MINUTES OF CONVOCATION

Thursday, 26th October, 2006
9:00 a.m.

PRESENT: The Treasurer (Gavin MacKenzie), Aaron, Alexander, Backhouse, Banack, Boyd, The Honourable Michael Bryant, Campion, Carpenter-Gunn, Chahbar (by telephone), Cherniak, Coffey, Copeland, Crowe, Curtis, Dickson, Dray, Eber, Elliott, Feinstein, Filion, Finkelstein, Finlayson, Furlong, Gold, Gotlib, Gottlieb, Harris, Heintzman, Henderson, Krishna, Lawrence, Legge, Manes, Martin, Millar, Minor, Murphy, Murray, O'Donnell, Pattillo, Pawlitza, Potter, Ross, Ruby, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Symes, Topp (by telephone), Wardlaw, Warkentin and Wright (by telephone).

…….

Secretary: Katherine Corrick

The Reporter was sworn.

…….

IN PUBLIC

…….

TREASURER'S REMARKS

The Treasurer welcomed the Attorney General, The Honourable Michael Bryant and Dean Patrick Monahan to Convocation.

Congratulations were extended to the Attorney General on the adoption by the Ontario Legislature of Bill 14, the Access to Justice Act 2006, which will come into force May 1, 2007.

On behalf of Convocation the Treasurer expressed sympathy to the family and friends of the late Ian Scott, Q.C., a former Attorney General and ex officio bencher, who passed away on October 10 at the age of 72.

The Treasurer announced the appointment of four new directors of LibraryCo: Ross Murray, Paul Henderson, David Thompson of Siskinds in London and Lise Parent of Ottawa.

The Treasurer reported on his activities over the last month.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of September 27 and 28, 2006 were confirmed.

REPORT OF THE GOVERNMENT RELATIONS AND PUBLIC AFFAIRS COMMITTEE

Re: Law Commission of Ontario

Mr. Finkelstein presented the Government Relations and Public Affairs Committee Report.

Report to Convocation
October 26, 2006

Government Relations & Public Affairs Committee

(Appendix 4 Revised)

Committee Members
James R. Caskey, Co-Chair
Julian H. Porter, Co-Chair
Laurie Pawlitza, Vice Chair
Andrea Alexander
Marion Boyd
John Campion
Abdul A. Chahbar
Andrew Coffey
Paul Dray
Allan F. Lawrence
Judith Potter
Alan Silverstein
William J. Simpson
Michelle Strom

Purposes of Report: Decision & Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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For Decision

COMMITTEE PROCESS

1. The Committee met on October 11th 2006. Committee members in attendance were: James Caskey (Co-Chair), Julian Porter (Co-Chair), Laurie Pawlitza (Vice Chair), Andrea Alexander, Abdul Chahbar (by telephone), Paul Dray, Allan Lawrence, Judith Potter (by telephone), William Simpson and Michelle Strom. Bencher Neil Finkelstein attended for the discussion on the Law Commission. Staff in attendance were Malcolm Heins, Sheena Weir, Caterina Galati and Julia Bass. The Committee was also joined by guest speakers George Boddington and Peter Regenstrief of *Policy Concepts Inc.*

FOR DECISION

PROPOSAL FOR A LAW COMMISSION OF ONTARIO

Motion

2. That the Law Society of Upper Canada participate in the creation of a new Law Commission of Ontario, including naming a member of the governing board and making an annual financial contribution of $100,000 for five years.

3. That such participation be conditional on successful negotiations with the other parties according to the terms set out in the application to the Law Foundation of Ontario.

Introduction and Background

4. In his speech at the opening of the courts on January 4th, 2006 the Attorney General of Ontario announced his support for the establishment of a new Law Commission of Ontario. The press release is attached at Appendix 1, together with an excerpt from the Attorney General's speech. The previously existing body, the Ontario Law Reform Commission, was abolished 1995.

5. The proposal involves a partnership between the government, the Law Society, the Law Foundation, Osgoode Hall law school at York University and the other Ontario law schools. This would be similar to the model of the Alberta Law Reform Institute (ALRI) at the University of Alberta in Edmonton.

6. A grant application was submitted to the Law Foundation of Ontario for consideration at their board meeting in June. A copy is attached at Appendix 2.

7. The Law Foundation approved the proposal in the amount of $485,000 per year for five years, on a number of conditions, including the following:

    a. That the ministry of the Attorney General commit $100,000 cash and $120,000 in kind, per year for 5 years.
    b. That the Law Society commit $100,000 per year for five years and participate actively in the project.
    c. That the law schools other than Osgoode Hall commit $10,000 per year each for five years, and participate actively in the project.
    d. Satisfactory completion of, and reporting on, proposed activities such as the creative symposium.

8. The approval letter from the Law Foundation is attached at Appendix 3.

9. The proposed budget totals roughly $1.2 million, of which the Law Society's contribution would be $100,000 per year.

10. The funding application included provision for working sessions for all the involved parties, to take place 'between June and October 2006'. This schedule has since been lengthened and discussions have continued between the Law Society, the ministry and the law schools. The resulting proposed governance structure for the Commission is attached at Appendix 4.

11. Of note is that the proposed governance structure provides the Law Society with strong representation on the governing board, on equal terms with the Law Foundation and the government.

12. The application contemplates the organization of a 'creative symposium' to identify 'top priority areas of study'. This event is now scheduled for November 30th.

13. The funding for the Law Society's contribution has been included in the 2007 budget, subject to approval by Convocation.

14. While the deans of the law schools other than Osgoode Hall have been participating in the planning discussions, they have not yet confirmed the extent of their financial contribution.

Other Law Commissions in Canada

15. On September 25th, the federal government cancelled 100% of the funding for the Law Commission of Canada (without repealing the constituting statute). The Commission has announced that it will be closing its doors in December of this year, as the government is their sole source of funding. This may be seen as showing the vulnerability of a structure that is entirely dependent on the government. Some media coverage of this is attached at Appendix 5.

16. An excerpt from a background paper on law reform commissions in Canada by Gavin Murphy (Legal Editor of the *Commonwealth Law Bulletin*) is attached at Appendix 6. Murphy's paper notes:

> *The Ontario Law Reform Commission was the first law reform commission in the sense understood within the Commonwealth, namely, a permanent body provided with stable human and financial resources. The Commission was created by statute in 1964, one year before its British counterparts and before any other continuing law reform institution in Canada.*

17. Five other provinces currently have law reform bodies: British Columbia, Alberta, Saskatchewan, Manitoba and Nova Scotia. A list of these and some similar bodies in other jurisdictions is attached at Appendix 7, together with excerpts from the current websites of the provincial bodies.

18. Information on the law reform bodies in the other provinces is summarized in the following chart:

NAME	STRUCTURE	FUNDING
B.C. Law Institute	Replaced abolished Law Reform Commission of BC in 1997. 14-member board, 8 appointed by stakeholders.	Sustaining funding from BC Law Foundation, some provincial funds since 2003, plus BC-CBA and Vancouver BA and several other supporters.
Alberta Law Reform Institute	Partnership of the province, the University of Alberta and the Law Society of Alberta since 1967. Located at University of Alberta.	Mainly funded by the three partners.
Saskatchewan Law Reform Commission	Established by Act of legislature in 1973, 9 commissioners appointed by Order in Council.	Mainly funded by Law Foundation of Saskatchewan and provincial department of justice.
Manitoba Law Reform Commission	5 members appointed by Order in Council, including 1 judge, 1law professor, 1 practising lawyer and 1 layperson.	Provincial department of justice and law foundation
Law Reform Commission of Nova Scotia	Established 1991. Six part time commissioners, including one judge, two community representatives, two N.S. Barristers' Society reps and one faculty member from Dalhousie.	Provincial government and law foundation.

The Committee's Deliberations

19. The Committee agreed that the former Ontario Law Reform Commission played a useful role. While some Committee members felt that the government should take principal responsibility for such a body, it was noted that the proposed model would give the Commission more independence from government and that the involvement of the Law Society on the governing board would ensure that issues of concern to Law Society and the legal profession would be considered.

20. It was noted that smaller provinces have successfully established such bodies and that these have made important contributions to law reform, the administration of justice and access to justice.

21. The Committee was of the view that the Law Society's mandate "to maintain and advance the cause of justice and the rule of law", to "facilitate access to justice for the people of Ontario" and "to protect the public interest" supports participation in an important public interest initiative of this nature.

22. It was noted that the Law Foundation's conditional approval means that, if all of the partners cannot agree on the specified terms, the project may not proceed. Accordingly, the Committee was of the view that the Law Society's participation should also be expressed to be conditional.

23. On balance, the Committee was of the view that this is an important opportunity for the Law Society to work with the other partners on a project that can bring real benefits to the people of Ontario.

APPENDIX 1

For Immediate Release
January 4, 2006

ATTORNEY GENERAL TO ESTABLISH NEW
LAW COMMISSION OF ONTARIO

Commission To Make Justice System More Accessible

TORONTO — The McGuinty government intends to establish a new Law Commission of Ontario, Attorney General Michael Bryant announced today at the Opening of the Courts ceremony. "We will pursue discussions with the Law Foundation of Ontario, the Law Society of Upper Canada, Ontario's law schools, and the legal community," said Bryant. "The goal is to create a modern, relevant and responsive commission that will bring forward recommendations to improve the administration of Ontario's justice system and enhance access to justice."

Ontario has not had a law reform commission since 1995. The development of the new Law Commission of Ontario will be a joint effort. The government and its partners in the legal community will work to make this goal a reality in 2006.

"For many years, the previous Law Reform Commission was an important instrument of change in our province's legal system," said Bryant. "It was known to forward progressive ideas, ask tough questions and engage in creative, innovative, critical thinking. Our justice system needs the same capacity today."

The commission's mandate will be to work with government, the legal profession, the judiciary, the faculties and students of all Ontario law schools and the public, to:

- Examine issues of significant interest and importance
- Develop recommendations designed to improve the administration of Ontario's justice system and
- Enhance access to justice.

A significant aspect of the mandate of the commission will be to make the justice system more accessible and equitable by using modern technologies to collect and distribute legal knowledge and research. "I look forward to working with all involved groups on this important project," said Bryant. "This is part of the McGuinty government's commitment to an effective and efficient legal system."

Contacts:
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(416) 326-2210

DRAFT Jan. 4, 2006 – FINAL

Notes for Remarks by

The Honourable Michael J. Bryant
Attorney General of Ontario

Opening of Courts

January 4, 2006

[EXCERPT]

Check Against Delivery

I'd also like to use this occasion to look ahead.

For many years, the Law Reform Commission was one of the most important instruments of change in our province.

It brought forward progressive ideas, it asked tough questions, it engaged in creative, innovative, critical thinking.

Yet, a decade ago the Law Reform Commission was scrapped. I think it's time to re-evaluate that decision.

Today, more than ever, we need to tap the best legal minds -- for practical and creative solutions to existing challenges, and to explore new directions for the rule of law.

Otherwise, assessment and reform of our legal system amounts to *ad hoc* efforts, more often than not driven (or not) by government.

After all, it is the province which has jurisdiction to administer justice.

A provincial Law Commission is the critical means by which a provincial justice system, with independent and government partners, examines reform in a rigorous, objective fashion. Many have called for this, and I have listened. I want to thank the many benchers who have spoken to me about this issue.

We are also fortunate to have the latest, but not the last, Law Reform Commissioner, Professor John McCamus of Osgoode Hall Law School, as a constant advocate for, and advisor to, the Law Commission's revival.

And I want to thank Chief Justice McMurtry, who has been calling for the revival of the Law Reform Commission for years.

To them and to the members of the legal profession I say "I agree." Let's do it. Let us revive the Commission, and let us do it together.

Today, I am announcing my intention to resurrect the Law Reform Commission. I will pursue discussions with the Law Foundation of Ontario, the Law Society of Upper Canada, Ontario's law schools, and the legal community.

Our shared goal is to establish a modern, relevant, and responsive Commission.

This will be an independent body that will work with the judiciary, academic institutions, the legal community, and the public, to examine important issues, and to develop recommendations on how to improve the administration of justice and enhance access to justice.

The new Law Commission will also have a mandate to make our justice system more accessible and equitable. There are a lot of ways to do this, for example, by using modern technologies to collect and disseminate legal knowledge and research.

I'm looking forward to seeing the new Law Commission get to work. Its reawakening is finally upon us.

Appendix 4

REVISED OCTOBER 17, 2006

Steering Committee: Recommendations regarding Governance of LCO

1. Constituting the Commission

Recommended Approach:
For the interim period, enter into a Founding Agreement with contributing partners. Signatories would include a representative from each of Osgoode Hall Law School, the Law Society, the Law Deans and the Ministry of the Attorney General. Legislation establishing the Law Commission of Ontario could be introduced at a future date.

2. Structure and Appointments

A. Board of Governors

Recommended Approach:
The grant application set out that the makeup of the body would reflect regional diversity and include:

- 1 representative appointed by the Law Foundation,
- 1 representative appointed by the Law Deans (other than Osgoode Hall Law School),
- 1 representative appointed by Osgoode Hall Law School,
- 1 representative appointed by the Ministry of the Attorney General,
- 1 representative appointed by the Law Society,
- 1 representative appointed by the judiciary,
- other members as required and identified by the Board (e.g., drawn from a university outside the law schools or other communities)

Members of the Board of Governors would be volunteers. In order to have continuity for the vision and establishment of the Commission, the terms of the Board of Governors would be staggered. For the first Board of Governors: representatives appointed by the judiciary, the Law Deans (other than Osgoode Hall Law School) and the Ministry would be for 2 year terms; representatives appointed by Osgoode Hall Law School, the Law Society and the Law Foundation would be for 3 year terms. Following the first Board, all members would be appointed for a 3-year period. Members would continue to serve until a successor is appointed. Members may be reappointed. Members appointed to the Board of Governors cannot also be appointed to the Research Advisory Board.

In order to ensure that the appointees chosen for the Board of Governors meet regional and diversity criteria, the groups putting forward proposed appointees will be required to closely collaborate.

The Board of Governors would select one of their members to be the Chair of the Board. The Chair would be selected based on the following criteria:

- High level of professional achievement in his/ her field of endeavour
- Demonstrated commitment to law reform
- Strong managerial/leadership skills
- Interest in operational design and operational issues
- Energetic and able to make the required time commitment
- Excellent interpersonal skills – as the public face of the LCO – must be able to build good relations with a variety of stakeholders (academic community, LFO, Law Society, MAG)
- Political acuity

B. Research Advisory Board
Recommended Approach:
The body's makeup would reflect regional diversity and could include:

- 1 representative chosen by each law school (6),
- 1 representative chosen by the Ministry of the Attorney General,
- 1 representative chosen by the Law Society,
- 1 representative of the private bar chosen by the other representatives, and

- 1 representative of another discipline chosen by the other representatives.

The members of this board would be volunteers. Members' terms would be for a period of three years. Members would continue to serve until a successor is appointed. Members may be reappointed. Members appointed to the Research Advisory Board cannot also be appointed to the Board of Governors.

Members of the Research Advisory Board would select one of their members as Chair. The Chair would be selected based on the following criteria:

- Demonstrated commitment to law reform
- Outstanding academic and research background
- Ability and willingness to make interdisciplinary and inter-law school connections
- Excellent interpersonal skills
- Dynamic analytic and creative problem-solving abilities

3. Relationship between Board of Governors and Advisory Body

Recommended Approach:
The Board of Governors would be the decision-making body. It would deal with operational issues and make final determinations regarding research projects, the overall research agenda of the Commission and approving final reports. The Board of Governors would be the public face of the Commission. As such, the Chair and the Board of Governors would be responsible for making links with the private bar, federal and international research bodies as well as groups such as the Uniform Law Conference of Canada.

The Research Advisory Board would make recommendations to the Board of Governors regarding research projects, timelines etc. It would be responsible for recommending the establishment of multidisciplinary project teams drawing on members from several law schools, across other university faculties, the government and practicing bar. It would also have the ability to create ad hoc advisory groups with broad representation from various academic disciplines, the bar, government etc. to advise on particular projects.

The respective roles of the Board of Governors and the Research Advisory Board would be set out in the Founding Agreement.

The Founding Agreement would also set out the relationship between the Board of Governors, the Research Advisory Board and the Executive Director along the lines set out below:

- The Board of Governors will:
  - hire the Executive Director;
  - develop his/ her performance measures;
  - set and review the terms of employment.

- The Executive Director will:
  - report to the Board of Governors through the Chair;
  - be a non-voting member of the Board of Governors;
  - support the Board of Governors meetings and decision-making process;
  - consult with the Board of Governors on the operational running of the LCO;

- work with the Board of Governors to develop and support the research agenda, conduct RFPs, set timelines and ensure they are met, provide project management.
- assist the Board in the maintenance of ongoing stalkeholder communications and management.

- The Executive Director will be responsible for:
  - the day to day running of the LCO;
  - hiring support staff, technological support;
  - the information posted on the website; and
  - the financial management of the LCO.

- The Executive Director will:
  - support the Research Advisory Board meetings and decision-making process;
  - work with the Board to develop and support the research agenda, develop multi-disciplinary teams for projects; develop and monitor timelines for projects and ad hoc advisory committees as required for particular projects.

4. Mandate of the Commission

Recommended Approach:
The mandate of the Commission would be to recommend law reform measures to:

- Enhance the legal system's relevance, effectiveness and accessibility;
- Improve the administration of justice through the clarification and simplification of the law;
- Consider the effectiveness and use of technology as a means to enhance access to justice;
- Stimulate critical debate about law and promote scholarly legal research; and
- Develop priority areas for study which are underserved by other research, determine ways to disseminate the information to those who need it and foster links with communities, groups and agencies.

5. Project Selection Criteria for Commission

The project selection criteria would be a list of factors to guide the Board of Governors when deciding which projects to pursue. Projects would not be required to meet all of these criteria. A recommended short list of project criteria is set out below. It is proposed that the project selection criteria would be refined at the Creative Symposium.

Recommended Approach:
- Has the need for intervention to reform the law been clearly demonstrated?
- Is the project coherent with the general strategic directions identified by the Commission?
- Will the project engage the concerns/ needs of those who might not otherwise have the resources to make their voices heard effectively through the policy process?
- Does the project have potential for collaborative efforts with other law reform bodies, government ministries or non-governmental research groups or take advantage of interdisciplinary perspectives?

- Does the project have the potential to be of interest and benefit the broader public?
- Would the project produce a worthwhile result?
- Administrative considerations, such as:
  - Can the project be completed in a timely manner to maintain its relevance?
  - Does the project duplicate work being done elsewhere?
  - Does the project make excessive demands on resources?

6. Designates for the Board of Governors and Research Advisory Board

Contributing partners will be asked to submit names for the Board of Governors and the Research Advisory Board during the week of October 26-Nov 3, 2006. Members of the Board of Governors and the Research Advisory Board will be appointed the week of November 6-10, 2006.

APPENDIX 6

LAW REFORM AGENCIES

By Gavin Murphy Legal Editor, Commonwealth Law Bulletin. [EXCERPT]

Ontario

The Ontario Law Reform Commission was the first law reform commission in the sense understood within the Commonwealth, namely, a permanent body provided with stable human and financial resources. The Commission was created by statute in 1964[66], one year before its British counterparts and before any other continuing law reform institution in Canada. The *Ontario Law Reform Commission Act, 1964* contains only five sections. Section 2 specified that it was the function of the Commission to inquire into reform of the law and consider any matter relating to it. The Commission's mandate included the examination of statute law, the common law, judicial decisions, the administration of justice, or any other subject referred to it by the Attorney General. There was no restriction regarding the number or qualifications of commissioners[67].

Unlike the British Commissions, the Ontario Law Reform Commission could initiate its own projects without obtaining prior approval. Nevertheless, it was obliged to report on its work periodically to the Attorney General of the province[68]. At its funding high point in the early 1990s, the Commission had an annual budget of almost $1,700,000. By the time the Commission was closed, its financial resources had shrunk to $687,700. The following table shows the evolution of the budget of the Commission[69].

Ontario Law Reform Commission Budget
(Canadian dollars)

1965–1966	$	158,000
1966–1967	$	155,000
1967–1968	$	213,000
1968–1969	$	190,000
1969–1970	$	224,000
1970–1971	$	271,000
1971–1972	$	447,000
1972–1973	$	421,000

1973–1974	$	393,700
1974–1975	$	394,500
1975–1976	$	468,900
1976–1977	$	476,700
1977–1978	$	524,300
1978–1979	$	644,400
1979–1980	$	708,500
1980–1981	$	810,400
1981–1982	$	892,700
1982–1983	$	979,300
1983–1984	$	1,052,800
1984–1985	$	1,099,400
1985–1986	$	1,128,200
1986–1987	$	1,145,700
1987–1988	$	1,215,300
1988–1989	$	1,225,000
1989–1990	$	1,325,900
1990–1991	$	1,620,400
1991–1992	$	1,670,200
1992–1993	$	1,690,800
1993–1994	$	1,006,600
1994–1995	$	980,000
1995–1996	$	902,700
1996–1997	$	687,700

To be selected for study by the Commission in its later years of operation, a project had to demonstrate a need for law reform that could not be effectively addressed elsewhere. There had to be a likelihood that the Commission's proposals would address the needs and concerns of groups who would not otherwise have the resources or degree of organisation to make their voices effectively heard. The Commission had to have the available personnel and the financial resources to initiate the project, and the nature of the subject was required not to be under review by other government agencies. A project had to have a likelihood of completion in a reasonable period of time, be consistent with any Commission statement of current priorities and have the potential for collaboration with other law reform bodies, government ministries or non-governmental research groups. Finally, there had to be an absence of reports by law reform bodies or other agencies that rendered study on a particular subject necessary, and there had to be a reasonable expectation of implementation of proposals for reform.

In contrast to most other law reform agencies, the Ontario Law Reform Commission had a large part of its research work conducted by outside teams of academic lawyers[70]. During the 1980s, the Commission consisted of one senior legal research officer and four legal research officers. Utilising outside expertise was possible because of the existence of a large number of academics at the province's six law schools[71].

A broad-based project advisory board was also set up. The board comprised practising lawyers, academics, representatives of appropriate interest groups and other interested parties who advised the Commission with respect to its projects. Once a draft report was completed, the commissioners reviewed it and the Commission's legal staff would make any necessary changes. A final report, which represented the Commission's views on a subject, was presented to the Attorney General. The final report sometimes included draft legislation[72].

The Commission was abolished in 1996, a victim of the government's policy to reduce the deficit and eliminate agencies considered non-essential.

