

## MINUTES OF CONVOCATION

Thursday, 24<sup>th</sup> January, 2008  
9:00 a.m.

## PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Aitken, Anand, Backhouse (by telephone), Banack, Boyd, Bredt, Campion, Carpenter-Gunn, Caskey, Chahbar, Conway, Copeland (by telephone), Crowe, Daud, Dickson, Dray, Finlayson, Go, Gold, Gottlieb, Ground, Hare, Hartman, Heintzman, Henderson, Krishna, Lawrence, Lawrie, Legge, McGrath, Millar, Minor, Murphy, Murray, Pawlitza, Porter, Potter, Pustina, Rabinovitch, Robins, Rock, Ross, Ruby, St. Lewis, Schabas, Sikand, Silverstein, C. Strosberg, Swaye, Symes, Tough, Wardlaw, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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MOTION – ELECTION OF BENCHER

WHEREAS Carole Curtis, who was elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of votes cast by all electors has been appointed a judge of the Ontario Court of Justice; and

WHEREAS upon being appointed a judge of the Ontario Court of Justice, Carole Curtis became unable to continue in office as a bencher, thereby creating a vacancy in the office of bencher elected from the Province of Ontario “A” Electoral Region (City of Toronto) on the basis of votes cast by all electors;

MOVED BY: Bradley Wright

SECONDED BY: Janet Minor

THAT under the authority contained in By-Law 3, Christopher Bredt, having satisfied the requirements contained in subsections 43 (1) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation to fill the vacancy in the office of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by all electors.

Carried

#### TREASURER'S REMARKS

The Treasurer and benchers welcomed Christopher Bredt to Convocation.

Congratulations were extended to Carole Curtis on her appointment to the Ontario Court of Justice.

Condolences were extended to bencher Doug Lewis and his family on the passing of his wife Linda Lewis on January 14<sup>th</sup>.

The Treasurer reported on his activities since the November Convocation.

#### DRAFT MINUTES OF CONVOCATION

The draft Minutes of Convocation of November 22, 2007 were confirmed.

#### REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

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#### CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, January 24, 2008.

ALL OF WHICH is respectfully submitted

DATED this 24th day of January, 2008

CANDIDATES FOR CALL TO THE BAR  
January 24th, 2008

Karen Nancy Beattie  
David Ross Bennett  
Louis Phillippe Bisson  
Andrew Emmanuel Bryan  
Ian Michael Carter  
Brendan Paul Fagan  
Shelley Colleen Fitzpatrick  
Stephen Boyd Good  
Arie Zébulon Itman  
Paraskevi Kotoulas  
Rebecca Ann La Flamme  
Dara Heidi Lithwick  
Catherine June MacDonald  
Kevin Michael Massie  
Jodi Leigh McFetridge  
Demitra Moutsios  
Jonathan Jay Naimark  
Tammy Joy Shulman  
Peter Christopher Timmons

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

Carried

MOTION – Appointment to Advisory Committee on Attracting New Child Protection Lawyers

It was moved by Mr. Wright, seconded by Ms. Minor, –

THAT Susan Hare be appointed to the Advisory Committee on Attracting New Child Protection Lawyers.

Carried

MOTION – Appointment to Hearing Panel

It was moved by Mr. Wright, seconded by Ms. Minor, –

That Christopher Bredt be appointed to the Hearing Panel.

Carried

MOTION – Appointment to Board of Directors of LibraryCo

It was moved by Mr. Wright, seconded by Ms. Minor, –

THAT Carol Hartman be appointed to the Board of Directors of LibraryCo as the Law Society's representative to replace Abraham Feinstein who has resigned.

Carried

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## LICENSING AND ACCREDITATION TASK FORCE REPORT

Professor Krishna presented the interim report of the Licensing and Accreditation Task Force.

Interim Report To Convocation  
January 24, 2008

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Licensing and Accreditation Task Force

### Task Force Members

Vern Krishna, Chair  
Constance Backhouse  
Carole Curtis  
Carol Hartman  
Laurie Pawlitza

Purposes of Report: Information  
Decision

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

### TASK FORCE PROCESS

1. To date, the Task Force has met on April 17, 2007, May 24, 2007, June 26, 2007, June 28, 2007 (with the Ontario law school Deans), July 6, 2007 (all day meeting), August 9, 2007 (all day meeting), September 11, 2007, September 24, 2007, October 4, 2007, October 23, 2007, November 20, 2007 and January 10, 2008.
2. In addition to the Task Force members, the Treasurer and the Chief Executive Officer have attended some of the meetings. Staff members to the Task Force are Diana Miles, Nancy Reason and Sophia Sperdakos.

**MOTION**

3. That Convocation approve the dissemination of this report to the profession, law schools and legal organizations for the purposes of receiving written comments on Part 3 (Skills and Professional Responsibility) and Part 4 (Articling).
4. That written comments be accepted until April 3, 2008 after which the Task Force will prepare a further report for Convocation's consideration.

**Background and Introduction to the Issues**

5. In March 2007 Convocation approved the recommendation of the Professional Development and Competence Committee to establish a Licensing and Accreditation Task Force whose mandate is to,
  - undertake an analysis of and make recommendations on the most effective means by which the Law Society's established competency requirements for call to the bar of Ontario can be achieved within the pre-and-post-call continuum of legal education;
  - review the criteria for approving law degrees, and make recommendations on more appropriate criteria; and
  - analyze the impact of increased numbers of applicants for admission to the bar of Ontario, from domestic and international sources, on the viability of the current licensing process, and make appropriate recommendations.
6. In June 2007 the Federation of Law Societies of Canada also established a Task Force on the approved common law degree to consider a number of issues related to legal education and to make recommendations for the consideration of and possible adoption by member law societies. The Chair of the Law Society's Task Force is also a member of the Federation Task Force. The Law Society's Task Force provided background materials to the Federation Task Force. The Federation Task Force is to,
  - a. review the criteria currently in place establishing the approved common law degree for the purposes of entrance to law societies' bar admission/ licensing programs ("the approved common law degree") and determine whether modifications are recommended;
  - b. if modifications are recommended, to propose a national standard for the approved common law degree; and
  - c. consider the matters in (a) and (b) in relation to the National Committee on Accreditation requirements for granting a certificate of qualification and determine what changes if any should be made to those requirements. By articulating standards for the approved common law degree the Federation can more clearly identify for internationally trained candidates and those with civil law degrees from Quebec the meaning of "equivalent to a Canadian common law degree." This will address the requirements of the fair access to regulated professions legislation that requires processes to be transparent, objective, fair and impartial.

7. It became clear to the Law Society's Task Force that some of the issues it has been considering have national scope, as illustrated in the mandate of the Federation Task Force. These include,
  - a. the approved law degree;
  - b. the implications of fair access to regulated professions legislation (which now exists in two provinces with a third introducing legislation shortly); and
  - c. the National Committee on Accreditation requirements.
8. A national discussion by regulators of these issues and a national approach is critical to ensure,
  - a. the continued portability of the Canadian common law degree from jurisdiction to jurisdiction within Canada;
  - b. the continued sustainability of a national process for accrediting foreign law degrees; and
  - c. compliance across jurisdictions with fair access to regulated professions legislation.

Given this, the Law Society's discussion of these national issues and the time line for their discussion have become interwoven with those of the Federation Task Force. The Law Society's Task Force will continue to give its views to that Task Force, whose deliberations are ongoing and consultative.

9. At the same time, however, it is important that the discussion and resolution of other issues within the Law Society Task Force's mandate continue to be advanced and addressed at their own pace, in particular as they relate to the skills and professional responsibility program and the articling component of Ontario's licensing process.
10. This interim Report to Convocation,
  - a. provides background information on the issues that have a national scope, including outlining the Federation Task Force's progress. This material is provided for information only at this stage, not for consultation (Part 1);
  - b. provides a description and analysis of the current Law Society skills and professional responsibility program and articling components of the licensing process (Part 2);
  - c. presents a proposal respecting the skills and professional responsibility component of the Law Society's licensing process for which comments will be sought from the profession (Part 3);
  - d. presents options respecting the articling component of the Law Society's licensing process for which comments will be sought from the profession (Part 4); and

- e. set out the steps of the consultation process (Part 5).

#### Continuum of Legal Education

11. Respecting the continuum of legal education the Professional Development & Competence Committee noted in its reporting recommending this Task Force's establishment that there is,
  - the need to determine the most effective way for the Law Society's established competency requirements for call to the bar to be achieved within the pre-and-post-call legal education continuum. The consideration of this question necessitates an analysis of each level of the legal education continuum - law school, aspects of the licensing process (specifically the skills program and articling) and post-call learning – not as individual units, but as components of a whole that together should produce candidates with the required competencies for call to the bar.
12. In September 2007 the Task Force provided Convocation with an interim report on the nature of its discussions to date and the factors underlying its deliberations. It noted that to the extent possible the continuum of legal education should,
  - a. encompass law school, the licensing process and post-call learning;
  - b. avoid duplication among the components of the continuum;
  - c. ensure there are no gaps among the components of the continuum; and
  - d. position the learning at the point in the continuum when it will be most effective.
13. It also noted that a meaningful discussion of the continuum necessitates,
  - a. a willingness to consider new approaches;
  - b. accurate knowledge and an understanding of current law school curricula, particularly skills and professional responsibility offerings; and
  - c. a critical analysis of the current skills component in the licensing process, including consideration of whether it remains viable or necessary.
14. It has reflected on these considerations as it has undertaken its ongoing work.

## PART 1: ISSUES OF NATIONAL SCOPE - INFORMATION

### Background

15. A national standard for the approval of common law degrees for the purpose of entrance into law society bar admission or licensing processes has never been articulated in Canada. The only articulated standard for 50 years is a Law Society of Upper Canada document, set out at Appendix 1, that was prepared in 1957 and amended in 1969 ("the amended 1957 requirements") and which other law societies appear to have tacitly accepted.

16. The amended 1957 requirements set out a lengthy list of courses law schools should *offer* to candidates and a brief list of courses that candidates must take, namely civil procedure, constitutional law of Canada, contracts, criminal law and procedure, personal and real property, and torts. The requirements take a minimalist approach to defining the structure and make up of the law school on issues such as numbers of faculty, learning supports, and physical plant. They do not address issues that though relevant today were not contemplated in 1957 or 1969, for example, whether on-line learning could result in an LL.B. degree or whether such degrees would qualify as approved law degrees.
17. A comparison of the amended 1957 requirements with the reality of law school structure and course offerings in 2007 reveals a significantly more sophisticated structure than was articulated in 1957 or perhaps even contemplated, and a vast array of course offerings well beyond those listed in the document. The required courses have remained substantially unchanged in 50 years. No review mechanism was built into the document and it is fair to say that there has been no substantial national regulatory discussion of the issue.
18. The establishment of both the Law Society's Task Force and the Federation's Task Force reflect regulators' concerns that the amended 1957 requirements on what constitutes the approved law degree for the purposes of entrance to law societies' bar admission/licensing programs are inadequate to describe the legal education landscape as it currently exists and will evolve in the future. The regulators' discomfort with the requirements has grown in part as a result of events that have shone a light on those requirements, revealing their gaps and problems created by the passage of time. Two of these are renewed interest in establishing new law schools and issues related to the accreditation of foreign law degrees.
19. In 2006 and 2007 two Ontario universities submitted proposals to the Ministry of Training, Colleges and Universities in Ontario (MTCU) and the Law Society of Upper Canada for the establishment of new law faculties. With no other document as a guide, the proposals refer to the amended 1957 requirements that offer little meaningful guidance on what components are advisable in the 21st century to establish a faculty that will produce an approved law degree for the purposes of entrance into the bar admission / licensing process. Additional universities in Ontario have now expressed interest in establishing law schools and others across the country may also be interested in doing so. It is worth noting that the last new faculty of law established in Canada was at the University of Calgary in 1979.
20. The national scope of this issue is evidenced by the fact that responsibility for recognizing new law faculties/programs for the purposes of entrance of graduates into law society bar admission /licensing processes is located with the Federation of Law Societies of Canada. In 1994 it was passed to the National Committee on Accreditation (NCA), a Committee of the Federation. Locating the responsibility with the Federation was done to ensure the portability of candidates' degrees. The Federation website states the following:

With the dissolution of the Joint National Committee on Legal Education in February 1994, the Federation has decided to transfer the responsibilities of the Portability Subcommittee to the National Committee on Accreditation. The

Portability Subcommittee was formed by the Federation to assess and recommend to the Law Societies the recognition of new full-time, part-time or joint degree programs from all Canadian law schools.

21. Following the first submission for a new law faculty that the Law Society received in 2006 Convocation decided that it would not consider any subsequent applications until such time as the review of the amended 1957 requirements has occurred. It advised the Ministry of Colleges, Training and Universities of its decision. The National Committee on Accreditation is in agreement with this approach.
22. The approved law degree issue is also relevant to the process for accrediting the credentials of those with foreign law degrees. The NCA is responsible for evaluating the legal training and professional experience of persons with international or Canadian non-common law credentials who wish to be admitted to a common law bar in Canada.
23. Ontario has recently passed the *Fair Access to Regulated Professions Act*. Manitoba has passed almost identical legislation and Nova Scotia has indicated it will introduce legislation in the spring. The Act's purpose is to ensure that regulated professions and individuals applying for registration are governed by registration practices that are "transparent, objective, impartial, and fair." A positive duty is placed on regulated professions to meet the requirements of the Act. If a regulated profession makes its own assessment of international qualifications it must do so in accordance with the Act's requirements. If it retains a third party, such as the NCA to do this evaluation, it must "take reasonable steps" to ensure the third party does the same.
24. The NCA is currently reviewing its processes to ensure that requirements do not constitute an unreasonable barrier to admission for the internationally trained. Given the requirements of the Act, there is a greater responsibility to ensure that those requirements that internationally trained candidates are required to meet have a clear causal link to the approved law degree.
25. The increasingly varied origins of those with international degrees and the underpinnings of their law degrees must also be taken into account in considering the accreditation process. This diversity includes,
  - a. Canadian residents who go abroad for their law degree to a variety of universities, in particular those in England, Scotland, Australia and the United States and then seek to return to Canada;
  - b. internationally trained candidates who receive their law degrees through distance learning;
  - c. internationally trained candidates with one and two year law degrees;
  - d. internationally trained candidates with law degrees obtained immediately following graduation from high school; and
  - e. internationally trained candidates with law degrees obtained by way of examination only.

### The Federation Task Force

26. The Federation Task Force has prepared a preliminary discussion paper to initiate a national consideration of the approved law degree and related issues. The Federation has not adopted the draft discussion paper as policy. The Federation Task Force has indicated that the paper represents its *preliminary* thoughts and that it will be developing a more detailed report that, with the Federation Council's approval, it will use as the basis for a full consultation with law societies, law schools and legal organizations. It is anticipated that the input of the working group of law school Deans will be discussed in that subsequent report. The Federation's draft discussion paper and an accompanying memorandum are set out at Appendix 2. A working group of that Task Force is being established with three law school Deans on it to consult on the issues discussed in the paper.
27. The Law Society's Task Force has been asked for its comments on the draft discussion paper because of its direct involvement with the issues. It is meeting with Ontario law school Deans to seek their thoughts on the draft discussion paper. It will provide its views to the Federation Task Force.
28. At this point in the Federation Task Force's process the discussion paper has been circulated to law societies *for information* so that they will be familiar with the issues when the consultation process is ultimately undertaken in the spring of 2008.

### PART 2: THE LAW SOCIETY'S LICENSING PROCESS: SKILLS AND PROFESSIONAL RESPONSIBILITY PROGRAM AND ARTICLING

29. The Law Society has reviewed and altered its bar admission/licensing process many times over the last two decades, beginning in particular with the report of the Spence Committee in 1988 and most recently in 2004-2005. The last Task Force that studied the issue was called the Task Force on the Continuum of Legal Education, but in fact confined itself to reviewing the teaching term of its bar admission course (now the licensing process).
30. The almost continuous evaluation of the licensing process in Ontario reflects a number of factors, in particular the changing landscape of legal education and the implications of increasing numbers of candidates seeking admission to the bar in Ontario.
31. In focusing primarily on the bar admission/licensing component of the legal education continuum Law Society task forces and committees have done so for a number of reasons. For example, the Spence Committee noted in its Report in June 1988:

While we have considered the full continuum of legal education we have not attempted to restructure it. *Rather our focus has been upon measures that might be adopted at those stages that are under the direct administration of the Law Society of Upper Canada* in the belief that much can be accomplished here without more fundamental reform of legal education. [italics added]

With respect to the LL.B program we do not propose any changes in the present agreement between the Law Society of Upper Canada and the universities offering the LL.B programs. However we have attempted to design a Bar

Admission Course that builds upon a better understanding of the knowledge and skills students will have acquired by the time they receive their LL.B.'s.

32. In addition, Convocation has been reluctant to reform multiple components of the process at one time, preferring to pursue incremental change. To some degree this explains the number of times Convocation has addressed the issues.
33. This approach, while understandable and even effective at certain points in time, has done little to look at legal education as an interwoven framework from admission to law school through call to the bar and beyond to continuing professional development. It has also made the consideration of duplication between stages of education difficult to address because the components are treated as somehow unique.
34. When Convocation established this Licensing & Accreditation Task Force it did so with a view to an examination of all the legal education components, including those affecting internationally trained candidates. This is, in fact, taking place with the Law Society assessing the skills and professional responsibility program and the articling requirement and playing a key role in the national discussions respecting the approved law degree and the National Committee on Accreditation requirements.
35. In considering the skills and professional responsibility programs and the articling requirement, the Task Force has felt the weight of the status quo affecting its discussions. It is sometimes difficult to effect change when there is a tradition of doing things in a particular way.
36. However, the Task Force is of the view that there is danger in continuing to assess the licensing process on the basis of memory and past experiences, rather than on present context, effectiveness and results. Moreover, much as it may be preferable to consider programs on their merits alone, they do not exist in a vacuum. It is irresponsible to ignore practical factors that impede the viability of programs and undermine their goals.
37. In considering the skills and professional responsibility program the Task Force has asked itself a number of questions:
  - a. What are the goals/purposes of the program?
    - i. Is the program duplicative?
  - b. Is the program accomplishing its goals?
    - i. Are there factors that render the goals difficult or impossible to acquire?
  - c. What conclusion and recommendations should be drawn from (a) and (b)?

It has asked similar questions in considering the articling requirement.

38. In the case of the skills and professional responsibility program this analysis has led the Task Force to a single proposal on which it seeks comments and advice from the profession. In the case of the articling program the analysis has led the Task Force to three options on which it seeks comment and advice to choose the most viable for further research.

### PART 3: SKILLS AND PROFESSIONAL RESPONSIBILITY PROGRAM

#### The Current Program

39. The Skills and Professional Responsibility Program began as a five-week instructional program. It was reduced to a four-week instructional program in 2007 after the candidate evaluations indicated a perceived repetitiveness within the learning modules and Convocation approved a reduction in the length of the program.
40. The candidates receive three and a half hours of instruction per day, for four weeks for a total of 12 instructional days, six assessment days and one reassessment day for those who require it. Attendance is mandatory.
41. The Law Society must set aside two full days to conduct each of three assessments during the program. In 2007 there were 1400 candidates in the process. Two days of assessments allows only a 15 or 20 minute assessment period plus five to 10 minutes of performance feedback on each activity. The assessments are completed individually or in pairs, depending on the activity.
42. Candidates are expected to undertake preparatory work for each day of instruction and to engage in a number of assessments that may require advance practice and then formal presentation, and prepare and submit a number of assignments which are completed both in and outside of class time.
43. The total instructional, exercise and preparatory time that a candidate will likely dedicate to this program during the four week period includes,
  - a. 19.5 hours of instruction;
  - b. 19.75 hours of exercises/practicing activities;
  - c. 5.90 hours of independent preparation for class work; and
  - d. 14.85 hours of preparation, assessment and feedback time on assessments and assignments.

Total time spent in and out of class on program requirements is 60 hours.

#### Goals of the Program

44. The development of skills training in Canadian bar admission/licensing programs began in earnest in the mid 1980s. It reflected a belief among regulators that law school education did not equip candidates with the practice skills necessary for the early years following call to the bar. Although it was agreed that post-call learning, experience and maturity immediately built upon the foundation lawyers had at call to the bar, it was felt that at call to the bar there were certain minimum skills lawyers should have in addition to their legal knowledge.
45. When the Law Society's Task Force on the Continuum of Legal Education completed its report in October 2003 it recommended maintaining a skills program, redesigned in the current form. In its earlier interim report to Convocation, however, it had proposed doing away with the skills component. There continued to be concern in Convocation that insufficient numbers of candidates were receiving the exposure to skills training during law school that the profession deemed appropriate for newly called lawyers to have. Accordingly, the program is intended to fill a gap in law school education.

46. Following approval of the licensing program a series of focus group discussions were held with members of the profession throughout the province to consider the appropriate competencies candidates should be exposed to in the skills and professional responsibility program. The competencies were refined and finalized and provided to Convocation in June 2004. The taxonomy of skills and professional responsibility competencies are set out at Appendix 3.
47. The learning objectives or goals of the program, to be evidenced through the design of the learning activities, were to,
- a. provide candidates with opportunities to increase their awareness of issues relating to ethics and professionalism;
  - b. improve their ability to identify issues when they arise; and
  - c. develop their analytical skills in dealing with issues they will confront in the practice of law.<sup>1</sup>
48. The goals are modest (e.g. increasing awareness; improving ability to identify), reflecting an understanding of the limited amount that can be accomplished in the allotted instructional, assessment and feedback hours.
49. Central to the design of the program is the following feature:
- All...instructors in this Program will be practising lawyers. Prior to the commencement of the Program all...instructors will receive comprehensive training on facilitation in a small group learning environment, group dynamics, conflict resolution, skills development and how to apply assessment criteria consistently. Candidates will be asked to evaluate instructors and constructive feedback will be provided to facilitate instructor improvements.<sup>2</sup>
50. In the Task Force's and Convocation's view, the role of practising lawyers was of central importance to the program to provide candidates with an early exposure to mentors and role models and the opportunity to be taught by those with direct and current experience of practice.
51. The program by its very nature also requires a small group learning environment. Classroom sizes are currently at 24 per class. This is already a higher number than is optimum for skills training. It would be inappropriate to go above this number if there is to be sufficient opportunity for practising skills and receiving instructor feedback. The less feedback, the less effective the program for individual candidates.<sup>3</sup>

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<sup>1</sup> Professional Development, Competence & Admissions Committee. Report to Convocation, February 24, 2005, p.7

<sup>2</sup> Ibid.

<sup>3</sup> In the Spence Report the classroom size goal was 14 students. With increasing numbers and the demands for more instructors this was virtually impossible to achieve.

#### Task Force Survey of Law Schools and Duplication

52. When the skills training issue was last considered it was difficult to evaluate whether actual (as opposed to perceived) gaps or duplication existed in skills education between what law schools taught and the profession considered essential. This was because at that time there was no Law Society taxonomy of skills (Appendix 3) against which to measure law school teaching.
53. Early on in its deliberations the Task Force met with Ontario law school Deans and sought their cooperation in tracking their course curriculum against the taxonomy, for the purpose of exploring the gap/duplication issue.
54. The Ontario Deans and subsequently the Deans of virtually every law school with a common law degree program responded to a lengthy survey setting out the competency descriptions and asking them to,
  - a. track programs in their curriculum that addressed these competencies;
  - b. identify the number of law school hours that were spent on the competencies in comparison with the hours required in the Law Society's skills program; and
  - c. indicate whether the courses were mandatory.
55. The results, which have greatly informed the Task Force's discussions, are set out in a summary document Appendix 4.<sup>4</sup>
56. In the Task Force's view the survey provides strong evidence of the following:
  - a. Skills education forms a significant part of the law school curriculum, in many cases the mandatory curriculum. This is equally true for professional responsibility as it is for the other identified skills.
  - b. It is overwhelmingly the case that the skills instruction candidates receive typically involve more hours of instruction than candidates receive in the licensing program, in some instances significantly more. This is hardly surprising given that any skills unit in the licensing process spans at most a few half-days of instruction, while skills and professional responsibility programs in law school are taught for a term or even a full academic year.
  - c. Intensive courses and clinical experience have multiplied over the years since the Spence Report and are now present in most law schools. These provide integrated and complex training that cannot be duplicated in the licensing process. The skills of client relationships and practice management appear to be most frequently addressed in this context. In the Task Force's view it is difficult if not impossible to learn these skills well other than in "practice" context.

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<sup>4</sup> Law schools understand that their responses were to be included in this public report.

- d. The survey reveals evidence of significant duplication and only modest gaps between the Law Society's skills and professional responsibility program and law school education in these competencies.
  - e. With few exceptions, the majority of law schools identify a mandatory professional responsibility course. This is in addition to any teaching integrated into substantive courses.
57. The Task Force was impressed with the breadth of skills and professional responsibility offerings in law schools that address the Law Society competencies and the extent to which many of these offerings are mandatory. In considering the extent to which the Law Society's program is accomplishing its goals and can do so in the future and the ongoing need for the program the Task Force has placed significance on the law school survey information.

#### Achievement of skills and professional responsibility program's goals

58. The Task Force is convinced that the Law Society's skills and professional responsibility program has already encountered difficulty in accomplishing its goals. In all likelihood the external circumstances beyond the Law Society's control that have already affected the program's viability, and are discussed below, will become increasingly challenging in the future, making it virtually impossible to run the program in its current form.

#### Factors that affect the achievement of the program goals

59. In 2007 approximately 1476 candidates applied to the licensing process. This number has been steadily increasing from year to year. A number of factors are currently in play that will likely result in the number of candidates in the licensing program rising even more significantly in the future. In addition, there will continue to be pressures to facilitate quicker access to the licensing process. The factors that are contributing to increased enrollments or may do so in the future) include the following:
- a. The University of Ottawa has increased the size of its student body by approximately 60 students per year.
  - b. Bond University in Australia has a number of Canadian students who it is anticipated will return to Canada for admission. Although not all of them will come to Ontario, it is anticipated that approximately 25 per year may. In addition, other Australian law schools are beginning to recruit Canadian students.
  - c. Lakehead University has applied to establish a law school with an annual entry of 25-30 students.
  - d. Wilfrid Laurier University has applied to establish a law school with an annual entry of 75 students.
  - e. There is likely to continue to be the standard 4% increase in registration levels, many from international jurisdictions. This could increase even more as more domestic students address the inability to gain admission to Canadian law schools by attending law school overseas and then returning home through the NCA process.

- f. Efforts are increasing by those seeking to have international law degrees apply on par with Canadian LLB degrees.
  - g. The Law Foundation of Ontario is studying the desirability of increased part-time LLB studies.
60. While not all of these factors may materialize or may not do so all at once, the Law Society cannot ignore the pressures on a system already taxed to the maximum. Law school enrolment figures and NCA certificates of accreditation numbers are not within any law society's control or influence.
61. With the increasing number of candidates coming into this process, the ability for the Law Society to mount the skills and professional responsibility program becomes more and more difficult. In 2007, the Law Society spent in excess of \$400,000, paid by candidates, in instructor fees and disbursements to ensure that all four teaching sites and all classes had sufficient instructional support. In addition, the Law Society will spend, in excess of \$300,000, paid by candidates, to rent facilities for class instruction.<sup>5</sup> In Toronto the program is currently run at Ryerson University after the spring term is over. It is very possible that in the near future university space may no longer be available as universities are moving to adding summer semesters for their own registrants. Even more expensive hotel space may then become the only option for the skills and professional responsibility program.
62. Even without a sizeable increase in registrants, the program has been unable to fulfil one of its main goals, namely that only practising lawyers teach the candidates.
63. The Law Society has had increasing difficulty in recruiting these role models to teach. Although the time commitment for the skills program is similar to the time commitments in the old program for teaching substantive law subjects such as Civil Litigation and Real Estate (10 half-days), the profession has been reluctant to become involved or stay involved in the skills program.
64. This may be because lawyers felt more comfortable in a substantive law teaching environment than they are teaching skills. It may be a result of the case-based methodology that results in greater complexity of the teaching or the requirement to attend a training session and use specifically developed instruction methods to enhance consistency of instruction across the province.<sup>6</sup>
65. The end result is that many of the lawyers who have demonstrated a willingness and availability to instruct are no longer practising lawyers. The provision of experience-

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<sup>5</sup> These figures do not include other costs attributable to the skills and professional responsibility program. The total cost of the program is approximately two million dollars or a little less than 1/3 of the costs of the licensing process. Additional costs include salaries, indirect costs attributable to the program, materials and translation.

<sup>6</sup> Despite instructor training, consistency in teaching across seminars continues to be a problem, given the number of seminars and the size of each class.

based information on practice management that is considered one of the practical benefits of the program does not really occur because many instructors are not in a position to provide it.

66. Large law firm commitment to the program is extremely limited. Very few of the over 100 instructors who participate are from larger firm environments. Yet the majority of candidates will article in those environments upon completion of this program.
67. In 2007, the Professional Development & Competence Department was required to use full-time lawyer employees of the Law Society to fill instructor requirements, taking those employees away from their regular work, often in areas outside of licensing process. As stated above, while many of these lawyers were in private practice at some point in their careers they are not currently. Ironically, candidates may have significantly greater exposure to the practising bar in their law school education than they currently do in the licensing program.
68. The Task Force believes this to be a serious impediment to the attainment of the program's goals. The Law Society's claim to expertise in skills training is tied to its ability to attract the members of the profession to pass on their ability and ethics to the next generation of lawyers. If they cannot or will not, the Task Force believes this seriously limits what the program can achieve.
69. Moreover the Task Force does not believe it is a realistic answer to resolve to recruit or exhort the members of the profession more effectively. The Law Society has already made numerous efforts to seek out instructors, to little avail. The program's continuation cannot be based upon the assumption or even the hope that greater efforts will convince the practising bar to take up teaching again.
70. The Law Society's policy analysis often benefits from considering whether other jurisdictions have faced similar issues. In this instance there has been little benefit to examining other jurisdictions. This is because the number of candidates in the licensing programs of other regulators' in common law jurisdictions does not begin to approach the Law Society's. Those programs do not require the same scope of voluntary practitioners and never have. The table below sets out the number of candidates registered for bar admission programs by province. Ontario has 44% of the national total. The next highest is Quebec with 27% followed by British Columbia with 11%.

