

MINUTES OF CONVOCATION

Thursday, 23rd March, 2006
9:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Alexander, Backhouse (by telephone), Bobesich, Boyd, Champion, Caskey, Chahbar (by telephone), Cherniak, Coffey, Copeland, Crowe, Curtis, Dickson, Doyle, Dray, Eber, Feinstein, Fillion, Furlong, Gold, Gotlib, Gottlieb, Harris, Henderson, Krishna, Manes, Millar, Minor, Murphy, Murray, O'Donnell (by telephone), Pattillo, Pawlitzka, Potter, Robins, Ross, Ruby, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Symes, Topp, Wardlaw, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer reported on his activities over the last month including meetings with the Chief Justice of Ontario, the Attorney General and the Minister of Training, Colleges and Universities. He spoke at the International Women's Day Forum, the Chief Justice of Ontario's Advisory Committee on Professionalism's Sixth Colloquium and to the University of Western Ontario Law School's first year Professional Responsibility class.

Congratulations were extended to Ron Manes on his marriage to Lynn Burns, the Executive Director of ProBono Law Ontario.

The Treasurer expressed the condolences of Convocation to the family of The Honourable Joe Potts who passed away on February 26, 2006.

Condolences were also extended to former Treasurer, Laura Legge and her family on the passing of her husband and law partner, Major General Bruce Legge on February 27, 2006. The Treasurer, several benchers and senior staff attended a service of thanksgiving for Major General Legge who was described as "a rock of common sense" and "an exemplar of old world values".

Mr. Millar rose to announce that Paul Copeland was this year's recipient of Legal Aid Ontario's Sidney B. Linden Award.

DRAFT MINUTES OF CONVOCATION – FEBRUARY 23, 2006

The Draft Minutes of Convocation of February 23, 2006 were confirmed.

MOTION – COMMITTEE APPOINTMENTS

It was moved by Mr. Caskey, seconded by Ms. Dickson, that the list of Committee appointments be approved with Judith Potter being added to the Government Relations and Public Affairs Committee.

Carried

Finance and Audit

Derry Millar (Chair)
Beth Symes (Vice Chair)
Bradley Wright (Vice Chair)
Abdul Chahbar
Andrew Coffey
Marshall Crowe
Holly Harris
Ross Murray
Alan Silverstein
Gerald Swaye

Audit Subcommittee

Beth Symes (Chair)
Abdul Chahbar (Vice Chair)
Marshall Crowe
Ross Murray
Gerald Swaye

Professional Development, Competence & Admissions

Laurie Pawlitzka (Chair)
Constance Backhouse (Vice Chair)
Mary Louise Dickson (Vice Chair)
Robert Aaron
James Caskey
Carole Curtis
Kim Carpenter-Gunn

Professional Regulation

Clayton Ruby (Chair)
Laurence Pattillo (Vice Chair)
Heather Ross (Vice Chair)
Anne Marie Doyle
George Finlayson
Alan Gold
Allan Gotlib
Gary Lloyd Gottlieb
Paul Henderson
Ross Murray
Sydney Robins
Robert Topp
Roger Yachetti

Proceedings Authorization Committee

Laurence Pattillo (Chair)
Earl Cherniak (Vice Chair)
Mary Louise Dickson
Beth Symes

Equity & Aboriginal Issues

Joanne St. Lewis (Chair)
Paul Copeland (Vice Chair)
Marion Boyd
Richard Fillion
Holly Harris
Thomas Heintzman

Paul Henderson
 Laura Legge
 Daniel Murphy
 Judith Potter
 Bonnie Warkentin

Governance Task Force

Thomas Heintzman (Chair)
 Vern Krishna (Vice Chair)
 Sy Eber
 Abraham Feinstein
 Janet Minor
 William Simpson

Emerging Issues

Ron Manes (Co-Chair)
 Bonnie Warkentin (Co-Chair)
 Robert Aaron
 Paul Copeland
 Susan Elliott
 Richard Filion
 Holly Harris
 Thomas Heintzman
 Allan Lawrence
 Janet Minor
 Julian Porter
 Joanne St. Lewis

Paralegal Task Force

William Simpson (Chair)
 Paul Dray (Vice Chair)
 Marion Boyd
 James Caskey
 Allan Gotlib
 Julian Porter
 Alan Silverstein
 Bonnie Warkentin

Sole Practitioner & Small Firms Task Force

Judith Potter (Co-Chair)
 Abraham Feinstein (Co-Chair)
 Carole Curtis
 Susan Elliott
 Alan Gold
 Gary Lloyd Gottlieb

Tracey O'Donnell
 Mark Sandler

Government Relations & Public Affairs

James Caskey (Co-Chair)
 Julian Porter (Co-Chair)
 Laurie Pawlitzka (Vice Chair)
 Andrea Alexander
 Marion Boyd
 John Campion
 Abdul Chahbar
 Paul Dray
 Allan Lawrence
 Alan Silverstein
 William Simpson
 Michelle Strom

Hearing Panel

Larry Banack (Chair)

Heritage

Constance Backhouse (Chair)
 Andrea Alexander (Vice Chair)
 Robert Aaron
 Andrew Coffey
 Patrick Furlong
 Allan Lawrence
 Laura Legge

Inter-Jurisdictional Mobility

William Simpson (Chair)
 Anne Marie Doyle
 Neil Finkelstein
 Vern Krishna
 Derry Millar

Lawyers' Fund for Client Compensation

Bradley Wright (Chair)
 Marshall Crowe (Vice Chair)
 Robert Aaron
 Richard Filion
 Allan Gotlib
 Holly Harris

Thomas Heintzman
 Laura Legge
 Daniel Murphy
 Ross Murray
 Alan Silverstein
 William Simpson
 Bradley Wright

Access to Justice

Marion Boyd (Co-Chair)
 Judith Potter (Co-Chair)
 Andrea Alexander
 Paul Dray
 Tracey O'Donnell
 Laurence Pattillo

Tribunals

Larry Banack (Chair)
 Mark Sandler (Vice Chair)
 Carole Curtis
 Sy Eber
 Derry Millar
 Janet Minor
 Bonnie Warkentin

Law Foundation of Ontario

Larry Banack (Chair)
 Susan Elliott
 Laurence Pattillo

LAWPRO Board of Directors

Kim Carpenter-Gunn (Chair)
 Constance Backhouse
 John Campion
 Abdul Chahbar
 Abraham Feinstein
 Laurie Pawlitza

LibraryCo. Board of Directors

Abraham Feinstein (Chair)

CanLii Board Representative

Carole Curtis

Alan Silverstein
 Gerald Swaye

Litigation

Neil Finkelstein (Co-Chair)
 Earl Cherniak (Co-Chair)
 John Campion
 Kim Carpenter-Gunn
 James Caskey
 Alan Gold
 Clayton Ruby

Summary Disposition Benchers

Paul Copeland
 Thomas Heintzman (Alternate)

Investigations Task Force

Earl Cherniak (Chair)
 Carole Curtis
 Allan Gotlib
 Laurence Pattillo
 Heather Ross
 Mark Sandler
 Beth Symes

Tribunal Composition Task Force

Mark Sandler (Chair)
 Larry Banack
 Carole Curtis
 Anne Marie Doyle
 Ron Ellis
 Bryan Finlay
 Allan Gotlib
 Lorne Sossin
 Bonnie Warkentin
 Bradley Wright

Ontario Lawyers' Gazette Advisory Board

Julian Porter (Chair)
 Constance Backhouse (Vice Chair)
 Bradley Wright

Federation of Law Societies Council
Representative

John Campion

Independence of the Bar Task Force

Neil Finkelstein (Chair)
Constance Backhouse
Shelia Block
Earl Cherniak
Jack Giles
David Jackson
David Scott
Richard Simeon
Jack Major
Michel Proulx
Sydney Robins

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

CONVOCATION ASSEMBLED

The Director of Professional Development and Competence reports:

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, March 23rd, 2006:

Oluyemisi Ayodele Abrahams	Bar Admission Course
UmeshKumar Ahuja	Bar Admission Course
Roy Chimezie Amadi	Bar Admission Course
Asmita Banerjee Bhattacharya	Bar Admission Course
Julie Annik Bossé	Bar Admission Course
Desmond Brizan	Bar Admission Course
Jeffery Alan Brown	Bar Admission Course
Naveed Khalid Butt	Bar Admission Course

Angeline Zenobea Clarke	Bar Admission Course
John David Coon	Bar Admission Course
Antonio Franco De Bartolo	Bar Admission Course
Bevan Leroy Earhart	Bar Admission Course
Fiona Margaret Fitzpatrick	Bar Admission Course
Annastasia Marie Friend	Bar Admission Course
Colin Satesh Ogilvie Grey	Bar Admission Course
Sandeep Singh Johal	Bar Admission Course
Sherian Michelle MacDonald	Bar Admission Course
Laurent Nigel Massam	Bar Admission Course
Tam Nguyen	Bar Admission Course
Sheel Parekh	Bar Admission Course
Elsie Eugina Peters	Bar Admission Course
Andrey Pinsky	Bar Admission Course
Richard John Polgar	Bar Admission Course
Shanthi Elizabeth Senthe	Bar Admission Course
Maria Fortunata Simone	Bar Admission Course
Atul Subedi	Bar Admission Course
Jessica Maha Suidan	Bar Admission Course
Bedawi Abdelrahman Tago	Bar Admission Course
Anthony Vuletic	Bar Admission Course
David John Dominic Welsh	Bar Admission Course

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

B.1.4. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, March 23rd, 2006:

Edwin Shou-fat Chan	Province of British Columbia
Leon Isaac Efraim	Province of Alberta
Nadine Colette Hodder	Province of Newfoundland
Evatt Francis Anthony Merchant	Province of Saskatchewan
Peter Pastewka	Province of Alberta
Marie Anne Barbara Pelletier	Province of Alberta
Jason Rootenberg	Province of British Columbia
Dennis William Theman	Province of British Columbia
Jin Duo Wang	Province of Saskatchewan

B.1.5. (c) Transfer from another Province - Section 4.1

B.1.6. The following candidates have completed successfully the transfer examinations or the academic phase 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 Thursday, March 23rd, 2006:

Charles Jocelyn Deschamps	Province of Quebec
Gail Jaffe	Province of Quebec
Andrea James	Province of Quebec
Sarah Landry Maltais	Province of Quebec

Dave Morin-Pelletier
Joseph Edgar Weir

Province of New Brunswick
Province of New Brunswick

ALL OF WHICH is respectfully submitted

DATED this the 23rd day of March, 2006

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

Carried

CALL TO THE BAR (Convocation Hall)

The candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar.

The Treasurer adjourned Convocation. [Ms. Warkentin then presented the candidates to Justice Gerald F. Day to sign the rolls and take the necessary oaths.]

Convocation reconvened.

REPORT OF THE EMERGING ISSUES COMMITTEE REPORT

Mr. Millar presented the Emerging Issues Committee Report.

Report to Convocation
March 23, 2006

Emerging Issues Committee

INCLUDES REPORT TABLED AT JANUARY 26, 2006 CONVOCATION
(AMENDED)

Committee Members
W.A. Derry Millar, Co-chair
Heather Ross, Co-chair
Beth Symes, Vice-chair
Kim Carpenter-Gunn
W. Paul Dray
E. Susan Elliott
Alan Gotlib
Thomas G. Heintzman
Vern Krishna
Allan F. Lawrence
Julian H. Porter
Judith Potter
Bradley Wright

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Emerging Issues Committee (“the Committee”) met on March 8, 2006. In attendance were Derry Millar and Heather Ross (Co-Chairs), Beth Symes (Vice-Chair), Kim Carpenter-Gunn, Sy Eber, Paul Dray, Tom Heintzman, Judith Potter, and Bradley Wright. Staff attending were Anne-Katherine Dionne and Jim Varro.

FOR DECISION

POLICY ON LAW SOCIETY RESPONSES TO HUMAN RIGHTS VIOLATIONS INVOLVING LAWYERS AND JUDGES

MOTION

2. That Convocation approves:
 - a. a policy to systematically respond to human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties, and;
 - b. that a group of benchers be charged with monitoring human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties, the composition of the group and particulars of its mandate to be determined following Convocation’s approval of this proposal.

Background

3. At the Committee’s March 2005 meeting, a new issue was raised concerning the Law Society’s role in the global community, and in particular, whether the Society should develop a policy for responding in an organized fashion to international crises and human rights abuses as an alternative to approaching these issues on a case-by-case basis, and what the scope of that policy should be.

4. From time to time, Convocation has formally responded to certain events in the international community. For example, in January 2005, Convocation approved assistance to victims of the December 2004 South and Southeast Asian tsunami by facilitating the provision of *pro bono* legal services to Ontarians who had been affected by the disaster and organizing legal information sessions within the affected communities. Convocation has also approved responses to events in which lawyers have been targeted for their activities as lawyers and have suffered tragic consequences as a result. The following are two examples:

a. Rosemary Nelson

In March 1999, Convocation unanimously adopted a motion calling for an immediate independent and international inquiry into the murder of lawyer Rosemary Nelson, who was killed by a car bomb outside her home in Northern Ireland on March 15, 1999. Ms. Nelson's clients included those who had been arrested under emergency laws for questioning about politically motivated offences.

b. Iqbal Raad, Asthma Jahangir and Hina Jilani

Convocation adopted a similar approach in April 2000 in responding to the case of a lawyer murdered and threats in a separate incident to two other lawyers in Pakistan. Mr. Raad was one of two senior lawyers defending Nawaz Sharif, Pakistan's deposed Prime Minister, against a possible death sentence. Mr. Raad was shot dead in his office by three assailants who also killed his office assistant and a guest, the son of a High Court Justice. Death threats were made against Asthma Jahangir and Hina Jilani, two human rights lawyers who were assisting a client in obtaining a divorce from her abusive husband. The client herself was shot dead in the lawyers' offices by a gunman who had accompanied her family to the meeting. In response, Convocation decided to convey to the appropriate authorities in Pakistan its dismay over the murders and the death threats directed at the two lawyers and the murder of their client in their office. Convocation also conveyed its hope that the Pakistani authorities would take necessary steps to protect lawyers in the carrying out of their duties, and to reaffirm the commitments of the Pakistani government to the rule of law, to the United Nations Declaration on Human Rights Defenders and to the United Nations Basic Principles on the Role of Lawyers.

5. The Committee focussed on the merits of a more formalized structure for preparing responses to these events. After directing research on the issue, the Committee struck a working group¹ at its May 2005 meeting to study the issue and, in considering a policy, how to frame the scope and content of the policy.
6. At its November 2005 meeting, the Committee considered the working group's report, which formed the basis for the proposals in this report. The Committee also asked the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (EAIC) to review the working group's report and provide feedback on the proposals.

¹ Working Group members were Paul Copeland (Chair), Anne-Marie Doyle and Tom Heintzman.

7. EAIC reviewed the report at its January 12, 2006 meeting, discussed later in this report, and endorsed the proposals.

The Committee's Review

8. In examining this subject, the Committee considered a number of issues.

The Law Society's Mandate and the Independence of the Bar

9. The Law Society's mandate, as articulated in its Role Statement, is as follows:

The Law Society of Upper Canada exists to govern the legal profession in the public interest by,

- ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct; and
- upholding the independence, integrity and honour of the legal profession,

for the purpose of advancing the cause of justice and the rule of law.

10. The language of the Role Statement suggests that the scope of the mandate would appropriately include responding generally to situations in which members of the legal profession and judiciary are subjected to persecution as a result of the discharge of their legitimate professional duties.
11. The primary responsibility of the Law Society is to govern, a privilege granted to the Society by statute for the purposes of self-regulation of the legal profession. The Commentary to the Role Statement, however, acknowledges that "Governance can also be a useful limiting concept. We can ask in respect of every program and activity of the Law Society (actual or proposed): "Does it qualify as *governance* of the profession?" or "Is it an essential function of governing the profession?"²
12. The scope of governance, and the activities that properly fall within it, are informed by the purposes of governance. As Commentary 6.1 states: "The role statement declares that the Law Society is to govern the legal profession in the public interest by upholding the *independence* of the legal profession." Commentary 6.2 goes on to explain:

The role of the Law Society in maintaining the essential independence of the profession was stated by Henry J. (dissenting, but not on this point) in *Re Klein and the Law Society of Upper Canada*, (*supra* par. 2.1) at 143:

Society as a whole needs the legal profession to assist the citizen in his dealing with others and with the state. The role of the Law Society is to ensure that that service is available through the profession, and that it will be seen as a body of professionals acting with competence, integrity and independence.³

² Commentary 1.3 to the Role Statement.

