

22nd April, 2010

MINUTES OF CONVOCATION

Thursday, 22nd April, 2010
9:00 a.m.

PRESENT:

The Treasurer (W.A. Derry Millar), Aaron, Anand, Backhouse, Banack, Boyd, Braithwaite, Bredt, Campion, Caskey, Chilcott, Conway, Crowe, Dickson, Dray, Elliott, Epstein, Eustace (by telephone), Fleck, Go, Gold (by telephone), Gottlieb, Haigh, Hainey, Halajian, Hare, Hartman (by telephone), Heintzman, Henderson, Krishna, MacKenzie, McGrath, Minor, Murphy, Murray, Pawlitza, Porter (by telephone), Potter, Pustina, Rabinovitch (by telephone), Robins, Rothstein, Sandler, Schabas, Sikand, Silverstein, Simpson, C. Strosberg (by telephone), Swaye, Symes, Tough, Wardlaw and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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ANNOUNCEMENT

The Secretary announced the results of the Paralegal Election last month. The elected paralegals are Cathy Corsetti, W. Paul Dray, Michelle Haigh, Robert J. Burd and Kenneth C. Mitchell.

On April 8, the five paralegal members and three lay benchers of the Paralegal Standing Committee elected Paul Dray and Michelle Haigh as paralegal benchers. Cathy Corsetti was elected Chair by all members of the Paralegal Standing Committee.

TREASURER'S REMARKS

The Treasurer congratulated Mary Louise Dickson, Laurie Pawlitza and Beth Symes who will be honoured on April 27 at the LEAF Equality Day Celebration for the difference they have made for women and girls through the law.

Congratulations were also extended to Bonnie Tough who was awarded the Women's Law Association President's Award for her outstanding service and leadership within the profession.

The Treasurer, on behalf of Convocation, thanked Mr. David Thompson for his service and contributions as Chair of LibraryCo for the past two years.

The Treasurer announced that on March 25, amendments to the *Law Society Act* implementing the governance amendments approved by Convocation in December were tabled in the budget bill in the Ontario Legislature.

Benchers were reminded that due to the G-20 Summit being held in Toronto on June 26 and 27, the End of Term Dinner and Convocation have been changed to June 28 and 29 respectively.

DRAFT MINUTES OF CONVOCATION

The draft minutes of Convocation of February 25, 2010 were confirmed.

MOTIONS – APPOINTMENTS

It was moved by Ms. McGrath, seconded by Mr. Schabas, –

THAT the following people be appointed to the Hearing Panel for a term of two years.

Alan Gold (Chair)	Abraham Feinstein	Laurie Pawlitz
Thomas Conway (Vice-Chair)	Neil Finkelstein	Maurice Portelance
Bob Aaron	Carl Fleck	Julian Porter
Andrea Alexander	Patrick Furlong	Judith Potter
Raj Anand	Avvy Go	Nicholas Pustina
Constance Backhouse	Gary Lloyd Gottlieb	Jack Rabinovitch
Larry Banack	Jack Ground	Sydney Robins
Margot Blight	Michelle Haigh	Allan Rock
Marion Boyd	Glenn Hainey	Heather Ross
Jack Braithwaite	Jennifer Halajian	Linda Rothstein
Christopher Bredt	Susan Hare	Clayton Ruby
Robert Burd	Carol Hartman	Mark Sandler
John Campion	Thomas Heintzman	Paul Schabas
James Caskey	Paul Henderson	Baljit Sikand
Dan Chilcott	Vern Krishna	Alan Silverstein
Paul Copeland	Barbara Laskin	William Simpson
Cathy Corsetti	Doug Lewis	Catherine Strosberg
Marshall Crowe	Gavin MacKenzie	Harvey Strosberg
Aslam Daud	Ronald Manes	Gerald Swaye
Mary Louise Dickson	Dow Marmur	Beth Symes
Adriana Doyle	Susan McGrath	Robert Topp
W. Paul Dray	Jacques Ménard	Bonnie Tough

Susan Elliott
Seymour Epstein
Lawrence Eustace

Janet E. Minor
Kenneth Mitchell
Daniel Murphy
Ross Murray
Stephen Parker

Howard Ungerman
Sarah Walker
James Wardlaw
Bradley Wright
Roger Yachetti
David Young

Carried

It was moved by Ms. McGrath, seconded by Mr. Schahbas, –

THAT the following benchers be appointed to the Appeal Panel for a term of two years.

Mark Sandler (Chair)
Paul Henderson (Vice-Chair)
Dan Chilcott
Seymour Epstein
Janet Minor
Sydney Robins
Clayton Ruby
Bradley Wright

Carried

It was moved by Ms. McGrath, seconded by Mr. Schabas, –

THAT the following people be appointed to the Proceedings Authorization Committee for a term of one year.

Julian Porter (Chair)
Beth Symes (Vice-Chair)
Michelle Haigh
Glenn Hainey
Alan Silverstein

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

Carried

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

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, April 22nd, 2010.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of April, 2010

CANDIDATES FOR CALL TO THE BAR

April 22nd, 2010

Miguel Antonio Bernal Castillero
Jeffery Edward Conway
Matthew James Dorreen
Heather Lee Gallant
Margaret Ann Hughes
Robert Brent Lilly
Jeremy Nathaniel Mandell
Jean-Félix Joseph Lionel Robitaille
Nicholas Peter Robinson
Darlene Marie St. Jean
Yasaman Targhibi
Sarah Lynne Markman Weingarten

CEO'S REPORT

Mr. Heins presented his Report to Convocation on the insurance litigation.

Purpose of Report: Information

Prepared by
Malcolm L. Heins LSM, Chief Executive Officer
(416) 947-3385

Law Society of Upper Canada (Law Society) and Lawyers' Professional Indemnity Company (LAWPRO) v. Ernst & Young (E&Y) and Tillinghast, et al. Superior Court of Justice, File Court No.: 01CL4299 (the Action)

1. This action was settled on February 25, 2010 following a mediation conducted by The Honourable Warren K. Winkler, Chief Justice of Ontario.
2. Pursuant to the settlement, the defendants collectively paid to the plaintiffs \$8 million, inclusive of damages, costs and interest. No party made any admission of liability as part of the settlement. The settlement also provide for a mutual release including certain confidentiality and non-disparagement covenants.
3. This report summarizes the action and its resolution.

Background to the Action

4. The action was for professional negligence arising out of the operation of the Law Society's insurance program during 1991 through 1994. The Law Society and LAWPRO commenced the action against the defendants by Statement of Claim issued in April 1997. The Law Society and LAWPRO alleged that both E&Y and Tillinghast were negligent and breached their professional responsibilities as accountants/auditors and as actuaries.
5. E&Y and Tillinghast disputed and never conceded that they were negligent or breached their professional responsibilities. It was alleged by both defendants that any issues with respect to the estimation of liabilities of the insurance program during this period were the responsibility of the Law Society and LAWPRO's management and officers under the oversight and direction of the Law Society's benchers. The defendants further maintained that neither of the plaintiffs sustained any recoverable damages, and that both interest and avoided liabilities were not recoverable. It was further their position that even if the Law Society and LAWPRO had known of the true position of the insurance program's liabilities, that they would not have raised the premiums because it was their wish to minimize the increase in insurance levies.

6. The factual background to the action is set out in the Report to Convocation of the Insurance Task Force and the Insurance Committee, dated October 28, 1994, and amended on November 15, 1994. Convocation established the Task Force on June 27, 1994, upon learning that the Law Society had a deficit in its insurance program of \$154,089,000. The report indicated that it had four primary purposes:
 - (i) to raise with Convocation the question of whether the Society should continue the E&O program;
 - (ii) to inform Convocation of the amount of the deficit and explain the increase;
 - (iii) to recommend short and long term solutions leading to the elimination of the deficit and proper capitalization within four years; and
 - (iv) to report on management and legal costs.
7. By December 31, 1998, LAWPRO was fully capitalized with \$53 million in capital and by February 28, 1999, the deficit of \$154 million was retired.
8. The elimination of the deficit and the capitalization of LAWPRO took place as a consequence of a number of factors. Coverage under the insurance policy was reduced by eliminating coverage for mortgage brokering, reducing vicarious liability coverage, and broadening the application of insureds' deductibles; thereby reducing LAWPRO's exposure to claims. Insurance levies were raised substantially (1995 - \$5,600; 1996 - \$5,150; 1997 - \$5,150; 1998 - \$4,650; 1999 - \$3,650). In addition, transaction levies were imposed for real estate and litigation matters and a claims history surcharge was imposed. There was also a favourable investment income environment during this period of time and the claims experience ameliorated post-1995.
9. It would be somewhat of an understatement to say that the profession was angry and disappointed with the announcement of the deficit in June of 1994. There was a view that some third party must have been responsible for the \$154 million deficit and that they should pay. This view was over simplified to the point of being incorrect. The deficit (an excess of liabilities over assets) arose as a consequence of claims being incurred by Law Society members. The deficit per se was not a reason to initiate a claim. Rather, the questions that arose as a result of the announcement of the deficit were whether the Law Society and LAWPRO were aware of the deteriorating results of the insurance program and the amount of claims liabilities being incurred between 1991 and 1994 that is, were the claims liabilities and the deficit properly reported on by the defendants on a timely basis; if they were not, was that due to professional error; what, if anything, could they have done with better knowledge; and what savings would that have yielded or what liabilities would have been avoided.

The Action

10. The action alleged that the Law Society and LAWPRO did not learn the true extent of the insurance program's liabilities at an earlier date due, in whole or part, to negligence of the defendants and that, as a result, both the Law Society and LAWPRO incurred damages. The key component of the damages claim was the value of the claims

liabilities that could have been avoided by changing the provisions of coverage and deductibles in the insurance program at an earlier date, that is, had the Law Society and LAWPRO known the actual deficit at an earlier date. Other items included the out-of-pocket investigation and professional expenses, as well as the foregone opportunities to take steps to raise funds by increasing the insurance levies and the lost interest on those funds.

11. One of the key contested aspects of the action's claim for damages was proving what changes to coverage the Law Society and LAWPRO would have made and when they would have made them if accurate information about the claims liabilities was known earlier. The Law Society and LAWPRO argued that the changes to coverage and deductibles made in 1995 were the same changes that would have been made at the earlier date. Assuming this aspect of the Law Society's damages claim was provable and compensable in its entirety, the expert calculations obtained by the Law Society indicated that the avoided claims would have been \$32.5 million, which assumed that coverage changes were made at the beginning of 1992. If it took until either 1993 or 1994 for the Law Society and LAWPRO to take action, the avoided liabilities would shrink to \$18 million and \$8 million respectively. Given the time required to react to the deteriorating claims experience, 1993 may have been the most reasonable date for the purposes of calculating this aspect of the claim. The claim for lost interest on the funds that were not collected because the deficit was understated was also dependent upon when the Law Society and LAWPRO would have taken action. The out-of-pocket expense claims totalled just under \$1.5 million.
12. In addition to the strenuous denial on the part of the defendants that there was any negligence in the provision of their services to the Law Society and LAWPRO, a defence was also advanced that because of the levying authority of the Law Society and the structure of the insurance program; no damages were in fact suffered. It was the defendants' theory that it was simply a matter of timing as to when the profession would be assessed to pay for the deteriorating claims experience. The defendants also took the position that it was the actions of the Law Society and LAWPRO's own employees and officers and the decisions of the Law Society's benchers that contributed to the understatement of the deficit.
13. None of the damage figures previously mentioned reflect any discount for the defendants' arguments of contributory negligence or for their substantive arguments about whether there were any damages recoverable at law or the risks associated with the plaintiffs actually proving negligence on the part of the defendants. The defendants also contested specific components of the plaintiffs' claim of avoided liabilities which, if accepted, would have the effect of reducing the total damages payable even in the event of liability.

Chronology

14. Following completion of pleadings, the parties engaged in an extensive documentary discovery. At the conclusion of the exchange of documents, a lengthy and extensive ADR mediation process took place. That mediation, conducted by the late Honourable David Griffiths, concluded without success, at the end of June 2001.

15. The defendants then brought motions for summary judgment under Rule 21.01(1)(a) seeking dismissal of the action on the basis that there were no recoverable damages because the deficit had been retired. The summary judgment motions were argued before the Honourable Justice Ground in February 2002, and the motions were dismissed in April 2002. However, it should be noted that Justice Ground found that the plaintiffs' claim for lost interest was not recoverable. The matter was appealed by both the plaintiffs and the defendants to the Court of Appeal. The Court of Appeal in July 2003 set aside the orders of Justice Ground and ordered the action to proceed to trial on all of the issues. Leave to appeal to the Supreme Court of Canada was sought by the defendants, which was denied in April 2004. Examinations for discovery were deferred by the court pending the final determination of the summary judgment motions and appeals. Discoveries took place from October 2004 to 2007. All parties then attended in Commercial Court at the end of 2007 for the purposes of scheduling the trial. Given the length of the anticipated trial, it was not possible to schedule the trial to commence until April 6, 2010, for an eight week trial.

Mediation and Settlement

16. The mediation that was conducted by Chief Justice Warren Winkler on February 25, 2010, was agreed to by all parties in an effort to avoid what would have been further substantial expenses, and a very lengthy trial. At the time of the mediation there were two formal offers to settle on the table. The plaintiff's formal offer of settlement of May 2006 in the amount of \$15 million inclusive of interest, and the defendant's formal offer to settle of \$1.5 million inclusive of costs and interest.
17. Ultimately, with the assistance of the Chief Justice all parties agreed to a resolution on the basis of the defendants paying \$8 million to the plaintiffs without an admission of liability on the part of the defendants. The Chief Justice, in his role as mediator, recommended the settlement figure as a reasonable one and fair to all parties. The costs and complexity of the trial were important factors in pushing all parties to settle together with the potential exposure of the losing party to costs. In the event the Law Society and LAWPRO failed to prove liability on the part of the defendants or that there were no damages that were legally compensable, they too were exposed to paying the costs of the defendants.
18. Further to the instructions of Convocation and the board of directors of LAWPRO, the settlement was approved and accepted by me, together with the Treasurer, the delegated members of the Litigation Committee, and Harvey Strosberg, who chaired the original Insurance Task Force and the Insurance Committee Report. We unanimously agreed that this was a reasonable resolution of the litigation having regard to the risks in continuing to pursue the action and a realistic appraisal of the Law Society's and LAWPRO's recoverable damages.
19. The \$8 million recovery increased the E&O fund surplus by \$8 million. The expenses of the litigation had been financed by the Law Society through the E&O fund. The net recovery after accounting for the costs of pursuing this litigation is \$5 million. Included in the costs were the fees of our legal counsel, accountants, actuaries and expert witnesses. These costs are not insubstantial, however, given the fact that the events that

took place giving rise to this litigation occurred over a four year period, the complexity of the matters at issue and the length of the litigation itself, costs in the circumstances were reasonable.

20. This report is the final chapter to the October 1994 Insurance Task Force and Insurance Committee Report to Convocation. My association with the Law Society and its insurance subsidiary, LAWPRO started in December of 1994 when I was hired as Chief Executive Officer of the Lawyers' Professional Indemnity Company (then LPIC, now LAWPRO). My mandate was to implement the October 1994 Report's recommendations and rebuild the Law Society's insurance subsidiary. Upon my arrival, I toured the province with Harvey Strosberg to explain the findings of the Task Force report. It was not a particularly pleasant task to explain to members of the profession that it was they who were going to have to pay the \$154 million, because after all, it was they who incurred the claims. Harvey Strosberg and I heard many times that someone must be at fault for the \$154 million. We explained during the course of our meetings that it was claims that were incurred by members that made up the \$154 million deficit and that the only damages that were potentially compensable were as a consequence of the Law Society and LAWPRO having been denied the opportunity to fund the deficit and to make changes to the insurance program at an earlier date. This was also explained to Convocation in 1996 when permission was sought to commence the litigation.
21. In all of the circumstances of the history that led up to the commencement of the action, the difficult factual and legal issues of the action itself and the expense and exposure of continuing to pursue the action, the settlement is a reasonable one. I am pleased that this matter is now concluded.

AUDIT COMMITTEE REPORT

Ms. Symes presented the Report.

Report to Convocation
April 22, 2010

Audit Committee

Committee Members
Beth Symes (Chair)
Marshall Crowe
Seymour Epstein
Glen Hailey
Doug Lewis
Bill Simpson

Purpose of Report: Decision and Information

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

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FOR DECISION

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2. Financial Statements of Lawyers' Professional Indemnity Company for the year ended December 31, 2009
3. Committee Review of In Camera Reports (In Camera)
4. Investment Compliance Reporting
5. Other Committee Work

COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on April 7, 2010. Committee members in attendance were Beth Symes (c), Marshall Crowe, Seymour Epstein, Glenn Hainey, Doug Lewis and Bill Simpson.
2. Staff in attendance were Malcolm Heins, Wendy Tysall, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse.
3. Also in attendance were Kathleen Waters and Steve Jorgensen of LAWPRO, David Thompson, Chair of LibraryCo Inc., and Paula Jesty, Sam Persaud and Trevor Ferguson of Deloitte & Touche LLP

FOR DECISION

LAW SOCIETY OF UPPER CANADA, AUDITED FINANCIAL STATEMENTS FOR THE YEAR
ENDED DECEMBER 31, 2009

Motion

4. That Convocation approve the audited Annual Financial Statements for the Law Society of Upper Canada at December 31, 2009.
5. Representatives from our auditor, Deloitte & Touche LLP, will be in attendance.
1. The following supplementary schedules are provided to Convocation to assist in the review of the Annual Financial Statements. These schedules are unaudited and are for information only.
 - General Fund, Lawyers and Paralegals, Revenues and Expenses, Actual to Budget
 - General Fund, Lawyers, Revenues and Expenses, Actual to Budget
 - General Fund, Paralegals, Revenues and Expenses, Actual to Budget
 - Compensation Fund, Revenues and Expenses, 2009 and 2008
 - Errors & Omissions Insurance Fund, Revenues and Expenses, 2009 and 2008
 - Other Restricted Funds, Change in Fund Balances

THE LAW SOCIETY OF UPPER CANADA

General Fund - Lawyers and Paralegals

Schedule of Revenues and Expenses

*Unaudited**Stated in thousands of dollars**For the year ended December 31*

		2009	YTD	
		Actual	Budget	Variance
Revenues				
1	Annual fees	40,618	41,477	(859)
2	Professional development and competence	10,940	9,728	1,212
3	Investment income	1,116	860	256
4	Ontario reports revenue	1,820	2,036	(216)
5	Payment plan admin fee	256	250	6
6	Lawyer referral fees	447	503	(56)
7	Other	2,925	2,643	282
8	Total revenues	58,122	57,497	625

Expenses				
9	Professional regulation	18,097	19,245	1,148
10	Professional development and competence	16,379	17,215	836
11	Administrative	8,736	8,991	255
12	Other	3,157	3,396	239
13	Client service centre	5,333	5,538	205
14	Facilities	4,044	4,316	272
15	Policy and legal services	2,214	2,399	185
16	Communications	1,465	1,482	17
17	Bencher and convocation	1,897	2,327	430
18	Equity	1,164	1,343	179
19	CanLII	967	1,000	33
20	Tribunals	942	913	(29)
21	Ontario Lawyers' Assistance Program	335	335	-
22	Total expenses	64,730	68,500	3,770
23	Expenses allocated to Compensation Fund	(5,705)	(5,821)	(116)
24	Net expenses	59,025	62,679	3,654
25	Deficit	(903)	(5,182)	4,279

General Fund - Lawyers – Schedule of Revenues and Expenses
Budget to Actual Comparison

2. On the revenue side, the major variances between budget and actual amounts include:
 - Lawyer annual fees are under budget by \$673,000 with less full fee paying members than budgeted.
 - Professional Development and Competence revenues are \$294,000 over budget mainly due to the higher than anticipated Licensing Process revenues of \$333,000 with more candidates than planned. CLE registrations ended the year \$137,000 under budget, reflecting economic conditions.
 - Investment income is higher than expected. The annual budget was set conservatively given the economic conditions at the time. Actual performance has exceeded expectations with unrealized gains in market value offsetting lower rates of interest on new fixed income purchases. Investment income has exceeded budget by \$256,000.
3. On the expense side, the major variances between budget and actual amounts include:
 - Lawyer professional regulation is under budget by \$1 million mainly due to reduced requirements for expert opinions / witnesses and outside counsel. These expenses do not follow a regular or predictable pattern.

- Lawyer professional development and competence is under budget by \$735,000. This can be attributed to lower spending on the licensing process, staffing vacancies and reduced CLE spending, in line with reduced CLE course registration revenues described above.
- The budget for Other expenses includes an unused contingency of \$225,000 and the provision for doubtful accounts which was \$130,000 under budget.
- Benchers and convocation expenses are under budget by \$430,000. There were less Committee and Convocation days as a cost saving measure in response to the difficult conditions in the economy.
- The lawyer General Fund balance is now \$8.3 million, of which \$5.8 million has been earmarked for the reduction of annual fees in 2010.

THE LAW SOCIETY OF UPPER CANADA

General Fund - Lawyers

Schedule of Revenues and Expenses

Unaudited

Stated in thousands of dollars

For the year ended December 31

		2009	YTD	
		Actual	Budget	Variance
Revenues				
1	Annual fees	39,099	39,772	(673)
2	Professional development and competence	9,318	9,024	294
3	Investment income	1,116	860	256
4	Ontario reports revenue	1,820	2,036	(216)
5	Payment plan admin fee	256	250	6
6	Lawyer referral fees	447	503	(56)
7	Other	2,925	2,643	282
8	Total revenues	54,981	55,088	(107)
Expenses				
9	Professional regulation	16,727	17,752	1,025
10	Professional development and competence	15,666	16,401	735
11	Administrative	8,404	8,659	255
12	Other	3,069	3,495	426
13	Client service centre	5,123	5,333	210
14	Facilities	3,954	4,226	272
15	Policy and legal services	2,157	2,346	189
16	Communications	1,407	1,424	17

17	Benchers and convocation	1,806	2,236	430
18	Equity	1,140	1,318	178
19	CanLII	967	1,000	33
20	Tribunals	922	893	(29)
21	Ontario Lawyers' Assistance Program	335	335	-
22	Total expenses	61,677	65,418	3,741
23	Expenses allocated to Compensation Fund	(5,536)	(5,606)	(70)
24	Net expenses	56,141	59,812	3,671
25	Deficit	(1,160)	(4,724)	3,564

Fund - Paralegal - Schedule of Revenues and Expenses
Budget to Actual Comparison

4. Paralegal revenues exceeded budget by \$732,000 as a result of greater than budgeted numbers of applicants for the licensing program in 2009.
5. At around \$3 million, total expenses in the Paralegal Fund approximately broke even with budget, before and after allocations to the Compensation Fund.
6. Included in the paralegal expenses are costs of \$305,000 for good character hearings originally budgeted as part of the 2008 start up costs of paralegal regulation. The high volume of paralegal applications has necessitated ongoing resources for this activity, for which completion is expected in 2010. Costs will continue to be funded through the paralegal surplus.
7. The paralegal General Fund balance is now \$1.5 million at the end of 2009, of which \$920,000 has been earmarked for the reduction of annual fees in 2010.