Alberta

The next province to establish a permanent law reform agency was Alberta, which proceeded differently from Ontario. As noted earlier, senior members of the provincial Law Society of Alberta had set up a Law Reform Committee in 1964. By the end of 1966, the Law Society realised that the task of law reform in the province could not depend on a voluntary and unpaid committee with no permanent staff. Discussions therefore began in early 1967 between the Law Society, the Attorney General's department and the University of Alberta's faculty of law to establish a commission or institute of law reform within the university. From the beginning, all concerned felt that the faculty of law should play a significant role in the proposed body, and members of the faculty enthusiastically supported the proposal. The provincial government, the Law Society of Alberta and the University of Alberta entered into an agreement in November 1967 to provide for the establishment of the Alberta Institute of Law Research and Reform[73]. The objectives of the Institute are set out in the founding agreement and consist of four elements : conducting and directing research into law and the administration of justice, recommending ways in which the law may be made more effective, promoting legal research and reform, and working in cooperation with others, especially the faculties of law at the University of Alberta and the University of Calgary[74]. The Institute has been given a broad mandate. It has the power to engage in anything that falls within the term "law reform", and it can propose anything that will make the law more effective. The Institute commenced operations on 1 January 1968.

Research is a separate element of the Institute's objectives, and as a result, several projects have been undertaken that have not led to actual reform proposals[75]. The Institute's law reform reports have covered an extraordinary range of topics, from landlord and tenant law to compensation for victims of crime. The main criterion for the selection of a subject for consideration is its relevance to Alberta. Federal matters are not excluded, but they do not have a priority. Although the Institute has based some of its projects on government suggestions, it is not required to accept references from the government. The Institute is free to choose its own projects.

As of 1 January 2003, a board of thirteen members, including its director, who is also a member of the faculty of law at the University of Alberta, governed the Institute. The Institute is located at the university, and the government and university cover its operating expenses. The Institute is not statutorily protected, and its existence is dependent upon the continuing agreement of its three constituent bodies[76]. The name Alberta Law Reform Institute was adopted in 1989[77].

The Institute's board meets monthly to review the overall operations, approve all reports and consider the direction of research papers. Project funding for the Institute comes from the Alberta Law Foundation[78] and the provincial Department of Justice.

British Columbia

The statute creating the Law Reform Commission in British Columbia came into force on 1 July 1969[79]. The Commission began operations the following year. Its mandate and structure were similar to those of the Law Commission for England and Wales, including the requirement that the provincial Attorney General approve its research programs. The Commission's mandate was

to recommend the examination of law needing reform and to suggest an agency, whether itself or another body, to carry out the review. The Commission was usually composed of practising and academic lawyers. Despite numerous changes in staff during its early years, the Commission managed to produce a high volume of work.

The Commission ceased to exist at the end of March 1997, when the provincial government cut its funding. Over its 27 years of existence, the Commission produced more than 140 reports on a wide variety of topics[80]. It also initiated several Internet-based projects, including a law reform database and an index of its collection of law reform materials from throughout the Commonwealth.

Prior to the Commission's demise, the British Columbia Law Institute was created in January 1997 through incorporation under the province's *Society Act*. The Institute was formed in response to the decision by the Attorney General's department to withdraw funding for the Commission. At the time of the announced cuts, there was widespread concern that the disappearance of the Commission would create a void and result in the loss of tangible and intellectual assets.

Section 2 of a text, called its "Constitution", creates the Institute[81]. This section states that the purpose of the Institute is to promote the clarification and simplification of the law and its adaptation to modern social needs, to promote improvement of the administration of justice and respect for the rule of law, and to promote and carry out scholarly legal research. The internal rules[82] of the Institute provide that it is to be composed of fourteen members. Of these fourteen members, two are appointed by the Attorney General, two by the executive committee of the Law Society of British Columbia[83], two by the executive committee of the British Columbia branch of the Canadian Bar Association and one each by the deans of the law faculties of the University of British Columbia (Vancouver) and the University of Victoria. Every member of the Institute is also a director. Membership is for a term of five years, with the possibility of reappointment.

The British Columbia Law Institute did not receive any funds from the provincial government for its regular operations until the spring of 2003. At that time, the province's Ministry of Attorney General committed to provide funding to the Institute over the next three years. Sources of funding in the past have included the Law Foundation of British Columbia[84], the Law Society of British Columbia, the Canadian Bar Association and the Vancouver Bar Association[85]. Since 1998 the Institute has had charitable status, which means that any donation to the Institute can be used to reduce personal income tax. In 1999 it undertook a fundraising initiative, which proved successful. That same year, it received a grant from the federal Law Commission of Canada for the compilation of a database of federal legislative references to family-like relationships.

As of March 2003, the Institute had completed 24 reports. But efforts are not solely confined to law reform matters. The Institute is also mandated to prepare publications that will improve access to the law or provide a base from which reform work can be done. One example of the Institute's work that goes beyond law reform is a report on gender-neutral legal writing.

Nova Scotia

The province of Nova Scotia created the Law Reform Advisory Commission in 1969. The Commission began operations in 1972[86]. It consisted of between five and ten members, all drawn from the legal community, and it could inquire into any matter relating to reform of the

law. However, its activities could only be carried on with the support of the province's Attorney General[87]. The Commission shared support staff with a senior provincial law officer known as the legislative counsel, who was to be appointed secretary and executive officer of the Commission[88]. In 1976 the statute was amended to expand membership to between 10 and 15 members[89]. Up to five non-legal commissioners were permitted, although none was ever appointed. Also around this time the Commission hired a full-time permanent legal research officer, having previously relied on external consultants working under contract and its own members serving as volunteers[90].

The Commission continued to exist in law until its governing statute was repealed in 1990. But it was not active after 1981, when the terms of all of its members expired and no reappointments were made. The Commission's demise appears to have been due to financial concerns, lack of a consistent approach to law reform and the view that the provincial Ministry of the Attorney General could as effectively develop any necessary changes[91].

The Commission examined 17 areas of the law during its lifetime, including matters such as mechanic's liens, matrimonial property, changes of name and reciprocal enforcement of judgments. Some of its recommendations were in the form of separate reports, while others were presented as draft bills sent to the Attorney General. Publication of both annual and law reform reports could only take place with the approval of the Attorney General[92].

With the closure of the Law Reform Advisory Commission came the creation in 1990 of a new body, the Law Reform Commission of Nova Scotia[93]. The Commission acts as an independent advisor to the government, and this independence gives it the possibility to make recommendations on law reform in a non-partisan manner[94]. The Commission reports to the public and elected representatives of Nova Scotia through the provincial Attorney General.

The Law Reform Commission of Nova Scotia consists of between five and seven full-time or part-time commissioners drawn from the community : one judge appointed by Cabinet who is selected by the judges of Nova Scotia, two community representatives selected by the Cabinet, two representatives appointed by the Nova Scotia Barristers' Society, one member from the Dalhousie University faculty of law and one commissioner who must not be a law school graduate.

Under the provisions of the *Law Reform Commission Act*, the Commission reviews the laws of the province and makes recommendations for improvement. One of the Commission's priorities is to discuss law reform with the general public. These talks then form the basis on which the Commission determines if existing laws are adequately serving the people or whether legal reform is required. The Commission's projects cover an extensive range of social and legal issues[95]. Judges, the legal community and the public suggest the majority of projects for review, while others have been references from the government of Nova Scotia.

The Commission's final reports and recommendations are formally presented to the Minister of Justice and Attorney General for Nova Scotia. These reports are available to the public without cost. Commission reports once included draft legislation, but this is no longer the case. The Commission has neither the resources nor the expertise to prepare draft legislation[96].

In April 2000 the Commission was advised that the provincial government would provide no further financial assistance after 2000–2001. From April 2001 the Law Foundation of Nova Scotia[97] funded Commission activities in the entirety. However, discussions with the provincial Attorney General's office led to the restoration of government support in 2004[98].

Prince Edward Island

Prince Edward Island adopted a statute in 1970[99] establishing a law reform commission. The statute was modelled on the *Ontario Law Reform Commission Act, 1964*. The Prince Edward Island Law Reform Commission did not commence work until 1976. The chairman of the Commission was the Chief Justice of the province, and the other commissioners were prominent members of the legal profession. The Commission ceased to operate after the discontinuation of its budget in 1983. Throughout the Commission's existence, its staff consisted of only one lawyer. The Commission did not release formal reports or working papers. All recommendations were made briefly or in the form of draft legislation. The Commission evidently did not have strong support from the government or the legal community[100]. The founding statute was repealed in 1989 by virtue of its omission from the 1988 Revised Statutes of Prince Edward Island. Through provisions found in the provincial *Legal Profession Act*[101], the Law Foundation of Prince Edward Island[102] is now responsible for any law reform activities that may take place.

Manitoba

It was not until 1970 that the Manitoba legal community called for a full-time law reform agency patterned after the Ontario commission. Later that year, Manitoba enacted a statute[103] establishing its own law reform commission, and membership of the Manitoba Law Reform Commission was completed in February 1971.

The first chairman of the Commission was Francis Muldoon, later to become the third president of the Law Reform Commission of Canada. Until 1979, three of the seven commissioners were non-lawyers, and since that time there has always been at least one non-lawyer commissioner. Non-lawyers were appointed to encourage a wide range of viewpoints, and their inclusion resulted in reports being drafted in simple and easy-to-read, non-legal language. Like most other commissions, the Manitoba Law Reform Commission was given a wide mandate. Its duties were to inquire into and consider any matter relating to law in Manitoba and to formulate recommendations for reform. The Commission had to accept references from the provincial Attorney General and give them priority, but its activities were not restricted to responding to such references.

While the Commission functioned effectively from 1970 to 1986, by 1987 the government clearly intended to abolish it. However, the Commission was soon restored by a new government, which regarded the agency's existence and independence as a matter of priority. A new *Law Reform Commission Act* was assented to by the provincial government on 8 March 1990[104].

The Manitoba Law Reform Commission[105] is funded through grants from the provincial Department of Justice and the Manitoba Law Foundation[106]. The Commission is composed of at least five, but not more than seven commissioners appointed by the provincial Cabinet[107]. The membership must include a judge of the Court of Queen's Bench, a full-time member of the teaching staff of the University of Manitoba faculty of law, a lawyer entitled to practise in Manitoba who is not employed by the provincial government and a non-lawyer. One of the members is appointed president, and that person must be a lawyer.

In March 1997 the government announced its intention of finally eliminating the Commission. After protests, the government backed down and provided modest support to the Commission. As of 30 June 1997, all of the Commission's permanent staff were dismissed, and it operated with only a part-time administrator. There was no in-house legal research staff, and the

Commission had to hire outside consultants to undertake projects on its behalf. The Commission even acknowledged in 2001 that it lacked staff and resources to be active[108]. But with an increase in annual funding from the Manitoba Law Foundation from $50,000 to $65,000, it was able to hire a full-time legal researcher in August of that year. The law foundation increased its annual grant to $100,000 for financial year 2002–2003[109].

Since its inception in 1970, the Commission has issued over 100 formal papers, of which over 75 percent have been implemented. Some of the Commission's most important recommendations acted upon by the provincial legislature have been in the areas of the administration of justice, family law and municipal law.

Saskatchewan

The Saskatchewan Law Reform Commission was established by law in 1971 [110]. The statute came into effect in 1973, and the Commission began work in February 1974. The Commission's functions are described in section 6 of the Act. These provisions are almost identical to those for the former British Columbia Law Reform Commission, which themselves were inspired by the requirements found in the United Kingdom's *Law Commissions Act 1965* and the *Canadian Law Reform Commission Act* of 1971. The Saskatchewan Law Reform Commission is primarily mandated to keep all the law of the province under review. This objective is achieved through the systematic development and reform of the law, including codification, elimination of anomalies, repeal of obsolete and unnecessary enactments and, more generally, simplification and modernisation of the law[111].

Since 1973 the Commission has consisted of at least three members[112] who are appointed by Cabinet and hold office with Cabinet approval. As of February 2003, there were six members of the Commission. The chair, who is designated by Cabinet and acts as chief executive officer, is always a legal academic from the University of Saskatchewan. The governing statute allows the Commission to appoint committees to consider and report on any aspect of the Commission's work. Members of these committees need not be members of the Commission itself. Funding for the Commission comes from both the provincial government and the Saskatchewan Law Foundation[113].

Project suggestions can come from a number of sources, including the Minister of Justice, the Commission itself and its staff, the judiciary, the legal profession, professional organisations and the general public. After preliminary research, the Commission usually issues a background or consultation paper to facilitate public discussion. Tentative proposals may be released if the legal issues involved in the matter under review are complex. Upon completion of a project, the Commission's recommendations are submitted to the province's Minister of Justice as final proposals.

The Commission has made recommendations in a number of substantive areas over the years, including family law, commercial and contract law, insurance law, trust law, personal property security law and medical-legal law. The Commission completed three research projects during the 2001–2002 fiscal year[114]. The June 2001 report on a proposed law for the division and sale of land among co-owners included draft legislation.

Newfoundland

Legislation was enacted in 1971 to permit the creation of a law reform commission in Newfoundland[115]. It was not until a decade later, in 1981, that the first commissioners were

appointed and the Newfoundland Law Reform Commission commenced activities. The Commission was established to inquire into and consider matters relating to reform of the law in Newfoundland. Furthermore, the provincial Minister of Justice could refer any subject to the Commission.

The provincial Cabinet determined the number and names of Commission members, who were appointed for three-year, renewable terms. The Commission was not obliged to present an annual report to the government. Rather, it was required to report when it seemed advisable based on the progress of its work or when requested by the Minister of Justice. The Minister of Finance provided funding, on the request of the Minister of Justice, out of the provincial government revenues. Provision was made in 1991 for the Commission to receive funding from sources other than the government.

In the provincial Budget Speech of 1992, the Minister of Finance for Newfoundland announced that the government would no longer fund the Commission[116]. The principal motivating factor behind the Commission's abolition was, as so often the case, fiscal restraint.

New Brunswick

In 1971, New Brunswick established a Law Reform Branch within its Department of Justice, rather than creating a separate law reform agency. The Legal Research Section of the Law Reform Branch carried out the province's law reform work. In 1993, the Legal Research Section was closed and the Law Reform Branch was renamed the Legislative Services Branch[117].

Quebec

Quebec established a Civil Code Revision Office in 1955 to work on reform of the entire field of private law in the province. The primary role of the Office was to assess the fundamental principles behind the Civil Code's institutions[118]. From 1955 to 1960, the Office consisted of only one person. In 1960 it was expanded to four members and was asked to produce a new Civil Code.

The intensity of this undertaking increased significantly from 1966. Work was structured around 43 committees composed of between three and seven jurists, who were assisted by researchers and experts. Committee reports were prepared in both English and French, and each study was accompanied by a commentary. These reports were circulated among interested persons and groups for comments. A total of 64 reports were then compiled into one single document on the Civil Code, which was released in 1978[119]. The 1978 draft Civil Code was never implemented as such. However, the revision exercise led to reforms on several issues, including parental authority, and provided the basis for the final effort that eventually led to the adoption in 1991 of an entirely updated Civil Code. The work in that last phase was conducted on a different basis, this time without a law commission-type formal structure.

In 1992, the province enacted legislation to create the Quebec Law Reform Institute (Institut québécois de réforme du droit). According to the statute, the mission of the Institute is essentially the same as that of law reform bodies in the other provinces of Canada[120]. As with the federal Law Commission of Canada model, the Institute is required to consult the provincial Minister of Justice on its research programs and give priority to the Minister's requests for advice or research. Unlike the practice of the federal commission, the Quebec legislation provides that the majority of members, including the chair and vice-chair, are appointed on a full-time basis. Full-time members must be legally trained or have a long-standing interest in the

law. They are appointed for a term of not more than five years. Part-time members, whose terms shall not exceed three years, must be knowledgeable in the Institute's research areas. The Institute is to fulfil its mission by conducting or commissioning research, and it is to receive initial funding from the provincial government alone. The bill creating the Institute was assented to in the province's National Assembly on 23 June 1992. It is to come into force on a date to be fixed by the government[121]. As of March 2004, this statute had not been brought into force, so the proposed Institute has not yet come into existence.

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Source: http://www.justice.gc.ca/en/ps/inter/law_reform/page2.html

APPENDIX 7

LIST OF EXISTING LAW REFORM COMMISSIONS

Provincial Law Reform Commissions:

- B.C. Law Institute and Law Reform Database
- Alberta Law Reform Institute
- Saskatchewan Law Reform Commission
- Manitoba Law Reform Commission
- Law Reform Commission of Nova Scotia

Canadian Law Reform Commissions:

- Law Commission of Canada
- Canadian Forum on Civil Justice
- Uniform Law Conference of Canada

Foreign Law Reform Commissions:

- Australian Law Reform Commission
- Law Commission for England and Wales
- Law Reform Commission of Hong Kong
- Law Reform Commission of Ireland
- New Zealand Law Commission
- Scottish Law Commission
- South African Law Commission
- U.S. - American Law Institute - descriptions of restatements only
- U.S. - California Law Revision Commission
- U.S. - New Jersey Law Revision Commission
- U.S. - Commission on Civil Rights
- U.S. - Uniform Law Commissioners - National Conference of Commissioners on Uniform State Laws

Overview

The British Columbia Law Institute was created in January 1997 by incorporation under the Provincial *Society Act*. The broad purposes of the Institute, described in Article 2 of its Constitution, are to:

- promote the clarification and simplification of the law and its adaptation to modern social needs,
- promote improvement of the administration of justice and respect for the rule of law, and
- promote and carry out scholarly legal research.

The Institute was created in response to a decision by the Ministry of Attorney General to withdraw program funding from the Law Reform Commission of British Columbia. The disappearance of the Commission, without replacement, had the potential to create a serious vacuum in the legal resources available to the people of British Columbia and carried a significant risk that the tangible and intellectual assets of the Commission would become dissipated and irretrievably lost. The Institute was created as a successor body to mitigate this loss. The by-laws of the Institute provide that it is composed of 14 members, eight appointed by stakeholder groups and the balance serving as "members-at-large." Every member of the Institute is also a director.

ALRI

History

In 1993, the Alberta Law Reform Institute proudly marked 25 years of service to Albertans. It was on November 15th, 1967 that representatives of the Province of Alberta, the University of Alberta and the Law Society of Alberta signed the first agreement creating the Institute of Law Research and Reform. In January of 1968, the Institute formally commenced operations and held its first Board deliberations. The name Alberta Law Reform Institute was adopted in 1989.

About ALRI

The Institute delivers law reform proposals through specific projects.

Project Selection Criteria
The rationale for the program content includes a number of component principles:

- each project must meet a perceived community need by providing a remedy for a deficiency in the law or in the administration of justice.
- a project must be one that neither the political process or the administrative process is likely to deal with effectively.
- each project must be one that falls within the capability of the Institute, as a group of lawyers acting with the best available advice from segments of the public and from law and other disciplines.
- the total program must make contributions both to technical areas of law and to areas of law involving social policy.

Law Reform Commission of Saskatchewan

About the Commission

The Law Reform Commission of Saskatchewan was established by An Act to Establish a Law Reform Commission, proclaimed in force in November, 1973, and began functioning in February of 1974.

The Commission is incorporated by an Act of the Saskatchewan Legislature. Commissioners are appointed by Order-in Council. Its recommendations are independent, and are submitted to the Minister of Justice for consideration.

Projects are initiated by the Commission in response to suggestions from the public and the legal community, or at the request of the Minister of Justice. After preliminary research, the Commission usually issues background or consultation papers to facilitate consultation. Tentative Proposals may be issued if the legal issues involved in a project are complex. Upon completion of a project, the Commission's recommendations are formally submitted to the Minister as final Proposals.

At present, the Commission is funded primarily by grants from the Law Foundation of Saskatchewan and the Department of Justice.

What is the Law Reform Commission of Nova Scotia?

The Law Reform Commission of Nova Scotia was created in 1991 by the Government of Nova Scotia. The law which created the Commission is the *Law Reform Commission Act*, S.N.S. 1990, c. 17. The Commission is an independent advisor to the Government and is not a government department. The independence of the Commission enables it to make recommendations for law reform in a non-partisan manner. The Commission reports to the public and elected representatives of Nova Scotia, through the Minister of Justice and Attorney General for Nova Scotia.

The *Law Reform Commission Act* requires that there be between five and seven Commissioners. There are currently six part-time Commissioners: one judge selected by the judges of Nova Scotia; two community representatives selected by the Minister of Justice; two representatives of the Nova Scotia Barristers' Society; and one faculty representative from Dalhousie Law School. One of the Commissioners has been selected by the other Commissioners to act as President.

The Commission does not provide legal advice to individuals or organizations and does not intervene in individual cases. The Commission attempts, however, to provide the public with accurate legal information and often assists members of the public in locating legal information either directly or through other organizations. The Commission is funded by the Government of Nova Scotia and by the Law Foundation of Nova Scotia.

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

(1) Copy of the grant application submitted to the Law Foundation of Ontario.
(Appendix 2, pages 14 – 26)

(2) Copy of a letter to Patrick J. Monahan, Dean of Law, Osgoode Hall Law School from Mary Shannon Brown, Executive Director, The Law Foundation of Ontario dated June 30, 2006 re: Grant No. 873-06.

(Appendix 3, pages 27 – 28)

(3) Copies of newspaper articles on the Law Commission of Canada.

(Appendix 5, pages 34 – 37)

The Attorney General addressed Convocation.

It was moved by Mr. Finkelstein, seconded by Mr. Campion,

That the Law Society of Upper Canada participate in the creation of a new Law Commission of Ontario, including naming a member of the governing board and making an annual financial contribution of $100,000 for five years.

That such participation be conditional on successful negotiations with the other parties according to the terms set out in the application to the Law Foundation of Ontario.

Not Put

It was moved by Mr. Ruby, seconded by Ms. Curtis, that Convocation ask the Government Relations Committee to re-negotiate the proposal for the Law Commission.

Carried

ROLL-CALL VOTE

Aaron	For	Krishna	For
Alexander	Against	Legge	For
Backhouse	For	Manes	Against
Banack	Against	Martin	For
Campion	Against	Millar	Against
Carpenter-Gunn	For	Minor	Abstain
Chahbar	Against	Murray	For
Cherniak	Against	O'Donnell	Against
Coffey	Against	Pattillo	Against
Copeland	For	Pawlitza	Against
Crowe	For	Potter	For
Curtis	For	Ruby	For
Dickson	Against	St. Lewis	For
Dray	Against	Sandler	Against
Eber	Against	Silverstein	For
Elliott	Against	Simpson	Against
Feinstein	For	Swaye	Against
Filion	For	Symes	For
Finkelstein	Against	Topp	For

Finlayson	For	Warkentin	Against
Gotlib	Against	Wright	For
Gottlieb	For		
Harris	Against		
Heintzman	For		
Henderson	For		

Vote: 23 For; 22 Against; 1 Abstention

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FINANCE AND AUDIT COMMITTEE REPORT

Mr. Millar presented the Report of the Finance and Audit Committee.