³ Note that this reference to the role of the Law Society touches not only on independence but also on other elements of the role statement: the public availability of legal services, competence and integrity.

13. Human rights abuses, whether here or abroad, resulting in the persecution of lawyers for discharging their legitimate professional duties may directly or indirectly threaten the independence of the bar and the freedom of lawyers to make their services available to those who need them. Statements of concern by the Society in response to threats or incursions to the profession's independence would appear to fall within the scope of the Society's activities.

The Law Society and Other Organizations

14. A policy that the Society systematically address human rights violations against lawyers and the judiciary might include, where appropriate, joining with other organizations in responding to matters within the scope of the policy. On occasion, the Society may find it appropriate to review the sufficiency of other organizations' activities in terms of addressing issues that arise. It may be that other organizations are well-placed to respond effectively and this may determine whether or not or to what extent the Law Society should respond.
15. The Committee reviewed the work of advocacy organizations on behalf of persecuted lawyers and the work of other Canadian law societies in this area:
 - a. Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers dedicated to protecting human rights advocates and promoting the rule of law and human rights internationally. The organization monitors cases of lawyer persecution and conducts letter writing campaigns, trial observations and rights advocacy training. In 2005, LRWC was granted Special Consultative Status with the United Nations, which allows it to participate in U.N. human rights policy development. Bencher Paul Copeland is on LRWC's Board of Directors.
 - b. The Law Society of England and Wales' International Human Rights Committee and staff organizes a letter writing campaign through which members and the public can download, sign and send to the appropriate foreign government authorities a letter outlining the fact of the human rights violation, commenting on the relevant law(s) being violated and demanding immediate action.
 - c. In 2002, Richard Gibbs, Q.C., then Vice-President of the Law Society of British Columbia, went to Malaysia to monitor and report on the trial of lawyer, Karpal Singh. Mr. Singh was charged with sedition for words spoken in defence of his client who was in custody, facing criminal charges. Mr. Gibbs represented the Law Society of British Columbia, Lawyers' Rights Watch Canada and the Federation of Law Societies of Canada. The Law Society indicated that the Malaysia trial observation was a one-time project and that at present the Law Society does not engage in international human rights advocacy.
 - d. The Barreau du Québec's Comité sur les droits de la personne is responsible for advising the equivalent of the Treasurer and Convocation whenever a public position on human rights violations is warranted.
16. The Committee also considered whether a national group, such as the Canadian Bar Association, might be better suited to respond to human rights violations that target

members of the legal profession and judiciary. National organizations have the ability to mobilize members across the country, which may have greater impact than a response from a provincial law society. However, it was recognized that with approximately 35,000 members, a response from the Law Society may carry significant weight.

17. The Committee also contemplated that there may be occasions in which the only appropriate response available is one that can be effected immediately, without the constraints of relying on another organization's timetable.

Factors Relevant to a Response

18. In considering a method of systematic response to address human rights abuses involving the legal profession, it is suggested that building in a threshold by which to measure the need for a response based on certain considerations would be appropriate. These considerations include
 - a. the Law Society's mandate and how the issue relates to governance of the profession;
 - b. the best 'voice' to address the issue;
 - c. the perspective the Law Society can bring to the issue;
 - d. the persuasiveness of the Law Society's position;
 - e. how the Law Society might be distinguished from other organizations; and
 - f. the Law Society's resources.

The Committee's Proposals

Rationale For and Scope of Responses to Human Rights Abuses

19. The Committee recognized that any proposal to address this issue should be informed by the Law Society's Role Statement, noted earlier.
20. In the Committee's view, the following warrant a policy that the Society should monitor human rights abuses that involve persecution of lawyers and the judiciary, here and abroad, for the purposes of advising Convocation of the need for a response:
 - a. in keeping with the Role Statement, the cause of justice and the rule of law are promoted when members of the public have access to meaningful legal representation and an independent bar and judiciary;
 - b. these basic tenets of a fair and accountable justice system are achieved when members of the legal profession and judiciary are free to discharge their legitimate professional duties without threat of persecution;
 - c. justice is denied where lawyers are persecuted for performing their professional duties;
 - d. the legal profession is becoming globalized, and the erosion of respect for the rule of law elsewhere threatens its tenuous position even in the most democratic societies; as Martin Luther King, Jr. observed, "A threat to justice anywhere is a threat to justice everywhere";

- e. governing in the public interest requires that the Law Society ensures access to lawyers who can meet the public's legal needs by preserving and promoting access to justice, the rule of law and an independent bar; as one Canadian lawyer put it, "We are the only profession referred to in our country's constitution. The judges must be drawn from our ranks. With these privileges go great responsibilities. One of these is to maintain not only the independence of the bar but the independence of all individual lawyers to do their professional duty."⁴

These factors informed the previous responses the Society approved on an *ad hoc* basis, noted earlier in this report and as such, in the Committee's view, they support establishing a structure to facilitate a more systematic approach to framing such responses.

- 21. With respect to scope, responses should be limited to cases in which members of the legal profession and judiciary are threatened or persecuted as a result of the discharge of their legitimate professional duties.⁵ While many human rights abuses are politically complex and 'double-edged', responding in cases in which lawyers have been murdered or incarcerated for discharging their professional duties is readily justifiable. In other cases in which the circumstances of the threat or persecution are less obvious, it may be appropriate for the Law Society to conduct research and determine whether a response is warranted.
- 22. Suggestions for possible responses include:
 - a. Letters of indignation;
 - b. Letters in support of others' advocacy;
 - c. Letters urging responses from other organizations, such as the Federation of Law Societies, the Canadian Bar Association or the federal government; and/or
 - d. Partnering with advocacy organizations such as Lawyers' Rights Watch Canada.

Forming a Group of Interested Benchers to Monitor Human Rights Abuses

- 23. The Committee believes that a group of interested benchers should be formed to monitor on an on-going basis human rights abuses, including threats and persecution, of lawyers and the judiciary. Once the group is established, it would be for the group to bring definition to its structure and determine such details as the frequency of reporting, the range of responses, including those outlined in paragraph 22, and the particulars of the action required in a specific case for the approval of Convocation, with regard to the considerations in paragraph 18.
- 24. The Committee anticipates that staff support will be required to assist the group with on-going monitoring, research into the circumstances of alleged cases of lawyer

⁴ Giles, Jack. "Why Multi-Disciplinary Practices Should be Controlled by Lawyers," (2000) 58 *The Advocate* 695 at 697

⁵ The Committee determined that a Law Society response to general humanitarian crises and human rights abuses, as opposed to those directly involving lawyers and members of the judiciary, does not fall within the narrow scope of the Law Society's mandate as a regulator of the legal profession in the public interest. However, this would not preclude interest benchers from bringing general egregious abuses to the attention of Convocation for review on a case-by-case basis.

persecution, where necessary, and the preparation of materials for the group and Convocation's review. The Committee considers this support essential to permit Convocation to make effective, informed and timely responses.

25. The Committee determined that an initiative of this nature might best be implemented by the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (EAIC), given the relationship of this issue to the work done in that committee. One option would be to constitute the group of benchers as a working group of this standing committee.
26. The Committee referred its report to EAIC for comment on the proposal, and EAIC considered the report at its January 12, 2006 meeting. EAIC agreed with the Committee's approach and supports establishing the group of benchers under its leadership. Upon approval of the policy discussed in this report, EAIC is prepared to consider in detail the composition of the working group and the matters noted in paragraph 23.
27. While the working group will define its work more precisely, it is suggested that its broadly-stated mandate would be to review information that comes to its attention about human rights abuses of lawyers and judges here and abroad, determine if the matter is one that requires a response from the Law Society, instruct research if necessary on the issue and prepare a response for review first by the EAIC and then by Convocation.

Financial Implications of the Proposal

28. The working group discussed above would be supported primarily by staff in the Equity Initiatives Department, under the leadership of the Equity Advisor, Josée Bouchard.
29. Currently, Equity staff receive information from various sources and, if relevant, will note developments in society that relate to the Law Society's equity focus. This would include from time to time information generally about the profession and developments or events in other countries involving the legal profession that are newsworthy, matters that raise concerns from the equity perspective or issues that otherwise relate to the Department's interests. Some of this information may relate to human rights issues.
30. To facilitate the work of the proposed working group, the responsibilities of the Equity staff can be expanded, without any increase in financial resources, by establishing regular channels of communication with groups such as Lawyers Rights Watch Canada. While it is not the expectation that Equity staff would be able to identify and/or monitor all incidences of human rights abuses involving lawyers or judges, this information channel would provide sufficient information to the staff to assist the working group in its monitoring function. The Equity staff are also well-equipped and have the necessary resources to undertake research when warranted.

Summary of the Proposed Policy

31. The Committee recommends that Convocation adopt and implement a policy to systematically respond to national and international human rights violations that result in the persecution of members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties. These responses are justified on the basis that the events that prompt them generally relate to matters of the independence

of the bar and access to justice, referenced in the Role Statement and its commentary, and that a threat to a lawyer anywhere is a threat to the legal profession as a whole.

32. The Committee further recommends that Convocation charge a group of benchers with responsibility to monitor human rights violations and persecution experienced by members of the legal profession and judiciary as a result of the discharge of their legitimate professional duties. The particulars of the mandate of this group and its composition should be determined after Convocation has approved this proposal.

For Information

CANADIAN STUDENTS STUDYING LAW ABROAD FOR ADMISSION TO THE ONTARIO BAR

33. Over the past few months, the Committee has been considering the possible impact on the Law Society of the increasing number of Canadian students trained at law schools outside of Canada who return to Canada and seek admission to the Ontario bar. As internationally-educated law students, they must fulfill the requirements of the Federation of Law Societies' National Committee on Accreditation (NCA) program to be eligible for admission to the bar of a Canadian province or territory.
34. The current statistics from the NCA and the Law Society do not show a significant upward trend in the number of internationally-educated Canadian law students applying for admission to the Ontario bar. But anecdotal information is that increasing numbers of Canadian law students are studying at certain law schools outside of Canada, and that a larger group of graduates over the next few years may be applying through the NCA for admission to the Ontario bar. These students include those who were not accepted at a Canadian law school or who are attracted by the shorter program offered by the schools abroad. The Committee received information through the NCA that approximately 200 Canadian law students will graduate from Bond University in Australia alone within the next year or two. The number of similar students at other universities in other countries is not known, nor is there information on how many will return to Canada, or how many will return and seek to be admitted in Ontario.
35. In light of this information, the Committee felt it appropriate at this stage to refer this issue to the Chair of the Professional Development, Competence and Admissions Committee. Apart from monitoring this issue to determine if a trend to increased numbers of Canadian internationally-educated students develops, the Chair may wish to consider the following issues identified by the Committee:
 - a. If the influx of such students in one year is significant, the effect this may have operationally on the licensing program or on the availability of articling positions;
 - b. Depending on the composition of the group who are internationally-educated Canadians, whether this could have a bearing on the current diversity that is reflected in graduates of Ontario law schools;
 - c. From the broader public interest perspective, the value these graduates bring to the provision of and access to legal services in Ontario that may be related to their international education experience.

Re: Policy on Responses to Human Rights Violations Involving Lawyers and Judges

It was moved by Mr. Millar, seconded by Ms. Ross, that Convocation approve:

- a. a policy to systematically respond to human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties, and;
- b. that a group of benchers be charged with monitoring human rights violations that target members of the legal profession and judiciary in retribution for the discharge of their legitimate professional duties, the composition of the group and particulars of its mandate to be determined following Convocation's approval of this proposal.

An amendment was accepted to substitute the words "as a result of" for the words "in retribution for" in paragraph a.

Carried

Item for Information

- Canadian Students Studying Law Abroad for Admission to the Ontario Bar

TREASURER'S REPORT TO CONVOCATION

Re: LAWPRO's Annual Meeting

Treasurer's Report to Convocation
March 23, 2006

LAWPRO's Annual Meeting

Purpose of Report: Decision

Prepared by: Katherine Corrick

FOR DECISION

Motion

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

Background

2. The Annual and General Meeting of Shareholders of the Lawyers' Professional Indemnity Company will be held on April 26, 2006. The Notice of the Meeting is attached at Appendix 2.
3. The minutes of the 2005 Annual and General Meeting of Shareholders are attached at Appendix 3.
4. At the meeting, the shareholder will be asked to vote on the proposed shareholder resolutions set out at Appendix 1.
5. Traditionally, the Treasurer has signed the proxy to vote the Law Society's shares in favour of the resolutions.
6. The Treasurer seeks Convocation's guidance on the exercise of the proxy.

APPENDIX 1

LAWYERS' PROFESSIONAL INDEMNITY COMPANY
ANNUAL AND GENERAL MEETING OF SHAREHOLDERS
WEDNESDAY, APRIL 26, 2006

PROPOSED SHAREHOLDER RESOLUTIONS

1. APPROVAL OF MINUTES OF PREVIOUS MEETING*

RESOLVED that the minutes of the June 8, 2005 Shareholders Meeting are accepted.

2. APPROVAL OF FINANCIAL STATEMENTS

RESOLVED that the financial statements of the Company for the year ended December 31, 2005 are approved.

3. ELECTION OF DIRECTORS

RESOLVED that [*George D. Anderson, Constance Backhouse, Kim A. Carpenter-Gunn, Abdul A. Chahbar, Ian D. Croft, Douglas F. Cutbush, Lawrence A. Eustace, Frederick W. Gorbet, Malcolm L. Heins, Rita Hoff, William G. Holbrook, Vern Krishna, Q.C., Laurie H. Pawlitza, Michelle L.M. Strom and Gerald A. Swaye, Q.C.*], are elected directors of the Company to hold office until the next annual meeting of shareholders or until their successors are elected or appointed.

4. APPOINTMENT OF AUDITORS

RESOLVED that [*Deloitte & Touche LLP*] are appointed as auditors of the Company to hold office until the next annual meeting of shareholders at such remuneration as may be fixed by the directors and the directors are authorized to fix such remuneration.

5. REMUNERATION AND PAYMENT OF DIRECTORS AND OFFICERS*

RESOLVED that By-Law no. 14, regarding the remuneration and payment of directors and officers of the Company, is reaffirmed as passed by the Board of Directors on November 15, 2005, and shall take effect as at that date.

6. CONFIRMATION OF ACTS OF DIRECTORS AND OFFICERS

RESOLVED that all acts, contracts, by-laws, proceedings, appointments, elections and payments, enacted, made, done and taken by the directors and officers of the Company to the date hereof, as the same are set out or referred to in the resolutions of the board of directors, the minutes of the meetings of the board of directors or in the financial statements of the Company, are approved, sanctioned and confirmed.

* Please see attached for a copy of the draft minutes of the June 8, 2005 Shareholders Meeting and By-Law No. 14.

-DRAFT-

MINUTES OF THE GENERAL MEETING OF THE SHAREHOLDERS
of Lawyers' Professional Indemnity Company held at 2075 Bayview Avenue,
Toronto, Ontario on Wednesday, June 8, 2005 at the hour of 10:00 a.m.

Present in Person:

George D. Anderson, Constance Backhouse, Kim A. Carpenter-Gunn, Abdul A. Chahbar, Ian D. Croft, Douglas F. Cutbush, Lawrence A. Eustace, Malcolm L. Heins, Rita Hoff, William G. Holbrook, Vern Krishna, Q.C., Laurie H. Pawlitzka, Michelle L. M. Strom and Gerald A. Swaye, Q.C.

Present by Proxy:

Duncan Gosnell advised the Chair that a proxy had been received from the Law Society appointing Malcolm Heins as its nominee, as well as a proxy received from Frederick Gorbet appointing Michelle Strom as nominee, being a quorum of the shareholders of the Company.

Present by Invitation:

Duncan D. Gosnell. Kim Carpenter-Gunn acted as Chair for the meeting and Duncan Gosnell acted as Secretary for the meeting.

The Chair stated that a quorum was present and notice of the meeting had been sent to all of the directors and shareholders and to the auditor of the Company, and she therefore declared the meeting to be duly constituted for the transaction of business.