THE LAW SOCIETY OF UPPER CANADA

General Fund - Paralegals

Schedule of Revenues and Expenses

Unaudited

Stated in thousands of dollars

For the year ended December 31

		2009	YTD	
		Actual	Budget	Variance
	Revenues			
1	Annual fees	1,519	1,705	(186)

2	Application and examination fees	1,622	704	918
3	Total revenues	3,141	2,409	732
Expenses				
4	Professional regulation	1,370	1,493	123
5	Professional development and competence	713	814	101
5	Administrative	332	332	-
6	Other	88	(99)	(187)
7	Client service centre	210	205	(5)
8	Facilities	90	90	-
10	Policy and legal services	57	53	(4)
11	Communications	58	58	-
12	Benchers and convocation	91	91	-
13	Equity	24	25	1
14	Tribunals	20	20	-
	Total expenses	3,053	3,082	29
15	Expenses allocated to Compensation Fund	(169)	(215)	(46)
16	Net expenses	2,884	2,867	(17)
17	Surplus (Deficit)	257	(458)	715

Compensation Fund – Schedule of Revenues and Expenses

8. The Compensation Fund experienced a surplus for the year of \$1.3 million (2008 – deficit of \$2 million).
9. Total annual fee revenue has increased by \$1.1 million primarily as a result of an increase in the lawyer levy from \$200 to \$226 and the inclusion of paralegals for the full year in 2009. The paralegal levy at \$145 was unchanged in 2009.
10. Investment income has increased by \$2 million, largely from unrealized gains, as financial markets have undergone a significant recovery in 2009.
11. Expenses have decreased by \$119,000. The provision for unpaid grants expense decreased by \$1.1 million as 2008 included unusually large claims against two lawyers. The decrease in the grants expense was offset by increased costs for spot audits approved in the 2009 budget. The expanded spot audit program was the primary driver in the increase in the annual levy for the lawyers' compensation pool. Allocated and administrative expenses also increased.

THE LAW SOCIETY OF UPPER CANADA

Compensation Fund

Schedule of Revenues and Expenses

Unaudited

Stated in thousands of dollars

		2009			2008
		Lawyers	Paralegals	Total	Total
<i>For the year ended December 31</i>					
Revenues					
1	Annual fees	7,457	303	7,760	6,695
2	Investment income	2,532	-	2,532	433
3	Recoveries	223	-	223	122
4	Total revenues	10,212	303	10,515	7,250
Expenses					
5	Provision for unpaid grants	2,778	85	2,863	3,916
6	Spot audit	2,617	124	2,741	2,261
7	Share of investigation and discipline	1,538	45	1,583	1,343
8	Administrative	1,562	14	1,576	1,315
9	Salaries and benefits	384	-	384	430
10	Total expenses	8,879	268	9,147	9,265
11	Surplus (Deficit)	1,333	35	1,368	(2,015)

Errors and Omissions Insurance Fund – Schedule of Revenues and Expenses

12. Insurance premiums and levies increased from \$72.1 million in 2008 to \$74.4 million in 2009. The base premium was \$2,450 per lawyer for 2009, an increase of \$150 from the base premium charged in 2008, although revenues from supplemental premium levies were slightly higher in 2008, in line with economic conditions. Premiums and levies collected from lawyers were supplemented by \$7.1 million (2008 – \$6.6 million) transferred from E&O Fund balance, \$4.9 million as part of the approved insurance program and \$2.2 million to make up for the short fall in transaction levies, again as provided for in the approved 2009 insurance program.

13. Investment income has increased by \$2.4 million over 2008 primarily as a result of gains in the fair value of investments as markets have recovered in 2009.
14. As claims continue to wind down in the E&O Fund, valuations on the reserve for unpaid claims have disclosed that some claims had been overprovided for in previous estimates.
15. There has been an expense reduction in the provision for claims of \$899,000 (2008 – \$50,000) due to a favorable claims valuations in the relatively few active claims remaining in the E&O Fund reserve.
16. Premiums remitted to LAWPRO have increased from \$78.8 million in 2008 to \$95 million in 2009 due to the retrospective premium provisions under the insurance policy between the Society and LAWPRO. To the extent underwriting results vary from the approved program, additional premiums are charged or premium refunds are made. Under these provisions, LAWPRO made retrospective premium assessments totalling \$13.6 million for 2009 (2008 – refunded \$1.4 million). The 2009 amount included \$10.5 million arising from the pending implementation of harmonized sales tax in Ontario effective July 1, 2010 and \$3.1 million due to unfavourable underwriting results.

THE LAW SOCIETY OF UPPER CANADA

Errors and Omissions Insurance Fund

Schedule of Revenues and Expenses

Unaudited

Stated in thousands of dollars

For the year ended December 31

	2009 Actual	2008 Actual
Revenues		
1 Insurance premiums and levies	74,403	72,156
2 Investment income	3,498	1,081
3 Total revenues	77,901	73,237
Expenses		
4 Administrative	187	400
5 Claims	(899)	(50)
6 Insurance	95,086	78,812
7 Total expenses	94,374	79,162
8 Deficit	(16,473)	(5,925)

FOR DECISION
LAW SOCIETY AUDITOR

Motion

6. That Deloitte & Touche LLP be appointed as auditor of the Law Society of Upper Canada and LibraryCo Inc. for the 2010 financial year.
7. Convocation appoints the Law Society auditor on the advice of the Audit Committee. Under the Unanimous Shareholders Agreement, Convocation appoints the auditor of LibraryCo Inc.. LAWPRO's auditors are appointed at their Annual General Meeting.
8. This has been the eighth year for Deloitte & Touche as the Law Society auditor.
9. The Audit Committees of the Law Society and LAWPRO will have a joint meeting to discuss the possible tendering for audit services in the future.

FOR INFORMATION
LIBRARYCO INC. – AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED
DECEMBER 31, 2009

10. The Audit Committee recommends that the audited Annual Financial Statements for LibraryCo Inc. at December 31, 2009 be received by Convocation for information.
11. LibraryCo's Annual Financial Statements were approved by LibraryCo's board on March 25, 2010.
12. The Message From The Chair of LibraryCo, David Thompson, included in LibraryCo's Annual Report is also provided for the information of Convocation.
13. Library usage statistics were presented to Convocation for information in the Professional Development and Competence Committee Report in February, 2010.

LIBRARYCO INC. 2009 ANNUAL REPORT
MESSAGE FROM THE CHAIR

Introduction

In 2009, we implemented a number of changes and improvements for LibraryCo Inc. as a result of the meetings and consultations which took place in 2008. The biggest single change which we undertook in 2009 was the restructuring of electronic resources. We also completed our intensive review of salary bands and job descriptions for library staff and distributed the results of that information to the Law Associations throughout the province.

Highlights of the 2009 Budget

As in previous years, the Board of Directors of LibraryCo Inc. consulted with the County and District Law Presidents' Association (CDLPA) and the Toronto Lawyers' Association (TLA) and requested budget submissions from each association. Those submissions played an integral part in the development of the 2009 budget.

The most significant item for the 2009 budget was a drastic reduction in the amount of money spent on electronic resources. As a result, the LibraryCo Inc. levy to lawyers was reduced.

In 2009, the Law Foundation of Ontario continued to provide generous financial support to our library system. The grant from the Law Foundation of Ontario was used for the purchase of electronic resources. LibraryCo Inc. would again like to thank the Law Foundation of Ontario for their continuing support of the lawyers of Ontario.

Electronic Resources

As we explained briefly in the 2008 Annual Review, significant changes in our electronic resources came into effect on January 1, 2009.

We did not renew our subscriptions to the WestlaweCarswell and CCH Canadian electronic products. The LexisNexis Quicklaw product was our core electronic resource for both in-library and desktop use. The Canada Law Book Criminal Spectrum product was retained.

The changes implemented in 2009 were drastic. Of greatest significance was the non-renewal of subscriptions of some significant secondary resources. Although the vast majority of research done electronically is done on primary case law, there is undeniably a need for access to good secondary resources at a reasonable price.

In the fall of 2009, LibraryCo Inc. completed its negotiations with the electronic resource providers. As a result of those negotiations, LibraryCo Inc. will have a much stronger electronic resource package available for in-library use and to desktop users for 2010 and 2011. In addition, desktop access has been expanded to Algoma, Kenora and Thunder Bay.

In 2009, LibraryCo Inc. was able to improve the quality of usage statistics. We are now receiving detailed usage statistics with respect to both in-library and desktop use. We can clearly identify, both on a system- wide basis and on a library-by-library breakdown, what type of research is being done electronically, and we receive detailed statistics on the databases which are being used. The detailed usage statistics LibraryCo Inc. receives indicate that the international component of LexisNexis receive slow use across the system. The relatively high cost of the international component could not be justified.

The international component was discontinued for 2010. County and District law libraries will have access to the international component through document delivery from the Great Library.

The Board welcomes input from the associations through the CDLPA Library Committee.

Library Collections

In 2009, the Core Collections lists were reviewed and revised. LibraryCo Inc. would like to thank the many librarians across the province who provided valuable input during this process. This was the first major revision of the Core Collections since 2005. The Core Collections are a useful and cost effective guide for collection development. In 2009, we also implemented some changes to the type of statistics being collected from regional and area libraries.

Staffing

The consultant retained by LibraryCo Inc. to review salary bands and job descriptions in our County and District law libraries completed his report in 2009. The executive summary and detailed report were distributed to the presidents of the County and District Law Associations in the fall of 2009.

The consultants identified some areas where change is probably needed.

In particular, it appears that the job descriptions as developed at the inception of LibraryCo Inc. may not be in keeping with the reality of the day to day work undertaken by library staff across the province.

The salary bands are in need of some minor revision.

As of the end of 2009, the Board of LibraryCo Inc. was still awaiting some further response and input from the County and District Law Associations concerning the consultant's report. The Board hopes to implement any changes by mid 2010.

The Board of LibraryCo Inc. continues to provide bursaries for library staff members to attend both the Conference for Ontario Law Associations' Libraries (COLAL) and the Canadian Association of Law Libraries (CALL) conferences. We urge all associations to encourage their staff members to attend these conferences that provide effective professional development.

Business Plan

In early 2009, the Board of LibraryCo Inc. formally approved the business plan which has been developed for the years 2009, 2010 and 2011. The business plan is posted on the LibraryCo Inc. website. It was distributed to LibraryCo Inc. shareholders shortly after its approval.

In 2009, the Board also implemented its communication guide to assist the County and District Law Associations and their library staff in dealing with LibraryCo Inc. This guide is posted on the LibraryCo Inc. website. LibraryCo Inc. has also prepared a handbook, which we hope will facilitate better communication and a better understanding of the work of LibraryCo Inc., its mandate and services. The handbook should be posted on the LibraryCo Inc. website early in 2010.

Long Term Issues and Plans

The major long term issues and plans for LibraryCo Inc. continue to be as follows:

- a) Consistent allocation of resources as between associations of similar size and demand;
- b) Maintaining effective lines of communication between the LibraryCo Inc. Board, its shareholders, the Ontario Courthouse Librarians' Association and the Law Foundation of Ontario;
- c) Exploring alternate ways of providing both electronic and print resources;
- d) Participation in and development of the Canadian Legal Information Institute (CanLII);
- e) Continuing examination of the core collections and collection standards for the various levels of libraries throughout the province;
- f) Enhancing continuing education for Law Association library staff through COLAL and CALL conferences and by other means.

In 2009, members of the Board of Directors attended the COLAL conference for an open question and answer session.

From the Board's perspective, the discussion was constructive and helpful.

In 2009, members of the Board met on two occasions with the Law Foundation of Ontario to discuss LibraryCo Inc.'s ongoing needs and expectations. On both occasions, we had wide ranging discussions with the Foundation. As a result of the economic conditions in 2009 and 2010, the Law Foundation of Ontario will not be able to continue providing the same level of financial support which it has provided. We appreciate the open communication which we have with the Law Foundation of Ontario and will continue to work with them to make sure that Law Foundation grants are utilized to obtain the greatest benefit possible for the County and District Law Library system.

Acknowledgments

The Board of Directors would like to thank Martha Foote, Board General Manager, for her professionalism and efforts in assisting the Board during this past year. We are also pleased to welcome Raluca Serban to LibraryCo Inc. Ms. Serban is working as the assistant to our Board General Manager and is providing valuable support to LibraryCo Inc. The Board of LibraryCo Inc. would also like to thank Wendy Tysall, who is the Chief Financial Officer for LibraryCo Inc., Diana Miles, David Whelan and numerous other employees of the Law Society of Upper Canada and the Great Library for their assistance and cooperation with the operations of LibraryCo Inc. We would also like to thank Nardeo Sham of Law Society Finance, who had been of great assistance to LibraryCo Inc. for several years. Mr. Sham has taken on other responsibilities within the Law Society and the Board of LibraryCo Inc. wishes him well. At the same time, we welcome the assistance provided by Mr. Sham's replacement, Gary Cheong, and look forward to working with him.

The Board would also like to thank the County and District Law Presidents' Association executive, the local associations, the Ontario Courthouse Librarians' Association and the Toronto Lawyers' Association for their continuing assistance and constructive submissions to the Board of Directors.

In 2009, Tom Conway stepped down as a Law Society representative on the Board of LibraryCo Inc. We wish Mr. Conway well and thank him for his significant contribution to the work of LibraryCo Inc. Mr. Conway was replaced on the Board by Gerry Swaye, Q.C. of Hamilton, a former member of the Board of LibraryCo Inc. and also a valuable contributor to the work of LibraryCo Inc. We welcome Mr. Swaye back.

At the end of 2009, Susan McGrath stepped down from the Board of LibraryCo Inc. We want to thank Ms. McGrath for her significant contribution to the work of LibraryCo Inc. and her advocacy on behalf of the small associations in particular. We wish Ms. McGrath well.

Carl Fleck, Q.C. of Sarnia replaces Ms. McGrath on the Board of LibraryCo Inc. and we look forward to working with Mr. Fleck.

The Board wishes to reiterate its thanks to the Law Foundation of Ontario for its generous funding over the years and its willingness to continue working with us in difficult times.

David S. Thompson, Chair of LibraryCo Inc.

FOR INFORMATION
FINANCIAL STATEMENTS OF LAWYERS' PROFESSIONAL INDEMNITY COMPANY FOR
THE YEAR ENDED DECEMBER 31, 2009

14. The Committee recommends the audited financial statements for Lawyer's Professional Indemnity Company for the year ended December 31, 2009 be received by Convocation for information.
15. A Report to the Audit Committee along with a Key Point Summary and the financial statements of the Lawyers Professional Indemnity Company are attached.
16. Management representatives from LAWPRO will be in attendance.

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IN CAMERA

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IN PUBLIC

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FOR INFORMATION
INVESTMENT COMPLIANCE REPORTING
LONG-TERM INVESTMENTS COMPLIANCE REPORTING

20. Compliance Statements for the long-term investment portfolios as at December 31, 2009 are attached for information.

FOR INFORMATION
STATEMENT OF COMPLIANCE – SHORT-TERM INVESTMENTS

21. Compliance statements for the short-term investments as at December 31, 2009 are attached for information.

FOR INFORMATION
OTHER COMMITTEE WORK

22. The Committee reviewed the following reports for information:

- Schedule of amounts paid to benchers and the Treasurer for remuneration and expense reimbursements.
- Summary of the current status of litigation matters.
- An update of accounting standards in transition.

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

- (1) Copy of Law Society of Upper Canada, Audited Financial Statements for the year ended December 31, 2009.
(pages 5 – 23)
- (2) Copy of the Law Society of Upper Canada, Errors and Omissions Insurance Fund, Schedule of Revenues and Expenses.
(page 33)
- (3) Copy of the Law Society of Upper Canada, Other Restricted Funds, Schedule of Revenues and Expenses and Changes in Fund Balances.
(page 34)
- (4) Copy of LibraryCo Inc. Management Discussion and Analysis, December 31, 2009.
(pages 37 – 38)
- (5) Copy of Auditor's Report to the Shareholders of LibraryCo Inc. from Deloitte.
(pages 39 – 46)
- (6) Copy of Lawyers' Professional Indemnity Company – Report to the Audit Committee of the Law Society of Upper Canada, April 7, 2010.
(pages 52 – 98)
- (7) Copy of The Law Society of Upper Canada, Report to the Audit Committee Results of the 2009 Audit, April 7, 2010 (Deloitte). (in camera)
(pages 100 – 117)
- (8) Copy of Compliance Statements for long-term investment portfolios as at December 31, 2009.
(pages 119 – 121)
- (9) Copy of Compliance Statements for short-term investments as at December 31, 2009.
(page 123)

Re: Approval of Law Society of Upper Canada Audited Financial Statements for Year Ended December 31, 2009

It was moved by Ms. Symes, seconded by Mr. Crowe, that Convocation approve the audited Annual Financial Statements for the Law Society of Upper Canada at December 31, 2009.

Carried

Re: Appointment of Law Society Auditor

It was moved by Ms. Symes, seconded by Mr. Crowe, that Deloitte & Touche LLP be appointed as auditor of the Law Society of Upper Canada and LibraryCo Inc. for the 2010 financial year.

Carried

Items for Information

- LibraryCo Inc. – Audited Financial Statements for the Year Ended December 31, 2009
- Financial Statements of Lawyers' Professional Indemnity Company for the year ended December 31, 2009
- Committee Review of In Camera Reports (in camera)
- Investment Compliance Reporting

TREASURER'S REPORT TO CONVOCATION

Mr. Caskey presented the Report.

Treasurer's Report to Convocation
April 22, 2010

LAWPRO's Annual Meeting

Purpose of Report: Decision

Prepared by: Katherine Corrick

FOR DECISION

Motion

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

Background

2. The Annual and General Meeting of Shareholders of the Lawyers' Professional Indemnity Company will be held on April 28, 2010. The notice of the meeting is attached at Appendix 1.
3. At the meeting, the shareholder will be asked to vote on the proposed shareholder resolutions set out at Appendix 2.
4. Traditionally, the Treasurer has signed the proxy to vote the Law Society's shares in favour of the resolutions. The proxy is set out at Appendix 3.
5. The Treasurer seeks Convocation's authorization to sign the proxy on behalf of the Law Society of Upper Canada.

Appendix 3

LAWYERS' PROFESSIONAL INDEMNITY COMPANY

PROXY

The undersigned, a shareholder of Lawyers' Professional Indemnity Company, hereby appoints James R. Caskey, whom failing Malcolm Heins, as nominee for the undersigned to attend, act and vote for and on behalf of the undersigned at the Annual and General Meeting of Shareholders of the Company to be held on Wednesday, April 28, 2010 at 250 Yonge St., Suite 3101 at 2:00 p.m., and any adjournment or adjournments thereof, and to vote and otherwise act before the meeting, in the same manner as the undersigned could do if personally present there at, the undersigned hereby ratifying and confirming and agreeing to ratify and confirm all that such nominee may lawfully do by virtue hereof.

Dated the ____ day of _____, 2010.

The Law Society of Upper Canada
By: W. A. Derry Millar, Treasurer

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

- (1) Copy of the Notice of Annual & General Meeting of Shareholders.
(Appendix 1, page 3)
- (2) Copy of the Proposed Shareholder Resolutions together with Draft Minutes of May 5, 2009.
(Appendix 2, pages 4 – 7)

LAWPRO Proxy

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

Carried

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Rothstein presented the Report.

Report to Convocation
April 22, 2010

Professional Regulation Committee

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

Purpose of Report: Decision and Information

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

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For Decision

Amendment to Rule 2.04 of the *Rules of Professional Conduct* Respecting
Pro Bono Short Term Limited Legal Services..... TAB A

Information

Annual Report of the Complaints Resolution Commissioner TAB B

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on February 19, 2010. In attendance were Linda Rothstein (Chair), Julian Porter (Vice-Chair), Christopher Bredt, Carl Fleck, Patrick Furlong, Glenn Hainey, Brian Lawrie, Ross Murray and Baljit Sikand. Clare Lewis, the Law Society’s Complaints Resolution Commissioner, also attended the meeting. Staff attending were Cathy Braid, Terry Knott, Zeynep Onen and Jim Varro.
2. The Committee also met on April 8, 2010. In attendance were Linda Rothstein (Chair), Julian Porter (Vice-Chair), Christopher Bredt, Carl Fleck, Patrick Furlong, Glenn Hainey, Ross Murray and Baljit Sikand. Staff attending were Dan Abrahams, Cathy Braid, Lesley Cameron, Malcolm Heins, Zeynep Onen, Jim Varro and Jane Withey.

AMENDMENT TO RULE 2.04 OF THE *RULES OF PROFESSIONAL CONDUCT*
RESPECTING PRO BONO SHORT TERM LIMITED LEGAL SERVICES

Motion

3. That Convocation add subrules 2.04(15) to (19) and commentary, as set out in this report, to rule 2.04 of the *Rules of Professional Conduct* (Avoidance of Conflicts of Interest) to implement its policy decision of January 28, 2010 on conflicts of interest related to pro bono short term limited legal services.
4. On January 28, 2010, Convocation approved the Committee’s recommendation for a change in the conflicts of interest standard for lawyers participating in Pro Bono Law Ontario (PBLO) brief services court-based programs.
5. The change requires amendment to the *Rules of Professional Conduct* to add new subrules. A draft of the proposed subrules, prepared by staff, was approved by Convocation (excerpts from the Committee’s report to January Convocation showing the motion and the staff draft are at Appendix 1). The staff draft was referred to the Law Society’s Rules drafter, Don Revell, following January Convocation.
6. Mr. Revell prepared subrules and commentary based on the staff draft. The Committee approved Mr. Revell’s draft, which appears on the following pages, and is requesting that Convocation adopt the subrules and commentary as additions to the end of rule 2.04.

PROPOSED AMENDMENTS TO RULE 2.04

CONFLICTS OF INTEREST

SHORT-TERM LIMITED LEGAL SERVICES

Short-term limited legal services

(15) In this subrule and subrules (16) to (19)

“pro bono client” means a client to whom a lawyer provides short-term limited legal services;

“short-term limited legal services” means *pro bono* summary legal services provided by a lawyer to a client under the auspices of Pro Bono Law Ontario’s Law Help Ontario program for matters in the Superior Court of Ontario or in Small Claims Court, with the expectation by the lawyer and the client that the lawyer will not provide continuing legal representation in the matter.

(16) A lawyer engaged in the provision of short-term limited legal services may provide legal services to a *pro bono* client unless

- (a) the lawyer knows or becomes aware that the interests of the *pro bono* client are directly adverse to the immediate interests of another current client of the lawyer, the lawyer’s firm or Pro Bono Law Ontario; or
- (b) the lawyer has or, while providing the short-term limited legal services, obtains confidential information relevant to a matter involving a current or former client of the lawyer, the lawyer’s firm or Pro Bono Law Ontario whose interests are adverse to those of the *pro bono* client.

(17) A lawyer who is a partner, an associate, an employee or an employer of a lawyer providing short-term limited legal services to a *pro bono* client may act for other clients of the law firm whose interests are adverse to the *pro bono* client so long as adequate and timely measures are in place to ensure that no disclosure of the *pro bono* client’s confidential information is made to the lawyer acting for the other clients.

(18) A lawyer who is unable to provide short-term limited legal services to a *pro bono* client because of the operation of subrule (16) (a) or (b) shall cease to provide short term limited legal services to the *pro bono* client as soon as the lawyer actually becomes aware of the adverse interest or as soon as he or she has or obtains the confidential information referred to in subrule (16) and the lawyer shall not seek the *pro bono* client’s waiver of the conflict.