Report to Convocation
October 26, 2006

Finance and Audit Committee

Committee Members
Derry Millar, Chair
Beth Symes, Vice-Chair
Brad Wright, Vice-Chair
Abdul Chahbar
Andrew Coffey
Marshall Crowe
Holly Harris
Ross Murray
Alan Silverstein
Gerald Swaye

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on October 12, 2006. Committee members in attendance were: Derry Millar (c.), Beth Symes (v.c.), Brad Wright (v.c.) Abdul Chahbar, Marshall Crowe, Holly Harris, Ross Murray, Alan Silverstein, Gerald Swaye. Abe Feinstein also attended.

2. Michelle Strom and Akhil Wagh of LawPro attended. Suzan Hebditch from LibraryCo Inc. attended. Staff attending were Malcolm Heins, Wendy Tysall, Fred Grady and Andrew Cawse.

FOR DECISION

2007 DRAFT LAW SOCIETY BUDGET and LIBRARYCO INC. 2007 BUDGET

Motion

3. That Convocation approve the Law Society budget for 2007 and the amount of the annual fee for the year at $1,601.

Motion

4. That Convocation approve the LibraryCo Inc. budget for 2007. LibraryCo's 2007 budget is part of this Report (in camera document).

5. The draft Law Society budget for 2007 is submitted under separate cover in two books. The Summary book is a public document providing an overview of the Society's budget in its major functional categories with summarized staffing, revenue and expense information. The Detail book (in camera) provides a detailed, divisional breakdown of staffing numbers, revenue analysis and expense breakdown, comparing 2006 budgeted and projected numbers with the draft 2007 budget. Departmental narratives are also included describing operations and performance.

Summary

6. The budget proposes an increase in the annual membership fee of $92 from $1,509 to $1,601. When combined with the $100 reduction in the base LAWPRO insurance levy, the total cost to practising members will decline by $8 from 2006.

	2007	2006
General membership	$1,102	$1,015
Lawyers Fund for Client Compensation	200	200
LibraryCo	224	219
Capital	75	75
Total	$1,601	$1,509

7. The primary factors driving the proposed fee increase are:

   a) The Regulatory Division's continued need for additional resources,

   b) Implementation of practice reviews and sole practitioner supports approved by Convocation in 2006,

   c) The competitive employment market for professional staff,

   d) Positioning the Society's electronic infrastructure to support the anticipated regulation of paralegals.

8. The growth in annual membership, estimated at 1,000, will increase the total full fee paying equivalent membership to 32,000. The membership has increased almost 36% in the last 10 years from 23,500 in 1997.

Revenues

9. The Errors and Omissions Insurance Fund investment income is budgeted to increase by $250,000 to $3.25 million in 2007.

10. The Licensing Process fee of $2,750 represents an increase in fees of $150 per student from the previous academic period. The member subsidy has been maintained at $32 per member. CLE revenues are budgeted to increase by 5% from the 2006 budget, in line with projected actual CLE revenues in 2006.

Expenses

11. The budget request for Professional Regulation increases to approximately $14.6 million from $12.7 million in 2006. The increase is attributable to a number of factors including:

- Staffing level increases for mortgage fraud investigations and prosecutions,
- Additional staff for Complaints Resolution,
- Additional funds for outside counsel to support the increasingly complex investigations and prosecutions,
- Salary merit and market adjustments.

12. We are providing approximately $2 million in the 2007 draft budget to deal with a variety of compensation related issues. These include standard merit based adjustments, performance bonuses, adjustment to our base pay ranges to reflect the movement of pay scales in the external market place and internal equity issues related to equal compensation for jobs rated of equal value.

13. New initiatives approved by Convocation will be implemented in 2007. Practice management reviews and support for sole practitioners and small firms will add 3.5 and 1.5 positions respectively. Another new initiative is aimed at the retention of women in private practice budgeted at $120,000 for 2007.

14. Funding for the Great Library at $2.8 million is essentially unchanged from 2006 with an additional $850,000 allocated for CanLII. Total library spending, including CanLII and LibraryCo, amounts to $10.8 million in 2007 ($9.8 million in 2006).

15. The Society's general contingency account has been reduced from $1.2 million to $600,000.

16. No allowance has been made for the funding of paralegals. Upon the passage of Bill 14, Access to Justice Act, a separate budget will be developed for paralegal regulation to be funded by paralegals.

Unrestricted Fund Surplus

17. The 2007 budget proposes that $500,000 of the Unrestricted Fund surplus accumulated in prior years be applied to reduce the annual membership levy (2006: $1 million). The use of this surplus results in a $16 reduction in the member fee.

Working Capital Reserve

18. The Working Capital Reserve remains at $7.9 million. The reserve was established in 2000 by policy of Convocation. The reserve policy provides for the maintenance of a balance of up to two months of operating expenses. The current balance is less than two months expenses based on the expenditure levels in this draft budget. Any unrestricted fund surplus not used to reduce the 2007 member fee could be added to the Working Capital Reserve.

Capital

19. The capital levy of $75 per member has been unchanged for eight years. The levy is tracked in the Capital Allocation Fund and is intended to ensure adequate funding is available to meet the capital requirements of the Law Society.

20. Funding in the amount of $1.3 million for facilities projects and funding in the amount of $1.1 million for information systems projects, is included in this budget.

Lawyers Fund for Client Compensation

21. The member levy for 2007 of $200 is unchanged from 2006. The budget for 2007 proposes to retain the allowance for claims at $2.7 million. This level of claims experience is consistent with average claims levels over the past ten years. The Compensation Fund Committee supports maintaining the levy at $200.

LibraryCo Inc.

22. The "Proposed 2007 Budget for LibraryCo" submitted by LibraryCo is attached requesting funding of $7,164,200 or $224 per member compared to the 2006 approved funding of $6,801,231 or $219 per member. The budget is to be approved by Convocation as required by the Unanimous Shareholders Agreement for LibraryCo Inc.

23. It is based on a continuation of the existing business model and does not address potential developments such as changes arising from the Integration Task Force recommendations. The Finance & Audit Committee reviewed the budget and recommends its approval by Convocation.

Budget Process

24. the Law Society's budget process involves a series of rotational operational reviews where the mandate for the selected area is defined, and resources to meet that mandate are assessed.

25. A meeting for all benchers was held on September 13, 2006 to discuss the preliminary 2007 budget and to review possible options. There have been no significant changes in

the budget since that date. The budget was reviewed by the Finance & Audit Committee on October 12, 2006. The Committee recommends Convocation approve the budget.

Organization of Budget Materials

26. To assist the reader in reviewing the materials, a brief explanation of how the materials are presented and organized follows.

27. The materials are presented in two books:

- 2007 Draft Budget Summary
- 2007 Draft Budget Detail

28. The 2007 Draft Budget Summary contains an overview of the 2007 Budget. In addition, it presents high-level financial information on the Society's operations divided into two major categories:

- 2007 vs 2006 Comparative Summaries
  The 2007 vs 2006 Comparative Summaries present summary budget comparisons by function/department between the two years and projected actual for 2006.

- 2007 Budget Summaries
  The 2007 Budget Summaries present summary budgets in major functional categories employing the full cost allocation method. The Society adopted full cost allocation budgeting in 1999 to reflect the true cost of its various programs.

29. In addition to allocated administrative costs, the costs of the Spot Audit program, and a portion of the costs of the Investigations and Discipline departments are allocated to the Lawyers Fund for Client Compensation. This has been a consistent practice even before the adoption of full cost allocation.

30. The 2007 Draft Budget Detail book contains detailed line budget information for 2007 with 2006 approved budget and projected 2006 operating results.

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

Copy of the LibraryCo's 2007 budget. (in camera)

(pages 8 – 25)

2007 Budget

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the Law Society budget for 2007 and the amount of $1,601 as the annual fee.

Carried

ROLL-CALL VOTE

Aaron	For	Legge	For
Alexander	For	Manes	For
Backhouse	For	Martin	For
Banack	For	Millar	For
Campion	For	Minor	For
Carpenter-Gunn	For	Murray	For
Chahbar	For	O'Donnell	For
Cherniak	For	Pattillo	For
Coffey	For	Pawlitza	For
Copeland	For	Potter	For
Crowe	For	Ross	For
Curtis	For	Ruby	For
Dickson	For	St. Lewis	For
Dray	For	Sandler	For
Eber	For	Silverstein	For
Feinstein	For	Simpson	For
Gold	For	Swaye	For
Gotlib	For	Symes	For
Gottlieb	Against	Warkentin	For
Harris	For	Wright	For
Heintzman	For		
Henderson	For		
Krishna	For		

Vote: 42 For; 1 Against

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the LibraryCo Inc. budget for 2007.

Carried

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MOTION – Appointment of Vice-Chair of Hearing Panel

It was moved by Mr. Banack, seconded by Dr. Eber, that Mark Sandler be appointed Vice-Chair of the Hearing Panel effective October 26, 2006.

Carried

MOTION – Appointments to the Paralegal Standing Committee

It was moved by Ms. Carpenter-Gunn, seconded by Ms. St. Lewis, that the following benchers be appointed to the Paralegal Standing Committee once the committee is established by by-law:

Andrea Alexander
James Caskey
Anne Marie Doyle
Thomas Heintzman
Laurence Pattillo
William Simpson
Bonnie Warkentin

Carried

Convocation adjourned and reconvened as a Committee of the Whole.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M. AND RESUMED AT 2:40 P.M.

PRESENT: The Treasurer (Gavin MacKenzie), Alexander, Banack, Boyd, Coffey, Copeland, Crowe, Curtis, Dickson, Dray, Eber, Gottlieb, Harris, Heintzman, Henderson, Krishna, Millar, Minor, O'Donnell, Pattillo, Pawlitza, Potter, Ross, Sandler, Simpson, Swaye, Symes, Warkentin and Wright (by telephone).

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EQUITY AND ABORIGINAL ISSUES COMMITTEE/Comité sur léquité et les affaires autochtones Report

Re: Human Rights Monitoring Group Report – Request for Change in Mandate

Report to Convocation
October 26, 2006

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

Committee Members
Joanne St. Lewis, Chair
Paul Copeland, Vice-Chair
Marion Boyd
Richard Filion
Holly Harris
Thomas Heintzman
Tracey O'Donnell
Mark Sandler

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on October 12, 2006. Committee members Joanne St. Lewis, Chair, Dr. Richard Filion, Holly Harris, Thomas Heintzman, Tracey O'Donnell and Mark Sandler participated. Milé Komlen, Chair of the Equity Advisory Group (the "EAG") also attended. Gabrielle St. Hilaire, Vice-Dean, Faculty of Law, University of Ottawa, Stéphane Émard-Chabot, Assistant Dean, Academic Affairs, Faculty of Law, University of Ottawa, Professor Louise Bélanger-Hardy, Faculty of Law, University of Ottawa, Hugh Anderson, Senior Associate, The Strategic Counsel and Raj Anand, member of EAG, made presentations to the Committee. Staff members Josée Bouchard, Marisha Roman, Rudy Ticzon and Sybila Valdivieso also attended.

FOR DECISION
HUMAN RIGHTS MONITORING GROUP REPORT – REQUEST FOR LAW SOCIETY INTERVENTIONS

MOTION

2. That Convocation,

   a. approve the Law Society of Upper Canada letters of intervention presented at Appendix 1 in the following cases of human rights violations that target lawyers:

      i. Gao Zhisheng – lawyer in China;
      ii. Zheng Enchong – lawyer in China;
      iii. Mohammed Abbou – lawyer in Tunisia;
      iv. Chen Guangcheng – lawyer in China; and
      v. Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat Dafaalla and Mohamed Badawi – lawyers in Sudan.

BACKGROUND

3. In March 2006, Convocation approved a policy to systematically respond to human rights violations that target members of the legal profession and the judiciary as a result

of the discharge of their legitimate professional duties. Convocation also approved the establishment of a group of benchers to be responsible for monitoring these human rights violations ("Human Rights Monitoring Group").

4. On April 27, 2006, Convocation appointed the following benchers to the Human Rights Monitoring Group: Paul Copeland, Chair, Anne Marie Doyle, Heather Ross, Mark Sandler and Joanne St. Lewis. Equity Initiatives Department staff members provide support to the Human Rights Monitoring Group.

5. The mandate of the Human Rights Monitoring Group is,

   a. to review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
   b. to determine if the matter is one that requires a response from the Law Society; and
   c. to prepare a response for review and approval by Convocation.

6. The Human Rights Monitoring Group received information through Amnesty International and the World Organisation against Torture about five cases of alleged persecutions of lawyers as a result of the discharge of their legitimate professional duties. The Human Rights Monitoring Group considered the following five cases, and recommended that the Law Society intervene in each case:

   a. Human Rights Lawyer Gao Zhisheng – China;
   b. Human Rights Lawyer Zheng Enchong – China;
   c. Human Rights Lawyer Mohammed Abbou – Tunisia;
   d. Human Rights Lawyer Chen Guangcheng – China; and
   e. Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat Dafaalla and Mohamed Badawi –Sudan.

7. On October 12, 2006, the Equity and Aboriginal Issues Committee approved the requests for intervention and brings a motion to Convocation for decision.

8. The Human Rights Monitoring Group gathered the information about the five cases through Amnesty International and the World Organisation against Torture. Therefore, information about those organizations is presented below, followed by a description of each case. Proposed letters of intervention are presented at Appendix 1.

AMNESTY INTERNATIONAL

9. Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights. Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the *Universal Declaration of Human Rights* standards. In pursuit of this vision, Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

10. Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor

does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

11. Amnesty International has a varied network of members and supporters around the world. At the latest count, there were more than 1.8 million members, supporters and subscribers in over 150 countries and territories in every region of the world. Although they come from many different backgrounds and have widely different political and religious beliefs, they are united by a determination to work for a world where everyone enjoys human rights.

12. Amnesty International is a democratic, self-governing movement. Its International Council, made up of representatives from all national sections, makes major policy decisions. Amnesty International's national sections and local volunteer groups are primarily responsible for funding the movement. No funds are sought or accepted from governments for Amnesty International's work investigating and campaigning against human rights violations.

THE WORLD ORGANISATION AGAINST TORTURE

13. The World Organisation against Torture (the "WOAT") is the world's largest coalition of non-governmental organizations that fight against arbitrary detention, torture, summary and extra judicial executions, forced disappearances and other forms of violence. It is based in Geneva and has a network of about 300 local, national and regional organizations, which share the common goal of eradicating any practice that violates human rights. In 1997 the WOAT created the Observatory for the Protection of Human Rights Defenders (the "Observatory") in association with the International Federation for Human Rights. They intervene by means of more than 150 urgent appeals per year. They also undertake missions in the field, with the collaboration of national, regional and international non-governmental organizations.

CASE OF HUMAN RIGHTS LAWYER GAO ZHISHENG – CHINA

Background information reported by Amnesty International – updated September 15, 2006

14. Amnesty International reports that Gao Zhisheng, a Beijing lawyer and the director of the Beijing-based Shengzhi Law Office, has defended members of the banned spiritual movement Falun Gong. He has taken on several high-profile cases and defended a number of activists, including Yang Maodong, a human rights activist, Zheng Yichun, a journalist and former professor who has been sentenced to seven years' imprisonment for his online writings, and Pastor Cai Zhuohua, who has been imprisoned for three years for 'illegal business practices' such as printing and selling copies of the Bible.

15. Reports indicate that in November 2005, the Beijing Municipal Bureau of Justice suspended the operations of the Shengzhi Law Office for one year. One month later, Gao Zhisheng's licence to practice law was revoked. These events appear to be linked to his work in defending activists, and in particular his publication of an open letter calling for religious freedom and an end to the 'barbaric' persecution of the Falun Gong spiritual movement. Since then, it is reported that Gao Zhisheng has been subjected to continuous surveillance and other forms of harassment and intimidation by the authorities. In January 2006, Amnesty International reported that Gao Zhisheng

survived an apparent attempt on his life when he almost collided with a car. Gao Zhisheng believes the authorities instigated the incident.

16. Amnesty International recently reported that, on August 15, 2006, Gao Zhisheng was detained in Shandong Province by police officers from Beijing. It is believed that he is held incommunicado at an unknown location and is at risk of torture or ill treatment. Reports indicate that Gao Zhisheng was detained while visiting his sister's house in Dongying City, Shandong Province. His sister was warned not to tell anybody about his detention. The police have reportedly provided no reason for his detention to his family, but on August 18, 2006 the state-run Xinhua News Agency reported that Gao Zhisheng was detained on suspicion of engaging in unspecified criminal activities. It is unclear where he is being held.

17. Gao Zhisheng's wife and two children have reportedly been confined to their home in Beijing by police officers standing guard around their house since Gao Zhisheng was detained. The family is prohibited from contacting anybody or from receiving visitors. Reports also indicate that on August 20, 2006 human rights lawyer Teng Biao and academic Jiao Guobiao attempted to visit Gao Zhisheng's wife and daughter. They managed to talk to his daughter briefly but she was quickly taken back into the house by a police officer who was guarding the home. Immediately afterwards, the police took both Teng Biao and Jiao Guobiao to Xiaoguan Police Station in Chaoyang District. They were released after approximately one hour of questioning.

Recommended Action by Amnesty International

18. Amnesty International recommends that letters be sent to Chinese authorities,
    a. urging the authorities to reveal the whereabouts of Gao Zhisheng and to release him unless he is to be charged with a recognized criminal offence;
    b. urging the authorities to guarantee that Gao Zhisheng will not be tortured or ill treated while in custody, and for him to have access to a lawyer, to members of his family and to necessary medical treatment while in detention;
    c. expressing concern about the fact that Gao Zhisheng's family members are confined to their home and asking for restrictions on their freedom of movement to be lifted;
    d. urging the authorities to ensure that Gao Zhisheng can carry out his peaceful and legitimate activities without fear of arbitrary detention, torture or ill treatment, or other human rights violations.

Recommended Recipients

19. Amnesty International recommends that appeals be sent to the following individuals:
    a. Prime Minister of the People's Republic of China ;[1]

[1] Prime Minister of the People's Republic of China
WEN Jiabao Guojia Zongli
The State Council
9 Xihuangcheng Genbeijie, Beijingshi 100032
People's Republic of China
Fax: + 86 10 65961109 or 2260 (c/o Minister of Foreign Affair)
Email: gazette@mail.gov.cn

b. Minister of Justice of the People's Republic of China ;[2]
c. Minister of Public Security of People's Republic of China ;[3]
d. Copies to the Director of the Beijing Public Security Bureau [4].

Human Rights Monitoring Group Recommendation Approved by the Committee

20. On September 28, 2006, members of the Human Rights Monitoring Group considered the case of Gao Zhisheng and decided that this is the type of case in which a recommendation to intervene should be made to Convocation. It appears from Amnesty International reports, that Gao Zhisheng has been the victim of human rights violations by Chinese authorities. Such violations include his arbitrary detention incommunicado, his harassment by authorities and the revocation of his licence to practice law. These actions were taken as a result of the discharge of his legitimate professional duties, including his work as a defense lawyer for human rights activists.

21. The Human Rights Monitoring Group recommends that the Law Society send a letter, presented at Appendix 1, to the Prime Minister of the People's Republic of China, the Minister of Justice of the People's Republic of China, the Minister of Public Security of

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Salutation: Your Excellency

[2] Minister of Justice of the People's Republic of China
WU Aiying Buzhang
Sifabu
10 Chaoyangmen Nandajie, Chaoyangqu
Beijingshi 100020
People's Republic of China
Fax: + 86 10 65292345
Email: minister@legalinfo.gov.cn
Salutation: Dear Minister

[3] Minister of Public Security of People's Republic of China
ZHOU Yongkang Buzhang
Gong'anbu
14 Dongchang'anjie, Beijingshi 100741
People's Republic of China
Fax: + 86 10 63099216 (it may be difficult to get through; please keep trying)
Salutation: Dear Minister

[4] Director of the Beijing Public Security Bureau
MA Zhenchuan Juzhang
Beijingshi Gong'anju
9 Qianmen Dongdajie, Dongchengqu
Beijingshi 100740, People's Republic of China
Email: 110@bjgaj.gov.cn

People's Republic of China, representatives of the Chinese Embassy in Ottawa[5] and the Chinese Consulate in Toronto[6] , and copies to the Director of the Beijing Public Security Bureau. The Human Rights Monitoring Group also recommends that copies of the letter be sent to the All China Lawyers Association[7] informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case. The All China Lawyers Association (the "ACLA"), founded in July of 1986, is a self-disciplined professional body for lawyers at the national level, which by law carries out professional administration over lawyers. All lawyers of the People's Republic of China are members of ACLA and the local lawyers associations are group members of ACLA. At present, ACLA has thirty-one group members, which are lawyers associations of provinces, autonomous regions and municipalities and nearly 110,000 individual members.

22. On October 12, 2006, the Committee approved the recommendation to intervene, and brings a motion to Convocation for intervention.

CASE OF HUMAN RIGHTS LAWYER ZHENG ENCHONG – CHINA

Background information reported by Amnesty International – updated September 15, 2006

23. Zheng Enchong, a lawyer in China, had his licence to practice law revoked in 2001 after he advised more than 500 families displaced by Shanghai's urban redevelopment projects on their rights to fair compensation from the authorities. He continued to give advice although his applications for reinstatement of his law licence failed. Mr. Enchong was arrested on 6 June 2003 and accused of stealing 'state secrets' and passing them to 'entities outside China'. Amnesty International considered Zheng Enchong to be a prisoner of conscience, imprisoned solely for his legitimate work as a lawyer.

24. Amnesty International reports that Zheng Enchong was released from Tilanqiao Prison in Shanghai on June 5, 2006 on completion of his three-year sentence. He expressed thanks to Amnesty International for the organization's support and efforts in calling for his release. However, reports indicate that Zheng Enchong's political rights have been suspended by a year. This means that he is forbidden from meeting foreigners, from talking to the media, from attending protests, from participating in political activities, and from taking a leading position in state enterprises.