Number of Candidates Registered for bar admission by province

Province	Number of registered candidates	Number of sessions per year	% of national total
Alberta	340	2	10
British Columbia	366	3	11
Manitoba	71	1	2
Nova Scotia and PEI	75	4	2

New Brunswick	50	1	1
Newfoundland and Labrador	32	1	1
Ontario	1,476	1	44
Quebec	900	2	27
Saskatchewan	64	1	2
Total	3,374	-	100

71. As discussed above,<sup>7</sup> the skills and professional responsibility program's instructional goals are modest. No one could reasonably argue that after the limited number of instructional days in each of the covered skills or competencies candidates have mastered any of them. At best the program may raise awareness or allow some modest practice in a new area. If a practising lawyer provides the feedback this may give the candidate some additional insight on "real world" context. To the extent, however, that candidates have already covered the competency or skill in law school, the Task Force questions how much benefit the candidate will receive from a brief review. This may become even less helpful if the instructor is not a practising lawyer. In addition, even the best of non-practising lawyer instructors may find the candidates resistant to their message simply because they are not in private practice.
72. Overall, the candidate evaluations support the view that the program is of only modest benefit, if at all. The 2006 and 2007 group of candidates evaluated the program. In both years the preponderance of views was that the training in each distinct competency/skill set was too brief in scope and nature to be worthwhile. Many of the candidates who provided feedback indicated that they received all of this training in a far more substantial manner, with more variety and in the context of more personally relevant substantive law areas, in their various law school courses in the three years prior to licensing. They also pointed to inconsistent teaching across seminars.
73. Some candidates found the hands-on learning activities related to skills, in particular the motion argument activities, to be interesting and potentially useful. Candidate evaluations found the interaction with instructors and other candidates to be interesting. Generally, however, candidates indicated that the case based work is too contrived to be useful. A number of candidates complained that the program does not approximate reality and will not be useful in articles or practice.
74. There was substantial feedback on the focus of the activities in the program, with some candidates negatively noting the emphasis on litigation. Many candidates have no intention of litigating and "resent" the requirement to be forced to participate in, and be assessed upon, these activities.

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<sup>7</sup> Paragraph 47.

75. Some candidates thought that it was unfair to be judged on a skills exercise or assignment after being given such a short amount of instruction and preparatory time. However, it should be noted that no one fails the program. The components of the program are presented as iterative exercises and candidates who do poorly on an assessment or assignment are required to submit a revised assignment or return on the last day of the program to be reassessed.
76. Appendix 5 contains student feedback from 2006 and 2007.
77. Evaluations must of course be considered in their context. By the time candidates reach the licensing process they have been in the undergraduate and law school stream for anywhere from between five and nine years. If they have graduate education or have returned to law school after working for some years in another career, this period will be even longer. The classroom approach to skills seems like an impediment to the real thing, namely articling and practice. The length of the program is a problem from two different perspectives, too short to allow for an intensive learning process and too long for those who are overly ready to be part of the “real world”.

#### Conclusion and Recommendation

78. The Task Force is of the view that the skills and professional responsibility program is not meeting its goals for the reasons set out above. Moreover, external pressures such as increasing enrollments, potential shortage of teaching space, and in particular difficulty in recruiting members of the practising bar to instruct in the program, render the program increasingly unsustainable.
79. This conclusion, coupled with the strong evidence that law school skills training is accomplishing most, if not all, of what the current Law Society skills and professional responsibility program does, has made the Task Force confident in proposing that the skills and professional responsibility program of the licensing process be discontinued.
80. The Task Force has not provided other options, such as reworking the program yet again, because in its view other options are neither necessary to fill a gap nor viable in the current environment.
81. The Task Force has reflected on a number of consequential concerns that may be raised about this proposal and addresses them as follows:

- a. Professional responsibility and ethics has a particular resonance for the Law Society, rendering its continued involvement in this topic important even if law students are all taught professional responsibility at law school. The Task Force agrees with this and its recommendation does not eliminate the Law Society's involvement in this area.

Currently, 15% of the questions in each of the Law Society's barrister and solicitor licensing examinations are on professional responsibility and ethics. The testing is integrated into the substantive law area being examined. The Task Force recommends that this percentage be increased to 30% in each examination.

This will have two possible effects. The first is that candidates will pay even more attention to preparing for the professional responsibility component of the

examinations because the questions will represent almost 1/3 of the possible marks. The second is that to the extent particular law schools do not have mandatory stand alone courses in professional responsibility, they may begin to feel the pressure of their students to require this.

- b. There may be concern that those candidates who have entered the licensing process through the National Committee on Accreditation will lose an introduction to skills in the Canadian context. While this is true, the Task Force believes that the limited nature of the current program renders this less of a gap than might at first seem the case. There are a variety of ways in which to address this issue through,
- i. creation of a stand alone shorter program to assist these candidates;
  - ii. focused post-call learning opportunities designed to assist all sole practitioners or newly called lawyers;
  - iii. mentoring; and
  - iv. guidance to these candidates on the numerous Law Society on-line and other practice supports and equity initiatives that exist to assist practitioners.

If following consultation on the Task Force's proposal Convocation is of the view that this issue requires addressing, a proposal can be put forward and its costs estimated that will provide supports to internationally trained candidates.

- c. To the extent that there is some continuing concern that there are gaps in the law school coverage of skills and professional responsibility competencies, there is a significant role to be played by post-call professional development. In the Task Force's view the preferred methodology for filling any proven gap would be to allow the individual lawyer to obtain this knowledge and instruction post call to the bar in a situation that is more relevant and capable of being immediately applied in practice.

The Task Force also notes that although the discussions about the approved law degree are in their early stages, the Federation's Task Force has raised as possible required competencies the following:

- i. Principles of legal ethics and professional responsibility.
- ii. Dispute resolution and advocacy skills.
- iii. Legal research skills.
- iv. Oral and written communication skills specific to law.<sup>8</sup>

82. To the extent that other issues are identified during the course of the consultation the Task Force will undertake to address them. The Task Force seeks comment and advice on the proposal it has put forward here respecting the skills and professional responsibility program.

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<sup>8</sup> See Federation Task Force's draft discussion paper, Appendix 2.

## PART 4: ARTICLING PROGRAM

83. The Law Society's articling program has been an established part of the licensing process for decades. It reflects the transition from the earlier legal education system that was predominantly an apprenticeship system to the university model that replaced it. It has provided students-at-law with an opportunity to experience and learn about the practice of law in a relatively risk free context of supervised law firm placement. In the Law Society's current licensing process the articling term is 10 months. Candidates may begin articling at any time after the end of the skills and professional responsibility program.
84. Unlike the medical model of education, however, articling is not interwoven into the framework of legal education. There is little direct link between the education candidates receive during law school and the "clinical" component that is articles. The profession has long viewed the articling program as a bridge between the two worlds of education and practice.
85. The articling program has not been without its critics or problems and has undergone a number of reviews in Ontario, the two most detailed ones occurring in 1972 (the Report of the Special Committee on Legal Education - also known as the MacKinnon Report) and 1990 (Proposals for Articling Reform - also known as the Epstein Report). The MacKinnon Report recommended the abolition of the articling program, which Convocation declined to accept. The current structure of the articling program flowed out of the Epstein Report.
86. There have been a number of occasions since the Epstein Report when the articling program has been raised in the context of discussions on the licensing process and on diversity in the legal profession. On each occasion the tendency has been to make modest recommendations to alleviate some of the pressures on or problems with the program. The most recent recommendations came from a 2005 Task Force on Employment Opportunities for Articling Students, chaired by bencher Kim Carpenter-Gunn. The focus of the report was on addressing difficulties that certain groups experience in finding articles.
87. In the Task Force's view, in light of external and internal factors that are jeopardizing the articling program's continued viability, it is time to examine the articling program more thoroughly than has been done in some time. The Task Force agrees with the Professional Development & Competence Committee's comment in its report recommending the establishment of this Task Force in March 2007:
- The projected increase in the number of candidates entering the licensing process, from both domestic and international sources... will have a serious effect on the viability of the current licensing process. This issue has an urgency to it that cannot be ignored...
88. The vast majority of articling jobs are located in Toronto, including the GTA (71%) and Ottawa (16.5%). London and Hamilton are the next largest employers of articling students at 3.5 % each. Most of the jobs in Toronto are found in the large downtown law firms and government employs a significant number of students-at-law in Toronto and Ottawa. Appendix 6 sets out the location of jobs and the size of firms.

89. There has been a steady and persistent increase in new applications and registrations arising from these applications in the bar admission/licensing process in recent years. To illustrate,

Year	New Applications <sup>9</sup>	Actual Registrations <sup>10</sup>
2001	1247	1133
2002	1312	1199
2003	1317	1258
2004	1356	1313
2005	1403	1301
2006	1457	1360
2007	1476	1408

90. The external factors the Task Force has identified elsewhere in this Report, such as increased law school enrolments, possible establishment of new law schools, increasing numbers of internationally trained candidates,<sup>11</sup> which have implications for the delivery of the skills and professional responsibility program, are equally problematic for articling program. In addition, since it began its work the Task Force has continued to receive information about the increasing interest in establishing new law schools in Ontario, international law schools seeking to attract Canadian students, and proposals for different delivery methods for the LL.B degree. These include,
- interest expressed by a further law school in Australia in developing a program that caters to Canadian law students, similar to Bond University's program;
  - Athabasca University, which specializes in distance learning, examining the possibility of a distance education law program;
  - an increasing number of distance education law schools in the United Kingdom, including London University and Wolverhampton; and
  - an increasing number of Canadian students going abroad to law school who will return to Ontario and other parts of Canada through the NCA route.

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<sup>9</sup> Indicates the new applications received for the bar admission/licensing process (October to September) of each year. Note: applications to the process are continuous. Applicants may enter the process upon completing their LL.B. or NCA Certificate requirements. Requirements may be met at different times of the year.

<sup>10</sup> Indicates the number of new registrants from the application process who are/were in the process as at December 31 of each year. Excludes applications that did not result in a registration (failed to meet the criteria or withdrew in advance of approval), registrants who voluntarily withdrew or had to withdraw due to failed admission requirements after entering the process.

<sup>11</sup> Paragraph 59.

91. All of these factors have implications for numbers of candidates potentially seeking articles. Appendix 7 contains the Director of Professional Development and Competence's background analysis of the articling situation as numbers rise. As can be seen from the analysis, in a system that appears able to place approximately 1300 articling students in a stable economy, it is likely that the number of candidates seeking articles in 2009 could be approximately 1730. This does not reflect additional candidates that would come from any new law schools.
92. As the system is currently structured, the prospect of this number of candidates seeking articling placements raises issues for the Law Society and for the legal profession not only in Ontario, but also potentially in the rest of the country.
93. The Law Society requires candidates to complete an articling program in the licensing process, but has never guaranteed them articling placements, because the process of hiring articling students is between candidates and the law firms. Nonetheless the Law Society has always demonstrated concern over unplaced candidates, sought to assist them, maintains statistics on placement, and has considered issues of equity and diversity as they relate to the articling program.
94. The number of available articling placements has not grown in any substantial number in recent years. To the extent the number of available placements fluctuates there may be more pressure downward to reflect economic realities and changing law firm and government hiring policies, than upward.
95. The Task Force is convinced that the articling program cannot continue to drift. But the difficulty is what to do to address the issues. Whereas the Task Force has been able to conclude on the evidence that the best option for the skills and professional responsibility program of the licensing process is to abolish it, it has found the articling issue a more complex and challenging one that requires a more detailed analysis of and consultation on the various options that may be considered.
96. In considering the articling program the Task Force has asked itself a number of questions:
  - a. What are the goals/purposes of the program?
  - b. Is the program accomplishing its goals?
    - i. Are there practical realities that render the goals difficult or impossible to acquire?
  - c. What options are available to address the inability to meet the goals of the program?

#### Goals of Articling

97. To assist its consideration of the issues surrounding the articling program the Task Force has identified what it believes to be the goals of the program:
  - a. To provide law school graduates with exposure to certain defined practice skills in a professional environment in a consistent manner across articling positions.

- b. To provide law school graduates with exposure to professional responsibility and ethical issues in a professional environment, in a consistent manner across positions.
  - c. To provide law school graduates with the opportunity to evaluate practice environments for the purposes of subsequent professional life.
  - d. To fill law school gaps in law students' development as professionals.
  - e. To facilitate the transition to sole or small firm practice.
98. All of these goals are in the interest of contributing to the Law Society's commitment that lawyers called to the bar and admitted as solicitors are equipped with the skills, knowledge and sense of professional responsibility and purpose required to see them through the initial three years of practice.
99. The 1990 Epstein Report amendments were particularly focused on increasing quality, articulating educational components for the program and introducing consistency across articling positions. Appendix 8 contains a sample educational plan that addresses the skills and knowledge to which the articling student is to be exposed. The Epstein Committee was responding to ongoing complaints that articling students had widely disparate experiences from firm to firm and from city to city. The report noted the following:

...the Sub-Committee assumed in its deliberations that articling would continue. This assumption reflects the profession's commitment to articling...It may be that the recommendations of this Sub-Committee will not cure the problems related to articling. It is intended, therefore, that while these recommendations suggest the continuation of articling in a somewhat modified form, the matter should be entirely reviewed within a three-year period of implementation.<sup>12</sup>

#### Achievement of Goals

100. In considering whether the articling program is currently accomplishing its goals or will be able to do so in the future, the Task Force has identified the following concerns:
- a. As can be seen in Appendix 7, it appears to be clear that the demand for articling places in Ontario will increase in the coming years without a realistic likelihood that significant numbers of new placements can be located. If the economy undergoes a downturn there may be fewer placements than is currently the case in a thriving economy. The implications of this are that increasing numbers of candidates may be unable to complete their requirements for call to the bar. This is perhaps the most serious problem to address as the indications are that it will become a permanent feature of the program. Current placement information is set out in Appendix 9.

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<sup>12</sup> A full review of the program did not take place.

- b. There is evidence that some candidates from Aboriginal, Francophone, racialized communities and National Committee on Accreditation candidates face different challenges to find articling jobs than do other candidates. Appendix 10 is an excerpt from a report from the Law Society's Equity and Aboriginal Affairs Committee outlining the issues candidates from these groups face. The Task Force is of the view that there is every reason to be concerned that as numbers seeking articling placements rise the issues these groups face will become even more troublesome. Given the *Fair Access to Regulated Professions Act* requirements, the Law Society must be even more concerned about NCA candidates who might be disproportionately represented among those who do not obtain placements.
  - c. Despite the introduction of education plans, it continues to be virtually impossible to assess the consistency of articling experiences across the province. Unlike the medical profession where clinical training occurs within hospitals over which the province has control, the Law Society has only limited influence on principals. The role of articling principal is a voluntary one and principals who find it too onerous simply cease to act. Indeed, when the Epstein reforms were introduced, a percentage of principals ceased taking articling students because the paper work was too much trouble. Given the need to hold onto as many placements as possible and continue to seek out others, there is a limit to what can be imposed upon principals in an effort to improve the program quality, thus potentially limiting the ability to enhance the program.
  - d. There continue to be few jobs outside the large metropolitan areas or in firms of 10 lawyers or fewer. This has implications for the extent to which articling can accomplish one of its goals to act as a transition to sole or small firm practice. If most candidates article in large firms it is unlikely they are receiving training in the hands-on skills they will most require to operate their own practices.
101. These problems have led the Task Force to believe that the articling program is at best only partly meeting its goals and at worst on the brink of a situation that will only deteriorate due to the increase in numbers, thereby threatening the program's viability. Once again, it is important to note that little assistance can be found by examining the experience of other provinces. The Table provided earlier in this Report on bar admission program registrants illustrates the significant difference in numbers for whom jobs must be found in Ontario compared with all other provinces.

#### Consultation Options on which Comment and Advice is Sought

102. The Task Force has identified three possible ways to address the issues the articling program is facing. None of the options is new. The 1972 McKinnon Report addressed some of them. Other jurisdictions, particularly in the United Kingdom and Australia have adopted some of them. Perhaps none of them is without criticism. But the Task Force is convinced that something must be done beyond exhorting the Law Society to try harder to fund more placements and improve quality. Something more fundamental must be done.

103. There are three options on which the Task Force is seeking comment and advice:
- a. Continue the program, but make it clear that the Law Society makes no guarantees that candidates will find employment.<sup>13</sup>
  - b. Accept that if there is to be an apprenticeship requirement the Law Society should take responsibility for all candidates having an opportunity to qualify; develop an alternative stream for those unable to find a placement.<sup>14</sup>
  - c. Abolish the articling requirement.<sup>15</sup>
104. Appendix 11 sets out the pros and cons of each option in chart form. Each option is also discussed below. The Task Force has made no decisions respecting any of the options. The Task Force is seeking comment and advice on each option and which ones it should develop further in its subsequent reports.

#### Option One: No Guarantee of Placement

105. The Law Society has never guaranteed that all candidates would find articling jobs. It has put in place a number of supports to assist candidates in doing so and has continued to try to expand the number of available articling placements, but in the end the market has more or less governed hiring.
106. Other Commonwealth regulatory bodies make it clear to candidates that completion of various components of legal training does not guarantee completion of others or guarantee of obtaining a call to the bar. The Law Society of Scotland notes on its web site:
- It should also be noted that gaining a place on, or successful completion of, an LL.B. degree does NOT guarantee a place in the Diploma in Legal Practice course, a training contract<sup>16</sup> or future employment in the legal profession in Scotland.
107. The Law Society of England and Wales' website describes in great detail the challenges to completing the requirements for call to the bar as a solicitor. England and Wales candidates must complete both a legal practice course and a training contract. The Law Society of England and Wales' website sets out the cost requirements for the legal practice course, makes it clear that there is no guarantee a candidate will obtain a training contract and points out the implications of these realities.
108. The Law Society of England and Wales appears to have taken the view that its responsibility is to ensure that individuals are given the information about the risks involved in taking up their legal training. It is then up to them to make their choices. If the entrance requirements are legitimate competency requirements, it is not unreasonable to

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<sup>13</sup> To some degree the status quo in Canada; more stark reality in Scotland, England and Wales

<sup>14</sup> Australian system

<sup>15</sup> U.S. model

<sup>16</sup> equivalent to articles

include them even if not everyone will obtain a placement. The Law Society of England and Wales' notice is set out at Appendix 12.

109. In assessing this approach used in England and Wales it is important to step back and consider that guarantees of placement are seldom built into professional requirements. From the outset, competition for places is endemic to the professional education process. It is realistic for candidates to be hopeful of placement, but perhaps unrealistic to expect guarantees. The earlier in the process that individuals are alerted to this type of warning the better, so that they can make decisions about their future in an informed context.
110. In comparing the Canadian situation with that of England and Wales and Scotland, and other legal education regimes, however, it is important to identify the differences in the legal education systems. In these other jurisdictions, the law degree is truly an undergraduate degree, most students attending law school immediately following high school, sometimes in conjunction with obtaining another undergraduate degree. The length of the program is shorter in some circumstances than our three year degree. Many of those pursuing the law degree do not intend to become members of the legal profession or practise law.
111. In Canada, the law degree is *de facto* a graduate degree as most students have already obtained a first university degree when they enter law school. There is a high expectation among students that they will enter the legal profession and there is a greater commitment of time and money devoted to that end goal because of how much more education is involved. NCA candidates may have given up a career and a life in another country with even more financial and time consequences. The stakes of failing to obtain an articling position may arguably be higher, at least for many of the candidates in Ontario and Canada generally, than it is in England and Wales.
112. Moreover, the difficulty this option presents is not that it is heretofore unheard of or even uncommon in the professional world, but that given the Task Force's estimates of increasing numbers, unplaced candidates in larger numbers than has previously been the case may become a permanent feature of the program.
113. This would result in the Law Society and the profession in general being faced, on an ongoing basis, with candidates who cannot complete their licensing requirements. To the extent that Aboriginal, Francophone, racialized and NCA candidates are disproportionately represented in this group, the profession may be increasingly uncomfortable with the consequences. It is possible that should internationally trained candidates be disproportionately represented in this group the requirements of the *Fair Access to Regulated Professions Act* would identify articling as an unreasonable barrier to admission.
114. An advantage of this option in the short term is that it may provide the Law Society with time. By articulating the status quo in a clear way to all candidates,
  - a. the Law Society may have time to better assess the numbers issue. If the increase in numbers turns out to be less than anticipated, this reduces at least some of the urgency of the issue;

- b. the Law Society may have time to once again explore the expansion in available placements and a re-assessment of what kind of placements may qualify as meeting the requirements;
  - c. the discussions respecting the approved law degree, NCA requirements and new law school applications will be completed with possible implications for the articling requirement;
  - d. a national analysis of articling requirements might be contemplated, with a view to creating national solutions and improvements.
115. In periods of economic downturn in the past, the Law Society has faced high levels of candidates failing to find employment contracts. While it is true that these have tended to be of relatively short duration, the precedent for accepting labour shortages as a reality of the system does exist.<sup>17</sup>
116. It is interesting to note that the McKinnon Report addressed this issue in 1972:
- The indications are that the demand for articling positions will increase substantially in the next few years. The demand will reach 900 by 1974 and would almost certainly exceed the supply of positions available. Unless the system of legal education is changed some of the graduates of Ontario law schools will be unable to qualify for admission to the Bar – a situation that would be unacceptable to everyone concerned, the student, the public, and the legal profession.
117. That Special Committee recommended the abolition of articling as the appropriate way to address the numbers issue. This was rejected. Articling placements continued to be found, but there is little doubt that there were periods when candidates did not find jobs and the system has continued nonetheless.

#### Option 2: Articling or a Practical Legal Training Course

118. If the Law Society and the profession find Option 1 unacceptable, but wish to continue some form of practical training requirement before call to the bar, then in the Task Force's view an alternative means of meeting the training requirement must be found for those who cannot obtain articling positions.
119. In the Task Force's view the only realistic option, although not without drawbacks, is the introduction of a practical legal training course (PLTC), as is found in the states of Australia, for those candidates who cannot find articling positions.
120. The practical legal training programs vary in length and scope, but for the purposes of this discussion the Task Force describes the program offered at the Leo Cussen Institute in the State of Victoria, one of the earliest PLTC courses.

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<sup>17</sup> Anecdotal evidence suggests that those unable to follow the traditional route of call to the bar often find other careers in which to use their legal education.

121. The on-site program runs for approximately 31 weeks. It is offered once yearly with an enrollment of 140 students. Attendance is mandatory and students are required to attend from 9:00 a.m. – 5:00 p.m. five days a week. The program meets the National Competency Standards in place to ensure lawyers are called to the bar with requisite knowledge, skills and ethics. There is a three-week professional placement as part of the program wherein Leo Cussen Institute places students in legal offices for work experience. There are full time instructors, as well as part time practitioner instructors. Students complete assignments and assessments. Students pay for course. Additional information on the Leo Cussen program is set out at Appendix 13.
122. Since 2004 the Institute also offers an on-line version of the course. On-line students must arrange their own three-week professional placement and during the 31 weeks of the program they must attend in person for 16 days of “on-site intensives.”
123. The practical legal training course exists as an alternative to articling. In a recent review of legal education in Victoria the author of the report commented that articles are consistently students’ preferred option over the training courses because,
- a. they are paid a salary as opposed to having to pay for the course; and
  - b. articling represents a foot in the door of the legal environment.<sup>18</sup>
124. At the same time the author pointed out that if there were no practical legal training courses, “several hundred graduates each year would not be able to qualify for admission to practice.”
125. The report also points out that the demographics of students in Victoria has changed dramatically.

There are more middle-aged students who are prepared to pay fees to obtain a law degree and who complete their degree part-time while maintaining other careers. These students, once they graduate, are not willing to sacrifice their existing career to do articles full time or to take a full time practical training course. Others are not financially able to support families at the current salary rate for articles, and still less able to pay course fees for a practical training course which prevents them earning income for six months. Many younger students who have supported themselves throughout the undergraduate degree are equally reluctant to take a full time, fee-paying practical training course.

This change in the student demographic has occurred throughout Australia and, combined with the emergence of technology, has led to the development of alternative modes of practical training courses...new courses have been developed and approved by the Council of Legal Education.<sup>19</sup>

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<sup>18</sup> State of Victoria, Department of Justice, *Review of Legal Education Report* (2006), p.24

<sup>19</sup> *Ibid*, p. 25.

126. In addition to Leo Cussen practical legal training is offered at universities in Victoria, both in person and on-line.
127. While it is possible under the Victoria model for a student to voluntarily choose the practical legal training route over the articling route, the main rationale for introducing programs such as this is to address shortage of placement issues. The Task Force's description of this as an option is in the same context - to address placement shortfalls.
128. Introducing this option could have a number of benefits:
- a. To the extent the estimates of increasing numbers are correct, the introduction of a practical legal training course could make the difference between a candidate being called to the bar or not.
  - b. As described above, for those with families to support and in-person time constraints, an on-line part time course could assist.
  - c. For those who live in remote communities where there are no articling jobs, they could complete most of their requirements in their communities.
  - d. For those who intend to pursue sole or small firm practice the training course may in fact give them more focused and consistent practice management training than occurs in firm settings with busy practitioners.
129. This option would, however, involve a significant shift in the way in which the profession and the Law Society approaches and thinks about practical training. A possible hurdle for this approach would be in satisfying prospective employers and perhaps the profession in general that applicants with a practical legal training credential are equally qualified as those who articulated. This would be less of an issue for those graduates who intend to be self-employed.<sup>20</sup> Much would depend upon,
- a. the reputation of the programs and their affiliations (e.g. with universities);
  - b. the willingness of leaders of the bar to stand behind the courses, both by teaching and offering to take candidates if there is a brief placement component; and
  - c. the quality of those who graduate and their willingness to act as ambassadors for the program.
130. This option may still present a hurdle to those who will have to find the funds to pay for the course. Part-time options may assist that will spread the cost out, but it may still be the case that candidates in serious financial need will not be able to afford the course. This option requires further consideration of this issue and the extent to which, if at all, the Law Society or other bodies such as the Law Foundation of Ontario could or would subsidize costs or provide financial aid.

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<sup>20</sup> This is more of an issue in the Australian States where no one is entitled to practice as a sole practitioner or partner unless they have first worked in an employment setting for a period of years.

131. In addition, this option can only proceed if there are third party providers interested in opening schools. This requires an infrastructure, full-time faculty, and resources that are well beyond the Law Society's capacity to provide. The Task Force is of the view that this option should not be contemplated with the Law Society as the provider. A further difficulty with this option is whether there would be a sufficient number of candidates on an annual basis willing to enroll. While this option may be interesting and even inevitable, it may not be viable in the shorter term. It would be important to learn more about its origins in Australia and how the courses ensured enrollments in the early years.

Option 3: Abolish the Articling Requirement

132. This option is, of course, the most radical and final in its scope and nature. Once dismantled it is unlikely the program could be easily resurrected, so any decision to end the requirement should only be made after careful consideration.
133. None of the American states requires articling. It is interesting to note that in recent major studies on U.S. legal education the Commonwealth articling programs are always depicted as providing an advantage to those whose education includes them. Despite this there appears to be no inclination in the United States to introduce such a program.
134. In the Law Society's current situation of anticipating a significant increase in candidates seeking placement, there is a certain attractiveness to doing away with the requirement altogether. This is the only way to ensure that a potentially unreasonable barrier to call to the bar is eliminated. It does away with the ongoing concerns that articling is uneven and that its educational value is only as good as the individual principal's commitment to teaching and mentoring.
135. At the same time, however, it is important to consider the possible negative implications of such a move:
- a. There is the potential for the public and the government to perceive this move as a reduction in standards, with a corresponding concern about self-regulation.
  - b. It is true that large firms are the primary employers of articling students. With no articling requirement the period of trying out new graduates would shift to the first year associate pool. But the numbers the firms hire in this capacity may be significantly fewer than the number of articling students they hire. For those who are not hired as first year associates and those who would not have articulated for large firms in any event, there could be competency implications for moving straight from the licensing process to call to the bar with no further training in between. This training gap could have even greater implications for NCA candidates who have had little opportunity to become acclimatized to the Canadian legal system before call to the bar.
  - c. The abolition of articling in one jurisdiction would have implications for all jurisdictions, since candidates in Ontario could be called to the bar significantly sooner than elsewhere in the country.
  - d. Although the National Mobility Agreement is premised on each jurisdiction's acceptance of the others' licensing requirements, it is true that at the time the Agreement was negotiated all jurisdictions had some form of articling.

136. In considering this option the Task Force has tried to contemplate what might reduce concerns about the abolition of a pre-call requirement. Many American jurisdictions have what are called “bridging” programs. These are required professional development programs of short duration for newly called lawyers designed to address issues of professional responsibility and practice management. It would be possible to introduce a mandatory professional development curriculum requirement for the first year or two after call to the bar to address some of the competencies currently included in the articling education plans. This would not be likely to have a hands-on practice component.
137. The Task Force seeks comment and advice on the options for articling put forward here. It invites additional options and ideas.

#### The Numbers Issue

138. The Task Force was not mandated to consider the issue of numbers in the profession. It is inevitable, however, that this issue will be raised in the course of the consultations. Accordingly, the Task Force makes a brief comment on this issue here.
139. In the Task Force’s view, further limiting numbers who may gain access to the profession is not a reasonable or indeed viable option for myriad reasons the most compelling of which are,
- a. numbers are in fact already limited by the fact that there are only 16 common law schools in Canada. Applications for places in those schools far exceed the number of available places. Increasing numbers of Canadian students who can afford to do so are attending foreign law schools and then seeking accreditation of their foreign law degree through the NCA. Many more who cannot afford to go overseas simply do not have access to the profession. To further reduce access to the profession, is in the Task Force’s view, inappropriate and short sighted;
  - b. further limiting numbers who may be called to the bar may have the unintended result of removing from the pool some of the future most competent, ethical and talented members of the profession. Further cut-offs will inevitably become tied to performance levels on examinations. High performance on examinations is not determinative of proficiency in practice;
  - c. it is possible, perhaps probable that such further arbitrary limitations could run afoul of the *Fair Access to Regulated Professions Act*;
  - d. the Federal Bureau of Competition has recently published a report in which it studies the regulatory rules of a number of professions, including the legal profession, and reflects on the implications of self-regulation on competition issues. The report makes recommendations aimed at reducing arbitrary or unnecessary limitations on competition within the professions. Some of these recommendations apply to the legal profession. Further limiting numbers who may gain entry to the profession would be unlikely to find favour with the Federal Bureau of Competition.

## PART V: THE CONSULTATION PROCESS

140. As has been set out above, this report is divided into two streams. The first, setting out the developments in the discussions about the approved law degree discussion is provided only for *information* (Part 1). The second, addressing the skills and professional responsibility program and the articling program (Parts 2, 3 and 4) are intended for *consultation* with the profession. In particular, the Task Force seeks comment and advice on the proposals and options so that it can continue to develop its position and ultimate recommendations to Convocation on these issues.
141. Further consultations may follow this one to address issues provided in Part 1 of this Report for information only as they are further developed and to consider any further issues that arise from this consultation.
142. The Task Force's mandate included a commitment to consult interested parties such as,
  - a. law schools and Law Deans, both within and outside of Ontario;
  - b. the Ontario Bar Association;
  - c. the County and District Law Presidents' Association;
  - d. other legal organizations such as the Advocates' Society and the Criminal Lawyers' Association,
  - e. legal organizations representing Aboriginal and equity-seeking groups;
  - f. large law firms that hire articling students;
  - g. government lawyers;
  - h. sole practitioners and small firm lawyers;
  - i. the National Committee on Accreditation working group on NCA standards;
  - j. the Federation of Law Societies of Canada;
  - k. the Government of Ontario;
  - l. Legal Aid Ontario;
  - m. the Law Foundation of Ontario; and
  - n. the judiciary.
143. The Task Force will place notices in the Ontario Reports, on the Law Society website and through e-mails to the profession advising members of the Report and seeking written input by April 3, 2008. In addition, it will send the Report to the organizations identified above seeking written comment and advice on the report and providing questions that might facilitate the responses by April 3, 2008. If organizations would like Task Force members to attend one of their meetings to further discuss their written submissions the Task Force will endeavour to do so.
144. The Task Force will then consider all the comments and compile a report for Convocation on the comments and advice received. Its next steps will depend to some degree on both the outcome of the input and on the continuing national work respecting the approved law degree.
145. The Task Force is hopeful that the profession will take an interest in these important issues and provide comments and advice to assist it in finalizing its Report and recommendations.