(19) In providing short-term limited legal services, a lawyer shall

- (a) ensure, before providing the legal services, that the appropriate disclosure of the nature of the legal services has been made to the client; and
- (b) determine whether the client may require additional legal services beyond the short-term limited legal services and if additional services are required or advisable, encourage the client to seek further legal assistance.

Commentary

Short-term limited legal service programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of Pro Bono Law Ontario (PBLO) and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the *pro bono* services described in subrule (15) are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided. The time required to screen for conflicts may mean that qualifying individuals for whom these brief legal services are available are denied access to legal assistance.

Subrules (15) to (19) apply in circumstances in which the limited nature of the legal services being provided by a lawyer significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for a client receiving short-term limited legal services only if the lawyer has actual knowledge of a conflict of interest between the *pro bono* client and an existing or former client of the lawyer, the lawyer's firm or PBLO. For example, a conflict of interest of which the lawyer has no actual knowledge but which is imputed to the lawyer because of the lawyer's membership in or association or employment with a firm would not preclude the lawyer from representing the client seeking short-term limited legal services.

The lawyer's knowledge would be based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of the consultation and in the client's application to PBLO for legal assistance.

The personal disqualification of a lawyer participating in PBLO's program does not create a conflict for the other lawyers participating in the program, as the conflict is not imputed to them.

Confidential information obtained by a lawyer representing a *pro bono* client, as defined in subrule (15), will not be imputed to the lawyer's licensee partners, associates and employees or non-licensee partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the *pro bono* client who is obtaining or has obtained short-term limited legal services, and may act in future for another client adverse in interest to the *pro bono* client who is obtaining or has obtained short-term limited legal services.

Appropriate screening measures must be in place to prevent disclosure of confidential information relating to the client to the lawyer's partners, associates, employees or employer (in the practice of law). Subrule (17) extends, with necessary modifications, the rules and guidelines about conflicts arising from a lawyer transfer between law firms (rule 2.05) to the situation of a law firm acting against a current client of the firm in providing short term limited legal services. Measures that the lawyer providing the short-term limited legal services should take to ensure the confidentiality of information of the client's information include:

- having no involvement in the representation of or any discussions with others in the firm about another client whose interests conflict with those of the *pro bono* client;
- identifying relevant files, if any, of the *pro bono* client and physically segregating access to them to those working on the file or who require access for specifically identified or approved reasons; and

- ensuring that the firm has distributed a written policy to all licensees, non-licensee partners and associates and support staff, explaining the screening measures that are in place.

Subrule (18) precludes a lawyer from obtaining a waiver in respect of conflicts of interest that arise in providing short-term limited legal services.

APPENDIX 1

EXCERPTS FROM REPORT TO JANUARY 28, 2010 CONVOCATION

CONFLICTS OF INTEREST STANDARD FOR COUNSEL IN PRO BONO LAW ONTARIO'S "BRIEF SERVICES" PROGRAMS

Motion

7. That Convocation approve

- (a) the policy for a new rule in the *Rules of Professional Conduct* that modifies the standard for conflicts of interest for lawyers participating in Pro Bono Law Ontario's court-based brief services programs by permitting a lawyer to provide brief services to a person within such programs unless the lawyer knows of a conflict of interest that would prevent him or her from acting, and
- (b) the draft of the new rule for review by the Law Society's Rules drafter.

PROPOSED DRAFT SUBRULE AND COMMENTARY ON CONFLICTS OF INTEREST FOR LAWYERS PROVIDING SHORT TERM LIMITED LEGAL SERVICES THROUGH PBLO

2.04 (X1) In this subrule, "short-term limited legal services" means *pro bono* summary legal services provided by a lawyer to a client through [OR "under the auspices of"] Pro Bono Law Ontario's Law Help Ontario program for matters in the Superior Court of Ontario and Small Claims Court, with the expectation by the lawyer and the client that the lawyer will not provide continuing legal representation in the matter.

(X2) A lawyer shall not act for a client in providing short-term limited legal services if the lawyer:

- (a) knows or becomes aware of a conflict of interest between the lawyer's client and another client of the lawyer, the lawyer's firm or Pro Bono Law Ontario; or
- (b) has or obtains confidential information relevant to a matter involving a current or former client whose interests are adverse to those of the client of the lawyer, the lawyer's firm or Pro Bono Law Ontario.

(X3) A lawyer who is a partner, an associate, an employee or an employer of a lawyer providing short-term limited legal services to a client may act for other clients of the law firm whose interests are adverse to the client receiving short-term limited legal services, provided that adequate and timely measures are in place to ensure that no disclosure of the client's confidential information is made to the lawyer acting for the other clients.

(X4) Where a lawyer knows or becomes aware of a conflict pursuant to this sub-rule, the lawyer shall not seek the client's waiver of the conflict.

(X5) In providing short-term limited legal services to a client, the lawyer shall:

- (a) prior to providing the legal services, ensure that the appropriate disclosure of the nature of the legal services has been made to the client;
- (b) determine whether the client may require additional legal services beyond the short-term limited legal services; and
- (c) in the event that such additional services are required or advisable, encourage the client to seek further legal assistance.

Commentary

Short-term limited legal service programs are usually offered in circumstances in which it may be difficult to systematically screen for conflicts of interest in a timely way, despite the best efforts and existing practices and procedures of Pro Bono Law Ontario (PBLO) and the lawyers and law firms who provide these services. Performing a full conflicts screening in circumstances in which the *pro bono* services described in the subrule are being offered can be very challenging given the timelines, volume and logistics of the setting in which the services are provided. The time required to screen for conflicts may mean that qualifying individuals for whom these brief legal services are available are denied access to legal assistance.

This subrule applies in circumstances in which the limited nature of the legal services being provided significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm. Accordingly, the lawyer is disqualified from acting for the client receiving short-term limited legal services only if the lawyer has actual knowledge of a conflict of interest between the client and an existing or former client of the lawyer, the lawyer's firm or PBLO. For example, a conflict of interest of which the lawyer has no actual knowledge but which is imputed to the lawyer because of the lawyer's membership in or association or employment with a firm would not preclude the lawyer from representing the client seeking short-term limited legal services.

The lawyer's knowledge would be based on the lawyer's reasonable recollection and information provided by the client in the ordinary course of the consultation and in the client's application to PBLO for legal assistance.

The personal disqualification of a lawyer participating in PBLO's program does not create a conflict for the other lawyers participating in the program, as the conflict is not imputed to them.

Confidential information obtained by the lawyer representing the client who is receiving short-term limited legal services will not be imputed to the lawyer's licensee partners, associates and employees or non-licensee partners or associates in a multi-discipline partnership. As such, these individuals may continue to act for another client adverse in interest to the client who is obtaining or has obtained short-term limited legal services, and may act in future for another client adverse in interest to the client who is obtaining or has obtained short-term limited legal services.

Appropriate screening measures must be in place to prevent disclosure of confidential information relating to the client to the lawyer's partners, associates, employees or employer (in the practice of law). Subrule (X3) extends with necessary modifications the rules and guidelines about conflicts arising from a lawyer transfer between law firms (rule 2.05) to the situation of a law firm acting against a current client of the firm in providing short term limited legal services. Measures that the lawyer providing the short-term limited legal services should take to ensure the confidentiality of information of the client's information include:

- having no involvement in the representation of or any discussions with others in the firm about another client whose interests conflict with those of the client who is receiving or has received short-term limited legal services;
- identifying relevant files, if any, of the client who is receiving or has received short-term limited legal services and physically segregating access to them to those working on the file or who require access for specifically identified or approved reasons; and
- ensuring that the firm has distributed a written policy to all licensees, non-licensee partners and associates and support staff, explaining the screening measures that are in place.

ANNUAL REPORT OF THE COMPLAINTS RESOLUTION COMMISSIONER

7. Part I of By-Law 11, which governs the office of the Complaints Resolution Commissioner, requires that the Complaints Review Commissioner ("the Commissioner") submit an annual report to the Committee. The Committee must then provide the report to Convocation. The relevant section of the By-Law reads:

Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.
8. The report of the Commissioner, Clare Lewis, appears on the following pages.
 9. Mr. Lewis, who finished his term as the Commissioner on March 31, 2010, attended the Committee's February 19, 2010 meeting to discuss the report. The Committee thanks Mr. Lewis, who was appointed in 2005 and served as the first Commissioner, for his outstanding contribution and dedication to this office.

Annual Report of the Complaints
Resolution Commissioner

January 1, 2009 – December 31, 2009

Prepared by Clare Lewis
Complaints Resolution Commissioner

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APPENDICES

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2	By-Law 11
3	By- Law 20
4	Information Sheet

Annual Report 2009

A. Introduction

Appointment of the Complaints Resolution Commissioner

On April 1, 2005, Mr. Clare Lewis Q.C. became the first Complaints Resolution Commissioner for the Law Society of Upper Canada. He was so appointed by Convocation, pursuant to sections 49.14 through 49.19 of the Law Society Act (the Act).¹ The relevant provisions of the Act are attached at Appendix 1.

Mr. Lewis' first term was for a two-year period, which appointment was subsequently renewed for a further three-year term. In late 2008, Mr. Lewis informed the Law Society that he would not be seeking reappointment at the end of his term on March 31, 2010. Convocation during its December 4, 2009 meeting announced the appointment of Mr. Stindar K. Lal Q.C. as the Law Society's new Complaints Resolution Commissioner. Mr. Lal's two year term will begin on April 1, 2010.

Role of the Complaints Resolution Commissioner

In cases in which a complaint against a lawyer or paralegal has been closed by the Law Society staff following an investigation into the merits of the complaint and the complainant is dissatisfied with the Society's decision to close the complaint file, the complainant may request that the Complaints Resolution Commissioner conduct an independent review of the Law Society's decision. The Commissioner's function is similar to that of an ombudsman in that the Commissioner is empowered to make recommendations for further action.

The office of the Complaints Resolution Commissioner provides the public with a mechanism for an independent and impartial review of their complaints. Complainants are given the opportunity to voice their concerns directly to the Commissioner and to highlight issues that are of particular importance to them, ensuring transparency and fairness in the public complaints process.

Typically, the review process will include an in person meeting with the Commissioner, providing the complainant with an opportunity to make oral submissions to the Commissioner, along with a thorough examination of the documentary evidence.

Part I of By-Law 11² describes the permissible functions of the Complaints Resolution Commissioner with respect to the review and resolution of complaints. It also sets out the responsibilities of the Complaint Resolution Commissioner's office. Part I of By-Law is attached as Appendix 2.

¹ In accordance with O.Reg 31/99

² By-Law 11 was made May 1, 2007, and amended June 28, 2007

Standard of Review

The legislation requires that the Commissioner apply a “reasonableness standard” of review which accords a degree of deference to the decision made by Law Society staff. After reviewing the Law Society’s consideration of a complaint and the Society’s resulting decision to take no further action in respect of the complaint, if the Complaints Resolution Commissioner is satisfied that the Law Society’s consideration and decision was reasonable, the Commissioner will so notify the complainant and the Society. The Act provides that the Commissioner’s decision is final and not subject to appeal. If the Commissioner is not satisfied that the Law Society’s decision to close the file was reasonable, the Commissioner is required to refer the complaint back to the Law Society with a recommendation that further action be taken. The Complainant is notified of the Commissioner’s decision, in writing, within several weeks of the review meeting.

Although the Director, Professional Regulation is not required to accept the Commissioner’s recommendation, if the recommendation is not accepted, the Director is required to notify the Commissioner and the Complainant in writing of the reasons for declining.

The subject licensee is notified of the Commissioner’s decision by the Law Society’s investigating department.

Prior to the creation of the position of Complaints Resolution Commissioner, reviews were performed by Lay Benchers functioning as Complaints Review Commissioners, in accordance with By-Law 20³. The review function performed by the previous Commissioners was very similar to the review function performed by the current Commissioner, with one notable exception. In the old regime, the standard of review used by the Commissioners was one of “appropriateness” while By-Law 11⁴ imposes a standard of “reasonableness”. A copy of the revoked By-Law 20 is attached as Appendix 3, for comparison purposes.

Annual Report

By-Law 11 requires that the Complaints Resolution Commissioner prepare an annual report. In particular, section 3 provides as follows:

Annual Report

3. Not later than March 31 in each year, the Commissioner shall submit to the standing committee of Convocation responsible for professional regulation matters a report upon the affairs of the Office of the Commissioner during the immediately preceding year, and the committee shall lay the report before Convocation not later than at its regular meeting in June.

Mr. Lewis, in his role as Complaints Resolution Commissioner, submitted his first annual report to the standing committee of Convocation (Professional Regulation Committee) in March 2006. The Report provided a comparison of the statistical data gathered during the last quarter of the

³ By-Law 20 was revoked on December 9, 2005 and replaced with a new unrelated By-Law.

⁴ The standard of review is set out in By-Law 11, section 7

Lay Benchers' activities and the statistical information compiled by the office of the Complaints Resolution Commissioner for the period April 1, 2005 through December 31, 2005. The 2006, 2007 and 2008 Annual Reports were submitted to the standing committee in February of 2007, March of 2008 and February 2009, respectively and the Committee laid these Reports before Convocation in June of the year in which they were submitted.

This is the Annual Report for 2009. Included in this report is statistical information collected during the 2006, 2007, 2008 and 2009 calendar years, and in certain instances, data collected in 2005 will also be reflected, for comparison purposes. This will be the last annual report to be submitted by the current Complaints Resolution Commissioner, Mr. Clare Lewis, to Convocation.

Composition of the Office

In 2009, the Commissioner's office was comprised of the Complaints Resolution Commissioner who performs his duties on a part-time basis, two part-time Counsel and a Complaints Resolution Coordinator. Although the office was initially established with one part-time Counsel, in order to meet the growing demand for reviews, a second Counsel was hired in early 2008.

B. The Review Function

By-Law 11 provides the Complaints Resolution Commissioner with two distinct functions. In addition to the review role, the Commissioner has the authority in certain circumstances to perform a formal complaint resolution function. To date, the Commissioner has only exercised his review function.

A request for review by the Complaints Resolution Commissioner is initiated when staff of either the Complaints Resolution or Investigation departments close a complaint file. The closure by staff from either of these two departments triggers the complainant's automatic right to request a review of the Law Society's decision. Accordingly, every Law Society closing letter, sent out at the conclusion of the Society's investigation into the merits of the complaint, contains an Information Sheet explaining both the role of the Complaints Resolution Commissioner and the process to be followed when seeking a review. The Information Sheet is attached as Appendix 4.

On receipt of a request for review, the Coordinator of the Commissioner's office sends the complainant a letter of confirmation. The Coordinator notifies the investigator of the request and the Professional Regulation Division then provides written notice of the request for review to the subject licensee.

The investigator, on being advised of the request, is responsible for preparing the materials for the review. Although the Commissioner is provided with the entire Law Society file, the investigator prepares a bound copy of all relevant materials, referred to as the Complaints Review Index, for use at the review meeting. The Complaints Review Index includes the Law Society's closing letter or report, copies of all materials submitted by the complainant and either the licensee's written response or a synopsis of the response.

When the Complaints Review Index is completed, it is reviewed by the office of the Director, Professional Regulation and then delivered to the Coordinator for distribution. The Coordinator, in consultation with the complainant, schedules the date for the review meeting, sends a letter to the complainant confirming the date and encloses a copy of the Complaints Review Index for the complainant's use at the meeting. The Commissioner and Counsel also receive a copy of the bound materials, in advance of the meeting.

Documents that fall within the confidentiality provisions of s. 49.12⁵ of the Law Society Act are also bound and provided to the Complaints Resolution Commissioner and Counsel. The type of information considered confidential includes:

1. Personal information about the licensee
2. Evidence from third parties which is protected by confidentiality or solicitor-client privilege
3. Solicitor-client information, when the Complainant is not the client or the information is in respect of other clients

Reviewable Complaints

Section 4(1) of By-Law 11 identifies which complaints the Complaints Resolution Commissioner may review. A review is only available when,

- (a) the merits of the complaint have been considered by the Law Society;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
- (c) the complaint has not been previously reviewed by the Commissioner; and
- (d) the Law Society has notified the complainant that it will be taking no further action in respect of the complaint.

Section 4 (2) provides that a complaint may not be reviewed by the Complaints Resolution Commissioner if, in the opinion of the Commissioner, it concerns only the quantum of fees or disbursements charged by a licensee, a licensee's filing requirements, the handling of money and other property or negligence of a licensee.

Since Section 4 of By-Law 11, provides that a review is only available when the merits of a complaint have been considered by the Society, section 4(1) has been interpreted to mean that the Commissioner can only review those files that have been investigated under the investigation authority set out in section 49.3 of the Act and an investigation into the merits of the complaint have been conducted. This means that generally complaints referred to the Complaints Resolution or Investigations departments are reviewable by the Commissioner, but the Commissioner does not have the authority to review those cases closed earlier in the process, for example, cases closed by Complaints Services or the Intake department because of the Law Society's lack of jurisdiction to act on the complaint.

⁵ 49.12 (1) A benchers, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part

In late 2005, when it became apparent that a process for reviewing complaints closed by the Intake department was needed, an alternate process for reviewing complaints closed without an investigation was established.

When the Commissioner receives a request for review of a complaint closed by the Intake department, the complainant is advised that the Commissioner does not have the jurisdiction to review the matter and the complaint is referred back to the Intake department for a further response. The Intake Manager reviews the file. If the Manager believes that the file should remain closed and the Complainant remains dissatisfied, the Director, Professional Regulation, reviews the file. A similar review process is used for complaints closed by Complaints Services in the Client Service Centre.

In 2007, on the recommendation of the Director, Professional Regulation, the Complaints Resolution Commissioner conducted a review of a file closed by the Intake department. The Commissioner agreed to proceed with the review after satisfying himself that the complaint had been investigated on its merits.

During the past year, a number of files closed by the Investigations department, because of concurrent litigation, were referred to the Complaints Resolution Commissioner, for review. Since the merits of the complaint had not been considered by the Law Society, the complainant in each of these cases was advised that the Commissioner did not have the jurisdiction to conduct a review of the complaint file. In each of these instances, the complainant's request for review was brought to the attention of the Director, Professional Regulation.

The Review Meeting

Most reviews include in-person meetings between the Commissioner and the complainant. Counsel to the Commissioner also attends to advise the Commissioner and to take notes of the proceedings. The complainant is occasionally accompanied by legal counsel, a friend or a family member. Pursuant to Section 8(4) of By-Law 11, the lawyer who is the subject of the complaint is not entitled to participate in the process.

Complaint review meetings, unless conducted out of town, are held at Osgoode Hall. This provides the Commissioner with access to a variety of administrative services, including assistance from the Coordinator and the use of a photocopier or facsimile machine. Law Society security officers are also present at the meetings.

When the complainant is unable to attend a meeting in person, the review meeting may be conducted by teleconference. There were 44 review meetings conducted by telephone in 2009, compared to 24 in 2008. Ten of the review meetings were conducted by teleconference in 2007 and 15 in each of 2006 and 2005.

Since trips out-of-town are only conducted several times a year, the dramatic increase in the number of requests for review by teleconference may be attributable to the desire by complainants who reside outside of the Toronto area to have their review meetings conducted as quickly as possible. This increase may also be attributable to the increase in requests for review generally. Furthermore, when a complainant is unavailable to attend a scheduled in person meeting and is seeking to adjourn the meeting, the complainant is often encouraged to proceed by teleconference on the scheduled meeting date.

In some circumstances, for example when the complainant fails to attend without a request for an adjournment, or if the complainant is unwilling or unable to participate, the review may proceed based on the written material alone. Sixteen reviews, including those files in which the complainant agreed to attend a meeting but failed to do so, proceeded in this manner in 2009 and in 2008. Nine files were reviewed in this manner during 2007, six in 2006 and only one such review was conducted in 2005.

Although most of the meetings are held in Toronto, in December 1997, to provide greater accessibility to the process for those complainants who reside outside of the Toronto area, Convocation approved the holding of complaint review meetings in centres outside of Toronto. The Commissioner has conducted review meetings in Cambridge, Kitchener, London and Ottawa.

In 2009, seven complaint files were reviewed in London. Except for the reviews held in Toronto, there were no review meetings held in any other city. In 2008, nine files were reviewed in London and 19 complaint files were reviewed in Ottawa. In 2007, 12 review meetings were conducted in Ottawa. Although three reviews were scheduled to proceed in London during 2007, only one personal meeting took place. The second London file was returned to the investigator for further work in advance of the meeting; the third complainant failed to attend the meeting and the review proceeded on the written material. There were five review meetings held in Ottawa, in 2006. There were no meetings held in either Cambridge or Kitchener during 2008 but three reviews were performed in Cambridge in 2007.

Given the dramatic increase in the number of requests for review received over the past year, unless those complainants from areas outside of Toronto request teleconference meetings, it is anticipated that the frequency of out of town trips will also increase.

There were also a number of files reviewed during 2009, which were sent back to the Law Society following a review of the file in advance of the meeting but prior to meeting with the complainant. In four of the files scheduled for review, in preparation for the meeting, it was discovered that the Commissioner did not have the jurisdiction to conduct a review because the complaint had not been considered on its merits prior to its closing. These files were brought to the attention of the Director, Professional Regulation.

C. Review Meeting Statistics

Requests for Review

Given the dramatic increase in the number of requests for review received since the beginning of Mr. Lewis' tenure as Complaints Resolution Commissioner, the number of files reviewed each year, has also significantly increased. The steady increase in the number of requests has been attributed not only to the larger number of complaints received by the Law Society as a whole but also to an increased awareness by complainants of the Commissioner's independent review function.

In 2009, 254 requests for review were received. There were 188 requests for review in 2008 and 154 in 2007. The non-jurisdictional requests received from the Intake department have not been included in these calculations.

The following Table 1 provides a breakdown of the department that conducted the investigation from which the review was requested in 2009.