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[5] Embassy of the People's Republic of China
515 St. Patrick Street, Ottawa, Ont. K1N 5H3
Tel: 613-7893434 Fax: 613-7891911
Ambassador: His Excellency Lu Shumin
Political Counselor and Deputy Chief of Mission: Minister Huang Huikang

[6] Chinese Consulate General in Toronto
240 St. George Street, Toronto Ontario M5R 2P4
Tel: 416.964.7260 Fax: 416.324.6468
Consul General: Madam Chen Xiao Ling

[7] Rm 244, Nth Building, Guoyi Hotel, Wenxingdongjie, Beijing, 100044, China.

25. According to Amnesty International's reports, the police have also banned him from leaving his residential district since his release. This will prevent Zheng Enchong from taking his daughter to school, and worshipping at his local church (Zheng Enchong is a devout Christian), and there is concern that the ban will prevent him from finding work.

26. Reports indicate that since he was freed, Zheng Enchong and his family have been harassed and intimidated by the authorities. Zheng Enchong has been detained four times since his release. Amnesty International fears they are at risk of further abuse.

27. Amnesty International notes that on July 12, 2006, Zheng Enchong and his wife Jiang Meili were detained by police at their home in the Zabei district of Shanghai and were taken away to the district police station. They were questioned separately for several hours about Zheng Enchong's activities on behalf of families that were forcibly evicted by the Chinese authorities in urban development projects. That same evening, around a dozen police officers from Zabei district police station searched Zheng Enchong's home. They confiscated his computer, documents, and names of contacts, as well as draft documents about alleged forced evictions. The police warned Jiang Meili, and later her brothers and sisters, that they would be detained if they continued to speak to the media about Zheng Enchong's situation.

28. The police detained Zheng Enchong again on July 21, 2006 to question him about information found on his computer. He was released from Zabei police station after four hours of questioning. Zheng Enchong was also detained briefly on June 11, 2006 and on June18, 2006.

29. There have been reports that police and municipal officials have warned Zheng Enchong that his physical safety may be at risk if he continues to work on cases of alleged forced evictions. Amnesty International is aware of numerous cases of human rights defenders and activists becoming victims of violence after their release from prison.

Recommended Action by Amnesty International

30. Amnesty International recommends that letters be sent to the Chinese authorities,
    a. welcoming Zheng Enchong's release, but expressing concern at the continued restrictions imposed upon him which violate his rights to freedom of expression, of association and of movement, and calling for these restrictions to be lifted immediately;
    b. calling on the authorities to stop the campaign of intimidation and harassment against Zheng Enchong and his family, and to ensure that they are not subjected to further human rights violations;
    c. urging the authorities to guarantee that Zheng Enchong and all other lawyers and human rights defenders are able to carry out their legitimate human rights work without fear of arbitrary detention or harassment;
    d. calling on the authorities to amend or repeal legislation, which can be used to violate the rights to freedom of expression, association or assembly, including laws concerning 'state secrets', which facilitate the detention of human rights defenders.

Recommended Recipients

31. Amnesty International recommends that letters be sent to the following individuals:

a. Director of the Shanghai Bureau of Justice ;[8]
b. Prime Minister of the People's Republic of China ;[9]
c. Copies to: Mayor of the Shanghai Municipal People's Government .[10]

Human Rights Monitoring Group Recommendation

32. On September 28, 2006, members of the Human Rights Monitoring Group considered the case of Zheng Enchong and decided that this is the type of case in which a recommendation to intervene should be made to Convocation. It appears from Amnesty International reports, that Zheng Enchong has been the victim of human rights violations by Chinese authorities. These violations include the violation of his political right, his right to freedom of movement and his right to freedom of expression. These violations occurred as a result of the discharge of his legitimate professional duties in advising families of their legal rights.

33. It recommends that the Law Society send a letter, presented at Appendix 1, to the Director of the Shanghai Bureau of Justice, the Prime Minister of the People's Republic

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[8] Director of the Shanghai Bureau of Justice
MIAO Xiaobao Juzhang
Shanghaishi Sifaju
225 Wuxinglu
Shanghaishi 200030
People's Republic of China
Email: contact_us@eastday.com
webmaster@justice.gov.cn
jijianjiancha@eastday.com
Fax: + 86 21 64743029
Salutation: Dear Director

[9] Prime Minister of the People's Republic of China
WEN Jiabao Guojia Zongli
The State Council
9 Xihuangcheng Genbeijie
Beijingshi 100032
People's Republic of China
Email: gazette@mail.gov.cn
Fax: + 86 10 65292345 (c/o Ministry of Communication)
Salutation: Your Excellency

[10] Mayor of the Shanghai Municipal People's Government
HAN Zheng Shizhang
Shanghaishi Renmin Zhengfu
30 Fuzhoulu
Shanghaishi 200002
People's Republic of China
Email: webmaster@shanghai.gov.cn

of China, to representatives of the Chinese Embassy in Ottawa[11] and of the Chinese Consulate in Toronto[12] , and copies to the Mayor of the Shanghai Municipal People's Government. The Human Rights Monitoring Group also recommends that copies of the letter be sent to the All China Lawyers Association[13] informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case.

34. On October 12, 2006, the Committee approved the recommendation to intervene, and brings a motion to Convocation for intervention.

CASE OF HUMAN RIGHTS LAWYER MOHAMMED ABBOU TUNISIA

Background information reported by Amnesty International – updated September 15, 2006

35. Mohammed Abbou is a 39-year-old lawyer and member of the National Council for Civil Liberties in Tunisia. In March 2005, Mohammed Abbou was arrested as a result of an article he published online. In November 2005, the UN Working Group on Arbitrary Detention concluded that Mohammed Abbou's detention was arbitrary and in violation of Article 19 of the *Universal Declaration of Human Rights* and Article 19 of the *International Covenant on Civil and Political Rights*, which guarantee the right to freedom of expression.

36. In April 2006, Mohammed Abbou was sentenced to imprisonment for three years and six months for publishing two Internet articles critical of the Tunisian authorities and denouncing the use of torture in Tunisia. He also used the Internet to condemn the use of torture in Tunisia in the aftermath of worldwide revelations about US soldiers' torture and abuse of Iraqi prisoners at Baghdad's Abu Ghraib prison. He is currently imprisoned in the town of El-Kef, approximately 200 kilometers from his family home in the capital, Tunis, making visits by his family difficult.

37. In April 2006, Amnesty International reported that Mohammed Abbou was on a hunger strike and that his health was at risk.

38. In May 2006, the *Amnesty International Report 2006* referred to the case of Mohammed Abbou, noting that the UN Working Group on Arbitrary Detention adopted the opinion that his detention was arbitrary. In September 2006, Amnesty International reported that Mohammed Abbou is still serving his three and a half year prison sentence. Since his

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[11] Embassy of the People's Republic of China
515 St. Patrick Street, Ottawa, Ont. K1N 5H3
Tel: 613-7893434 Fax: 613-7891911
Ambassador: His Excellency Lu Shumin
Political Counselor and Deputy Chief of Mission: Minister Huang Huikang

[12] Chinese Consulate General in Toronto
240 St. George Street, Toronto Ontario M5R 2P4
Tel: 416.964.7260 Fax: 416.324.6468
Consul General: Madam Chen Xiao Ling

[13] Rm 244, Nth Building, Guoyi Hotel, Wenxingdongjie, Beijing, 100044, China.

detention in March 2005 he has undertaken several hunger strikes in protest at the conditions of his detention. According to reports he continues to face harassment and ill treatment by the prison administration. Amnesty International considers Mohammed Abbou to be a prisoner of conscience, detained for exercising his fundamental right to freedom of expression.

39. Amnesty International reports that the conditions of Mohammed Abbou's detention have deteriorated further after a demonstration in support of his case outside the prison earlier this year. On more than one occasion he has had his cell searched by prison guards in the middle of the night. Following a request to change his cell, prison guards beat him up and his mattress was removed. He is now forced to sleep on an iron bedstead. Other prisoners, at the instigation of prison authorities, have harassed him.

Amnesty International's Recommended Action

40. Amnesty International recommends that letters be sent to Bechir Tekkari, Minister of Justice and Human Rights[14] , urging the immediate release of imprisoned human rights defender Mohammed Abbou.

Human Rights Monitoring Group Recommendation approved by the Committee

41. On September 28, 2006, members of the Human Rights Monitoring Group considered the case of Mohammed Abbou and decided that this is the type of case in which a recommendation to intervene should be made to Convocation. It appears from Amnesty International reports, that Mohammed Abbou has been the victim of human rights violations by Tunisian authorities. Such human rights violations include Mohammed Abbou's arbitrary detention and the poor conditions of his detention. These actions were taken as a result of the discharge of his legitimate professional duties, including his public denunciation of torture in Tunisia.

42. It recommends that the Law Society send a letter, presented at Appendix 1, to Bechir Tekkari, Minister of Justice and Human Rights. The Human Rights Monitoring Group also recommends that copies of the letter be sent to the Barreau de la Tunisie informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case.

43. On October 12, 2006, the Committee approved the recommendation to intervene, and brings a motion to Convocation for intervention.

CASE OF HUMAN RIGHTS LAWYER CHEN GUANGCHENG – CHINA

Background information reported by the World Organisation against Torture – updated September 15, 2006

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[14] Ministère de la Justice et des Droits de l'Homme
31 Boulevard Bab Benat
1006 Tunis - La Kasbah
Tunisia
Fax: 00216 71 568 106

44. The World Organisation against Torture reports that, in early 2005, Chen Guangcheng, a lawyer in China, began to investigate the violence perpetrated on local women and their families in the name of meeting birth planning quotas in his native Linyi City. Efforts were made to bring legal action against local authorities for related violations of national law. Information on the extensive violations was also published in international media and on the Internet. Eventually, the State Family Planning Commission conducted its own investigation and admitted publicly that officials had violated the law and that disciplinary action was being taken.

45. Since August 2005, reports indicate that the authorities have tried to undermine and intimidate Chen Guangcheng, his family and other villagers who support Chen Guangcheng's work, through illegal means such as close surveillance, threats, house arrest and secret detention. On September 6, 2005, Chen Guangcheng was placed under "residential surveillance".

46. The World Organisation against Torture further reports that on March 11, 2006, local police arrested and questioned Chen Guangcheng on the pretext that he and other activists had obstructed traffic. On the same night, the police assaulted Chen Guangcheng's wife.

47. On June 11, 2006, Chen Guangcheng's wife, Yuan Weijing, was notified by the Yinan County Public Security Bureau that her husband had been charged with "deliberate destruction of property" and with "organising a mob to disrupt traffic".

48. After his arrest, the police did not notify his family of the reason for his detention, nor did they inform them of his whereabouts. During Chen Guangcheng's detention, the police repeatedly summoned and detained many local rights activists and supporters for questioning. On May 8, 2006, when Chen Guangcheng's lawyer requested to meet him, the police even denied that they were holding Chen Guangcheng in detention.

49. On August 24, 2006, the World Organisation against Torture reported that Chen Guangcheng was sentenced to four years and three months imprisonment. According to the information received, Chen Guangcheng was sentenced for "deliberate destruction of property" and "organising a mob to disrupt traffic" by the Linnan County People's Court. The trial only lasted two hours.

50. In September 2006, the Observatory for the Protection of Human Rights Defenders reported that it had been informed by Human Rights in China that Chen Guangcheng had been sentenced.

51. The Observatory is especially concerned that during the judicial proceedings, Chen Guangcheng was denied access to the legal team attempting to prepare his defense. The first instance in his trial took place on August 19, 2006, without the presence of his legal team, all of who were either detained by the police or denied access to the court. On August 18, 2006, Xu Zhiyong, one of his defence lawyers, was beaten by five unidentified men and then taken into police custody, only to be released 22 hours later, after Chen Guangcheng's trial had finished. On the same day, police surrounded Li Jinsong and Zhang Lihui after dinner and detained them on charges of theft. Both Zhang Lihui and Li Jinsong were released, but were then barred from attending the trial.

52. Two other human rights defence lawyers associated with Chen Guangcheng's case, Yang Zaixin and Zhang Jiankang, were also harassed and forcibly returned home for their involvement in Chen Guangcheng's defence. Consequently, authorities appointed their own public defender, who did not read Chen Guangcheng's file and did little to defend him. Chen Guangcheng is currently under detention at the Yinan County Detention Centre. The Observatory expressed its deep concern about the sentencing, as it seems to be directly linked to his activities in favour of the villagers of Linyi, who have been the victims of numerous violations of their rights in relation to the implementation of the birth planning policy. Chen Guangcheng tried to assist them by bringing legal proceedings against the perpetrators of such violations.

53. The Observatory reports that the sentencing contravenes the provisions of the UN *Declaration on Human Rights Defenders*, adopted by the General Assembly of the United Nations on December 9, 1998, especially article 6.b, which states "Everyone has the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms", and article 9.3.c, which states "Everyone has the right [...] to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms".

54. Xu Zhiyong, one of Chen Guangcheng's defence lawyers who was supposed to replace lawyer Li Jingsong, could not get permission from the court to act in his defence. The court did not process the necessary documents. This occurred while Chen Guangcheng's lawyers had been under strong pressure from the authorities to drop the case.à

Recommendation by the Observatory

55. The Observatory urges the Chinese authorities to conform to its international human rights obligations, commitments that were reaffirmed by China on the occasion of its election as a member of the new United Nations Human Rights Council.

56. The Observatory asks that letters be sent to the Chinese authorities urging them to,
    a. guarantee in all circumstances the physical and psychological integrity of Chen Guangcheng as well as of his lawyers;
    b. ensure that Chen Guangcheng be released immediately, because his detention is arbitrary;
    c. put an end to any kind of reprisals against all human rights defenders in China;
    d. conform with the provisions of the *UN Declaration on Human Rights Defenders*, adopted by the General Assembly of the United Nations on December 9, 1998, especially its article 1, which states "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels", article 12.2, which states "The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present *Declaration*", as well as articles 6.b and 9.3.c mentioned above;
    e. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international

instruments signed by the People's Republic of China, in particular the *International Covenant on Civil and Political Rights*, that China has publicly declared its intention to ratify.

Recommended Recipients

57. The Observatory recommends that letters be sent to the following individuals:
    a. President Hu Jintao, People's Republic of China;
    b. Minister of Justice of the People's Republic of China ;[15]
    c. Minister of Foreign Affairs of the People's Republic of China ;[16]
    d. the diplomatic representatives of the People's Republic of China in Canada .[17]

Human Rights Monitoring Group Recommendation

58. On September 28, 2006, members of the Human Rights Monitoring Group considered the case of Chen Guangcheng and decided that this is the type of case in which a recommendation to intervene should be made to Convocation. It appears from reports from the World Organisation against Torture and the Observatory, that Chen Guangcheng has been the victim of human rights violations by Chinese authorities. Such violations include his arbitrary detention by authorities and the denial to access legal representation. These actions were taken as a result of the discharge of his legitimate professional duties, including the provision by Chen Guangcheng of legal assistance to victims of violations of their rights in relation to the implementation of the birth planning policy.

59. It recommends that the Law Society send a letter, presented at Appendix 1, to President Hu Jintao of the People's Republic of China, the Minister of Justice of the People's Republic of China, the Minister of Foreign Affairs of the People's Republic of China, Ambassador, Sha Zukang and representatives of the Chinese Embassy in Ottawa[18] and of the Chinese Consulate in Toronto[19] . The Human Rights Monitoring Group also

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[15] Zhang Fusen Buzhang, Sifabu, 10 Chaoyangmen Nandajie, Chaoyangqu, Beijingshi 100020, People's Republic of China, Fax: +86 10 6529 2345

[16] Li Zhaoxing Buzhang Waijiaobu, 2 Chaoyangmen Nandajie, Beijingshi 100701, People's Republic of China, Fax: +86 10 6588 2594, Email: ipc@fmprc.gov.cn

[17] Chinese Consulate General in Toronto
240 St. George Street, Toronto Ontario M5R 2P4
Tel: 416.964.7260 Fax: 416.324.6468
Consul General: Madam Chen Xiao Ling

[18] Embassy of the People's Republic of China
515 St. Patrick Street, Ottawa, Ont. K1N 5H3
Tel: 613-7893434 Fax: 613-7891911
Ambassador: His Excellency Lu Shumin
Political Counselor and Deputy Chief of Mission: Minister Huang Huikang

[19] Chinese Consulate General in Toronto
240 St. George Street, Toronto Ontario M5R 2P4
Tel: 416.964.7260 Fax: 416.324.6468

recommends that copies of the letter be sent to the All China Lawyers Association[20] informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case.

60. On October 12, 2006, the Committee approved the recommendation to intervene, and brings a motion to Convocation for intervention.

CASES OF HUMAN RIGHTS LAWYERS: MOSSAAD MOHAMED ALI, RASHA SOURAJ, EBTISAM ALSEMANI, NAJAT DAFAALLA AND MOHAMED BADAWI OF SUDAN
Background information reported by the Observatory – updated October 3, 2006

61. The Observatory published the following update on October 3, 2006 and has requested urgent interventions in the following situations in Sudan.

62. The Observatory was informed by the Sudan Organisation against Torture (SOAT) of new acts of harassment against members of the Amel Centre for the Treatment and Rehabilitation of Victims of Torture, which provides legal aid to victims of torture and sexual violence, and to individuals at risk of cruel, inhuman and degrading punishment. Five of the victims are lawyers.

63. The Observatory reports that on May 15, 2006, officers from the National Security Bureau (NSB) in Nyala, Southern Darfur, summoned for questioning Mr. Mossaad Mohamed Ali, lawyer and Coordinator of the Amel Centre in Nyala. Mr. Ali was detained for thirteen hours in a cell in the NSB offices in Nyala, without being questioned or charged with an offence.

64. On May 16, 2006, in the early morning, Mr. Ali was summoned to the security offices, where he remained in detention until May 20, 2006. He was denied access to his family and to legal counsel. Security officers denied the United Nations Mission in Sudan (UNMIS) an opportunity to meet with him. No reason was given as to why Mr. Ali was summoned, arrested and held incommunicado.

65. Upon his release on May 20, 2006, Mr. Ali was told to report to the security offices at 08:00AM the following day. On May 21, 2006, he reported to the security offices and was detained until 12:00PM. Prior to his release, he was once again told to report to the security offices on the following day, May 22,2006.

66. On July 27, 2006, Mr. Mossaad Mohamed Ali, lawyer and Coordinator of the Amel Centre in Nyala, Ms. Rasha Souraj and Ms. Ebtisam Alsemani, volunteer lawyers at the Amel Centre, received a letter from the NSB notifying them that the Attorney General in Nyala had filed a case against them for “offences against the State”. The letter accused the defendants of sending false reports and of disclosing information of a military nature. The letter warned the three lawyers that their case had been given to the police and that it was likely they would face arrests upon the completion of a police investigation.

Consul General: Madam Chen Xiao Ling

[20] Rm 244, Nth Building, Guoyi Hotel, Wenxingdongjie, Beijing, 100044, China.

67. On August 1, 2006, Mr. Ali and Ms. Najat DafaAlla, a volunteer lawyer at the Amel Centre, reported to the security offices. They were separated and interrogated by a police officer about the events in Otash camp, a camp for internally displaced people. They were accused of spreading false information and of being a threat to public security. It is believed that they were being investigated for their work in defending the rights of five individuals from the Otash camp, who were detained after participating in a demonstration against the Darfur Peace Agreement, on May 30, and 31, 2006. Upon learning of such a detention, on June 3, 2006, the lawyers submitted a public application to the "Security Committee"[21] requesting information on the detainees. In the application they also urged the committee to release the detainees unless there was a valid charge against them.

68. Prior to being released, Mr. Ali and Ms. DafaAlla were told that the police would evaluate the facts and would refer their case to the Attorney General in order to move the case before the courts.

69. On September 9, 2006, Mr. Mohamed Badawi, a human rights lawyer and Coordinator of the Amel Centre in El Fashir, was summoned by the NSB. He reported to the NSB offices immediately and remained there for more than three hours without being interrogated. He was released without charge but ordered to report back the following day. On September 10, 2006, at around 9:15AM, Mr. Badawi reported to the NSB and was held until 3:00PM. Prior to being released, without being charged, he was interrogated by security officers about the Amel Centre's activities and about the Centre's relationship with international organisations and with the Communist Party.

Recommended Actions by the Observatory

70. The Observatory recommends that letters be sent to the authorities of Sudan urging them to:
    a. guarantee under all circumstances, the physical and psychological integrity of all members of the Amel Centre for the Treatment and Rehabilitation of Victims of Torture;
    b. put an end to all acts of harassment and intimidation against human rights defenders in Sudan;
    c. conform with the provisions of the *Declaration on Humans Rights Defenders,* adopted by the General Assembly of the United Nations on December 9, 1998, in particular Article 1, which states that "everyone has the right, individually or in association with others, to promote the protection and realisation of human rights and fundamental freedoms at the national and international levels", Article 5, which provides that "for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) to meet or assemble peacefully; (b) to form, join and participate in non-governmental organizations, associations or groups; (c) to communicate with non-governmental or intergovernmental organisations", and Article 12.2, which provides that "the State shall take all necessary measures to ensure the protection by the

[21] The Security Committee is headed by the Governor of the Southern Darfur State (Wali) and made up of representatives from the Attorney General's office, the NSB, the police forces and the armed forces.

competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, *de facto or de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration";

d. more generally, ensure that in all circumstances respect for human rights and fundamental freedoms in Sudan are in accordance with its national laws, the *National Interim Constitution* (2005) and international human rights standards.

Recommended Recipients

71. The Observatory recommends that letters be sent to the following individuals:
   a. His Excellency Lieutenant General Omar Hassan al-Bashir, President of the Republic of Sudan and Chief of State[22] ;
   b. Mr. Al Zubeir Beshir Taha, Minister of the Interior[23] ;
   c. Mr. Mustafa Lam Akol Ajawin, Minister of Foreign Affairs[24] ;
   d. Dr. Abdelmuneim Osman Mohamed Taha, Rapporteur, Advisory Council for Human Rights[25] ;
   e. His Excellency Salva Kiir Mayardit, First Vice-President, People's Palace[26] ;
   f. His Excellency Ali Osman Mohamed Taha, Vice-President, People's Palace[27] ;
   g. Mr. Ali Mohamed Osman Yassin, Minister of Justice and Attorney General, Ministry of Justice[28] ;
   h. Dr. Faiza Hassan Taha, Ambassador of the Republic of Sudan to Canada.

Human Rights Monitoring Group Recommendation

72. On October 11, 2006, members of the Human Rights Working Group considered the cases of Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat DafaAlla and Mohamed Badawi and decided that this is the type of case in which a recommendation to intervene should be made to Convocation. It appears from the Observatory reports that Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat DafaAlla and Mohamed Badawi have, in various forms, been summoned, detained and questioned without being charged with an offence. They have been denied access to their families, to legal counsel and to audiences with officials from organizations such as the United Nations Mission in Sudan. These actions were taken as a result of the discharge of their legitimate professional duties, more specifically their work as lawyers at the Amel Centre for the Treatment and Rehabilitation of Victims of Torture.

