and
   e. to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.

Policy examples:

- financial policies and controls
- audit scope
- budget

Government and Public Affairs Committee

3. The mandate of the Government and Public Affairs Committee is,
   a. to develop and maintain an effective working relationship with the Government of Ontario, the Attorney General of Ontario, the Ontario Public Service and all elected officials of the Ontario Legislature for the purpose of ensuring that the Society's policies and positions on matters affecting the interests of the public and the profession are understood before decisions affecting those matters are made;
   b. to ensure that the Society's legislative agenda is effectively presented to the Government of Ontario for its consideration and approval;
   c. to develop and maintain an effective working relationship with the Government of Canada and the Attorney General of Canada with respect to federal initiatives affecting matters within the Society's jurisdiction;
   d. to develop, for Convocation's approval, a public affairs mandate for the Society, which identifies the constituencies that the Society should address and sets out the outcomes that should be achieved with each constituency; and
   e. to develop a long range and comprehensive public affairs strategy consistent with the Society's public affairs mandate approved by Convocation.

Lawyers Fund for Client Compensation Committee

4. The Lawyers Fund for Client Compensation Committee is responsible to Convocation for the administration of the Lawyers Fund for Client Compensation.

Legal Aid Committee

5. The mandate of the Legal Aid Committee is to report to Convocation its recommendations in regard to matters which should be brought to the attention of Legal Aid Ontario including,

   a. the scope of legal services provided to the disadvantaged people of Ontario;
   b. the manner of delivery of legal aid services to the disadvantaged people of Ontario;
   c. the funding of legal aid services in Ontario;
   d. the financial eligibility criteria for people seeking legal aid services in Ontario;
   e. the rate of remuneration for persons providing legal aid services in Ontario;
   f. the impact of legal aid on the administration of justice and access to justice; and
   g. other issues as circumstances appear to suggest.

This mandate was approved by Convocation on March 26, 1999.

Professional Development & Competence Committee

6. The mandate of the Professional Development and Competence Committee is to develop for Convocation's approval policy options on all matters relating to the professional competence of members.
Policy examples:

- standards for various areas of legal practice
- goals for the delivery of province-wide CLE
- certification standards for accredited specialty areas
- strategies for the delivery of technology and information services to members
- requirements for requalification candidates
- Practice Review Programme content and delivery
- member services and member relations

Professional Regulation Committee

7. The mandate of the Professional Regulation Committee is to develop for Convocation's approval,
   a. policy options on all matters relating to regulation of the profession in the areas of professional conduct and fitness to practise; and
   b. policies and guidelines for the prosecution of unauthorized practice.

Policy examples:

- Rules of Professional Conduct
- practice review authorization
- policies and procedures for the investigation and prosecution of complaints of professional misconduct
- guidelines for initiating prosecutions of unauthorized practice
- members' financial reporting requirements to the Law Society

I. Annual Bencher Planning Cycle

1. To accomplish its job to govern with a long-term strategic perspective Convocation shall on an annual basis,

   a. re-examine its Ends policies; and
   b. set a 12-month agenda for its deliberations and policy development.

2. These activities shall precede the creation of the budget for the following year.

III. Bencher-Staff Relations

A. Chief Executive Role

1. The Chief Executive Officer is accountable to Convocation acting as a body. Convocation will instruct the Chief Executive Officer through written policies, delegating to the Chief Executive Officer interpretation and implementation of those policies.

2. The Chief Executive Officer will carry out the statutory powers and duties of that office.

B. Delegation to the Chief Executive Officer

1. While Convocation's job is defined as establishing policies to achieve the Mission and Ends of the Law Society, the implementation and subsidiary policy development is delegated to the Chief Executive Officer. All Convocation authority delegated to staff is delegated through the Chief Executive Officer, so that all authority and accountability of staff—as far as Convocation is concerned—is considered to be the authority and accountability of the Chief Executive Officer.

2. Convocation will direct the Chief Executive Officer to achieve specified results, through the establishment of Mission and Ends policies. Convocation limits the latitude the Chief Executive Officer may exercise in practices, procedures, methods and conduct through Part IV: Executive Limitations policies.

3. As long as the Chief Executive Officer uses any reasonable interpretation of Part I: Mission and Ends and Part IV: Executive Limitations policies, the Chief Executive Officer is authorized to establish all further means or procedural policies, make all decisions, take all actions, establish all practices and develop all activities necessary to achieve the results directed by Convocation.

4. Convocation may change its Mission and Ends and Executive Limitations policies, thereby shifting the boundary between Convocation and the Chief Executive Officer's domain. By so doing, Convocation changes the latitude of choice given to the Chief Executive Officer.