Table 1 – CRC Requests Received by Department 2009

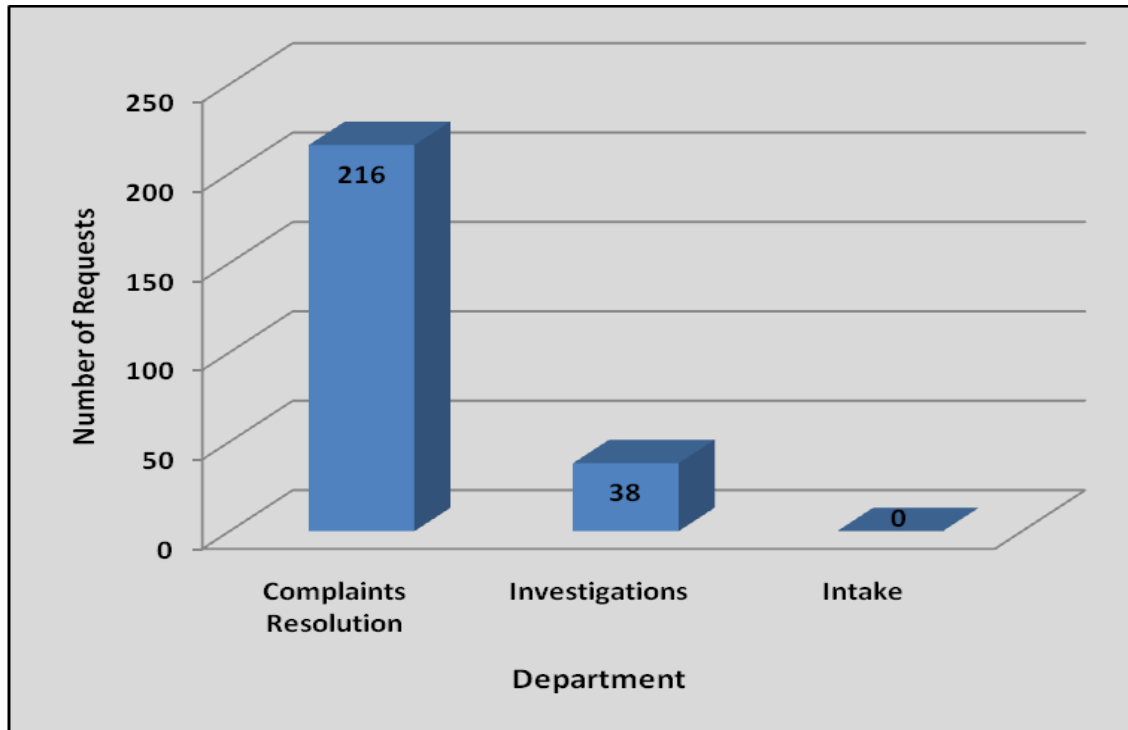
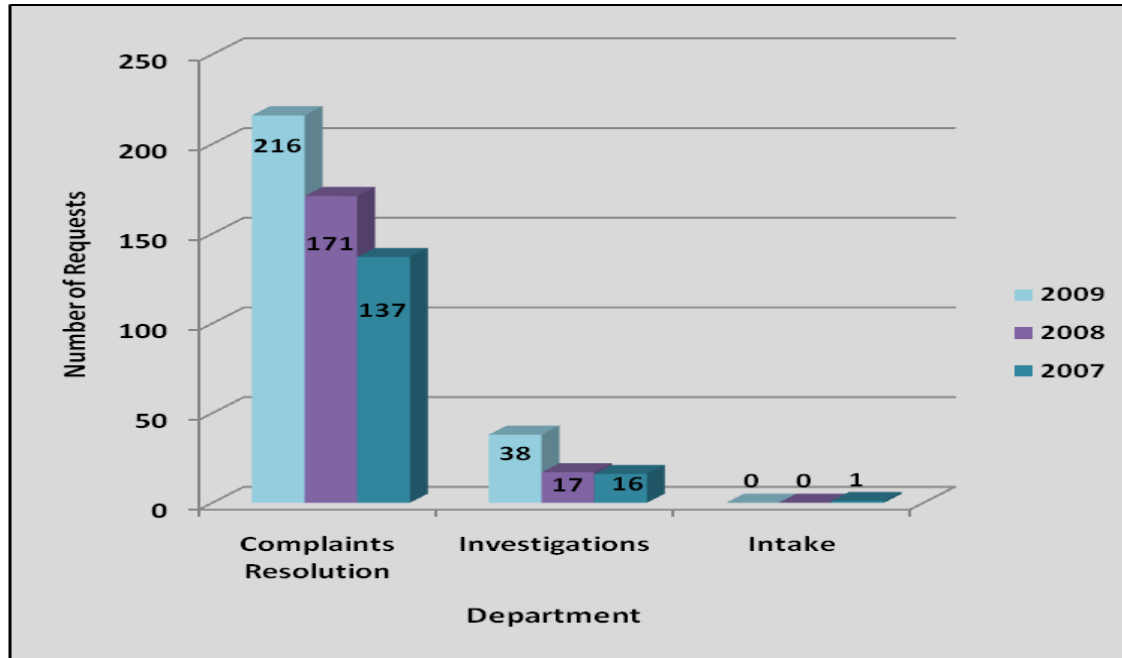


Table 2 that follows compares the increase in the number of requests for review, received from each department, over the past three years.

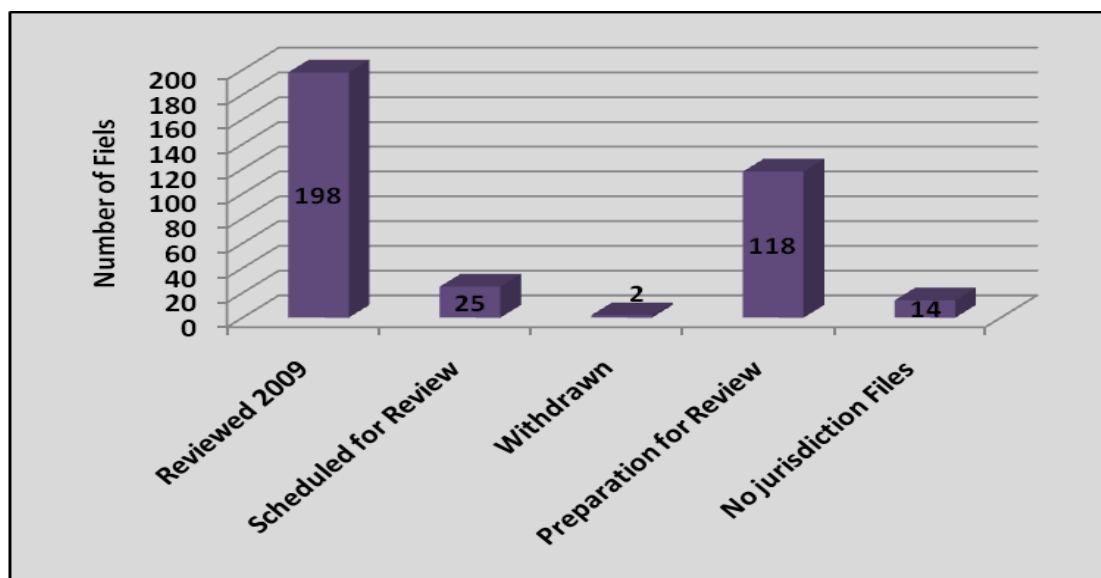
Table 2 – Comparison of Requests Received by Department 2007, 2008 & 2009



Status of Requests

Table 3 that follows provides a summary of the work flow status of all complaint files in the Commissioner's Office as of December 31, 2009. It includes the status of the files in which a request for review was received in 2008 but not reviewed until 2009 and those requests received in 2009.

Table 3 - Status of CRC Requests 2009



Although a review was conducted on 198 files in 2009, the request for review was received on 105 of the files in 2008 but the review was not conducted until 2009. From the requests for review received in 2009, 93 files were reviewed in 2009.

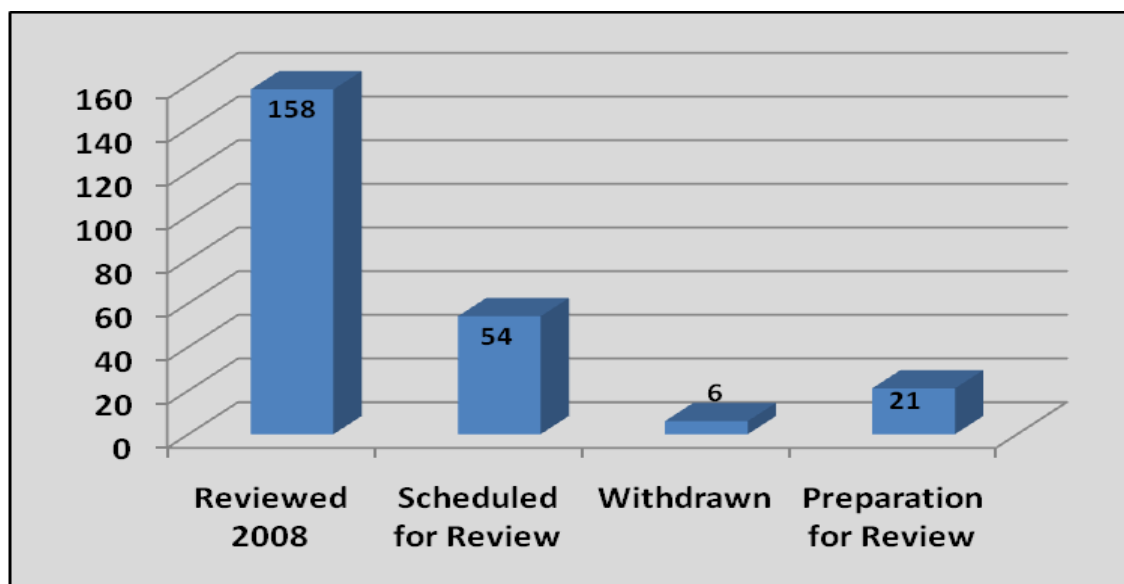
During 2009, one complaint file was withdrawn by the complainant as the complainant resolved the issue with the licensee. A second file was withdrawn and returned to the Complaints Resolution department, for further work, following a Managerial Review.

One hundred and eighteen files are still at various stages of preparation by the Law Society and 25 files have been scheduled but the review meeting will not be held until a date in 2010.

An investigation into the merits of the complaint, for a variety of reasons including concurrent litigation, was not performed on 14 files. Although a review by the Commissioner was offered by the investigator in many of the files, the Commissioner after reviewing the file, advised the complainant that he did not have the jurisdiction to review the matter and the complaint files were returned to the Investigations department.

For comparison purposes, Table 4 reflects the status of the 2008 files as at December 31, 2008.

Table 4 - Status of Requests 2008



Following receipt of the requests for review during 2008, nine files, in total, were withdrawn to allow further investigation to be performed prior to the review. The Department Manager or Counsel to the Director identified the need for further investigation during a managerial review for readiness to proceed. Of the nine files three files were returned for review because on completion of the further investigation by the Complaints Resolution department, the complainant resubmitted a request for review. Therefore, a total of 6 requests were withdrawn.

In comparison, there were 10 such withdrawals in 2007. Eight were withdrawn by the department Manager. Counsel to the Complaints Resolution Commissioner identified the need for further investigation on 2 of the files. Following discussions with the department Manager, the Manager agreed to have further work performed in advance of the review meeting. An eleventh file was withdrawn prior to the review meeting at the request of the complainant.

Number of Reviews Conducted

From January 1, 2009 to December 31, 2009, 198 files were reviewed. The Commissioner reviewed 196 of the files and Senior Counsel reviewed two of the files, as the Commissioner's Delegate, pursuant to Section 49.16 of the Act. Section 49.16 provides, in part, that the Commissioner may in writing delegate any of his powers or duties to members of his staff. The Commissioner, identifying a potential conflict, delegated his functions in relation to these two files, to the Commissioner's Counsel. The Complaints Resolution Commissioner also delegated two files to Counsel, in 2008.

The significant increase in the number of files reviewed over the past several years is illustrated by the statistics that follow. In 2009, 198 files were reviewed, 158 were reviewed in 2008, 108 in 2007 and 79 files were reviewed in 2006. The additional 40 files reviewed from 2008 to 2009, represents a 26% increase in the number of files reviewed over a one year period.

Department that Conducted the Investigation

Table 5 that follows identifies the department that conducted the investigation of the files reviewed in 2009.

Table 5 – CRC Reviews Conducted in 2009 by Department

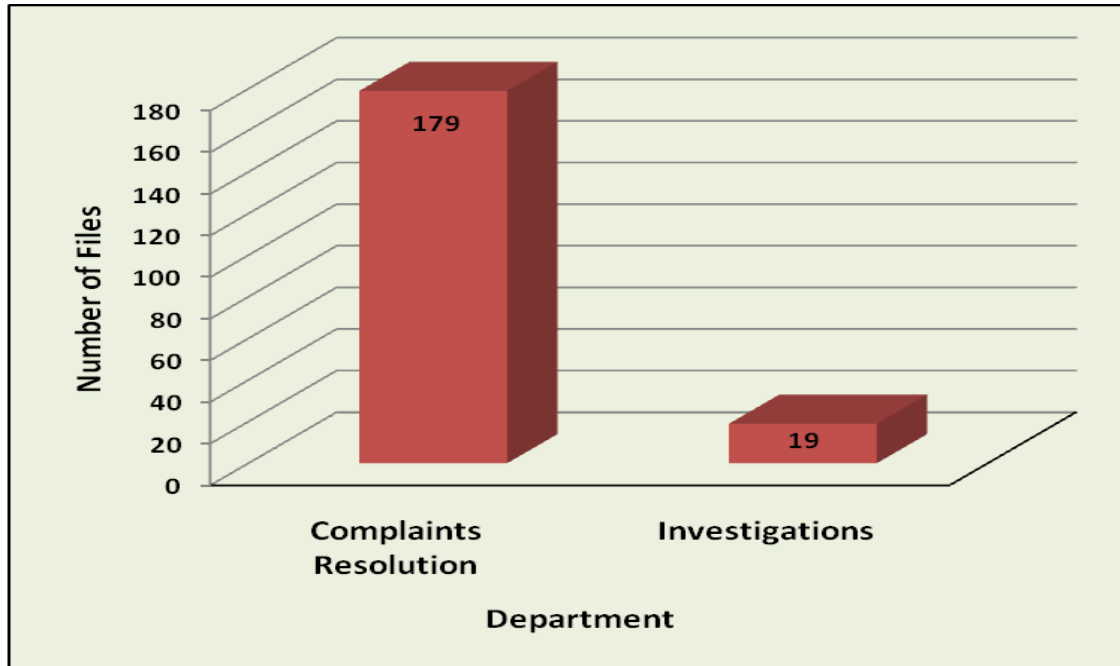
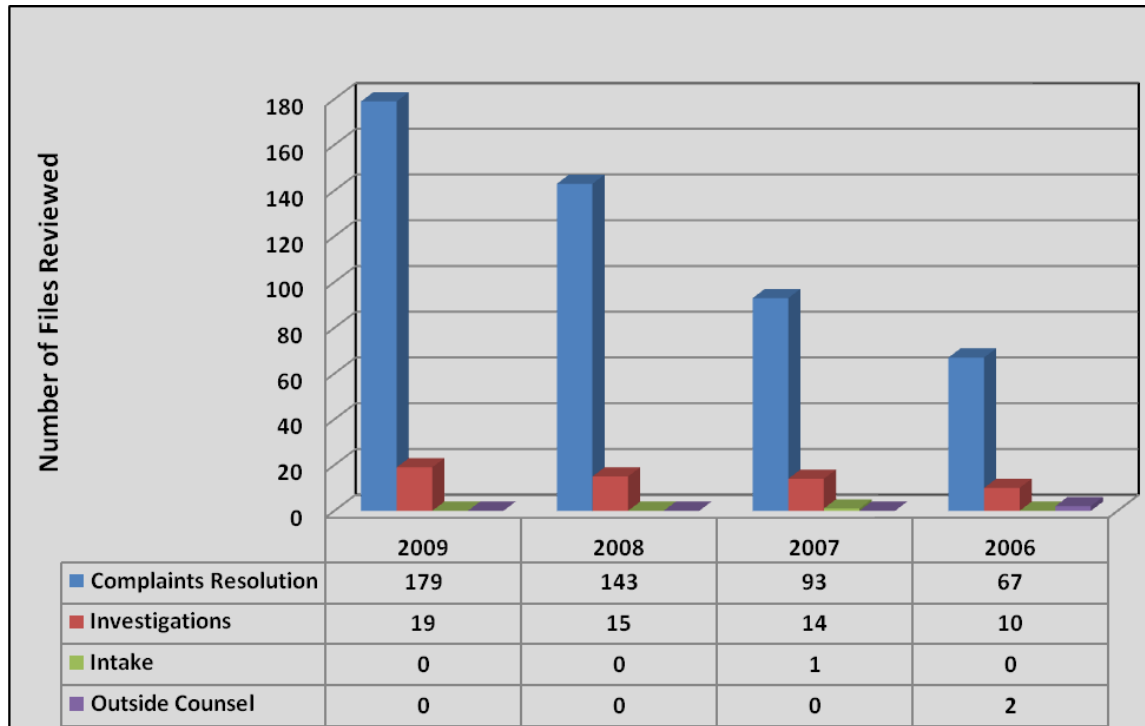


Table 6 that follows provides a comparison of the number of files received from each department and reviewed by the Commissioner during 2009, 2008, 2007 and 2006.

Table 6 – CRC Reviews Conducted 2009, 2008, 2007 & 2006 by Department



As table 6 demonstrates, from the 198 files reviewed in 2009, 179 (90.40%) were investigated by the Complaints Resolution department and 19 (9.60%) of the files were investigated by the Investigations department.

In 2008, from the 158 files reviewed, 143 (90.51%) were investigated by the Complaints Resolution department and 15 (9.49%) of the files were investigated by the Investigations department.

In 2007, 93 of the files (86%) reviewed by the Commissioner were investigated by the Complaints Resolution department, 14 (approximately 13%) were from the Investigations department and one (less than 1%) was investigated by the Intake department.

In 2006, of the 79 files reviewed, 67 (approximately 85%) were from the Complaints Resolution department, 10 (approximately 13%) were from Investigations and two (less than 2%) had been investigated by outside counsel.

Predominant Issues in the Cases Reviewed

In cases investigated by the Law Society, the Society identifies the issues raised in the complaint file. Relying on the Law Society's categorization, Tables 6, 7, 8 and 9 that follow identify the predominant Issue identified in each of the files reviewed in 2009, 2008, 2007 and

2006, respectively. For the purpose of preparing the following tables, when the complaint raises both service issues and issues of integrity, the integrity issue may be included in the service issues category.

Table 6 - Predominant Issues identified in each of the 2009 files reviewed

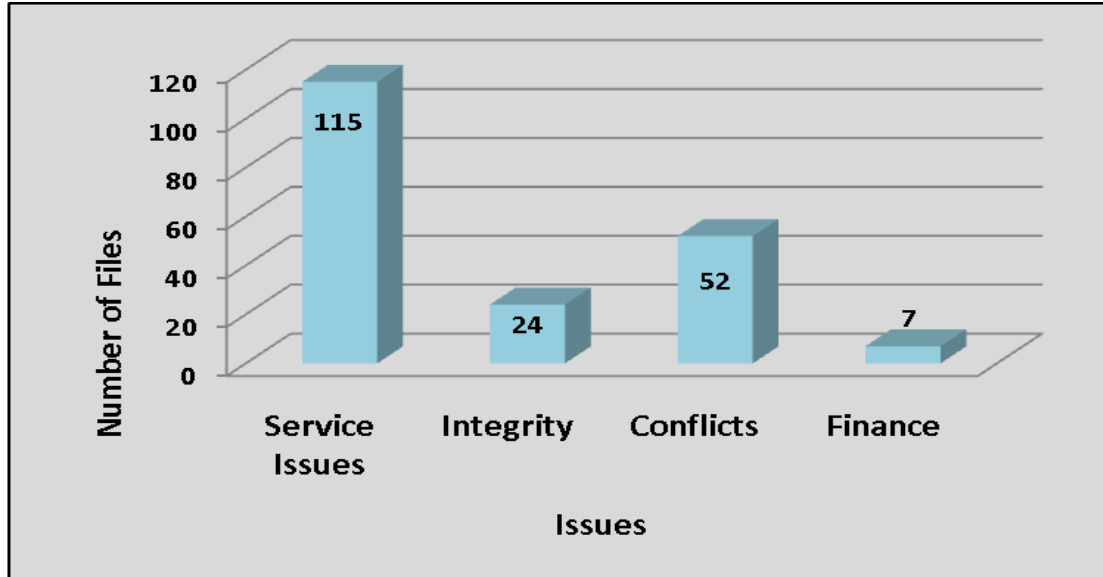


Table 7 – Predominant Issue identified in each of the 2008 files reviewed

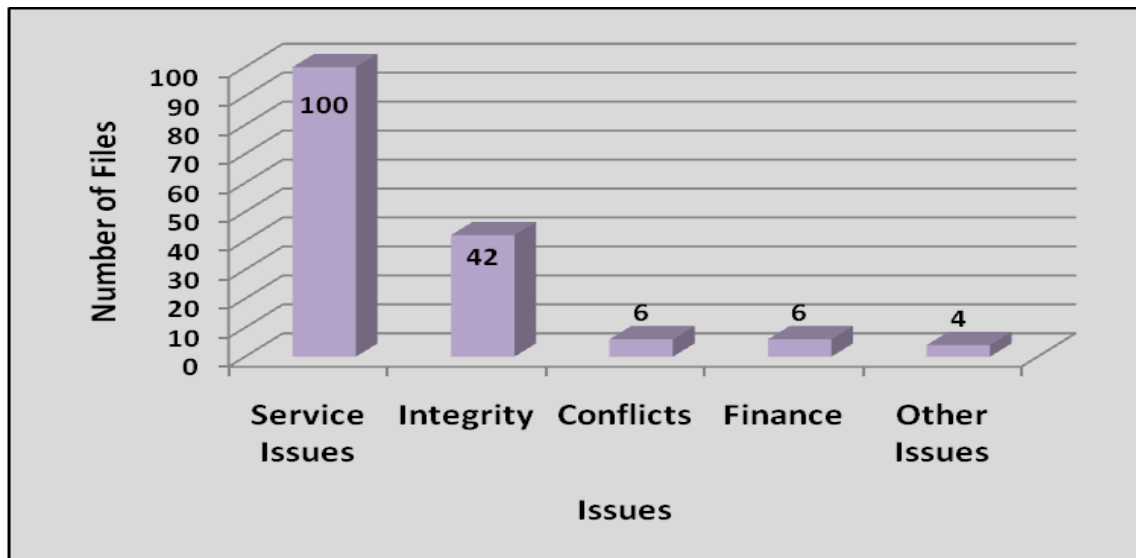


Table 8 - Predominant Issues identified in each of the 2007 files reviewed

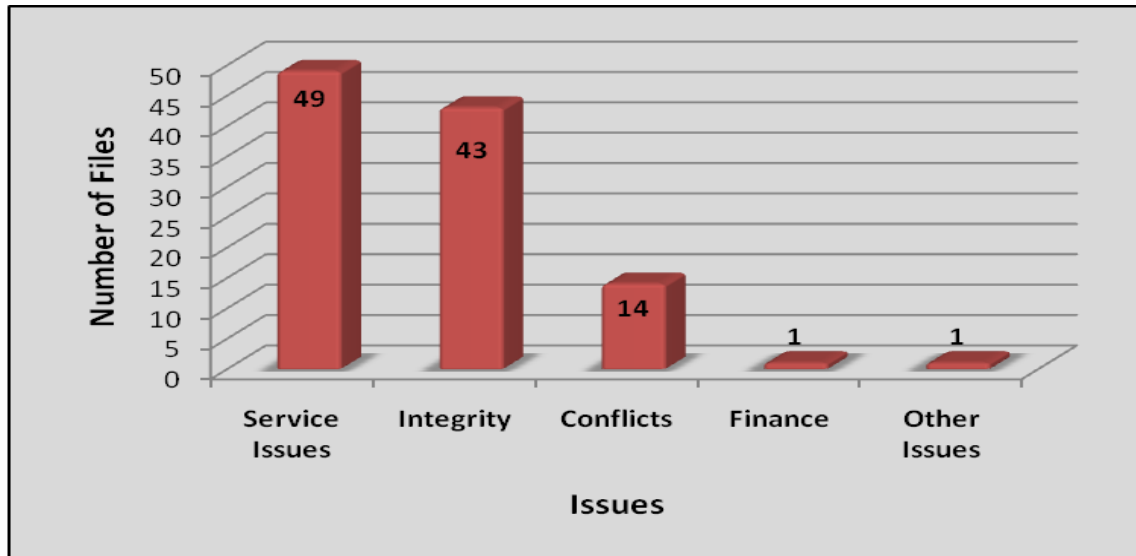


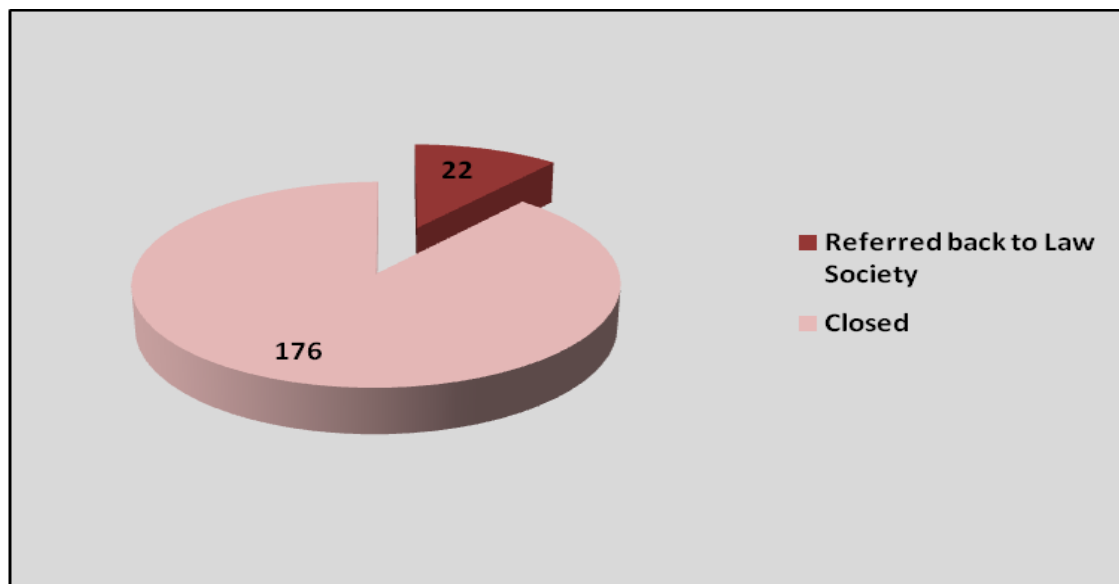
Table 9 - Predominant Issue identified in each of the 2006 files reviewed



Review Results

Figure 1 (1), that follows, depicts the dispositions rendered following all reviews conducted in 2009.