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[22] Presidential Palace, PO Box 281, Khartoum, Sudan, Fax: +249 183 783 223

[23] PO Box 873, Khartoum, Sudan, Fax: + 249 183 779383

[24] Ministry of Foreign Affairs, PO Box 873, Khartoum, Sudan, fax: + 249 183 779 383

[25] PO Box 302, Khartoum (Sudan), Fax No.: + 249 183 77 08 83

[26] , PO Box 281, Khartoum, Sudan, Fax: + 249 183 771025

[27] , PO Box 281, Khartoum, Sudan, Fax: + 249 183 771025

[28] Khartoum, Sudan, Fax: + 249 183 788 941.

73. The Human Rights Monitoring Group recommends that the Law Society send a letter, presented at Appendix 1, to the His Excellency Lieutenant General Omar Hassan al-Bashir, President of the Republic of Sudan and Chief of State, Mr. Al Zubeir Beshir Taha, Minister of the Interior, Mr. Mustafa Lam Akol Ajawin, Minister of Foreign Affairs, Dr. Abdelmuneim Osman Mohamed Taha, Rapporteur, Advisory Council for Human Rights, His Excellency Salva Kiir Mayardit, First Vice-President, People's Palace, His Excellency Ali Osman Mohamed Taha, Vice-President, People's Palace, Mr. Ali Mohamed Osman Yassin, Minister of Justice and Attorney General, Ministry of Justice, and Dr. Faiza Hassan Taha, Ambassador of the Republic of Sudan to Canada.

74. The Human Rights Monitoring Group also recommends that copies of the letter be sent to the Sudan bar association informing it of the actions taken by the Law Society and asking for its collaboration in exchanging information about the case.

75. On October 12, 2006, the Committee approved the recommendation to intervene, and brings a motion to Convocation for intervention.

APPENDIX 1

RECOMMENDED INTERVENTION LETTER
IN THE CASE OF GAO ZHISHENG

[Date]

[Proposed recipients:
Prime Minister of the People's Republic of China
Minister of Justice of the People's Republic of China
Minister of Public Security of the People's Republic of China]
Dear [title]:

Re: Gao Zhisheng

The Law Society of Upper Canada is the governing body for some 36,000 lawyers in the Province of Ontario, Canada. Our mandate is to govern the legal profession in the public interest. Fundamental to our system of democracy in Canada is the maintenance of an independent bar. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

In this regard the governing board of the Law Society of Upper Canada, on the recommendation of its Human Rights Monitoring Group, has requested that I write to you to express our deep concern over the news that human rights lawyer Gao Zhisheng, Director of the Beijing-based Shengzhi Law office, is reported to have been detained and is being held incommunicado. The Law Society of Upper Canada is also concerned over reports that the Beijing Municipal Bureau of Justice has suspended the operations of the Shengzhi Law Office for one year, that Gao Zhisheng's licence to practice law was revoked and that, before his detention, he was subjected to continuous surveillance and other forms of harassment and intimidation by the authorities. These events appear to be linked to Mr. Zhisheng's discharge of his legitimate professional duties.

Article 16 of the United Nations *Basic Principles on the Role of Lawyers* requires governments to ensure that lawyers are "able to perform all of their professional functions without intimidation, hindrances, harassment or improper interference." Article 17 states that "where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities." Thus, governments have a duty under international law to create an environment in which lawyers and judges can do their work without fear.

The Law Society expresses its concern that lawyer Gao Zhisheng is being held incommunicado. It is also concerned that Gao Zhisheng has been prevented from discharging his legitimate professional duties. It is our hope that the government of China will,

1. reveal the whereabouts of Gao Zhisheng and release him unless he is to be charged with a recognized criminal offence;
2. guarantee that he will not be tortured or ill treated while in custody, and have access to a lawyer, to members of his family and to necessary medical treatment while in detention;
3. ensure that Gao Zhisheng can carry out his peaceful and legitimate activities without fear of arbitrary detention, torture or ill treatment, or other human rights violations.

Sincerely,

Gavin MacKenzie
Treasurer

Cc: [Proposed copy to: Director of the Beijing Public Security Bureau
All China Lawyers Association]

RECOMMENDED INTERVENTION LETTER
IN THE CASE OF ZHENG ENCHONG

[Date]

[Proposed recipients:
Director of the Shanghai Bureau of Justice
Prime Minister of the People's Republic of China]

Dear [title]:

Re: Zheng Enchong

The Law Society of Upper Canada is the governing body for some 36,000 lawyers in the Province of Ontario, Canada. Our mandate is to govern the legal profession in the public interest. Fundamental to our system of democracy in Canada is the maintenance of an

independent bar. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

In this regard the governing board of the Law Society of Upper Canada, on the recommendation of its Human Rights Monitoring Group, has requested that I write to you to express our support for the release of lawyer and human rights defender Zheng Enchong from Tilanqiao Prison in Shanghai on June 5, 2006. I am also writing to express our deep concern over reports that Zheng Enchong and his family have been harassed and intimidated by the authorities, and that Mr. Enchong has been detained four times since his release from prison. We have been informed that Mr. Enchong's political rights were suspended by a further year, and that he is forbidden from meeting with foreigners, from talking to the media, from attending protests, from participating in any political activities, and from taking a leadership position in a state enterprise. Since his release, he has also been banned from leaving his residential district. These events appear to be linked to Mr. Enchong's discharge of his legitimate professional duties.

Article 16 of the United Nations *Basic Principles on the Role of Lawyers* requires governments to ensure that lawyers are "able to perform all of their professional functions without intimidation, hindrances, harassment or improper interference." Article 17 states that "where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities." Thus, governments have a duty under international law to create an environment in which lawyers and judges can do their work without fear.

The Law Society expresses its concern at the continued restrictions imposed on lawyer Zheng Enchong and at the reported violations of his rights to freedom of expression, of association and of movement. It calls upon the authorities to,

1. lift the restrictions on Mr. Enchong;
2. refrain from intimidating and harassing Mr. Enchong, and to ensure that he is not subjected to further human rights violations;
3. guarantee that Mr. Enchong and other lawyers are able to discharge their legitimate professional duties without fear of arbitrary detention or harassment.

Sincerely,

Gavin MacKenzie
Treasurer

Cc: [Proposed copy to: Mayor of the Shanghai Municipal People's Government
All China Lawyers Association]

RECOMMENDED INTERVENTION LETTER
IN THE CASE OF MOHAMMED ABBOU

[date]

[Récipiendaire : Bechir Tekkari – Ministre de la justice et des droits de l'Homme]

Objet : Mohammed Abbou

Madame, /Monsieur,

Le Barreau du Haut-Canada est l'organe de réglementation des quelque 36 000 avocats et avocates de la province de l'Ontario au Canada. Notre mandat est de régir la profession juridique dans l'intérêt public. Le maintien de l'indépendance du barreau est un des fondements de l'appareil démocratique du Canada. Lorsque des problèmes graves d'injustice flagrante envers des avocats ou avocates ou envers la magistrature sont portés à notre attention, nous nous prononçons.

À cet égard, le conseil d'administration du Barreau du Haut-Canada, sur la recommandation de son groupe de surveillance des droits de la personne, a demandé que je vous écrive pour exprimer notre inquiétude profonde suscitée par la nouvelle que le défenseur des droits de la personne, Me Mohammed Abbou, membre de la Ligue tunisienne des droits de l'homme, a été condamné en avril 2005 à trois ans et six mois de prison pour avoir publié deux articles sur Internet critiquant les autorités tunisiennes. Le Barreau du Haut-Canada est également préoccupé par des rapports selon lesquels, depuis sa détention en mars 2005, il a entrepris plusieurs grèves de la faim pour protester contre les conditions de sa détention. Selon les rapports, il continue d'être harcelé et mal traité par l'administration de la prison, et ses conditions de détention se sont détériorées après une manifestation d'appui qui s'est déroulée en dehors de la prison plus tôt cette année. Nous avons aussi été informés du fait que d'autres prisonniers, à l'instigation des autorités carcérales, l'ont harcelé.

Le Barreau prend note qu'en novembre 2005, le Groupe de travail de l'ONU sur la détention arbitraire a conclu que la détention de Mohammed Abbou était arbitraire et violait l'article 19 de la *Déclaration universelle des droits de l'homme* et l'article 19 du *Pacte international relatif aux droits civils et politiques* qui garantit le droit à la liberté d'expression. L'article 19 du *Pacte international relatif aux droits civils et politiques*, ratifié par la Tunisie le 18 mars 1969, stipule que « Toute personne a droit à la liberté d'expression ». L'article 19 de la *Déclaration universelle des droits de l'homme* stipule que « Tout individu a droit à la liberté d'opinion et d'expression, ce qui implique le droit de ne pas être inquiété pour ses opinions et celui de chercher, de recevoir et de répandre, sans considération de frontières, les informations et les idées par quelque moyen d'expression que ce soit ».

Le Barreau exprime sa crainte que Me Mohammed Abbou soit détenu pour avoir exercé son droit à la liberté d'expression. Nous espérons que le gouvernement de Tunisie,

1. libérera Me Abbou à moins qu'il ne soit inculpé d'une infraction criminelle reconnue;
2. garantira qu'il ne sera pas torturé ou maltraité pendant sa détention, et qu'il aura accès à un avocat, aux membres de sa famille et à tout traitement médical nécessaire pendant sa détention;
3. s'assurera que Me Abbou pourra mener ses activités pacifiques et légitimes sans craindre la détention arbitraire, la torture ou les mauvais traitements, ou autres violations des droits de la personne.

Je vous prie d'agréer l'expression de mes salutations distinguées,

Le Trésorier,

Gavin MacKenzie

[C. c. : Barreau de la Tunisie]

ENGLISH VERSION OF INTERVENTION LETTER
IN THE CASE OF MOHAMMED ABBOU

[Date]

[Proposed recipient: Bechir Tekkari - Minister of Justice and Human Rights]

Dear [title]:

Re: Mohammed Abbou

The Law Society of Upper Canada is the governing body for some 36,000 lawyers in the Province of Ontario, Canada. Our mandate is to govern the legal profession in the public interest. Fundamental to our system of democracy in Canada is the maintenance of an independent bar. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

In this regard the governing board of the Law Society of Upper Canada, on the recommendation of its Human Rights Monitoring Group, has requested that I write to you to express our deep concern over the news that human rights lawyer Mohammed Abbou, a member of the National Council for Civil Liberties, is reported to have been sentenced in April 2005 to imprisonment for three years and six months for publishing two Internet articles that are critical of the Tunisian authorities. The Law Society of Upper Canada is also concerned over reports that since his detention in March 2005, he has undertaken several hunger strikes in protest of the conditions of his detention. According to reports he continues to face harassment and ill treatment by the prison administration, and his conditions of detention have deteriorated further after a demonstration in support of his case was held outside the prison earlier this year. We have also been made aware of the fact that other prisoners, at the instigation of prison authorities, have harassed him.

The Law Society notes that in November 2005, the UN Working Group on Arbitrary Detention concluded that Mohammed Abbou's detention was arbitrary and in violation of Article 19 of the *Universal Declaration of Human Rights* and of Article 19 of the *International Covenant on Civil and Political Rights* which guarantee the right to freedom of expression. Article 19 of the *International Covenant on Civil and Political Rights*, ratified by Tunisia on March 18, 1969, states "Everyone shall have the right to freedom of expression". Article 19 of the *Universal Declaration of Human Rights* states "Everyone has the right to freedom of opinion and

expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

The Law Society expresses its concern that lawyer Mohammed Abbou is being detained for exercising his right to freedom of expression. It is our hope that the government of Tunisia will,

1. release Mr. Abbou unless he is to be charged with a recognized criminal offence;
2. guarantee that he will not be tortured or ill treated while in custody, and have access to a lawyer, to members of his family and to necessary medical treatment while in detention;
3. ensure that Mr. Abbou can carry out his peaceful and legitimate activities without fear of arbitrary detention, torture or ill treatment, or other human rights violations.

Sincerely,

Gavin MacKenzie
Treasurer

[C.c. to: Barreau de la Tunisie]

RECOMMENDED INTERVENTION LETTER
IN THE CASE OF CHEN GUANGCHENG

[Date]

[Proposed recipients:
President Hu Jintao, People's Republic of China
Minister of Justice of the People's Republic of China
Minister of Foreign Affairs of the People's Republic of China
Diplomatic representatives of the People's Republic of China in Canada]

Dear [title]:

Re: Chen Guangcheng

The Law Society of Upper Canada is the governing body for some 36,000 lawyers in the Province of Ontario, Canada. Our mandate is to govern the legal profession in the public interest. Fundamental to our system of democracy in Canada is the maintenance of an independent bar. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

In this regard the governing board of the Law Society of Upper Canada, on the recommendation of its Human Rights Monitoring Group, has requested that I write to you to express our deep concern over the news that lawyer Chen Guangcheng, a lawyer involved in denouncing the use of violence of the authorities of Linyi, Shangdong province, in the implementation of the birth planning policy, has been sentenced to four years and three months imprisonment. According to the information received, on August 24, 2006, Mr. Chen Guangcheng was sentenced for "deliberate destruction of property" and "organising a mob to disrupt traffic" by the Linnan County People's Court. The trial only lasted two hours. The Law Society is particularly concerned that during all the judicial proceedings, it is reported that Mr. Chen was denied access to the legal team attempting to prepare his defense. Thus, the first instance of his trial took place on August 19, 2006, without the presence of his legal team, all of whom were either detained by the police or denied access to the court. These events are linked to the lawyers' discharge of their legitimate professional duties.

The UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, states at Article 1 "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels". Article 12.2, states "The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto or de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration". Article 6.b states "Everyone has the right, to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms", and article 9.3.c states "Everyone has the right [...] to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms".

The Law Society hopes that the government of China will,

1. guarantee in all circumstances the physical and psychological integrity of Mr. Chen Guangcheng as well as of his lawyers;
2. ensure that Mr. Chen Guangcheng is released immediately because his detention is arbitrary;
3. put an end to any kind of reprisals against all human rights defenders in China;
4. conform with the provisions of the UN *Declaration on Human Rights Defenders*, adopted by the General Assembly of the United Nations on December 9, 1998, especially its articles 1, 12.2, 6.b and 9.3.c mentioned above;
5. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments signed by the People's Republic of China, in particular the *International Covenant on Civil and Political Rights*, that China has publicly declared its intention to ratify.

Sincerely,

Gavin MacKenzie
Treasurer

[C.c. to: All China Lawyers Association]

RECOMMENDED INTERVENTION LETTER
IN THE CASES OF MOSSAAD MOHAMED ALI; RASHA SOURAJ, EBTISAM ALSEMANI, NAJAT DAFAALLA, AND MOHAMED BADAWI

[Date]

[Proposed recipients:
President of the Republic of Sudan
Minister of the Interior of Sudan
Minister of Foreign Affairs of Sudan
Rapporteur, Advisory Council for Human Rights in Sudan
First Vice-President, People's Palace
Vice-President, People's Palace
Minister of Justice and Attorney General, Ministry of Justice in Sudan
Ambassador of the Republic of Sudan in Canada
Bar association in Sudan

Dear [title]:

Re: Lawyers-Mossaad Mohamed Ali; Rasha Souraj, Ebtisam Alsemani, Najat DafaAlla, and Mohamed Badawi.

The Law Society of Upper Canada is the governing body for some 36,000 lawyers in the Province of Ontario, Canada. Our mandate is to govern the legal profession in the public interest. Fundamental to our system of democracy in Canada is the maintenance of an independent bar. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

In this regard the governing board of the Law Society of Upper Canada, on the recommendation of its Human Rights Monitoring Group, has requested that I write to you to express our deep concern over the news that human rights lawyers affiliated with the Amel Centre for the Treatment and Rehabilitation of Victims of Torture providing legal assistance to victims of torture, sexual violence, and to those at risk of cruel, inhuman and degrading punishment have been targeted. The Law Society expresses its concern that lawyers Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat DafaAlla, and Mohamed Badawi are being arrested, interrogated, at times held without charge and intimidated. Between May and September 2006 these lawyers have, in various forms, been summoned, detained and questioned without being charged with an offence. They have been denied access to their families, to legal counsel and to audiences with officials from organizations such as the United Nations Mission in Sudan. No reasons have been given as to their arrests.

The Law Society of Upper Canada is also concerned over reports that all of the accusations against the lawyers have been made after they, in their professional capacity, have submitted applications requesting information on individuals being detained at internal displacement camps who have not been charged with a valid offence. This is of concern to the Law Society because it appears that all the lawyers at the Amel Centre for the Treatment and Rehabilitation of Victims of Torture have been prevented from discharging their legitimate professional duties.

The United Nation's *Basic Principles on the Role of Lawyers* declare as follows:

- Principle 16, states that lawyers should be able to perform their professional obligations without intimidation, hindrance, harassment or improper interference;
- Principle 17, states that where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities;
- Principle 18, states that lawyers should not be identified with their clients or their clients' causes as a result of their work; and
- Principle 20, guarantees lawyers civil and penal immunity for statements made in good faith in oral or written submissions.

It is our hope that the government of Sudan will,

1. guarantee under all circumstances the physical and psychological integrity of Mossaad Mohamed Al, Rasha Souraj, Ebtisam Alsemani, Najat DafaAlla, and Mohamed Badawi, as well as of all members of the Amel Centre for the Treatment and Rehabilitation of Victims of Torture;

2. put an end to all acts of harassment and intimidation against human rights defenders in Sudan;

3. conform with the provisions of the United Nation's *Basic Principles on the Role of Lawyers,* adopted by the General Assembly in September 1990, and in particular with principles 16, 17, 18 and 20 regarding guarantees for the functioning of lawyers so that all lawyers are granted the freedom to effectively carry out their work.

4. more generally, ensure that in all circumstances respect for human rights and fundamental freedoms in Sudan is in accordance with its national laws, the *National Interim Constitution* (2005) and international human rights standards.

Sincerely,

Gavin MacKenzie
Treasurer

FOR DECISION

HUMAN RIGHTS MONITORING GROUP REPORT –
REQUEST FOR CHANGE IN MANDATE

MOTION

76. That Convocation add the following paragraph to the mandate of the Human Rights Monitoring Group, presented at paragraph 79 below:

"d. Where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate."

BACKGROUND

77. On April 26, 2006, Convocation adopted a motion to appoint the following benchers to be responsible for monitoring human rights violations that target members of the legal profession and judiciary (the "Human Rights Monitoring Group"), here and abroad, as a result of the discharge of their legitimate professional duties:
    a. Paul Copeland (Chair);
    a. Anne Marie Doyle;
    b. Heather Ross;
    c. Joanne St. Lewis; and
    d. Mark Sandler.

78. The Human Rights Monitoring Group reports to Convocation through the Equity and Aboriginal Issues Committee.

79. On May 25, 2006, Convocation adopted the following mandate for the Human Rights Monitoring Group:
    a. to review information that comes to its attention about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
    b. to determine if the matter is one that requires a response from the Law Society; and
    c. to prepare a response for review and approval by Convocation.

REASON FOR PROPOSED CHANGE OF MANDATE

80. To date, the Human Rights Monitoring Group has considered cases where threats have been made against lawyers as a result of the discharge of their legitimate professional duties and cases of arbitrary detention of lawyers. The purpose of intervening in such cases is to promote the safety and human rights of members of the profession and the judiciary. In order to effectively fulfill its mandate, the Human Rights Monitoring Group must have the capacity to act quickly. In a number of cases considered to date, the Human Rights Monitoring Group has been unable to act in a timely manner in part because Convocation does not hold meetings over the summer. Convocation also meets only if necessary in December and, during the remainder of the year, only once a month. This makes it difficult for the Human Rights Monitoring Group to proceed with urgent cases in a timely manner.

81. Members of the Human Rights Monitoring Group are of the view that the requirement to request Convocation's approval in all cases where it recommends a Law Society intervention is a process that does not allow the Human Rights Monitoring Group to effectively fulfill its mandate. Therefore, the Human Rights Monitoring Group considered a number of options and recommends that its mandate be modified to allow the Law Society to intervene in cases where Convocation's meeting schedule makes it impractical to review and approve requests for intervention.

82. The Human Rights Monitoring Group is of the view that the recommendation is reasonable in that,
    a. it only applies in instances where a response from the Law Society is urgently required and Convocation's meeting schedule makes it impractical to review and approve requests for intervention; and
    b. it respects the role of the Treasurer as representative of the Law Society and is consistent with his or her authority to respond for the Law Society of Upper Canada.

84. On October 12, 2006, the Committee approved the recommendation and brings a motion to Convocation for decision.

EQUITY PUBLIC EDUCATION SERIES – Fall 2006

86. Louis Riel Day

Event date:	November 16, 2006
Topic:	Meeting at the Table: The Evolution of Métis – First Nations Relations
Time, Location:	4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

87. CLE in Partnership with the Ontario Association for the Deaf and Pro Bono Law Ontario

Event date:	November 21, 2006
Topic:	Recruitment and Training of Lawyers for the Provision of Legal Services to the Deaf Community
Time, Location:	2:00 p.m. – 5:00 p.m.: Donald Lamont Learning Centre

88. International Day of Disabled Persons

Event date:	November 30, 2006 (TBC)
Topic:	E-Accessibility – Access to Information and Communication Technologies
Time, Location:	4:00 p.m. – 6:00 p.m.: Panel discussion, Donald Lamont Learning Centre 6:00 p.m. – 8:00 p.m.: Reception, Law Society Convocation Hall

89. CLE in Partnership with Nishnawbe-Aski Legal Services Corporation, Pro Bono Law Ontario and Bar Ex

Event date:	January 18, 2007
Topic:	Telejustice Project CLE - First Nations Issues in Family and Criminal Law
Time, Location:	9:00 a.m. – 12 p.m.

It was moved by Mr. Copeland, seconded by Ms. Ross, that Convocation add the following paragraph to the mandate of the Human Rights Monitoring Group:

d. Where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps as he or she deems appropriate.

An amendment was accepted by the mover and seconder that the phrase "and shall report on the matter at the next Convocation" be added after the words "deems appropriate."

The motion as amended was put.