## APPENDIX 6

Table 1: Percentage of Students Articling at Size of Firm (2003-2007)<sup>1</sup>

Year of Call <sup>2</sup>	51 lawyers or more	11 to 50 lawyers	5 to 10 lawyers	1 to 4 lawyers
2007	34.8	25.1	8.4	12.0
2006	34.2	23.8	9.0	14.1
2005	33.3	24.5	12.7	10.8
2004	34.6	21.2	11.0	11.2
2003	43.3	22.6	7.5	8.2

Table 2: Percentage of Students Articling by Location (2003- 2007)

Year of Call	City of Toronto	GTA East <sup>3</sup>	GTA West <sup>4</sup>	Ottawa	London <sup>5</sup>	Hamilton <sup>6</sup>	Windsor	Other <sup>7</sup>
2007	62.1	2.5	3.3	16.7	3.4	4.0	1.8	5.6

<sup>1</sup> The data is based on students' voluntary completion of an articling survey at the time of signing the rolls for the call to the bar. Our response rate, on average, is 75%. The calls took place in June or July and September after articles.

<sup>2</sup> Since the call to the bar occurs the following year after articles, statistics for a 2007 call represent articling data for 2006.

<sup>3</sup> Includes Durham, York.

<sup>4</sup> Includes Halton, Peel.

<sup>5</sup> Includes Middlesex, Elgin.

<sup>6</sup> Includes St. Catherines Region.

<sup>7</sup> Includes all other regions: East (Kingston, Brockville, Cornwall) Central North (Huntsville, Pembroke, Mattawa), Central (Owen Sound, Barrie, Peterborough), Central South (Waterloo, Guelph, Brantford), Southwest (Essex, Kent, Lambton), Northeast (Sudbury, Cochrane, Hearst), Northwest (Thunder Bay, Kenora).

2006	65.7	2.3	2.8	15.3	3.3	3.2	1.7	5.2
2005	63.9	1.4	3.1	16.7	4.2	3.6	1.8	5.2
2004	64.1	0.8	3.9	22.3	0.7	2.2	0.8	4.8
2003	69.6	0.9	2.5	15.5	3.3	2.3	1.3	4.2

## Appendix 9

Table 1- Articling Statistics of Unplaced Students from 2003-2006, December 2007

Licensing Process/Bar Admission Course Year	Articling Group Size	As of Call to the Bar	Total Unplaced Candidates
2003	1219	July 2004	57
2004	1256	July 2005	66
2005	1267	June 2006	73
2006	1318	June 2007	56

Table 2- Equity Breakdown of Total Unplaced Students

BAC/ Licensing Process Year (as at Call to the Bar)	2003 (July 2004)	2004 (July 2005)	2005 (June 2006)	2006 (June 2007)
Total Unplaced Students <sup>1</sup>	57	66	73	56
Total Non self-identified students <sup>2</sup>	23	24	43	25
Total self-identified Equity Seeking Students <sup>3</sup>	34	42	30	31
Unplaced self-identified Aboriginal Students	2	1	2	2
Unplaced self-identified Students with Disabilities	1	3	1	0
Unplaced self-identified Francophone Students	8	14	5	7
Unplaced self-identified Gay/Lesbian/Bisexual/Trans-gendered Students	2	1	1	3
Unplaced self identified Mature Students	8	11	9	13
Unplaced self-identified Students from a Racialized Community	20	19	15	13

<sup>1</sup> This represents the number of registered students who have not filed Articles of Clerkship with the Society.

<sup>2</sup> Students who did not voluntarily identify as being from an equity-seeking community on the BAC/Licensing Process application are represented in the non self-identified category.

<sup>3</sup> Equity-seeking student groups are not mutually exclusive so the total may not equal the sum of the categories.

Table 3- Unplaced Students' Current Status as at December 2007

BAC/Licensing Process Year	2003	2004	2005	2006
Total Unplaced Students	57	66	73	56
Total Students Not Called to the Ontario Bar (to date) <sup>4</sup>	18	30	44	56
Total Equity Seeking Students of those not Called <sup>5</sup>	12	18	23	31
Aboriginal Students	2	1	2	2
Students with a Disability	0	1	1	0
Francophone Students	3	6	5	7
Gay/Lesbian/Bisexual/Transgendered Students	0	1	0	3
Mature Students	6	5	8	13
Students From a Racialized Community	3	8	10	13

Table 4- Total Unplaced Students by Law School and N.C.A

	Osgoode	University of Toronto	University of Ottawa	Western	Windsor	Queen's	NCA	Out of Province	Total
2003	8	2	19	4	6	5	7	6	57
2004	14	0	28	1	4	2	8	9	66
2005	13	7	21	6	8	3	7	8	73
2006	8	0	16	3	5	3	14	7	56

## Appendix 10

Excerpt from Report of the Equity and Aboriginal Issues Committee – June 28, 2007

## FOR INFORMATION

## ENTRY INTO THE PROFESSION REPORT

## Background

97. The Articling Task Force, in its report to Convocation dated October 20, 2005, recommended that the Equity and Aboriginal Issues Committee consider conducting a study to gather information about students-at-law who do not have articling placements.
98. At its October 6, 2005 meeting, the Committee decided to give priority to identifying and developing strategies that would address barriers faced by individuals from

<sup>4</sup> These students have not been called to the bar in Ontario and are: still registered in the Licensing Process, have withdrawn or have been called as a transfer candidate from another jurisdiction (2 in 2004 and 2 in 2005).

<sup>5</sup> Equity-seeking student groups are not mutually exclusive so the total may not equal the sum of the categories

Francophone, Aboriginal and equality-seeking communities when entering the legal profession. The study would also take into account the unique experience of internationally trained lawyers, the value they bring to the Ontario legal profession and their challenges when seeking employment in the Ontario legal profession.

99. On November 10, 2005, the Committee adopted a project proposal to undertake a study in incremental phases. Phase I concentrates on students-at-law who have not found articling placements. Phases II, III and IV would focus on the first 2 years following the call to the bar, students-at-law with articling placements and summer employment.
100. The Law Society retained Hugh Anderson of the Strategic Counsel, to conduct interviews with students in the Licensing Process (formerly the Bar Admission Course) who are seeking articles and those who have withdrawn from the process. In February 2007, The Strategic Counsel presented its report to the Committee.

#### Executive Summary of Strategic Counsel Findings

##### *Background, Objectives and Methodology*

101. The 10-month period of articles is a necessary component in the Licensing Process before a candidate may be called to the Bar. The study sought in part to uncover some of the barriers to obtaining articles, as well any commonalities among those who were unable to find articling positions. Understanding the nature of any barriers, and whether these barriers affect some law graduates more than others, is a logical first step in addressing the issue. With this in mind, the following three key objectives for the research were identified:
  - a. understand why some students-at-law are unable to find work as articling students;
  - b. report on the specific experience of students from Francophone, Aboriginal and equality-seeking communities, and of the NCA students, in seeking articling positions;
  - c. to the extent supported by the research findings, identify possible solutions and make recommendations as to how any barriers identified might be reduced or eliminated.
102. The Target Group for interviewees was comprised of 299 students-at-law registered for the 46th, 47th, and 48th Bar Admission Courses (application dates ranged from 2001 to 2005), who were still seeking articling positions or who had withdrawn from the process. The Target Group also included third year law students who were still seeking articling positions.
103. Out of the Target Group pool of 299 individuals, 145 were classified as having “Applied” or registered for the Bar Admission Course, and 154 were classified as having “Withdrawn” from the process. A total of 183 invitations were sent to individuals in the Target Group, asking them to participate in the research. Of these, 183 invitations, 95 were sent to students classified as “Applied” and 88 were sent to students classified as “Withdrawn”. In the end, 52 interviews were conducted, of which, 33 were with students classified as “Applied” and 19 with students classified as “Withdrawn”.

*Key Findings - Preliminary Observations*

104. Law Society data indicated that approximately 95% of all law students in Ontario are able to secure an articling position by the end of their third year at law school. This means that for the purposes of this study, the population group represents about 5% of the student body eligible to register for the licensing process. Law Society data further revealed that this 5% self-identified as being members of the following communities that were of interest for the purposes of this study:
- a. Racialized (23%);
  - b. Mature student (17%);
  - c. Francophone (14%);
  - d. Aboriginal (2%);
  - e. Disabilities (2%);
  - f. Gay/Lesbian (2%);
  - g. NCA students (11%).
105. The interviews revealed that the experiences of mature students (especially women), NCA students and members of racialized communities are unique and merit particular attention.

*Law School Experience*

106. For the most part, interview participants did not employ a particular strategy or approach to selecting courses in law school, nor did they believe that their course selection had an adverse impact on their search for an articling position.
107. The students interviewed participated to a very limited extent in On Campus Interviews (OCIs). They did access career offices and most were of the view that they offer basic services that are useful. However, there was some criticism about the limited range of materials and resources available and the scope of services offered. Students had mixed impressions of career days as some found that they focused on big firms. Students commented favourably on career days that offered panel discussions about topics such as the practice of law. There was definitely a sense that job search options were geared towards large Toronto law firms or government ministries, and not enough attention was paid to other or even non-traditional articling environments.

*Approach to Job Search*

108. At the time of the interviews, some of the students admitted that they had not been as organized or proactive as they could have been in the job search. That being said, it was clear that at this stage in the process, the search for an articling position becomes increasingly more difficult. This difficulty is exacerbated by having to balance the job search with 3rd year law school study commitments. In addition, students who are seeking articling positions during their third year of law school must compete not only with other students in their own year, but also with students in the year behind them. Further, the fact that students have not secured articles this late in the process causes employers to question whether or not there is something “wrong” with these students, and whether there are reasons for their unemployment.

*The Law Society*

109. Generally, interviewees felt that the Law Society made sincere efforts to assist students in the Target Group in finding articling positions. Interviewees made particular reference

to the Law Society's resume and cover letter review service and the biographical paragraph service, which they found to be helpful.

110. Despite the assistance provided, some interviewees still felt that the Law Society ought to be more proactive than it is, in terms of tracking students through various stages of the articling selection process. There were also some criticism of the requirement to article, as it is currently structured, and some interviewees suggested that the articling search process be more streamlined, or even that the articling requirement be waived, if it gets to a point where the inability to secure articles bars a student from continuing on with the licensing process to eventually be able to practice law.

#### *Mentors*

111. Although participants placed great value on the mentoring process, those who had the benefit of actual mentoring experiences said the success of such an endeavour depends on finding the right "fit" between mentor and mentee.

#### *Communities of Concern*

112. Although everyone who was eligible to participate in the consultation has experienced difficulty in securing an articling position, three communities of interest to the Law Society reported particular difficulties that were unique to them. These communities are: mature students, students of a racialized community, and NCA students.

#### Mature Students

113. The difficulties experienced by mature students appeared to stem both from the way others view and treat them on the one hand, and from the way they see the world, law school and the search for an articling position on the other hand. Some of the barriers reported by mature students in their search for articles included the fact that there was a greater likelihood that they would have life commitments, such as a partner or children, which had the effect of restricting both the types of articles they could apply for and whether they could relocate.
114. Female mature students, particularly those of childbearing age, face the greatest barriers. These interviewees reported having to deal with offending questions about whether they intend to start a family, or for those who had a noticeable gap in their resume, whether they had family responsibilities that might detract from their job performance.

#### Students of a Racialized Community

115. Some interviewees who were members of a racialized community acknowledged that they did not place a high enough priority or devote enough time to the search for articles. However, based on their experiences, these interviewees seemed to face challenges that their colleagues did not. For instance, private sector articling positions were seen as depending on a particular "fit", while articling positions with the government were not. In addition, there was the perception that there was a greater prevalence of family networks with connections in the legal community among those who are not members of racialized communities.

#### NCA Students

116. NCA students reported facing the two following significant challenges:

- a. ascertaining what the NCA and the Law Society would require in order to accredit them and in order to be eligible to be called to the bar;
  - b. finding an articling position as an NCA candidate once they had been accredited by the NCA.
117. NCA candidates who participated in the consultation indicated that there was no information provided by the NCA on the articling requirement of the licensing process. This puts people coming from outside Canada at a disadvantage, as they may not be familiar with the peculiarities of the articling process, particularly the fact that recruitment takes place a year in advance.
118. NCA candidates also noted that the fact that their challenge exams are graded on a pass/fail basis makes it difficult for prospective employers to evaluate the academic performance of the NCA candidates against those of students with transcripts from Canadian law schools. Some NCA candidates felt that the Law Society did not do enough to educate its members, particularly those who are in a position to hire candidates, about the NCA process and that employers should not discriminate against candidates because they hold an NCA certificate rather than a Canadian law degree.

#### Summary and Strategies for Action

119. Although the Articling Consultation reveals that a significant proportion of participants are still on track to be called to the bar and that there is no great cause for concern, it also identifies three communities of interest in which there do appear to be areas of concern. Those are mature students, NCA students and students of racialized communities. It was suggested that the Law Society might consider facilitating ways in which members of these communities could strengthen and enhance their personal networks.
120. The Equity and Aboriginal Issues Committee and the Equity Initiatives Department, in consultation with the Equity Advisory Group, are already working on a number of initiatives to address barriers faced by Aboriginal, Francophone and equity-seeking communities when entering the profession. The following strategies for action seek to build on the activities undertaken by the Committee and the Equity Initiatives Department (the "Department") and address the areas of concern identified in the *Articling Consultation* report. Some strategies are generic and others address the specific needs of mature, racialized or NCA students. Strategies identified in this report will be undertaken within the budget of the Equity Initiatives Department.

*Strategy I - The Articling Consultation report will be provided to the career officers of the Ontario law schools for their consideration.*

121. The findings of the Articling Consultation indicate that impressions of the career development or career services offices maintained by law faculties were mixed. Those offices were fairly widely seen as offering a suite of useful services, such as resume and cover letter review, interview preparation and job listings, which most participants used.
122. However, participants noted that the offices and resources provided focused mainly on large Toronto law firms and larger government ministries. In response to this finding, law school career officers may wish to consider expanding its materials and resources to provide more information beyond articling positions and careers in large law firms or government, and include more information about alternative positions and careers.

123. A strong majority of participants noted that their job search had proceeded in two phases, the first, more narrow and the second much broader. Those participants indicated that they had originally failed to apply to a sufficient number of firms and had unrealistically restricted their applications based on the type of law the firm practised or the geographical location. By the time they realized this, the majority of participants found themselves behind in the search. Some participants were of the view that part of the issue may have been that the importance of finding an articling position, and the amount of work that may be required to do so, was not emphasized enough at an early stage in the process. Participants indicated that they do not have sufficient information, when entering law school, about the competitiveness of the market and the barriers faced by students when searching for articling positions. They noted that being informed in a timely fashion of the competitiveness of the marketplace for articling positions would be of assistance to students. Career officers may wish to consider these findings when developing its resources and information provided to students.
124. Some participants also noted that they felt isolated and excluded from law school extra curricular activities. Mature students, in particular women, were more likely to have partners and children, which affected their availability to participate in extra curricular activities that look good on resumes and provide a topic of conversation during job interviews. Mature students noted that they felt isolated during law school and they missed out on networking opportunities that come with socializing in participation in extra-curricular activities.
125. Racialized students also pointed to cultural conventions that would be difficult for them to adhere to. For example, most events involve wine and cheese and bars. Some students noted that, for religious reasons they do not drink.
126. The Committee was of the view that the *Articling Consultation* report should be provided to the law schools career officers of Ontario law schools to inform them of the findings of the consultation. The Committee and/or the Department will offer to collaborate with law schools career offices in developing strategies, if required, to address challenges faced in the articling search process and to develop and/or make existing networking opportunities inclusive of mature, NCA and racialized students.

*Strategy II - The Articling Consultation report will be provided to the Law Society's Task Force on Licensing and Accreditation for its consideration.*

127. The Articling Consultation report notes that a minority of participants did express criticism of the requirement to article as it is currently structured. Several participants suggested that more support from the practising profession might improve things for students seeking articles. Some noted that the requirement to article should be waived for some students. Participants also raised concerns about the NCA process. As a result, the Committee is of the view that the Articling Consultation report should be forwarded to the Law Society's Task Force on Licensing and Accreditation for its consideration.

*Strategy III – The Committee and/or the Department will develop guidelines and resources to assist legal employers in adopting recruitment policies and/or practices that are fair and inclusive, and take into account the unique experiences of mature, racialized and NCA students.*

128. All three communities that experienced the most difficulties in finding articling positions (NCA students, racialized students and mature students) indicated that they faced challenges during the recruitment process in part because of recruitment practices adopted by law firms.
129. Mature students experienced challenges that flowed from perceptions that others, such as interviewees, held of them. Most mature students believed that their age was a detriment to their job prospects. Mature students also mentioned that one key criteria in the hiring selection process remains the question of “fit”. Most noted that interviewers were frequently younger than they were and that this generally had an adverse impact on their chances of getting the job.
130. Female mature students who appeared to be of childbearing years faced the greatest barriers. They reported fending off illegal questions about whether they intend on starting a family or for those with a gap in their resume, whether they had family responsibilities that might detract from their job performance.
131. Although there were no reports of overt racism or of racially based inappropriate questions during interviews, participants inferred that their racialized status impeded their job search. Concerns were expressed particularly about private sectors articling positions, which were seen as depending on “fit”.
132. Participants, more particularly mature students and racialized students noted that they often felt isolated or excluded from existing networking opportunities in the recruitment process. Recruitment guidelines and resources will also include information about how to make existing networking opportunities more inclusive of mature, NCA and racialized students and enable them to participate fully in the recruitment process.
133. NCA students also noted the unsupportive attitudes of prospective employers, largely due to a lack of understanding by employers of the NCA process and qualifications of NCA accredited students.
134. The Committee and/or the Department decided that it would develop guidelines and resources to assist legal employers in adopting recruitment practices and/or policies that are fair and inclusive. Without limiting the direction that may be taken, the Committee and/or the Department is of the view that recruitment guidelines could be developed along with education modules or programs to assist those involved in the recruitment process.
135. The Committee is of the view that the Department, in collaboration with the NCA if warranted, should develop resources to assist employers in understanding the NCA process and the implications of being accredited. The Law Society could also develop a communications strategy to raise the profile of internationally trained lawyers with the Ontario profession.

*Strategy IV – The Committee and/or the Department will work to enhance student access to information about diverse career opportunities, including opportunities in legal clinics, with the government, in education, in corporations and in private practice.*

136. Most participants indicated that their law school organized career days or fairs, but that big firms and the larger government ministries were the primary participants. The students who participated in this type of career day felt that it was of little benefit to them and saw them as promotional opportunities for the firms.
137. A number of participants, however, commented favourably on career days or fairs that offered panel discussions concerning things such as what the practice of law is all about, or alternate career paths. These were seen, ultimately, as being of more practical use to the majority of students, who are unlikely to be pursuing a job on Bay St.
138. Without limiting the direction that may be taken to provide information about career choices to students, the Committee and/or the Department will consult with law schools and legal clinics and associations such as the Canadian Association of Black Lawyers, the Association des juristes d'expression française de l'Ontario and others, to identify ways to enhance student access to information about diverse career opportunities. This may include organizing panel discussions and networking opportunities involving not only large law firms and government but also legal employers that offer alternative types of career opportunities.

*Strategy V - The Committee and/or the Department will assess the effectiveness of its equity and diversity mentoring program to ensure that it meets the needs of diverse communities and, if required, that alternative models of mentoring be developed.*

139. Findings from the consultation suggested that mentoring experiences do not always prove in practice to be as promising as they appear. The Department will assess the effectiveness of its Equity and Diversity Mentoring Program to ensure that it meets some measure of quality control and the needs of diverse communities. The Committee suggested that the Department may wish to compile a list of available mentoring programs and provide links or referrals to other mentoring programs to ensure that students identify mentoring programs tailored to their needs.

*Strategy VI - The Committee and/or the Department, in collaboration with legal associations, law schools and law firms, will consider developing networking opportunities for mature, racialized and NCA students.*

140. The consultation indicated the importance of networks in the search for an articling position. Mature students, racialized students and NCA students all expressed concerns that their own networks were not as well developed as they might have been. This suggests that the Committee and/or the Department might consider facilitating ways in which members of these communities could strengthen and enhance their personal networks.
141. The Committee and/or the Department, in collaboration with legal associations, law schools and law firms, will consider developing networking opportunities for mature, racialized and NCA students.

*Strategy VII - The Committee and/or the Department will work with the NCA and the Professional Development and Competence Department, when appropriate, to provide NCA students with timely and consistent access to information about the articling process.*

142. NCA students expressed some concerns about the lack of information they receive from the NCA about the articling process and important timelines and deadlines. Since the consultation with students, the Department has been working with the NCA, the Professional Development and Competence Department and the Ontario government, to develop a career map to provide internationally trained lawyers timely and consistent access to information about the accreditation process and the Licensing Process, including the articling phase. The career map will be in plain language, consistent with career maps developed by other regulators about their process, and will be available on-line.

*Strategy VIII- he Committee will create a working group to consider strategies to assist NCA students overcome some of the challenges they face when entering the profession.*

143. In light of the unique needs of NCA students when entering the legal profession, the Committee was of the view that it should create a working group of its members with representatives of the Equity Advisory Group/Groupe consultatif en matière d'équité and of other Law Society committees, as required, to consider strategies to assist internationally trained lawyers overcome some of the challenges they face when entering the profession. In developing such strategies, the working group will consult with relevant committees and task forces of the Law Society.

Appendix 12

Law Society notice to LPC admission applicants

Education and Training Unit  
May 2006

Working as a solicitor is a rewarding career, but, as with any choice of occupation, the decision to pursue a legal career path should be thoroughly considered. It is inevitable that such a satisfying vocation will be accompanied by certain demands and will exist in an often fiercely competitive environment.

The Law Society wishes to ensure that all who consider entering the profession are aware of the challenges they are likely to face. In this context, the Law Society urges every LPC admission applicant to give careful thought to the following:

- In order to qualify as a solicitor, you must complete both the LPC and a training contract before you are eligible to apply for admission.
- Successful completion of the LPC is by no means a guarantee of an offer of a training contract.
- If you are unable to secure an offer of a training contract prior to beginning the LPC you should – *before* making the final decision to embark on the LPC – carefully research and pragmatically reassess your long-term chances of securing a training contract. The Law Society publishes an Annual Statistical Report, which contains details of the number of

people studying the LPC and the number of training contracts registered each year as well as information about trends in recruitment. You may find it helpful to refer to this publication.

- Completing the LPC entails a significant financial commitment. Fees for the course range from £5,000 to £9,000, and do not include living expenses.
- Many LPC students are able to minimise their exposure to risk by securing an offer of a training contract *before* they commence the LPC. However, some firms prefer to recruit trainees who have already completed the LPC or who are studying on the course.
- Many LPC graduates fail to secure a training contract at first attempt, and some fail to obtain one altogether. Failure to secure a training contract will mean that you will be unable to continue your training as a solicitor.
- As you plan to start an LPC, you should be aware that the course is deliberately practical and participative in its nature. Preparation for the sessions is essential. Research has shown that students who lack motivation and commitment to the course are less likely to pass it. You should consider whether you have the determination to succeed on the course and whether a full- or part-time course would be most suitable for you.

#### Tips from the Law Society

- Bear in mind that the number of training contracts available varies each year. In any given year, the number of training contracts on offer could be much lower than the number of qualified applicants.
- Be aware that you can develop skills on the LPC which you could use to pursue other careers or occupations. For example, some LPC graduates pursue careers in the insurance and financial services industries.
- Consider the merits of all training contract options: full-time training contract, part-time training contract and 'part-time study' training contract as well as training opportunities in commerce and industry, the public sector and private practices both large and small.
- Seek advice from careers advisors.
- Research a range of firms and other training contract providers. You should be aware that the area of law or the type of firm you are interested in may affect your chances of getting a training contract.
- If possible, obtain practical legal experience as this will give a valuable insight into the legal environment and help you decide which areas you wish to work in, or indeed, whether the legal profession is for you at all. It will also assist in securing a training contract if you have relevant experience in a legal environment.
- Consult information published by the following websites:
  - [www.lawsociety.org.uk](http://www.lawsociety.org.uk)
  - [www.lcan.org.uk](http://www.lcan.org.uk)
  - [www.tsg.org](http://www.tsg.org)
  - [www.traineesolicitor.co.uk](http://www.traineesolicitor.co.uk)

### Excerpt from Leo Cussen Institute Web Site

Leo Cussen Institute was established in 1972 by an Act of the Victorian Parliament under the auspices of the Law Institute of Victoria, the Victorian Bar Council, the University of Melbourne and Monash University to provide *'continuing legal education for legal practitioners in Victoria and to perform certain functions in connexion with legal education'*

It is the principal provider of continuing legal education and professional development programs in Victoria. Over time its brief has expanded to encompass the provision of training, both legal and skills based, to include the wider community.

### Practical Training Course

The Practical Training Course offers to law graduates, wishing to be admitted to practise as an Australian Lawyer in Victoria, an alternative to completing one year of Articled Clerkship in a law firm. Each year over a seven month period, from March to October, Leo Cussen Institute trains 140 law graduates for admission to practise.

All Practical Training Course applicants must have passed all the subjects required by the Council of Legal Education and be a graduate of a law school of an approved Australian university. Overseas applicants may also be permitted by the Council of Legal Education to enrol in the Practical Training Course.

The purpose of the Practical Training Course is to provide sufficient practical knowledge and training to enable its graduates to cope both competently and confidently with matters they may have to deal with in the first years after they have been admitted to practise law.

Wherever appropriate and possible, Leo Cussen Institute Practical Training Course students 'learn by doing'. The Practical Training Course is structured to ensure that students gain skills by completing a series of exercises designed to resemble legal practice as closely as possible. While it is accepted that there is no substitute for experience, the aim is to provide the training in a manner which will enable students to gain the experience necessary for competence in practice.

The Practical Training Course runs from March to October annually. Course graduates are usually able to apply for admission to practise as an Australian Lawyer in the Supreme Court of Victoria on the first Court sitting day in the following November or December.

### Online Practical Training Course

The Leo Cussen Institute Online Practical Training Course (Online PTC) was approved by the Council of Legal Education on 31 May 2004.

From 2004 Leo Cussen Institute offers an Online PTC in addition to the existing Onsite Practical Training Course (Onsite PTC).

### Features

- teaching with a practical emphasis providing daily communication and monitoring of progress

- dedicated Mentors and Instructors
- extensive Course Reference Materials + online materials
- extension elective topics
- current matters - file work and appearances
- continuous assessment and feedback
- proven and supported educational software

The Online PTC and the Onsite PTC offers to law graduates, wishing to be admitted to practise as an Australian Lawyer in Victoria (Australia), an alternative to completing one year of Articles of Clerkship in a law firm.

Both Courses are approved as a Graduate Diploma in Legal Practice.

Applications for the Online PTC and the Onsite PTC open in October each year.

Click here to visit [www.leocussenonline.com](http://www.leocussenonline.com) for more information on Online PTC.

#### About the Practical Training Course

- [Areas of Practice](#)
- [Establishing and Running a Legal Practice](#)
- [Course features](#)

The Practical Training Course of the Leo Cussen Institute provides one of the means of qualifying, under the rules of the Council of Legal Education, for admission to practise as an Australian Lawyer of the Supreme Court of Victoria.

An applicant for admission must also have passed all the subjects required, and be a graduate of a law teaching institution approved by the Council of Legal Education. Overseas applicants for admission may also be permitted by the Council of Legal Education to enrol for the course as an alternative to service as a Law Clerk.

The course should be considered as a link in the continuum between academic training in law and practice and as the first stage of a professional career, rather than the last stage of academic training.

Its purpose is to give sufficient practical information and training to enable the graduate to cope both competently and confidently with matters likely to arise in the first few years after admission.

#### Areas of Practice and Skills Dealt With in the Course

The areas of practice dealt with in the course include:

1. Administrative Law Practice
2. Advocacy - General, Civil and Criminal
3. Civil Litigation Practice in Magistrates', County, Supreme and Federal Courts, and Enforcement of Judgments
4. Commercial Practice, including Business Names, Sale and Purchase of Small Businesses, Partnerships, and Commercial Leases
5. Company Law Practice

6. Compensation Systems
7. Consumer Law
8. Conveyancing
9. Criminal Procedure
10. Employment and Industrial Law
11. Ethics
12. Family Law Practice (under the Family Law Act and state law)
13. Revenue Law, including Taxation and Duties
14. Trusts
15. Wills and Administration of Deceased Estates

In addition, Bankruptcy, Intellectual Property, Planning Law and other specialised areas, either related to the main topics or not otherwise covered, will be offered by way of elective topics towards the end of the course.

Lawyers' skills such as advocacy, taking instructions, drafting, negotiating, and communicating are developed through the course. In several topics and current matters 'court' appearances will be made, in some cases using court rooms provided by the County and Family Courts. Skills days are also included in the program to provide a general introduction to these skills.

#### Features of the Course

##### Direct Teaching

There is inevitably some direct teaching, mainly by group instruction. Students work in groups of 14, and are assisted by practising members of the legal profession experienced in the particular topic. Students can expect to meet a wide range of practitioners through this part of the course.

##### Practical Emphasis

The emphasis of the course is essentially practical, in that the student will carry out exercises corresponding to the work reasonably expected in practice. Where possible, the exercises are linked, to provide an overview of the area of practice.

##### Work Stations and Leo Document Exchange (LDX)

Each student is allocated an individual workstation and a pigeon-hole in the Leo Document Exchange (LDX). The workstation number and pigeon-hole number are the same and serve as a means of location, identification and communication between students.

##### The Leo Bank

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n the first few weeks of the course, students will set up their own "legal practice", including Trust and Office books of account. A "Bank" is operated at the Institute, by a retired Bank Manager, for the conduct of these accounts. The books of account are audited by the Law Institute inspection team.

##### Current Matters

As part of their legal practice, students are required to conduct about 15 files during the course, applying the knowledge gained from instruction. These files cover a wide range of areas of legal

practice and present the usual legal and practical problems found in real matters. This program is known as the "current matters program". The Institute conducts the Leo Registry to act as a number of government offices, court registries, and so on, for the purposes of the program.

### Unstructured Days

Instruction is timetabled for specific days. In addition, some days each week are set aside as "unstructured". On these days, students have time to work on course exercises and "current matter" files. Lectures or small group instruction sessions, appointments for "current matter" settlements or "court" appearances, and group meetings may also be programmed for those days.

On unstructured days, one or more experienced members of the profession may be available as Consultants to discuss problems arising out of the course program and to talk to students generally about the profession. Sometimes they will be supplemented by two or three Instructors who will attend to give assistance in particular topics.