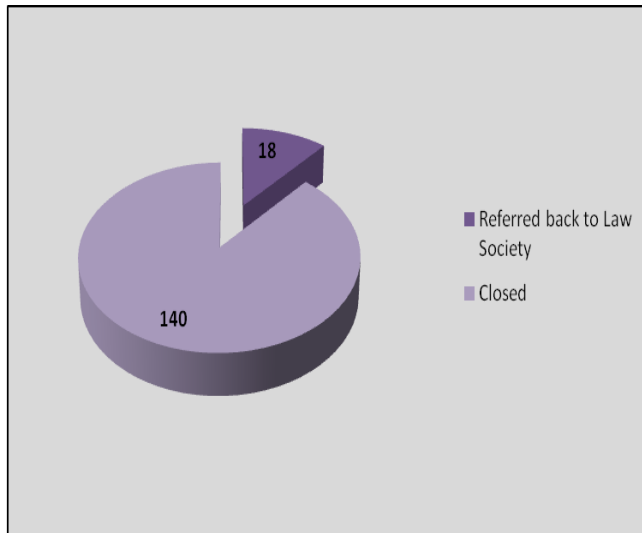
Figure 1 (1) Review Results 2009



As shown in Figure 1 (1), the review results indicate that in 2009, among the 198 complaint files reviewed, 22 files were referred back to the Law Society, representing approximately 11% of the total files reviewed in 2009. Twenty of the 22 files were from the Complaints Resolution department and two of the files were from the Investigations department.

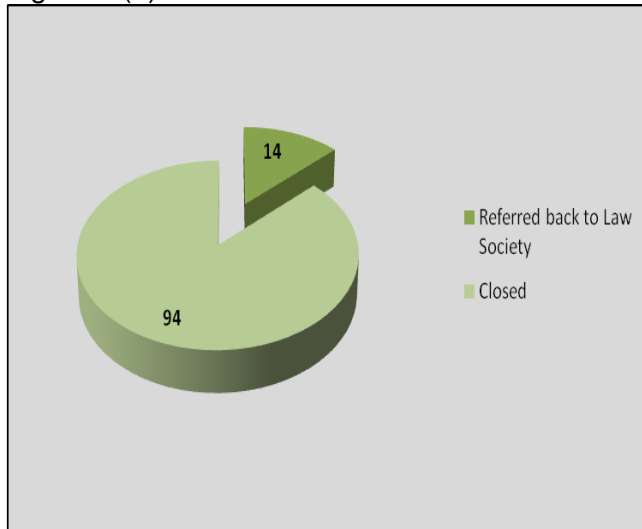
Figures 1(2), 1(3), 1(4), 1(5) and 1(6) that follow, depict the dispositions achieved in 2008, 2007, 2006 and 2005 files, respectively. This information is provided for comparison purposes only.

Figure 1 (2) - Review Results 2008



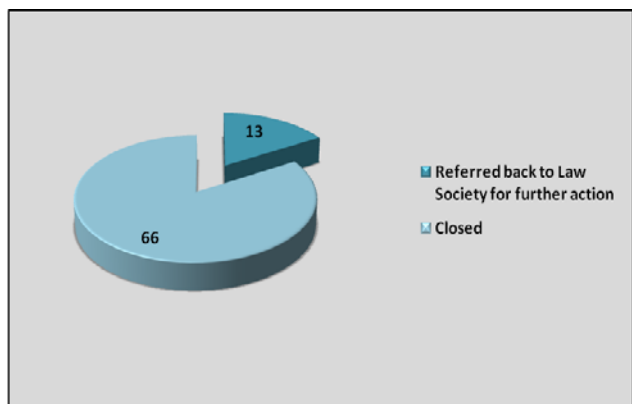
The 2008 review results, depicted in figure 1(2), indicate that in 2008 a total of 18 complaint files, representing approximately 11% of the files reviewed, were sent back to the Law Society with a recommendation for further action. Fourteen of the 18 files were from the Complaints Resolution department and four cases were from the Investigations department.

Figure 1 (3) - Review Results 2007



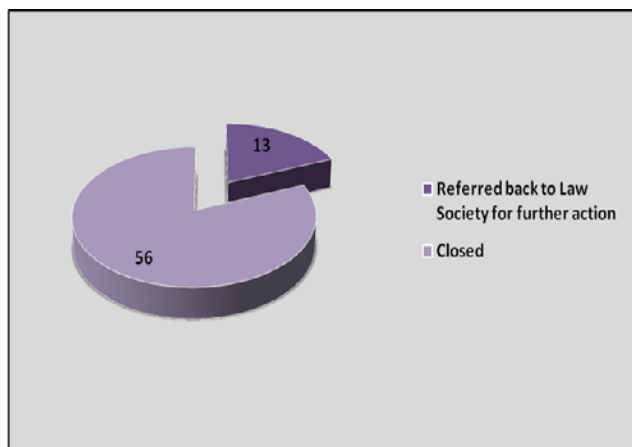
The 2007 review results, depicted in figure 1(3), indicate that in 2007 14 complaints, approximately 13% of the files reviewed, were referred back for further action. Twelve of the 14 files were from the Complaints Resolution department and two cases were from the Investigations department. This statistical data does not include the 2 files that were taken back by the investigating department at the suggestion of Counsel to the Complaints Resolution Commissioner prior to the review meeting.

Figure 1 (4) – Review Results 2006



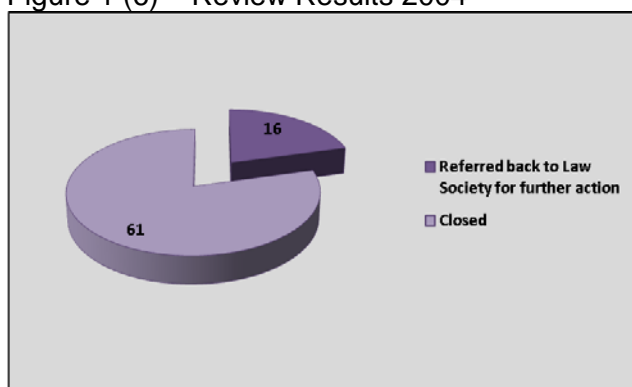
The 2006 review results, depicted in figure 1(4), indicate that in 2006 a total of 13 complaints, representing 16.45% of the files reviewed were referred back for further action. Nine of the 13 files were from the Complaints Resolution department, three cases were from the Investigations department and Outside Counsel investigated one of the files.

Figure 1(5) - Review Results 2005



As depicted in Figure 1 (5), in 2005, 13 or 18.84% of the files reviewed were referred back for further action. Of the 13 files referred back in 2005, the former Complaints Review Commissioners made 5 of the referrals and eight were made by Clare Lewis as the Complaints Resolution Commissioner. The Complaints Review Commissioners' standard of review was, as indicated earlier, "appropriateness" as opposed to the current standard, which is "reasonableness".

Figure 1 (6) – Review Results 2004

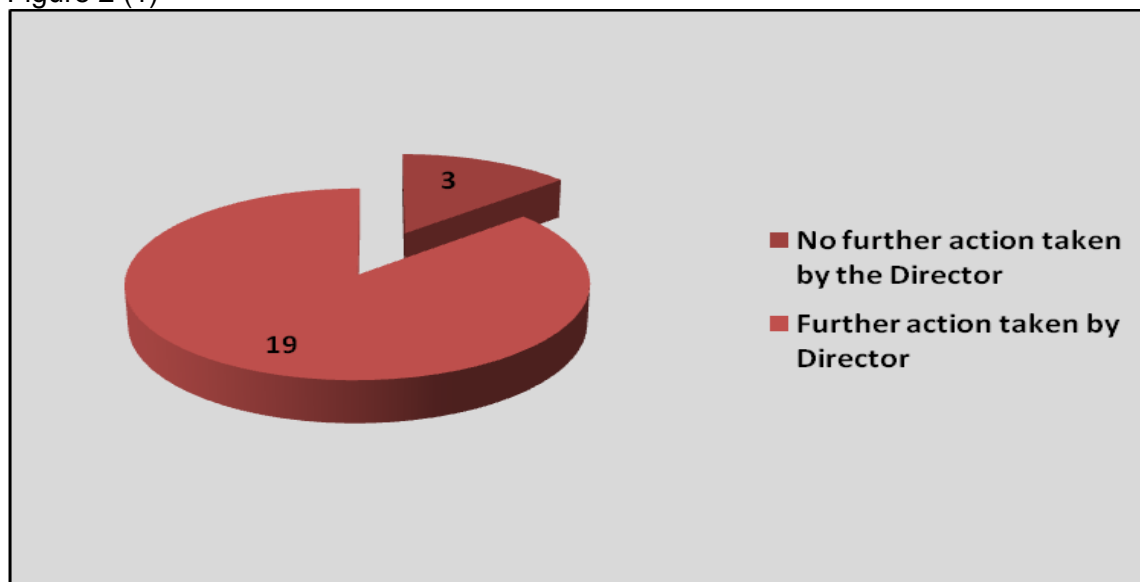


In 2004, using the "appropriateness" standard of review, 16 or 20.77% of the files reviewed by the Complaints Review Commissioners were referred back for further action.

Status of Files Referred Back

Figure 2 (1) that follows, reflects the Law Society's response to the 22 files that the Complaints Resolution Commissioner referred back to the Law Society for further action in 2009, in accordance with By-Law 11 section 7.

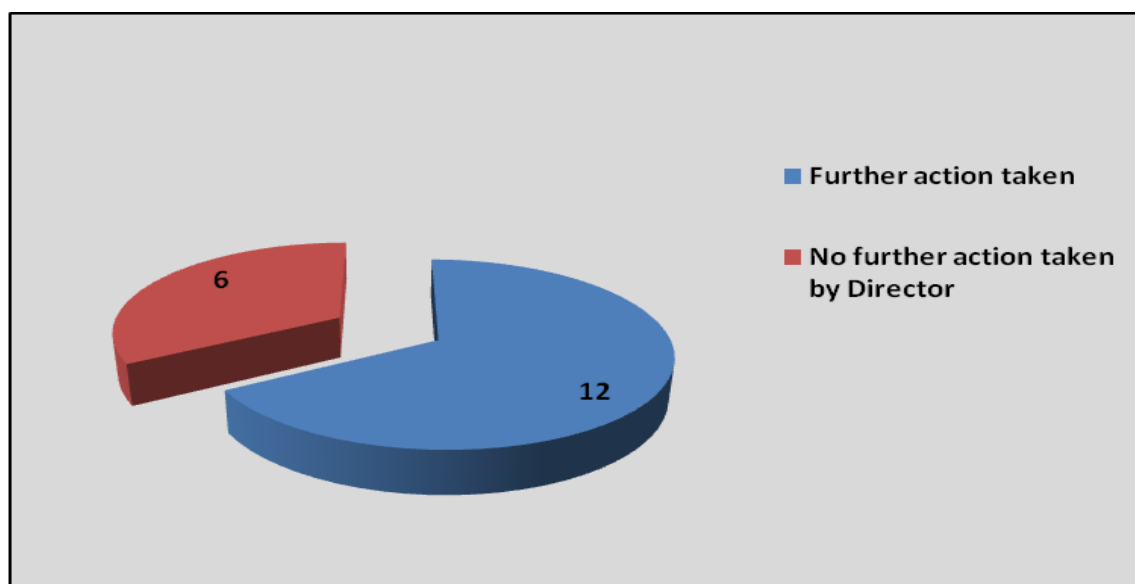
Figure 2 (1)



From 22 files referred back to the Law Society, the Commissioner found the Law Society's decision, on 18 of the files, to be unreasonable. Specific recommendations for further action were made by the Commissioner in each of these cases. The Director, Professional Regulation declined the recommendation on two of the files referred back and no further action was taken by the Law Society. Although the specific recommendation was not accepted on a third file, the Director, Professional Regulation did take further action on the file.

With respect to four of the files referred back to the Law Society, although the Complaints Resolution Commissioner found the Law Society's investigation into these complaints and the resulting decisions to take no further action reasonable, the Commissioner nonetheless referred these files back to the Law Society for a variety of reasons. One of the files was referred back to the attention of the Director, Professional Regulation, identifying the Commissioner's concerns regarding the licensee's practice. On the second file, the Commissioner recommended that the Law Society assist the complainant in retrieving money owing to him which the licensee undertook to return to the complainant but failed to do. On the third file, the Commissioner brought his concern regarding a provision in the Rules of Professional Conduct to the Director's attention. On the fourth file, although the Law Society's decision was reasonable based on the material available during the course of the investigation, since closing the file, new information was received from the complainant, raising ongoing concerns regarding the licensee's professional conduct.

Figure 2 (2) Referral Back Results 2008



Although the Director did not take any further regulatory action on six of the files referred back, on two of the files the Director addressed a concern identified by the Commissioner in a manner which differed from the specific recommendation. For example, rather than take further regulatory steps, the Director recommended a referral to Practice Review on one file and on another file the lawyer was referred to Practice Audits to consider the appropriateness of a spot audit.

Figure 2(3) that follows sets out the Law Society's response to the 14 files that the Commissioner referred back to the Law Society in 2007.

Figure 2(3) - Referred Back Results 2007

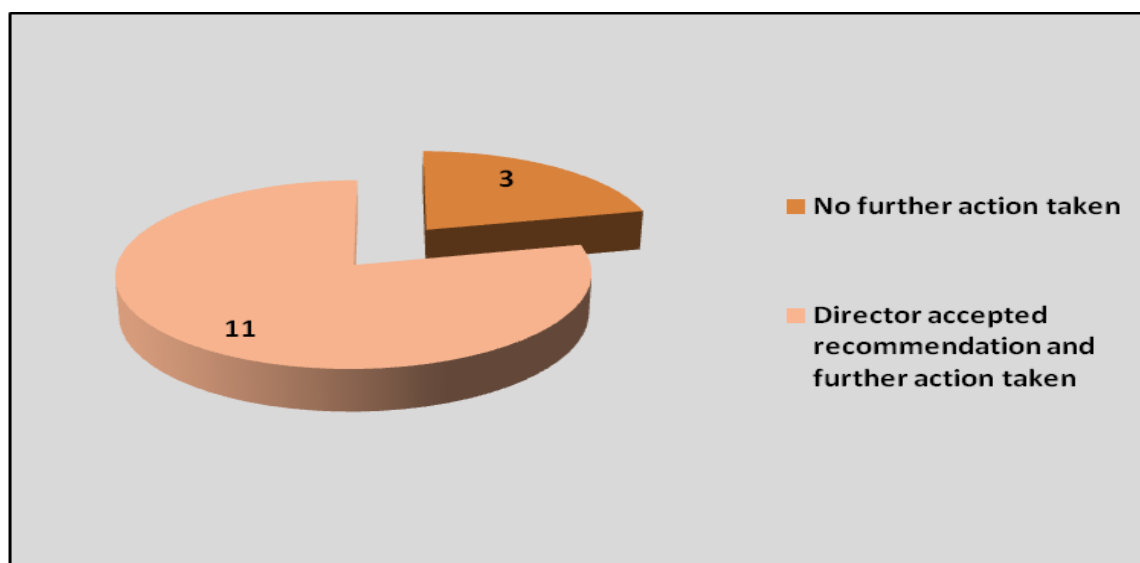
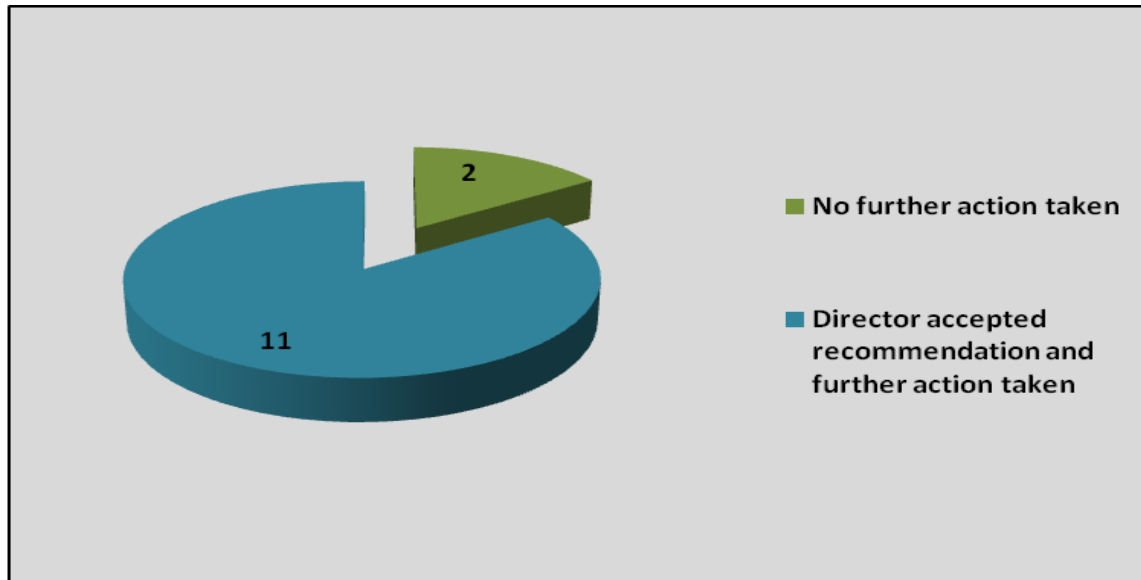


Figure 2(4) that follows sets out the status of the files that were referred back to the Law Society for further action in 2006.

Figure 2(4) – Referred Back Results 2006



D. Schedule of Review Meetings

Over the past three years, the number of requests for review has increased dramatically. In order to meet this growing demand, the frequency of the review days has increased. During 2006, a review day was scheduled for every two weeks with three files being reviewed on each of these days. However, because of the growing number of requests for review, during 2007, the number of files reviewed on each review day was increased from three to four. On occasion, telephone meetings were also held on separate dates and 9 files were reviewed in the absence of the complainant.

Beginning in May 2008, to meet the increasing demand for reviews and in order to manage the waiting time between the receipt of the request for review and the meeting day, two consecutive days of meetings were held every two weeks. Meetings with four different complainants were frequently scheduled each day. Many of the meetings involved complaints against multiple lawyers. In addition, a number of review meetings were held on days not otherwise scheduled as review days. Those files reviewed in the complainant's absence were also reviewed on days not scheduled as review meeting days.

Furthermore, during the two day trips to either Ottawa or London, the number of reviews scheduled for each of the meeting days also increased. The increase in both the number of review days and the number of files reviewed on each review day, resulting in the Complaints Resolution Commissioner reviewing a total of 198 files in 2009 and 158 files in 2008. However, it is clear that the number of requests for review will continue to increase, and further steps will have to be taken to accommodate the growing demand.

E. Systemic Issues

In addition to referring matters back to the Law Society with a recommendation for further action, the Commissioner has continued to identify systemic issues during the review meetings and has brought these issues and concerns to the attention of the Director, Professional Regulation. There have also been discussions among the Commissioner, Counsel and the Director, regarding the content of closing letters. The Commissioner has raised these issues and expressed his concerns in an effort to support and improve the Society's commitment to serve the public and protect the public interest.

The Commissioner and his Counsel and the Director, Professional Regulation, have also continued to work towards addressing and improving practices and procedures between the Professional Regulation departments and the Office of the Complaints Resolution Commissioner.

Counsel to the Commissioner has also continued to work on an informal basis with the Managers of the Professional Regulation departments to clarify issues and address concerns, in advance of the review meetings. For example, when additional material has been received by the Commissioner's office, in advance of a scheduled review meeting, the documents have been provided to the department manager and/or the investigator for consideration before the meeting. When possible, if outstanding issues have been identified prior to the review meeting, the issues have been addressed by the investigator before the meeting. These mutually supportive practices and procedures have promoted a more efficient and effective transfer of files and have allowed for greater consistency in the practices and procedures within the review process.

F. The Resolution Function

In addition to the review function performed by the Complaints Resolution Commissioner, section 9 of By-Law 11 also provides that the Society may refer a complaint to the Commissioner for resolution. This function is intended to be a more formal resolution process for addressing complaints.

By-Law 11 states that the Society will determine whether a matter is referred to the Commissioner for resolution, prior to the file being closed or a referral to the Proceedings Authorization Committee has been made. The Society can only refer a complaint to the Commissioner for resolution with the consent of the complainant, the lawyer and the Society. The Complaints Resolution Commissioner has the broad discretion to determine the process for the resolution function.

During 2006, Counsel to the Commissioner, in consultation with the Director, Professional Regulation and her counsel, drafted a proposal for identifying and streaming files for resolution. Counsel to the Director created the necessary policies to implement the process.

The resolution process was ready for implementation in 2007. Although one file was identified as appropriate for the process during 2007, the complainant did not wish to participate in the process. The complaint file was, therefore, investigated in the ordinary course.

During 2008, although a second file was considered suitable for the resolution process and the parties expressed an interest in participating in the process on reviewing the nature of the complaint, it became apparent that because of an ongoing investigation involving the lawyer, the file was not in fact suitable.