ACCEPTANCE OF MINUTES

The Chair presented to the meeting the minutes of the April 27, 2005 Shareholders Meeting.

ON MOTION DULY MADE by Malcolm Heins, SECONDED by George Anderson AND UNANIMOUSLY CARRIED, the following resolution was passed:

RESOLVED that the minutes of the April 27, 2005 Shareholders Meeting are accepted.

REMUNERATION AND PAYMENT OF DIRECTORS AND OFFICERS

The Chair presented to the meeting By-Law no. 13, respecting the remuneration and payment of directors and officers of the Company, as passed by resolution of the Board on April 27, 2005.

ON MOTION DULY MADE by Malcolm Heins, SECONDED by Douglas Cutbush AND UNANIMOUSLY CARRIED, the following resolution was passed:

RESOLVED that By-Law no. 13, regarding the remuneration and payment of directors and officers of the Company, is reaffirmed as passed by the Board of Directors on April 27, 2005, and shall take effect as at that date.

There being no further business, the meeting was then adjourned.

Chair

Secretary

APPENDIX 2

LAWYERS' PROFESSIONAL INDEMNITY COMPANY

NOTICE OF ANNUAL & GENERAL MEETING OF SHAREHOLDERS

Notice is hereby given that the Annual and General Meeting of Shareholders of the Lawyers' Professional Indemnity Company will be held on Wednesday, April 26, 2006 at 1 Dundas Street West, Suite 2200, at 2:00 p.m. for the purposes of conducting the annual general business of the Company, including:

1. Approving the minutes of the last meeting;
2. Considering and approving the audited financial statements for the year ending December 31, 2005;
3. Electing Directors;
4. Appointing Auditors;
5. Considering and confirming By-Law No.14, regarding the remuneration and payment of Directors and Officers of the Company, as passed by the Board of Directors on November 15, 2005;
6. Confirming the acts of Directors and Officers; and
7. Other business of the Company.

DATED the 8th day of March, 2006.

Duncan Gosnell
Secretary

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

- (1) Copy of By-Law 14 Lawyers' professional Indemnity Company re: the remuneration and payment of Directors and Officers of the Company.
(page 5)
- (2) Copy of the Minutes of the Annual and General Meeting of the Shareholders of Lawyers' Indemnity Company on April 27, 2005.
(pages 7 – 9)

It was moved by Professor Krishna, seconded by Mr. Sandler, that Convocation authorize the Treasurer to vote the proxy in favour of the proposed shareholder resolutions set out at Appendix 1 of the Report.

Carried

SOLE PRACTITIONER & SMALL FIRM TASK FORCE REPORT

Ms. Potter and Mr. Feinstein presented the Report.

Report to Convocation
March 23, 2006

SOLE PRACTITIONER AND SMALL FIRM TASK FORCE

Task Force Members
Abe Feinstein, Q.C. (Co-chair)
Judith Potter (Co-chair)
Carole Curtis
Alan Gold
Gary Lloyd Gottlieb, Q.C.
Thomas Heintzman, O.C., Q.C.
Laura Legge, O. Ont., Q.C.
Dan Murphy, Q.C.
Ross Murray, Q.C.
Alan Silverstein
Michelle Strom

Purpose of Report: Decision

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

FOR DECISION

SOLE PRACTITIONER AND SMALL FIRM TASK FORCE

MOTION

1. That Convocation approves,
 - a. the Task Force's March 24, 2005 report (considered April 28, 2005); and
 - b. the establishment of a working group of the Professional Development, Competence and Admissions Committee made up of two benchers, two representatives of the County and District Law Presidents' Association and two representatives of the Ontario Bar Association; and
 - c. as the working group's mandate, that it bring forward strategies and priorities for Convocation's consideration based on the Task Force's recommendations and taking into account the legal organizations' submissions; and
 - d. the allocation of \$220, 000 from the Law Society's general fund to fund the activities of a counsel within the Professional Development and Competence department to chair, coordinate and facilitate the work of the working group and prepare the report on the working group's recommended strategies and priorities, and its proposed initiatives to implement those strategies, including a business plan, for the Committee's and Convocation's consideration.

Introduction and Background

2. The Sole Practitioner and Small Firm Task Force presented its final report to Convocation on April 28, 2005.⁶ A copy of the Task Force's report is provided to Convocation under separate cover.
3. Convocation discussed the report in a preliminary fashion. It then approved one amendment to the recommendations, namely that Recommendation 4, which set out a scheme for mandatory attendance of certain categories of members at a start-up workshop, would be amended to remove the mandatory requirement. Convocation then directed that the Task Force seek written input from legal organizations and the profession on its recommendations.
4. In November 2005 Convocation received copies of all the submissions that the Task Force received, both from individuals and from legal organizations.
5. The Task Force has reviewed the individuals' and organizations' submissions. Those individuals and organizations addressed the Task Force recommendations and made additional recommendations of their own.
6. The organizations' submissions reveal universal agreement that sole and small firm practitioners play an integral role in both the public's access to justice and the legal profession in Ontario.
7. The submissions also reflect support for the need to address the issues that sole and small firm practitioners face and to do so in a coordinated, collaborative way among the Law Society and the legal organizations.
8. To take the Task Force's work to the next stage, on January 11, 2006 the Task Force Chairs, the then Acting Treasurer, Clayton Ruby, and the Chief Executive Officer met with representatives of the Ontario Bar Association (OBA), the County and District Law Presidents' Association (CDLPA) and the County of Carleton Law Association (CCLA), whose organizations had submitted the most in depth comments on the Task Force's Report.
9. The participants at that meeting discussed the establishment of a working group to bring forward strategies and priorities for Convocation's consideration based on the Task Force's recommendations and taking into account the legal organizations' submissions.
10. The Task Force has considered this approach and agrees with it. The Task Force proposes that Convocation approves the Task Force March 24, 2005 Report (considered April 28, 2005) and establishes a working group consisting of two representatives of the OBA, two representatives of CDLPA and two benchers of the Law Society. The Task Force is of the view that this should be a working group of the Professional Development, Competence and Admissions Committee, given that the majority of the Task Force's recommendations come within that Committee's mandate. The Professional Development, Competence and Admissions Committee has considered the proposal and does not have objections to it.

⁶ The report was dated March 24, 2005, but considered on April 28, 2005.

11. The Task Force agrees that a small group will be more effective and able to develop strategies and priorities more expeditiously than would be the case with a larger group. Both CDLPA and the OBA have undertaken to ensure that, within their own organizations, they will seek broad province-wide input to better inform their representatives' contributions to the working group. As the strategies and priorities are developed, further consultations with other organizations will occur. The most important consideration is to move forward expeditiously in developing the tools necessary to assist those sole and small firm practitioners who would benefit from them.
12. It is clear to the Task Force and the representatives of the OBA, CDLPA and CCLA with whom the Chairs met that for the process to move forward it is essential that there be someone whose job it is to chair, coordinate and facilitate the work of the working group and move the priorities and strategies that emerge forward.
13. The Task Force proposes the allocation out of the Law Society's general fund of \$220,000. This would fund the activities of a counsel within the Professional Development and Competence department in 2006 who would chair, coordinate and facilitate the work of the working group and prepare the report on the working group's strategies and priorities, and its proposed initiatives to implement those strategies, including a business plan, for the Committee's and Convocation's consideration.
14. Specifically, the funds would be allocated as follows:
 - a. \$140,000 salary, benefits
 - b. \$ 10,000 to support working group meetings (space, catering, etc.)
 - c. \$ 10,000 office expenses (printing, copying, supplies, etc.)
 - d. \$ 10,000 travel and expenses
 - e. \$ 50,000 indirect expense allocation
15. Both the OBA and CDLPA have indicated their approval for the Task Force's motion to Convocation, in letters attached at Appendix 1.
16. At its February and March 2006 meetings the Finance and Audit Committee also considered the Task Force's motion and recommends approval of the \$220,000 allocation from the general fund.

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

- (1) Copy of the final Sole Practitioner and Small Firm Task Force Report dated March 24, 2005 and considered on April 28, 2005.
(under separate cover)
- (2) Copy of a letter from Heather McGee, President of the Ontario Bar Association to Sophia Sperdakos dated February 8, 2006 re: Sole Practitioner and Small Firm Task Force Report.
(page 6)
- (3) Copy of a letter from W. Ormond Murphy, Chair of the County & District Law Presidents' Association to Sophia Sperdakos dated February 14, 2006 re: Sole Practitioner and Small Firm Task Force Report.
(page 7)

It was moved by Ms. Potter, seconded by Mr. Feinstein, that Convocation approve,

- a. the Task Force's March 24, 2005 report (considered April 28, 2005); and
- b. the establishment of a working group of the Professional Development, Competence and Admissions Committee made up of two benchers, two representatives of the County and District Law Presidents' Association and two representatives of the Ontario Bar Association; and
- c. as the working group's mandate, that it bring forward strategies and priorities for Convocation's consideration based on the Task Force's recommendations and taking into account the legal organizations' submissions; and
- d. the allocation of \$220,000 from the Law Society's general fund to fund the activities of a counsel within the Professional Development and Competence department to chair, coordinate and facilitate the work of the working group and prepare the report on the working group's recommended strategies and priorities, and its proposed initiatives to implement those strategies, including a business plan, for the Committee's and Convocation's consideration.

Carried unanimously

Ms. Potter thanked Mr. Feinstein, members of the Task Force, Joyce Kaplan and Sophia Sperdakos who wrote the Report.

CEO'S REPORT TO CONVOCATION

Mr. Heins informed Convocation that there was a flood in the basement of Osgoode Hall on March 12, 2006 as a result of a broken water main. The insurer and the City of Toronto were notified as required. This has impacted the Feed the Homeless program.

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EQUITY AND ABORIGINAL ISSUES COMMITTEE/Comité sur l'équité et les affaires autochtones Report

Re: Retention of Women in the Legal Profession Working Group

Mr. Pattillo and Ms. Pawlitza presented the Report.

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

Committee Members
Joanne St. Lewis (Chair)
Paul Copeland (Vice-Chair)
Marion Boyd
Richard Fillion
Thomas Heintzman
Tracey O'Donnell
Mark Sandler
Bradley Wright

Purpose of Report: Decision and Information

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

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Retention of Women in Private Practice Project..... TAB A

For Information

Equity Public Education Series Schedule – 2006..... TAB B

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones [the Committee] met on February 9, 2006. Committee members participating were Joanne St. Lewis (Chair), Paul Copeland (Vice-Chair and Chair of meeting), Dr. Richard Fillion, Thomas Heintzman and Tracey O'Donnell. Nathalie Boutet (representative of the Association des juristes d'expression française de l'Ontario [AJEFO]), Milé Komlen (Chair of the Equity Advisory Group [EAG]) and Cynthia Petersen (Discrimination and Harassment Counsel [DHC]) also participated. Staff members in attendance were Josée Bouchard, Anne-Katherine Dionne, Sudabeh Mashkuri, Marisha Roman and Rudy Ticzon.

FOR DECISION

RETENTION OF WOMEN IN
PRIVATE PRACTICE PROJECT

MOTION

2. That Convocation approves the allocation of \$50,000 from the contingency account in 2006 and the allocation of \$120,000 in the 2007 budget to enable the Equity and Aboriginal Issues Committee to undertake a project, presented at Appendix 1, that will identify solutions and develop tools for law firms to address the issue of retention of women in private practice.

BACKGROUND

3. Research findings show that women still face inequalities and barriers in the legal profession. More particularly, research findings note that women do not remain in private practice throughout their careers and face challenges when re-entering private practice.
4. The Law Society held a benchers' planning session on September 26 and 27, 2005, to identify core issues that will drive policy making in the next two years and beyond. Benchers identified the issue of retention of women in private practice as a core issue, and decided that the Law Society should develop strategies to address this issue. In 2005, the Equity and Aboriginal Issues Committee [the Committee] identified as a policy development priority for 2006 the elaboration of strategies to address the issue of retention of women in private practice.
5. As a result, the Committee created the Retention of Women in Private Practice Working Group [the Working Group] with a mandate to,
 - a. identify best-practices in law firms and in sole practice to enhance the retention of women;
 - b. design and implement strategies for medium and large law firms to retain women;
 - c. develop strategies to respond to the socio-economic needs of women in small firms and sole practices including the viability of their practices as well as their unique child-care challenges; and
 - d. take into account the needs of women from diverse communities.
6. Members of the Working Group are: Laurie Pawlitzka (Co-Chair), Bonnie Warkentin (Co-Chair), Laurie Pattillo (Vice-Chair), Andrea Alexander, Ritu Bhasin (Representative of the EAG), Nathalie Boutet (Representative of the AJEFO), Kim Carpenter-Gunn, James Caskey, Dr. Richard Filion, Holly Harris, Thomas Heintzman, Katherine Hensel (Representative of Rotiio> taties Aboriginal Advisory Group), Tracey O'Donnell, Julie Ralhan (Representative of the EAG) and Joanne St. Lewis (Chair of the Equity and Aboriginal Issues Committee).
7. The Working Group met on January 25, 2006 and decided to focus on identifying solutions and developing practical tools and best practices through a comprehensive consultation with law firms. The consultation will include firms of all sizes and sole practices.

8. On February 9, 2006, the Committee approved the recommendation of the Working Group that the Law Society consult law firms to identify,
 - a. successful tools, resources and practices;
 - b. programs and initiatives that have been less successful; and
 - c. what the Law Society can do to promote the retention of women in private practice.
9. The Committee requested an estimate of costs to undertake the consultation. Consulting firms were informally approached and the following methodology is recommended. Estimated costs are also presented below.

METHODOLOGY OF CONSULTATION

10. It is recommended that the Law Society embark on a three-phase project beginning in 2006 and ending in 2007. It is anticipated that a consulting firm would be retained to assist the Law Society with this project.
11. In Phase I, the Working Group will survey law firms from across Ontario to explore practices and policies aimed at addressing the issue of retention of women, identify gender and diversity initiatives, and establish benchmarks of initiatives in place. The survey will provide useful quantitative information about best practices and less effective practices in the legal profession, and commonalities among law firms based on geographical location, size and other relevant factors. The estimated cost for this phase is between \$30,000 and \$40,000.
12. In phase II, the quantitative survey will be followed by a qualitative consultation phase. By its nature, qualitative research has considerably more flexibility than quantitative research because it is not governed by a largely static questionnaire. Compared to quantitative data, qualitative research tends to produce higher quality data from consultations. The qualitative consultation phase will include interviews and focus groups to provide more thorough information about experiences, attitudes, practices and perceptions and greater context in interpreting the findings and proposing practical solutions. The Working Group will use the findings of the survey and consultation to develop recommendations for Convocation's approval. The estimated cost for this phase is between \$40,000 and \$60,000.
13. In Phase III, the Working Group will work with law firms to implement the recommendations. The Working Group is of the view that the Law Society can positively influence change, attitudes, practices and perceptions through policy, programs and initiatives aimed at enhancing the retention of women in private practice. The objective of this phase of the project is to implement practical and effective solutions and create buy-in and law firm commitment towards change. The estimated cost for this phase is between \$50,000 and \$70,000.
14. The research funds in the Equity Initiatives Department 2006 budget are already allocated to two consultations, the first with the Aboriginal bar and the second with students seeking articling positions. The Equity Initiatives Department budget for 2007 is also insufficient to cover the costs of this project. Therefore, in March, 2006, the

Committee requested that the Finance and Audit Committee approve the allocation of \$50,000 from the contingency account in 2006 and the allocation of \$120,000 in the 2007 budget to enable the Equity and Aboriginal Issues Committee to undertake the Retention of Women in Private Practice project. The Finance and Audit Committee approved the request.

15. Convocation is requested to allocate \$50,000 from the contingency in 2006 and to allocate \$120,000 in the 2007 budget to enable the Equity and Aboriginal issues Committee to undertake this project. A full description of the project is presented at Appendix 1.