### Elective Topics

These elective courses are designed to allow students a limited number of courses of their own choice by way of extension of the general courses covered already or in new areas of practice. Two weeks have been set aside for this, and further details of the courses available (and the minimum requirements) will be announced during the first half of the course. It is anticipated, however, that topics to be covered will include:

- Advanced Problem Solving
- Advanced Interviewing
- Bankruptcy
- Children's Court Practice
- Consumer Law
- Conveyancing (Extension) - Pre-Selling
- Crime 2 (Extension)
- Discrimination Law
- Environmental Law
- Family Law (Extension)
- Intellectual Property
- Mediation
- Planning Law
- Superannuation
- Taxation (Extension)
- Tribunal Advocacy

### Course Reference Materials

All participants in the course receive a detailed set of reference materials for each topic, both for use during the course and for assistance later in practice. Guidance notes are provided in each of the "current matter" files.

### Optional Topics and Current Matters

Students are given some options in their choice of Current Matters and some topics later in the course. Along with the Elective topics, this enables students to develop some of their own areas of interest.

Students will elect to take either the second Conveyancing Current Matter (Strata Title and Mortgages) or as an alternative the Company Liquidation Matter.

The General Practice, Bankruptcy and Part IV (TFM) Application Current Matters are alternatives, and students will opt for one. These are problem-based, rather than being complete files.

Two days in August have been specified as "In-Basket Days", and on these days a number of problems will be issued in the morning, for resolution the same day. In the following week, students will have the option to take either In-Basket (solicitors) problems or Duty Lawyer (courts and advocacy) problems.

### Outside Visits

Visits are made to Courts, government and semi-government offices, registries and other bodies with which students are likely to deal when in practice.

### Clinical Training Program

The Clinical Training Program was introduced in 1986 in conjunction with Victoria Legal Aid to provide an opportunity for students to have some real-life client contact and to practice their interviewing skills. Students will be rostered two half-day sessions at Victoria Legal Aid's various locations to observe such interviews in both an office setting and a court or tribunal setting. Sessions available include city and suburban advice clinics, various court and tribunal duty lawyer services and mental health hospital ward visits.

### Visiting Speakers

Arrangements are made for visiting speakers to talk on aspects of legal practice. These talks may range from overview lectures on particular areas of practice to specialist subjects such as the musculo-skeletal system. The Student Association may also organise lunchtime talks.

### Professional Placement

The course has a three-week "professional placement" segment in September. Students are assigned to firms of solicitors, Community Legal Services or other legal offices, and will have the opportunity to join in the work of that firm or office. During this placement, students should enter in the relevant pages of their student diary the activities undertaken on each day, and the diary should be handed to the group Mentor on their return.

### Consultants' Committees

The materials for the course are prepared by the full-time professional staff, sometimes in consultation with an outside Consultant. In some topics, a Consultant's Committee assists in the

preparation of materials; these committees consist of members of the profession experienced in the area of practice covered by the topic.

The purpose of these committees is to ensure that the course is relevant and practical and its materials are appropriate, accurate and up-to-date.

#### Students' Comments

At the end of each topic, and at the end of the course, students are invited and encouraged to make comments on the materials, methods of instruction and other aspects of the course. These comments are used for the continuing development and improvement of the course.

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

- (1) Copy of a letter from Mr. Kenneth Jarvis, Secretary to Professor Thomas G. Feeney, Dean, Faculty of Law, University of Ottawa dated April 15, 1969 with a copy of the amended 1957 requirements of the Law Society of Upper Canada pertaining to the approval of Law Faculties for admission to the Bar Admission Course.  
(Appendix 1, pages 45 – 50)
- (2) Copy of a Memorandum from John J. L. Hunter, Q.C, Chair, Federation of Law Societies of Canada Task Force on the Accreditation of the Canadian Common Law Degree to Provincial and Territorial Law Societies dated November 30, 2007 with a copy of the Task Force's draft discussion paper.  
(Appendix 2, pages 51 – 98)
- (3) Copy of the Skills and Professional Responsibility Competencies.  
(Appendix 3, pages 99 – 102)
- (4) Copy of the results of a survey completed by the Ontario Deans re: Skills and Professional Responsibility Competency Comparisons Law Schools and Law Society of Upper Canada.  
(Appendix 4, pages 103 – 112)
- (5) Copy of an Excerpt from Student Evaluations – 2006.  
(Appendix 5, pages 113 – 161)
- (6) Copy of the Director of Professional Development and Competence's background analysis of the articling situation re: Articling Requirement and Projected Increase in Candidates for Licensing.  
(Appendix 7, pages 163 – 165)
- (7) Copy of a Sample Education Plan: Thirteen Lawyering Skills.  
(Appendix 8, pages 166 – 167)
- (9) Copy of a chart setting out the pros and cons of Consultation Options.  
(Appendix 11, pages 183 – 184)

It was moved by Professor Krishna, seconded by Ms. Pawlitzka, that Convocation approve the dissemination of this report to the profession, law schools and legal organizations for the purposes of receiving written comments on Part 3 (Skills and Professional Responsibility) and Part 4 (Articling).

That written comments be accepted until May 31, 2008 after which the Task Force will prepare a further report for Convocation's consideration.

Carried

ROLL-CALL VOTE

Aaron	Against	Lawrie	For
Aitken	For	Legge	For
Anand	For	McGrath	For
Backhouse	For	Millar	For
Banack	For	Minor	For
Boyd	For	Pawlitzka	For
Bredt	For	Porter	For
Campion	For	Potter	For
Carpenter-Gunn	For	Pustina	For
Caskey	For	Rabinovitch	For
Chahbar	For	Robins	For
Conway	For	Rock	For
Crowe	For	Ross	Against
Dickson	For	Ruby	For
Dray	For	St. Lewis	For
Finlayson	For	Schabas	For
Gold	For	Sikand	For
Gottlieb	For	C. Strosberg	For
Hare	For	Swaye	For
Hartman	For	Symes	For
Heintzman	For	Tough	For
Henderson	For	Warkentin	For
Krishna	For	Wright	For

Vote: 44 For; 2 Against

A friendly amendment was accepted that sub paragraph d. with the words "the consultation consider any other options" be added to paragraph 103 on page 32 of the Report.

The Treasurer announced that the Equity and Aboriginal Issues Committee be involved in deciding who we will consult with and a representative of the Committee will receive submissions and attend any meetings of the Task Force at which submissions will be considered.

## HERITAGE COMMITTEE REPORT

The Treasurer announced that Convocation earlier adopted a resolution that Convocation reverse its 1993 policy eliminating the Law Society's contribution of \$25,000 per portrait for the painting of portraits of the Chief Justices of the Superior Court and the Chief Justice of Ontario.

Report to Convocation  
January 24, 2008

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Heritage Committee

Committee Members  
Constance Backhouse (Chair)  
Gary Lloyd Gottlieb (Vice-Chair)  
Robert Aaron  
Patrick Furlong  
Allan Lawrence  
Laura Legge

Purposes of Report: Decision

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

## COMMITTEE PROCESS

1. The Committee met on January 10, 2008. Committee members Constance Backhouse (Chair), Gary Lloyd Gottlieb (Vice-Chair), Bob Aaron, Allan Lawrence and Laura Legge attended. Staff members Susan Lewthwaite, Terry Knott and Sophia Sperdakos also attended.

## CHIEF JUSTICE PORTRAITS

### MOTION

2. That Convocation reverse its 1993 policy eliminating the Law Society's contribution of \$25,000 per portrait for the painting of portraits of Chief Justices of Ontario.

### Background and Introduction

3. The Law Society's has a long-standing policy of providing a stipend to former Treasurers for the painting of a portrait to honour their contribution to the profession.

4. For over a century the Law Society has also contributed financially to the cost of painting the portraits of Chief Justices of Ontario.

5. Following are transcripts of the relevant excerpts from the Minutes of Convocation:

1st September 1884, Trinity Term.

... On the motion of Mr. Irving, seconded by Mr. Read, it was Ordered, That as it is desirable to settle a rule upon the subject of adorning the walls of Osgoode Hall with the portraits of those judges who have been appointed Chief Justices, the custom shall be restricted to the portraits of such judges as shall hereafter be appointed Chief Justices of Ontario.

7th February 1888, Hilary Term.

In pursuance of notice given by Mr. McCarthy, it was moved, and -- Ordered, that the resolution of Convocation passed on 1st September 1884, relating to the portraits of Chief Justices, be rescinded....  
Ordered, that the portraits of the Chief Justices of the Queen's Bench and Common Pleas Division be painted and placed in Osgoode Hall, and that it be referred to a Committee consisting of Messrs. Blake, Bruce, Irving, McCarthy, and Maclennan, to report upon the artist to be selected as well as the size of the painting.

6. The policy remained in place until 1993. At that time Convocation reversed its policy. During the budget discussions Convocation sought ways to reduce expenditures. The Report of the Priorities and Planning Subcommittee of the Finance Committee addressed the issue as part of its "recommendations as to Budget Guidelines and Fees for 1993/94." The memorandum attached to the report in the Convocation Files indicates that,

Convocation will be asked to change the policy of the portraits of the Chief Justices (now that the portrait of Chief Justice Callaghan is complete) and that in future only Treasurers' portraits be done.

7. The Chair of the Priorities and Planning Committee noted,

There are a number of difficult decisions within the secretariat. For example, we pay \$25,000 per portrait now for various defined groups of people; ought we to continue to pay \$25,000 to have the portraits of the judiciary painted at our expense? I make no comment on that. It is our committee's recommendation that in these times the Law Society should not continue after this particular round to pay for these portraits.

The motion was approved.

8. Despite the change in policy, however, on Nov. 28, 1997 Convocation approved a motion that the Law Society provide funds amounting to \$50,000 (then approximately \$2 per member) towards the portraits of two Chief Justices. Since there had been no previous requests between 1993 and 1997 the practical result of this decision was that the 1993 policy was never implemented.

9. In the discussion at Convocation in 1997 it was noted that the request for funds for these portraits had to be made as a separate motion because such a development reversed Convocation policy established in 1993. The then Chair of Finance noted,
 

If you choose to adopt...the option of including the \$2, you will, in effect, also implicitly or explicitly be reversing Convocation policy in respect of that matter.
10. In supporting the motion, one of the benchers noted,
 

For a \$2 contribution by every member of the Society, it is my respectful view we ought not to discontinue the 200-year tradition of painting the portraits of each Chief Justice. We have a duty to include a historical record behind us...
11. There have not been any other formal requests for funds since 1997 and an allocation of funds has not been included in annual budgets since then. Several years ago, however, there were informal inquiries about a portrait for the current Chief Justice of the Superior Court, Heather Smith, but they never went any further than this. As the tradition appears to have been to paint the portraits during the earlier years of a sitting Chief Justice there are two portraits that would appear to be in line to be done, those of Chief Justice of the Superior Court, Heather Smith, and Chief Justice of Ontario, Warren Winkler.
12. The Law Society retains ownership of the portraits for which it has made a contribution. Accordingly, continuing the tradition would ensure continuity of the historic narrative.
13. The Chief Executive Officer requested that the Committee consider this issue for Convocation. If the Committee and Convocation were to determine that the Law Society should make the \$25,000 contribution to the Chief Justice portraits, the Law Society could then budget accordingly.

#### Discussion

14. The Committee has reviewed the historic information on the portraits, the context within which the 1993 policy change was made, the exception made to the policy in 1997, and the fact that the policy has not been implemented to date.
15. The Law Society has a rich and varied history that it has celebrated for over 200 years. Its history is highlighted by many physical symbols, not the least of which is its remarkable portrait collection consisting of portraits of both Treasurers and Chief Justices, spanning hundreds of years. Not only is the portrait collection of immeasurable value to the Law Society and to the profession, it is one of the most significant portrait collections in the province. By continuing its contribution, the Law Society would ensure an unbroken line of continuity and in the case of Chief Justice Smith's portrait, ensure that the first female Chief Justice's contribution is reflected in this historic collection.
16. The Law Society must, of course, keep in mind that it is members' fees that pay for each \$25,000 contribution to the Chief Justice portraits. The per member contribution to one portrait is approximately \$0.79. In the Committee's view this is an extremely reasonable expenditure, the long-term value of which is incalculable.
17. The tradition of painting portraits of both Treasurers and Chief Justices is the Law Society's, not the government's. The collection belongs to the Law Society. As its

steward, the Law Society should continue to build on the collection and preserve and celebrate it.

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Ross presented the Professional Regulation Committee Report.

Report to Convocation  
January 24, 2008

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Professional Regulation Committee

Committee Members  
Clayton Ruby, Chair  
Julian Porter, Vice-Chair  
Heather Ross, Vice-Chair  
Linda Rothstein, Vice-Chair  
Melanie Aitken  
Tom Conway  
Brian Lawrie  
George Finalyson  
Patrick Furlong  
Gary Gottlieb  
Ross Murray  
Sydney Robins  
Bonnie Tough  
Roger Yachetti

Purpose of Report: Decision

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 January 10, 2008. In attendance were Clay Ruby (Chair), Heather Ross (Vice-chairs), Tom Conway, George Finlayson, Gary Gottlieb, Brian Lawrie (by telephone), Ross Murray and Bonnie Tough. Kim Carpenter-Gunn also attended with representatives from LawPRO, Michelle Strom and Duncan Gosnell. Staff attending were Naomi Bussin, Lesley Cameron, Malcolm Heins, Terry Knott, Dulce Mitchell, Elliot Spears and Jim Varro.

### NEW BY-LAWS, *RULES OF PROFESSIONAL CONDUCT* AND GUIDELINES ON REQUIREMENTS FOR SUSPENDED LICENSEES AND LICENSEES WHO HAVE UNDERTAKEN NOT TO PRACTICE

#### Motion

2. That Convocation
  - a. Amend By-law 7.1 [Operational Obligations and Responsibilities] by adding the following:

#### PART IV

#### OBLIGATIONS RESULTING FROM SUSPENSION

#### Interpretation

8. In this Part,

“existing client” means,

- (a) a person who is a client of a suspended licensee when a suspension order is made against the licensee, or
- (b) a person who becomes a client of the suspended licensee after the suspension order is made but before the suspension begins;

“former client” means a person who was a client of a suspended licensee before a suspension order was made against the licensee but who was not a client when the order was made;

“prospective client” means a person who seeks to retain a suspended licensee after the suspension order is made the licensee but before the suspension begins;

“suspended licensee” means a licensee who holds a Class L1 licence or a Class P1 licence and who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Notice requirements before suspension begins

9. (1) A suspended licensee shall before the suspension begins, but not later than the date on which the suspension begins,
- (a) notify every existing client, on whose matters the work will not be completed by the suspended licensee before the suspension begins, of the suspension order and that,
    - (i) the suspended licensee will be unable to complete the work,
    - (ii) the client will need to retain another licensee to complete the work, and
    - (iii) the suspended licensee, subject to any rights that the suspended licensee may have over the client’s file, will transfer the file to the licensee, if any, retained by the client to complete the work or will return the file to the client; and
  - (b) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection 14 (1) of the name and contact information of the licensee to whom the suspended licensee has given possession of the client’s documents and files.

Compliance with subclauses (1) (a) (i) to (iii) not required

(2) A suspended licensee is not required to comply with the notice requirements mentioned in subclauses (1) (a) (i) to (iii) if the only work remaining to be completed on the client’s matter is work mentioned in section 12 or 13, but, in such a case, the suspended licensee shall, before the suspension begins, notify the client of the name and contact information of the licensee retained by the suspended licensee to complete the work.

Notice requirements: during suspension

10. A suspended licensee shall, during the suspension,
- (a) notify all persons who contact the suspended licensee’s place of business of the suspension order; and
  - (b) notify any existing client or former client who contacts the suspended licensee’s place of business of the name and contact information of another licensee who has been given possession of the clients’ documents and files.

Notice requirements: prospective clients

11. A suspended licensee, at the time a prospective client seeks to retain the suspended licensee, shall notify the prospective client of the suspension order.

Work remaining on file: final report to client

12. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is a final report to the client, the suspended licensee shall, before the suspension begins, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

Work remaining on file: fulfilment of undertakings

13. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is the fulfillment of one or more undertakings given by the suspended licensee, the suspended licensee shall retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

Additional requirements: preparation of will, power of attorney, corporate records

14. (1) This section applies to a suspended licensee who performs or has performed any of the following work for a client:

1. Preparation of a will.
2. Preparation of a power of attorney.
3. Preparation of, or preparation and continued maintenance of, corporate records.

Requirement re original documents

- (2) A suspended licensee shall, before the suspension begins,
  - (a) return to the client all original documents; or
  - (b) transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work.

Real estate law: direction re Teranet access disk

15. A suspended licensee who has access to the Teranet system shall, on or before the date the suspension begins, complete and file with the Society, in a form provided by the Society, a direction authorizing the Society to take all steps necessary to cancel the suspended licensee's Teranet access disk for the period of the suspension.

Return of photo identification card

16. A suspended licensee shall, on or before the date the suspension begins, return to the Society any photo identification card issued to her or him by the Society.

## Students

17. A suspended licensee, who has accepted a person into service under articles of clerkship where the period of service includes any or all of the period of the suspension, shall, before the suspension begins,

- (a) notify the person of the suspension order and that the suspended licensee will not be able to retain the person in service under articles of clerkship after the suspension begins;
- (b) arrange for another licensee, who is authorized and approved by the Society to do so, to accept the person into service under articles of clerkship after the suspension begins; and
- (c) arrange with the Society for the person's service under articles of clerkship to be transferred from the suspended licensee to the other licensee effective the date on which the suspension begins.

## Report to Society on compliance

18. A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this Part.

## Permission to be exempt from requirement

19. A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

## PARTIE IV

### OBLIGATIONS EN CAS DE SUSPENSION

## Interprétation

8. Les définitions qui suivent s'appliquent à la présente partie.

« ancien client » Personne qui était le client ou la cliente d'un titulaire de permis suspendu ou d'une titulaire de permis suspendue avant le rendu de l'ordonnance de suspension, mais qui ne l'est plus à ce moment-là. (« former client »)

« client actuel » S'entend :

- a) soit de la personne qui est le client ou la cliente d'un titulaire de permis suspendu ou d'une titulaire de permis suspendue lors du rendu de l'ordonnance de suspension;

- b) soit de la personne qui devient le client ou la cliente d'un titulaire de permis suspendu ou d'une titulaire de permis suspendue après le rendu de l'ordonnance de suspension, mais avant le début de la suspension. (« existing client »)

« client éventuel » La personne qui cherche à retenir les services d'un titulaire de permis suspendu ou d'une titulaire de permis suspendue après le rendu de l'ordonnance de suspension, mais avant le début de la suspension. (« prospective client »)

« ordonnance de suspension » Ordonnance rendue en application de la Loi qui a pour effet de suspendre un permis autorisant à exercer le droit en Ontario en qualité d'avocat ou à fournir des services juridiques en Ontario, que la suspension commence lors du rendu de l'ordonnance ou par la suite. (« suspension order »)

« titulaire de permis suspendu » Titulaire de permis qui détient un permis de catégorie L1 ou P1 et qui fait l'objet d'une ordonnance de suspension. (« suspended licensee »)

Avis à donner avant le début de la suspension

9. (1) Les titulaires de permis suspendus font ce qui suit au plus tard à la date du début de la suspension :

- a) ils avisent chacun et chacune des clients actuels dans le cadre des affaires desquels ils n'ont pas terminé leurs travaux avant le début de la suspension de l'ordonnance de suspension elle-même et de ce qui suit :
- (i) ils ne seront pas en mesure de terminer les travaux,
  - (ii) le client ou la cliente devra retenir les services d'un autre ou d'une autre titulaire de permis pour terminer les travaux,
  - (iii) sous réserve des droits qu'ils peuvent avoir sur le dossier du client ou de la cliente, ils le transféreront à la ou au titulaire de permis retenu par le client ou la cliente pour terminer les travaux, le cas échéant, ou au client ou à la cliente même;
- b) ils avisent chacune et chacune des clients actuels et des anciens clients pour lesquels ils ont effectué des travaux visés au paragraphe 14 (1) du nom et des coordonnées du ou de la titulaire de permis à qui ils ont remis la possession des documents et des dossiers du client ou de la cliente.

Cas où l'observation des alinéas (1) a) (i) à (iii) est facultative

(2) Les titulaires de permis suspendus ne sont pas tenus de donner les renseignements exigés aux sous-alinéas (1) a) (i) à (iii) si les seuls travaux qui restent à terminer dans le cadre de l'affaire du client ou de la cliente sont visés à l'article 12 ou 13. Dans ce cas, toutefois, ils avisent le client ou la cliente, avant le début de la suspension, du nom et des coordonnées du ou de la titulaire de permis dont ils retiennent les services pour terminer les travaux.

Renseignements à donner pendant la suspension

10. Pendant la durée de la suspension, les titulaires de permis suspendus :
- a) d'une part, avisent toutes les personnes qui entrent en contact avec leur lieu d'affaires de l'ordonnance de suspension;
  - b) d'autre part, avisent chaque client actuel ou cliente actuelle et chaque ancien client ou ancienne cliente qui entre en contact avec leur lieu d'affaires du nom et des coordonnées de l'autre titulaire de permis à qui ils ont remis la possession des documents et des dossiers le ou la concernant.

Renseignements à donner : clients éventuels

11. Les titulaires de permis suspendus avisent de l'ordonnance de suspension le client éventuel ou la cliente éventuelle qui cherche à retenir leurs services.

Travaux restants : rapport final destiné au client

12. Si, à la date du début de la suspension, le seul travail qui reste à terminer aux titulaires de permis suspendus dans le cadre de l'affaire d'un client ou d'une cliente est le rapport final destiné à celui-ci ou à celle-ci, ils retiennent, avant le début de la suspension, les services d'un ou d'une autre titulaire de permis, qui est autorisé à cette fin, pour qu'il ou elle examine le dossier du client ou de la cliente et qu'il ou elle rédige et lui envoie le rapport final.

Travaux restants : respect d'engagements

13. Si, à la date du début de la suspension, les seuls travaux qui restent à terminer aux titulaires de permis suspendus dans le cadre de l'affaire d'un client ou d'une cliente sont de respecter un ou plusieurs engagements qu'ils ont pris, ils retiennent, avant le début de la suspension, les services d'un ou d'une autre titulaire de permis, qui est autorisé à cette fin, pour qu'il ou elle prenne toutes les mesures nécessaires au respect des engagements.

Autres exigences : testaments, procurations ou registres sociaux

14. (1) Le présent article s'applique aux titulaires de permis suspendus qui ont effectué l'un ou l'autre des travaux suivants pour un client ou une cliente :
1. La rédaction d'un testament.
  2. La rédaction d'une procuration.
  3. La préparation de registres sociaux ou leur tenue à jour.

Exigences : originaux

- (2) Avant le début de la suspension, les titulaires de permis suspendus :
- a) soit retournent tous les originaux au client ou à la cliente;

- b) soit transfèrent le dossier du client ou de la cliente, originaux compris, à un ou une autre titulaire de permis qui est autorisé à effectuer les travaux nécessaires.

Droit immobilier : directive concernant le disque d'accès à Teranet

15. Au plus tard à la date du début de la suspension, les titulaires de permis suspendus qui ont accès au réseau Teranet remplissent et déposent auprès du Barreau une directive rédigée selon la formule fournie par ce dernier, qui autorise celui-ci à prendre toutes les mesures nécessaires pour rendre inopérant leur disque d'accès à Teranet pendant la durée de la suspension.

Remise de la carte d'identité

16. Au plus tard à la date du début de la suspension, les titulaires de permis suspendus remettent au Barreau la carte d'identité avec photo qu'il leur a délivrée.

Étudiants

17. Les titulaires de permis suspendus qui ont accepté une personne en service en vertu de la convention de stage pour une durée de service qui tombe en totalité ou en partie dans la période de suspension font ce qui suit avant le début de la suspension :

- a) ils avisent la personne de l'ordonnance de suspension et du fait qu'ils ne pourront pas la garder en service en vertu de la convention de stage après le début de la suspension;
- b) ils prennent des dispositions pour qu'un ou une autre titulaire de permis, qui est autorisé et approuvé par le Barreau pour ce faire, accepte la personne en service en vertu de la convention de stage après le début de la suspension;
- c) ils prennent les dispositions auprès du Barreau pour que le service que la personne effectue auprès d'eux en vertu de la convention de stage soit transféré à l'autre titulaire de permis à compter de la date du début de la suspension.

Reddition de comptes au Barreau quant à l'observation

18. Les titulaires de permis suspendus rédigent et déposent auprès du Barreau, dans les 30 jours du début de la suspension, un rapport rédigé selon la formule fournie par celui-ci, qui confirme et qui expose en détail la façon dont ils observent la présente partie.

Permission d'être dispensé

19. Les titulaires de permis suspendus peuvent demander par écrit au Barreau d'être dispensés d'une exigence prévue à la présente partie ou de la modifier. Le Barreau peut alors les dispenser de l'exigence ou la modifier, sous réserve des conditions qu'il impose.

- b. Amend By-Law 9 [Financial Transactions and Records] by adding the following:

## PART II.1

## HANDLING OF MONEY BY LICENSEE WHOSE LICENCE IS SUSPENDED

## Interpretation

2.1 In this Part,

“suspended licensee” means a licensee who holds a Class L1 or a Class P1 licence and who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

## Handling of money by suspended licensee

2.2 (1) Subject to subsection (2) and section 2.3, a suspended licensee shall not, during the suspension receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

## Exception

(2) A suspended licensee may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the suspended licensee for the person or group; or
- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

## Trust account

2.3 (1) A suspended licensee shall, within 30 days of the beginning of the suspension,

- (a) withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, and, as required, pay to the appropriate person,
  - (i) money properly required for payment to a person on behalf of a client,
  - (ii) money required to reimburse the suspended licensee for money properly expended, or for expenses properly incurred, on behalf of a client,
  - (iii) money required for or toward payment of fees for services performed by the suspended licensee, and

- (iv) all other money that belongs to the suspended licensee or to a person other than a client;
- (b) after complying with clause (a), withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, all money belonging to a client and pay the money to,
  - (i) the client,
  - (ii) another licensee to whom the client has directed the suspended licensee to make payment, or
  - (iii) another licensee who has agreed with the suspended licensee to accept payment in the event that the suspended licensee is unable to comply with subclause (i) or (ii); and
- (c) after complying with clauses (a) and (b),
  - (i) close every trust account that was kept in the name of the suspended licensee, and
  - (ii) cancel or cause to be cancelled the suspended licensee's signing authority on every trust account that was kept in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

#### Compliance with clause (1) (b) not required

(2) A suspended licensee is not required to comply with clause (1) (b) if the client's file is transferred, in accordance with Part IV of By-Law 7.1, to another licensee in the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

#### Application of sections of Part IV

(3) Subsection 9 (3) and sections 10, 11 and 12 apply to the withdrawal of money from a trust account under this section.

#### Report to Society on compliance

(4) A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this section.

#### Permission to be exempt from requirement

2.4 A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

## PARTIE II.1

## INTERDICTION D'EFFECTUER DES OPÉRATIONS TOUCHANT DES FONDS – TITULAIRE DE PERMIS SUSPENDUS

## Interprétation

2.1 Les définitions qui suivent s'appliquent à la présente partie.

« ordonnance de suspension » Ordonnance rendue en application de la Loi qui a pour effet de suspendre un permis autorisant à exercer le droit en Ontario en qualité d'avocat ou à fournir des services juridiques en Ontario, que la suspension commence lors du rendu de l'ordonnance ou par la suite. (« suspension order »)

« titulaire de permis suspendu » Titulaire de permis qui détient un permis de catégorie L1 ou P1 et qui fait l'objet d'une ordonnance de suspension. (« suspended licensee »)

## Interdiction d'effectuer des opérations touchant des fonds

2.2 (1) Sous réserve du paragraphe (2) et de l'article 2.3, les titulaires de permis suspendus ne doivent pas, pendant la durée de la suspension, recevoir de fonds ni d'autres biens d'une personne ou d'un groupe de personnes ou en leur nom ni effectuer d'autres opérations touchant des fonds ou d'autres biens qui sont détenus en fiducie pour une personne ou un groupe de personnes.

## Exception

(2) Les titulaires de permis suspendus peuvent recevoir des fonds d'une personne ou d'un groupe de personnes ou en leur nom dans les cas suivants :

- a) il s'agit du paiement d'honoraires pour des services qu'ils ont fournis à cette personne ou à ce groupe de personnes;
- b) il s'agit du remboursement de fonds légitimement dépensés ou de frais légitimement engagés au nom de cette personne ou de ce groupe.

## Compte en fiducie

2.3 (1) Les titulaires de permis suspendus font ce qui suit dans les 30 jours du début de la suspension :

- a) ils retirent les fonds suivants de chaque compte en fiducie ouvert à leur nom ou au nom du cabinet où ils sont associés ou employés et, au besoin, ils les versent à la personne pertinente :
  - (i) les fonds légitimement requis pour effectuer un paiement au nom d'une cliente ou d'un client,

- (ii) les fonds requis pour se rembourser des fonds dépensés ou engagés légitimement au nom d'une cliente ou d'un client,
  - (iii) les fonds requis pour régler leurs honoraires relativement à des services rendus,
  - (iv) tous les fonds qui leur appartiennent ou qui appartiennent à une personne autre que la cliente ou le client;
- b) après avoir observé l'alinéa a), ils retirent tous les fonds appartenant à une cliente ou à un client de chaque compte en fiducie ouvert à leur nom ou au nom du cabinet où ils sont associés ou employés et ils les versent :
- (i) soit à la cliente ou au client,
  - (ii) soit à un autre ou à une autre titulaire de permis à qui la cliente ou le client leur a donné la directive de verser les fonds,
  - (iii) soit à un ou une autre titulaire de permis qui a convenu avec eux d'accepter le versement lorsqu'ils ne peuvent pas observer le sous-alinéa (i) ou (ii);
- c) après avoir observé les alinéas a) et b) :
- (i) d'une part, ils ferment chaque compte en fiducie ouvert à leur nom,
  - (ii) d'autre part, ils annulent ou font annuler l'autorisation de signer qu'ils ont reçue à l'égard de chaque compte en fiducie tenu au nom du cabinet où ils sont associés ou employés.

Cas où l'observation de l'alinéa (1) b) est facultative

(2) Les titulaires de permis suspendus ne sont pas tenus d'observer l'alinéa (1) b) si le dossier de la cliente ou du client est transféré, conformément à la partie IV du règlement administratif no 7.1, à un ou une autre titulaire de permis du cabinet où ils sont associés ou employés.

Application de la partie IV

(3) Le paragraphe 9 (3) et les articles 10, 11 et 12 s'appliquent au retrait de fonds d'un compte en fiducie effectué dans le cadre du présent article.

Reddition de comptes au Barreau quant à l'observation

(4) Les titulaires de permis suspendus rédigent et déposent auprès du Barreau, dans les 30 jours du début de la suspension, un rapport rédigé selon la formule fournie par celui-ci, qui confirme et qui expose en détail la façon dont ils observent le présent article.