There were no files identified as suitable for the resolution process during 2009.

G. The Commissioner's Observations

The following are Mr. Clare Lewis' comments and observations regarding the Complaints Review process in 2009.

I believe that the establishment of the Office of the Complaints Resolution Commissioner, by the Law Society, has significantly increased complainant satisfaction with the Law Society's public complaint process. I also believe that it is critical that dissatisfied complainants are given an opportunity to voice their concerns to an independent third party. Whenever possible I have provided Law Society complainants with such a forum. This includes meeting with complainants, thereby adding a valuable personal component to the process for resolving Law Society complaints.

Since the beginning of my tenure as Complaints Resolution Commissioner, I have seen a steady increase in the number of requests for review, which I believe is attributable, in part, to the overall rise in the number of complaints to the Law Society. There has also been an increase in public awareness of the process.

In addition, the change in the practice of the Law Society requiring that a copy of the Complaints Review Process Information Sheet be enclosed with every closing letter from the Complaints Resolution and Investigations departments has resulted in a substantial increase in the number of requests.

The Office of the Complaints Resolution Commissioner has also continued to receive requests for review from complainants whose files were closed several years ago, at a time when a review by the Complaints Resolution Commissioner was not offered. Having recently become aware of the Office's existence, the complainants are now requesting a review.

I also continue to receive requests from complainants, prior to the conclusion of the investigation or on complaints that have not been investigated by the Law Society. When the complaint is still under investigation, the complainant is advised that a review cannot be conducted until the conclusion of the investigation. If the complaint file was closed by either Client Services or the Intake department, often because the complaint does not raise a regulatory issue or is outside of the Law Society's jurisdiction to investigate, the complainant is advised of the Commissioner's lack of authority to conduct a review and the letter of request is sent to the department's Manager, for further consideration.

During the past year, there have also been a number of requests for review from complainants who, because of their involvement in concurrent litigation, were advised by the Law Society that their complaint files were being closed pending completion of the litigation. Since the Law Society had not concluded an investigation into the merit of such complaints, this office corresponded with the complainants in order to inform them of the Commissioner's lack of jurisdiction to conduct a review on their files. A number of requests for review from

complainants, who had submitted complaints regarding the professional conduct of a paralegal prior to the licensing of the paralegal, have also been declined. Although a review meeting was not conducted on any of the non-jurisdictional complaint files, the requests for review received from these complainants have added to the current workload of this office.

Despite the increased demands on this office, I am confident that we have continued to provide the public with an independent and impartial forum for review. I have made every effort to ensure that public complaints are dealt with in a fair, effective, efficient and transparent manner. I have provided complainants with comprehensive reasons for my decisions. When I have determined that I do not have the jurisdiction to conduct a review, I have provided the complainant with an explanation for my lack of jurisdiction.

As the end of my role as Commissioner draws near, I wish to express my gratitude to the Law Society for having granted me this challenging and personally fulfilling opportunity. I am enormously indebted to the excellent support of my two counsel, Ms Miriam Weinfeld and Ms Sara Hickling and our Coordinator, Ms Nicola Broome.

Mr. Stindar Lal Q.C. will assume the duties of Complaints Resolution Commissioner on April 1, 2010. I have had the privilege of knowing and, on occasion, working with Mr. Lal over many years and I am confident that he will serve the public and the Law Society with distinction during his term.

Appendix 1

Law Society Act
R.S.O. 1990, CHAPTER L.8
COMPLAINTS RESOLUTION COMMISSIONER

Appointment

49.14 (1) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations. 1998, c. 21, s. 21.

Restriction

(2) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner. 1998, c. 21, s. 21.

Term of office

(3) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment. 1998, c. 21, s. 21.

Removal from office

(4) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation. 1998, c. 21, s. 21.

Restriction on practice of law

(5) The Commissioner shall not engage in the practice of law during his or her term of office. 1998, c. 21, s. 21.

Functions of Commissioner

49.15 (1) The Commissioner shall,

- (a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and
- (b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws. 1998, c. 21, s. 21.

Investigation by Commissioner

(2) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to an employee of the Society holding an office prescribed by the by-laws shall be deemed to be a reference to the Commissioner. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (1).

Access to information

(3) If a complaint is referred to the Commissioner under the by-laws, the Commissioner is entitled to have access to,

- (a) all information in the records of the Society respecting a licensee who is the subject of the complaint; and
- (b) all other information within the knowledge of the Society with respect to the subject matter of the complaint. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (2).

Delegation

49.16 (1) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws. 1998, c. 21, s. 21.

Terms and conditions

(2) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate. 1998, c. 21, s. 21.

Identification

49.17 On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation. 1998, c. 21, s. 21.

Confidentiality

49.18 (1) The Commissioner and each member of his or her staff shall not disclose,

- (a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or

- (b) any information that comes to his or her knowledge under subsection 49.15
- (3) that a bencher, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12. 1998, c. 21, s. 21.

Exceptions

(2) Subsection (1) does not prohibit,

- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
- (b) disclosure required in connection with a proceeding under this Act;
- (c) disclosure of information that is a matter of public record;
- (d) disclosure by a person to his or her counsel; or
- (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure. 1998, c. 21, s. 21.

Testimony

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

Decisions final

49.19 A decision of the Commissioner is final and is not subject to appeal. 1998, c. 21, s. 21.

Appendix 2

BY-LAW 11
 Made: May 1, 2007
 Amended: June 28, 2007
 September 20, 2007 (editorial changes)
 October 25, 2007 (editorial changes)
 February 21, 2008
 April 24, 2008
 October 30, 2008
 January 29, 2009

REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE

PART I
COMPLAINTS RESOLUTION COMMISSIONER
GENERAL

Definitions

1. In this Part,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a licensee;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 6 (1).

Provision of funds by Society

2. (1) The money required for the administration of this Part and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefor by Convocation.

Restrictions on spending

(2) In any year, the Commissioner shall not spend more money in the administration of this Part and sections 49.15 to 49.18 of the Act than is budgeted therefor by Convocation.

Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

REVIEW OF COMPLAINTS

Reviewable complaints

4. (1) A complaint may be reviewed by the Commissioner if,

- (a) the merits of the complaint have been considered by the Society;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
- (c) the complaint has not been previously reviewed by the Commissioner; and
- (d) the Society has notified the complainant that it will be taking no further action in respect of the complaint.

Same

(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:

1. Quantum of fees or disbursements charged by a licensee to a complainant.
2. Requirements imposed on a licensee under By-Law 9 [Financial Transactions and Records].
3. Negligence of a licensee.

Interpretation: "previously reviewed"

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 7 (1).

Right to request referral

5. (1) A complainant may request the Society to refer to the Commissioner for review a reviewable complaint.

Request in writing

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

Time for making request

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

When notice given

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,
 - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
 - (ii) if it was faxed, on the first day after it was faxed.

Referral of complaints

6. (1) The Society shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 5.

Notice

(2) The Society shall notify in writing the licensee who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 5 that the complaint has been referred to the Commissioner for review.

Fresh evidence

7. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner's opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

Disposition of complaint referred for review

(2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,

- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

Disposition of complaint referred for review: notice

(3) The Society shall notify in writing the licensee who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

Referral back to Society: notice

(4) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, the Society shall consider the recommendation and notify in writing the Commissioner, complainant and licensee who is the subject of the complaint of whether the Society will be following the recommendation.

Same

(5) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and the Society determines not to follow the recommendation of the Commissioner, the Society shall provide the Commissioner, complainant and licensee who is the subject of the complaint with a written explanation for the determination.

Procedure

8. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

Meeting

(2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Participation in review: Society

(3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

Participation in review: licensee

(4) The licensee who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

Description of consideration, *etc.*

(5) At the time that the Society refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

Requirement to answer questions

(6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

RESOLUTION

Discretionary referral of complaints

9. (1) The Society may refer a complaint to the Commissioner for resolution if,

- (a) the complaint is within the jurisdiction of the Society to investigate;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
- (c) the complaint has not been referred to the Proceedings Authorization Committee;

- (d) no resolution of the complaint has been attempted by the Society; and
- (e) the complainant and the licensee who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

Parties

10. The parties to a resolution of a complaint by the Commissioner are the complainant, the licensee who is the subject of the complaint and the Society.

Outcome of Resolution

11. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

No resolution

(2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Society.

Enforcement of resolution

(3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

Confidentiality: Commissioner

12. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

Exceptions

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's rules of professional conduct.

Without prejudice

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

Procedure

13. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

...

Appendix 3

BY-LAW 20

Made: January 28, 1999

Amended:

May 28, 1999

April 26, 2001

January 24, 2002

Revoked and Replaced: December 9, 2005

REVIEW OF COMPLAINTS

Complaints Review Commissioners

Each lay benchers is a Complaints Review Commissioner.

Function

2. (1) Subject to subsection (2), the function of a Complaints Review Commissioner is to review the Society's disposition of a complaint against a member.

Same

(2) A Complaints Review Commissioner shall not review the disposition of a complaint against a member by,

- (a) the chair and vice-chairs of the Discipline Committee as it was constituted before February 1, 1999;
- (b) a committee of benchers acting under section 33 of the Act as that section read before February 1, 1999;
- (c) Convocation acting under section 33 of the Act as that section read before February 1, 1999;
- (d) The Proceedings Authorization Committee;
- (e) The Hearing Panel; or
- (f) The Appeal Panel.

Request to review disposition of complaint

3. (1) A complainant who is dissatisfied with the Society's disposition of his or her complaint against a member may request the Society to refer the disposition of the complaint to a Complaints Review Commissioner for review.

Referral of disposition of complaint to Commissioner

(2) If a request is made under subsection (1), unless a complaint was disposed of by the persons or body mentioned in subsection 2 (2), the Society shall refer the disposition of a complaint to a Complaints Review Commissioner for review.

Review by Commissioner of disposition of complaint

4. (1) A Complaints Review Commissioner shall review every disposition of a complaint referred to him or her under subsection 3 (2) and shall decide whether the Society's disposition of a complaint was appropriate.

Referral to Society for further investigation

(2) A Complaints Review Commissioner may, before or after deciding whether the Society's disposition of a complaint was appropriate, refer a complaint to the Society and direct the Society to investigate the complaint further.

Procedure on review

5. The procedure applicable to a review by a Complaints Review Commissioner of the Society's disposition of a complaint shall be determined by the Complaints Review Commissioner and, without limiting the generality of the foregoing, the Complaints Review Commissioner may decide who may make submissions to him or her, when and in what manner.

Independent counsel

6. The Complaints Review Commissioners may retain independent counsel on such terms and conditions as they consider appropriate to provide them with advice on the performance of their duties and the exercise of their duties under this By-Law.

Two or more Commissioners may review disposition of complaint

7. Despite any provision in this By-Law, two or more Complaints Review Commissioners may sit together to review the Society's disposition of a complaint and sections 2, 4 and 5 apply, with necessary modifications, to the review of the Society's disposition of a complaint by two or more Commissioners.

Commencement

8. This By-Law comes into force on February 1, 1999.

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

A copy of an information sheet re: Office of the Complaints Resolution Commissioner.
(Appendix 4, pages 49 – 50)

Re: Amendment to Rule 2.04 of the *Rules of Professional Conduct* Respecting Pro Bono Short Term Limited Legal Services

It was moved by Ms. Rothstein seconded by Mr. Hainey, that Convocation add subrules 2.04(15) to (19) and commentary, as set out in this report, to rule 2.04 of the *Rules of Professional Conduct* (Avoidance of Conflicts of Interest) to implement its policy decision of January 28, 2010 on conflicts of interest related to pro bono short term limited legal services.

The definition of short-term limited legal services in subrule 2.04(15) was amended by changing the words "Superior Court of Ontario" to the "Superior Court of Justice".

The main motion as amended was carried.

Items for Information

- Annual Report of the Complaints Resolution Commissioner

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITE SUR L'EQUITE ET LES
AFFAIRES AUTOCHTONES REPORT

Ms. Minor presented the Ornstein Report for information.

FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Report to Convocation
April 22, 2010

Finance Committee

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

Purpose of Report: Decision and Information

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

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HST Impact on LAWPRO and the Errors & Omissions Insurance Fund Tab C

For Information..... Tab D

1. 2011 Budget Process

COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on April 8, 2010. The Committee members in attendance were: Carol Hartman, Chair, Chris Bredt, Vice-Chair, Larry Banack, Jack Braithwaite, Mary Louise Dickson, Janet Minor, Ross Murray, Judith Potter, Paul Schabas, Gerald Swaye, and Brad Wright.
2. Staff in attendance were Malcolm Heins, Wendy Tysall, Fred Grady and Andrew Cawse.

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IN CAMERA

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IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

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IN PUBLIC

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FOR DECISION

¹ The only exception is PBLO approved services under By-law 5.

INVESTMENT POLICY

Motion

13. That Convocation approve the revised Investment Policy for the Law Society as attached.
14. The new policy includes the following significant revisions from the policy previously approved by Convocation in June 2009 including, (A) Asset Mix and (B) Portfolio Performance and several housekeeping amendments as listed in paragraph 17.
 - A. Change the asset mix guidelines, constituting the acceptable range of exposure for the various asset classes, increasing Canadian equities from 13% to 15% of the portfolio.

Asset Mix

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

Portfolio Performance Benchmark

- B. Set the benchmark portfolio to outperform a static benchmark portfolio consisting of 85% of the DEX Short-Term Bond Index total return, and 15% of the total return of the S&P/TSX Composite Index, proportionally weighted, over a four year moving average or complete market cycle.

Background

15. The Law Society's investment policy governs the investments of the General, Compensation and Errors & Omissions Insurance Funds. At December 31, 2009 these investments had a total market value of \$81.8 million comprising \$42.5 million in the Errors & Omissions Insurance Fund, \$27.1 million in the Compensation Fund and \$12.2 million in the General Fund.
16. In 2009, the Finance Committee instructed the Finance Department to engage Hewitt Associates to undertake an investment structure review for the three portfolios. The results of this review were presented to the Finance Committee in February 2010² and the Finance Committee approved the changes, increasing the typical proportion of portfolio investments allocated to Canadian equities from 13% to 15% and standardizing the fixed income performance benchmark as the DEX Short-Term Bond Index. These changes have now been incorporated into the revised Investment Policy.

² The full, 67 page, Hewitt Investment Structure Review is available on BenchNet.

17. Other less important amendments have been made to the policy as summarized below.

- i. Incorporating the investment policy for the Errors & Omissions Insurance Fund into the Law Society's policy. This has no impact on either previously separated policies as they mirrored each other. As noted at the Finance Committee meeting in February, the E&O Fund portfolio, which was previously divided into a Surplus portion and a Dedicated portion, has now been combined into one. As manager of the Errors and Omissions Insurance Fund, LAWPRO previously had responsibility for the investment of the E&O Fund portfolio. The Law Society has now taken over responsibility for the investment of the E&O Fund portfolio.
- ii. Total revenue for the Law Society updated for the year ended December 31, 2009.
- iii. Investment balances updated for the year ended December 31, 2009.
- iv. The benchmark of obtaining a total rate of return in the top 50% of a sample of funds having similar investment objectives, utilizing an independent performance measurement service on a four year moving average, has been deleted. This has been difficult to measure accurately - for instance there is no differentiation between value and growth managers, and is redundant given the use of the portfolio benchmark.
- v. The normal Duration range for the bond portfolio administered under this policy should be between 1 and 5 years (previously the duration range for the Compensation Fund was between 1 and 6 years, but this aligns with change B. in the motion above).
- vi. No more than 8% (was 5%) of each of the short-term part of the portfolios may be invested in the commercial paper securities of any one single issuer.
- vii. Insertion of a clause that in the event an investment has no active market, the Investment Manager will advise of an appropriate course of action for the valuation of that investment.

LAW SOCIETY OF UPPER CANADA
INVESTMENT POLICY

Revised
April 2010

Purpose

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

Accountabilities and Responsibilities

2. Convocation

Convocation shall:

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

3. Finance Committee

The Finance Committee shall:

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

4. Law Society Management

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

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

5. Investment Manager

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

- Managing the Portfolios in terms of this Investment Policy, and in the best interests of the Law Society

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

6. Custodian

The Custodian shall:

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

and shall be one of the following:

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

Philosophy

7. The Law Society is of the belief that:

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

Business Characteristics

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

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

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

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

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

Objectives

9. The primary objective is to preserve and enhance the real capital base of the Portfolios.
10. The secondary objective is to generate investment returns to assist the Law Society in funding its programs.
11. Even with the guidelines outlined in this Policy, the investment returns from the Portfolios will vary from year to year, reflecting market and economic conditions, levels of inflation, government policies and many other factors which are beyond the control of the Investment Manager. These outside factors should not deter the Investment Manager from exercising due diligence and using its best efforts to achieve the long-term primary investment objective for the Portfolios as set out above, and the following benchmarks:
 - By asset class
 - o to outperform the appropriate market index return

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

Investment Manager

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

Asset Mix

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

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

Diversification

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

Short-Term Investments

15. Short-term investments with a maximum term to maturity at purchase of 364 days may be held in the Portfolios when appropriate as an alternative to bond and equity investments. Appropriate short-term investments are:
- (a) Treasury bills issued by the Government of Canada and provincial governments and their agencies
 - (b) Obligations of trust companies and Canadian and foreign banks chartered to operate in Canada, including bankers' acceptances

- (c) Commercial paper issued by Canadian corporations with a rating of "R1" or better as established by The Dominion Bond Rating Service or equivalent rating by another recognized bond rating service, at the time of purchase.
16. No more than 8% of each of the portfolios may be invested in the securities of any one single issuer permitted in (b) and (c) above.
17. Where the Investment Manager operates a pooled money market fund, which meets the requirements set out in (a), (b) and (c), this pooled money market fund may be used as an alternative in order to achieve better rates and liquidity.

Bonds

18. Investment instruments allowed include:
- ☐ bonds, debentures, notes, non-convertible preferred stock, term deposits and guaranteed investment certificates
 - ☐ bonds of foreign issuers denominated in Canadian dollars
 - ☐ NHA-insured mortgage-backed securities or collateralized mortgage-backed securities
 - ☐ Marketable private placements of bonds.
19. Each bond portfolio may be invested up to a maximum of:
- ☐ 100 % in Government of Canada or Government of Canada guaranteed bonds
 - ☐ 60% in provincial government and provincial government guaranteed bonds
 - ☐ 10 % in municipal bonds; and
 - ☐ 50 % in corporate issues
 - ☐ Not more than 10% of the total market value of each bond portfolio will be invested in securities issued by a foreign issuer, or Canadian issuer in a foreign currency.
20. Investment in any one security or issuer shall not exceed 10% of each Bond portfolio with the exception of Government of Canada and provincial government bonds and their guarantees.
21. In line with the benchmark portfolio of the DEX Short Term Bond Index, the normal Duration range for the bond portfolio administered under this policy should be between 1 and 5 years. The Duration of a portfolios is a measure of the portfolio's sensitivity to changes in the general level of interest rates (Duration multiplied by change in interest rates gives change in value of bond portfolio).
22. The emphasis within the bond portfolio will be on quality, with a minimum rating "BBB" for bonds and debentures or "P2" for preferred shares by The Dominion Bond Rating Service or equivalent rating by another recognized bond rating service, at the time of purchase.
23. In the event of a downgrade below "BBB" for bonds and debentures, "P2" for preferred shares or "R-1" for short-term investments, the Investment Manager will advise of an appropriate course of action. No more than 10% of the market value of each bond portfolio shall be invested in bonds rated "BBB".

24. In cases where the recognized bond rating agencies do not agree on the credit rating, the bond will be classified according to the methodology used by DEX, which states:
- If two agencies rate a security, use the lower of the two ratings
 - If three agencies rate a security, use the most common; and
 - If all three agencies disagree, use the middle rating.
25. In the event that an individual bond, debenture, short-term investment or preferred share is no longer rated by a recognized bond rating agency, that security will no longer be considered to be investment grade and the Investment Manager will place the asset on a watch list subject to monthly review by the Investment Manager with the Law Society until such time as the security matures, is sold or until it is upgraded to a level consistent with the purchase quality standards as expressed in the guidelines listed above. The Manager may not infer a rating for an individual unrated security from ratings of other securities issued by the same issuer.

Equities

26. The intent is to provide a diversified selection of Canadian common stocks, also allowing any of the following, provided that they are listed on a recognized stock exchange:
- ☐ Convertible preferred stock and convertible debentures
 - ☐ Real estate investment trusts ("REITs").
27. The market value of any one issuer cannot represent more than 10% of the market value of the total Portfolios, or that equity's weight in the S&P/TSX Composite Index, whichever is greater.

Other Investments

28. Investments in open or closed-ended pooled or mutual funds are permitted provided that the assets of such funds are permissible investments under this Policy.
29. Deposit accounts of the custodian, or Schedule 1 banks can be used to invest surplus cash holdings.
30. With the exception of rights, warrants and special warrants or instruments used for hedging purposes, no derivative investments will be permitted without the prior written approval of the Finance Committee.
31. No venture capital financing or non-conventional investments will be permitted without the prior written approval of the Finance Committee.
32. In the event any investment has no active market, the Investment Manager will advise of an appropriate course of action for the valuation of that investment.

Discretion

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

Communications

34. The Communications process between the Investment Manager and Law Society Management is flexible, but at a minimum will include the following:
- monthly transaction statements
 - a quarterly written summary listing of all portfolio transactions from the Investment Manager
 - a complete quarterly portfolio listing
 - a quarterly written assessment of the North American economies and the financial markets, and impact on the Portfolios
 - annual investment meetings with the Investment Manager. The agenda at these meetings would include an overview of the economy and the outlook for the financial markets, the current investment strategy, and a review of the performance results
 - an annual review of the Investment Policy and the Portfolios' quality and diversification guidelines.
35. Any time that the Investment Manager is not in compliance with this policy, they are required to advise the Chief Financial Officer of the Law Society immediately, detailing the breach and recommending a course of action to remedy the situation.

Securities Lending

36. No lending of securities is permitted.

Conflicts of Interest – Investment Policy

37. Conflict of interest standards apply to all members of Convocation, Law Society management and the Investment Manager, as well as to all Agents employed by the Law Society, in the execution of their fiduciary responsibilities.
38. An 'Agent' is defined to mean a company, organization, association or individual, as well as its employees, retained by the Law Society to provide specific services with respect to the administration and management of the Law Society's investment assets.
39. In carrying out their fiduciary responsibilities, these parties must act at all times in the best interests, and for the benefit, of the Law Society. All parties must act in the manner that a "prudent person" would in matters related to the investment strategy and portfolio management.
40. No affected person shall accept a gift or gratuity or other personal favour, other than one of nominal value, from an individual with whom the person deals in the course of performance of his or her duties and responsibilities.
41. In the execution of their duties, all of the parties listed in Section 37 above shall disclose any material conflict of interest relating to them, or any material ownership of securities, which could impair their ability to render unbiased decisions, as it relates to the administration of the investment assets.

42. Further, it is expected that none of the parties listed in Section 37 above shall make any personal financial gain (direct or indirect) because of their fiduciary position. However, normal and reasonable fees and expenses incurred in the discharge of their responsibilities are permitted if documented and approved by the Law Society.
43. It is incumbent on any party affected by this Policy who believes that he/she may have a material conflict of interest, or who is aware of any conflict of interest, to notify the CEO or the CFO of the Law Society. Disclosure should be made promptly after the affected person becomes aware of the conflict. The CEO or CFO, in turn, will decide what action is appropriate under the circumstances but, at a minimum, will table the matter at the next regular meeting of the Finance Committee.
44. No affected person who has or is required to make a disclosure as contemplated in this Policy shall participate in any discussion, decision or vote relating to any proposed investment or transaction in respect of which he or she has made or is required to make disclosure.