Retention of Women in Private Practice Project
Adopted by the Committee
On February 9, 2006

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

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

BACKGROUND

1. At the end of 1990, the Law Society faced its first challenges with equality issues brought on by the critical mass of women joining the profession in record numbers between 1975 and 1990.¹ Women identified a range of issues and barriers affecting their ability to perform well in the legal profession. Some of the issues are presented in the 1997 *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession [the Bicentennial Report]*. The Law Society began to address these issues by creating a standing committee of Convocation, the Equity and Aboriginal Issues Committee [the Committee], and the Equity Advisory Group [the EAG] and by conducting research and developing resources such as model policies for the legal profession.
2. Research findings today show that women still face inequalities and barriers in the legal profession. More particularly, research findings note that women do not remain in private practice throughout their careers and face challenges in re-entering private practice.
3. The Law Society held a benchers' planning session on September 26 and 27, 2005, to identify core issues that will drive policy making in the next two years and beyond. Benchers identified the issue of retention of women in private practice as a core issue,

¹ *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997) [*"Bicentennial Report"*]. Also see Michael Ornstein, *The Changing Face of the Ontario Legal Profession, 1971-2001* (Toronto: Law Society of Upper Canada, October 2004).

and decided that the Law Society should develop strategies to address this issue. In 2005, the Committee identified as a policy development priority for 2006 the elaboration of strategies to address the issue of retention of women in private practice.

4. This priority falls within the Committee's mandate to develop for Convocation's approval, policy options for the promotion of equity and diversity in the legal profession and for addressing all matters related to Aboriginal peoples and Francophones, and to consult with the EAG, Rotiio> taties Aboriginal Advisory Group, the Association des juristes d'expression française de l'Ontario [AJEFO], women and equity-seeking communities in the development of such policy options.²
5. Identifying solutions to address the issue of retention of women in private practice also falls within the mandate of the Law Society to "govern the legal profession in the public interest by [...]upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law." In 2001, women represented 51.2% of the Ontario population and 54% of lawyers called to the Ontario bar in 2005. However, women comprise only 36% of the Ontario bar today, and studies show that they are more likely to leave private practice than men. The Committee strongly believes that access to justice for Ontarians is enhanced by a representative and inclusive profession, and that the Law Society should be a leader in promoting access and retention of women in private practice.
6. The *Bicentennial Report*, adopted unanimously by Convocation in 1997, outlined the Law Society's role and responsibility in the advancement of equity and diversity. The report states "As the governor of the profession in the public interest, the Law Society occupies a variety of roles including that of policy maker, resource to the public and the profession, regulator, and educator." The Bicentennial Report Working Group noted in 2004 "that women continue to leave the profession in significant numbers at mid-career and that there continue to be barriers to re-entry. These matters require particular attention."
7. The Law Society has a catalyst role to play within the legal profession by guiding law firms and sole practitioners in the development of initiatives and programs and by providing best practices and resources to the legal profession to enhance the retention of women in private practice. The Committee also believes that the Law Society has a strong role to play in providing support to alleviate the challenges faced by those who have left, and wish to re-enter, private practice.
8. To address these pressing issues, the Committee created in 2005 the Retention of Women in Private Practice Working Group [the Working Group] with a mandate to,
 - a. identify best practices in law firms and in sole practice to enhance the retention of women;
 - b. design and implement strategies for medium and large law firms to retain women;
 - c. develop strategies to respond to the socio-economic needs of women in small firms and sole practices including the viability of their practices as well as their unique child-care challenges; and
 - d. take into account the needs of women from diverse communities.

² By-law 9 – Committees.

9. Members of the Working Group are:
 - a. Laurie Pawlitzka (Co-Chair)
 - b. Bonnie Warkentin (Co-Chair)
 - c. Laurie Pattillo (Vice-Chair)
 - d. Andrea Alexander
 - e. Ritu Bhasin (Representative of EAG)
 - f. Nathalie Boutet (Representative of AJEFO)
 - g. Kim Carpenter-Gunn
 - h. James Caskey
 - i. Dr. Richard Filion
 - j. Holly Harris
 - k. Thomas Heintzman
 - l. Katherine Hensel (Representative of Rotiio> taties Aboriginal Advisory Group)
 - m. Tracey O'Donnell
 - n. Julie Ralhan (Representative of EAG)
 - o. Joanne St. Lewis
10. The Working Group met on January 25, 2006 to set out the preliminary framework for addressing the issue of retention of women in private practice. The Working Group decided to focus on identifying solutions and developing practical tools and best practices through a comprehensive consultation with law firms. The consultation will also serve as a catalyst to create change in the legal profession and to enhance awareness about these issues and possible solutions. The consultation will include firms of all sizes and sole practices.
11. The Working Group will not duplicate studies that have already been done on the issue of retention of women in private practice. The objective of consulting law firms is to provide practical solutions and prospective models for the retention of women in private practice and for the re-entry of women into private practice. An extensive review of the existing findings indicates that although law firms understand the costs associated with the departure of lawyers from private practice and are committed to addressing this issue, concrete and comprehensive solutions have not been identified.
12. Therefore, the Working Group recommended to the Committee that the Law Society consult law firms to identify,
 - a. successful tools, resources and practices;
 - b. programs and initiatives that have been less successful; and
 - c. what the Law Society can do to promote the retention of women in private practice and facilitate the re-entry of women in private practice.
13. The purpose of this report is to provide Convocation with an overview of findings about retention of women in private practice, the Committee's recommendation to consult law firms and estimated costs.

FINDINGS ABOUT RETENTION OF WOMEN IN PRIVATE PRACTICE

14. The challenges faced by women in private practice are well documented. The following provides an overview of some of the findings:
 - a. Practice of law:
 - i. Men are more likely than women to be engaged in the practice of law (11% of men and 21 % of women are not practising law).
 - ii. Twelve percent of men and 21 % of women report having at least one position outside of law in the last six years.
 - b. Impact on maternity: Women in private practice are likely to delay having children.
 - c. Responsibility for childcare: Men spend 13 hours per week compared to women who spend 35 hours per week on childcare.
 - d. Part-time employment: Women are considerably more likely to pursue part-time jobs at some point in their careers.
 - e. Job interruptions:
 - i. Interruptions of work are more common among women.
 - ii. The activities between job interruptions are, for women, more likely to be for childcare while for men, they are for education or travel.
 - f. Partnership:
 - i. Men are much more likely than women to be partners (34% of men and 16% of women).
 - ii. Fewer women are senior partners (71% of men and 51% of women).
 - iii. More women have alternative forms of partnerships (18% of men and 40% of women).
 - g. Sole practice: Men are much more likely than women to be sole practitioners (21% of men and 15% of women).
 - h. Remuneration:
 - i. Women continue to receive lower remuneration than men of equivalent experience and practice settings (as government lawyers, sole practitioners and law firm partners).
 - ii. Men are more like than women to earn in excess of \$300,000 and women are much more likely than men to earn less than \$60,000.
15. Fiona Kay has written about systematic gender bias and discrimination around partnerships in law. She concludes that the transformation of the profession involves reduced partnership opportunities for women and men, and that women fare worse than

men in the competitions. In studies commissioned by the Law Society, Fiona Kay notes the following challenges faced by women in private practice :³

- a. There is a lack of part-time employment, part-time partnerships, job sharing and flexibility in hours.
 - b. There is a perception that part-time partnerships, job sharing and flexibility in hours have a negative impact on chances of advancement and women are discouraged from entering into such agreements.
 - c. When women have children there is a lack of workplace supports to accommodate their needs.
 - d. Women face challenges in balancing career and family life.
 - e. There is inequality for women in the legal workplace.
 - f. There is a lack of recognition for the value of alternative careers and also a lack of alternative choices.
 - g. There are inadequate maternity leave plans and workplace supports for lawyers and families.
 - h. There is discrimination and harassment.
 - i. Women feel excluded from informal internal networks.
 - j. Women lack role models.
 - k. Women have less client development/general management experience and opportunities to develop their client development skills.
 - l. Women lack mentoring opportunities.
16. The *Report of the Sole Practitioner and Small Firm Task Force*⁴ points to the difficulty female sole practitioners and female partners and associates in small firms may face. The study includes in the target group lawyers in sole practices and small firms of five or fewer. In the target group, 21% of respondents were women. The report provides the following findings:
- a. Within the target group, women are more likely to be associates or employees of small firms (33%), and less likely to be partners in those firms (13%). This trend was also repeated in the non-target group where 33% of all respondents were women, but 47% of all employees/associates are women and only 13% are partners.
 - b. All other factors being equal, men are more likely to earn more than women. Women in the equality-seekers focus groups reported more serious concerns over low income than did men.
 - c. The focus group of women equality-seekers indicated that they consider long work hours as a serious issue for them.
 - d. Female sole practitioners and proprietors pointed out the serious barriers to having children. Participants noted the lack of maternity leave benefits. All

³ Fiona Kay, *Women's Careers in the Legal Profession* (Toronto: Law Society of Upper Canada, September 2004); Fiona Kay, *The Contemporary Legal Profession in Ontario* (Toronto: Law Society of Upper Canada, September 2004). See also Fiona M. Kay and John Hagan, "Changing Opportunities for Partnership for Men and Women Lawyers during the Transformation of the Modern Law firm" (1995) 32 Osgoode Hall Law Journal 413. Fiona Kay also looked at gender disparities in the Quebec legal profession in "Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec" (2002) 47 McGill L.J. 699.

⁴ Report to Convocation (Toronto: Law Society of Upper Canada, March 24, 2005).

- participants conceded that the decision to have a child meant serious sacrifices with respect to their capacity to practise law.
- e. Female focus group participants discussed issues of sexual harassment and condescension toward women within the law profession and reported that sexual harassment is pervasive.
 - f. Gender differences are perceived by women in the target group to be fundamental in shaping perceptions related to managing work and life. In the women's focus group, the conversation about specific drawbacks of the practice context spontaneously gave way to a discussion about the many disadvantages that women faced in practising law.
17. Catalyst, a research and advisory organization working to advance women in business, studied the issue of work life balance within the legal profession. The American Catalyst's 2001 study of 1400 lawyers found that 70% of both men and women report work/life conflict and a third of men, and almost half of women identify work/life balance as one of their top three reasons for choosing their employer. While those with children report the highest levels of conflict, men and women without children also find it difficult to balance their professional and personal life.⁵
 18. Although both men and women are seeking better work/life balance, their experiences in law firms differ significantly and may influence the way law firms and the Law Society tackle these issues. For example, women are more interested in reduced work hours than men. While half of women in law firms or in house want reduced work schedules, less than 20% of men indicate an interest in such arrangements. These issues affect women's careers more than men's.
 19. Catalyst also published reports about gender related issues in Canadian law firms. Key findings indicate that 62% of women associates and 47% of men associates intend to stay with their firms for five years or less. Women and men report the same top factors as important in choosing to work at another firm: an environment more supportive of family and personal commitments, and more control over work schedules. The average total cost of an associate's departure is \$315,000, approximately twice the average associate's salary. The average firm breakeven point (the point at which revenues generated by an associate equal the cost of recruitment training, and the potential cost of departure from the firm) on an associate is 1.8 years.⁶
 20. Catalyst also found that men partners perceive and experience the law firm work environment differently than women partners, women associates, and men associates. Firms need to recognize that, while both men and women lawyers experience work-life balance difficulty, the challenge of managing work and personal/family responsibilities is felt disproportionately by women lawyers, especially women associates.⁷
 21. Studies also indicate that both men and women identify family life as the aspect of their lives that give them the most satisfaction. However, women are leaving law earlier in

⁵ Catalyst, *Women in Law – Making the Case* (New York: Catalyst, 2001).

⁶ Catalyst, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (New York: Catalyst, 2005).

⁷ Catalyst, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (New York: Catalyst, 2005).

their careers and in greater numbers than men, due in large part to hour demands, lack of flexibility, lack of accommodation for childcare and stressful practices.⁸

22. Women from Francophone, Aboriginal and/or equality-seeking communities often face greater challenges due to their membership in those communities. For example, studies have shown that lawyers with disabilities face barriers entering and remaining in the legal profession, more particularly in private practice.⁹ Lawyers with disabilities are also more likely than lawyers without disabilities to leave private practice because of illness or injury and involuntary loss of employment, inability to find a job practising law, discrimination and credit for work. Studies also show that there is a high non-practising rate of Aboriginal lawyers compared to other segments of the legal profession¹⁰, and racialized lawyers are more likely than non-racialized lawyers to leave the practice of law because of an inability to find a job.¹¹
23. In summary, studies have identified the following:
 - a. Women leave private practice in droves because of barriers related to gender;
 - b. The intersection of grounds of distinction, such as race, disability and/or sexual orientation, produce unique and distinct challenges, realities and experiences for women who are members of equality-seeking communities;
 - c. Barriers faced by women are systemic and will require organizational and cultural change, along with a shift in resources, policies and programs in the legal profession;
 - d. Women face unique challenges, including economic challenges, in small and sole practice.

RECOMMENDED APPROACH

24. Based on the information outlined above, the Committee requested an estimate of costs to undertake this consultation. Consulting firms were informally approached and the following methodology is proposed along with estimated cost. Of course, without a proper request for proposals, costing for the consultation is based on a rough estimate.
25. It is recommended that the Law Society embark on a project to begin in 2006 and end in 2007. The phases of the project are outlined below. It is anticipated that a consulting firm would be retained to assist the Law Society with this project.
26. The methodology is based on the fact that there are 583 law firms in Ontario with five lawyers are more. The firms can be divided as follows:

⁸ See Catalyst studies, *ibid.*, and Jean McKenzie Leiper, "Women Lawyers Caught in the Time Crunch" (1998) 13 (2) Canadian Journal of Law and Society 117.

⁹ *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession* (Toronto: Law Society of Upper Canada, 2005). See also *Lawyers with Disabilities: Identifying Barriers to Equality* (Vancouver: Law Society of British Columbia, 2001) and *Lawyers with Disabilities: Overcoming Barriers to Equality* (Vancouver: Law Society of British Columbia, 2004).

¹⁰ *Addressing Discriminatory Barriers Facing Aboriginal Law Students* (Vancouver: Law Society of British Columbia, 2000).

¹¹ *Final Report on Equity and Diversity in Alberta's Legal Profession* (Calgary: Law Society of Alberta, January 26, 2004). Also see *Racial Equality in the Canadian Legal Profession* (Ottawa: Canadian Bar Association, 1999).

- a. 5 lawyers: 131 firms;
 - b. 6 to 20 lawyers: 371 firms;
 - c. 21 to 50 lawyers: 50 firms;
 - d. 51 to 200 lawyers: 24 firms; and
 - e. over 201 lawyers: 7 firms.
27. There is also a large number of firms and sole practices with 5 lawyers and less. The Sole Practitioner and Small Firm Task Force has undertaken extensive consultation with that target group and the Retention of Women in Private Practice Working Group will use the findings of the Task Force to inform its work.

Phase I - Survey

28. In Phase I, the Working Group will survey law firms from across Ontario to,
- a. explore practices and policies aimed at addressing the issue of retention of women;
 - b. identify gender and diversity initiatives; and
 - c. establish benchmarks of initiatives in place.
29. Studies indicate that large and medium size law firms face different challenges than smaller firms in addressing the issue of retention of women. Therefore, the Law Society may develop more than one survey questionnaire to address these differences.
30. The survey will provide useful quantitative information about best practices and less effective practices in the legal profession, and commonalities among law firms based on geographical location, size and other relevant factors. The estimated cost for this phase is between \$30,000 and \$40,000.

Phase II- Qualitative Consultation

31. The quantitative survey phase will be followed by a qualitative consultation phase. By its nature, qualitative research has considerably more flexibility than quantitative research because it is not governed by a largely static questionnaire. Compared to quantitative data, qualitative research tends to produce higher quality data from consultations. In one-on-one interviews and focus groups, interviewers or facilitators have more flexibility to tailor the discussion according to the individual being interviewed.
32. The qualitative consultation phase will include interviews and focus groups to provide more thorough information about experiences, attitudes, practices and perceptions and greater context in interpreting the findings and proposing practical solutions.
33. The consultation process could also be used as an educational opportunity and an awareness building opportunity.
34. The Working Group will use the findings of the survey and consultation to develop recommendations for Convocation's approval. The estimated cost for this phase is between \$40,000 and \$60,000.

Phase III - Implementation

35. In Phase III, the Working Group will work with law firms to implement the recommendations. The Law Society has positively influenced change, attitudes and perceptions in the legal profession through education, programs and policies in areas such as harassment and discrimination, and has created an environment of inclusiveness within the legal profession. The Retention of Women in Private Practice Working Group is of the view that the Law Society can also positively influence change, attitudes, practices and perceptions through policies, programs and initiatives aimed at enhancing the retention of women in private practice. The objective of this phase of the project is to implement practical and effective solutions and create buy-in and law firm commitment towards change. The estimated cost for this phase is between \$50,000 and \$70,000.