Carried

Item for Information

- Public Education Sessions

MOTION – Amendment to By-Law 5 [Election of Benchers]

It was moved by Professor Krishna, seconded by Mr. Swaye that –

By-Law 5 [Election of Benchers] made, under paragraph 6 of subsection 62 (1) of the *Law Society Act*, on January 28, 1999 and amended on February 19, 1999, March 26, 1999, April 26, 2001 and September 28, 2006 be further amended as follows:

1. Section 18 is amended by adding "other than a temporary member/qui ne sont pas membres temporaires" after "member/membres".

Carried

BENCHER ELECTION 2007 REPORT

Professor Krishna presented the Report on the 2007 Bencher Election.

REPORT TO CONVOCATION
October 26, 2006

Bencher Election 2007

Purpose of Report: Decision

Prepared by the Policy Secretariat
Katherine Corrick (416-947-5210)

FOR DECISION

BENCHER ELECTION 2007

Motion

1. That Convocation approve the recommendations set out in this report as follows:

a. that the Law Society not provide the email addresses of members to candidates in the 2007 bencher election; and
b. that the Law Society continue to provide candidates the option of using a mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region. The cost of the labels and shipping ought to be borne by the candidates.

Elector Mailing List

1. Some candidates in the 2003 bencher election requested the email addresses of members to assist them in distributing their campaign material without having to incur the expense of labels, stationery and postage.

2. The Law Society refused to distribute the email addresses of members in 2003. It is anticipated that candidates will make this request again in 2007.

3. Convocation has not previously considered this issue. As it is a matter of policy, the Elections Officer seeks Convocation's decision on the matter.

Background

4. Since at least the 1983 bencher election, the Law Society has provided candidates with the mailing addresses of all eligible voters. In 1999 and 2003, candidates requested the email addresses of members. The Law Society of Upper Canada refused to provide them.

5. In 1999, candidates were offered mailing lists on disks or on labels. Disks were free. Pressure-sensitive labels of the entire membership cost $450 plus GST. Members could order lists of the entire membership, or of specified counties. Of the 83 candidates, 8 ordered disks, and 22 ordered labels.

6. There were numerous problems associated with the service in 1999. Staff were unable to cope with the demands of the candidates. It took nearly 24 hours to print a set of labels for the entire membership. The volume of custom orders monopolized an extraordinary amount of time for an Information Systems Department employee. The variations in technological skills and type of equipment and software meant that many candidates could not use the disks provided to produce mailing labels. One staff member had to be dedicated to answering questions from candidates about the data format.

7. The candidates signed an undertaking promising to return all disks to the Law Society by a specified date. Many did not and had to be pursued. The Law Society has no way of knowing that the data was not copied.

8. Finally, the candidates were not charged for the cost of shipping the printed labels, even though a full set of labels weighed more than ten pounds, and was very expensive to ship.

9. To attempt to eliminate these problems in 2003, the Law Society contracted with Pitney Bowes, its in-house mail service provider, to provide candidates with full mail house services, including printing and distribution of campaign material. In addition, Pitney

Bowes provided pressure-sensitive address labels of electors by region to candidates who requested them. Labels for all eligible voters cost $1,107. Candidates dealt directly with Pitney Bowes. Candidates were responsible for arranging shipping of the labels by courier, and for paying Pitney Bowes. This arrangement allowed the Law Society to maintain control over its database of member addresses, while at the same time assisting candidates to communicate with the electorate.

10. Many candidates were pleased with this service. Others were not. Candidates from outside of Toronto complained about the courier charges they had to incur to ship the labels, and felt that this gave Toronto candidates an advantage. Pitney Bowes did not always meet its promised delivery time, which annoyed some candidates.

Issue

11. What is the appropriate balance between maintaining the privacy of information that members are compelled to provide the Law Society and assisting candidates to gain access to the electorate?

Discussion

12. It is expected that candidates in the 2007 bencher election will request the email addresses of members. Although providing members' email addresses to candidates is simpler and cheaper than providing printed labels, and would level the playing field for candidates, it is not without its own set of problems.

13. In general, there is a heightened awareness in Canada of issues surrounding the privacy of information and the duty of companies and organizations to maintain the confidence of certain information they have about their customers and members.

14. Specifically, the Law Society has created an expectation among its members that it will keep their information confidential. The Member's Annual Report includes a box that members check off if they do not want the Law Society to provide their name or business address to other legal organizations. It is interesting that in 2003, 11% of members indicated they did not want the Law Society to provide their contact information to other legal organizations. By 2005, this percentage had risen to nearly 20%.

15. The Law Society has heard from members about this issue in response to two situations. In the spring of 2006, the Law Society launched an on-line member directory that included members' email addresses in the Member Contact Information section. Members informed the Law Society that this may have provided email spammers with a source of email addresses. As a result of this feedback, the Law Society has removed the email addresses of members from the on-line directory.

16. In 2003, some candidates had access to a large database of member email addresses, and used it to distribute campaign material. The Law Society did not provide the database. The Law Society received many calls from members complaining about the emails they received from candidates. They assumed that the Law Society had provided their email addresses to the candidates. Members expect the Law Society to keep their email addresses confidential unless they have otherwise consented.

17. If the Law Society distributes the database of member email addresses, it will have no control over the use that is made of it. The risk is not limited to the use made of it by the candidate who uses it to distribute campaign material, but extends to the recipients of the material as well. Unless the sender of the original email develops a customized email program, all recipients of the email will have access to the database.

18. A definitive email list of Ontario lawyers would be highly prized and of significant commercial value. The distribution of members' email addresses to unknown third parties would likely lead to members receiving significant volumes of unwanted email and inevitable criticism of the Law Society.

19. Spam has become a worldwide problem. There are estimates that spam accounts from between 75 and 90% of all email sent worldwide[1]. At the Law Society of Upper Canada, about 75% of the email received is spam. It is having a significant negative impact on the productivity of employees, and is costing organizations and individuals increasing amounts of money to control. Members of the Law Society are affected by it.

20. In an effort to explore alternatives, the Law Society contacted Canada Law Book, which publishes the Ontario Lawyers Phone Book. The Ontario Lawyers Phone Book lists Ontario lawyers, with the lawyer's contact information, including email address. Canada Law Book refuses to sell or provide an electronic database of lawyers' email addresses, although it will sell the mailing addresses of lawyers.

Recommendations

21. The Law Society should not provide the email addresses of members to candidates.

22. The Law Society should continue to provide candidates the option of using a mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region. The cost of the labels and shipping ought to be borne by the candidates.

It was moved by Professor Krishna, seconded by Mr. Henderson, that Convocation approve the recommendations in the report as follows:

a. that the Law Society not provide the email addresses of members to candidates in the 2007 bencher election; and

b. that the Law Society continue to provide candidates the option of using a mailing house that has access to the Law Society's database of members' mailing addresses or purchasing pressure-sensitive address labels of electors by region. The cost of the labels and shipping ought to be borne by the candidates.

Not Put

It was moved by Professor Krishna, seconded by Mr. Henderson, that the matter be referred to the Equity and Aboriginal Issues Committee.

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[1] According to Messaging Anti-Abuse Working Group, www.MAAWG.org; Gartner Inc., Press Release June 8, 2004, www.gartner.com/press_releases

Carried

PROFESSIONAL DEVELOPMENT, COMPETENCE AND ADMISSIONS COMMITTEE REPORT

Ms. Pawlitza presented the Report of the Professional Development, Competence and Admissions Committee.

Re: Amendment to By-Law 24 Respecting Practice Review

REPORT TO CONVOCATION
October 26, 2006

Professional Development, Competence and Admissions Committee

Committee Members
Laurie Pawlitza (Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Robert Aaron
Kim Carpenter-Gunn
James Caskey
Carole Curtis
Paul Henderson
Vern Krishna
Laura Legge
Daniel Murphy
Judith Potter
Bonnie Warkentin

Purpose of Report: Decision
Information

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

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COMMITTEE PROCESS

1. The Committee met on October 12, 2006. Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice-Chair), Mary Louise Dickson (Vice-Chair), Robert Aaron, Kim Carpenter-Gunn, James Caskey, Carole Curtis, Laura Legge, Daniel Murphy, Judith Potter and Bonnie Warkentin attended. Bill Simpson and Gerry Swaye also attended part of the meeting. Alf Mamo attended part of the meeting at the invitation of the Committee. Staff members Diana Miles, Allyson O'Shea and Sophia Sperdakos attended.

FOR DECISION

AMENDMENTS TO BY-LAW 24 RESPECTING PRACTICE MANAGEMENT REVIEW

MOTION

2. That Convocation approve the amendments to By-law 24 as follows:

THAT By-Law 24 [Professional Competence], made by Convocation on March 26, 1999 and amended on May 28, 1999, April 26, 2001, January 24, 2002, October 31, 2002, April 25, 2003 and March 25, 2004 be further amended as follows:

1. Subsection 5 (1) of By-Law 24 [Professional Competence] is deleted and the following substituted:

Mandatory reviews

5. (1) On the request of the Secretary, the chair or a vice-chair of the standing committee of Convocation responsible for professional competence matters shall direct that a review of a member's practice be conducted if,

(a) the chair or the vice-chair to whom the Secretary has made the request is satisfied that there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence; or

(b) the member was admitted as a member to the Society within the eight years immediately before the request of the Secretary and is a category A member under By-Law 13 at the time of the request of the Secretary.

Inspection obligatoire

5. (1) À la demande du ou de la secrétaire, la personne assumant la présidence ou la vice-présidence du Comité permanent du Conseil chargé des questions de compétence professionnelle ordonne l'inspection des activités professionnelles d'un membre si :

a) la personne assumant la présidence ou la vice-présidence à qui la Secrétaire a fait la demande est convaincue qu'il existe des motifs raisonnables de croire que le membre ne respecte pas ou n'a pas respecté les normes de compétence de la profession;

b) le membre a été admis comme membre du Barreau dans les huit ans précédant immédiatement la demande de la Secrétaire et est membre de la catégorie A conformément au règlement administratif 13 au moment de la demande de la Secrétaire.

2. Subsection 5 (3) of the By-Law is amended by adding "For the purposes of paragraph 1 of subsection (1)," / "Aux fins de l'alinéa 1 du paragraphe (1)," at the beginning of the subsection.

Introduction and Background

3. In June 2006 Convocation approved the introduction of a practice management review program to begin in 2007.

4. By-law 24 must now be amended to reflect Convocation's approval of the criteria upon which a member may be selected to participate in a practice management review.

5. The Committee has reviewed the proposed amendments and recommends them to Convocation for approval.

FOR INFORMATION

LICENSING PROCESS REVIEW SUBCOMMITTEE – INFORMATION REPORT

6. Convocation established the Licensing Process Review Subcommittee in March 2004 when it approved the new program. The members of the Subcommittee are Clayton C. Ruby (Chair), Constance Backhouse, Julian Porter, Beth Symes, and Bonnie Warkentin.

7. The Committee has prepared its first information report, set out at APPENDIX 1.

PROFESSIONAL DEVELOPMENT AND COMPETENCE DEPARTMENT BENCHMARKING REPORT

8. The Quarterly Benchmarking Report of the Director, Professional Development and Competence, for the period ending September 30, 2006 is provided to the Committee for information at APPENDIX 2.

APPENDIX 1

Report to Professional Development, Competence and Admissions Committee
October 4, 2006

Licensing Process Review Subcommittee

Committee Members

Clayton C. Ruby, Chair
Constance Backhouse
Julian Porter
Beth Symes
Bonnie Warkentin

Purpose of Report: Information

COMMITTEE PROCESS

1. Between July 2005 and the present date, the Committee met by teleconference and communicated by fax and e-mail.

ISSUE

LICENSING PROCESS REVIEW SUBCOMMITTEE

Introduction and Background

1. The Licensing Process Review Subcommittee was established by Convocation in March of 2004 to review the licensing process, with a focus on "operations and the fairness of the Licensing Process to ensure that the Licensing Process reflects the values and commitments of Convocation."

2. Pursuant to Convocation's direction, our Report is first made to the Professional Development, Competence and Admissions Committee and then forwarded on to Convocation.

3. The Subcommittee looked at the treatment of aboriginals in the Bar Admission Course. Our inquiries of Diana Miles, Director, indicate that the success rate for Aboriginal students in the previous three years (average) of the Bar Admission Course on first writing results only was 71.6%. The success rate for Aboriginal students in the present licensing process on first writing results only is 71.8%.

4. Accordingly, it does not appear that there is any significant problem so far.

5. Previously, students had to write all of the examinations and there was a limited process of deferral. Deferral is now widely available.

6. By way of contrast, figures in general indicate that 84% of the students enrolled in the process wrote the first sitting of examinations and of those students 95.35% of the students passed the Barrister Examination and 92.41% of the students passed the

Solicitor Examination. Two further sittings of examinations are scheduled for November 2006 and March 2007. Students have three years, or as many as 9 sittings, to achieve a passing score. Almost 200 students did not write either of the first sittings.

7. This year there were 23 newly registered Aboriginal students in the licensing process (there were 19, 25 and 19 newly registered Aboriginal students in the process in 2003, 2004 and 2005 respectively). Four of these students this year (approximately 17%) have elected not to write exams at this time. This figure is similar to the overall students who decided not to write the first sittings. Accordingly, to the extent that there is any concern, we focus on the number of students who decided not to write examinations at this time because some of them may decide never to write the examinations.

8. Generally speaking students who chose not to write the first sitting of examinations have very personal reasons for doing so ranging from preferring to spend more time to prepare to not being available at that time of the year due to other personal commitments. Our staff is in close contact with the remaining four students and is continuing to make available to them tutoring and any other assistance they may need.

9. The structure of the examinations is such that we are not in a position at the end of the first exam to find out whether the overall figures will be different this term, but we will continue to monitor that issue. There is so far no cause for alarm.

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

(1) Copy of the Professional Development & Competence Department Resource and Program Benchmarking Report as at September 30, 2006.
(Appendix 2, pages 11 – 25)

It was moved by Ms. Pawlitza, seconded by Mr. Pattillo, that Convocation approve the amendments to By-Law 24 as follows:

THAT By-Law 24 [Professional Competence], made by Convocation on March 26, 1999 and amended on May 28, 1999, April 26, 2001, January 24, 2002, October 31, 2002, April 25, 2003 and March 25, 2004 be further amended as follows:

1. Subsection 5 (1) of By-Law 24 [Professional Competence] is deleted and the following substituted:

Mandatory reviews
5. (1) On the request of the Secretary, the chair or a vice-chair of the standing committee of Convocation responsible for professional competence matters shall direct that a review of a member's practice be conducted if,

(a) the chair or the vice-chair to whom the Secretary has made the request is satisfied that there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence; or

(b) the member was admitted as a member to the Society within the eight years immediately before the request of the Secretary and is a category A member under By-Law 13 at the time of the request of the Secretary.

Inspection obligatoire

5. (1) À la demande du ou de la secrétaire, la personne assumant la présidence ou la vice-présidence du Comité permanent du Conseil chargé des questions de compétence professionnelle ordonne l'inspection des activités professionnelles d'un membre si :

a) la personne assumant la présidence ou la vice-présidence à qui la Secrétaire a fait la demande est convaincue qu'il existe des motifs raisonnables de croire que le membre ne respecte pas ou n'a pas respecté les normes de compétence de la profession;

b) le membre a été admis comme membre du Barreau dans les huit ans précédant immédiatement la demande de la Secrétaire et est membre de la catégorie A conformément au règlement administratif 13 au moment de la demande de la Secrétaire.

2. Subsection 5 (3) of the By-Law is amended by adding "For the purposes of paragraph 1 of subsection (1)," / "Aux fins de l'alinéa 1 du paragraphe (1)," at the beginning of the subsection.

Carried

Items for Information

- Director's Quarterly Benchmark Report
- Report of the Licensing Process Review Committee

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Ross presented the Professional Regulation Committee Report.

Re: Amendment to Rules 1.02, 3.02(4), 3.03(1) and 6.01(3) of the *Rules of Professional Conduct*

Report to Convocation
October 26, 2006

Professional Regulation Committee

Committee Members
Clayton Ruby, Chair
Laurence Pattillo, Vice-Chair
Heather Ross, Vice-Chair
Anne Marie Doyle
George Finlayson

Alan Gold
Allan Gotlib
Gary Gottlieb
Paul Henderson
Ross Murray
Sydney Robins
Robert Topp
Roger Yachetti

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on October 12, 2006. In attendance were Clayton Ruby (Chair), Heather Ross (Vice-chair), Anne-Marie Doyle, George Finlayson, Gary Gottlieb and Ross Murray. Staff attending were Susan Bryson, Naomi Bussin, Zeynep Onen, and Jim Varro.

AMENDMENTS TO RULES 1.02, 3.02(4), 3.03(1) AND COMMENTARY TO RULE 6.01(3) OF THE *RULES OF PROFESSIONAL CONDUCT*

Motion

2. That Convocation make the following amendments to the *Rules of Professional Conduct:*

   a. Replace the definition of "associate" in rule 1.02 with the following:

      "associate" includes:

(a) a member who is an employee of the law firm in which the member practises law; and
(b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law in which the non-member provides his or her services.

Replace the definition of “professionnel salarié” in rule 1.02 with the following:

“professionnel salarié” s’entend notamment des personnes suivantes :

a) Les membres qui sont des employés d’un cabinet dans lequel ils exercent le droit ;
b) Les employés d’un cabinet multidisciplinaire qui ne sont pas membres, mais qui fournissent des services qui soutiennent ou complètent l’exercice du droit.

b. Amend rule 3.02(4) to add the word “the” before the word “practice”[1] ;

c. Amend Rule 3.03(1) by

i. adding a new paragraph (c) as follows:

the name of a retired from practice or deceased member of the firm, identified as such, who was qualified to practise law (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or (ii) in a jurisdiction outside of Canada where the law firm carries on its practice;

and

ii. renumbering existing paragraphs (c) through (n) as (d) through (o).

Amend Rule 3.03(1) by

i. adding a new paragraph c) as follows:

le nom d’un avocat retraité ou d’une avocate retraitée de l’exercice ou d’un membre décédé du cabinet, identifié comme tel, qui était habilité à exercer le droit (i) en Ontario ou dans une autre province ou un autre territoire du Canada où le cabinet poursuit ses activités, ou (ii) dans un ressort en dehors du Canada où le cabinet poursuit ses activités;

and

d. Amend the Commentary to rule 6.01(3) by replacing “Ontario Bar Assistance Program (OBAP), LINK,” with “Ontario Lawyers’ Assistance Program (OLAP)” and replacing “OBAP” with “OLAP”.

[1] Not Applicable in French

Amend the Commentary to rule 6.01(3) by replacing "OBAP (programme d'entraide pour les juristes), LINK (programme d'aide aux avocats)," with "OLAP (programme d'aide aux juristes de l'Ontario)" and replacing "OBAP" with "OLAP".

3. On September 28, 2006, Convocation approved in principle amendments to rules 1.02, 3.02(4) and 3.03(1) of the *Rules of Professional Conduct*, reflected in the motion at paragraph 2.

4. Following Convocation, the amendments were reviewed by Rules drafter Donald Revell, who confirmed that from a drafting perspective, the language fulfills the policy decisions made by Convocation.

5. The motion at paragraph 2 sets out the specific words for the amendments to the Rules in English and French. The motion varies slightly from the language before Convocation in September, in that the phrases "retired from practice" and "identified as such" have been added to rule 3.03(1)(c) in response to suggestions made at September Convocation.

6. The report of the Committee before September Convocation appears at Appendix 1.

Additional Housekeeping Amendment to the Rules – Rule 6.01(3) Commentary

7. The commentary under rule 6.01(3) (Duty to Report Misconduct) currently refers to LINK and the Ontario Bar Assistance Program (OBAP). Earlier this year, these two organizations merged and became the Ontario Lawyers' Assistance Program (OLAP).

8. The Committee proposes that the commentary be amended to reflect this change. The rule and commentary with the proposed amendment is as follows:

Duty to Report Misconduct

(3) A lawyer shall report to the Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege,

(a) the misappropriation or misapplication of trust monies,

(b) the abandonment of a law practice,

(c) participation in serious criminal activity related to a lawyer's practice,

(d) the mental instability of a lawyer of such a serious nature that the lawyer's clients are likely to be severely prejudiced, and

(e) any other situation where a lawyer's clients are likely to be severely prejudiced.

Commentary

Unless a lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer).

Nothing in this paragraph is meant to interfere with the traditional solicitor client relationship. In all cases the report must be made bona fide without malice or ulterior motive.

Often, instances of improper conduct arise from emotional, mental, or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports the ~~Ontario Bar Assistance Program (OBAP), LINK~~, Ontario Lawyers' Assistance Program (OLAP) and other support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for ~~OBAP~~ OLAP and other support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity, or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

[Amended - June 2001]

APPENDIX 1

Introduction

9. The Committee reviewed two separate matters related to the *Rules of Professional Conduct*. The Committee is proposing that Convocation agree in principle to the amendments to the Rules described in [the motion]. Thereafter, the Committee will refer the proposed language to the Law Society's Rules drafter for preparation of the precise wording of the amendments to be adopted by Convocation. It is anticipated that this will be ready for October 26, 2006 Convocation.

Rules 1.02 and 3.02(4)

10. The Committee reviewed a matter referred from the Proceedings Authorization Committee ("the PAC"). The issue concerned the meaning of the words "associate" and "Associates" in rules 1.02 and 3.02(4) respectively, and whether, for example, use of the phrase "& Associates" by a group of sole practitioners was appropriate.

11. Rules 1.02 and 3.02(4) read:

Rule 1.02:

"associate" includes:
(a) a member who is an employee of a law firm; and
(b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law.

Rule 3.02(4):

The name of a law firm shall not include the use of such phrases as "John Doe and Associates", "John Doe and Company", or "John Doe and Partners" unless there are in fact, respectively, two or more other lawyers associated with John Doe in practice or two or more partners of John Doe in the firm."

12. In the Committee's view, the intent of rule 3.02(4) is to prevent the public from being misled about the type and size of the firm that is being retained. In order to use the words "& Associates" in the firm name, the member must have associates who are actually associated in practice with the member (i.e. associates who are employees of the member's firm). As such, use of the phrase "& Associates" by a number of independent sole practitioners may mislead the public into thinking that the lawyers are part of the same law practice.

13. As a matter of interpretation, there is a concern that rule 3.02(4) does not make it clear that the "associates" must be employees of the firm using the "& Associates" in its firm name and not "associates" from another firm. In the Committee's view, the rule was not intended to permit, for example, a sole practitioner's use of the designation "& Associates" in cases where the "associates" are employees of other firms retained by the lawyer on an occasional basis.