Changes to Policy

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

FOR DECISION SPECIAL LEVY TO RECOVER HST IMPACT ON THE ERRORS & OMISSIONS INSURANCE FUND

Motion:

18. That Convocation accept the recommendation from LAWPRO's Board to postpone a special levy to replenish the Errors & Omissions Insurance Fund ("E&O Fund") to fund the impact of HST on LAWPRO's claims reserves.
19. The attached letter from Kathleen Waters, President and CEO of LAWPRO, includes a motion from the LAWPRO board to postpone any recommendation regarding replenishing the E&O Fund by special levy.
20. The LAWPRO Insurance report presented to Convocation in September 2009 noted the following:

"On substantive enactment of the legislation to introduce HST and subject to any transitional relief, a special levy will be charged for the one-time reassessment of existing claims reserve liabilities, currently estimated to be \$10.2 million (or \$450 per practising insured lawyer) [now \$10.5 million or \$465 per practicing insured lawyer]."
21. With "substantive enactment" of the legislation prior to December 31, 2009, LAWPRO was required to revalue its loss provisions for claims currently on the books. Given the complexity of claims and the nature of the litigation process, many claims take years to

be resolved. Of the \$384 million of unpaid claims liability LAWPRO held on its balance sheet as at December 31, 2009, a certain amount will be resolved and paid out by June 30, 2010. However, the majority likely will be resolved some time after the July 1, 2010, HST implementation date. The extra 8% tax included in the HST rate of 13% (previously 5% GST only) will generally apply to defense costs incurred with respect to these existing claims after June 30, 2010.

22. The one-time reassessment of its existing claims liabilities due to the introduction of HST increased these liabilities by \$10.5 million. At the time of drafting the 2010 Insurance Report, LAWPRO was facing tremendous uncertainty in terms of transaction levies, claims experience and investment income. The degree of uncertainty as to what level of funding might be required from the E&O Fund's premium stabilization fund to support shortfalls in transaction levies and negative claims results dictated that LAWPRO prepare for the possibility of a special levy to recover the HST upon substantive enactment. As the financial year progressed, it became clear that the E&O Fund was adequate to support the added one-time cost of the HST and the retrospective premium provision of the Society's insurance policy with LAWPRO was employed to satisfy LAWPRO's premium requirements related to HST.
23. A special levy on lawyers to recoup the HST cost of \$10.5 million is not needed for E&O Fund cash flow purposes and the E&O Fund balance of \$57.4 million at December 31, 2009 is sufficient to act as a backstop to losses in the primary professional insurance program. Over and above this, the litigation settlement of \$8.0 million was received and deposited into the E&O Fund in March 2010. Additional monies raised from a special levy at this point would not flow to LAWPRO but would instead remain in the Law Society's E&O Fund balance.
24. The Finance Committee therefore supports the motion by the LAWPRO board to postpone any action on a special levy to recoup the HST cost until Convocation considers the 2011 insurance program in September 2010.

FOR INFORMATION 2011 BUDGET PROCESS

25. Convocation is requested to review the suggested structure and timetable for the 2011 budget process for information.
26. Typically, Convocation adopts the annual budget at its October meeting (under the By-Laws the budget must be approved by Convocation prior to the end of November).
27. A comprehensive system of program reviews linked to the budget has been in place since 2002. The operations to be reviewed for the 2010 budget will be Professional Regulation, including the Compensation Fund, and Communications.
28. The rotational review of activities has the benefits of:

- Allowing a more meaningful and focused analysis of revenues and expenditures relating to program activities under review
- Increasing discipline in budget development
- Limiting resistance as the onerous and exhaustive examination of costs is not imposed every year in the absence of changing circumstances
- Reducing the length of the budget process
- Increasing benchers understanding of a number of specific activities each year.
- Increasing the accountability of management for the programs underlying the financial information contained in the annual budget.

Operational Reviews for the 2011 Budget

29. A history of operational reviews since Convocation approved the process in 2002 is set out below.
- | | |
|------|---|
| 2010 | Professional Regulation and Communications |
| 2009 | Professional Development & Competence and Information Systems |
| 2008 | Policy and Government Relations Departments and the Client Service Centre |
| 2007 | Professional Regulation and Communications |
| 2006 | Professional Development & Competence and Information Systems |
| 2005 | Compensation Fund and the Customer Service Centre |
| 2004 | Professional Regulation and Policy & Legal Affairs |
| 2003 | Professional Development & Competence and Communications |
| 2002 | Client Service Centre, Lawyers Fund for Client Compensation and Great Library |
30. All significant Law Society programs have had previous reviews as the process works its way through a third cycle.
31. It is intended that the operational reviews for the 2011 budget be completed and presented in September 2010 as set out in the timetable below. The Finance Committee intends to work with the Audit Committee to ensure the greatest value is obtained from the operational reviews.
32. Presentations on the LibraryCo budget would also be conducted in September.

DATE (2010)	PROCESS
April / May	<p>The Senior Management Team (SMT) commences the budget process by considering individual and collective budget assumptions, variables and objectives. This review also includes how the proposed 2011 budget fits into longer-term plans for the organization and departments.</p> <p>Finance Committee and Convocation approve a process for preparing the 2011 budget that includes Standing Committee endorsement of operational reviews. Benchers' comments on the program reviews and budget process are invited. This is also an opportunity for the Priority Planning Committee / Convocation to convey policy objectives and budget priorities to the Finance Committee.</p>

June July	SMT Budget Planning session – how each division will address the priorities of Convocation.
July August	<p>The components reviewed and approved above are compiled into an operating budget for the Law Society.</p> <p>Facilities and Information Systems compile a capital budget with the assistance of user departments.</p> <p>Further assessments of LibraryCo operations.</p>
September	<p>Operational reviews for selected departments are presented to the Finance Committee and any other benchers who wish to attend. The Finance Committee reports results of the program reviews to Convocation and program review material is available to all benchers. Bencher's comments on the program reviews and budget process are invited. Opportunity for the Priority Planning Committee / Convocation to convey policy objectives and budget priorities to the Finance Committee.</p> <p>A budget information session is held for all benchers to ensure a full exchange of information on the 2011 budget.</p> <p>LibraryCo submits preliminary submissions on 2010 activities and 2011 projections to the Finance Committee at this time.</p> <p>2011 budget requests from external organizations such as CDLPA received by this time.</p>
October	Draft operating budgets for lawyers and paralegals and a capital budget for 2011 are presented to the Finance Committee, Paralegal Standing Committee, Compensation Fund Committee and Convocation for approval.

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

A copy of a letter from Kathleen A. Waters, President & CEO, LAWPRO to Ms. Wendy Tysall, Chief Financial Officer re Levy of \$450 regarding HST proposed in 2009 Report to Convocation.

(pages 19 – 20)

Re: Shirley Denison Fund Applications (in camera)

It was moved by Mr. Bredt, seconded by Ms. Hartman, that Convocation approve a grant of \$671.45, already paid under the administrative provisions of the J. Shirley Denison Fund, to Applicant 2010-7.

Carried

Re: Investment Policy

It was moved by Mr. Bredt, seconded by Ms. Hartman, that Convocation approve the revised Investment Policy for the Law Society as attached.

It was moved by Ms. Elliott, seconded by Mr. Wright, that paragraph 45 on page 16 of the Report be amended by deleting the words “on the specific recommendation of the Finance Committee” and replacing it with the words “after a full report of the Finance Committee.” The sentence would then read:

- “The Investment Policy may only be changed by Convocation after a full report of the Finance Committee.”

Carried

The main motion as amended was carried.

Re: HST Impact on LAWPRO and the Errors & Omissions Insurance Fund

It was moved by Mr. Bredt, seconded by Ms. Hartman, that Convocation accept the recommendation from LAWPRO’s Board to postpone a special levy to replenish the Errors & Omissions Insurance Fund (E & O Fund) to fund the impact of HST on LAWPRO’s claims reserves.

Carried

Item for Information

- 2011 Budget Process

Convocation adjourned and reconvened as a Committee of the Whole in camera.

Mr. Sandler addressed the benchers on adjudicator education.

The Committee of the Whole adjourned and Convocation continued in camera.

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Report to Convocation
April 22, 2010

Law Society Awards Committee Report

Committee Members
Treasurer W. A. Derry Millar (Chair)
Glenn Hainey
Carol Hartman
Doug Lewis
Susan McGrath
Baljit Sikand
Chief Justice Warren Winkler
Dean Ian Holloway
Carole Brown
Sandra Forbes
Rob Zochodne

Purposes of Report: Decision and Information

Prepared by Deidré Rowe Brown
Executive Assistant and Coordinator to the Treasurer

COMMITTEE PROCESS

1. The Law Society Awards Committee ("the Committee") met on March 31, 2010. In attendance were Treasurer W. A. Derry Millar (Chair), Glenn Hainey, Doug Lewis, Susan McGrath (by telephone), Chief Justice Warren Winkler, Dean Ian Holloway (Chair of the Council of Ontario Law Deans), Carole Brown (President, Ontario Bar Association), Sandra Forbes (President of The Advocates' Society – by telephone), and Rob Zochodne (Chair of the County and District Law Presidents' Association).
2. Treasurer Millar spoke to Carol Hartman on the telephone prior to the meeting due to a scheduling conflict that prevented her from attending the meeting either in person or by telephone.

FOR DECISION

PROPOSED 2010 LAW SOCIETY MEDAL/LINCOLN ALEXANDER AWARD/LAURA LEGGE AWARD RECIPIENTS

MOTION

3. That Convocation approve the proposed recipients of the 2010 Law Society Medal, the 2010 Lincoln Alexander Award, and the 2010 Laura Legge Award.
4. The Law Society Medal
The Law Society Medal was first struck in 1985 as an honour to be awarded by the Law Society of Upper Canada to members who have made significant contributions to the profession. It is given to those who perform the ordinary tasks of a lawyer, but with such diligence or effectiveness or so much to the benefit of the profession as a whole, that they deserve recognition. The award is made for outstanding service within the profession whether in the area of practice or in the academic sphere or in some other professional capacity where the service is in accordance with the highest ideals of the legal profession and whether by devotion to professional duties over a long term or for a single outstanding act of service.
5. The honour is granted only to members of the Law Society of Upper Canada or in recognition of service given while a member of the Society.
6. The Lincoln Alexander Award
On February 20, 2002, Convocation approved the establishment of an award in the name of Colonel The Honourable Lincoln M. Alexander to be conferred upon a member of the profession for demonstrating longstanding interest and commitment to matters public and to the pursuit of community service on behalf of the residents of Ontario.
7. The honour is granted only to members of the Law Society of Upper Canada or in recognition of service given while a member of the Society.

- The Laura Legge Award
8. On May 25, 2007, Convocation approved the establishment of an award in the name of Laura Legge, Q.C. to be conferred to recognize a woman lawyer in Ontario who has exemplified leadership within the profession.
 9. The honour is granted only to members of the Law Society of Upper Canada or in recognition of service given while a member of the Society.

The Committee's Review

10. The Committee received 31 nominations for the Law Society Medal, 3 nominations for the Laura Legge Award and 4 nominations for the Lincoln Alexander Award.
11. The Committee reviewed the following material at its meeting:
 - a) the material filed on behalf of every nominee,
 - b) the criteria for the Law Society Medal, Lincoln Alexander Award, and Laura Legge Award,
 - c) a complete list of previous recipients of each of the awards, and
 - d) the report of the Special Committee on the Law Society Medal Program attached as Appendix 1.

The Committee's Proposals

12. The Committee's recommendations to Convocation for the 2010 Law Society Medal, Lincoln Alexander and Laura Legge Awards will be distributed under separate cover at Convocation's meeting on April 22, 2010.

Appendix 1

Special Committee on the Law Society Medal Program
October 31, 2002

Report to Convocation

Purpose of Report: Decision

Prepared by The Honourable John Arnup, Q.C.

REPORT OF THE SPECIAL COMMITTEE ON THE LAW SOCIETY MEDAL PROGRAM

On March 21, 2002, the Treasurer presented to Convocation the report of the committee established to recommend to Convocation the names of members of the Law Society for award of the Law Society Medal (hereafter "the Awards Committee"). The report recommended the appointment of seven persons, all male. In the subsequent discussion, it was mentioned that there were no women in the list.

The Treasurer, who is the Chair of the Awards Committee, stated that there had been twenty-eight nominations before the Committee, of whom only three were women. One bencher observed that nominees would normally be members of long standing in the profession and that the increase in the proportion of women in the profession was of relatively recent origin. The report was adopted.

Subsequently, the Treasurer appointed this Committee to review and report on the Law Society Medal Program, particularly the criteria for the granting of the award of the Medal. Its members are: John Arnup (Chair), Laura Legge, Sydney Robins, Susan Elliott and Marion Boyd (four ex-Treasurers and a former Attorney-General of Ontario). The Committee met on June 27, 2002 (Marion Boyd was not able to be present).

CONCLUSION:

The Committee is unanimously of the view that the present criteria for the award of the Medal are appropriate and should not be changed. We are also of the view that the process leading up to the award is appropriate and should not be changed. We made some comments below.

BACKGROUND:

In September 1983, Convocation approved, in principle, the establishment of an honour or honours to those members of the Law Society who had made a significant contribution to the profession, and continued the Special Committee under the chairmanship of George Finlayson. That Committee made its report to Convocation on June 22, 1984. That report was adopted and its contents can fairly be described as the Constitution of the Law Society Medal Program. We reproduce it here:

Your Committee reported last in September 1983. At that time Convocation gave its approval in principle to the establishment of an honour or honours to be awarded by the Society as the governing body of the legal profession to members who have made a significant contribution to the profession: that it should be granted in sufficient number that members who make such a contribution may have some reasonable expectation that their work will receive recognition but not awarded to so many that its coinage becomes debased; that the award should be visible but not ostentatious and that the awarding of it should not be confined to any particular segment of professional activity and that the selection should be made for unimpeachable reasons having to do purely with contributions made as a lawyer to the profession.

Following this direction from Convocation your Committee met at 4:30 p.m. on the 22 of February 1984 the following members being present: Mr. Finlayson (Chairman) with Messrs. Ground and Rock.

In considering the basis of the award and the kinds of services for which it should be awarded your Committee was mindful of the honour granted by the Association of Professional Engineers to certain of its members for services to the Engineering Profession which might otherwise go unrecognized. That honour is known as the Sons of Martha Award and, as the name suggests, is given to those who perform the ordinary tasks of a professional engineer but with such diligence or effectiveness, or so much to the benefit of the profession as a whole that they are deserving of recognition. Similarly the Law Society's award should, in your Committee's opinion, be made for outstanding

service within the profession whether in the area of practice or in the academic sphere or in some other professional capacity where the service is in accordance with the highest ideals of the professional and whether by devotion to professional duties over a long term or for a single outstanding act of service.

The honour should be granted only to members of the Law Society of Upper Canada in recognition of service given while a member of the Society.

Your Committee recommends that the honour be granted not more often than annually but not necessarily in each year and that the list of those to be honoured be highly selective so that no more than a few would be granted at any one time. It is recommended that the occasion of the bestowing of the honour be a special dinner to be held annually at Osgoode Hall and that if in any year no award is to be made the dinner be held nonetheless and an outstanding speaker invited to address those present.

Those who have received the honour should be entitled to use the letters LSM after their names immediately after the initials of any Queen's honour and ahead of the initials of any academic or other honour.

Your Committee recommends that the selection process be begun by nomination in which the nominator would set forth reasons and give the names of references and that the nominations be considered by a special committee composed of the Chief Justice of Ontario, the President of the Canadian Bar Association (Ontario), the President of the Advocate's Society, the Chairman of the Committee of Ontario Law Deans, the Treasurer of the Law Society who would be the Chairman of the committee, plus four Benchers elected by Convocation to serve for a period of three years.

COMMENTARY:

The medal was designed by Kenneth Jarvis F.R.C.A.

We point out that on the Committee thus created are represented the judiciary, the Ontario Bar Association, the Advocate's Society, and the academic community. The benchers retain voting control of the Awards Committee (five out of nine members).

The criteria quite properly do not create any groups based on gender, age or any other restrictive qualification. It can be safely assumed that all of its members are familiar with the policies of the Law Society concerning equality and equity.

The "Constitution" does not make any stipulation as to the term of membership on the Awards Committee of the four benchers. There is usually some benefit in continuity of membership in committees of this nature, but with a benchers' election held every four years, it is probably best that the bencher members be appointed annually.

We feel we should emphasize two aspects of the awards process. First, the proposed recipients must have made a significant contribution to the legal profession. Contributions to the public benefit but not made in or for the benefit of the profession do not justify an award. There are other awards available to recognize this kind of public service.

Second, it was contemplated in 1984 and expressly stated, that the number of recipients in any year should be very small. Laura Legge was a senior bencher in 1984 and Treasurer when the first awards were being considered, and her recollection is very clear that this point was emphasized in 1984 and subsequently. The award loses some of its prestige if it is too widely handed out.

The suggestion was made at the March 2002 Convocation that the invitation to the profession to submit nominations should be more widely circulated. To date it has been confined to the Ontario Reports, which until recently was the only official publication of the Law Society. Since we now have the Ontario Lawyers Gazette, we think it would be appropriate to place a notice there as well as in the Ontario Reports, but we would oppose any advertisements in other publications, legal or otherwise. Such efforts would cheapen the award whose unique significance must be maintained.

Letters of recommendation, supporting a particular nominee, and sent in by the nominator(s) would be acceptable, but of course, attempts to influence a member of the Awards Committee (or of Convocation) would not. Fortunately, there has been no evidence of such unseemly activity.

We have been provided with statistics of the total membership of the Society, including a breakdown into the various categories of occupation for the years 1997 to date and a similar breakdown of female members but have not found this helpful for our purposes, except to note, somewhat to our surprise, that while there has been a continuous rise in the number of members, including female members, the numbers of female members as a proportion of the total membership has risen only from 28% to 32.5%.

ALL OF WHICH is respectfully submitted.

Dated this the 31st day of October 2002.

The Honourable John Arnup, Q.C.
Chair

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Report to Convocation
April 22, 2010

LL.D. Advisory Committee Report

Committee Members
Treasurer W. A. Derry Millar (Chair)
Glenn Hainey
Carol Hartman
Doug Lewis
Susan McGrath
Baljit Sikand

Purposes of Report: Decision and Information

Prepared by Deidré Rowe Brown
Executive Assistant and Coordinator to the Treasurer

COMMITTEE PROCESS

1. The LL.D. Advisory Committee (“the Committee”) met on April 5, 2010. In attendance were Treasurer W. A. Derry Millar (Chair), Glenn Hainey, Carol Hartman (by telephone), Doug Lewis, Susan McGrath (by telephone), and Baljit Sikand.

FOR DECISION

PROPOSED 2010 HONORARY LL.D. RECIPIENTS

MOTION

2. That Convocation approve the proposed recipients of the 2010 Honorary LL.D. degree.
3. On January 28, 2010, Convocation approved the Treasurer's recommendation that the following benchers serve on the Treasurer's LL.D. Advisory Committee:
 - Glenn Hainey
 - Carol Hartman
 - Doug Lewis
 - Susan McGrath
 - Baljit Sikand
4. Benchers were asked by Treasurer Millar to suggest the names of potential candidates for consideration for the conferral of the degree of Doctor of Laws, *honoris causa* at the Call to the Bar Ceremonies in June 2010. Potential candidates were also brought to the Committee's attention through other sources. In all, the Committee considered eight potential candidates.

The Committee's Review

5. In determining potential recipients, the Committee considered the following:
 - a) The Report of the Special Committee on the Doctor of Laws Program (April 25, 2003) attached as Appendix 1.
 - b) The Supplementary Report of the Special Committee on the Doctor of Laws Program (October 23, 2003) attached as Appendix 2.

The Committee's Proposals

6. The Committee's recommendations for the degree of Doctor of Laws, *honoris causa* will be distributed under separate cover on April 22, 2010.

SPECIAL COMMITTEE ON THE SOCIETY'S DOCTOR OF
LAWS PROGRAM
April 25, 2003

Report to Convocation

Purpose of Report: Decision

Prepared by John D. Arnup, Q.C., LSM

REPORT OF THE SPECIAL COMMITTEE ON THE SOCIETY'S DOCTOR OF LAWS
PROGRAM

In October 2002 the Special Committee on the Society's Law Society Medal program presented its report to Convocation, which approved it. Shortly afterwards, the Treasurer asked the Special Committee to conduct a similar review of the Society's program concerning the conferring of the degree of Doctor of Laws, *honoris causa*. The members of the Special Committee are John Arnup (Chair), Sydney Robins, Laura Legge, Susan Elliott and Marion Boyd. This is their report.

Background:

When the Society and the Ontario universities began discussing the creation of law faculties in the universities, it was recognized early in the discussions that since the Society was going to continue to operate the Osgoode Hall Law School, the Society would be granting to its graduates the same degrees as the universities would be granting to the graduates of the faculties of law. There was never any controversy over this. The Government of Ontario agreed with this conclusion and in 1957, shortly after the historic agreement between the Law Society and the universities, amended The Law Society Act by adding to the section setting out the powers of the Benchers the words "and may provide for the granting of and grant degrees in law".¹

The Society then began to confer upon the graduates of its law school the degree of "Bachelor of Laws" (LL.B.) and, in due course, the universities who now had law faculties did the same.

The first honorary degree conferred by the Law Society pursuant to the power granted by the 1957 statute was conferred on June 23, 1960, upon John D. Falconbridge, Q.C., long time dean of the Osgoode Hall Law School, and nationally renowned author of text-books on mortgages and on banking and bills of exchange. He was an internationally renowned scholar and writer on conflict of laws.

¹ Stat. Ont. 1957, c.59, s.1

After the Osgoode Hall Law School moved to York University, the honorary degree of LL.D. was the only academic degree left within the powers given to the Society.²

As the number of graduates from Ontario law schools has steadily increased, added to by transfers from other provinces, it has been found necessary to increase the number of Calls to the Bar in Toronto and to have one or more Call ceremonies in London and Ottawa, each of which cities now has its own bar admission course. This requires the selection of more persons to address the graduating class at each of these Convocations, and the practice has developed of conferring an LL.D. at each Convocation on the person also chosen to give the Convocation address. We will have more to say about this below.

Up to April 1, 2003, 85 degrees have been granted, 23 in the last four years.

Our Research:

1. We requested and were provided with every reference in the minutes of Convocation to the LL.D. degree. At the time of the institution of the degree there were no criteria established as to the qualifications of the proposed recipient, and no protocol as to the process of selection. None has been established since. Clearly it is time, after forty-three years of experience, for Convocation to consider both criteria for recipients and, at least, guidelines for the process of selection.
2. Because of the lack of protocol concerning selection, the Chair wrote to all of the surviving Treasurers in whose tenure of office LL.D.'s were awarded (fourteen in all) asking them to indicate, on a confidential basis, what steps they took leading to the selection of recipients. Thirteen replies were received, by letter or orally. (Four ex-Treasurers in this group were on this Committee)

Not surprisingly, there was considerable difference in the methods of selection reported, but also a helpful similarity or approach; and your Committee is grateful to the responders, who were quite interested in the project.