Estimated Costs and Timelines

36. A rough estimate of costs to undertake this study is \$170,000 over two fiscal years (2006-2007). The Committee requests an allocation of \$50,000 in 2006 and \$120,000 in 2007 to complete this project.
37. The following table outlines a rough estimate of cost allocation.

Project component	Timelines	Description	Price estimate
Phase I: Survey of 580 law firms seeking 20% response rate	Completion: Summer 2006	-Design of survey -Conduct survey -Tabulation -Report of findings	\$30,000 - \$40,000
Phase II: Consultation, including interviews and focus groups with firms	Beginning: Fall 2006 Completion Spring 2007	-Planning and design -Interviews -Transcription -Data analysis, interpretation -Report -Adoption of recommendations	\$40,000 - \$60,000
Phase III: Recommendations and implementation	Beginning Spring 2007 End December 2007	-Implementation of solutions	\$50,000 - \$70,000
Total			\$170,000

38. It is estimated that a project of this magnitude is likely to take one and a half years to complete.

16. The research funds in the Equity Initiatives Department budget for 2006 are already allocated for two consultations, the first with the Aboriginal bar and the second with students seeking articling positions. The Equity Initiatives Department budget for 2007 is also insufficient to cover the costs of this project. Therefore, in March 2006, the Committee requested that the Finance and Audit Committee approve the allocation of \$50,000 from the contingency account in 2006 and the allocation of \$120,000 in the 2007 budget to enable the Equity and Aboriginal Issues Committee to undertake the Retention of Women in Private Practice project. The Finance and Audit Committee approved the request.
39. Convocation is requested to allocate \$50,000 from the contingency in 2006 and to allocate \$120,000 in the 2007 budget to enable the Equity and Aboriginal issues Committee to undertake this project.

FOR INFORMATION

EQUITY PUBLIC EDUCATION SERIES SCHEDULE - 2006

1. International Day for the Elimination of Racial Discrimination: Canadian Legal Response to Torture – Promoting Human Rights
Event date: March 24, 2006

Location: Panel discussion: University of Ottawa, Alumni Auditorium of the Jock Turcot University Centre building, 85 University, Ottawa.

Reception: Tsampalieros Atrium, 3rd Floor, Fauteux Hall, 57 Louis Pasteur, University of Ottawa.

Time:

3:00 p.m. – 6 p.m. Canadian Legal Response to Torture panel discussion

The Law Society of Upper Canada in partnership with the University of Ottawa, Faculty of Law and the Human Rights Research and Education Centre are pleased to present a public panel discussion that will examine legal, political and social implications for the torture and the role and responsibility of governments in eliminating torture.

Chair: Joanne St. Lewis, Bencher, Law Society of Upper Canada

Speakers: Dr. Amir Attaran, Faculty of Law, University of Ottawa and Institute of Population Health
Paul Copeland, Bencher, Law Society of Upper Canada
Barbara Jackman, Barrister & Solicitor
Alex Neve, Secretary General, Amnesty International Canada
Kerry Pither, Campaign & media Strategist
Veena Verma, Cavalluzzo Hayes Shilton McIntyre & Cornish

6:00 p.m. – 8:00 p.m. Reception to Celebrate International Day for the Elimination of Racial Discrimination

2. National Holocaust Memorial Day topic: *Eliminating On-Line Propaganda of Racial and Religious Hatred*
 Event date: April 26, 2006
 Location:
 4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall
 Panelists

Moderator: Professor Alain Goldschlager, Director of the Holocaust Literature Research Institute at the University of Western Ontario (TBC)

Speakers:

 Professor Jane Bailey, Faculty of Law, University of Ottawa (TBC)

 David Matas, Barrister & Solicitor (TBC)

 Mark Sandler, Bencher, Law Society of Upper Canada

 Sgt. Heidi Shellhorne, York Regional Police (TBC)

3. South Asian Heritage Month topic: *How the Law Recognizes Culturally Diverse Family Structures*
 Event date: May 3, 2006
 Location:
 4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

4. Access Awareness topic: TBD
 Event date: May 17, 2006
 Location:

 4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

5. National Aboriginal Day topic: *Aboriginal Perspectives on Access to Justice*
 Event date: June 7, 2006
 Location:
 2:00 p.m. – 5:00 p.m.: Panel discussion, Donald Lamont Learning Centre
 5:00 p.m. – 7:00 p.m.: Reception, Law Society Convocation Hall

6. Pride Week Event topic: TBD
 Event date: June 20, 2006 (TBC)
 Location:
 4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

7. Louis Riel Day
 Event date: November 16, 2006
 Topic: TBD
 Location:

4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre
 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

It was moved by Mr. Pattilo, seconded by Ms. St. Lewis, that Convocation approve the allocation of \$50,000 from the contingency account in 2006 and the allocation of \$120,000 in the 2007 budget to enable the Equity and Aboriginal Issues Committee to undertake a project, presented at Appendix 1, that will identify solutions and develop tools for law firms to address the issue of retention of women in private practice.

Carried

Item for Information

- Equity Public Education Series Schedule – 2006

FINANCE & AUDIT COMMITTEE REPORT

Mr. Ruby presented the Report.

Report to Convocation
 March 23, 2006

Finance and Audit Committee

Committee Members:
 Clayton Ruby, Chair
 Abdul Chahbar, Vice-Chair
 Marshall Crowe, Vice-Chair
 Beth Symes, Vice-Chair
 John Campion
 Mary Louise Dickson
 Allan Gotlib
 Holly Harris
 Ross Murray
 Alan Silverstein
 Gerald Swaye
 Robert Topp

Purpose of Report: Decision
 Information

Prepared by the Finance Department

Table of Contents

For Decision

Annual Combined Financial Statements of the Errors and Omissions Insurance Fund and Annual Financial Statements of the Lawyers' Professional Indemnity Company for the Year Ended December 31, 2005	TAB A
J.S. Denison Trust Fund (Confidential)	TAB B
Retention of Women Working Group Project.....	TAB C
Sole Practitioner and Small Firm Task Force	TAB D

COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on March 9, 2006. Committee members in attendance were: Clayton Ruby, Abdul Chahbar (vc.), Marshall Crowe (vc.), Beth Symes (v.c.), Mary Louise Dickson, Holly Harris, Alan Silverstein and Gerald Swaye.

Other benchers present were Laurence Pattillo and Laurie Pawlitz. LawPro representatives were Michelle Strom (President and CEO) and Akhil Wagh (Vice President & Treasurer). Staff present were Malcolm Heins, Wendy Tysall, Josee Bouchard, Fred Grady and Andrew Cawse.

FOR DECISION:

ANNUAL COMBINED FINANCIAL STATEMENTS OF THE ERRORS AND OMISSIONS
INSURANCE FUND AND ANNUAL FINANCIAL STATEMENTS OF THE LAWYERS'
PROFESSIONAL INDEMNITY COMPANY
FOR THE YEAR ENDED DECEMBER 31, 2005

The Finance & Audit Committee recommends that the annual combined financial statements of the Errors & Omissions Insurance Fund be approved by Convocation and the annual financial statements for the Lawyers' Professional Indemnity Company be received for information.

2. The two sets of financial statements are attached separately in the "Report to the Finance and Audit Committee of the Law Society of Upper Canada". Ms Michelle Strom (CEO) and Mr. Akhil Wagh (Vice President & Treasurer) of LawPro will be in attendance.

FOR DECISION

RETENTION OF WOMEN WORKING GROUP PROJECT

The Finance & Audit Committee recommends Convocation approve the allocation of \$50,000 from the contingency account in 2006 and the allocation of \$120,000 in the 2007 budget to enable the Equity and Aboriginal Issues Committee to undertake a project that will identify solutions and develop tools for law firms to address the issue of retention of women in private practice.

24. The Committee approved a funding proposal which would enable the Equity and Aboriginal Issues Committee, via the Retention of Women Working Group, to consult with Ontario law firms to identify solutions and develop tools to address the issue of retention of women in private practice.
25. Proposed 2006 expenditures were not included in the 2006 budget and would be funded from the contingency account, which has a budget of \$1.2 million. At this stage of the year, \$150,000 has been allocated from the 2006 contingency account for the Task Force on the Rule of Law and Independence of the Bar. However competing claims on these contingency funds from initiatives such as \$220,000 for the Small Firm and Sole Practitioner Task Force (see page 13) and other possible amounts for the regulation of paralegals are gaining prominence.

Background

26. The Equity and Aboriginal Issues Committee is bringing a motion to Convocation in March requesting approval of the Retention of Women in Private Practice Working Group's preliminary framework for addressing the issue of retention of women in private practice. The Finance & Audit Committee motion addresses the financing of this initiative.
27. The Law Society held a benchers' planning session in September 2005, to identify core issues that will drive policy making in the next two years and beyond. Benchers identified the issue of retention of women in private practice as a core issue, and decided that the Law Society should develop strategies to address this issue.
28. The Equity and Aboriginal Issues Committee ("the Equity Committee") have confirmed the issue of retention of women in private practice as a priority for 2006. Research findings show that women still face inequalities and barriers in the legal profession. More particularly, research findings note lower rates of women remaining in private practice throughout their careers and face challenges when re-entering private practice.
29. The Equity Committee created the Retention of Women Working Group with a mandate to:
 - (a) identify best-practices in law firms and in sole practice to enhance the retention of women;
 - (b) determine the role of the Law Society in addressing the issue of retention of women in private practice;
 - (c) design and implement strategies for medium and large law firms to retain women;

- (d) develop strategies to respond to the socio-economic needs of women in small firms and sole practices including the viability of their practices as well as their unique child-care challenges; and
 - (e) take into account the needs of women from diverse communities.
30. The Retention of Women Working Group has met to set out a preliminary framework. The Working Group decided to focus on identifying solutions and developing practical tools and best practices through a comprehensive consultation with law firms. The consultation will not focus only on large and medium size firms, but will be customized to include small firms and sole practices.
31. The Equity Committee approved the recommendation of the Working Group that the Law Society consult law firms to identify:
- (a) successful tools, resources and practices;
 - (b) programs and initiatives that have been less successful; and
 - (c) what the Law Society can do to promote the retention of women in private practice.
32. After preliminary discussions with consulting firms the following, three phase methodology is proposed.
- (a) It is recommended that the Law Society survey law firms from across Ontario with the purpose of:
 - i. exploring practices and policies aimed at addressing the issue of retention of women;
 - ii. identifying gender and diversity initiatives; and
 - iii. establishing benchmarks of initiatives in place.
 - (b) The quantitative survey findings would be supplemented by qualitative data from interviews and focus groups to provide more thorough information about experiences, attitudes, practices and perceptions and greater context in interpreting the findings and proposing practical solutions.
 - (c) The Retention of Women in Private Practice Working Group will work with law firms to implement the recommendations. The Working Group is of the view that the Law Society can positively influence change, attitudes, practices and perceptions through policy, programs and initiatives aimed at enhancing the retention of women in private practice. The objective of this phase of the project is to implement practical and effective solutions and create buy-in and law firm commitment towards change. The estimated cost for this phase is between \$50,000 and \$70,000.

The consultation process could also be used as an educational opportunity and an awareness building opportunity.

33. A preliminary estimate of costs to undertake this study totals \$170,000 with \$50,000 being spent in 2006 and \$120,000 being spent in 2007. The following table outlines a rough estimate of cost allocation

Project component	Timelines	Description	Price estimate
Phase I: Survey of 580 law firms seeking 20% response rate	Completion: Summer 2006	-Design of survey -Conduct survey -Tabulation -Report of findings	\$30,000 - \$40,000
Phase II: Consultation, including interviews and focus groups with firms	Beginning: Fall 2006 Completion Spring 2007	-Planning and design -Interviews -Transcription -Data analysis, interpretation -Report -Adoption of recommendations	\$40,000 - \$60,000
Phase III: Recommendations and implementation	Beginning Spring 2007 End December 2007	-Implementation of solutions	\$50,000 - \$70,000
Total			\$170,000

FOR DECISION

SOLE PRACTITIONER AND SMALL FIRM TASK FORCE

The Finance & Audit Committee recommends Convocation approve the allocation of \$220,000 from the Law Society's Contingency Account to fund the activities of a counsel within the Professional Development and Competence department to chair, coordinate and facilitate the work of the working group and prepare the report on the working group's recommended strategies and priorities, and its proposed initiatives to implement those strategies, including a business plan, for the Committee's and Convocation's consideration.

34. The Committee approved a funding proposal enabling the Sole Practitioner and Small Firm Task Force to implement the assessment phase or their recommendations.
35. This funding was not included in the 2006 budget and would be funded from the contingency account, which has a budget of \$1.2 million. At this stage of the year, \$150,000 has been allocated from the 2006 contingency account for the Task Force on the Rule of Law and Independence of the Bar. However competing claims on these contingency funds from initiatives such as \$50,000 for the Retention of Women Working Group (see page 9) and other possible amounts for the regulation of paralegals are gaining prominence.

Background

36. The Sole Practitioner and Small Firm Task Force ("the Task Force") submitted a report to Convocation in June 2004 ("the Report"), Convocation held an information session on

the Report in January 2005 and in April 2005 Convocation decided to seek the input of the profession concerning the Final Report. The profession and legal organizations have submitted written comments on the report and recommendations, provided to Convocation in November, and consultations concluded with meetings with CDLPA and the OBA.

37. The Task Force is bringing a motion to Convocation in March requesting approval of the Task Force's report and the establishment of a working group of the Professional Development, Competence and Admissions Committee, which will bring forward strategies and priorities for Convocation's consideration. The Task Force is also requesting \$220,000 to fund the activities of a counsel within the Professional Development and Competence department to chair, coordinate and facilitate the work of the working group.

38. The funding above would be allocated as follows:

Costs of establishing a counsel position including salary and benefits	\$140,000
Working group meetings (space, catering, etc.)	\$10,000
Office expenses (printing, copying, supplies, etc.)	\$10,000
Travel and expenses	\$10,000
Indirect expense allocation	<u>\$50,000</u>
TOTAL	\$220,000

39. Implementing the recommendations of the Task Force Report has the potential to require new and significant expenditures by the Law Society in future years. Methods of implementing the report's recommendations are still to be resolved so there is insufficient information to accurately quantify these additional expenditures. However the expenditures in 2006 represent the start of that process.

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

(1) Copies of the Annual Combined Financial Statements of the Errors and Omissions Insurance Fund and Annual Financial Statements of the Lawyers' Professional Indemnity Company for the year ended December 31, 2005.

(pages 5 – 51)

It was moved by Mr. Ruby, seconded by Mr. Crowe, that Convocation approve,

- the allocation of \$50,000 from the contingency account in 2006 and the allocation of \$120,000 in the 2007 budget to enable the Equity and Aboriginal Issues Committee to undertake a project that will identify solutions and develop tools for law firms to address the issue of retention of women in private practice.
- That the annual combined financial statements of the Errors & Omissions Insurance Fund be approved and the annual financial statements for the Lawyers' Professional Indemnity Company be received for information.
- That Convocation approve the allocation of \$220,000 from the Law Society's Contingency Account to fund the activities of a counsel within the Professional

Development and Competence department to chair, coordinate and facilitate the work of the working group and prepare the report on the working group's recommended strategies and priorities, and its proposed initiatives to implement those strategies, including a business plan, for the Committee's and Convocation's consideration.

Carried

SECRETARY'S REPORT TO CONVOCATION

Mr. Pattillo presented the Report.

Secretary's Report to Convocation
March 23, 2006

Rules of Procedure for Convocation

Purpose of Report: Decision

Prepared by: Katherine Corrick

FOR DECISION

Motion

1. That Convocation approve the attached rules of procedure for the conduct of Convocation's business.

Background

2. On June 23, 2005, Treasurer George Hunter distributed to benchers a set of draft rules of procedure for the conduct of Convocation's business. At that time, Treasurer Hunter informed benchers that he would conduct the affairs of Convocation in accordance with the draft rules for a period of six months. At the end of the six months, Treasurer Hunter intended to seek Convocation's disposition regarding the adoption of these rules. Attached as Appendix 1 is a copy of the memorandum Treasurer Hunter sent to benchers.
3. Convocation's business has been conducted in accordance with these rules since that time. The rules are attached as Appendix 2 to this report.
4. The rules are brought forward to Convocation at this time for discussion and adoption. If adopted by Convocation, they will be translated and brought back before Convocation in the form of a by-law at a later date.