5. Only decisions of the benchers acting in Convocation are binding upon the Chief Executive Officer.

6. Decisions or instructions of individual benchers, officers, or committees are not binding on the Chief Executive Officer except in rare instances when Convocation has specifically authorized such exercise of authority.

7. In the case of benchers or committees requesting information or assistance without Convocation's authorization, the Chief Executive Officer may decline such requests if they are disruptive or require—in the Chief Executive Officer's judgment—a material amount of staff time or unbudgeted funds.

C. Chief Executive Officer Job Description

1. As Convocation's single official link to the operations of the Law Society, the Chief Executive Officer's performance will be considered to be synonymous with the Society's performance as a whole.

2. Consequently, the Chief Executive Officer's job is to,

   a. execute Convocation's policies;
   b. fulfil the Chief Executive Officer's obligations under s.8 (1) of The Law Society Act and *By-laws*; and
   c. operate within the boundaries of prudence and ethics established by Convocation in Part IV: Executive Limitations policies.

   The word "By-laws" has been substituted for the word "Rules."

D. Monitoring Executive Performance

1. The Chief Executive Officer's performance is tied to how well the Law Society is performing. The criteria for monitoring are: the extent to which Convocation's Mission and Ends policies are being implemented; whether the Chief Executive Officer is fulfilling the Chief Executive Officer's statutory obligations; and whether the Chief Executive Officer is in compliance with Executive Limitations policies. Any evaluation of Chief Executive Officer performance, formal or informal, may be derived only from these criteria.

2. The purpose of monitoring is simply to determine the degree to which the Chief Executive Officer is fulfilling Convocation's policies and the Chief Executive Officer's statutory obligations. Information which does not do this will not be monitored. (Convocation's time is to be used to create the future rather than to review the past).

3. Performance may be monitored in one or more of the following three ways:

   a. Internal report: disclosure of compliance information to Convocation from the Chief Executive Officer.

b. External report: discovery of compliance information by a disinterested, external auditor or source who is selected by and reports directly to Convocation. Such reports must assess executive performance only against policies of Convocation, not those of the external party, unless Convocation has previously indicated that party's opinion to be the standard.

c. Direct inspection by Convocation: discovery of compliance information by Convocation or its designee. This includes the inspection of documents, activities or circumstances directed by Convocation which allows a "prudent person" test of policy compliance.

4. Any policy can be monitored by any method at any time by Convocation. For regular monitoring, however, each policy will be classified by Convocation according to frequency and method.

a. Financial planning will be monitored internally quarterly.

b. Human resources and staff treatment policies will be monitored internally annually.

c. The financial condition of the Society will be monitored internally by the Finance & Audit Committee providing to Convocation quarterly a summary of financial and management information relating to the General, Errors and Omissions and Lawyers Fund for Client Compensation Funds and will monitor same annually by an external audit.

d. The administration of the Society's assets will be monitored by the Chief Executive Officer providing investment reports to the Finance and Audit Committee quarterly, and such will also be the subject of the annual external audit.

e. Compensation and benefits of Society staff will be reviewed annually by the Chief Executive Officer.

f. Communication and advice from the Chief Executive Officer will be monitored directly semi-annually.

5. Each year Convocation will have a formal evaluation of the Chief Executive Officer to assess the Chief Executive Officer's compliance with Convocation's policies and the Chief Executive Officer's performance expectations. That process will normally include the following elements:

a. The Chief Executive Officer's annual report to Convocation.

b. Self-assessment by the Chief Executive Officer.

c. Treasurer's meeting with the Chief Executive Officer to discuss the Chief Executive Officer's annual performance.

d. Convocation's approval of the final performance review report.

e. Convocation's approval of performance expectations for the Chief Executive Officer for the coming year.

IV. Executive Limitations

A. Budgeting

1. Unless directed by Convocation, the Chief Executive Officer shall not,

a. allow operating expenses to deviate from the budget in any significant way;

b. allow expenditures to deviate materially from the Society's mission, priorities and programs;

c. incur debt on behalf of the Law Society of Upper Canada, other than an operating line of credit; and

d. present a budget without,

i. a reasonable projection of revenues and expenses,
ii. disclosure of planning assumptions,
iii. disclosure of operating and capital items, and
iv. dedication of appropriate human and financial resources to implement Convocation's Ends policies.

Approved by Convocation in May 1997 as part of the Bicentennial Report.