14. The Committee agreed that the rule required clarification.

The Committee's Recommendation

15. The Committee determined that the Rules should be amended as follows:

a. the definition of "associate" in rule 1.02 should be amended to read:
"associate" includes:

(a) a member who is an employee of ~~a law firm~~ the law firm in which the member practises law"
(b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law in which the non-member provides his or her services";

b. rule 3.02(4) should be amended to add the word "the" before the word "practice":

The name of a law firm shall not include the use of such phrases as "John Doe and Associates", "John Doe and Company", or "John Doe and Partners" unless there are in fact, respectively, two or more other lawyers associated with John Doe in the practice or two or more partners of John Doe in the firm."

Rule 3.03(1)

16. A matter was referred to the Committee as a result of a bencher's advice to the Treasurer about a gap in the letterhead rule, rule 3.03, namely, that the rule does not permit a law firm to include the name of a deceased member of the firm.

17. Rule 3.03(1) reads:

RULE 3.03 - LETTERHEAD

3.03 (1) Subject to subrules (2), (3) and (4), a lawyer's letterhead and the signs identifying the office may only include
(a) the name of the lawyer or law firm;

(b) a list of the members of any law firm, including counsel practising with the firm;

(c) the words "barrister", "barrister-at-law", "barrister and solicitor", "lawyer", "law office", "solicitor", "solicitor-at-law", or the plural, where applicable;

(d) the words "notary" or "commissioner for oaths" or both, where applicable;

(e) the words "patent and trade mark agent", where applicable;

(f) a statement that a member of the law firm is qualified to practise law in another named jurisdiction, along with his or her title in that jurisdiction, such as "attorney" or "attorney at law",

(g) a statement that a member of the law firm is certified by the Law Society as a specialist in a specified field;

(h) the phrases "limited liability partnership" or "société à responsabilité limitée" or the letters "LLP," "L.L.P." or "s.r.l." where applicable,

(i) the words "Professional Corporation", or "Société professionnelle," where applicable,

(j) the phrase "multi-discipline practice" or "multi-discipline partnership" where applicable;

(k) the addresses, telephone numbers, office hours, and the languages in which the lawyer or law firm is competent and capable of conducting a practice; and

(l) a logo.

(m) reference to an affiliation, and

(n) advertising permitted under rules 3.04 and 3.05.

18. As noted above, rule 3.03(1) includes a lengthy but exclusive list of items that are permitted to appear on letterhead. The rule does not include an item for the name of a deceased member of a firm.

19. Rule 3.02(1) on firm names (see Appendix 1) permits law firm names, subject to certain restrictions in rule 3.02(3) through (6), to include a name of a current, a retired from practice, or a deceased member of the firm who is or was qualified to practise law

    a. in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or
    b. in a jurisdiction outside of Canada where the law firm carries on its practice.

    The Committee's Recommendation

20. The Committee acknowledged that it is not uncommon for law firms to include the names of deceased partners on their letterhead. As such, the Committee decided that it would be appropriate to amend the letterhead rule to permit law firms to include such names on their letterhead.

21. The suggested language for the amendment is the language used in rule 3.02 to describe permissible firm names that include a deceased member of the firm. Accordingly, the proposal is that a new paragraph (c) be added to the rule as follows:

    (c) the name of a deceased member of the firm who was qualified to practice law

        (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or
        (ii) in a jurisdiction outside of Canada where the law firm carries on its practice;

APPENDIX 1 TO SEPTEMBER 28, 2006 REPORT

RULE 3.02 – LAW FIRM NAME

Permissible Names

3.02(1) A law firm name shall not include any name that is not

(a) a name of a current, a retired from practice, or a deceased member of the firm who is or was qualified to practice law

    (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or
    (ii) in a jurisdiction outside of Canada where the law firm carries on its practice, or

(b) a descriptive or trade name that is in keeping with the dignity, integrity, independence, and role of the legal profession in a free and democratic society and in the administration of justice.

3.02(2) A lawyer who purchases a practice may, for a reasonable length of time, use the words "Successor to _____" in small print under the lawyer's own name.

Restrictions

3.02 (3) A law firm name shall not include a descriptive or trade name that is misleading about

(a) the identities, responsibilities, or relationships of the lawyers practicing under the firm name, or
(b) the association or relationship of the law firm with other lawyers or non-lawyers.

3.02(4) The name of a law firm shall not include the use of phrases such as "John Doe and Associates", "John Doe and Company", or "John Doe and Partners" unless there are in fact, respectively, two or more other lawyers associated with John Doe in practice or two or more partners of John Doe in the firm.

3.02(5) When a lawyer retires from a law firm to take up an appointment as a judge or master or to fill any office incompatible with the practice of law, the lawyer's name shall not be included in the firm name.

3.02(6) A lawyer or law firm may not acquire and use a firm name unless the name was acquired along with the practice of a deceased or retiring member who conducted a practice under the name.

Limited Liability Partnership

3.02(7) If a law firm practices as a limited liability partnership, the phrases “limited liability partnership” “société à responsabilité limitée” or the letters “LLP,” “L.L.P.” or “s.r.l.” shall be included as the last words or letters in the firm name.

Professional Corporation

3.02(8) If a lawyer practices law through a professional corporation, the name of the corporation shall include the words “Professional Corporation” or “Société professionnelle”.

INFORMATION

REVIEW OF PROPOSED RESIDENTIAL REAL ESTATE TRANSACTION GUIDELINES AND AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT*

22. The Committee, together with the Professional Development, Competence and Admissions Committee, has begun review of new *Rules of Professional Conduct* and new Practice Management Guidelines for Real Estate Lawyers, following consultation with real estate practitioners.

23. The Rules and Guidelines are the result of the work of the Working Group on Real Estate Issues. This group, initiated by Malcolm Heins, was formed in April 2005 to focus on issues arising in real estate practice that relate to the Law Society’s regulatory responsibilities. Mortgage fraud, standards of practice and facilitating the public’s access to lawyers knowledgeable about real estate law are examples of the issues being addressed in this forum. The Working Group includes benchers, representatives from the Ontario Bar Association (OBA) Real Property Section and the County and District Law Presidents’ Association (CDLPA) and relevant Law Society staff.

24. In November 2005, Convocation approved consultations with the legal profession on the Rules and Guidelines. The consultations were conducted in April and May of 2006 in a number of locations across Ontario. Leading the consultations were Law Society benchers, staff and representatives from the OBA Real Property Section, CDLPA and the Ontario Real Estate Lawyers Association (ORELA).

25. The feedback received through the consultation was very informative and resulted in some changes to the proposed Rules and Guidelines. The Committee is continuing with its review and anticipates reporting to Convocation on this matter in early 2007.

It was moved by Ms. Ross, seconded by Mr. Pattillo, that Convocation make the following amendments to the *Rules of Professional Conduct*:

a. Replace the definition of "associate" in rule 1.02 with the following:

> "associate" includes:
> (a) a member who is an employee of the law firm in which the member practises law; and
> (b) a non-member employee of a multi-discipline practice providing services that support or supplement the practice of law in which the non-member provides his or her services.

Replace the definition of "professionnel salarié" in rule 1.02 with the following:

> "professionnel salarié" s'entend notamment des personnes suivantes :
> a) Les membres qui sont des employés d'un cabinet dans lequel ils exercent le droit ;
> b) Les employés d'un cabinet multidisciplinaire qui ne sont pas membres, mais qui fournissent des services qui soutiennent ou complètent l'exercice du droit.

b. Amend rule 3.02(4) to add the word "the" before the word "practice"[1];

c. Amend Rule 3.03(1) by

i. adding a new paragraph (c) as follows:

> the name of a retired from practice or deceased member of the firm, identified as such, who was qualified to practise law (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or (ii) in a jurisdiction outside of Canada where the law firm carries on its practice;
>
> and

ii. renumbering existing paragraphs (c) through (n) as (d) through (o).

[1] Not Applicable In French

Amend Rule 3.03(1) by

i. adding a new paragraph c) as follows:

le nom d'un avocat retraité ou d'une avocate retraitée de l'exercice ou d'un membre décédé du cabinet, identifié comme tel, qui était habilité à exercer le droit (i) en Ontario ou dans une autre province ou un autre territoire du Canada où le cabinet poursuit ses activités, ou (ii) dans un ressort en dehors du Canada où le cabinet poursuit ses activités;

and

d. Amend the Commentary to rule 6.01(3) by replacing "Ontario Bar Assistance Program (OBAP), LINK," with "Ontario Lawyers' Assistance Program (OLAP)" and replacing "OBAP" with "OLAP".

Amend the Commentary to rule 6.01(3) by replacing "OBAP (programme d'entraide pour les juristes), LINK (programme d'aide aux avocats)," with "OLAP (programme d'aide aux juristes de l'Ontario)" and replacing "OBAP" with "OLAP".

Carried

Item for Information

- Review of Proposed Residential Real Estate Transaction Guidelines and Amendments to the *Rules of Professional Conduct*

TRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Tribunals Committee Report.

Re: Adjudicator Code of Conduct

Report to Convocation
October 26, 2006

Tribunals Committee

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

Purpose of Report: Decision

Policy Secretariat
(Sophia Sperdakos 416-947-5209)

COMMITTEE PROCESS

1. The Committee met on October 12, 2006. Committee members Larry Banack (Chair), Mark Sandler (Vice-Chair), Carole Curtis, Sy Eber, Derry Millar, Janet Minor and Bonnie Warkentin attended. Members of the Professional Regulation Committee Laurie Pattillo, Heather Ross, and Anne Marie Doyle also attended part of the meeting. Staff members Katherine Corrick, Grace Knakowski, Dulce Mitchell, Allyson O'Shea, Elliot Spears, Sophia Sperdakos and Jim Varro attended the meeting.

FOR DECISION
ADJUDICATOR CODE OF CONDUCT

MOTION

2. That Convocation approve the proposed Adjudicator Code of Conduct set out at APPENDIX 1.

I. Introduction and Background

3. In May 2005 Convocation approved the recommendation of the Tribunals Task Force that "the Law Society develop an Adjudicator Code of Conduct (the "Code") to guide panels in their responsibilities as adjudicators". The Tribunals Committee was given the task of developing a Code for Convocation's consideration and approval.

4. On April 27, 2006 Convocation was provided with a brief introduction to the Tribunals Committee's proposed Code. Following the discussion benchers were invited to provide comments on the proposed Code in writing or by contacting the Chair or Vice-Chair of the Committee or the Secretary to Convocation, Katherine Corrick. The deadline for comments was May 12, 2006.

5. The Committee received a number of comments and met to discuss them. In considering the comments the Committee reflected upon whether,
   a. a proposed change was actually addressed elsewhere in the Code;
   b. a suggestion was better addressed in another forum (e.g. adjudicator education);
   c. a proposed change clarified or improved a provision or the Code overall;
   d. the Committee had already considered the subject matter of a comment during its own drafting process and made a determination on the issue;
   e. the comment reflected disagreement with the Code's overall tone or purpose and was better left to the policy discussion in Convocation; and
   f. the comment was in fact a question that could or should be addressed outside the Code, either in this report or in the presentation to Convocation.

6. This report describes the nature of the main comments the Committee received and its response to them. Comments the Committee agreed should be incorporated into the Code are reflected in the proposed Code set out at APPENDIX 1 for Convocation's consideration.

7. Underlying the Committee's deliberations both on the Code in general and on the comments it received is an important principle that the Committee sets out in the Code, but is emphasized here as well.

8. The proposed Code is designed as a guide, not a legislative directive, and is a component of the Law Society's ongoing development and improvement of a transparent regulatory structure.

9. It is not designed only for bencher adjudicators, but also for those members of the profession who may currently be asked to preside over French language hearings and may not be as familiar with the role of adjudicators. It would also play an important role in introducing new bencher adjudicators to the principles and framework that should guide their actions in this important function they assume upon being elected or appointed.

10. It also plays an important role in allowing the public and members affected by the Law Society's processes to see that the Law Society's adjudicators take their role seriously and have considered the kind of behaviour and approaches that should guide their attitudes and demeanour as they fulfill one of the fundamental roles of a self-regulating profession.

11. The *Law Society Act*, the Law Society Rules of Practice and Procedure and the By-laws all contain provisions to govern the hearings process. An Adjudicator Code of Conduct guides those who apply the Act, Rules and By-laws on how to conduct themselves.

12. Some of the comments the Committee received suggested that the provisions were too obvious and one person was of the view that the document was demeaning to the adjudicative process, given that elected benchers are experienced lawyers. The Committee has already expressed the importance of recognizing that more than benchers will have access to the document, but moreover it respectfully disagrees that the document undermines adjudicators. A public statement about the values that adjudicators should and do adopt can only add to the integrity and transparency of the Law Society's regulatory structures, in the public interest.

II. The Comments Received and the Committee's Response

a. Comments on the Code Generally

Comparison with other Codes

13. There was interest in knowing how this Code compared with other codes of conduct for judges and administrative tribunal adjudicators. The proposed Law Society Code is substantively and structurally based on the Model Adjudicator Code of Conduct (the

"SOAR model") published by the Ontario Society of Adjudicators and Regulators.[1] According to the preface to the SOAR model, it,

> was the product of an extensive consultative process over the course of two years. Drafts of the document were widely distributed for comment amongst SOAR members and an early version was the subject of workshop discussion at SOAR's November 1995 Conference of Ontario Boards and Agencies.

14. Both the proposed Law Society Code and the SOAR model contain provisions for dealing with conflicts of interest and a procedural protocol for when conflicts of interest arise. The adjudicator responsibilities set out in each are very similar. In fact, several paragraphs of the Law Society Code are taken verbatim from the SOAR model.

15. One of the primary differences between the two documents is the stated purpose. The SOAR model purports to "establish rules of conduct governing the professional and ethical responsibilities of tribunal members."[2] The proposed Law Society Code is meant to be a guide to appropriate adjudicator conduct. It has been drafted to serve as an educational tool for Law Society adjudicators.

16. The SOAR model was drafted using mandatory language ("An adjudicator shall/ shall not…"); the proposed Law Society Code is framed in terms of ideals, but not absolutes, except where it states behaviour that has been mandated by policies of Convocation or statute. Additionally, the SOAR model includes an undertaking to be signed by adjudicators promising to comply fully with the provisions of the Code. This undertaking has been omitted from the proposed Law Society Code.

17. Other tribunals and the courts take different approaches to codes of conduct. For example, the Ontario Human Rights Tribunal (the "OHRT") and the Ontario Workplace Safety and Insurance Appeals Tribunal ("WSIAT)" have adopted adjudicator Codes based on the SOAR model. Unlike the proposed Law Society Code, however, the OHRT and the WSIAT Codes are formally binding on adjudicators. Additionally, adjudicators for those tribunals must sign an undertaking to comply fully and to the best of their ability with the provisions of their Codes.

18. In some contrast, federally appointed judges can consult Ethical Principles for Judges, a document published by the National Judicial Council, for guidance on the discharge of their professional and ethical responsibilities. The principles set out include the high standards to which judges "should strive." They are organized by broad topic such as judicial independence, integrity, diligence, equality, and impartiality. Like the proposed Law Society Code, the stated purpose of Ethical Principals for Judges is to be a set of guidelines.[3]

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[1] The SOAR model can be found at http://www.soar.on.ca/soar-code.htm. One of the reasons the Law Society Code is based on the SOAR model is that the structure is such that it may be used as an easy reference when an adjudicator requires guidance on appropriate conduct.

[2] SOAR model, para. 1.

[3] Ethical Principles for Judges may be found at http://www.cjc-ccm.gc.ca/cmslib/general/ethical-e.pdf.

Interaction of the Code with Rules 6.05 and 6.06 of the Rules of Professional Conduct

19. A question was asked how Rules 6.05 and 6.06 of the Rules of Professional Conduct and the Code interact. Rule 6.05 (The Lawyer in Public Office) applies only to lawyers elected or appointed to government office. Convocation is not a "public office" as contemplated by the Rule.

20. Rule 6.06 governs lawyers' public appearances and public statements. The Commentary accompanying Rule 6.06 indicates that lawyers are not to use public statements for improper purposes, including statements that are not in a client's best interest or that jeopardize a client's right to a fair and impartial trial.

21. The Commentary sets out circumstances in which it may be appropriate for a lawyer to make public statements: when it is not detrimental to a client's best interests; when acting as a spokesperson for charitable or non-legal organizations; when commenting on the effectiveness of legislation or legal remedies; or when advocating for legislative changes, etc.

22. Provisions in the proposed Code are meant to encourage Law Society adjudicators to consider whether public comment would result in the perception of bias (either on the part of the individual adjudicator or institutionally) or might call the integrity of the Law Society tribunals into question. The provisions in the proposed Code are not dissimilar to the standards toward which judges are expected to strive.

Use of Mandatory Language

23. It was noted that some language of the Code was inconsistent with the Code being a guide. As stated above and reiterated in the Code, mandatory language only appears where there is a Convocation policy or other rule or statutory provision that requires the stated behaviour or prohibition.

Reversible Error on Appeal

24. One comment was made that it is important for benchers to remember that a Code such as this is intended to prevent reversible error on appeal. The provisions of the Code address topics that have been the subject of successful appeals of administrative tribunals and courts' decisions.

Code Unnecessary

25. There were some who viewed the Code overall as unnecessary and demeaning, because adjudicators are experienced lawyers who do not need such a document. One bencher expressed the view that such a Code may in fact be misused as a tool to challenge the propriety of individual adjudicators sitting on panels.

26. With respect, the Committee disagrees with both these views. Codes of Adjudicator Conduct are an important part of any tribunal or court's structures, all of which should be designed to reflect transparency and integrity. In May 2005 Convocation agreed that such a code was important. The Committee's proposed Code is premised on Convocation's view that an Adjudicator Code of Conduct would be useful for and beneficial to the adjudicators who use it and the public and others who refer to it.

b. Comments on Specific Provisions of the Code

Name of the Code

27. There was one suggestion that the name of the code be changed to the Adjudicator's Guide to Proper Conduct instead of the Adjudicator's Code of Conduct. The Committee is of the view that Code is the preferable term because it is commonly used to refer to a systematic collection of information on a topic. The Committee is also of the view that the addition of the word "proper" is unnecessary.

Reference to Constitutional Requirements and Human Rights Legislation

28. A comment was made that the provision in paragraph 1 of the Code stating that Law Society Adjudicators should familiarize themselves with the content of the Code "in addition to the legislation, rules and procedures established to ensure that the Law Society's tribunals processes are consistent, transparent and fair" should be amended to state as examples the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Cod. The word "legislation" in that section is intended, however, to mean legislation that directly governs the profession, such as the *Law Society Act*. The Committee is of the view that references to the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code are better added to section 40 of the Code and it has made that change.

Suggested Applicability of the Code to the Proceedings Authorization Committee ("PAC")

29. There was a suggestion that the Code be expanded to apply to the Proceedings Authorization Committee ("PAC"). The Committee considered this, but concluded that PAC does not perform the adjudicative functions envisioned in the Code. It is a Committee of Convocation. While there may be features of the Code that should apply to PAC specifically, the Committee is of the view that this issue should properly be referred to the Professional Regulation Committee for its consideration.

Conflict of Interest Definition

30. One comment suggested that the definition of "conflict of interest" in paragraph 7 of the Code could be improved. The Committee has made some minor adjustment to the paragraph, but is also of the view that paragraph 7 is merely the general opening paragraph on which the balance of Part IV elaborates. In essence, all of Part IV defines conflict.

Appearing as Counsel

31. A comment was made that paragraph 15 of the Code should be amended to reflect the fact that benchers often give informational advice without fee to lawyers who are charged or who may be charged with an offence, purely as part of their role as bencher. It is not desirable to stop providing this kind of informal consultation and advice. The Committee agrees that this is an important informal role for benchers and is appropriate, provided they are cautious when receiving such inquiries that they do not overstep the informational role to become an advocate. The Committee clarified some of the

language of the paragraph and replaced the reference to “acting” as a professional or legal consultant to “being retained as” a professional or legal consultant.

Bencher Under Investigation

32. Part VI.D of the Code discusses how a bencher who is under investigation that has been instructed pursuant to the *Law Society Act* should conduct him or herself as the investigation affects the adjudicator’s role. The Committee received a few comments that frivolous complaints are often received about benchers and a bencher should not be expected to withdraw from adjudicative function at this early stage.

33. This has been addressed in paragraph 34 of the Code in which it is stated that “a bencher should not sit as a Law Society adjudicator while under an investigation instructed by the Treasurer pursuant to the *Law Society Act* (“under investigation”) or while the subject of a Law Society proceeding subsequent to an investigation instructed by the Treasurer pursuant to the *Law Society Act* (“the subject of a Law Society proceeding”), unless otherwise approved by the Treasurer”.

34. The Committee is of the view that when a formal investigation has been authorized it is in the interests of protecting the tribunal’s integrity that a bencher should adhere to the principles laid out in the Code.

Unrepresented Litigants

35. Paragraph 43 of the Code provides that when adjudicators are faced with unrepresented litigants they should attempt to ensure they are not procedurally disadvantaged, while at the same time maintaining their role as impartial arbiters. One comment questioned how adjudicators would know if they were complying with the objective of the paragraph. The other disagreed with the objective of the paragraph, indicating that because adjudicators are lawyers judging lawyers they should be more than passive listeners to evidence and argument. They should ask questions and alert counsel to evidence not previously considered, so that it can be added to the context of cases before the panel.

36. The Committee is of the view that the first comment can and should be addressed through adjudicator education. The issue of unrepresented litigants affects all levels of court and educational tools to assist adjudicators exist.

37. Respecting the second comment, however, the Committee disagrees that adjudicators should become actively involved in the unfolding of a party’s case, whatever the circumstances. To do so opens the door to inconsistency of approach, procedural and substantive unfairness and perceptions of bias. The approach set out in paragraph 43 of the Code is consistent with the approach the courts take in these circumstances and is appropriate for Law Society proceedings.

Communication with Litigants and Witnesses

38. A comment was made respecting paragraph 44 that it is important to clarify the context of the communications or social interaction that is inappropriate, namely that these should not occur in relation to the proceedings. The Committee has clarified the intent of the provision.

Confidential Material

39. A comment was made that paragraph 45 of the Code respecting not leaving confidential material, including notes, in plain view in hearing rooms was an unnecessary provision. This paragraph was included to address an ongoing issue and, in the Committee's view, serves as a helpful reminder to adjudicators.

Civility and Collegiality

40. Paragraph 49 of the Code refers to promoting civility and collegiality. One bencher took exception to this provision as being so obvious as to open adjudicators up to ridicule. While the sentiments expressed in the paragraph may seem obvious and, to some, demeaning to the seriousness with which adjudicators approach their duties, the principles of civility and collegiality are fundamental to the profession. The courts and many bench and bar committees continue to spend time writing and speaking about the implications of incivility for the profession and the need to make and remake public statements on this issue. The Committee is of the view that this statement of principle is an important one to include in the Code.