## Permission d'être dispensé

2.4 Les titulaires de permis suspendus peuvent demander par écrit au Barreau d'être dispensés d'une exigence prévue à la présente partie ou de la modifier. Le Barreau peut alors les dispenser de l'exigence ou la modifier, sous réserve des conditions qu'il impose.

- c. Make the following amendments to rule 6.07 of the Rules of Professional Conduct (amendments shown in ~~strikeout~~ and in underlined text):

## 6.07 PREVENTING UNAUTHORIZED PRACTICE

### Preventing Unauthorized Practice

6.07 (1) A lawyer shall assist in preventing the unauthorized practice of law and the unauthorized provision of legal services.

[Amended – June 2007]

#### Commentary

Statutory provisions against the practice of law and provision of legal services by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, regulation, and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer client privilege, the lawyer's duty of secrecy, the professional standard of care that the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include professional liability insurance, rights with respect to the assessment of bills, rules respecting the handling of trust monies, and requirements for the maintenance of compensation funds.

#### Working With or Employing Unauthorized Persons ~~Disbarred Persons, Suspended Licensees, and Others~~

(2) Without the express approval of a committee of Convocation appointed for the purpose, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law or provision of legal services any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has had his or her license to practise law or to provide legal services revoked, has been suspended, has had his or her license to practise law or to provide legal services suspended, has undertaken not to practise law or to provide legal services, or who has been involved in disciplinary action and been permitted to resign or to surrender his or her license to practise law or to provide legal services, and has not had his or her license restored.

[Amended June 2007]

#### Practice by Suspended Lawyers Prohibited

6.07 (3) A lawyer whose licence to practise law is suspended shall comply with the requirements of the By-laws and shall not

- (a) practise law,  
 (b) represent or hold himself or herself out as a person entitled to practise law, or

- (c) represent or hold himself or herself out as a person entitled to provide legal services.

Commentary

Part IV of By-Law 7.1 (Operational Obligations and Responsibilities) and Part II.1 of By-Law 9 (Financial Transactions and Records) set out the obligations of a lawyer whose licence to practise law is suspended.

Undertakings Not to Practise Law

- (4) A lawyer who gives an undertaking to the Law Society not to practise law shall not,
- (a) practise law.
  - (b) represent or hold himself or herself out as a person entitled to practise law, or
  - (c) represent or hold himself or herself out as a person entitled to provide legal services.

Undertakings to Practice Law Subject to Restrictions

(5) A lawyer who gives an undertaking to the Law Society to restrict his or her practice shall comply with the undertaking.

Introduction and Background

3. To ensure appropriate guidance to and regulation of licensees whose licences are suspended or who are subject to other restrictions on practice, the Committee is recommending that amendments to the By-Laws and *Rules of Professional Conduct* to set out relevant licensee obligations be adopted.
4. Currently, the Law Society publishes “Guidelines for Suspended, Resigned or Disbarred Members and Members Who Have Given an Undertaking Not to Practise” (last updated June 2001 – see Appendix 1)<sup>1</sup>. These Guidelines provide detailed instructions to lawyers on what they can and cannot do if their licence is suspended or they are subject to an undertaking not to practise. Instruction is also given to those whose licenses have been surrendered or revoked.
5. The Committee is recommending that the Guidelines for suspended licensees, or licensees who have undertaken not to practise, be converted into By-laws and *Rules of Professional Conduct*. There are two reasons for this proposed change:
  - a. The current Guidelines are not enforceable against a licensee who fails to observe them. By turning the Guidelines into obligations under the Law Society’s By-laws and Rules, they will be enforceable.

<sup>1</sup> Given the initiative to formulate a by-law on this subject, the Guidelines have not been updated in accordance with the amended *Law Society Act*.

- b. The Guidelines in their current form no longer accurate in light of the May 1, 2007 amendments to the *Law Society Act*. Previously, there was no legislative prohibition on suspended lawyers acting as paralegals. Now, lawyers who cannot engage in the practice of law because of a suspension of their licence can no longer provide legal services. A specific P1 licence is required in order to engage in the provision of legal services as a paralegal. This changes the information contained in the Guidelines. In addition, the information in the Guidelines relevant to lawyers is required for paralegal licensees who are suspended or who have undertaken not to practice.

#### The Professional Regulation and Paralegal Standing Committee Process

6. At its November 2007 meeting, the Committee approved the amendments to the By-Laws and *Rules of Professional Conduct* in this report for Convocation's consideration. The By-Law amendments were drafted to cover both lawyer and paralegal licensees and similar rules of conduct were anticipated for paralegal licensees. The Chair, after consulting through staff with the Chair of the Paralegal Standing Committee (PSC), determined that the PSC would need to review this matter and approve it before it is reported to Convocation.
7. The PSC met on December 7, 2007, and approved the By-Law amendments, with only minor grammatical changes suggested to two sections. The PSC also approved changes to the Paralegal Rules to incorporate requirements similar to those for lawyers.<sup>2</sup> Further, Guidelines for paralegal licensees have also been prepared and were reviewed by the PSC. They are virtually identical to the lawyer Guidelines, with necessary modifications for the scope of practice of paralegals. The PSC will be reporting the Paralegal Rules amendments and Guidelines for paralegals to January 24, 2008 Convocation.
8. The PSC is content that the Committee report the By-Law amendments on behalf of both Committees.

#### By-Law Amendments

9. Generally, the information contained in the current Guidelines describes the activities that a lawyer who is not permitted to practise must do, may do and is prohibited from doing in respect of his or her practice. The new By-Law provisions are based on the Guideline's requirements.
10. The amendments to By-Law 7.1 (Operational Obligations and Responsibilities) include the following:
  - a. notice requirements to clients prior to the effective date of the suspension;
  - b. notice requirements to clients and prospective clients after the suspension has begun;
  - c. requirements with respect to completion of work in progress at the time the suspension commences and with respect to the handling of original documents;
  - d. certain obligations of the lawyer to students and the Law Society as a result of the suspension; and
  - e. a requirement for a compliance report.

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<sup>2</sup> The paralegal Rules are being reported by the PSC to Convocation for adoption in January 2008.

11. The amendments to By-Law 9 (Financial Transactions and Records) deal with obligations with respect to handling of client money and property, and include:
  - a. a general prohibition on receiving and handling trust money or other property of a client;
  - b. obligations with respect to withdrawals of funds from a trust account;
  - c. a requirement for a compliance report to the Law Society.
12. These By-Laws with the amendments redlined are included at Appendix 2.

#### Rules Amendments

13. The Committee is recommending that three new subrules, 6.07(3) through (5), be added on this subject.
14. New subrule 6.07(3) requires lawyer to comply with the By-Laws and prohibits the practice of law by a person whose licence is suspended. Commentary to this subrule references the relevant By-Laws. A second new subrule, 6.07(4), prohibits a person who has undertaken not to practice from practicing law. The third new subrule, 6.07(5), requires lawyers who have agreed by undertaking to restrict their practices to comply with the undertaking.
15. A minor clarifying amendment to the heading to subrule 6.07(2) is also proposed.
16. The input of the Society's rules drafter, Don Revell, on the rules drafts appearing in this report has been received.

#### For Information: Redrafted Guidelines

17. The Committee agreed with the Director of Professional Regulation that new Guidelines should be drafted for the benefit of licensees whose licences are suspended or who are subject to an undertaking not to practice.
18. Two new Guidelines have been prepared (at Appendix 3). The Guidelines reference the By-Laws and Rules. The first Guideline includes information for licensees on prohibited, mandatory and permissible activities, based on the definitions of the practice of law and provision of legal services contained in the *Law Society Act* and the case law on unauthorized practice. The second includes information for individuals who have surrendered their licences to practise law or whose licenses have been revoked.
19. The second Guideline serves two purposes. Although the Law Society loses jurisdiction over persons who surrender their licence or whose licences are revoked, the information contained in the Guidelines is useful for former licensees. It is also important to publish this information for former licensees as it could be evidence used for unauthorized practice prosecutions.
20. As the Guidelines do not require Convocation's approval, they are reported as information.

## APPENDIX 1

GUIDELINES FOR SUSPENDED, RESIGNED OR DISBARRED MEMBERS  
AND MEMBERS WHO HAVE GIVEN AN UNDERTAKING NOT TO PRACTISE

Subsections (1)(a) of Section 50 and Section 50.1(1) of the Law Society Act, R.S.O. 1990, c. L.8 as amended provide as follows:

- 50 (1) Except where otherwise provided by law,  
(a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themselves out as or represent themselves to be a barrister or solicitor or practise as a barrister or solicitor;

- 50.1(1) Every person who contravenes section 50 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

EFFECTIVE FROM THE DATE OF SUSPENSION, RESIGNATION, DISBARMENT OR  
UNDERTAKING NOT TO PRACTISE:

## I - YOU MAY:

- (a) See clients only for the limited purpose of assisting them in transferring their past or present legal work to another solicitor;
- (b) Collect accounts receivable;
- (c) Render accounts for work completed on or before the date of your suspension, resignation, disbarment or undertaking not to practise;

## II - YOU SHALL NOT:

Carry on the practice or profession of a barrister and solicitor in any way, nor, represent or hold yourself out as a barrister and solicitor in any way. Except on the terms set out above, and without limiting the generality of the following, you shall not:

- (a) Accept any new clients;
- (b) Accept new legal work for existing clients;
- (c) Give legal advice to any client, other individual, corporation or other entity;
- (d) Subject to paragraph (f), continue, commence, carry on or defend any lawsuit or proceeding for any client, other individual, corporation or other entity with or without fee;
- (e) Subject to paragraph (f), appear in court for any purpose other than in your personal capacity to represent yourself as a party and/or as a witness;

- (f) Provide legal services to the public, unless acting as an agent where permitted by statute or by leave of the court or tribunal (e.g. including but not limited to Provincial Offences, Landlord and Tenant, Small Claims and Highway Traffic Act matters) on the specific condition that the principal has been advised, in writing, that you are not entitled to act and are not acting as a barrister and solicitor, that your representation will not afford them the protection of the Lawyers' Professional Indemnity Company in the event of your negligence or the protection of the Lawyers Fund for Client Compensation in the event of dishonesty or fraud and that your representation will not afford them the protection of solicitor-client privilege. In addition, any Court, administrative tribunal or other adjudicative body, as well as all other parties involved, must be informed that you are not entitled to act as a barrister and solicitor but are appearing as an agent.
- (g) Draft or revise legal documents of any type, and/or execute documents of any type which require or permit execution by a barrister and solicitor;
- (h) Notarize documents pursuant to the Notaries Act, R.S.O. 1990, c. N.6, or swear affidavits pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
- (i) Report to clients, other than to: 1) inform them that you are not practising law; and/or 2) deliver an account for services rendered prior to your suspension, resignation, disbarment or undertaking not to practise (for the preparation of client reporting letters see III (b) below);
- (j) Certify, or give any opinions on, title to property;
- (k) Subject to paragraph (f), draft and/or send a demand letter threatening or intimating that legal proceedings of any form will be taken on behalf of a third party, with or without fee;
- (l) Act as a solicitor for the estate of a deceased person or party under a "disability" as defined by the Rules of Civil Procedure;
- (m) Prepare wills or have anything to do with the administration, distribution or completion of estates, other than in your capacity as an estate trustee;
- (n) Give to another lawyer or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
- (o) Hold yourself out as a barrister and/or a solicitor;
- (p) Occupy or share office space with a barrister and solicitor in contravention of Rule 6.07;
- (q) Provide services to a barrister and solicitor, in relation to that individual's practice of law in contravention of Rule 6.07;
- (r) Act as an articling principal to a student-at-law in the Bar Admission Course or act as the supervising lawyer to a student-at-law in the Bar Admission Course;

- (s) Accept any referrals from the Lawyer Referral Service.

EFFECTIVE FROM THE DATE OF THE SOCIETY'S DECISION OR ORDER SUSPENDING YOU, PERMITTING OR ACCEPTING YOUR RESIGNATION OR DISBARRING YOU, OR REQUIRING OR ACCEPTING YOUR UNDERTAKING NOT TO PRACTISE, WHERE YOU HAVE NOT APPEALED AND OBTAINED A STAY OF THE DECISION OR ORDER:

III YOU MUST:...

- (a) Arrange immediately to inform all clients in active matters that they should take their files to a solicitor of their choice, unless such matters will be completed before the date you cease to practise. You may, in this capacity, suggest a referral to a particular solicitor. The ultimate choice of who is retained rests with the client and not with you;
- (b) Not accept any new client matters without informing the prospective clients of the decision or order and the fact of that you will cease to practise on a particular date, unless such matters will be completed before the date you cease to practise

EFFECTIVE FROM THE DATE OF SUSPENSION, RESIGNATION, DISBARMENT OR UNDERTAKING NOT TO PRACTISE:

IV YOU MUST:

Fulfil the requirements of all paragraphs below and confirm, in writing, to the Law Society, within 30 days of your suspension, resignation, disbarment or undertaking not to practise that you have done so.

- (a) Assign any and all outstanding reporting letters to another solicitor in good standing for completion. You may prepare a draft report for the solicitor of your choice, but that solicitor must review the file completely and send any reporting letter out to the client on his or her letterhead. You may make personal arrangements with the solicitor for his or her remuneration;
- (b) Employ another solicitor or agent to complete all undertakings given by and accepted by you prior to your suspension, cancellation or undertaking not to practise;
- (c) Return original wills and documents to clients or arrange to transfer this part of your practice to another solicitor, and inform your clients and the Law Society who has been given possession of their wills, documents and files;
- (d) Remove any sign from your door, building, premises, window, building directory or property designating it as a "law office" or designating you to be a "barrister", "solicitor", "lawyer", "Q.C.", "notary public" and/or "commissioner of oaths", in English or any other language. The above words must also be removed or crossed out from all stationery, letterhead, business cards, forms, stamps, accounts and any publications bearing your name;

- (e) If you were issued a Law Society Membership Photo ID Card, confirm that you have returned it to the Society forthwith, if you have not already done so;
- (f) Telephone/fax:
  - i) Either disconnect the lines or arrange for a voice message to advise callers that your law practice is closed until further notice and provide callers with the name and number of another lawyer to call for information regarding their files. Members under a definite suspension can leave a message advising when the office will reopen;
  - ii) Contact your telephone company and directory advertisers instructing them to remove from the next printing of the white and yellow pages of the telephone directory any words or abbreviations for "barrister", "solicitor", "lawyer", "Q.C.", "notary public" and/or "commissioner of oaths", in English or any other language, and to delete from Directory Assistance your law office listings and;
  - iii) Have your name deleted from the listing of lawyers under your law firm's name;
- (g) Trust Account(s):

Have all trust funds on deposit balanced to client liabilities as of the date of your suspension, resignation, disbarment or undertaking not to practise and turn funds over to:

  - (i) clients; or
  - (ii) succeeding solicitor, in trust, by direction of client; or
  - (iii) succeeding solicitor of your choice, in trust, if clients decline to claim or direct; and
  - (iv) close the account(s);
  - (v) forward a copy of your trust bank statements showing account closed particulars to the Law Society;
- (h) Finalize your accounting books and records to the latest of the date of your suspension, resignation, disbarment or undertaking not to practise and the closure of your trust account. Submit your annual filings within 90 days of your fiscal year-end, as required by the By-Laws.
  - (i) If a suspended member or a member subject to an undertaking not to practise, continue to file annually thereafter a Member's Annual Report;
- (j) Locate another member of the profession who will act as the articling principal to your current or incoming students-at-law and arrange for the orderly assignment or transfer of articles of the student-at-law under the direction of the Articling Director at the Law Society.

Enquiries regarding these guidelines and compliance should be directed to the Law Society of Upper Canada at telephone 416-947-3315.

June 8, 2001

## APPENDIX 2

## BY-LAW 7.1

Made: October 25, 2007  
Amended: November 22, 1007

## OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

## PART I

## GENERAL

## Interpretation

1. (1) In this By-law,

“licensee” means a licensee who holds a Class L1 licence;

“non-licensee” means an individual who,

- (a) is not a licensee;
- (b) is engaged by a licensee to provide her or his services to the licensee; and
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee.

Interpretation: “effective control”

(2) For the purposes of subsection (1), a licensee has effective control over an individual’s provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society’s rules of professional conduct and the Society’s policies and guidelines.

## PART II

## SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

## Application

2. This Part does not apply to the provision of legal services by a student under the supervision of a licensee who is approved by the Society.

Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may, in accordance with this Part, assign to a non-licensee tasks and functions in connection with the licensee's practice of law in relation to the affairs of the licensee's client.

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law in relation to the affairs business of the licensee's client only if the client consents to the licensee doing so.

Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law in relation to the affairs of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law in relation to the affairs of each client..
- (2) Without limiting the generality of subsection (1),
- (a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;
  - (b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
  - (c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;
  - (d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;
  - (e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at frequent intervals;
  - (f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;
  - (g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and
  - (h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee's client.

Assignment of tasks, functions: prior express instruction and authorization required

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,

1. to give or accept an undertaking on behalf of the licensee;
2. to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
3. to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

(2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Tasks, functions that may not be assigned: general

6. A licensee shall not permit a non licensee,
  - (a) to give the licensee's client legal advice;
  - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the Law Society Act to do so;
  - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);
  - (d) to sign correspondence, other than correspondence of a routine administrative nature;
  - (e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee; or
  - (f) to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

### PART III

#### COLLECTION LETTERS

Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,
  - a. the letter is in relation to the affairs of the licensee's client;
  - b. the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;

- c. if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;
- d. the letter is on the licensee's business letterhead; and
- e. the letter is signed by the licensee.

#### PART IV

#### OBLIGATIONS RESULTING FROM SUSPENSION

##### Interpretation

8. In this Part,

"existing client" means,

- (a) a person who is a client of a suspended licensee when a suspension order is made against the licensee, or
- (b) a person who becomes a client of the suspended licensee after the suspension order is made but before the suspension begins;

"former client" means a person who was a client of a suspended licensee before a suspension order was made against the licensee but who was not a client when the order was made;

"prospective client" means a person who seeks to retain a suspended licensee after the suspension order is made the licensee but before the suspension begins;

"suspended licensee" means a licensee who holds a Class L1 licence or a Class P1 licence and who is the subject of a suspension order;

"suspension order" means an order made under the Act suspending a licensee's licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

##### Notice requirements before suspension begins

9. (1) A suspended licensee shall before the suspension begins, but not later than the date on which the suspension begins,

- (a) notify every existing client, on whose matters the work will not be completed by the suspended licensee before the suspension begins, of the suspension order and that,
  - (i) the suspended licensee will be unable to complete the work,
  - (ii) the client will need to retain another licensee to complete the work, and

(iii) the suspended licensee, subject to any rights that the suspended licensee may have over the client's file, will transfer the file to the licensee, if any, retained by the client to complete the work or will return the file to the client; and

(b) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection 14 (1) of the name and contact information of the licensee to whom the suspended licensee has given possession of the client's documents and files.

Compliance with subclauses (1) (a) (i) to (iii) not required

(2) A suspended licensee is not required to comply with the notice requirements mentioned in subclauses (1) (a) (i) to (iii) if the only work remaining to be completed on the client's matter is work mentioned in section 12 or 13, but, in such a case, the suspended licensee shall, before the suspension begins, notify the client of the name and contact information of the licensee retained by the suspended licensee to complete the work.

Notice requirements: during suspension

10. A suspended licensee shall, during the suspension,

(a) notify all persons who contact the suspended licensee's place of business of the suspension order; and

(b) notify any existing client or former client who contacts the suspended licensee's place of business of the name and contact information of another licensee who has been given possession of the clients' documents and files.

Notice requirements: prospective clients

11. A suspended licensee, at the time a prospective client seeks to retain the suspended licensee, shall notify the prospective client of the suspension order.

Work remaining on file: final report to client

12. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is a final report to the client, the suspended licensee shall, before the suspension begins, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

Work remaining on file: fulfillment of undertakings

13. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is the fulfillment of one or more undertakings given by the suspended licensee, the suspended licensee shall retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

Additional requirements: preparation of will, power of attorney, corporate records

14. (1) This section applies to a suspended licensee who performs or has performed any of the following work for a client:

1. Preparation of a will.
2. Preparation of a power of attorney.
3. Preparation of, or preparation and continued maintenance of, corporate records.

Requirement re original documents

- (2) A suspended licensee shall, before the suspension begins,
  - (a) return to the client all original documents; or
  - (b) transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work.

Real estate law: direction re Teranet access disk

15. A suspended licensee who has access to the Teranet system shall, on or before the date the suspension begins, complete and file with the Society, in a form provided by the Society, a direction authorizing the Society to take all steps necessary to cancel the suspended licensee's Teranet access disk for the period of the suspension.

Return of photo identification card

16. A suspended licensee shall, on or before the date the suspension begins, return to the Society any photo identification card issued to her or him by the Society.

Students

17. A suspended licensee, who has accepted a person into service under articles of clerkship where the period of service includes any or all of the period of the suspension, shall, before the suspension begins,

- (a) notify the person of the suspension order and that the suspended licensee will not be able to retain the person in service under articles of clerkship after the suspension begins;
- (b) arrange for another licensee, who is authorized and approved by the Society to do so, to accept the person into service under articles of clerkship after the suspension begins; and
- (c) arrange with the Society for the person's service under articles of clerkship to be transferred from the suspended licensee to the other licensee effective the date on which the suspension begins.

Report to Society on compliance

18. A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this Part.

Permission to be exempt from requirement

19. A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

BY-LAW 9

FINANCIAL TRANSACTIONS AND RECORDS

PART I

INTERPRETATION

Interpretation

1. (1) In this By-Law,

“arm's length” has the same meaning given it in the *Income Tax Act* (Canada);

“cash” means current coin within the meaning of the *Currency Act* (Canada), notes intended for circulation in Canada issued by the Bank of Canada pursuant to the *Bank of Canada Act* and current coin or banks notes of countries other than Canada;

“charge” has the same meaning given it in the *Land Registration Reform Act*;

“client” means a person or group of persons from whom or on whose behalf a licensee receives money or other property;

“firm of licensees” means a partnership of licensees and all licensees employed by the partnership;

“holiday” means,

- (a) any Saturday or Sunday;
- (b) New Year's Day, and where New Year's Day falls on a Saturday or Sunday, the following Monday;
- (c) Good Friday;
- (d) Easter Monday;

- (e) Victoria Day;
- (f) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday;
- (g) Civic Holiday;
- (h) Labour Day;
- (i) Thanksgiving Day;
- (j) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday;
- (k) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday;
- (l) Boxing Day; and
- (m) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

“lender” means a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or corporation;

“licensee” means a licensee who holds a Class L1 licence and includes a firm of licensees;

“money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders;

“related” has the same meaning given it in the *Income Tax Act* (Canada);

“Teranet” means Teranet Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Business Services.

Time for doing an act expires on a holiday

(2) Except where a contrary intention appears, if the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

When deemed in trust

(3) For the purposes of subsections 9 (1), (2) and (3) and section 14, cash, cheques negotiable by the licensee, cheques drawn by the licensee on the licensee’s trust account and credit card sales slips in the possession and control of the licensee shall be deemed from the time the licensee receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day.

## PART II

## HANDLING OF MONEY BY BANKRUPT LICENSEE

## Handling of money by bankrupt licensee

2. (1) Subject to subsections (2) and (3), a licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) shall not receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

## Exception

(2) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the licensee for the person or group; or
- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

## Same

(3) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may apply in writing to the Society for permission to receive from or on behalf of a person or group of persons any money or other property, other than as permitted under subsection (2), or for permission to handle money or other property that is held in trust for a person or group of persons, and the Society may permit the licensee to do so, subject to such terms and conditions as the Society may impose.

PART II.1HANDLING OF MONEY BY LICENSEE WHOSE LICENCE IS SUSPENDEDInterpretation2.1 In this Part,

“suspended licensee” means a licensee who holds a Class L1 or a Class P1 licence and who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Handling of money by suspended licensee

2.2 (1) Subject to subsection (2) and section 2.3, a suspended licensee shall not, during the suspension receive from or on behalf of a person or group of persons any money or other

property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

Exception

(2) A suspended licensee may receive from or on behalf of a person or group of persons money,

(a) in payment of fees for services performed by the suspended licensee for the person or group; or

(b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Trust account

2.3 (1) A suspended licensee shall, within 30 days of the beginning of the suspension,

(a) withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, and, as required, pay to the appropriate person,

(i) money properly required for payment to a person on behalf of a client,

(ii) money required to reimburse the suspended licensee for money properly expended, or for expenses properly incurred, on behalf of a client,

(iii) money required for or toward payment of fees for services performed by the suspended licensee, and

(iv) all other money that belongs to the suspended licensee or to a person other than a client;

(b) after complying with clause (a), withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, all money belonging to a client and pay the money to,

(i) the client,

(ii) another licensee to whom the client has directed the suspended licensee to make payment, or

(iv) another licensee who has agreed with the suspended licensee to accept payment in the event that the suspended licensee is unable to comply with subclause (i) or (ii); and

(c) after complying with clauses (a) and (b),

- (i) close every trust account that was kept in the name of the suspended licensee, and
- (ii) cancel or cause to be cancelled the suspended licensee's signing authority on every trust account that was kept in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

Compliance with clause (1) (b) not required

(2) A suspended licensee is not required to comply with clause (1) (b) if the client's file is transferred, in accordance with Part IV of By-Law 7.1, to another licensee in the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

Application of sections of Part IV

(3) Subsection 9 (3) and sections 10, 11 and 12 apply to the withdrawal of money from a trust account under this section.

Report to Society on compliance

(4) A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this section.

Permission to be exempt from requirement

2.4 A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

## PART III

### CASH TRANSACTIONS

#### Definition

3. In this Part,

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them;

"public body" means,

- (a) a department or agent of Her Majesty in right of Canada or of a province;

- (b) an incorporated city, metropolitan authority, town, township, village, county, district, rural municipality or other incorporated municipal body or an agent of any of them; and
- (c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act (Canada) or agent of the organization.

#### Cash received

4. (1) A licensee shall not receive or accept from a person, in respect of any one client file, cash in an aggregate amount of 7,500 or more Canadian dollars.

#### Foreign currency

(2) For the purposes of this section, when a licensee receives or accepts from a person cash in a foreign currency the licensee shall be deemed to have received or accepted the cash converted into Canadian dollars at,

- (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the licensee receives or accepts the cash; or
- (b) if the day on which the licensee receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the licensee receives or accepts the cash.

#### Application

5. Section 4 applies when, in respect of a client file, a licensee engages in or gives instructions in respect of the following activities:
- 1. The licensee receives or pays funds.
  - 2. The licensee purchases or sells securities, real properties or business assets or entities.
  - 3. The licensee transfers funds by any means.

#### Exceptions

6. Despite section 5, section 4 does not apply when the licensee,
- (a) receives cash from a public body, an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* (Canada) applies, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act, an association that is regulated by the *Cooperative Credit Associations Act* (Canada), a company to which the *Trust and Loan Companies Act* (Canada) applies, a trust company or loan company regulated by a provincial Act or a

department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public;

- (b) receives cash from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;
- (c) receives cash pursuant to an order of a tribunal;
- (d) receives cash to pay a fine or penalty; or
- (e) receives cash for fees, disbursements, expenses or bail provided that any refund out of such receipts is also made in cash.

#### PART IV

#### TRUST ACCOUNT

#### TRUST ACCOUNT TRANSACTIONS

##### Money received in trust for client

7. (1) Subject to section 8, every licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation, to be kept in the name of the licensee, or in the name of the firm of licensees of which the licensee is a partner or by which the licensee is employed, and designated as a trust account.

##### Interpretation

(2) For the purposes of subsection (1), a licensee receives money in trust for a client if the licensee receives from a person,

- (a) money that belongs in whole or in part to a client;
- (b) money that is to be held on behalf of a client;
- (c) money that is to be held on a client's direction or order;
- (d) money that is advanced to the licensee on account of fees for services not yet rendered; or
- (e) money that is advanced to the licensee on account of disbursements not yet made.

#### Money to be paid into trust account

(3) In addition to the money required under subsection (1) to be paid into a trust account, a licensee shall pay the following money into a trust account:

1. Money that may by inadvertence have been drawn from a trust account in contravention of section 9.
2. Money paid to a licensee that belongs in part to a client and in part to the licensee where it is not practical to split the payment of the money.

#### Withdrawal of money from trust account

(4) A licensee who pays into a trust account money described in paragraph 2 of subsection (3) shall as soon as practical withdraw from the trust account the amount of the money that belongs to him or her.

#### One or more trust accounts

- (5) A licensee may keep one or more trust accounts.

#### Money not to be paid into trust account

8. (1) A licensee is not required to pay into a trust account money which he or she receives in trust for a client if,

- (a) the client requests the licensee in writing not to pay the money into a trust account;
- (b) the licensee pays the money into an account to be kept in the name of the client, a person named by the client or an agent of the client; or
- (c) the licensee pays the money immediately upon receiving it to the client or to a person on behalf of the client in accordance with ordinary business practices.

#### Same

(2) A licensee shall not pay into a trust account the following money:

1. Money that belongs entirely to the licensee or to another licensee of the firm of licensees of which the licensee is a partner or by which the licensee is employed, including an amount received as a general retainer for which the licensee is not required either to account or to provide services.
2. Money that is received by the licensee as payment of fees for services for which a billing has been delivered, as payment of fees for services already performed for which a billing will be delivered immediately after the money is received or as reimbursement for disbursements made or expenses incurred by the licensee on behalf of a client.

### Record keeping requirements

(3) A licensee who, in accordance with subsection (1), does not pay into a trust account money which he or she receives in trust for a client shall include all handling of such money in the records required to be maintained under Part V.

### Withdrawal of money from trust account

9. (1) A licensee may withdraw from a trust account only the following money:
1. Money properly required for payment to a client or to a person on behalf of a client.
  2. Money required to reimburse the licensee for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client.
  3. Money properly required for or toward payment of fees for services performed by the licensee for which a billing has been delivered.
  4. Money that is directly transferred into another trust account and held on behalf of a client.
  5. Money that under this Part should not have been paid into a trust account but was through inadvertence paid into a trust account.

### Permission to withdraw other money

(2) A licensee may withdraw from a trust account money other than the money mentioned in subsection (1) if he or she has been authorized to do so by the Society.

### Limit on amount withdrawn from trust account

(3) A licensee shall not at any time with respect to a client withdraw from a trust account under this section more money than is held on behalf of that client in that trust account at that time.

### Manner in which certain money may be withdrawn from trust account

10. A licensee shall withdraw money from a trust account under paragraph 2 or 3 of subsection 9 (1) only,
- (a) by a cheque drawn in favour of the licensee;
  - (b) by a transfer to a bank account that is kept in the name of the licensee and is not a trust account; or
  - (c) by electronic transfer.

### Withdrawal by cheque

11. A cheque drawn on a trust account shall not be,

- (a) made payable either to cash or to bearer; or
- (b) signed by a person who is not a licensee except in exceptional circumstances and except when the person has signing authority on the trust account on which a cheque will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all the trust accounts on which signing authority has been delegated to the person.