APPENDIX 1

OFFICE OF THE TREASURER

MEMORANDUM

TO: ALL BENCHERS
 CC. MALCOLM HEINS, KATHERINE CORRICK
 FROM: THE TREASURER
 DATE: JUNE 23, 2005
 RE: RULES OF CONVOCATION

As you will be aware, over the past several years, many attempts have been made to introduce a modern set of rules by which Convocation and its affairs could be effectively conducted. For various reasons that matter has not been finalized.

I attach a copy of the latest edition representing work on our procedures.

It is my intention to conduct the affairs of Convocation in accordance with these draft rules for a period of six months during which we may assess their appropriateness. Toward the end of that period I will seek Convocation's disposition regarding the adoption of these rules, or otherwise.

The draft attached represents our best efforts to date. I trust Benchers will give their cooperation to this project.

APPENDIX 2

10-aes

PROPOSED RULES OF PROCEDURE FOR CONVOCATION

INTERPRETATION

Definitions

1. (1) In this By-Law,

"main motion" means a motion which is the subject of an amendment contained in a motion to amend;

"question of privilege" means a question about any right enjoyed at Convocation by the benchers present at Convocation collectively or by any bencher present at Convocation individually conferred by this By-Law or by practice, precedent, usage and custom;

“question of procedure” means a question about the procedure being followed at any time at Convocation;

“substantive motion” means a motion that is a self-contained proposal capable of expressing a decision of the benchers present at Convocation concerning a matter of import to the Society.

Interpretation: tabling a motion

(2) In this By-Law, “to table a motion” means to defer indefinitely debating the motion or putting the motion to a vote and “a motion which was tabled” has a corresponding meaning.

MEETINGS

Convocation conducted in accordance with By-Law

2. (1) Convocation shall be conducted in accordance with this By-Law.

Waiving compliance, *etc.*

(2) Despite subsection (1), the Treasurer may waive compliance with any requirement, alter any requirement and abridge or extend any time period mentioned in this By-Law in respect of Convocation.

Matters of procedure not provided for

(3) Any matter of procedure not provided for in this By-Law shall be determined by the Treasurer.

Place of Convocation

3. (1) Subject to subsections (2) and (3), Convocation shall be held in Osgoode Hall.

Same

(2) The Treasurer may convene Convocation at any place.

Convocation by telephone conference call, *etc.*

(3) Convocation may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in Convocation to communicate with each other simultaneously and instantaneously.

Convocation: when held

4. Convocation shall be held on the fourth Thursday of each month, except the months of July, August and December, unless otherwise directed by the Treasurer.

Convocation: special meetings

5. (1) The Treasurer may convene Convocation at any time by giving at least twenty-four hours notice, or by directing the Secretary to give such notice, to each bencher.

Same

(2) Upon the written request of ten benchers who are entitled to vote in Convocation, the Secretary shall convene Convocation by giving at least twenty-four hours notice to each bencher.

Convocation open to public

6. (1) Subject to subsection (2), Convocation shall be open to the public.

Public excluded

(2) Convocation shall be held in the absence of the public to deal with any of the following matters:

1. Matters relating to the Society's personnel.
2. Litigation in which the Society is involved.
3. Negotiations with a government.
4. Intimate financial or personal matters or other matters in respect of which, in the opinion of the benchers present at Convocation, the need for privacy outweighs the public interest in disclosure.
5. Any matter at the instance of the Treasurer.

Order of business

7. Subject to section 8, the business and the order of business at Convocation shall be determined by the Treasurer.

Order of business: special meeting

8. At Convocation convened under subsection 5 (2), the business of Convocation shall include the matters for which Convocation was convened.

Minutes

9. (1) Except when Convocation is resolved into a meeting of the benchers as a committee of the whole, minutes shall be kept for Convocation.

Confirmation of minutes

(2) At each Convocation, the minutes of the last Convocation shall be confirmed by the benchers present at Convocation and shall be signed by the Treasurer or the bencher who presided at the meeting of the Convocation to which the minutes relate.

Publication of minutes

(3) Except in the case of the minutes of Convocation held in the absence of the public, the minutes of Convocation shall be made available for public inspection.

Transcript

10. (1) A full court reporter service shall be provided for Convocation.

Publication

(2) The transcript of Convocation open to the public shall be made available for public inspection.

Adjournment for lack of quorum

11. (1) If at any time after Convocation has commenced, the Treasurer's attention is directed to the apparent lack of a quorum, the Treasurer shall determine whether a quorum is present and, upon determining that a quorum is not present, the Treasurer shall adjourn Convocation without motion.

Same

(2) The matter before Convocation immediately prior to an adjournment under subsection (1), and all matters listed on the agenda for Convocation that are not reached prior to the adjournment, shall be deemed to be deferred to the next Convocation to be held under section 4.

Removal of benchers from office for non-attendance

12. (1) The benchers present at Convocation may remove from office an elected bencher who fails to attend Convocation held under section 4 six consecutive times.

Failure to attend three meetings

(2) When an elected bencher fails to attend Convocation held under section 4 three consecutive times, the Secretary shall immediately send to the elected bencher a notice of the failure and of the benchers' authority under subsection (1) to remove him or her from office.

Failure to attend six meetings: report

(3) When an elected bencher fails to attend Convocation held under section 4 six consecutive times, the Secretary shall report the failure at the first Convocation held thereafter under section 4.

TREASURER

Treasurer to preside

13. The Treasurer shall preside over Convocation.

Appeal of Treasurer's rulings and decisions

14. (1) Two or more benchers who are entitled to vote in Convocation may together appeal to the benchers present at Convocation from a ruling or decision of the Treasurer made in Convocation.

(2) Despite subsection (1), the following rulings and decisions of the Treasurer made in Convocation are not subject to an appeal:

1. A decision on a question of privilege or procedure.
2. A ruling that a bencher's remarks are out of order for the reason set out in clause 26 (3) (e).
3. A ruling that a motion is out of order because it is a motion mentioned in subsection 18 (2).
4. A decision under subsection 27 (1) to put a motion to a vote.
5. A decision about a recorded vote.

Time for making appeal

(3) An appeal from a ruling or decision of the Treasurer shall be made immediately after the ruling or decision.

Debate

(4) Except in the case of an appeal of a ruling or decision of the Treasurer in respect of a bencher's language or behaviour, an appeal of a ruling or decision of the Treasurer may be debated and sections 24 to 26 apply, with necessary modifications, to the debate.

Same

(5) The debate on an appeal of the Treasurer's decision under paragraph 5 of subsection 6 (2) shall be conducted in the absence of the public.

Disposition

(6) An appeal of a ruling or decision of the Treasurer shall be disposed of by a vote on the question: "Should the ruling or decision of the Treasurer be upheld?"

Same

(7) Sections 27 to 31 apply, with necessary modifications, to a vote on an appeal of a ruling or decision of the Treasurer.

Same

(8) The vote on an appeal of the Treasurer's decision under paragraph 5 of subsection 6 (2) shall be conducted in the absence of the public.

Resolution: appeal of Treasurer's ruling

(9) A ruling or decision of the Treasurer shall be upheld if the majority of votes cast are in favour of upholding the ruling or decision of the Treasurer or if there is a tie vote on the appeal.

ORDER AND DECORUM

Treasurer to preserve order, decorum, *etc.*

15. At Convocation, the Treasurer shall preserve order, decorum, civility and courtesy and shall decide questions of privilege and procedure.

Benchers not to interrupt Treasurer

16. (1) Benchers shall refrain from interrupting the Treasurer when he or she is speaking, making a ruling or decision or putting a motion or question to Convocation for a vote.

Bencher not to interrupt other bencher

(2) Unless otherwise provided in this By-Law, when a bencher is speaking, no bencher other than the Treasurer shall interrupt the bencher speaking.

Questions of privilege and procedure

17. (1) A bencher may raise a question of privilege or procedure at any time during Convocation and may interrupt another bencher who is speaking to do so.

Discussion

(2) Apart from the bencher raising the question, there shall be no discussion or debate of a question of privilege or procedure.

Decision

(3) The Treasurer shall decide a question of privilege or procedure immediately after it is raised.

Taken up immediately

(4) If the Treasurer decides that a *prima facie* case of privilege exists, it shall be taken into consideration immediately.

MOTIONS

Motions to be made in accordance with by-law

18. (1) Motions made in Convocation shall be made in accordance with this By-Law.

Prohibited motions

- (2) No motion shall be made concerning a matter,
- (a) in respect of which a hearing may be conducted under the Act or by-laws; or
 - (b) that is pending before a court or tribunal for determination.

Who may make motion

19. (1) A motion may be made in Convocation by a bencher who is entitled to vote in Convocation.

Certain benchers to move certain motions

(2) A substantive motion of which notice has been given shall be made by the bencher who gave notice of the motion.

Notice required

20. (1) Notice is required for the following motions:
- 1. A substantive motion, other than a substantive motion contained in the report of a standing or other committee.
 - 2. A motion to resume debating and to put to a vote a substantive motion which was tabled.

Method of giving notice

(2) Notice of a motion shall be given in writing by the bencher intending to make the motion by delivering a copy of the text of the motion, signed by the bencher intending to make the motion and the bencher intending to second the motion, to the Secretary at least twenty days before the day fixed for Convocation at which the bencher intends to make the motion.

Sending notice to all benchers

(3) The Secretary shall as soon as possible after receiving notice of a motion under subsection (2) send a copy of the text of the motion to all benchers.

Substantive motion without notice

(4) Despite subsection (1), a bencher may make a substantive motion, other than a substantive motion contained in a report of a standing or other committee, without notice at

Convocation if the motion relates to a matter then being debated at Convocation.

Secunder required

21. (1) A motion must be seconded before it may be debated, if debate is permitted, and voted on.

Seconders

(2) Only benchers who are entitled to vote in Convocation may second a motion.

Same

(3) A substantive motion of which notice has been given shall be seconded by the bencher who signed the text of the motion as the bencher intending to second the motion.

Introduction of substantive motion

22. (1) Subject to section 7, a substantive motion may be moved at any time at Convocation provided that no other substantive motion is before Convocation at the time.

Same

(2) A motion to refer the subject matter of a substantive motion, other than a substantive motion contained in the report of a standing or other committee, to a standing or other committee, a motion to table a substantive motion or a motion to put a substantive motion to a vote may be moved at any time after the substantive motion has been moved and seconded, but before it has been voted on, at Convocation.

Same

(3) A motion to amend may be made at any time after a main motion is moved and seconded, but before it has been voted on, at Convocation, provided that no other motion to amend is before Convocation at the time.

Same

(4) A motion to adjourn Convocation may be made at any time.

Withdrawal

23. (1) A bencher who has given notice of a motion may withdraw the same at any time.

Same

(2) A bencher who has moved a motion may withdraw the same at any time with the consent of the bencher who seconded the motion.

DEBATE

Debate on motions

24. A motion before Convocation may be debated except in the following cases:

1. A motion to table a motion.
2. A motion to adjourn Convocation.

Who may participate in debate

25. Every bencher, the Chief Executive Officer and any other person with the prior permission of the Treasurer may take part in any debate at Convocation.

Order of speaking

26. (1) Subject to subsection (2), in a debate, benchers are entitled to speak to a motion in the following order:

1. The bencher who moved the motion.
2. The bencher who seconded the motion.
3. Any other bencher or person, in accordance with section 25, when recognized by the Treasurer.

Reserving right to speak

(2) The bencher who seconded the motion may reserve the right to speak to the motion until a later time in the debate.

Matters out of order in debate

- (3) In a debate, a bencher shall be called to order by the Treasurer if he or she,
- (a) subject to subsections (4), (5), (6) and (7) speaks to a motion more than once;
 - (b) directs his or her speech to matters other than the motion being debated;
 - (c) persists in needless repetition or raises matters that have already been decided at Convocation;
 - (d) anticipates a matter already on the agenda of Convocation for consideration;
 - (e) refers to a matter,
 - (i) in respect of which a hearing may be conducted under the Act or by-laws; or
 - (ii) that is pending before a court or tribunal for determination;
 - (f) makes allegations against another bencher;
 - (g) imputes false, improper or ulterior motives to another bencher;
 - (h) charges another bencher with uttering a deliberate falsehood; or
 - (i) uses abusive or insulting language of a nature likely to create disorder.

Speaking twice

(4) A bencher may speak to a motion a second time only to explain a material part of his or her first speech which he or she believes may have been misunderstood, and in so doing, the bencher shall not introduce any new points.

Same

(5) A bencher who moves a motion may speak to the motion a second time immediately before the end of the debate to reply to any comments or questions raised during the debate.

Questions on speeches and replies

(6) At any time during the debate on a motion, a bencher may ask a brief question about another bencher's speech and that bencher may, with the Treasurer's permission, reply briefly.

Treasurer's permission to speak second time

(7) A bencher may speak to a motion a second time, in circumstances not mentioned in subsections (4), (5) and (6), with the Treasurer's permission.

Special rules of debate: motions to amend

(8) Immediately a motion to amend is made during the debate on a main motion, the Treasurer shall interrupt that debate and call for a debate on the motion to amend.

Resumption of interrupted debate

(9) A debate that has been interrupted under subsection (8) shall be resumed immediately the motion to amend which caused the debate to be interrupted has been voted on.

VOTING

Putting debatable motion to vote

27. (1) Subject to subsection (2), the Treasurer shall put a motion which may be debated to a vote when he or she is of the opinion that debate on the motion has been reasonably completed.

Motion to amend accepted

(2) A motion to amend shall not be put to a vote if the benchers who moved and seconded a main motion consent to that motion being amended as proposed in the motion to amend.

Putting non-debatable motion to vote

(3) The Treasurer shall put a motion which may not be debated to a vote immediately after the motion has received a seconder.

Treasurer may not vote

28. The Treasurer shall not vote on a motion except in the case of a tie when the Treasurer may give a casting vote.

Proxy voting prohibited

29. Votes may not be cast by proxy.

Manner of voting

30. Voting shall be by a show of hands, or if Convocation is conducted by means of telephone, electronic or other communication facilities under subsection 3 (3), by oral response, unless a recorded vote is required by the Treasurer, or requested by a bencher entitled to vote in Convocation and permitted by the Treasurer, in accordance with section 31.

Recorded vote

31. (1) A recorded vote may be required by the Treasurer or requested by a bencher entitled to vote in Convocation before a motion is put to a vote.

Recorded vote requested by bencher

(2) When a recorded vote has been requested by a bencher, the Treasurer may, but is not required to, conduct a recorded vote.

Manner of conducting recorded vote

(3) When a recorded vote is being conducted, the Treasurer shall put the subject motion to the benchers present in Convocation and the Secretary shall then call out the names of all benchers entitled to vote in Convocation and upon hearing his or her name, a bencher shall state his or her vote or if wishing not to vote shall state his or her abstention from the vote.

Resolution

32. A motion shall carry if a majority of the votes cast are in favour of the motion.

COMMITTEE OF THE WHOLE

Committee of the Whole

33. (1) At any time, the Treasurer may require Convocation to resolve itself into a meeting of the benchers as a committee of the whole to consider any matter before Convocation at the time.

Appointment of chair

(2) Immediately after announcing his or her decision to require Convocation to resolve itself into a meeting of the benchers as a committee of the whole, the Treasurer may appoint a bencher as chair of the committee of the whole and, if the Treasurer does so appoint a bencher, the Treasurer shall then leave the chair.

Appointed bencher takes chair

(3) When the Treasurer leaves the chair in accordance with subsection (2), the bencher appointed as chair of the committee of the whole shall take the chair whereupon Convocation resolves itself into a meeting of the benchers as a committee of the whole.

Rules of procedure

(4) Section 24 of the Act and subsection 11 (1) and sections 13 to 32 of this By-Law apply with necessary modifications to proceedings of a committee of the whole.

Treasurer resumes chair

(5) When a committee of the whole has completed its proceedings,

- (a) if the Treasurer had appointed a bencher as chair of the committee, the chair of the committee shall leave the chair and the Treasurer shall then resume the chair; and
- (b) Convocation shall resume as such.