B. Asset Administration and Acquisition of Services

1. Unless directed otherwise by Convocation, the Chief Executive Officer shall not,

a. allow Society funds to be invested except in accordance with the Society's Investment Policy;
b. allow physical assets to be subjected to improper wear and tear or insufficient maintenance or allow the historical integrity of the building to be impaired;
c. operate without adequate insurance;
d. make any capital purchases or commit the Society to any capital purchase of a value greater than $100,000;
e. make any purchase,

i. if normally prudent protection against conflict of interest has not been taken, and
ii. of over $10,000 without having obtained competitive prices and quality, unless fully justified and documented;

f. contract for any service that does not comply with the Law Society's policy on retaining services;
g. keep books and records, receive, process or disburse funds under controls which are insufficient to meet the Society's auditor's standards; and
h. acquire, encumber, or dispose of real property.

C. Financial Condition

1. The Chief Executive Officer shall protect the financial stability of the Law Society and shall not,
a. allow tax payments or other government ordered payments or filings to be overdue or inaccurately filed;
b. fail to monitor changes in legislation or legislative interpretation affecting Law Society finances and take appropriate action to protect the Law Society or each fund from liabilities arising from such changes; and
c. use reserves (except for the Errors and Omissions fund) except as budgeted.

D. Human Resources Principles

1. *The Law Society should pursue equity standards for its own staff that will make it a model for the profession as an employer.* Accordingly, the Chief Executive Officer shall not,

a. cause or allow conditions that are unfair or undignified to staff;
b. operate without,

i. written personnel procedures that clarify personnel rules for staff, provide effective handling of grievances, or protect against wrongful conditions, and
ii. job descriptions and regular performance appraisals for all staff;

c. operate without a workplace equity policy for staff that,

i. recognizes that every person has the right to equal opportunity without discrimination in matters relating to employment, and

ii. prohibits the treatment of any person in a discriminatory manner because of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age;

d. operate without a workplace harassment policy for staff that prohibits the harassment of any person on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age;

e. operate without being in compliance with all rules of the Law Society of Upper Canada and relevant provincial and federal legislation;

f. operate without developing guidelines for hiring outside counsel that ensure that work is fairly allocated among members of the legal profession; and

g. operate without examining whether or not the Law Society should develop a contract compliance program that would have the effect of requiring firms and organizations with which it does business to have in place practices that meet diversity and equity requirements.

Approved by Convocation in May 1997 as part of the Bicentennial Report.

E. Compensation and Benefits

1. With respect to employment, compensation and benefits to employees, consultants, contract workers and volunteers, the Chief Executive Officer shall not jeopardize the Society's fiscal stability.

2. The Chief Executive Officer shall not change the Chief Executive Officer's compensation and benefits.

3. The Chief Executive Officer shall not establish current compensation and benefits which deviate materially from the geographic or professional market for the skills employed.

4. The Chief Executive Officer shall not create compensation obligations that continue over a longer term than revenues can safely be projected.

5. The Chief Executive Officer shall not fail to maintain a parental leave policy for staff.

F. Communication and Support to Convocation

1. The Chief Executive Officer must provide Convocation with sufficient information and advice so that benchers are reasonably informed. Accordingly, the Chief Executive Officer must not,

a. fail to submit monitoring data required by Convocation (see policy on Monitoring Executive Performance) in a timely, accurate and understandable fashion, directly addressing provisions of the policies being monitored;

b. fail to give immediate notice of information which is relevant to the Treasurer, Convocation, or other organs of this body;

c. let Convocation be unaware of,

i. anticipated adverse media coverage,
ii. material external and internal changes, particularly changes in the assumptions upon which any Convocation policy has previously been established,
iii. lawsuits affecting the Law Society,
iv. relevant judicial decisions and pronouncements that create significant change in the law of governance of the legal profession,
v. hearing reports, and
vi. relevant legislation, proposed legislation and policy initiatives of government that could compromise the independence of the legal profession;

d. fail to advise Convocation if the benchers are not in compliance with their own policies on Part II: Governance Process and Part III: Board-Staff Relations, particularly in the case of bencher behaviour which is detrimental to the working relationship between the benchers and the Chief Executive Officer;

e. fail to provide Convocation with as many staff and external points of view, issues and options as required to allow Convocation to make fully informed choices and decisions. All policy matters for deliberation by Convocation must address the following components:

i. an analysis of options available,
ii. economic and financial impacts on the Law Society, the profession and the public,
iii. impact on Law Society staffing,
iv. need for legislative change, and
v. a summary of consultations that have taken place;

f. present information in unnecessarily complex or lengthy form;

g. fail to deal with Convocation as a whole; and

h. fail to report in a timely manner actual or anticipated noncompliance with any policy of Convocation.