#### Withdrawal by electronic transfer

12. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.

#### When money may be withdrawn

(2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the licensee must be one that does not permit an electronic transfer of funds unless,
  - i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and
  - ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.
2. The electronic transfer system used by the licensee must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.
3. The confirmation required by paragraph 2 must contain,
  - i. the number of the trust account from which money is drawn,
  - ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,
  - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
  - iv. the number of the account to which money is transferred,
  - v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and

- vi. the time and date that the confirmation from the financial institution is sent to the licensee.
4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic trust transfer system, an electronic trust transfer requisition must be signed by,
    - i. a licensee, or
    - ii. in exceptional circumstances, a person who is not a licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
  5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

Application of para. 1 of subs. (2) to sole practitioner

(3) Paragraph 1 of subsection (2) does not apply to a licensee who practises law without another licensee as a partner and without another licensee or person as an employee, if the licensee himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

Same

(4) In exceptional circumstances, the data referred to in subsection (3) may be entered by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Additional requirements relating to confirmation

(5) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (2) is sent to a licensee, the licensee shall,

- (a) produce a printed copy of the confirmation;
- (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and

- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(6) In exceptional circumstances, the tasks required by subsection (5) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 9A.

Definitions

13. (1) In this section,

“closing funds” means the money necessary to complete or close a transaction in real estate;

“transaction in real estate” means,

- (a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the *Land Titles Act* and a mortgage, but excluding a rent charge, or
- (b) a conveyance of freehold or leasehold land, including a deed and a transfer under the *Land Titles Act*, but excluding a lease.

Withdrawal by electronic transfer: closing funds

(2) Despite section 12, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.

When closing funds may be withdrawn

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the licensee must be one to which access is restricted by the use of at least one password or access code.
2. The electronic transfer system used by the licensee must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.
3. The confirmation required by paragraph 2 must contain,

- i. the name of the person or entity in whose name the account from which money is drawn is kept,
  - ii. the number of the trust account from which money is drawn,
  - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
  - iv. the number of the account to which money is transferred, and
  - v. the date the transfer is carried out.
4. Before the electronic transfer system used by the licensee is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,
  - i. the licensee, or
  - ii. in exceptional circumstances, a person who is not the licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

#### Additional requirements relating to confirmation

- (4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the licensee shall,
  - (a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);
  - (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
  - (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
  - (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(5) In exceptional circumstances, the tasks required by subsection (4) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition: closing funds

(6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 9C.

Requirement to maintain sufficient balance in trust account

14. Despite any other provision in this Part, a licensee shall at all times maintain sufficient balances on deposit in his or her trust accounts to meet all his or her obligations with respect to money held in trust for clients.

#### AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS

Authorizing Teranet to withdraw money from trust account

15. (1) Subject to subsection (2), a licensee may authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Conditions

(2) A licensee shall not authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction unless Teranet agrees to provide to the licensee in accordance with subsection (3) a confirmation of the withdrawal that contains the information mentioned in subsection (4).

Time of receipt of confirmation

(3) The confirmation required under subsection (2) must be received by the licensee not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the licensee.

Contents of confirmation

- (4) The confirmation required under subsection (2) must contain,
- (a) the amount of money withdrawn from the trust account;
  - (b) the time and date that the authorization to withdraw money is received by Teranet; and

- (c) the time and date that the confirmation from Teranet is sent to the licensee.

Written record of authorization

(5) A licensee who authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction shall record the authorization in writing.

Same

(6) The written record of the authorization required under subsection (5) shall be in Form 9B and shall be completed by the licensee before he or she authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Additional requirements relating to confirmation

(7) Not later than 5 p.m. on the day immediately after the day on which the confirmation required under subsection (2) is sent to a licensee, the licensee shall,

- (a) produce a paper copy of the confirmation, if the confirmation is sent to the licensee by electronic means;
- (b) compare the paper copy of the confirmation and the written record of the authorization relating to the withdrawal to verify whether money was withdrawn from the trust account by Teranet as authorized by the licensee;
- (c) indicate on the paper copy of the confirmation the name of the client and any file number in respect of which money was withdrawn from the trust account, if the confirmation does not already contain such information; and
- (d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.

Special trust account

16 (1) The trust account from which Teranet may be authorized by a licensee to withdraw money shall be,

- (a) an account at a chartered bank, provincial savings office, credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a registered trust corporation kept in the name of the licensee or in the name of the firm of licensees of which the licensee is a partner or by which the licensee is employed, and designated as a trust account; and
- (b) an account into which a licensee shall pay only,
  - (i) money received in trust for a client for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction; and

- (ii) money properly withdrawn from another trust account for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction.

#### One or more special trust accounts

(2) A licensee may keep one or more trust accounts of the kind described in subsection (1).

#### Payment of money into special trust account

(3) A licensee shall not pay into a trust account described in subsection (1) more money than is required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction, and if more money is, through inadvertence, paid into the trust account, the licensee shall transfer from the trust account described in subsection (1) into another trust account that is not a trust account described in subsection (1) the excess money.

#### Time limit on holding money in special trust account

(4) A licensee who pays money into a trust account described in subsection (1) shall not keep the money in that account for more than five days, and if the money is not properly withdrawn from that account by Teranet within five days after the day on which it is paid into that account, the licensee shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

#### Interpretation: counting days

(5) In subsection 16 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 16 (1) for more than five days.

#### Application of ss. 9, 11, 12 and 14

17. Sections 9, 11, 12 and 14 apply, with necessary modifications, to a trust account described in subsection 16 (1).

## PART V

### RECORD KEEPING REQUIREMENTS

#### REQUIREMENTS

#### Requirement to maintain financial records

18. Every licensee shall maintain financial records to record all money and other property received and disbursed in connection with the licensee's professional business, and, as a minimum requirement, every licensee shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the method by which money is received, the person from whom money is received, the amount of money received and the client for whom money is received in trust.
2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed and the client on whose behalf money is disbursed.
3. A clients' trust ledger showing separately for each client for whom money is received in trust all money received and disbursed and any unexpended balance.
4. A record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.
5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the method by which money is received, the amount of money which is received and the person from whom money is received.
6. A book of original entry showing all disbursements of money, other than money held in trust for a client, and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the amount of money which is disbursed and the person to whom money is disbursed.
7. A fees book or a chronological file of copies of billings, showing all fees charged and other billings made to clients and the dates on which fees are charged and other billings are made to clients and identifying the clients charged and billed.
8. A record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparisons:
  - i. A detailed listing made monthly showing the amount of money held in trust for each client and identifying each client for whom money is held in trust.
  - ii. A detailed reconciliation made monthly of each trust bank account.
9. A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the licensee took possession of each property, the person who had possession of each property immediately before the licensee took possession of the property, the value of each property, the client for whom each property is held in trust, the date on

which possession of each property is given away and the person to whom possession of each property is given.

10. Bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.
11. Signed electronic trust transfer requisitions and signed printed confirmations of electronic transfers of trust funds.
12. Signed authorizations of withdrawals by Teranet and signed paper copies of confirmations of withdrawals by Teranet.

#### Record keeping requirements if cash received

19 (1) Every licensee who receives cash shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received and any file number in respect of which cash is received and containing the signature of the licensee or the person authorized by the licensee to receive cash and of the person from whom cash is received.

#### No breach

(2) A licensee does not breach subsection (1) if a receipt does not contain the signature of the person from whom cash is received provided that the licensee has made reasonable efforts to obtain the signature of the person from whom cash is received.

#### Record keeping requirements if mortgages and other charges held in trust for clients

20. Every licensee who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A mortgage asset ledger showing separately for each mortgage or charge,
  - i. all funds received and disbursed on account of the mortgage or charge,
  - ii. the balance of the principal amount outstanding for each mortgage or charge,
  - iii. an abbreviated legal description or the municipal address of the real property, and
  - iv. the particulars of registration of the mortgage or charge.
2. A mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,

- i. all funds received and disbursed on account of each mortgage or charge held in trust for the person,
  - ii. the balance of the principal amount invested in each mortgage or charge,
  - iii. an abbreviated legal description or the municipal address for each mortgaged or charged real property, and
  - iv. the particulars of registration of each mortgage or charge.
3. A record showing a comparison made monthly of the total of the principal balances outstanding on the mortgages or charges held in trust and the total of all principal balances held on behalf of the investors as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparison:
- i. A detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding.
  - ii. A detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.

#### Financial records to be permanent

21. (1) The financial records required to be maintained under sections 18, 19 and 20 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

#### Paper copies of financial records

(2) If a financial record is entered and posted by mechanical or electronic means, a licensee shall ensure that a paper copy of the record may be produced promptly on the Society's request.

#### Financial records to be current

22. (1) Subject to subsection (2), the financial records required to be maintained under sections 18, 19 and 20 shall be entered and posted so as to be current at all times.

#### Exceptions

(2) The record required under paragraph 8 of section 18 and the record required under paragraph 3 of section 20 shall be created within twenty-five days after the last day of the month in respect of which the record is being created.

#### Preservation of financial records required under ss. 18 and 19

23. (1) Subject to subsection (2), a licensee shall keep the financial records required to be maintained under sections 18 and 19 for at least the six year period immediately preceding the licensee's most recent fiscal year end.

### Same

(2) A licensee shall keep the financial records required to be maintained under paragraphs 1, 2, 3, 8, 9, 10 and 11 of section 18 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

### Preservation of financial records required under s. 20

(3) A licensee shall keep the financial records required to be maintained under section 20 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

### Record keeping requirements when acting for lender

24. (1) Every licensee who acts for or receives money from a lender shall, in addition to maintaining the financial records required under sections 18 and 20, maintain a file for each charge, containing,

- (a) a completed investment authority, signed by each lender before the first advance of money to or on behalf of the borrower;
- (b) a copy of a completed report on the investment;
- (c) if the charge is not held in the name of all the lenders, an original declaration of trust;
- (d) a copy of the registered charge; and
- (e) any supporting documents supplied by the lender.

### Exceptions

- (2) Clauses (1) (a) and (b) do not apply with respect to a lender if,
  - (a) the lender,
    - (i) is a bank listed in Schedule I or II to the Bank Act (Canada), a licensed insurer, a registered loan or trust corporation, a subsidiary of any of them, a pension fund, or any other entity that lends money in the ordinary course of its business,
    - (ii) has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge, and
    - (iii) has given the licensee a copy of the written commitment before the advance of money to or on behalf of the borrower;
  - (b) the lender and borrower are not at arm's length;
  - (c) the borrower is an employee of the lender or of a corporate entity related to the lender;

- (d) the lender has executed Form 1 of Regulation 798 of the Revised Regulations of Ontario, 1990, made under the Mortgage Brokers Act, and has given the licensee written instructions, relating to the particular transaction, to accept the executed form as proof of the loan agreement;
- (e) the total amount advanced by the lender does not exceed \$6,000; or
- (f) the lender is selling real property to the borrower and the charge represents part of the purchase price.

#### Requirement to provide documents to lender

(3) Forthwith after the first advance of money to or on behalf of the borrower, the licensee shall deliver to each lender,

- (a) if clause (1) (b) applies, an original of the report referred to therein; and
- (b) if clause (1) (c) applies, a copy of the declaration of trust.

#### Requirement to add to file maintained under subs. (1)

(4) Each time the licensee or any licensee of the same firm of licensees does an act described in subsection (5), the licensee shall add to the file maintained for the charge the investment authority referred to in clause (1) (a), completed anew and signed by each lender before the act is done, and a copy of the report on the investment referred to in clause (1) (b), also completed anew.

#### Application of subs. (4)

- (5) Subsection (4) applies in respect of the following acts:
1. Making a change in the priority of the charge that results in a reduction of the amount of security available to it.
  2. Making a change to another charge of higher priority that results in a reduction of the amount of security available to the lender's charge.
  3. Releasing collateral or other security held for the loan.
  4. Releasing a person who is liable under a covenant with respect to an obligation in connection with the loan.

#### New requirement to provide documents to lender

(6) Forthwith after completing anew the report on the investment under subsection (4), the licensee shall deliver an original of it to each lender.

Requirement to add to file maintained under subs. (1): substitution

(7) Each time the licensee or any other licensee of the same firm of licensees substitutes for the charge another security or a financial instrument that is an acknowledgment of indebtedness, the licensee shall add to the file maintained for the charge the lender's written consent to the substitution, obtained before the substitution is made.

Exceptions

(8) The licensee need not comply with subsection (4) or (7) with respect to a lender if clause (2) (a), (b), (c), (e) or (f) applied to the lender in the original loan transaction.

Investment authority: Form 9D

(9) The investment authority required under clause (1) (a) shall be in Form 9D.

Report on investment: Form 9E

(10) Subject to subsection (11), the report on the investment required under clause (1) (b) shall be in Form 9E.

Report on investment: alternative to Form 9E

(11) The report on the investment required under clause (1) (b) may be contained in a reporting letter addressed to the lender or lenders which answers every question on Form 9E.

Appendix 3

## GUIDELINES FOR LAWYERS WHO ARE SUSPENDED OR WHO HAVE GIVEN AN UNDERTAKING NOT TO PRACTISE

### GENERAL

1. (1) In this guideline, "suspended lawyer" means a lawyer whose licence to practise law is suspended or who undertakes to the Law Society not to practise law.

(2) A suspended lawyer or a lawyer who has undertaken to the Law Society to restrict his or her practice must cease practice as a result of the suspension or the restriction on his or her practice under the terms of the undertaking. Suspended lawyers are also prohibited from providing legal services as defined by the Law Society Act, as only those persons licensed by the Law Society to provide legal services may do so. By-laws 7.1(IV) and 9(II.1) impose on suspended lawyers certain notice requirements, obligations and restrictions on activities, including handling of money and other property.

### MANDATORY ACTIVITIES

2. (1) Before the effective date of the suspension or undertaking not to practise, the suspended lawyer shall:

- a) Remove any sign from his or her door, building, premises, window, building directory, property or any other location designating it as a “law office” or designating the suspended lawyer as being able to practise law or to be a “barrister”, “solicitor”, “lawyer”, “Licensee of the Law Society of Upper Canada”, “Licensed by the Law Society of Upper Canada”, “notary public”, “commissioner for taking affidavits” or “commissioner of oaths” or similar words giving the impression, in English or any other language, that he or she is able to practise law.
- b) Remove or cross-out the words or terms set out in a) from all stationery, letterhead, business cards, forms, stamps, accounts electronic mail forms, internet sites and any other advertisements or publications bearing his or her s name;
- c) Disconnect his or her telephone and facsimile lines or arrange for a voice message to advise callers that his or her law practice is closed until further notice and provide callers with the name and number of another licensee to call for information regarding their files.
- d) Suspended lawyers under a definite suspension may leave a message advising when the office will reopen.

### PROHIBITED ACTIVITIES

3. (1) Effective from the date of suspension or undertaking not to practise, a lawyer shall not:
  - a) Accept legal work for new clients;
  - b) Accept new legal work for existing clients;
  - c) Notarize documents pursuant to the *Notaries Act*, R.S.O. 1990, c. N.6, or commission affidavits or statutory declarations pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
  - d) Report to clients, other than to:
    - i. inform them of the suspension or the undertaking not to practise; and
    - ii. deliver an account for services rendered in the period before the suspension or undertaking not to practise began;
  - e) Give to another licensee or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
  - f) Occupy or share office space with a licensee in contravention of Subrule 6.07(2) of the *Rules of Professional Conduct*;
  - g) Provide services to a licensee, in relation to that licensee’s professional business in contravention of Subrule 6.07(2) of the *Rules of Professional Conduct*;
  - h) Act as an articling principal to a student in the Licensing Process or act as the supervising lawyer to a student in the Licensing Process; and
  - i) Accept any referrals from the Lawyer Referral Service.
- (2) A suspended lawyer shall not resume the practice of law upon termination of a suspension or undertaking not to practise until the suspended lawyer receives written confirmation of the termination of the suspension or undertaking not to practise from the Law Society. This confirmation will be promptly given.

## PERMITTED ACTIVITIES

4. (1) During the term of the suspension or undertaking not to practise, the suspended lawyer may only:
  - a) See clients for the limited purpose of assisting them in transferring their past or present legal work to another licensee;
  - b) If requested by the client, suggest a referral to a particular licensee to continue work on the client's file. The ultimate choice of who is retained rests with the client and not with the suspended lawyer;
  - c) Collect accounts receivable;
  - d) Render accounts for work completed before the effective date of the suspended lawyer's suspension or undertaking not to practise; and
  - e) Arrange with the licensee whom the suspended lawyer has retained to complete outstanding reporting letters and undertakings the licensee's remuneration.

## GUIDELINES FOR FORMER LAWYERS WHOSE LICENCES HAVE BEEN REVOKED OR WHO HAVE BEEN PERMITTED TO SURRENDER THEIR LICENCES

### GENERAL

1. (1) In this guideline,
  - (a) "former lawyer" means a lawyer whose licence to practise law has been revoked or who has been permitted to surrender his or her licence.
  - (b) "existing client" means,
    - i. a person who is a client of a former lawyer when an order is made revoking the former lawyer's licence or permitting the former to surrender his or her licence, or
    - ii. a person who becomes a client of the former lawyer after an order is made revoking the former lawyer's licence or permitting the former to surrender his or her licence but before the order takes effect.
  - (c) "former client" means a person who was a client of a former lawyer an order is made revoking the former lawyer's licence or permitting the former to surrender his or her licence but who was not a client when the order was made.
  - (d) "prospective client" means a person who seeks to retain a former lawyer after an order is made revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence but before the order takes effect.
- (2) A former lawyer must cease practice as a result of the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence. Former lawyers are also prohibited from providing legal services as defined by the *Law Society Act*, as only those persons licensed by the Law Society to provide legal services may do so.

### MANDATORY ACTIVITIES

2. (1) Before the effective date of the revocation or surrender of his or her licence, the former lawyer shall:

### Advertising

- a) Remove any sign from his or her door, building, premises, window, building directory, property or any other location designating it as a “law office” or designating the suspended lawyer as being able to practise law or to be a “barrister”, “solicitor”, “lawyer”, “Licensee of the Law Society of Upper Canada”, “Licensed by the Law Society of Upper Canada”, “notary public”, “commissioner for taking affidavits” or “commissioner of oaths” or similar words giving the impression, in English or any other language, that he or she is able to practise law;
- b) Remove or cross-out the words or terms set out in a) from all stationery, letterhead, business cards, forms, stamps, accounts electronic mail forms, internet sites and any other advertisements or publications bearing his or her name;
- c) Disconnect his or her telephone and facsimile lines or arrange for a voice message to advise callers that his or her law practice is closed and provide callers with the name and number of another licensee to call for information regarding their files.

### Notice to Clients

- d) Notify all existing clients, work on whose matters will not be completed by the former lawyer before the order revoking the former lawyer’s licence or permitting the former lawyer to surrender his or her licence takes effect, of the order and that;
  - (i) the former lawyer will unable to complete the work,
  - (ii) the client will need to retain another licensee of the client’s choosing to complete the work, and
  - (iii) the former lawyer, subject to any rights that the former lawyer may have over the client’s file, will transfer the file to the licensee, if any, retained by the client to the complete work or will return the file to the client; and
  - (iv) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection j(i), and the Law Society, of the name and contact information of the licensee to whom the suspended licensee has given possession of the clients’ documents and files.

### Compliance with clause (d)(i) to (iii) not required

- (2) A former lawyer is not required to comply with the notice requirements mentioned in subclauses (d)(i) to (iii) if the only work remaining to be completed on the client’s matter is work mentioned in subsections (h) or (i) but, in such a case, the former lawyer shall, before the order revoking the former lawyer’s licence or permitting the former lawyer to surrender his or her licence takes effect, notify the client of the name and contact information of the licensee retained by the former lawyer to complete the work.

### Notice requirements: on date of and during suspension

- (3) A suspended licensee shall, during the suspension,

- a) notify all persons who contact the former lawyer's place of business of the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence; and
- b) notify any existing client or former client who contacts the former lawyer's place of business, and the Law Society, of the name and contact information of another licensee who has given possession of the clients' documents and files.

Notice requirements: prospective clients

- (4) A former lawyer, at the time a prospective client seeks to retain the former lawyer, shall notify the prospective client of the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence.

Work remaining on file: final report to client

- (5) If, on the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, the only work remaining for the former lawyer to complete on a client's matter is a final report to the client, the former lawyer shall, before the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

Work remaining on file: fulfilment of undertakings

- (6) If, on the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, the only work remaining for the former lawyer to complete on a client's matter is the fulfillment of one or more undertakings given by the former lawyer, the former lawyer shall, retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

Additional requirements: preparation of will, power of attorney, corporate records

- (7) This section applies to a former lawyer who performs or has performed any of the following work for a client:
  - a) Preparation of a will.
  - b) Preparation of a power of attorney.
  - c) Preparation of, or preparation and continued maintenance of, corporate records.

Requirement re: original documents

- (8) A former lawyer shall, before the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect,
  - a) return to the client all original documents; or
  - b) transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work, and inform the clients and the Law Society of the licensee who has been given possession of the client's wills, documents and files.

Real estate law: direction re Teranet access disk

- (9) A former lawyer who has access to the Teranet system shall, on or before the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, complete and file with the Society, in a form provided by the Society, a direction authorizing the Society to take all steps necessary to cancel former lawyer's Teranet access disk.

Return of photo identification card

- (10) A former lawyer shall, on or before the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, return to the Society any photo identification card issued to her or him by the Society.

Students

- (11) A former lawyer, who has accepted a person into service under articles of clerkship where the period of service includes any or all of the period after the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, shall, before the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect,
- a) notify the person of the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence and that the former lawyer will not be able to retain the person in service under articles of clerkship after the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect;
  - b) arrange for another licensee, who is authorized and approved by the Society to do so, to accept the person into service under articles of clerkship after the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect; and
  - c) arrange with the Society for the person's service under articles of clerkship to be transferred from the suspended licensee to the other licensee effective the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect.

Trust Accounts

- (12) A former lawyer shall within 30 days of the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect:
- a) withdraw from every trust account kept in the name of the former lawyer, or in the name of the firm of licensees of which the former lawyer was a partner or by which the former lawyer was employed, and, as required, pay to the appropriate person,
    - i. money properly required for payment to a person on behalf of a client,
    - ii. money required to reimburse the former lawyer for money properly expended, or for expenses properly incurred, on behalf of a client,
    - iii. money required for or toward payment of fees for services performed by the former lawyer, and
    - iv. all other money that belongs to the former lawyer or to a person other than a client;

- b) after complying with clause (i), withdraw from every trust account kept in the name of the former lawyer, or in the name of the firm of licensees of which the former lawyer was a partner or by which the former lawyer was employed, all money belonging to a client and pay the money to,
  - i. the client,
  - ii. another licensee to whom the client has directed the former lawyer to make payment, or
  - iii. another licensee who has agreed with the former lawyer to accept payment in the event that the suspended licensee is unable to comply with subclause 1 or 2;
 unless the client transfers their files to another lawyer in the firm of licensees of which the former lawyer was a partner or by which the former lawyer was employed;
- c) after complying with clauses (i) and (ii),
  - i. close every trust account that was kept in the name of the former lawyer, and
  - ii. cancel or cause to be cancelled the former lawyers's signing authority on every trust account that was kept in the name of the firm of licensees of which the former lawyer was a partner or by which the former lawyer was employed.

#### PROHIBITED ACTIVITIES

3. (1) Subject to subsection 2(1)(n) and 4(1)(f), a former lawyer shall not, after the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons
- (2) Effective from the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, a former lawyer shall not:
  - a) Accept legal work for new clients;
  - b) Accept new legal work for existing clients;
  - c) Notarize documents pursuant to the *Notaries Act*, R.S.O. 1990, c. N.6, or commission affidavits or statutory declarations pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
  - d) Report to clients, other than to:
    - i. inform them of the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her; and
    - ii. deliver an account for services rendered in the period before the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence took effect;
  - e) Give to another licensee or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
  - f) Occupy or share office space with a licensee in contravention of Subrule 6.07(2) of the *Rules of Professional Conduct*;
  - g) Provide services to a licensee, in relation to that licensee's professional business in contravention of Subrule 6.07(2) of the *Rules of Professional Conduct*;
  - h) Act as an articling principal to a student in the Licensing Process or act as the supervising lawyer to a student in the Licensing Process; and

- i) Accept any referrals from the Lawyer Referral Service.

#### PERMITTED ACTIVITIES

4. (1) After the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, the former lawyer may only:
  - a) See clients for the limited purpose of assisting them in transferring their past or present legal work to another licensee;
  - b) If requested by the client, suggest a referral to a particular licensee to continue work on the client's file. The ultimate choice of who is retained rests with the client and not with the suspended lawyer;
  - c) Collect accounts receivable;
  - d) Render accounts for work completed before the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect;
  - e) Arrange with the licensee whom the former lawyer has retained to complete outstanding reporting letters and undertakings the licensee's remuneration; and
  - f) Receive from on behalf of a person or group of persons money:
    - (i) in payment of fees for services performed by the former lawyer for the person or group prior to the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence took effect; or
    - (ii) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group prior to the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect.

#### AMENDMENT TO BY-LAW 4 (LICENSING)

##### Motion

21. That Convocation amend By-Law 4 [Licensing] by adding the following section immediately after the heading "LICENCE TO PROVIDE LEGAL SERVICES" / "PERMIS AUTORISANT LA PRESTATION DE SERVICES JURIDIQUES":

Requirement for issuance of Class P1 licence: not otherwise licensed

10.1 It is a requirement for the issuance of a Class P1 licence that an applicant not already hold a licence to provide the legal services that a licensee who holds a Class P1 licence is authorized to provide.

Exigence pour l'octroi d'un permis de catégorie P1 : pas d'autre permis

10.1 Pour obtenir un permis de catégorie P1, le requérant ou la requérante ne peut pas déjà détenir un permis autorisant la prestation des mêmes services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir.

The full text of this motion, which includes other amendments dealt with in the report of the Finance Committee, appears at Tab 3.

## Reasons for the Amendment

22. Prior to May 1, 2007 and the new statutory regime for licensing lawyers and paralegals, some lawyers whose membership in the Law Society was suspended performed paralegal work during the suspension.
23. After May 1, the work of paralegals pursuant to the Law Society Act falls within the provision of legal services for which a person requires a paralegal licence. As both those who practise law and provide legal services are required to be licensed under the Act, the Committee is recommending that a person licensed as a lawyer cannot also be licensed as a paralegal. This would mean, for example, that a lawyer whose license to practise law is suspended cannot be licensed as a paralegal and provide legal services.
21. In the Committee's view, this recommendation is consistent with the regulatory scheme under the Act whereby a licence to practise law and a licence to provide legal services are separate. It is in the public interest that the licensing scheme be transparent and applied in a way that promotes a clear understanding of who is entitled to practise law and who is entitled to provide legal services.
22. While this may affect some lawyers who are suspended as a result of a disciplinary penalty, a larger group is lawyers who are administratively suspended (e.g. for non-payment of the annual fee or failure to file the Member's Annual Report) and whose suspensions in some cases have continued for a number of years. Some of these lawyers have indicated an interest in applying for a P1 (paralegal) license.
23. To implement this recommendation, By-Law 4 should be amended to provided that a lawyer currently licensed by the Law Society (suspended or otherwise) is not entitled to apply for a P1 licence. The relevant part of By-Law 4 for the purpose of the amendment is attached at Appendix 4.
24. This matter was also reviewed by the Paralegal Standing Committee, which supports the Professional Regulation Committee's recommendation.

## APPENDIX 4

BY-LAW 4  
(EXCERPT)

## LICENSING

## LICENCE TO PROVIDE LEGAL SERVICES

Requirements for issuance of Class P1 licence: application received prior to November 1, 2007

11. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence prior to November 1, 2007:
  1. The applicant must have done any one of the following:
    - i. Provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years prior to May 1, 2007.

- ii. Obtained education, in a legal services program in Ontario, that the Society determines is equivalent to at least nine courses in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities and provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, in the five years prior to May 1, 2007, that include ten instances of representing a party before the Small Claims Court, before the Ontario Court of Justice, before a summary conviction court, before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament or before a person dealing with a claim, within the meaning of section 6, or a matter related to a claim when the Small Claims Court, the Ontario Court of Justice, the summary conviction court the tribunal or the person was hearing the merits of a proceeding.
  - iii. Graduated, within the three years prior to the application for licensing, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,
    - A. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and
    - B. a field placement of a least 120 hours.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.
  3. The applicant must provide written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant has met the experience requirement mentioned in paragraph 1.

Interpretation: "full-time basis"

(2) For the purposes of this section, an applicant provides legal services on a full-time basis if the applicant provides legal services, on the average, 30 hours per week.

Requirements for issuance of Class P1 licence: application received after October 31, 2007 and prior to July 1, 2010

12. The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after October 31, 2007 and prior to July 1, 2010:
  1. The applicant must have graduated, within the three years prior to the application, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,
    - i. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 (Providing Legal Services) licence is authorized to provide and one of which was a course on professional responsibility and ethics, and
    - ii. a field placement of a least 120 hours.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

Requirements for issuance of Class P1 licence: application received after June 30, 2010

13. The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

HOUSEKEEPING AMENDMENT TO  
COMMENTARY TO SUBRULE 2.04(10.3) OF THE  
*RULES OF PROFESSIONAL CONDUCT*

Motion

25. That Convocation amend the last sentence of the commentary to subrule 2.04(10.3) of the *Rules of Professional Conduct* by replacing “subrule 5.01(6) on supervision and delegation” with “subsection 3(2) of By-Law 7.1 (Operational Obligations and Responsibilities)”.
26. On a referral from Law Society staff, the Committee learned that an incorrect reference is made to subrule 5.01(6) in the last sentence in the commentary to subrule 2.04(10.3).
27. When By-Law 7.1 (Operational Obligations and Responsibilities) was made by Convocation in October 25, 2007, Rule 5.01 was revoked. The rule was then remade by Convocation on November 22, 2007, and subrule 5.01(6) ceased to exist in the *Rules of Professional Conduct*.
28. The current sentence of commentary in issue reads:
 

In reference to clause (a) of subrule (10.1), see also subrule 5.01(6) on supervision and delegation.
29. Subrule 2.04(10.1) deals with conflicts obligations in affiliations between lawyers and affiliated entities. Subrule 5.01(6) was a prohibition on a lawyer’s delegation of tasks to the affiliated (i.e. non-lawyer) entity or its staff without client consent, and read:
 

(6) In addition to the requirements of this rule and the commentaries thereunder, a lawyer in an affiliation shall not delegate to the affiliated entity or the affiliated entity’s staff any tasks in connection with the provision of legal services without obtaining the client’s informed consent.
30. This subrule was a made into s. 3(2) in new By-Law 7.1 and reads as follows:

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law in relation to the affairs of the licensee's client only if the client consents to the licensee doing so.

31. The Committee agreed that the last sentence of commentary to subrule 2.04(10.1) should be amended to correct the reference to the By-Law.