Report to meeting

(6) When Convocation resumes after the benchers present at Convocation have met as a committee of the whole, the Treasurer or the chair of the committee may report to Convocation on the proceedings of the committee.

Re: Proposed Rules of Procedure for Convocation

It was moved by Mr. Aaron, seconded by Mr. Topp, that the report be tabled.

Lost

ROLL-CALL VOTE

Aaron	For	Krishna	Against
Alexander	Against	Manes	Against
Backhouse	Against	Millar	Against
Campion	Against	Minor	Against
Caskey	Against	O'Donnell	Against
Cherniak	Against	Pattillo	Against
Coffey	Against	Pawlitza	Against
Crowe	Against	Potter	Against
Curtis	Against	Robins	Against
Dickson	Against	Ross	Against
Doyle	Against	Ruby	Against
Dray	Against	St. Lewis	Against
Eber	Against	Sandler	Against
Feinstein	Against	Silverstein	Against
Filion	For	Simpson	Against
Gold	Against	Swaye	Against
Gotlib	Against	Symes	Against
Gottlieb	For	Topp	For
Harris	Against	Warkentin	Against
Henderson	Against	Wright	Against

Vote: 4 For; 36 Against

It was moved by Mr. Pattillo, seconded by Mr. Cherniak, that Convocation approve the attached rules of procedure attached to the Report for the conduct of Convocation's business.

Carried

ROLL-CALL VOTE

Aaron	Against	Krishna	For
Alexander	For	Manes	For
Backhouse	For	Millar	For
Campion	For	Minor	For
Caskey	For	O'Donnell	For
Cherniak	For	Pattillo	For
Coffey	For	Pawlitza	For
Crowe	For	Potter	For
Curtis	For	Robins	For
Dickson	For	Ross	For
Doyle	For	Ruby	For
Dray	For	St. Lewis	For
Eber	For	Sandler	For
Feinstein	For	Silverstein	For
Filion	For	Simpson	For
Gold	For	Swaye	For
Gotlib	For	Symes	For
Gottlieb	Against	Topp	For
Harris	For	Warkentin	For
Henderson	For	Wright	For

Vote: 38 For; 2 AgainstTRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Report.

Report to Convocation
March 23, 2006

Tribunals Committee

Committee Members
 Larry Banack (Chair)
 Mark Sandler (Vice-Chair)
 Paul Copeland
 Sy Eber
 Derry Millar
 Bonnie Warkentin

Purpose of Report: Decision
InformationPolicy Secretariat
(Sophia Sperdakos 416-947-5209)

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COMMITTEE PROCESS

1. The Committee met on March 3, 2006. Committee members Larry Banack (Chair), Mark Sandler (Vice-Chair), Paul Copeland, Sy Eber, Derry Millar and Bonnie Warkentin attended. Bencher Janet Minor also attended. Staff members Katherine Corrick, A.K. Dionne, Grace Knakowski, Elliot Spears and Sophia Sperdakos also attended.

FOR DECISION

PROPOSED AMENDMENT TO RULE 1.11 OF THE RULES OF PRACTICE AND PROCEDURE

MOTION

2. THAT Rule 1 [General Rules] of the Rules of Practice and Procedure made under section 61.2 of the *Law Society Act* be amended as follows:
 1. Subrule 1.11 (1) of Rule 1 [General Rules] is deleted and the following substituted:
 - (1) A summons to witness may be signed by an officer or employee of the Society who holds the office of Senior Counsel and Manager, Tribunals Office.
 - (1) L'assignation de témoin peut porter la signature d'une ou d'un employé du Barreau qui occupe le poste d'avocat(e) principal(e) et directeur(trice), bureau des tribunaux.
 2. Subrule 1.11 (2) of the Rule is deleted and the following substituted:
 - (2) On the request of a party, an officer or employee of the Society who holds the office of Senior Counsel and Manager, Tribunals Office shall provide

a summons to a witness in blank form and the party may complete the summons and insert the name of the witness.

- (2) À la demande d'une partie, une ou un employé du Barreau qui occupe le poste d'avocat(e) principal(e) et directeur(trice), bureau des tribunaux, lui fournit une assignation vierge et la partie peut la compléter en y inscrivant le nom du témoin.

Introduction and Background

3. The Tribunals Task Force considered the method by which summonses are issued. In its final report to Convocation in April 2005, which Convocation adopted, the Task Force described the issue and a recommendation to address it, as follows:

SUMMONSES

99. Rule 1.11 of the *Rules of Practice and Procedure* provides that, the Secretary shall provide a summons to a witness in blank form and the party may complete the summons and insert the name of the witness. [emphasis added]
100. Currently, the Director of Professional Regulation performs this role.
101. Given the Law Society's efforts to separate the investigative/prosecutorial functions from the adjudicative functions, the Task Force believes it is preferable to have the Tribunals Office assume the summonses role currently exercised by the Director of Professional Regulation.
102. The Task Force therefore recommends that,
- a. the issuing of summonses should fall within the responsibility of the Tribunals Office, not the Director of Professional Regulation;
 - b. the Tribunals Office may issue summonses upon request;
 - c. where the Tribunals Office refuses to issue a summons a party may, on motion, request that the Hearing Panel or Appeal Panel issue the summons.
4. A closer examination of the most viable approach to issuing summonses revealed that the Task Force's recommendation could only be implemented in part. The Hearing Panel receives its authority with respect to summonses from the *Statutory Powers Procedure Act* and that legislation requires that the tribunal issue the summonses.
5. The proposed amendment to Rule 1.11 provides that, upon request, the Senior Counsel and Manager, Tribunals Office shall sign and issue a blank summons.
6. This approach addresses the Task Force's goal for the separation of the investigative/prosecutorial and adjudicative functions.

PROPOSED ADDITION TO THE RULES OF PRACTICE AND
PROCEDURE OF FORM 7C

MOTION

7. THAT Rule 7 [Motions] of the Rules of Practice and Procedure made under section 61.2 of the *Law Society Act* be amended as follows:
1. Rule 7 is amended by adding thereto the following:

FORM 7C - NOTICE OF ABANDONMENT

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*,

AND IN THE MATTER OF (*insert name of member or student member, etc.*) of the (*City, Town, etc.*), a (*Member, Student Member, etc.*) of the Law Society.

NOTICE OF ABANDONMENT

TAKE NOTICE that (*name of party*) hereby abandons (*its/his/her*) motion for (*insert nature of motion*).

DATED this day of , 200 .

(*Date*)

(*Name, address and telephone number of party's solicitor or party*)

TO: (*Name, address and telephone number of responding party's solicitor or responding party*)

FORMULAIRE 7C – AVIS D'ABANDON

No de dossier

BARREAU DU HAUT-CANADA

DANS UNE AFFAIRE CONCERNANT la Loi sur le Barreau ET DANS UNE AFFAIRE CONCERNANT (name of member, Student member, etc) de (City, Town etc.), (membre, membre étudiant, etc.) du Barreau.

AVIS D'ABANDON

SOYEZ AVISÉ que (*name of party*) abandonne par la présente sa motion de (*insert nature of motion*).

(*Date*)

(*Name, address and telephone number of party's solicitor or party*)

À : (*Name, address and telephone number of responding party's solicitor or responding party*)

Introduction and Background

8. Through inadvertence, the Rules of Practice and Procedure do not contain a prescribed form by which a party may abandon a motion. Proposed Form 7C corrects that oversight.

FOR INFORMATION

TIMING OF PROVIDING MATERIAL TO PANELS

9. Under current practice, panels receive materials filed in a matter, such as the Notice of Application and the Agreed Statement of Facts (ASF), prior to a hearing. Some question has arisen whether this approach could compromise a panel's impartiality because panelists may be inclined to develop their own theory of the case or accept the allegations raised in the materials filed as true, without hearing evidence and submissions on the matter.
10. There are a number of reasons for which the practice of providing materials in advance was introduced. For example, members of a panel would receive the ASF the morning of the hearing. Because they needed time to absorb the information, the parties would be required to wait while the members of the panel read the material. Reading the material in advance of the hearing saves time. In addition, before materials were provided in advance of a hearing, a panel member with a conflict of interest might not learn about it until the hearing began. This also has time and resource implications.
11. Despite these practical reasons for providing the material in advance, the issue has been raised whether this approach conflicts with principles of procedural fairness. The Committee has considered the issue and was assisted in its discussion by a memo, attached as APPENDIX 1, outlining the jurisprudence in this area. The Committee

unanimously agrees that the practice of providing materials to panels in advance is a proper and advisable one and will continue.

12. In the course of its discussion, the Committee also reflected on situations in which the parties choose not to provide materials to a panel in advance of the hearing. The Committee unanimously agrees that whereas parties are encouraged, wherever possible, to provide materials such as the Agreed Statements of Fact to panels in advance, it is always the parties' right to determine the manner in which to present their case.

APPENDIX 1

M E M O

TO: Tribunals Committee
 FROM: Angus Patterson
 DATE: November 15, 2005
 RE: Provision to Panel members of documents filed prior to hearings

Issue for Consideration

Panel members are provided with documents filed prior to the actual hearing. The issue that has been raised is whether this procedure conflicts with the principles of procedural fairness because panelists may develop their own "theory of the case" prior to hearing the parties' submissions on the evidence. Such a tainting would result in a breach of parties' rights to be heard by a fair and impartial Panel.

Practice in adjudicative organizations and the courts

Many adjudicative organizations provide the decision-maker with materials filed prior to the hearing.

The Society of Ontario Adjudicators and Regulators (SOAR), notes at Chapter 6 of its "A Manual for Ontario Adjudicators", that different organizations provide different materials to the adjudicators in advance of the hearing. SOAR recommends that adjudicators should read all the information well in advance of the hearing in order to 1) identify potential conflicts, 2) promote efficiency, and 3) identify issues of jurisdiction.

The Court of Appeal provides the materials filed to Justices two weeks prior to the hearing.

Former Supreme Court of Canada Justice Bertha Wilson described the Court's process of preparation in an essay published by the University of Toronto Law Journal¹ :

¹ "Decision-making in the Supreme Court" (1986) 36 U.T.L.J. 227

Each member of the Supreme Court prepares independently for the hearing of appeals. All judges are fully prepared, and no member of the Court is assigned the case so as to “brief” the rest of the panel before the hearing.

Reasonable apprehension of bias

There does not appear to be any Canadian cases that argue that systemic bias results from an adjudicator viewing the materials filed prior to hearing.

Numerous cases, however, have considered whether a reasonable apprehension of bias exists because a judge has prior knowledge of facts relating to the issue or a party to the dispute. The leading case is that of the Supreme Court of Canada: *Wewaykum Indian Band v. Canada*, [2003] 2 S.C.R. 259 in which the Court applied the well-established test of reasonable apprehension of bias elaborated by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369:

What would an informed person, viewing the matter realistically and practically – and having thought the matter through—conclude? Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?

Arguments advancing reasonable apprehension of bias to vitiate a decision are usually based on a past connection between the decision-maker and a party, other than financial or personal (i.e.: actual bias). In *Wewaykum*, for example, the question was whether the fact that Mr. Justice Binnie had been federal Associate Deputy Minister of Justice and had received information regarding the claim advanced by the Band raised a reasonable apprehension of bias with regard to a decision on the same claim made by a Supreme Court panel on which he sat some 17 years later. Actual bias was not alleged in *Wewaykum*. The remaining eight Justices found that no reasonable apprehension of bias was raised by the circumstances outlined in *Wewaykum*.

In *R. v. Perciballi*², the Ontario Court of Appeal noted in a criminal law context:

The mere prior involvement of the authorizing justice in an earlier proceeding does not, without convincing evidence to the contrary, displace the presumption of judicial integrity and impartiality. Hence, the bare allegation that Hamilton J. heard “prejudicial evidence” on the bail review that did not form part of the authorization package is meaningless. Trial judges routinely exclude evidence that they have heard on a voir dire, or hear confessions or guilty pleas by co-accused, and go on to preside over the trial of an accused.

While there is a risk that a decision-maker may be tainted by the review of the materials before a hearing, the fact remains that providing materials filed to decision-makers prior to the hearing is a widespread practice within the judicial and quasi-judicial system. Judges, and arguably adjudicators, are presumed to be impartial, and are trained to disregard facts that are not part of the evidence³.

² *R. v. Perciballi*, [2001] O.C.A. 54 O.R.

³ *R. v. Dunn*, [1996] 138 Nfld. & P.E.I.R. 46, a decision of the Trial Division of the Prince Edward Island Supreme Court.

To date, there have been no allegations against the Law Society of procedural unfairness arising from panels receiving materials filed in advance of the hearing.

TRIBUNALS OFFICE STATISTICS

13. The Tribunals Office now compiles statistics on a quarterly and comparative basis. Commencing with the fourth quarter 2005 statistics, set out at APPENDIX 2, the Tribunals Committee will provide statistics to Convocation on a quarterly basis for its information.

APPENDIX 2

Tribunals Office Statistics

Fourth Quarter Report

(October 1 to December 31, 2005)

FILES OPENED

The Tribunals Office opens a file upon the filing of an originating process that has been served on the parties. An originating process includes a notice of application, a notice of hearing, a notice of motion for an interlocutory suspension, and a notice of appeal.

Files related to the same member that are heard concurrently are counted as separate files.

	Hearing files	Appeal files	Total
Files opened during Q1	41	6	47
Files opened during Q2	30	0	30
Files opened during Q3	28	1	29
Files opened during Q4	27	1	28
Cumulative to year-end	126	8	134 (101) ¹

¹ Numbers in parentheses are 2004 year-end totals.

FILES CLOSED

The Tribunals Office closes a file after service of the final order is deemed effective on the parties.

A file that is closed in a quarter may have been opened in that same quarter or any time prior.

	Hearing files closed	Appeal files closed	Total
Files closed during Q1	19	6	25
Files closed during Q2	34	1	35
Files closed during Q3	29	0	29
Files closed during Q4	25	2	27
Cumulative to year-end	107	9	116 (117) ²

Age of Files Closed in Q4 2005

(see chart in Convocation Report)

OPEN FILES AT YEAR-END 2005

Open files as of end of Q1	102
Open files as of end of Q2	109

² Numbers in parentheses are 2004 year-end totals.

Open files as of end of Q3	107
Open files as of year-end	106 (92) ³

Active Files by Age at Year-End

(see chart in Convocation Report)

ACTIVE FILES OPEN OVER 24 MONTHS

- FILES A and B Filed with Tribunals Office August 1, 2000 and March 13, 2001, respectively. ASF set aside and hearing re-opened. Next hearing date set for April 28, 2006.
Age of files: 64 and 57 months, respectively.
- FILE C Filed with Tribunals Office March 8, 2002. Panel concluded hearing on November 8, 2005. File closed January 9, 2006.
Age of file: 45 months.
- FILE D Filed with Tribunals Office June 20, 2003. Panel concluded hearing on June 20, 2005. Awaiting written reasons of Appeal Panel.
Age of file: 30 months.
- FILE E Filed with Tribunals Office July 24, 2003. Next hearing date set for April 12, 2006.
Age of file: 29 months.

SUSPENDED FILES

- FILES F, G, H Filed with Tribunals Office January 5, 1994, June 23, 1995 and January 6, 1998, respectively. Files F and G were stayed on November 28, 1995 pending the outcome of a court proceeding. File H adjourned *sine die* on October 6, 1999.

³ Numbers in parentheses are 2004 year-end totals.

Age of files: 143 months, 126 months and 95 months, respectively.

FILE I Filed with Tribunals Office May 20, 1998. Adjourned *sine die* on January 29, 2001.

Age of file: 91 months.

FILE J Filed with Tribunals Office June 26, 2000. Adjourned *sine die* on consent on January 28, 2004. Age of file: 66 months.

FILE K Filed with Tribunals Office May 26, 2003. Adjourned *sine die* on March 8, 2004.

Age of file: 31 months.

FILE L Filed with Tribunals Office December 8, 2004. Adjourned *sine die* on October 18, 2005.

Age of file: 12 months.