2. *The Chief Executive Officer must not fail to provide Convocation with regular reports on the effectiveness of current and future equity and diversity initiatives.*

3. *Convocation has delegated authority to the Chief Executive Officer to implement the policies of Convocation in accordance with the policy entitled "Bencher - Staff Relations: Delegation to the Chief Executive Officer." In the implementation of the Ends policy "Discrimination, Equity, & Diversity in the Legal Profession" the Chief Executive Officer shall not operate without,*

a. ongoing evaluation of Law Society programs, services, and activities to ensure that they support this Ends Policy, including but not limited to,

i. ensuring that in the Department of Education (Continuing Legal Education, Bar Admissions, Articling),

a. Bar Admissions and Continuing Legal Education materials continue to be designed to increase the profession's understanding of equity and diversity issues and are gender neutral,
b. with respect to the Bar Admissions and Continuing Legal Education, members of diverse groups continue to be encouraged to participate in design, development, and presentation of materials and courses, and

c. the administration of and the requirements for articling and Bar Admissions do not impact disproportionately on the basis of personal characteristics in Rule 28,

ii. ensuring that in implementing its Requalification policy the Law Society continues to develop a process that is fair and equitable to all members of the profession,

iii. monitoring the effectiveness with which the Law Society is discharging its responsibility as a regulator to eliminate discriminatory practices in the legal profession,

iv. examining the impact of and the barriers presented by the current annual fee structure and considering options for revising the fee structure, if warranted, and

v. continuing to liaise with other groups, including the National Committee on Accreditation, to ensure that the accreditation requirements to enter the profession in Ontario for lawyers with foreign training or Quebec non common law training do not present an unreasonable barrier to entry;

b. a long-term organizational strategy to implement this Ends Policy, including the dedication of appropriate human and financial resources; and

c. sufficient research information and data on the changing demographics of the profession and the impact on the profession of barriers experienced by members of the profession for reasons unrelated to competence, so as to inform Convocation's policy making.

Approved by Convocation in May 1997 as part of the Bicentennial Report.

It was moved by Ms. Elliott, seconded by Mr. Swaye that the updated policy changes be approved with the exception that Section H be deleted which is a duplicate of By-Law 9.

Carried

ONTARIO LEGAL AID PLAN FINANCIAL STATEMENTS

It was moved by Mr. Armstrong, seconded by Mr. Swaye that the Ontario Legal Aid Plan Financial Statements for the year ended March 31st, 1998 be adopted.

Carried

(See Financial Statements in Convocation file)

REPORT FOR INFORMATION

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Finance and Audit Committee
April 15, 1999

Report to Convocation

Purpose of Report: Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on April 15, 1999. In attendance were V.Krishna (Chair), A.Chahbar, T.Cole, E.DelZotto, A.Feinstein, P.Furlong, T.Stomp, G.Swaye, B.Wright. Staff members in attendance were J.Saso, W.Tysall, F.Grady, R.White, R.Tinsley and G.Lalonde. Also in attendance were H.Willer, S.Bird and S.Pescador of Arthur Andersen LLP.

1. The Committee is reporting on the following two matters:

   - Investment Compliance Report for the Quarter Ended March 31, 1999 for the
     i. General Fund, and the
     ii. Lawyers' Fund for Client Compensation
   - Canadian Opera Company New Opera House Construction

2. The Committee received, reviewed and accepted the Investment Compliance Report for the Quarter Ended March 31, 1999 for the General Fund and the Lawyers Fund for Client Compensation.

3. The Society has recently been made aware of the plans of the Canadian Opera Company to construct a new opera house on the vacant property at the southeast corner of University Avenue and Queen Street. The building is expected to be a 44-60 storey commercial and retail complex, in addition to an opera house. A building of this size and its proximity to Osgoode Hall will have significant sunlight implications for our property. The Committee has recommended the creation of a sub-committee comprised of T.Stomp, A.Feinstein and B.Wright to seek an opportunity to meet with representatives of the Canadian Opera Company to discuss the impact of the proposed development on the property of the Law Society.

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

(1) Copy of the Investment Compliance Report for the Quarter Ended March 31, 1999 for the General Fund and the Lawyers Fund for Client Compensation.

(Pages 43 - 55)

Amendments to By-Laws 14, 15, 17 and 18 (French version)

The motion to amend the above By-Laws was not reached.

CONVOCATION ROSE AT 5:05 P.M.

Confirmed in Convocation this 28 day of May, 1999.

Harry T. Strasberg

Treasurer