APPENDIX 1

RULE 2.04

Affiliations Between Lawyers and Affiliated Entities

(10.1) Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a lawyer shall disclose to the client

- (a) any possible loss of solicitor and client privilege because of the involvement of the affiliated entity, including circumstances where a non-lawyer or non-lawyer staff of the affiliated entity provide services, including support services, in the lawyer's office,
- (b) the lawyer's role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,
- (c) any financial, economic or other arrangements between the lawyer and the affiliated entity that may affect the independence of the lawyer's representation of the client, including whether the lawyer shares in the revenues, profits or cash flows of the affiliated entity; and
- (d) agreements between the lawyer and the affiliated entity, such as agreements with respect to referral of clients between the lawyer and the affiliated entity, that may affect the independence of the lawyer's representation of the client.

(10.2) Where there is an affiliation, after making the disclosure as required by subrule (10.1), a lawyer shall obtain the client's consent before accepting a retainer under subrule (10.1).

(10.3) Where there is an affiliation, a lawyer shall establish a system to search for conflicts of interest of the affiliation.

Commentary

Lawyers practising in an affiliation are required to control the practice through which they deliver legal services to the public. They are also required to address conflicts of interest in respect of a proposed retainer by a client as if the lawyer's practice and the practice of the affiliated entity were one where the lawyers accept a retainer to provide legal services to that client jointly with non-legal services of the affiliated entity. The affiliation is subject to the same conflict of interest rules as apply to lawyers and law firms. This obligation may extend to inquiries of offices of affiliated entities outside of Ontario where those offices are treated economically as part of a single affiliated entity.

In reference to clause (a) of subrule (10.1), see also subrule 5.01(6) on supervision and delegation.

Re: New By-Laws, *Rules of Professional Conduct* and Guidelines on Requirements for Suspended Licensees and Licensees Who Have Undertaken Not to Practise

It was moved by Ms. Ross, seconded by Mr. Porter, that Convocation amend By-Law 7.1 [Operational Obligations and Responsibilities] as set out in the Report.

Carried

It was moved by Ms. Ross, seconded by Mr. Porter, that Convocation amend By-Law 9 [Financial Transactions and Records] as set out in the Report.

Carried

It was moved by Ms. Ross, seconded by Mr. Porter, that Convocation amend rule 6.07 of the *Rules of Professional Conduct*) as set out in the Report.

Carried

Re: Amendment to By-Law 4 [Licensing]

It was moved by Ms. Ross, seconded by Mr. Porter, –

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007 and September 20, 2007, be further amended as follows:

1. Subsection 3 (2) of By-Law 4 [Licensing] is amended by deleting “5 (1)” and substituting “4 (1)”.
2. Subsection 3 (3) of the By-Law is amended by deleting “5 (2)” and substituting “4 (2)”.
3. Paragraph 2 of subsection 8 (1) of the By-Law is amended by deleting “and annual fee” / “et la cotisation annuelle applicables”.
4. The By-Law is amended by adding immediately after the heading “LICENCE TO PROVIDE LEGAL SERVICES” / “PERMIS AUTORISANT LA PRESTATION DE SERVICES JURIDIQUES” the following:

Requirement for issuance of Class P1 licence: not otherwise licensed

10.1 It is a requirement for the issuance of a Class P1 licence that an applicant not already hold a licence to provide the legal services that a licensee who holds a Class P1 licence is authorized to provide.

Exigence pour l’octroi d’un permis de catégorie P1 : pas d’autre permis

10.1 Pour obtenir un permis de catégorie P1, le requérant ou la requérante ne peut pas déjà détenir un permis autorisant la prestation des mêmes services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir.

Carried

Re: Housekeeping Amendment to Rule 2.04(10.3) Commentary of the *Rules of Professional Conduct*

It was moved by Ms. Ross, seconded by Mr. Porter, that Convocation amend the last sentence of the commentary to subrule 2.04 (10.3) of the *Rules of Professional Conduct* by replacing “subrule 5.01(6) on supervision and delegation” with “subsection 3(2) of By-Law 7.1 (Operational Obligations and Responsibilities)”.

Carried

PARALEGAL STANDING COMMITTEE REPORT

Mr. Dray presented the Paralegal Standing Committee Report.

Report to Convocation  
January 24th, 2008

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Paralegal Standing Committee

Committee Members  
Paul Dray, Chair  
Bonnie Warkentin Vice-Chair  
Marion Boyd  
James R. Caskey  
Seymour Epstein  
Michelle L. Haigh  
Tom Heintzman  
Paul Henderson  
Brian Lawrie  
Douglas Lewis  
Margaret Louter  
Stephen Parker  
Cathy Strosberg

Purpose of Report: Decision  
Information

Prepared by the Policy Secretariat  
Julia Bass 416 947 5228

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## COMMITTEE PROCESS

1. The Paralegal Standing Committee met on December 7th, 2007. Committee members present were Paul Dray, Chair, Bonnie Warkentin (Vice-chair), Marion Boyd, James Caskey, Seymour Epstein, Tom Heintzman, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter and Cathy Strosberg. Staff members in attendance were Zeynep Onen, Terry Knott, Sara Hickling, Michael Elliot, Dulce Mitchell, Maria Loukidelis, Jim Varro and Julia Bass.
2. The Committee met further on January 10th, 2008. Committee members present were Paul Dray (Chair), by telephone, Bonnie Warkentin (Vice chair), Marion Boyd, James Caskey, Seymour Epstein, Michelle Haigh, Tom Heintzman, Brian Lawrie (by telephone), Margaret Louter and Stephen Parker. Staff members in attendance were Malcolm Heins, Terry Knott, Diana Miles, Katherine Corrick, Roy Thomas, Elliot Spears, Sara Hickling (by telephone), Lisa Mallia, Paul McCormick and Julia Bass.

## FOR DECISION

## PERSONS WHOSE LICENCES HAVE BEEN SUSPENDED OR REVOKED

## Motion

3. That Convocation approve the changes to Rule 6.01 (6) of the Paralegal Code of Conduct and receive for information the new guidelines set out below.

## Background

4. On November 8th the Professional Regulation Committee approved new provisions concerning lawyers whose licences have been suspended or revoked, or who have given the Law Society an undertaking not to practise. These provisions are important, as they are designed to protect the public by making it clear what licensees can and cannot do when they have been the subject of disciplinary proceedings by the Law Society, resulting in restrictions in their practices.
5. Analogous provisions for paralegal licensees will become necessary once P1 licences have been issued in 2008. It would be difficult for the Law Society to enforce if the rules governing different classes of licensees were substantially different. Accordingly, the Chair of the Profession Regulation Committee requested that the Paralegal Standing

Committee review the proposals prior to their being submitted to Convocation for approval.

6. The provisions governing lawyers are submitted to Convocation by the Professional Regulation Committee, together with the accompanying amendments to By-law 7.1 and By-law 9, which are applicable to all classes of licensee.

#### Existing Guidelines

7. The proposals replace an existing document entitled "Guidelines for Suspended, Resigned or Disbarred Members and Members Who Have Given an Undertaking Not to Practise," last updated in June 2001.
8. There are two principal reasons why the current guidelines need revision:
  - a. Since the current provisions are in the form of guidelines, they are not enforceable. The proposals would incorporate new obligations into the Law Society's by-laws and into both the Lawyers' Rules of Professional Conduct and the Paralegal Code of Conduct to reflect the guidelines, so that they become enforceable.
  - b. The current guidelines do not reflect the recent amendments to the *Law Society Act*. Previously, suspended lawyers could act as paralegals. Now, lawyers who are suspended are also prohibited from providing legal services.

#### Proposed Guidelines

9. The new guidelines are divided into two separate documents, one covering suspended licensees and one covering former licensees whose licences have been revoked. This is logical, since the Law Society loses jurisdiction over a licensee once the licence is revoked. The Guidelines for paralegals whose licences have been suspended, or who have given an undertaking not to practise, are attached at Appendix 1.

#### Suspended Licences

10. A 'suspended paralegal' is defined as 'a paralegal whose licence to provide legal services is suspended or who undertakes to the Law Society not to provide legal services.' The guidelines set out the following:
  - a. 'Mandatory activities', that is, things a suspended licensee must do, such as removing signs from the door, disconnecting the telephone or changing the voice message to indicate that the office is closed;
  - b. 'Prohibited activities' that the suspended licensee is not permitted to do, such as taking on new clients or new legal work, giving an undertaking or occupying office space with a licensee;
  - c. Permitted activities, such as assisting clients in transferring their files, collecting accounts receivable and making arrangements with the licensee whom the suspended licensee has retained to complete outstanding reporting letters.

#### Where licence has been revoked or surrendered

11. The Guidelines for paralegals whose licences have been revoked or who have been permitted to surrender their licences are attached at Appendix 2. The guidelines again set out,
  - a. Mandatory activities that must be performed prior to the effective date of the revocation or surrender of the licence, such as removing signs from the door,

- disconnecting the telephone or changing the voice message to advise clients that the practice is closed, notifying clients that the former licensee is unable to complete the work, returning original documents to the client, closing down all trust accounts and paying out the moneys to the appropriate person;
- b. Prohibited activities, such as accepting new work, giving a new undertaking, or occupying space with a licensee;
  - c. Permitted activities, such as assisting clients to transfer their files to another licensee, collecting accounts receivable, and rendering accounts for work performed before the date of the loss of the licence.
12. Although the Law Society loses jurisdiction over licensees who surrender their licence, or whose licences are revoked, the information contained in the guidelines is important, as it could be used as evidence in an unauthorized practice proceeding.
  13. The proposed guidelines are based on the definitions of the practice of law and provision of legal services contained in the *Law Society Act*, and the case law on unauthorized practice.

#### Proposed amendments to the Paralegal Code of Conduct

14. The proposed amendments to Rule 6 of the Code, 'Duty to the Administration of Justice,' are attached at Appendix 3. Rule 6.01 (6) would be reworded. This rule currently forbids a licensed paralegal from retaining or occupying office space with a former lawyer or suspended lawyer. The effect of the change would be to add former paralegals and suspended paralegals to the persons that a licensed paralegal cannot retain or occupy office space with.
15. Two new sub-rules would be added, requiring licensed paralegals to comply with the by-laws and not provide legal services or hold themselves out as entitled to provide legal services while under suspension or while having given an undertaking not to provide legal services.

*DRAFT*

APPENDIX 1

### GUIDELINES FOR PARALEGALS WHO ARE SUSPENDED OR WHO HAVE GIVEN AN UNDERTAKING NOT TO PROVIDE LEGAL SERVICES

#### GENERAL

1. (1) In this guideline, "suspended paralegal" means a paralegal whose licence to provide legal services is suspended or who undertakes to the Law Society not to provide legal services.
- (2) A suspended paralegal or a paralegal who has undertaken to the Law Society to restrict his or her professional business must cease providing legal services as a result of the suspension or the restriction on his or her professional business under the terms of the undertaking. By-laws XX and 9(II.1) impose on suspended paralegals certain notice requirements, obligations and restrictions on activities, including handling of money and other property.

## MANDATORY ACTIVITIES

2. (1) Before the effective date of the suspension or undertaking not to provide legal services, the suspended paralegal shall:
  - a) Remove any sign from his or her door, building, premises, window, building directory, property, vehicle or any other location designating it as a “paralegal office”, “law office”, or “legal office” or designating the former paralegal as being able to provide legal services or to be a “paralegal”, “law clerk”, “court agent”, “Licensee of the Law Society of Upper Canada”, “Licensed by the Law Society of Upper Canada”, or “notary public” or similar words giving the impression, in English or any other language, that he or she is able to provide legal services.
  - b) Remove or cross-out the words or terms set out in a) from all stationery, letterhead, business cards, forms, stamps, accounts electronic mail forms, internet sites and any other advertisements or publications bearing his or her name;
  - c) Disconnect his or her telephone and facsimile lines or arrange for a voice message to advise callers that his or her professional business is closed until further notice and provide callers with the name and number of another licensee to call for information regarding their files.
  - d) Suspended paralegals under a definite suspension may leave a message advising when the office will reopen.

## PROHIBITED ACTIVITIES

3. (1) Effective from the date of suspension or undertaking not to provide legal services, a suspended paralegal shall not:
  - a) Accept legal work for new clients;
  - b) Accept new legal work for existing clients;
  - c) Notarize documents pursuant to the *Notaries Act*, R.S.O. 1990, c. N.6, or commission affidavits or statutory declarations pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
  - d) Report to clients, other than to:
    - i) inform them of the suspension or the undertaking not to provide legal services; and
    - ii) deliver an account for services rendered in the period before the suspension or undertaking not to provide legal services began;
  - e) Give to another licensee or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
  - f) Occupy or share office space with a licensee in contravention of Subrule 6.01(6) of the *Paralegal Rules of Conduct*;
  - g) Provide services to a licensee, in relation to that licensee’s professional business in contravention of Subrule 6.01(6) of the *Paralegal Rules of Conduct*;
- (2) A suspended paralegal shall not resume the provision of legal services upon termination of a suspension or undertaking not to practise until the suspended paralegal receives

written confirmation of the termination of the suspension or undertaking not to provide legal services from the Law Society. This confirmation will be promptly given.

#### PERMITTED ACTIVITIES

4. (1) During the term of the suspension or undertaking not to provide legal services, the suspended paralegal may only:
  - a) See clients for the limited purpose of assisting them in transferring their past or present legal work to another licensee;
  - b) If requested by the client, suggest a referral to a particular licensee to continue work on the client's file. The ultimate choice of who is retained rests with the client and not with the suspended paralegal;
  - c) Collect accounts receivable;
  - d) Render accounts for work completed before the effective date of the suspended paralegal's suspension or undertaking not to provide legal services; and
  - e) Arrange with the licensee whom the suspended paralegal has retained to complete outstanding reporting letters and undertakings the licensee's remuneration.

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#### APPENDIX 2

#### *DRAFT*

#### GUIDELINES FOR FORMER PARALEGALS WHOSE LICENCES HAVE BEEN REVOKED OR WHO HAVE BEEN PERMITTED TO SURRENDER THEIR LICENCES

#### GENERAL

1. (1) In this guideline,
  - (a) "former paralegal" means a paralegal whose licence to provide legal services has been revoked or who has been permitted to surrender his or her licence.
  - (b) "existing client" means,
    - i. a person who is a client of a former paralegal when an order is made revoking the former paralegal's licence or permitting the former to surrender his or her licence, or
    - ii. a person who becomes a client of the former paralegal after an order is made revoking the former paralegal's licence or permitting the former to surrender his or her licence but before the order takes effect.
  - (c) "former client" means a person who was a client of a former paralegal an order is made revoking the former paralegal's licence or permitting the former to surrender his or her licence but who was not a client when the order was made.
  - (d) "prospective client" means a person who seeks to retain a former paralegal after an order is made revoking the former paralegal's licence

or permitting the former paralegal to surrender his or her licence but before the order takes effect.

(2) A former paralegal must cease providing legal services as defined by the *Law Society Act* as a result of the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence, as only those persons licensed by the Law Society to provide legal services may do so.

## MANDATORY ACTIVITIES

2. (1) Before the effective date of the revocation or surrender of his or her licence, the former paralegal shall:

### Advertising

- (a) Remove any sign from his or her door, building, premises, window, building directory, property, vehicle or any other location designating it as a "paralegal office", "law office", or "legal office" or designating the former paralegal as being able to provide legal services or to be a "paralegal", "law clerk", "court agent", "Licensee of the Law Society of Upper Canada", "Licensed by the Law Society of Upper Canada", or "notary public" or similar words giving the impression, in English or any other language, that he or she is able to provide legal services.
- (b) Remove or cross-out the words or terms set out in a) from all stationery, letterhead, business cards, forms, stamps, accounts, electronic mail forms, internet sites and any other advertisements or publications bearing his or her name.
- (c) Disconnect his or her telephone and facsimile lines or arrange for a voice message to advise callers that his or her professional business is closed and provide callers with the name and number of another licensee to call for information regarding their files.

### Notice to Clients

- (d) Notify all existing clients, work on whose matters will not be completed by the former paralegal before the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, of the order and that;
  - (i) the former paralegal will be unable to complete the work,
  - (ii) the client will need to retain another licensee of the client's choosing to complete the work, and
  - (iii) the former paralegal, subject to any rights that the former paralegal may have over the client's file, will transfer the file to the licensee, if any, retained by the client to complete the work or will return the file to the client; and
  - (iv) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection j(i), and the Law Society, of the name and contact information of the licensee to whom the suspended licensee has given possession of the clients' documents and files.

*Compliance with clause (d)(i) to (iii) not required*

- (e) A former paralegal is not required to comply with the notice requirements mentioned in subclauses (d)(i) to (iii) if the only work remaining to be completed on the client's matter is work mentioned in subsections (h) or (i) but, in such a case, the former paralegal shall, before the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, notify the client of the name and contact information of the licensee retained by the former paralegal to complete the work.

*Notice requirements: on date of and during suspension*

- (f) A former paralegal shall:
- (i) notify all persons who contact the former paralegal's place of business of the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence; and
  - (ii) notify any existing client or former client who contacts the former paralegal's place of business, and the Law Society, of the name and contact information of another licensee who has given possession of the clients' documents and files.

*Notice requirements: prospective clients*

- (g) A former paralegal, at the time a prospective client seeks to retain the former paralegal, shall notify the prospective client of the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence.

*Work remaining on file: final report to client*

- (h) If, on the date the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, the only work remaining for the former paralegal to complete on a client's matter is a final report to the client, the former paralegal shall, before the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

*Work remaining on file: fulfillment of undertakings*

- (i) If, on the date the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, the only work remaining for the former paralegal to complete on a client's matter is the fulfillment of one or more undertakings given by the former paralegal, the former paralegal shall, retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

## Requirement re: original documents

- (j) A former paralegal shall, before the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect,
  1. return to the client all original documents; or
  2. transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work, and inform the clients and the Law Society of the licensee who has been given possession of the client's documents and files.

## Return of photo identification card

- (k) A suspended licensee shall, on or before the date the suspension begins, return to the Society any photo identification card issued to her or him by the Society.

## Trust Accounts

- (l) A former paralegal shall within 30 days of the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect:
  - (i) withdraw from every trust account kept in the name of the former paralegal, or in the name of the firm of licensees of which the former paralegal was a partner or by which the former paralegal was employed, and, as required, pay to the appropriate person,
    1. money properly required for payment to a person on behalf of a client,
    2. money required to reimburse the former paralegal for money properly expended, or for expenses properly incurred, on behalf of a client,
    3. money required for or toward payment of fees for services performed by the former paralegal, and
    4. all other money that belongs to the former paralegal or to a person other than a client;
  - (ii) after complying with clause (i), withdraw from every trust account kept in the name of the former paralegal, or in the name of the firm of licensees of which the former paralegal was a partner or by which the former paralegal was employed, all money belonging to a client and pay the money to,
    1. the client,
    2. another licensee to whom the client has directed the former paralegal to make payment, or
    3. another licensee who has agreed with the former paralegal to accept payment in the event that the suspended licensee is unable to comply with subclause 1 or 2;

unless the client transfers their files to another paralegal in the firm of licensees of which the former paralegal was a partner or by which the former paralegal was employed;

- (iii) after complying with clauses (i) and (ii),
  1. close every trust account that was kept in the name of the former paralegal, and
  2. cancel or cause to be cancelled the former paralegal's signing authority on every trust account that was kept in the name of the firm of licensees of which the former paralegal was a partner or by which the former paralegal was employed.

#### Report to Society

- (m) A former paralegal shall, not later than thirty days after the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the former paralegal's compliance with these Guidelines.

#### Permission to be exempt from requirement

- (n) A former paralegal may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Guideline, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

#### PROHIBITED ACTIVITIES

3. (1) Subject to subsection 2(1)(n) and 4(1)(f), a former paralegal shall not, after the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons
- (2) Effective from the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, a paralegal shall not:
  - a) Accept legal work for new clients;
  - b) Accept new legal work for existing clients;
  - c) Notarize documents pursuant to the *Notaries Act*, R.S.O. 1990, c. N.6, or commission affidavits or statutory declarations pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
  - d) Report to clients, other than to:
    - i) inform them of the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her; and
    - ii) deliver an account for services rendered in the period before the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence took effect;
  - e) Give to another licensee or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
  - f) Occupy or share office space with a licensee in contravention of Subrule 6.01(6) of the *Paralegal Rules of Conduct*;

- g) Provide services to a licensee, in relation to that licensee's professional business in contravention of Subrule 6.01(6) of the *Paralegal Rules of Conduct*.

#### PERMITTED ACTIVITIES

- 4. (1) After the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect, the former paralegal may only:
  - a) See clients for the limited purpose of assisting them in transferring their past or present legal work to another licensee;
  - b) If requested by the client, suggest a referral to a particular licensee to continue work on the client's file. The ultimate choice of who is retained rests with the client and not with the suspended paralegal;
  - c) Collect accounts receivable;
  - d) Render accounts for work completed before the date on which the order revoking the former paralegal's licence or permitting the former paralegal to surrender his or her licence takes effect;
  - e) Arrange with the licensee whom the former paralegal has retained to complete outstanding reporting letters and undertakings the licensee's remuneration; and
  - f) Receive from on behalf of a person or group of persons money:
    - (i) in payment of fees for services performed by the former paralegal for the person or group prior to the date on which the suspension began; or
    - (ii) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group prior to the date on which the suspension began.

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APPENDIX 3

#### PROPOSED AMENDMENTS TO THE PARALEGAL CODE OF CONDUCT

##### Rule 6

*[NEW HEADING] Working with or employing unauthorized persons*  
*[REVISED WORDING OF SUSECTION (6)]*

- (6) Without the express approval of a committee of Convocation appointed for the purpose, a paralegal shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the provision of legal services any person who, in Ontario or elsewhere,
  - (a) is disbarred and struck off the Rolls,
  - (b) is a person whose license to practise law or to provide legal services is revoked,

- (c) as a result of disciplinary action, has been permitted to resign his or her membership in the Law Society or to surrender his or her licence to practise law or to provide legal services, and has not had his or her licence restored,
- (d) is suspended,
- (e) is a person whose licence to practise law or to provide legal services is suspended, or
- (f) is subject to an undertaking not to practise law or to provide legal services.

*[NEW SUBSECTIONS]*

Practice by suspended paralegal prohibited

(7) A paralegal whose licence to provide legal services is suspended shall comply with the requirements of the By-laws and shall not

- (a) provide legal services; or
- (b) represent or hold himself or herself out as a person entitled to provide legal services.

Undertakings not to provide legal services

(8) A paralegal who gives an undertaking to the Law Society not to provide legal services shall not,

- (a) provide legal services; or
- (b) represent or hold himself or herself out as a person entitled to provide legal services.

Undertakings to provide legal services subject to restrictions

(9) A paralegal who gives an undertaking to the Law Society to restrict his or her provision of legal services shall comply with the undertaking.

FOR INFORMATION

AMENDMENT TO BY-LAW 4 (LICENSING)

16. The Professional Regulation Committee is proposing an amendment to By-law 4, to the effect that a person cannot hold two classes of licence, L1 and P1, at the same time. The Paralegal Standing Committee reviewed this item, and concurs with the recommendation of the Professional Regulation Committee.

'GRANDPARENT' LICENSING EXAMINATION

17. The Professional Development & Competence Department projects the total number of applicants taking the Licensing Examination on January 17th at 1,911. The geographical breakdown is as follows:

Toronto (a.m.)	558
Toronto (p.m.)	854
London	192
Sudbury	48
Ottawa (a.m.)	25

Ottawa (p.m.) 41  
Thunder Bay 14

Re: Persons with Suspended or Revoked Licences

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve the changes to Rule 6.01 (6) of the Paralegal Code of Conduct and receive for information the new guidelines set out in the Report.

Carried

*Items for Information*

- Amendment to By-Law 4 (Licensing)
- Grandparent Licensing Examination

FINANCE COMMITTEE REPORT

Mr. Millar presented the Finance Committee Report.

Report to Convocation  
January 24, 2008

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Finance Committee

Committee Members  
Derry Millar, Chair  
Brad Wright, Vice-Chair  
Melanie Aitken  
John Ground  
Susan Hare  
Carol Hartman  
Janet Minor  
Jack Rabinovitch  
Paul Schabas  
Gerald Swaye

Purposes of Report: Decision & Information

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

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## COMMITTEE PROCESS

1. The Finance Committee (“the Committee”) met on January 10, 2008. Committee members in attendance were: Derry Millar(c.), Brad Wright (vc.), Susan Hare, Carol Hartman, Janet Minor, Jack Rabinovich and Paul Schabas. Bonnie Warkentin and Laurie Pawlitza were also in attendance.
2. Staff in attendance were Wendy Tysall, Josée Bouchard, Fred Grady and Andrew Cawse.

## FOR DECISION

## BY-LAW 4 AND 5 AMENDMENTS

3. The changes to By-laws 4 and 5 recommended by the Finance Committee are contained in a separate omnibus by-law motion along with changes recommended by the Professional Regulation Committee.
4. Convocation approved the paralegal fee categories in September 2007 and By-Law 4 and 5 are being updated to reflect the approved policies. The new by-laws therefore incorporate paralegal fees and include amendments for all licences issued and restored after January 1.

## FOR INFORMATION

## OTHER MATTERS

5. The Committee also reviewed the following other matters:
  - a) The Committee reviewed the draft paralegal operating budget for 2008. A decision on the matter was deferred to February to allow time for the Paralegal Standing Committee to also review the budget.

- b) The Committee reviewed the extension of the paralegal start-up budget which will be brought to Convocation together with the other paralegal budget matters in February.
- c) The Committee reviewed the Compensation Fund levy for paralegals for 2008. A decision on the matter was deferred to February to allow time for the Paralegal Standing Committee to also review the levy and any input from the Compensation Fund Committee.
- d) With the assistance of the co-chairs of the Retention of Women in Private Practice Working Group, Bonnie Warkentin and Laurie Pawlitzka, the Committee reviewed the resources required to implement the recommendations of the working group, and received further materials.
- e) Hewitt Associates, investment consultants, made a presentation on non-North American equity investments to the Committee to be used in formulating an updated Investment Policy for the Law Society.

It was moved by Mr. Millar, seconded by Mr. Wright, that the amendments to By-Laws 4 and 5 be approved.

Carried

Re: Amendment to By-Law 4

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007 and September 20, 2007, be further amended as follows:

1. Subsection 3 (2) of By-Law 4 [Licensing] is amended by deleting "5 (1)" and substituting "4 (1)".
2. Subsection 3 (3) of the By-Law is amended by deleting "5 (2)" and substituting "4 (2)".
3. Paragraph 2 of subsection 8 (1) of the By-Law is amended by deleting "and annual fee" / "et la cotisation annuelle applicables".
4. The By-Law is amended by adding immediately after the heading "LICENCE TO PROVIDE LEGAL SERVICES" / "PERMIS AUTORISANT LA PRESTATION DE SERVICES JURIDIQUES" the following:

Requirement for issuance of Class P1 licence: not otherwise licensed

10.1 It is a requirement for the issuance of a Class P1 licence that an applicant not already hold a licence to provide the legal services that a licensee who holds a Class P1 licence is authorized to provide.

Exigence pour l'octroi d'un permis de catégorie P1 : pas d'autre permis

10.1 Pour obtenir un permis de catégorie P1, le requérant ou la requérante ne peut pas déjà détenir un permis autorisant la prestation des mêmes services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir.

Re: Amendment to By-Law 5

THAT By-Law 5, made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, be revoked and the following substituted:

ANNUAL FEE

REQUIREMENT TO PAY ANNUAL FEE

Requirement to pay annual fee

1. (1) Every year, a licensee shall pay an annual fee, in accordance with sections 2 and 3, unless the licensee is exempt from payment of the annual fee.

Levy for Compensation Fund

(2) An annual fee shall include a Compensation Fund levy.

AMOUNT PAYABLE AND DUE DATE

Payment due

2. (1) Subject to subsection (7), payment of an annual fee is due on January 1 every year.

Amount payable

(2) Subject to subsections (3), (4), (5) and (6), a licensee shall pay the full amount of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee.

Same: fifty percent

(3) A licensee who does not practise law or provide legal services, including a licensee employed in education, in government or in a corporation in a position where he or she is not required to practise law or provide legal services, shall pay fifty percent of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee.

Same: twenty-five percent

(4) The following licensees shall pay twenty-five percent of an annual fee and any taxes that the Society is required to collect from the licensee in respect of the payment of the annual fee:

1. A licensee who does not engage in any remunerative work and does not practise law or provide legal services.
2. A licensee who is in full-time attendance at a university, college or designated educational institution within the meaning of the *Income Tax Act* (Canada) and does not practise law or provide legal services.
3. A licensee who is on a pregnancy or parental leave and does not practise law or provide legal services.

#### Licence issued after January 1

(5) A licensee who was issued a licence after January 1, shall pay, in respect of the year in which the licence was issued, an amount of an annual fee determined by the formula,

$$(A \div \square 12) \times B$$

where,

- A is the amount of the annual fee the licensee would have been required to pay under subsection (2), (3) or (4) if the licence was issued on January 1, and
- B is the number of whole calendar months remaining in the year beginning with the first month following the month in which the licence was issued.

#### Licence restored after January 1

(6) A licensee whose licence was restored under section 31 of the Act after January 1, shall pay, in respect of the year in which the licence was restored, an amount of an annual fee determined by the formula,

$$(A \square \div 12) \times B$$

where,

- A is the amount of the annual fee the licensee would have been required to pay under subsection (2), (3) or (4) if the licence was not in abeyance on January 1, and
- B is the number of whole calendar months remaining in the year beginning with the first month following the month in which the licence is restored.

#### Same: payment due

(7) Payment of an annual fee by a licensee to whom subsection (5) or (6) applies is due on the first day of the first month following the month in which the licence was issued or restored.

## CHANGE IN STATUS

## Change in status

3. (1) If a licensee who is required to pay the full amount, or fifty percent, of an annual fee becomes entitled to pay fifty percent, or twenty-five percent, of an annual fee, the licensee shall pay,

(a) an amount determined by the formula

$$(A \quad \square \div 12) \times B$$

where

A is the full amount, or fifty percent, of an annual fee, and

B is the number of whole or part calendar months during which the licensee is required to pay the full amount, or fifty percent, of the annual fee; and

(b) an amount determined by the formula

$$(C \quad \square \div 12) \times D$$

where

C is fifty percent, or twenty-five percent, of the annual fee, and

D is the number of whole calendar months during which the licensee is required to pay fifty percent, or twenty-five percent, of an annual fee.

## Same

(2) If a licensee who is required to pay fifty percent, or twenty-five percent, of an annual fee becomes required to pay the full amount, or fifty percent, of an annual fee, the licensee shall pay, in respect of the period of time during which he or she is required to pay the lesser amount of an annual fee and the period of time during which he or she is required to pay the higher amount of an annual fee,

(a) an amount determined by the formula

$$(E \quad \square \div 12) \times F$$

where

E is fifty percent, or twenty-five percent, of the annual fee, and

F is the number of whole calendar months during which the licensee is required to pay fifty percent, or twenty-five percent, of an annual fee; and

(b) an amount determined by the formula

$$(G \div 12) \times H$$

where

G is the full amount, or fifty percent, of the annual fee, and

H is the number of part or whole calendar months during which the licensee is required to pay the full amount, or fifty percent, of an annual fee.