Public Commentary

41. Some concern was raised about provisions expressing a blanket policy that adjudicators not publicly criticize the decisions, procedures or structures of the tribunal or the decisions or behaviour of other adjudicators. The comment was that such a blanket statement against public criticism was inappropriate given the possibility, however infrequent, that there may be occasions in which panel decisions deserve criticism, possibly in a public forum. The provision addressing criticism of other adjudicators was noted as being a polite lesson in collegiality and unenforceable and should therefore be omitted.

42. The Committee has considered the comments. The provision on public criticism was included to reflect a concern that public criticism of the decisions, procedures or structures of the tribunal may signal a lack of respect for the tribunal to the public. If the very people who adjudicate do not respect tribunal decisions, structures and processes, then it is not unreasonable to expect that the public and the government may call the integrity of the tribunal into question. Since continued self-governance is largely contingent on the public and government's respect for, and confidence in, the Law Society's ability to regulate the profession, this provision has been included to remind benchers that it is appropriate to think of the long-term repercussions of making critical comments in public.

43. The Committee therefore continues to be of the view that there should be a provision in the Code expressing the need for adjudicators to uphold the integrity of the tribunal process. The Committee does agree, however, that it was never intended that Law Society adjudicators should not think critically about the decisions, procedures or structures of the tribunal, nor is it expected that benchers will never comment or criticize publicly. It is essential to remember that the proposed Code is a set of guidelines only. Additionally, the Code guides benchers to consider raising their concerns in the appropriate forum (i.e. to a Hearing or Appeal Panel Chair). The Chairs are in a position to bring the bencher's concern to the Tribunals Committee's attention.

44. Amendments have been made to address the comments on these provisions and can be found in paragraph 57 of the Code. The paragraph now reminds adjudicators to exercise caution before publicly commenting. This approach reflects comments made in Convocation in November 1993 when the then Treasurer remarked:

> Next, I want to say something about comments by benchers to the news media. The time, and I think probably happily, is long gone when people felt that there were restraints upon their ability to speak to the press and to the other news media. And it is certainly not my intention or desire to suggest that anyone should refrain from comments. And each bencher must feel absolutely free to say exactly what in his or her good judgment may, and can appropriately be said. I ask only, really three things; first, we all recognize that a quote in the press or in the electronic media from a bencher carries a good deal more weight, and attracts a good deal more attention, than a statement made by any other member of the profession. And two, therefore, I ask that before making any comment to the press, benchers make sure that they have correct and accurate information. It's easy to make a statement right off the top of one's head which, through [sheer] inadvertence, contains inaccurate or incomplete information and may cause difficulty or embarrassment. And third, may I ask this; that if any bencher has said or proposes to say to the press anything that is critical of the Society or of Convocation or of its processes and proceedings, that he or she let me know. I am not asking for things to be cleared or anything of that sort. As a matter of courtesy let me know, please, so that I may be in a position to respond to the questions that may come to me as a result of that. In other words, in these dealings I'm asking for some responsibility and care and that's all.

Adjudicator Education

45. Paragraph 59 of the Code contains a provision that adjudicators shall attend adjudicator education in accordance with policies adopted by Convocation. There was one comment that the paragraph purports to make education mandatory when it should be hortatory. In fact, in May 2005 Convocation approved the Tribunals Task Force's recommendation that adjudicator education be mandatory.

Exploiting Authority

46. Paragraph 61 of the Code provides that adjudicators should not engage in conduct that exploits their authority. One comment questioned how one could exploit authority and suggested that that adjudicators have no authority that would be relevant to exploitation. The Committee disagrees. Any decision maker has the potential to intimidate or otherwise influence the manner in which the litigants before it present their case. The paragraph is a reminder to adjudicators that they should always be cognizant that they are in a position of authority and should govern themselves accordingly.

APPENDIX 1

Proposed Adjudicator Code of Conduct

Table of Contents

Law Society of Upper Canada
Adjudicator Code of Conduct

Introduction

I. Purpose

1. The Law Society of Upper Canada Adjudicator Code of Conduct (“Code”) is a guide to the conduct and the professional and ethical responsibilities of the Law Society’s

adjudicators. It is not intended as a legislative directive. Although there is some mandatory language in it, this is reflective of Convocation policies. The balance of the provisions is expressed in permissive language, but the purpose of the guide is to reflect accepted principles of behaviour. Law Society adjudicators should familiarize themselves with the content of this document in addition to the legislation, rules and procedures established to ensure that the Law Society's tribunal processes are consistent, transparent and fair.

II. Definitions

2. In the Code,

Appeal Panel means the Law Society Appeal Panel established under Part II of the *Law Society Act*;

Chair of the Appeal Panel means the member of the Appeal Panel appointed by Convocation as Chair of the Appeal Panel pursuant to the *Law Society Act;*

Chair of the Hearing Panel means the member of the Hearing Panel appointed by Convocation as Chair of the Hearing Panel pursuant to the *Law Society Act*;

Chair of the Panel means the individual member of a panel designated to ensure that a proceeding is conducted in an orderly fashion;

Final disposition of a matter occurs when the panel assigned to hear and decide a matter on the merits renders a final decision, order and, where reasons are required or given, reasons;

Hearing Panel means the Law Society Hearing Panel established under Part II of the *Law Society Act;*

Investigation means an investigation required by the Treasurer or a prescribed staff member pursuant to the *Law Society Act*;

Panel means a member or group of members of the Hearing Panel or Appeal Panel assigned to hear and determine a matter pursuant to Part II of the *Law Society Act*;

Proceeding means a proceeding under the Law Society Act that commences with the service of an originating process;

Tribunal means the Law Society of Upper Canada Hearing Panel and/or Appeal Panel, established pursuant to the *Law Society Act*, to hear and determine matters in whole or in part.

III. Application

3. The Code applies to the following areas of adjudicator responsibility: the conduct of pre-hearing conferences, hearings management (HM) and appeals management (AM) functions, hearings and appeals, and decision-making, as well as the institutional

responsibilities of adjudicators to colleagues, the chairs of the Hearing Panel and Appeal Panel, and to the tribunal itself.

4. Adjudicators are responsible for conducting themselves in a professional and ethical manner. The Code is a guide. It cannot anticipate all possible fact situations in which adjudicators may be called upon to exercise judgment about appropriate conduct.

5. The Code applies to all Law Society adjudicators who are members of, or appointed to, the Hearing Panel or Appeal Panel. The Code also applies, with necessary modifications, to temporary panelists appointed to the Hearing Panel or Appeal Panel pursuant to the *Law Society Act*.

6. The Code governs the conduct of adjudicators from the beginning of the term of membership in, or appointment to, the Hearing Panel or Appeal Panel and includes continuing responsibilities after completion of the term of membership. The Code also governs temporary panelists appointed to the Hearing Panel or Appeal Panel pursuant to the *Law Society Act* from the time of the panelist's appointment and includes continuing responsibilities after the final disposition of the matter.

Conflict of Interest and Reasonable Apprehension of Bias

IV. Definitions

7. A conflict of interest is any interest, relationship, association or activity that is incompatible with an adjudicator's obligations to the tribunal. Conflicts may be actual or perceived. In this Code, 'conflict of interest' includes both pecuniary and non-pecuniary conflicts.

8. A pecuniary conflict of interest will arise where an adjudicator has a financial interest that may be affected by the resolution or treatment of a matter before the tribunal. The financial interest may be that of the adjudicator, or of a relative or other person with whom the adjudicator has a relationship.

9. A non-pecuniary conflict of interest will arise where an adjudicator has a non-financial interest, relationship, or association, or is involved in an activity, that is incompatible with an adjudicator's responsibilities as an impartial decision-maker. The interests, relationships, or activities of a relative or associate may raise a potential conflict for adjudicators if they will be affected by the determinations of the tribunal.

10. Bias exists where considerations extraneous to the evidence, law, or submissions applicable to the matter before the tribunal influence an adjudicator's ability to make a neutral and impartial decision. A reasonable apprehension of bias arising from an adjudicator's conduct or conflict of interest may be as detrimental to the public interest as actual bias.

11. Conflicts of interest and bias, actual or perceived, are incompatible with neutral adjudication. Where the circumstances surrounding a proceeding raise an allegation of conflict of interest or bias on the part of an adjudicator, the test for whether or not the adjudicator should be disqualified from adjudicating the matter is whether or not the facts or procedure could give rise to a reasonable apprehension of conflict of interest or bias in the mind of a reasonable and informed person.

12. A significant professional relationship may include, for example, employee/employer, solicitor/client, partnership/association, or employee, associate or partner/law firm. Significant professional relationships may also arise outside the workplace as a result of, for example, the volunteer or charitable activities of an adjudicator.

13. A personal relationship may include, for example, a friendship or a spousal relationship.

V. Appropriate Conduct

14. Any conflict of interest, actual or perceived, arising from an adjudicator's professional or personal interests and the adjudicator's responsibilities as an adjudicator should be resolved in favour of the public interest.

15. Law Society adjudicators are prohibited from appearing as counsel before the tribunal and from being retained as professional or legal consultants in the preparation of a matter before the tribunal or in any matter relating to the work of the tribunal. Adjudicators are prohibited from engaging in these activities for 24 months following their term as a bencher or their appointment to, the Hearing Panel or Appeal Panel, or after the release of any outstanding decisions, orders or reasons, whichever is later.

16. Adjudicators should not adjudicate in any proceeding, or participate in tribunal discussions of any matter, in which they, or a business associate, have a financial interest that is neither remote nor trivial and may be affected by the resolution or treatment of a matter before the tribunal.

17. Adjudicators should not adjudicate in any proceeding, or participate in tribunal discussions with respect to any matter in which a party or the party's representative appearing before the tribunal or providing evidence (other than a written testimonial) is from their current law firm. A similar prohibition applies where a party or a party's representative practises in association with the Law Society adjudicator.

18. Adjudicators will not normally be eligible to conduct a proceeding involving a party or the party's representative with whom they were formerly in a significant professional relationship until at least 24 months have elapsed from the termination of the relationship. In some circumstances it may never be appropriate for the adjudicator to conduct a proceeding involving that individual. When evaluating whether the adjudicator's participation in the proceeding would give rise to a reasonable apprehension of bias, the position of all parties, although not determinative, and the circumstances of the relationship should be carefully considered.

19. Adjudicators will not normally be eligible to conduct a proceeding involving a party or a party's representative with whom they have a personal relationship. When evaluating whether the adjudicator's participation in the proceeding would give rise to a reasonable apprehension of bias, the position of all parties, although not determinative, and the circumstances of the relationship should be carefully considered.

20. Adjudicators should not generally adjudicate in any proceeding in which they, a relative or a business associate, have had any prior involvement in the proceeding.

21. Adjudicators should not adjudicate in any proceeding in which the outcome may have an impact on any other legal proceeding in which they have a significant personal interest.

22. Adjudicators should not take improper advantage of information obtained through official tribunal duties.

VI. Procedural Protocol

A. Overview

23. It is the responsibility of each adjudicator to consider any circumstance that might suggest a possible conflict of interest or bias in respect of any of the adjudicator's responsibilities. It may be that only the adjudicator is in a position to recognize a possible conflict or issue of bias.

24. As soon as grounds for a potential conflict of interest or allegation of bias are identified, an adjudicator should take appropriate steps as outlined in this Code. The particular procedure to follow will depend on whether the potential conflict of interest or bias is identified after accepting an appointment to a panel, but prior to hearing the matter, or is identified during a proceeding.

25. Where an investigation into a complaint against an adjudicator has been instructed pursuant to the *Law Society Act*, or the adjudicator is the subject of a Law Society proceeding, the adjudicator should follow the procedure articulated in the Code under the heading "Bencher under an investigation instructed pursuant to the *Law Society Act*."

26. An adjudicator who is uncertain about the appropriate action to take should consult with the Chair of the Hearing Panel or the Chair of the Appeal Panel.

27. Where a party has made submissions challenging the neutrality of an adjudicator, the panel should provide reasons, in most cases in writing, for its decision on the issue.

B. After Accepting an Appointment to a Panel but Prior to Hearing the Matter

28. Where an adjudicator becomes aware of circumstances that suggest a possible conflict of interest or bias on the part of the adjudicator after being assigned to hear a matter, but prior to the commencement of the hearing, the adjudicator should inform the Tribunals Office immediately. The adjudicator should indicate to the Tribunals Office that,

a. the adjudicator wishes to withdraw from the panel; or
b. the adjudicator is aware of circumstances that suggest a possible conflict of interest or bias on the part of the adjudicator but the adjudicator, having given the circumstances careful consideration, has determined that the adjudicator is able to proceed with hearing the matter objectively, and will advise the parties on the record at the hearing.

C. Arising During A Proceeding

29. During a proceeding, the panel shall determine issues of conflict of interest or bias.

30. Where, during a proceeding, an adjudicator becomes aware of circumstances that suggest a possible conflict of interest or bias and the related circumstances may be

unknown to the parties, the adjudicator should request the panel to recess the proceedings. The panel should then consider the seriousness of the possible conflict of interest or bias and determine whether,

a. the adjudicator should withdraw from the panel; or
b. the parties should be informed of the circumstances, submissions heard and a determination on the issue made.

31. Where a panel hears submissions from the parties on the issue of conflict of interest or bias, the panel should make a determination of the issue before continuing with the proceeding.

32. Where an allegation of conflict of interest or bias is raised about an adjudicator by a party,
a. the adjudicator may immediately withdraw from the panel if appropriate, given the nature and the circumstances of the alleged conflict of interest or bias; or
b. the panel may hear submissions from the parties with respect to the alleged conflict of interest or bias and make a determination on the issue.

D. Bencher Under an Investigation Instructed Pursuant to the *Law Society Act*

33. In this section,

a. reference to investigations instructed by the Treasurer pursuant to the *Law Society Act* includes investigations instructed by prescribed staff members if authorized by the *Law Society Act*; and
b. reference to benchers includes all Law Society adjudicators where the *Law Society Act* permits individuals other than benchers to act as Law Society adjudicators.

34. To preserve the integrity of the Law Society tribunal a bencher should not sit as a Law Society adjudicator while under an investigation instructed by the Treasurer pursuant to the *Law Society Act* ("under investigation") or while the subject of a Law Society proceeding subsequent to an investigation instructed by the Treasurer pursuant to the *Law Society Act* ("the subject of a Law Society proceeding"), unless otherwise approved by the Treasurer.

35. While under investigation or the subject of a Law Society proceeding, a bencher, subject to the discretion of the Treasurer, should decline to be scheduled to adjudicate when the Tribunals Office canvasses the adjudicator's availability. It is left to the discretion of each bencher to determine whether or not to disclose the reason for declining to be scheduled to adjudicate.

36. Where a bencher is assigned to a panel that is not seized of a matter, and the bencher is informed that the Treasurer has instructed an investigation into a complaint about that bencher or that the bencher is the subject of a Law Society proceeding, the bencher should withdraw from the panel if the investigation or proceeding will not be completed by the date on which the bencher is scheduled to adjudicate. It is left to the discretion of each bencher to determine whether or not to disclose the reason for withdrawing from the panel.

37. A bencher who is a member of a panel that is seized of a matter should immediately inform the Chair of the Hearing Panel or the Chair of the Appeal Panel of an investigation instructed by the Treasurer, or that the bencher is the subject of a Law Society proceeding, where the investigation or proceeding will not be completed by the next date on which the bencher is scheduled to adjudicate.

Adjudicator Responsibilities

VII. Conduct During the Proceeding

38. Adjudicators are expected to conduct both themselves and the proceedings in a judicial manner. To this end, adjudicators should,
    a. approach every proceeding with an open mind with respect to every issue and avoid comments or conduct that could cause any person to think otherwise;
    b. listen carefully and respectfully to the views and submissions of the parties and their representatives; and
    c. show respect for the parties, their representatives, witnesses, their panel colleagues, and for the proceeding process itself, through their demeanour, timeliness, dress and conduct throughout the proceeding.

39. Other than for scheduling a further hearing of the matter before the panel, adjudicators should refrain from using personal communication devices during a proceeding.

40. Adjudicators should familiarize themselves with constitutional requirements and legislation, such as the Canadian Charter of Rights and Freedom and the Ontario Human Rights Code, to ensure that they conform to relevant requirements. In addition, they should also be sensitive to issues of gender, ability, race, language, culture and religion. They should, for example recognize that these factors might influence how their demeanour and that of the parties, their representatives and witnesses is perceived.

41. Adjudicators should avoid undue interruption and interference in the examination and cross-examination of witnesses. To this end, adjudicators should be and appear to be objective and should avoid the appearance of advocating on behalf of a party to the proceeding.

42. The Law Society does not provide counsel to its tribunals. Accordingly, adjudicators should request submissions on questions of procedure or law from all parties or their representatives. Where all parties or their representatives are not in attendance before the tribunal, the request should be made of all parties through the Tribunals Office.

43. When attempting to ensure that unrepresented parties are not procedurally disadvantaged at a proceeding, adjudicators should do so in a manner that is not inconsistent with their role as impartial arbiters.

44. Communicating off the record with parties, their representatives or witnesses in respect of proceedings may give rise to an apprehension of bias. As a result, adjudicators should not, in respect of proceedings and before a decision is released,

    a. communicate with those persons, except in the presence of all parties and their representatives or with the consent of the parties;

b. correspond with parties, or their representatives, by any means (email, facsimile, text message, etc.), except through the Tribunals Office. It is the responsibility of the Tribunals Office to forward the adjudicators' communications to all parties and their representatives; and
c. when attending social occasions, discuss any matter in respect of the proceedings.

45. Hearing rooms and areas in which adjudicators convene may be accessible to others. It is essential that adjudicators not leave confidential materials, including their own notes taken during the proceeding, in plain view where others may have access to them.

VIII. Decision-Making Responsibilities

46. Adjudicators should make decisions on the merits and justice of the matter, based on the law and the evidence.

47. Adjudicators should apply the law to the evidence in good faith and to the best of their ability. The prospect of disapproval from any person, institution, or community must not deter adjudicators from making the decision that they believe is correct based on the law and the evidence.

48. Adjudicators should endeavour to ensure that decisions are rendered in a timely manner. Where written reasons are to be given, adjudicators should strive to ensure that they are prepared with reasonable promptness.

IX. Responsibilities To Other Panelists

49. Adjudicators should, through their conduct, promote civility among Law Society adjudicators and in the hearing process and be respectful of the views and opinions of colleagues.

X. Responsibilities When Sitting as a Panel

50. Adjudicators should make themselves available on a timely basis for discussions with their panel colleagues on the conduct of the proceeding and on the substance of the determinations to be made. When a draft decision is provided for comments, adjudicators should respond at the earliest opportunity. Adjudicators should follow the procedure for written reasons as determined by the Tribunals Office in consultation with the Chairs of the Hearing and Appeal Panels.

51. Adjudicators should consider carefully panel colleagues' reasons where there is a difference in their proposed determinations on an interim or final decision. However, adjudicators should not abandon strongly held views on an issue of substance, either for the sake of panel unanimity or in exchange for agreement on any other point.

52. In circumstances where adjudicators are unable to agree with the proposed decision of a majority of the panel after discussion and careful consideration, they should endeavour to ensure that a reasoned dissent is rendered with reasonable promptness.

XI. Responsibilities To the Chairs of the Hearing and Appeal Panels

53. When adjudicators become aware of colleagues' conduct that may threaten the integrity of the tribunal or its processes, they have a duty to advise the Chair of the Hearing Panel or the Chair of the Appeal Panel of the circumstances as soon as reasonably practicable.

XII. Responsibilities To the Tribunal

54. Adjudicators should comply with the policies and procedures established for the tribunal.

55. Where adjudicators have questions about the appropriateness of any hearing or appeal policy or procedure, they may consult with the Chair of the Hearing Panel or the Chair of the Appeal Panel.

56. Adjudicators should refrain from publicly taking a partisan position in respect of individual matters under consideration in a proceeding before the tribunal.

57. Adjudicators should not make public comment, orally or in writing, on any aspect of a matter before them. Adjudicators should exercise caution before publicly commenting on the decisions, procedures or structures of the tribunal, a decision of colleagues, or on the manner in which other colleagues have conducted themselves during a proceeding.

58. It is generally inappropriate for adjudicators to communicate with the media regarding a decision of the tribunal or the tribunal's conduct of a proceeding. All inquiries from the media should be referred to the Law Society's Communications Department.

59. Adjudicators shall attend adjudicator education programs in accordance with policies adopted by Convocation.

60. Adjudicators should not divulge confidential information unless legally required to do so, or appropriately authorized to release the information.

61. Adjudicators should not engage in conduct that exploits their position of authority.

XIII. Temporary Panelists Appointed Pursuant to the *Law Society Act*

62. Temporary panelists appointed pursuant to the *Law Society Act* should not allow their personal or professional activities to undermine the discharge of their responsibilities as Law Society adjudicators.

63. Temporary panelists appointed pursuant to the *Law Society Act* should minimize the likelihood of conflicts arising that may affect their neutrality or give rise to an allegation of bias.

64. Temporary panelists appointed pursuant to the *Law Society Act* are prohibited from appearing before the tribunal as representatives, expert witnesses or consultants for the duration of their appointment and until at least 24 months after the release of any outstanding decisions, orders or reasons.

XIV. Post-Term Responsibilities

65. Adjudicators are prohibited from appearing before the tribunal as a representative, expert witness or consultant until at least 24 months after the expiry of their membership in, or appointment to, the Hearing Panel or Appeal Panel, or after the release of any outstanding decisions, orders or reasons, whichever is later.

66. Adjudicators have an on-going duty of confidentiality after the expiry of their membership in, or appointment to, the Hearing Panel or Appeal Panel.

67. Adjudicators whose term of appointment has expired, but who have continuing responsibilities by virtue of on-going proceedings in which they participated as adjudicators continue to be guided by this Code.

It was moved by Mr. Sandler, seconded by Mr. Banack, that Convocation approve the proposed Adjudicator Code of Conduct set out at Appendix 1 to the Report.

Carried

It was moved by Ms. Ross, seconded by Mr. Swaye, that the motion be tabled to the November Convocation.

Lost

MATTERS DEFERRED

- Governance Task Force Interim Report
- Amendment to By-Law 6 Respecting the Election of Treasurer

CONVOCATION ROSE AT 4:05 P.M.

Confirmed in Convocation this 23rd of November, 2006.

Treasurer