NUMBER OF FILES HEARD BY TRIBUNALS

	NUMBER OF FILES ⁴	
Hearings Management Tribunal	Q1	119
	Q2	105
	Q3	101
	Q4	92
	Cumulative to year-end	417 (350)
Hearing Panel	Q1	41
	Q2	27
	Q3	30
	Q4	37
	Cumulative to year-end	135 (134)
Appeals Management Tribunal	Q1	0
	Q2	1
	Q3	1
	Q4	1
	Cumulative to year-end	3 (19)
Appeal Panel	Q1	3
	Q2	2

⁴ A file may be heard on more than one occasion by a tribunal within a quarter.

	Q3	4
	Q4	1
	Cumulative to year-end	10 (8)

NUMBER OF MEMBERS BEFORE TRIBUNALS

	NUMBER OF MEMBERS	
<u>Hearings Management Tribunal</u>	Q1	58
	Q2	65
	Q3	51
	Q4	58
	Cumulative to year-end	125 ⁵
Hearing Panel	Q1	29
	Q2	36
	Q3	27
	Q4	33
	Cumulative to year-end	107 ⁶
Appeals Management Tribunal	Q1	0
	Q2	1
	Q3	1
	Q4	1
	Cumulative to year-end	3
Appeal Panel	Q1	2
	Q2	2
	Q3	4
	Q4	1
	Cumulative to year-end	9

CALENDAR DAYS SCHEDULED AND VACATED

	Calendar Days				
	Q1	Q2	Q3	Q4	Cumulative to year-end

⁵ The number of members for cumulative to year-end is not the sum of the preceding quarters. The cumulative to year-end figure excludes repeat attendances of members.

⁶ Ibid.

Hearing Panel days scheduled	42	35	33	34	144 151) ⁷	
Hearing Panel days vacated	22	19	15	8	64 44%	(62) (41%)
<i>Bencher or party illness</i>	5	4	2			
<i>Bencher or Hearing Panel not available</i>	1	3	1			
<i>Adjournment request granted</i>	10	4	5	4		
<i>Additional days not required</i>	6	8	2	4		
<i>Bencher retreat</i>			5			
Appeal Panel days scheduled	2	2	4	1	9	(17)
Appeal Panel days vacated	0	0	1	0	1 11%	(9) (53%)
<i>Bencher conflict</i>			----- 1			
Total scheduled	44	37	37	35	153 (168)	
Total vacated	22	19	16	8	65 42%	(71) (42%)

A vacated calendar day is a day on which hearings were scheduled but not heard. The day an adjournment request is heard is not counted as vacated.

HEARINGS SCHEDULED AND VACATED

	Hearings				
	Q1	Q2	Q3	Q4	Cumulative to year-end

⁷ Numbers in parentheses are 2004 year-end totals.

Hearing Panel hearings scheduled	69	68	41	37	215
Hearing Panel hearings vacated	23	27	16	8	74 34%
Appeal Panel hearings scheduled	2	2	4	1	9
Appeal Panel hearings vacated	0	1	0	0	1 11%
Total scheduled	71	70	45	38	224
Total vacated	23	28	16	8	75 33%

WEEK-LONG HEARINGS SCHEDULED AND VACATED

Week-long Hearings	Q1	Q2	Q3	Q4	Cumulative to year-end	
Week-long Hearings scheduled	4	4	6	4	18	(12) ⁸
Week-long Hearings – all days used	0	0	0	1	1	(2)
Week-long Hearings – all days vacated due to:	3	2	4	0	9	(5)
	-----	-----	-----	-----		
<i>Bencher or party illness</i>	1	1				
<i>Adjournment request granted</i>	2		3			
<i>ASF signed- rescheduled</i>		1	1			
<i>Bencher retreat</i>						

⁸ Numbers in parentheses are 2004 year-end totals.

Week-long Hearings – some days vacated due to:	1	2	2	3	8	(5)
	-----	-----	-----	-----		
	1					
<i>Bench or party illness</i>		1	1	2		
<i>Adjournment request granted</i>		1				
<i>ASF signed- additional days not required</i>			1	1		
<i>Hearing concluded- additional days not required</i>						

ADJOURNMENT REQUESTS AND RESULTING VACATED DAYS

The following table lists the number of adjournment requests and resulting vacated hearing days.

Days on which the request was considered by the panel are not counted as vacated. For example, if a request to adjourn a week-long hearing was granted on the first day, only the remaining four days of the week are vacated. Also for example, if a regularly scheduled hearing was vacated, but other hearings proceeded, that day is not counted as vacated.

Adjournment requests made to		Requests					Vacated calendar days				
		Q1	Q2	Q3	Q4	Cumulative to year-end	Q1	Q2	Q3	Q4	Cumulative to year-end
HMT	Granted	4	4	5	8	21	7	2	10	0	19
	Denied	0	1	3	4	8					
Hearing Panel	Granted	7	7	5	9	28	6	10	0	8	24
	Denied	0	0	0	3	3					
AMT	Granted	0	1	1	0	2	0	1	0	0	1
	Denied	0	0	0	0	0					
Appeal Panel	Granted	0	1	0	0	1	0	0	0	0	0
	Denied	0	0	0	0	0					
Total	Granted	11	13	11	17	52	13	13	10	8	44
	Denied	0	1	3	7	11					

Re: Proposed Amendment to Rule 1.11 of the Rules of Practice and Procedure

It was moved by Mr. Sandler, seconded by Ms. Warkentin, that Rule 1 [General Rules] of the Rules of Practice and Procedure made under section 61.2 of the *Law Society Act* be amended as follows:

1. Subrule 1.11 (1) of Rule 1 [General Rules] is deleted and the following substituted:
 - (1) A summons to witness may be signed by an officer or employee of the Society who holds the office of Senior Counsel and Manager, Tribunals Office.
 - (1) L'assignation de témoin peut porter la signature d'une ou d'un employé du Barreau qui occupe le poste d'avocat(e) principal(e) et directeur(trice), bureau des tribunaux.
2. Subrule 1.11 (2) of the Rule is deleted and the following substituted:
 - (2) On the request of a party, an officer or employee of the Society who holds the office of Senior Counsel and Manager, Tribunals Office shall provide a summons to a witness in blank form and the party may complete the summons and insert the name of the witness.
 - (2) À la demande d'une partie, une ou un employé du Barreau qui occupe le poste d'avocat(e) principal(e) et directeur(trice), bureau des tribunaux, lui fournit une assignation vierge et la partie peut la compléter en y inscrivant le nom du témoin.

Carried

Re: Proposed Addition to the Rules of Practice and Procedure of Form 7C

It was moved by Mr. Sandler, seconded by Ms. Warkentin, that Rule 7 [Motions] of the Rules of Practice and Procedure made under section 61.2 of the *Law Society Act* be amended as follows:

1. Rule 7 is amended by adding thereto the following:

FORM 7C - NOTICE OF ABANDONMENT

File No.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the *Law Society Act*,

Items for Information

- Timing of Providing Materials to Panels
- Tribunals Office Statistics

REPORT FOR INFORMATION ONLY

Secretary's Report to Convocation

- Treasurer Election By-Law

Secretary's Report to Convocation
March 23, 2006

Treasurer Election By-Law

Purpose of Report: Information

Prepared by: Katherine Corrick

FOR INFORMATION

Background

1. I would like Convocation's guidance on a number of issues that have arisen during the course of the last three Treasurer elections. Some issues relate to the provisions of by-law 6, while others relate to the management of the election process. By-law 6 is attached as Appendix 1.

Withdrawal of Candidates

2. On April 25, 2005, Convocation amended section 3 of by-law 6 to permit a candidate to withdraw from the election at any time before the day of the election. Previously, candidates were not permitted to withdraw from the election once the advance poll opened.
3. In an election where there are more than two candidates, voters in the advance poll must rank the candidates. I assume they rank the candidates based on the pool of candidates. Their ranking may be different if the pool is different. Currently, if a candidate withdraws after the advance poll has opened, benchers who have already voted are not permitted to change their vote based on the new pool of candidates.
4. I do not believe Convocation considered this consequence when it amended the section in April 2005. Convocation may wish to consider it now.

Electronic Voting

5. The majority of benchers vote in the advance poll. This has been the case for at least the last three Treasurer elections. Currently, benchers must attend in person at my office to vote in the advance poll, or request a voting package that is then sent to them by courier. I must receive the ballot in an envelope that is signed by the bencher.
6. There is no provision for voting by fax, e-mail, telephone or internet. This is not the most efficient method of running the advance poll. Many benchers are out of the province and out of the country. Courier services are expensive and not always reliable.
7. Convocation may wish to explore the possibility of permitting electronic voting, by telephone or internet. The Law Society successfully conducted the referendum on bencher remuneration electronically. Anonymity and security are easily assured.

Number of Nominators

8. Section 2(1) of by-law 6 provides that, "a candidate for election as Treasurer shall be nominated by two benchers who are entitled to vote in Convocation." Notwithstanding this, it is not unusual for a candidate to be nominated by more than ten benchers.
9. It is unclear to me whether the provision in section 2(1) was intended to restrict the number of benchers who could nominate a candidate, or simply provide the minimum number. A number of benchers have inquired about the same matter.
10. If Convocation wishes to restrict the number of benchers who may nominate a candidate for Treasurer, it ought to amend section 2(1) to make that clear by, perhaps, including the phrase, "nominated by a maximum of two benchers... ."
11. Otherwise, Convocation ought to amend section 2(1) to make it clear that the minimum number of benchers required to nominate a candidate is two, by, perhaps, adding the phrase, "nominated by at least two benchers... ."
12. Either amendment would make Convocation's intention clear and allow the Secretary to determine whether a nomination form complies with Convocation's intention.
13. Convocation's direction on this matter would be appreciated.

Public Nature of the "Voter's List"

14. Prior to the opening of the advance poll, I make a chart listing the names of benchers who are entitled to vote. I note on the chart when a bencher votes in the advance poll. This allows me to know at all times who has voted.
15. While the advance poll is being conducted, candidates and other benchers who want to know which benchers have voted regularly contact me. I have provided this information. Some benchers have questioned my authority to do so.
16. I have likened the chart to the "voters list" that is used in municipal, provincial and federal elections. The names of those who have voted in the advance poll are available

to candidates. As well, throughout the day on which the election is held, candidates from each political party know who has yet to vote.

17. I would appreciate Convocation's guidance on this issue.

Tie-Breaking

18. In the event of a tie, section 13 of the by-law requires the Treasurer to cast the tie-breaking vote. This means that, in the event of a tie, the Treasurer votes twice. Many benchers were not aware of this detail prior to the last election.
19. It is not uncommon that the Chair of a Board, or in the Law Society's case, the Treasurer, is given the power to break a tie by casting a second vote.
20. Some benchers have mentioned that the method of tie-breaking provided for in the by-law ought to be re-examined. The issue was highlighted during the last election when the Acting Treasurer was a candidate in the election. In these circumstances, section 6 of by-law 6 requires the Treasurer to appoint a bencher who is the chair of a standing committee to perform the duties and exercise the powers of the Treasurer under the by-law. This section permits a candidate in the election to appoint a person who may, in the event of a tie, be permitted to vote twice.
21. The Acting Treasurer recognized this as an issue in the last election. To avoid the issue, the candidates agreed that the bencher appointed to conduct the election would cast the tie-breaking vote in accordance with a draw.
22. Convocation may wish to consider other means of breaking a tie.

APPENDIX 1

BY-LAW 6

Made: April 30, 1999

Amended:

June 25, 1999

December 10, 1999

May 24, 2001

October 31, 2002

April 28, 2005

May 26, 2005

TREASURER

ELECTION OF TREASURER

Time of election

1. (1) Subject to subsection (2), there shall be an election of Treasurer every year on the day on which the regular meeting of Convocation is held in June.

Same

(2) If after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection (1), all of the candidates, but one, cease, for any reason, to be candidates, there shall be an election of Treasurer on the later of the day on which the regular meeting of Convocation is held in June and the day that is ten business days after the day of the close of nominations of candidates.

First matter of business

(3) If there is an election of Treasurer on the day on which the regular meeting of Convocation is held in June, despite subsection 6 (1) of By-Law 8, the election of Treasurer shall be the first matter of business at the meeting.

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.

Nominations reopened

(5) If after the close of nominations of candidates under subsection (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (1), all of the candidates, but one, cease, for any reason, to be candidates,

- (a) the period for nominations of candidates shall be reopened; and
- (b) the new close of nominations of candidates shall be 5 p.m. on the day that is ten business days after the day on which the Secretary sends the notice under section 3.1.

Withdrawal of candidates

3. A candidate may withdraw from an election of Treasurer at any time before the day of the election of Treasurer by giving the Secretary written notice of his or her withdrawal.

Reduction in number of candidates: notice

3.1 If, after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (1), all of the candidates, but one, cease, for any reason, to be candidates, not later than five business days after the day on which one candidate remains, the Secretary shall send to each bencher entitled to vote in an election of Treasurer a notice stating,

- (a) the day on which the notice is sent;
- (b) that the period for nominations of candidates has re-opened;
- (c) the new time for close of nominations;
- (d) that any ballots received at the advance poll shall be discarded;
- (e) the time for the beginning of the new advance poll; and
- (f) the day on which there shall be an election of Treasurer.

Election by acclamation

4. If on the earlier of the time for the close of nominations of candidates and the day on which there shall be an election of Treasurer, there is only one candidate, the Secretary shall declare that candidate to be elected as Treasurer.

Poll

5. (1) If on the day on which there shall be an election of Treasurer, 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 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.

Notice of candidates to benchers

8. If after the close of nominations of candidates, there are two or more candidates, the Secretary shall, as soon as practicable after the close of nominations of candidates, notify each bencher entitled to vote in an election of Treasurer of the candidates and of the benchers who nominated each candidate.

Advance poll

- 9. (1) An advance poll shall be conducted,
 - (a) beginning at 9 a.m. on the second Wednesday in June and ending at 5 p.m. on the day preceding election day; or
 - (b) if after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (1), all of the candidates, but one, cease, for any reason, to be candidates, beginning at 9 a.m. on the day that is three business days after the day of the close of nominations of candidates under subsection 2 (5) and ending at 5 p.m. on the day preceding election day.

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 or otherwise.

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 the 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, remove the ballot from the ballot envelope and put the ballot into the 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.

Ballots to be discarded

(9) If after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (1), all of the candidates, but one, cease, for any reason, to be candidates, the Secretary shall cause to be discarded the ballots received at the advance poll conducted after the close of nominations under subsection 2 (3) or (4).

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 or otherwise, 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 day preceding election day.

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 day preceding election day.

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 for election as Treasurer.

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 of Treasurer 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.

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, open the ballot box, 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.

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.

Equal number of votes

13.1 (1) 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 of Treasurer, a poll shall be conducted to select the candidates to remain in the election.

Secret ballot

(2) A poll conducted under subsection (1) shall be conducted by secret ballot.

Right to vote

(3) Each bencher entitled to vote in an election of Treasurer is entitled to vote in a poll conducted under subsection (1).

Ballot

(4) Each bencher entitled to vote in a poll conducted under subsection (1) shall receive a ballot listing the names of the candidates who received the equal number of votes.

Marking ballot

(5) A bencher shall vote for the candidate or candidates, but not for all the candidates, whom he or she wishes to remain in the election of Treasurer and shall indicate his or her choice or choices by placing a mark beside the name of each candidate chosen.

Ballot box

(6) 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.

Counting votes

(7) After all benchers entitled to vote in a poll conducted under subsection (1) have voted or declined on a ballot, the Secretary shall, in the absence of all persons but in the presence of the Treasurer, open the ballot box, remove all ballots from the ballot box, open the ballots and count the votes cast for each candidate.

Report of results

(8) Immediately after counting the votes cast for each candidate, the Secretary shall report the results to Convocation.

Same

(9) The candidate who receives the least number of votes in the poll conducted under subsection (1) shall be removed as a candidate in the election of Treasurer.

Further polls

(10) If two or more candidates in a poll conducted under subsection (1) each receive the least and the same number of votes, additional polls shall be conducted under subsection (1), for the candidates with the same number of votes, until only one candidate from all the

candidates included in the initial poll conducted under subsection (1) is removed as a candidate in the election of Treasurer.

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 standing committee of Convocation responsible for financial matters, or if he or she for any reason is unable to act, the chair of the standing committee of Convocation responsible for admissions matters, 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.

The Secretary's Report re: Treasurer Election By-Law was referred to the Governance Task Force.

CONVOCATION ROSE AT 12:40 P.M.

Confirmed in Convocation this 27th day of April, 2006.

Treasurer