3. The Chair also circulated a memorandum to all Benchers, including life Benchers, inviting their comments on any and all aspects of the LL.D. program. Three replies were received, which this Committee has considered.

Tradition or Myth?

1. After some years of operation of the LL.D. program, this sentence emerged: "The granting of the LL.D. degree by the Society is the prerogative of the Treasurer." If this meant that the Treasurer was in sole control of the nomination of candidates, it was incorrect. From the beginning the role of the Treasurer in the selection process was important, and still is, but no Treasurer ever assumed the authority to act alone. Every single Treasurer consulted some of his/her colleagues, usually senior Benchers and often the chairs of committees. We have concluded that since the practice has been universal, it should now be formalized as part of a protocol for selection of recipients.

² To this day, as part of the Call to the Bar Ceremonies the Treasurer uses the words traditionally uttered by all Treasurers "...I confer upon each of you the degree of barrister-at-law..." This is not the place to discuss this historical legacy.

2. Commencing in 1979 the degree has been conferred upon a former Treasurer. To date, seventeen former Treasurers have been so honoured. At some stage this sentence emerged. "It is tradition (sic) that sooner or later a former Treasurer is given an LL.D."

The practice exists, but not simply because it is a "tradition". Treasurers are elected to that office by their peers in Convocation. They are invariably persons who have been outstanding in their achievements in practice and in Convocation, and have had the respect of their fellow Benchers.

The practice should continue, not because it is a "tradition" but because of the proven merits of the recipients.

Our Conclusions:

1. Too many LL.D.'s have been granted in recent years. At the outset of the program it was the view of each Treasurer and of Convocation that the power to grant the degree should be exercised sparingly. The effect of granting several degrees each year tends to weaken the prestige that ought always to be one of its important attributes.

There are two reasons advanced for the prolixity of awards, which are related. When the degree was first awarded, there was only one principal Call to the Bar. Today there are five, in three cities. It is the view of Treasurers that one attribute of proposed recipients should be his or her ability to make an appropriate Convocation address to graduates, who have worked so long and hard to reach this stage of their life. To be invited to address a Call to the Bar Convocation of the Law Society is, itself, a high honour.

It is doubtless true that the ability to deliver such an address is important, but we urge that consideration be given in the future to the question whether the person chosen to give the address must also be given an honorary degree. Consideration should also be given to the possibility of the Treasurer being the prime speaker, and perhaps at two or more of the Call Convocations. The opportunity thus given, was aptly put by Allan Rock, P.C., Q.C., in his reply to the Chair of this Committee:

"We must remember that these ceremonies take place when hundreds of young people are celebrating a milestone and embarking on a life's journey. It is, therefore, a wonderful opportunity to inspire and motivate by putting a living example of service and/or achievement in front of them."

We raise the question: why shouldn't this be the Treasurer himself/herself? The same speech could be given at two or more Call Convocations (some Benchers present may hear it more than once, but the speech is aimed at the new graduates).

The number of Call Convocations is not going to get less, and we ought not to keep on granting one or more honorary degrees at all of them.

2. It is desirable that some criteria be established, but in our view they should be expressed in broad and general terms. There has been general agreement since the beginning that the granting of the degree is in recognition of outstanding achievements in service and benefit to the legal profession of Ontario or the administration of justice whether in

practice, academia, the judiciary or authorship. It would be inappropriate for us to comment upon any specific past appointments. We say only that it is difficult to fit a few of them into a classification delineating outstanding service in and of benefit to the legal profession of Ontario.

3. At the beginning of each calendar year the Treasurer should appoint a committee, to be called "The Advisory LL.D. Awards Committee", whose mandate is to advise and assist the Treasurer in making a recommendation to Convocation of recipients of the L.L.D. degree in that year. We suggest a committee of five including the Treasurer who should chair it. The recommendation of the Treasurer, after approval by the Advisory Committee, should be presented to Convocation for its approval at an in camera session. As pointed out by one of the past Treasurers, one justification for presenting the recommendation of the Treasurer to Convocation is to guard against the possibility that in Convocation some information may come to light that makes a proposed award undesirable. It is highly unlikely that a proposed award, brought forward by the Treasurer and approved by the Advisory LL.D. Awards Committee would be rejected by Convocation but Benchers will not feel they have been presented with a fait accompli.

John D. Arnup, Q.C., LSM
Chair
April 25, 2003

Appendix 2

SUPPLEMENTARY REPORT OF THE
SPECIAL COMMITTEE ON THE LL.D. PROGRAM
October 23, 2003

Report to Convocation

Purpose of Report: Decision

Prepared by
John D. Arnup, Q.C., LSM

SUPPLEMENTARY REPORT OF THE SPECIAL COMMITTEE ON THE LL.D. PROGRAM

This Committee is composed of John Arnup (Chair), Laura Legge, Sydney Robins, Susan Elliott, Marion Boyd and Gavin MacKenzie. It reported to Convocation on April 25, 2003.

Background:

An amendment to the wording of the criteria for the award of the honorary degree of Doctor of Laws was proposed in Convocation and accepted by Mr. Arnup, Chair of the Committee. Convocation approved the report with one exception.

The criteria for the award proposed by the Committee and not changed in this regard by the amendment would have required that the accomplishment of the recipient be connected to law or the legal profession. It was pointed out that such a provision would not have permitted the granting of the degree to persons such as the Governor General of Canada or Bishop Tutu of South Africa. Convocation referred back to the Committee the criteria proposed so that the degree could be granted in recognition of outstanding achievements for public benefit not necessarily related to law.

Recommendation:

In accordance with the direction of Convocation, the Special Committee proposes that there be added to the amended criteria the following underlined words:

The granting of the degree is in recognition of outstanding achievements in service and benefits to the legal profession, the rule of law or the cause of justice. Notwithstanding that this general rule would require that the accomplishments of a recipient be related to law or the legal profession, Convocation may in exceptional circumstances confer the degree upon a person whose extraordinary accomplishments national or international were for the public benefit.

John D. Arnup, Q.C., LSM
Chair
October 23, 2003

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EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITE SUR L'EQUITE ET LES
AFFAIRES AUTOCHTONES REPORT

Ms. Minor presented the Report.

Report to Convocation
April 22, 2010

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

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

Purposes of Report: Decision and Information

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

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Law Society Interventions (*in Camera*)..... TAB A

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Professor Michael Ornstein - *Racialization and Gender of Lawyers in Ontario* (under separate
cover)

Public Education Equality and Rule of Law Series 2010

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on April 7, 2010. Committee members Janet Minor,

Chair, Paul Copeland, Mary Louise Dickson, Avvy Go, Doug Lewis, Judith Potter and Beth Symes participated. Chantal Brochu, representative of the Association des juristes d'expression française de l'Ontario, also participated. Gloria Roheim, The Strategic Counsel, attended to make a presentation about the findings of the Change of Status Survey. Staff members Josée Bouchard, Susan Tonkin and Mark Wells attended.

DECISION

HUMAN RIGHTS MONITORING GROUP
REQUEST FOR LAW SOCIETY INTERVENTIONS
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INFORMATION

PROFESSOR ORNSTEIN - ANALYSIS OF 2006 CANADA CENSUS DATA

42. In 2009, the Law Society of Upper Canada retained Professor Ornstein to provide a statistical portrait of women and men lawyers, racialized lawyers and Aboriginal lawyers in the legal profession, based on the 2006 Canada Census. Professor Ornstein's report entitled *Racialization and Gender of Lawyers in Ontario* is presented to Convocation for its information under separate cover.

PUBLIC EDUCATION EQUALITY AND RULE OF LAW SERIES 2010

ASIAN & SOUTH ASIAN HERITAGE MONTH - May 10, 2010

Panel Discussion – Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Reception – Convocation Hall (6:00 p.m. – 8:00 p.m.)

Topic: *Beyond Tolerance: Realizing Human Rights in a Pluralistic Society*

Statistics Canada predicts that by 2031, one in three Canadians will belong to a “visible minority” group or racialized community, and one in four Canadians will be foreign-born. Juxtaposed against this emerging demographic reality, recent incidents such as the proposed ban on the niqab in Québec, violence outside a Sikh temple allegedly involving a kirpan, and racially-motivated violence against Asian Canadians have reignited debates about multiculturalism, discrimination, and the accommodation of difference in Canadian society.

In celebration of Asian and South Asian Heritage Month, a panel of experts will explore and debate the need for a new framework for discussing human rights in a pluralistic society and how the Canadian legal and political systems can continue to recognize and protect the rights of racialized communities.

NATIONAL ABORIGINAL DAY - June 14, 2010

Panel Discussion – Lamont Learning Centre (4:00 p.m. – 6:00 p.m.)

Reception – Convocation Hall (6:00 p.m. – 8:00 p.m.)

PRIDE WEEK – June 16, 2010

Panel Discussion – Museum Room (4:00 p.m. – 6:00 p.m.)

Reception – Convocation Hall (6:00 p.m. – 8:00 p.m.)

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PARALEGAL STANDING COMMITTEE REPORT

Ms. Corsetti presented the Report.

Report to Convocation
 April 22, 2010

Paralegal Standing Committee

Committee Members
 Cathy Corsetti, Chair
 Susan McGrath, Vice-Chair
 Robert Burd
 Paul Dray
 Marion Boyd
 James R. Caskey
 Seymour Epstein
 Michelle L. Haigh
 Glenn Hainey
 Paul Henderson
 Douglas Lewis
 Ken Mitchell
 Cathy Strosberg

Purpose of Report: Decision
 Information

Prepared by the Policy Secretariat
 Julia Bass 416 947 5228

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For Information.....TAB B

Results of First Paralegal Election

Election of Paralegal Benchers

Election of Committee Chair

COMMITTEE PROCESS

1. The Committee met on April 8th, 2010. Committee members present were Susan McGrath (Vice-Chair), Marion Boyd, Robert Burd, James Caskey, Cathy Corsetti, Paul Dray, Seymour Epstein, Michelle Haigh, Glenn Hainey, Doug Lewis, Ken Mitchell and Cathy Strosberg. Staff members in attendance were Diana Miles, Zeynep Onen, Katherine Corrick, Terry Knott, Elliot Spears, Roy Thomas, Sheena Weir, Arwen Tillman, Sybila Valdivieso and Julia Bass.

FOR DECISION

INTEGRATION PROJECT: ELIGIBLE EXEMPTIONS

Motion

2. That Convocation approve the inclusion, in the Paralegal Integration Project approved by Convocation in February, of the groups shown in Appendix 1.

Background

3. On February 25th, Convocation approved in principle the Committee's proposal for a new process designed to make it easier for certain exempted paralegals and collection agents to become licensees, called the "Integration Project". The project will permit exempted persons and collection agents to apply to take the licensing examination to obtain a paralegal licence, provided they,
 - a. meet the criteria of having performed specified legal services for three years;
 - b. take a mandatory, 50-hour educational programme to be provided by the Law Society, emphasizing advocacy skills, and pass the associated tests, and
 - c. are of good character.
4. However, before the project can be announced, some aspects require further development.

Eligible Exemptions

5. The approved policy referred to the new process being available to "some" of the exempted groups in By-law 4, but did not specify which. Accordingly, it is now necessary to decide on the application of the policy.

6. Some groups were clearly intended to be included, such as the “single employer” exemption (including municipal prosecutors), while some others were not (such as the “Family and Friends” exemption). However, some of the exemptions do not fall so clearly into these categories. A chart showing all of the exemptions in By-law 4 with the Committee’s recommendations is attached at Appendix 1.

The Committee’s Deliberations

7. The Committee considered the list of exemptions in By-law 4 in light of the objectives of the Integration Project. The Committee was of the view that some of the exemptions clearly meet the objectives of the policy, as follows:
 - In-house legal services providers
 - Employees of Legal Clinics:
 - Staff of not-for-profit organizations
 - Staff of the Office of the Worker Adviser and Office of the Employer Adviser
 - Injured Workers’ groups funded by the WSIB
 - Trade union staff and persons designated by the Ontario Federation of Labour
8. The Committee was of the view that the project does not apply to the following groups:
 - Law students working in Legal Clinics
 - Law students working in law school student legal services
 - Law students working in law student pro bono programs
 - Persons acting for family, friend or neighbour
 - MPP’s and their designees
 - Articling Students
 - Employed law students
9. The Committee gave particular consideration to the groups under the exemption for “Other Profession or Occupation”, specified as members of,
 - A. Human Resources Professionals Association of Ontario
 - B. Ontario Professional Planners Institute
 - C. Board of Canadian Registered Safety Professionals
 - D. Appraisal Institute of Canada
10. These groups contain a wide range of professionals, some of whom do not provide any legal services. The Committee was of the view that the criteria to be applied will be sufficient to ensure that only suitable applicants from those groups can enter the process.
11. Accordingly, the Committee was of the view that these groups should be included, since the entry criteria and the compulsory educational course to be provided by the Law Society, together with the ‘good character’ requirement, will ensure that only suitable applicants can complete the programme.
12. Clarification by Convocation of who will be able to apply under the policy will permit discussions with the affected groups on the implementation details.
13. The Committee will be returning to Convocation shortly with the final necessary details to permit the project to be announced and publicized.

INTEGRATION PROJECT – RECOMMENDED ELIGIBILITY

APPENDIX 1

<i>EXEMPTION OR EXCLUSION BY-LAW 4, PART V:</i>	<i>RECOMMENDATION</i>	<i>EXAMPLE</i>
Section 30 (1) In-house legal services provider	• YES	Municipal prosecutors
Legal Clinics: employees	• YES	Community legal workers
Legal Clinics: law students	• NO	
Law school student legal services	• NO	
Law student <i>pro bono</i> programs	• NO	
Not for profit organizations	• YES	Human Rights Legal Support staff
Acting for family, friend or neighbour	• NO	
MPP's and their designees	• NO	
Other profession or occupation – member of A. Human Resources Professionals Association of Ontario B. Ontario Professional Planners Institute C. Board of Canadian Registered Safety Professionals D. Appraisal Institute of Canada	• YES	HR consultants working in workers' compensation
Section 31 Office of the Worker Adviser Office of the Employer Adviser	• YES	
Injured Workers groups funded by the WSIB	• YES	
Section 32 (2) trade unions and persons designated by the Ontario Federation of Labour	• YES	
Section 34 Articling Students Employed law students	• NO	

FOR INFORMATION

ELECTION OF PARALEGAL MEMBERS OF THE COMMITTEE

14. The first election of paralegal members of the Paralegal Standing Committee was held during the month of March 2010. There were 39 candidates. There were 2,817 eligible paralegal voters, of whom 831 voted, a turn-out of 29.5 %. The successful candidates were:

- i) Cathy Corsetti
- ii) W. Paul Dray
- iii) Michelle Haigh
- iv) Kenneth C. Mitchell
- v) Robert Burd

15. The full results are shown at Appendix 2.

ELECTION OF PARALEGAL BENCHERS

16. Pursuant to the provisions of Part 1.1 of By-law 3, the paralegal members and lay benchers of the Paralegal Standing Committee elected Michelle Haigh and W. Paul Dray as benchers.

ELECTION OF THE CHAIR OF THE COMMITTEE

17. Pursuant to the provisions of By-law 3, the members of the Paralegal Standing Committee elected Cathy Corsetti as Chair of the Committee.

4/29/2010 8:25 AM

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

Copy of the Order of Standing re 2010 Paralegal Standing Committee Election.

(Appendix 2, page 9)

Re: Paralegal Integration Project: Eligible Exemptions

It was moved by Ms. Haigh, seconded by Ms. McGrath, that Convocation approve the inclusion in the Paralegal Integration Project approved by Convocation in February, of the groups shown in Appendix 1.

An amendment to the motion was accepted that the words "indicated by yes" be added after the word "groups".

The motion as amended was carried.

Items for Information

- Results of First Paralegal Election
- Election of Paralegal Benchers
- Election of Committee Chair

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REPORT FOR INFORMATION ONLY

Tribunals Committee Report

- Number of Appeal Panel Members Required to Hear a Stay Motion
- Tribunals – Summary Respecting 2009 Tribunals Office Statistics

Report to Convocation
April 22, 2010

Tribunals Committee

Committee Members
Mark Sandler (Chair)
Alan Gold (Vice-Chair)
Thomas Conway
Jennifer Halajian
Tom Heintzman
Paul Schabas
William J. Simpson

Purposes of Report: Information

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

INFORMATION NUMBER OF APPEAL PANEL MEMBERS REQUIRED TO HEAR A STAY MOTION

1. Section 49.36 of the *Law Society Act* says “an appeal to the Appeal Panel does not stay the decision or order appealed from, unless, on motion, the Appeal Panel orders otherwise.”
2. There is nothing in this wording that requires five members of the Appeal Panel to hear a stay motion and Reg. 167/07 does not address the issue of motions to the Appeal Panel.
3. Concern has been raised about the practical difficulties of having to assemble five members of the Appeal Panel on every stay motion, even where the matter is on consent.
4. Since there is nothing in the *Law Society Act* or Regulations addressing the issue resort can be had to the provisions of the SPPA, specifically section 4.2(1), which provides as follows:

Panels, certain matters

4.2(1) A procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the tribunal, as assigned by the chair of the tribunal. 1994, c. 27, s. 56 (8).
5. This is a sensible approach that will allow more flexible allocation of Appeal Panel members and will be relied upon regarding stay motions, whether on consent or not. On a going forward basis, the chair will determine how many panelists to schedule to hear a stay motion, in accordance with section 4.2(1) of the SPPA.

TRIBUNALS – SUMMARY RESPECTING 2009 TRIBUNALS OFFICE STATISTICS

6. In February 2010 the Committee and Convocation were provided with the 2009 fourth quarter and 2009 annual Tribunals Office statistics. An annual summary of the 2009 statistics is provided at Appendix 1 for the Convocation's information.

Appendix 1

*2009 Tribunals Office Statistics
Annual Summary*

This summary highlights some of the activity in the Tribunals Office during 2009.

In 2009, 144 files were considered by the Law Society's tribunals. Although the inventory of files in the Tribunals Office increased considerably in 2009 as compared to 2008, significantly fewer files were closed and more files remained open. In 2009, hearings were scheduled on 96% of available calendar days. The rate at which hearings are vacated has remained stable from 2008 – about one-third of all hearings were vacated. Granted adjournment requests resulted in a loss of 29 hearing days for which a panel and hearing time was available.

A more detailed analysis of the information contained in the 2009 Tribunals Office Statistics, Fourth Quarter Report (October 1 – December 31, 2009) is provided below.

A. Files Opened

- ☐ From 2006 to 2008, the inventory of files in the Tribunals Office had steadily declined. However, in 2009, 39% more files were opened than in 2008 due to the inclusion of paralegal licensing applications– 169 files compared to 122.
- ☐ More appeal files were also opened in 2009 – 21 compared to 14 in 2008. In 2010, it is expected that the number of appeals will increase due to appeals from denied paralegal applications.

B. Files Closed

Age of Files Closed

- ☐ In 2009, significantly fewer files were closed than in 2008 – 119 files compared to 157 or a decrease of 24%. Some files are taking longer to close.
- ☐ The age and percentage of files closed from 2009 to 2007 are listed below.

Age and Percentage of Files Closed

	2009	2008	2007
0 to 6 months	37%	40%	31%
7 to 12 months	29%	28%	42%
13 to 18 months	15%	15%	18%
19 to 24 months	8%	10%	5%
Over 24 months	11%	7%	4%

C. Open Files at Year-End

- ☐ At year-end, 156 files remained opened compared to only 97 at year-end 2008 – an increase of 61%. This corresponds with more files being opened and fewer files being closed.

- ☐ The age and percentage of open files at year-end from 2009 to 2007 are listed below.

Age and Percentage of Open Files at Year-End

	2009	2008	2007
0 to 6 months	47%	42%	39%
7 to 12 months	31%	20%	31%
13 to 18 months	7%	18%	17%
19 to 24 months	4%	9%	8%
Over 24 months	11%	11%	5%

D. Number of Lawyers and Paralegals before the Tribunals

- ☐ In 2009, 140 lawyer and paralegal licensees or applicants appeared before the Law Society's tribunals.

E. Number of Files Considered by the Tribunals

- ☐ In 2009, 144 files were considered by the Law Society's tribunals.

F. Number of Hearings and Appeals Scheduled and Vacated

- ☐ In 2009, the Tribunals Office scheduled 335 hearings. Of these, 122 were vacated or 36%. These figures are similar to 2008.
- ☐ In 2009, the Tribunals Office scheduled 26 appeals, double the number of appeals scheduled in 2008. Of these, 3 were vacated or 12%.
- ☐ The reasons for vacated hearings vary. The top 3 reasons in 2009 were – party or counsel illness, counsel newly retained or unprepared and party to gather additional evidence.

G. Long Matter Hearings Scheduled and Vacated

- ☐ Of the 335 hearings scheduled in 2009, 99 were for hearings requiring more than one day to complete (long matter hearings) – an 80% increase from the 55 long matter hearings scheduled in 2008.
- ☐ The high number of vacated long matter hearings continues to be of concern. Of the 99 long matter hearings scheduled, 46% were vacated. In 2008 and 2007, 36% and 45% of all long matter hearings were vacated.
- ☐ The rate of hearing time used versus vacated are noted below.

Used versus Vacated Hearing Time

	2009 (99 long matter hearings scheduled)	2008 (55 long matter hearings scheduled)	2007 (60 long matter hearings scheduled)
All hearing time used	23%	35%	32%
All hearing time vacated	46%	36%	45%
Some hearing time vacated	31%	29%	22%

H. Calendar Days Scheduled and Vacated

- ☐ In 2009, the Tribunals Office scheduled hearings and appeals on 240 days out of a possible 249 days (including Committee and Convocation days). In other words, hearings were scheduled on 96% of the days available and often multiple files were scheduled on the same day.
- ☐ Of the 249 days on which hearings were scheduled, 29 days were vacated or 12%. In other words, 12% of days on which hearings could have been scheduled were not used.
- ☐ The reasons for vacated hearing days vary. The top 3 reasons in 2009 were agreed statement of facts expected to be signed or signed before or at hearing, hearing concluded earlier than estimated and counsel newly retained or unprepared.

I. Adjournment Requests

- ☐ The volume of adjournment requests made and granted continues to be high in 2009. Of the 54 adjournment requests made to the Proceedings Management Conference, 93% were granted. Of the 100 adjournment requests made to the Hearing Panel, 84% were granted.

J. Parties' Position on Adjournment Requests

- ☐ Of the 54 adjournment requests made to the Proceedings Management Conference in 2009, 23 were on consent (43%), 18 were unopposed (33%) and 13 were opposed (24%).
- ☐ Of the 100 adjournment requests made to the Hearing Panel, 33 were on consent (33%), 25 (25%) were unopposed and 42 (42%) were opposed.

K. Tribunal Reasons Produced and Published

- ☐ In 2009, the tribunals produced 92 sets of written reasons and 61 sets of oral reasons for a total of 153. Of these, 107 written and oral reasons were published. The discrepancy between reasons produced and published may be due to compliance with legislative requirements, oral reasons that are insufficient to be published and oral reasons that, although produced in 2009, will not be published until 2010 as production of the transcript causes some delay.

CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this 27th day of May, 2010.

Treasurer