Same

(3) If a licensee who is required to pay the full amount, fifty percent or twenty-five percent of an annual fee becomes exempt from payment of an annual fee, the licensee shall pay an amount determined by the formula

$$(I \div 12) \times J$$

where

I is the full amount, fifty percent or twenty-five percent of the annual fee, and

J is the number of whole or part calendar months during which the licensee is required to pay the full amount, fifty percent or twenty-five percent of an annual fee.

When payment due

(4) If under this section, a licensee is required to pay, in respect of a year, an amount that is greater than the amount required to be paid under section 2, the difference between the amount that the licensee is required to pay under this section and the amount that the licensee is required to be pay under section 2 shall be due on a date to be specified by the Society.

Application for refund

(5) If under this section, a licensee is required to pay, in respect of a year, an amount that is less than the amount required to be paid under section 2, subject to subsections (6) and (7), the licensee is entitled to a refund of the difference between the amount that the licensee is required to pay under section 2 and the amount that the licensee is required to be pay under this section.

Application for refund

(6) A licensee shall apply to the Society to claim an entitlement to a refund under subsection (5).

#### Time for making application

(7) An application to the Society under subsection (6) shall be made before the end of the year in respect of which the licensee claims an entitlement to a refund under subsection (5).

#### No entitlement to refund

(8) A licensee who does not comply with subsection (7) is not entitled to receive a refund.

### EXEMPTION FROM REQUIREMENT TO PAY ANNUAL FEE

#### Application for exemption from payment of annual fee: over sixty-five years of age

4. (1) A licensee who is over sixty-five years of age and practises law only as described in subsection 3 (2) of By-Law 4 [Licensing] may apply to the Society for an exemption from payment of an annual fee.

#### Same: incapacity

(2) A licensee who holds a Class L1 licence and who is incapacitated within the meaning of the Act may apply to the Society for an exemption from payment of an annual fee.

#### Application form

(3) An application under subsection (1) shall be in a form provided by the Society.

#### Consideration of application

(4) The Society shall consider every application made under subsections (1) and (2) and if satisfied that the requirements described subsection (1) or (2) have been met, the Society shall approve the application.

#### Effective date of exemption

(5) A licensee whose application is approved is exempt from payment of the annual fee beginning on the first day of the first month after the month in which the licensee submits an application form completed to the satisfaction of the Society.

#### Exemption from payment of annual fee: practising law for fifty years

(6) A licensee who has practised law in Ontario as a barrister, as a solicitor or as a barrister and solicitor for a period of fifty years is exempt from payment of the annual fee.

#### Period of fifty years

(7) The following periods of time may be counted towards the period of fifty years required by subsection (6):

1. A period of time during which the licensee's licence is in abeyance under section 31 of the Act.
2. A period of time during which the licensee's practice of law is interrupted by war service.
3. Subject to subsection (8), a period of time during which the licensee's licence is suspended for failure to pay a fee or levy.
4. In the absolute discretion of the Professional Development and Competence Committee, a period of time during which the licensee's licence is suspended for a reason other than for failure to pay a fee or levy.

Period of suspension for non-payment: limit on time that may be counted

(8) Subject to subsection (9), the total amount of time that may be counted under paragraph 3 of subsection (7) towards the period of fifty years required by subsection (6) is one year.

Period of suspension for non-payment: exception to limit

(9) In appropriate circumstances, the Professional Development and Competence Committee may permit a period of time in excess of one year to be counted under paragraph 3 of subsection (7) towards the fifty years required under subsection (6).

Exercise of powers by Committee

(10) The performance of any duty, or the exercise of any power, given to the Professional Development and Competence Committee under this section is not subject to the approval of Convocation.

Period of default

5. (1) For the purpose of subsection 46 (1) of the Act, the period of default for failure to pay an annual fee is 120 days after the day on which payment of the annual fee is due.

Payment plan: deemed date of failure to pay

(2) Where the Society arranges or permits a schedule for the payment of an annual fee by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay an annual fee will be deemed to have occurred on January 1.

Reinstatement of licence

(3) If a licensee's licence has been suspended under subsection 46 (1) of the Act for failure to pay an annual fee in a given year, for the purpose of subsection 46 (2) of the Act, the licensee shall pay an amount equal to the amount of the annual fee which the licensee is required to pay in respect of that year and a reinstatement fee.

## LA COTISATION ANNUELLE

## VERSEMENT OBLIGATOIRE DE LA COTISATION ANNUELLE

Versement obligatoire de la cotisation annuelle

1. (1) À moins d'en avoir été exonérés, les titulaires de permis versent chaque année leur cotisation annuelle, conformément aux articles 3 et 4.

Prélèvement pour le Fonds d'indemnisation

(2) Une partie de la cotisation annuelle est versée au Fonds d'indemnisation.

## MONTANT EXIGIBLE ET DATE DE PAIEMENT

Date de paiement

2. (1) Sous réserve du paragraphe (7), la cotisation annuelle est exigible le 1<sup>er</sup> janvier de chaque année.

Montant exigible

(2) Sous réserve des paragraphes (3), (4), (5) et (6), les titulaires de permis versent au Barreau le montant total de la cotisation annuelle et les taxes connexes que le Barreau est tenu de percevoir.

Idem : Cinquante pour cent

(3) Les titulaires de permis qui n'exercent pas le droit, notamment les titulaires de permis travaillant dans le milieu de l'éducation, pour le gouvernement ou pour une personne morale et dont les fonctions ne consistent pas à exercer le droit, versent au Barreau un montant équivalant à cinquante pour cent de la cotisation annuelle, ainsi que les taxes connexes que le Barreau est tenu de percevoir.

Idem : Vingt-cinq pour cent

(4) Les titulaires de permis suivants sont tenus de verser au Barreau un montant équivalant à vingt-cinq pour cent de la cotisation annuelle, ainsi que les taxes connexes que le Barreau est tenu de percevoir :

1. Les titulaires de permis qui ne se livrent pas à des activités rémunérées, n'exercent pas le droit et ne fournissent pas de services juridiques.
2. Les titulaires de permis qui, aux termes de la *Loi de l'impôt sur le revenu* (Canada), suivent des cours à temps plein dans un collège universitaire ou dans tout autre établissement d'enseignement désigné, qui n'exercent pas le droit et ne fournissent pas de services juridiques.

3. Les titulaires de permis qui sont en congé de maternité ou en congé parental, qui n'exercent pas le droit et ne fournissent pas de services juridiques.

Permis octroyé après le 1<sup>er</sup> janvier

(5) Les titulaires de permis qui reçoivent leur permis après le 1<sup>er</sup> janvier, doivent verser, pour l'année durant laquelle le permis a été octroyé, un montant de cotisation annuelle déterminé par la formule,

$$(A \div \square 12) \times B$$

où

- A représente le montant de la cotisation annuelle que ces personnes auraient été tenues de verser conformément aux paragraphes (2), (3) ou (4) si elles avaient été titulaires de permis en date du 1<sup>er</sup> janvier,
- B représente le nombre de mois civils entiers restant dans l'année, commençant le premier mois qui suit le mois durant lequel ces personnes ont reçu leur permis.

Personnes réadmisses après le 1<sup>er</sup> janvier

(6) Les personnes qui ont été réadmisses en tant que titulaires de permis après le 1<sup>er</sup> janvier en vertu de l'article 31 de la *Loi*, versent, pour l'année durant laquelle elles sont réadmisses, une cotisation annuelle dont le montant est calculé selon la formule suivante :

$$(A \square \div 12) \times B$$

où

- A représente le montant de la cotisation annuelle que ces personnes auraient été tenues de verser conformément aux paragraphes (4), (5) ou (6), si elles avaient été titulaires de permis en date du 1<sup>er</sup> janvier;
- B représente le nombre de mois civils entiers restant dans l'année, commençant le premier mois qui suit le mois durant lequel ces personnes sont réadmisses.

Idem : date de versement

(7) La cotisation annuelle des titulaires de permis visés au paragraphe (5) ou (6) est exigible le premier jour du premier mois qui suit celui au cours duquel ils sont admis ou réadmis.

## CHANGEMENT DE SITUATION PROFESSIONNELLE

Changement de situation professionnelle

3. (1) Les titulaires de permis tenus de verser le montant total ou cinquante pour cent du montant de la cotisation annuelle qui sont par la suite autorisés à verser cinquante pour cent ou vingt-cinq pour cent du montant de la cotisation annuelle versent alors le total des montants suivants :

- a) le montant calculé selon la formule

$$(A \div B) \times B$$

où

- A représente le montant total ou cinquante pour cent du montant de la cotisation annuelle;
- B représente le nombre de mois civils partiels ou entiers restant à l'année au cours de laquelle les titulaires de permis sont tenus de verser le montant total ou cinquante pour cent du montant de la cotisation annuelle;

- b) le montant calculé selon la formule

$$(C \div 12) \times D$$

où

- C représente cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle;
- D représente le nombre de mois civils entiers au cours desquels les titulaires de permis sont tenus de verser cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle.

Idem

(2) Les titulaires de permis tenus de verser cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle qui doivent par la suite verser le montant total ou cinquante pour cent du montant de la cotisation annuelle versent alors, pour la période durant laquelle ils sont tenus de verser un montant moins élevé de la cotisation annuelle et pour la période durant laquelle ils sont tenus de verser un montant plus élevé, le total des montants suivants :

- a) le montant calculé selon la formule

$$(E \div 12) \times F$$

où

- E représente cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle;
- F représente le nombre de mois civils entiers durant lesquels les titulaires de permis sont tenus de verser cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle;

- b) le montant calculé selon la formule

$$(G \div 12) \times H$$

où

- G représente le montant total ou cinquante pour cent du montant de la cotisation annuelle;
- H représente le nombre de mois civils partiels ou entiers au cours desquels les titulaires de permis sont tenus de verser le montant total ou cinquante pour cent du montant de la cotisation annuelle.

Idem

(3) Les titulaires de permis tenus de verser le montant total, cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle qui sont par la suite exonérés du versement de la cotisation annuelle versent alors le montant calculé selon la formule

$$(I \quad \square \div 12) \times J$$

où

- I représente le montant total, cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle;
- J représente le nombre de mois civils partiels ou entiers au cours desquels les titulaires de permis sont tenus de verser le montant total, cinquante ou vingt-cinq pour cent du montant de la cotisation annuelle.

Date de paiement

(4) Si, en vertu du présent article, un membre est tenu de verser, pour une année donnée, un montant supérieur à celui qui est prévu à l'article 3, la différence entre le montant que le titulaire de permis est tenu de verser selon le présent article et le montant que le titulaire de permis est tenu de verser selon l'article 3 est exigible à la date déterminée par un ou une responsable du Barreau.

Demande de remboursement

(5) Si, en vertu du présent article, un titulaire de permis est tenu de verser, pour une année donnée, un montant inférieur à celui qui est prévu à l'article 3, sous réserve des paragraphes (6) et (7), le titulaire de permis a droit à un remboursement équivalant à la différence entre le montant qu'il est tenu de verser selon l'article 3 et le montant qu'il est tenu de verser selon le présent article.

Demande de remboursement

(6) Les titulaires de permis présentent au Barreau la demande de remboursement visée au paragraphe (5).

Délai de présentation d'une demande de remboursement

(7) La demande de remboursement visée au paragraphe (6) est présentée au Barreau avant la fin de l'année durant laquelle le titulaire de permis prétend avoir droit au remboursement aux termes du paragraphe (5).

Inadmissibilité au remboursement

(8) Les titulaires de permis qui ne respectent pas le paragraphe (7) n'ont pas droit à un remboursement.

#### EXONÉRATION DU PAIEMENT DE LA COTISATION OBLIGATOIRE ANNUELLE

Demande d'exonération du paiement de la cotisation obligatoire annuelle : Plus de soixante-cinq ans

4. (1) Les titulaires de permis âgés de plus de soixante-cinq ans qui n'exercent le droit que conformément au paragraphe 3 (2) du règlement administratif 4 [Octroi de permis] peuvent présenter au Barreau une demande d'exonération du paiement de la cotisation annuelle.

Idem : Invalidité

(2) Les titulaires de permis de catégorie de permis L1 qui sont incapables d'exercer le droit en raison d'une invalidité permanente selon les dispositions de la Loi, peuvent présenter au Barreau une demande d'exonération du paiement de la cotisation annuelle.

Demande

(3) La demande présentée selon le paragraphe (1) est rédigée selon le formulaire du Barreau.

Examen de la demande

(4) Un ou une responsable du Barreau examine chaque demande présentée en vertu des paragraphes (1) et (2), s'il est d'avis que la demande répond aux exigences des paragraphes (1) et (2), accepte la demande.

Date d'entrée en vigueur de l'exonération

(5) Les titulaires de permis dont la demande d'exonération est acceptée sont exonérés du paiement de la cotisation annuelle à compter du premier jour du mois suivant celui au cours duquel les titulaires de permis ont présenté une demande d'exonération considérée comme étant complète par un ou une responsable du Barreau.

Exonération pour paiement de la cotisation annuelle : Exercice du droit pour une période de cinquante ans

(6) Les titulaires de permis qui exercent le droit en Ontario à titre d'avocat ou d'avocate pour une période de cinquante ans sont exonérés du paiement de la cotisation annuelle.

### Période de cinquante ans

(7) Les périodes qui suivent peuvent entrer dans le calcul de la période de cinquante ans exigée par le paragraphe (6) :

1. La période d'interruption de la qualité de titulaire de permis pour cause de nomination à une charge judiciaire visée à l'article 31 de la Loi.
2. La période d'interruption de la qualité de titulaire de permis pour cause de service militaire.
3. Sous réserve du paragraphe (8), la période de suspension du permis du titulaire pour raison du non-paiement de cotisations ou de droits.
4. À l'entière discrétion du Comité permanent du Conseil chargé des questions d'admission, la période de suspension du permis du titulaire pour une raison autre que le non-paiement de cotisations ou de droits.

Période de suspension pour cause de non-paiement : restriction de la période qui peut entrer dans le calcul

(8) Sous réserve du paragraphe (9), la période totale qui peut, en vertu de la disposition 3 du paragraphe (7), entrer dans le calcul de la période de cinquante ans exigée au paragraphe (6) est d'un an.

Période de suspension pour cause de non-paiement : exception à la restriction

(9) Lorsque les circonstances s'y prêtent, le Comité du perfectionnement professionnel peut permettre qu'une période de plus d'un an entre, en vertu de la disposition 3 du paragraphe (7), dans le calcul de la période de cinquante ans exigée au paragraphe (6).

### Exercice des pouvoirs d'un comité

(10) L'exercice des pouvoirs et des fonctions que le présent article confère au Comité du perfectionnement professionnel conformément au présent article n'est pas assujéti à l'approbation du Conseil.

### Période de défaut

5. (1) Aux fins de l'application du paragraphe 46 (1) de la Loi, la période de défaut dans le cas de non-paiement d'une cotisation annuelle est de 120 jours à compter de la date à laquelle le versement était exigible.

### Conditions de paiement et date présumée du non-paiement

(2) Lorsque le Barreau prend des dispositions particulières de paiement avec un membre ou qu'il lui permet d'acquitter sa cotisation annuelle par versements ou selon les termes d'une autre entente, et qu'un versement exigible n'a pas été effectué à la date prévue, le non-paiement de la cotisation annuelle est réputé avoir eu lieu le 1<sup>er</sup> janvier.

## Restitution d'un permis

(3) Si, en raison du non-paiement de la cotisation annuelle, le permis d'un titulaire de permis a été suspendu en vertu du paragraphe 46 (1) de la Loi, le titulaire de permis verse, aux fins de l'application du paragraphe 46 (2) de la Loi, un montant égal à celui de la cotisation annuelle qu'il était tenu de verser pour l'année en question et des frais de réadmission.

## ACCESS TO JUSTICE COMMITTEE REPORT

Ms. Boyd presented the Access to Justice Committee Report, which was originally distributed to Convocation in camera.

Report to Convocation  
January 24, 2008

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### Access to Justice Committee

Committee Members  
Marion Boyd, Co-Chair  
Judith Potter, Co-Chair  
Paul Schabas, Vice-Chair  
Paul Dray  
Avvy Go  
Allan Lawrence  
Susan McGrath  
Bonnie Tough

Purpose of Report: Decision

Prepared by the Equity Initiatives Department  
(Jewel Amoah, Counsel - 416-947-3425)

### COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on January 9, 2008, 2007. The Treasurer attended. Committee members Marion Boyd, Co-Chair, Judith Potter, Co-Chair, Paul Schabas, Vice-Chair, Avvy Go, Allan Lawrence, Susan McGrath and Bonnie Tough attended. Staff members Jewel Amoah, Josée Bouchard and Sheena Weir attended.

## FOR DECISION

## CIVIL JUSTICE LAW REFORM PROJECT

## MOTION

2. That Convocation strongly support the overall approach to increasing access to justice proposed in the *Summary of Findings and Recommendations Report* of the Civil Justice Reform Project, and that Convocation commit to working with the Ministry of the Attorney General on the details of the implementation of the recommendations.

## BACKGROUND

3. On June 28, 2006, then Attorney General Michael Bryant asked the Honourable Coulter Osborne, former Associate Chief Justice of Ontario, to lead the Civil Justice Reform Project.
4. The mandate of the Civil Justice Reform Project was to propose options to reform the civil justice system to make it more accessible and affordable to Ontarians. The recommendations for action were to focus on proposals that would produce meaningful results in enhancing access to justice for Ontarians and would be suitable for implementation within a reasonable amount of time.
5. On November 22, 2007, Justice Osborne released the *Summary of Findings and Recommendations* of the Civil Justice Reform Project at a launch event held at the Law Society.
6. At the launch event, Attorney General Chris Bentley commented that implementation of the recommendations will ensure that “the people of Ontario will benefit from a strengthened civil justice system that resolves disputes faster with lower costs.”
7. The *Summary of Findings* contains 81 recommendations, touching on 18 areas of procedural and substantive law, including unrepresented litigants, small claims, trial management, appeals, technology, courtroom civility and proportionality. The *Summary of Findings* is available for download from the website of the Ministry of the Attorney General at [www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp](http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjrp). The list of recommendations extracted from the *Summary of Findings* is presented at Appendix 1.
8. The *Summary of Findings and Recommendations* is informed by province-wide consultations, research on civil justice studies and reforms in other jurisdictions, and the review of written submissions from legal associations, lawyers, members of the judiciary and the public. The list of organizations consulted, including the Law Society, is Appendix C of the *Summary of Findings and Recommendations* and is presented at Appendix 2.
9. The full report is expected to be released in early 2008.

## Importance to the Law Society

10. The recommendations contained *Summary of Findings and Recommendations* are in conformity with the Law Society’s mandate to regulate in the public interest, having

regard to maintaining and advancing the cause of justice and the rule of law and facilitating access to justice for the people of Ontario.<sup>1</sup>

11. The recommendations address the access to justice priority identified at the Bencher Retreat in September 2007. For example, recommendations concerning proportionality and the cost of litigation aim address the expense and complexity of the justice system. The proposed recommendations will also assist in alleviating financial and informational barriers to access to justice.
12. The recommendations generally address the best interests of the public as consumers of legal services, and propose a number of appropriate alternative means by which to achieve access to justice.
13. Since the release of the *Summary of Findings and Recommendations* in November 2007, the Attorney General has indicated that improving access to the civil justice system is a priority for his office.
14. The Access to Justice Committee commends the Ministry of the Attorney General for its commitment to improving access to civil justice for the people of Ontario. The recommendations, if implemented, will ensure better access to justice for the people of Ontario.
15. The Access to Justice Committee is encouraged by the breadth of issues and depth of reform contemplated in the *Summary of Findings and Recommendations*, and is very supportive of the enhanced access to justice that will result. The *Summary of Findings and Recommendations* are a welcome contribution of initiatives to facilitate access to justice. Support of these recommendations and the Law Society's commitment to assist in their implementation where appropriate, are in keeping with the Law Society's function of governing the legal profession in the public interest.

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

- (1) Copy of the list of recommendations from the Summary of Findings and Recommendations Report. (Appendix 1, pages 5 – 30)
- (2) Copy of the list of organizations consulted. (Appendix 2, pages 31 – 32)

It was moved by Ms. Boyd, seconded by Mr. Caskey, that Convocation strongly support the overall approach to increasing access to justice proposed in the *Summary of Findings and Recommendations Report* of the Civil Justice Reform Project, and that Convocation commit to

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<sup>1</sup> *Law Society Act*, R.S.O. 1990, C. L.8, s. 4.2

working with the Ministry of the Attorney General on the details of the implementation of the recommendations.

Carried

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*REPORTS FOR INFORMATION ONLY*

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

Report to Convocation  
January 24, 2008

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

Committee Members  
Janet Minor, Chair  
Raj Anand, Vice-Chair  
Paul Copeland

Mary Louise Dickson  
 Avvy Go  
 Doug Lewis  
 Judith Potter  
 Robert Topp

Purposes of Report: Decision and Information

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

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

For Information..... TAB B

Gathering in Support of Lawyers in Pakistan

Equity Public Education Series Calendar

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on January 10, 2008. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson, Avvy Go and Judith Potter attended. Milé Komlen, Chair of the Equity Advisory Group (the "EAG") also attended. Staff members Josée Bouchard and Marisha Roman attended.

## FOR INFORMATION

### EQUITY PUBLIC EDUCATION SERIES CALENDAR 2008

*Black History Month -Managing Your Law Practice and Legal Career – The Business Case for Mentoring*

*In partnership with the Canadian Association of Black Lawyers*

Date: February 6, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall, featuring guest speaker, the Honourable Margaret Best, Ontario Minister of Health Promotion

*Access Awareness - The International Convention on the Rights of Persons with Disabilities and its Implications in Litigation*

*In partnership with ARCH Disability Law Centre*

Date: March 3, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

International Women's Day

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

Date: March 5, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

International Day for the Elimination of Racial Discrimination - *Routes to Freedom: Reflections on the Bicentenary of the Abolition of the Slave Trade*

*In partnership with the Canadian Association of Black Lawyers and the Black Law Students Association of Canada*

Date: March 14, 2008, Ottawa

The University of Ottawa's Faculty of Law will be hosting a three-day conference from March 13th to 16th, 2008 to recognize the 200th anniversary of the abolition of the slave trade. The conference will speak to the historic realities of the transatlantic slave trade and the accomplishments of African peoples, and heighten awareness of the complexities of current conditions for the descendants of that pivotal historic moment. The Law Society will be participating in the conference and will be the host of an evening reception for dignitaries and conference participants at the Ottawa Courthouse. The Equity Initiatives Department is taking the lead in the organizing and planning of the event, including handling all logistical details, sending invitations, confirming keynote speakers, and promotions.

National Holocaust Memorial Day

*In partnership with B'nai Brith Canada*

Date: April 30, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

South Asian Heritage Month

*In partnership with the South Asian Legal Clinic of Ontario*

Date: May 12, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

National Aboriginal Day

Date: June 16, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

Pride Week

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

Date: June 24, 2008  
Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre  
Reception: 6 p.m., Convocation Hall

Louis Riel Day  
Date: November 13, 2008  
Time: Workshop from 4 to 6 p.m., Donald Lamont Learning Centre  
Reception: 6 p.m., Convocation Hall

Tribunals Committee Report  
▪ Tribunals Office Quarterly Statistics

Report To Convocation  
January 24, 2008

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Tribunals Committee

Committee Members  
Mark Sandler (Chair)  
Bonnie Warkentin (Vice-Chair)  
Raj Anand  
Larry Banack  
Carole Curtis  
Jennifer Halajian  
Derry Millar  
Joanne St. Lewis

Purposes of Report: Information

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

## COMMITTEE PROCESS

1. The Committee met on January 10, 2008. Committee members Mark Sandler (Chair), Bonnie Warkentin (Vice Chair), Raj Anand, Larry Banack, Carole Curtis, Derry Millar, and Joanne St. Lewis attended. Bencher Heather Ross also attended. Staff members Lesley Cameron, Katherine Corrick, A.K. Dionne, Grace Knakowski, Lisa Mallia, Elliot Spears and Sophia Sperdakos also attended.

## INFORMATION

## TRIBUNALS OFFICE QUARTERLY STATISTICS

2. Convocation is provided with the Tribunals Office Quarterly Statistics for the fourth quarter of 2007 at APPENDIX 1.

Attached to the original Report in Convocation file, copy of the Tribunals Office Statistics Fourth Quarter Report (October 1 – December 31, 2007).

(Appendix 1, pages 4 – 23)

## Audit Committee Report

- LAWPRO Financial Statements for nine months ending September 30, 2007
- LibraryCo Financial Statements for nine months ending September 30, 2007

Report to Convocation  
January 24, 2008

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## Audit Committee

Committee Members  
Beth Symes (Chair)  
Marshall Crowe (Vice-Chair)  
Ab Chahbar  
Ross Murray  
Vern Krishna

Purpose of Report: Information

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

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## For Information:

1. LawPro Financial Statements for the Nine Months ended September 30, 2007
2. LibraryCo Inc. – Financial Statements for the Nine Months ended September 30, 2007

## COMMITTEE PROCESS

1. The Audit Committee (“the Committee” ) met on January 11, 2008. Committee members in attendance were Beth Symes (c.), Marshall Crowe, Ab Chahbar, Vern Krishna and Ross Murray.
2. Staff in attendance were Malcolm Heins, Wendy Tysall, Zeynep Onen, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse.

### FOR INFORMATION LAWPRO FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2007

The Audit Committee recommends the combined third quarter financial statements for the Errors & Omissions Insurance Fund and the Lawyers’ Professional Indemnity Company be received by Convocation for information.

LAWPRO’s Report to the Audit Committee for the third quarter is attached.

### FOR INFORMATION LIBRARYCO INC. – FINANCIAL STATEMENTS FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2007

The Audit Committee recommends the third quarter financial statements for LibraryCo Inc. be received by Convocation for information.

The third quarter financial statements for LibraryCo with accompanying management analysis are attached.

## LIBRARYCO INC: REPORT TO THE SHAREHOLDERS

3rd QUARTER FINANCIAL REPORT  
For the 9 months ended SEPTEMBER 30, 2007

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### KEY POINT SUMMARY

#### Statement of Operating Revenues and Expenses - LibraryCo only

- The Budget YTD figures presented are primarily based on 3/4 of the annual budgeted amount. The exceptions are for revenues from the Law Foundation of Ontario and expenses for Electronic products and services and Capital and special needs grants. In these instances, information provided is based on the timing of received revenues and expenses paid in this quarter.
- The 2007 Annual Projected figures presented are primarily based on third quarter actuals supplemented by known or expected commitments as at the beginning of November – two months before year end. The projections are conservative.
- Law Society of Upper Canada grant (line 1) is the member-based fee that is transferred to LibraryCo on a monthly basis. This transfer includes an additional amount each quarter related to the quarterly transfers to the 48 Law Libraries. The amount of \$5.4 million is in line with budget.
- The Law Foundation grant - Electronic Resources (line 2) is used exclusively for electronic resource purchases. The entire grant had been received by the end of the 1st quarter based on the fact that the corresponding purchases had also been incurred. The amount of \$850,000 is in line with budget and the prior year.
- The Law Foundation grant - VRS / advoCHAT (lines 3 and 15) was included in the budgeting process this year. The “actual” information provided here is based on the matching of revenues to the associated expenses incurred in this reporting period, each of \$47,149.
- The Law Foundation grant - Infrastructure (lines 4 and 16) relates to new matching funding and expenditures received for a new project referred to as “Supporting County & District Infrastructure Requirements” (i.e. computer upgrades). This was not included in the budgeting process for this year. Total funding for this project will be \$204,000 and to date an advance of \$51,000 has been received. As of September 30, 2007 expenditures of \$11,581 have been incurred and \$39,419 is included on the balance sheet as “deferred revenue”. The transfer of further funds from the LFO requires confirmation that the initial installment of funding has been spent. This will very likely take place by year end. The funding period extends to February 13, 2008. Every effort is being made to complete association commitments in 2007.

- Salaries & benefits (line 7) for the period of \$173,000 are in line with the budgeted amounts. There was some staff turnover and the additional costs associated with the payout of accumulated vacation pay and severance has been offset by the vacancies. Monthly costs associated with the departure of the Executive Director will continue through to January 31, 2008. In addition, the new board manager was hired in October.
- Office and occupancy (line 8) expenses of \$273,000 are more than budgeted due to the inclusion of the unbudgeted administrative fee payable to the Law Society for the first time in this caption. The fee is being charged by the Law Society due to the changes in operations that have resulted from the amended Shareholders Agreement and the corresponding Administrative Services Agreement. The monthly fee of \$33,875 has been charged for the months of March through September for a total of \$237,000 YTD and \$339,000 projected for year-end. A small offsetting saving of approximately \$24,000 compared to the original budget for the year is expected due to the closure of the LibraryCo office as of the end of June 2007.
- Professional fees (line 9) of \$45,000 can fluctuate from one period to the next depending on the timing of the use of the services. Expenses for the remainder of the year are projected to be restricted to the external accountant and external auditor for the remaining three months of the year.
- Electronic products and services (line 12) expenditures of \$1.7 million were fully incurred in the first quarter of the year. Actual costs are slightly higher than amounts originally budgeted due to increases in publishing costs that were not anticipated at the time the budget was prepared.
- Insurance and group benefit (line 13) projected expenses of \$259,000 for the year are projected to come in under budget by \$35,000 based on known monthly commitments to Great West Life.
- Traditional resources, cataloguing etc (line 14) of \$112,000 at the end of September are library related expenses including staff travel; COLAL and CDLPA Library Committee meetings; bulk purchase publications for the library system including Continuing Legal Education and Law Society Special Lecture series materials; and cataloguing of collections provided by the Law Society. If current trends continue, this caption has the potential to experience significant savings on budget but many of these expenses are incurred in later months based on the timing of various meetings and billings from the Law Society. Staff travel costs are down significantly due to staff turnover during the year. Promotional/public relation costs (YTD: Nil) and November COLAL meeting costs (expenditures being processed total approximately \$24,000) were budgeted for \$20,000 each for the year.
- Infrastructure expenses (line 16) have been projected to match revenues.
- Law Libraries – grants (line 19) show an “actual” amount that is greater than the budgeted amount as the annual allocation amounts for a few libraries were revised from the amounts originally included in the budget. The most significant change was the Sudbury library’s annual allocation which increased by approximately \$25,000 due to the hiring of a Library Technician to replace a retiring Librarian Assistant. The flood-related reductions in funding to Cochrane have been incorporated into projections.

- Capital and special needs grants (line 20) are provided to assist the libraries with replacing and upgrading of aging furniture and equipment, library renovations and/or library relocations. To date, a portion of this annual funding has already been provided to various Libraries for the purchase of a scanner, photocopiers and, in one case, a new phone system. Any interplay between this category and LFO funding is not expected to result in net savings.
- The overall deficit of revenues over expenses (line 23) of \$315,000 for the nine months is significantly above the amount budgeted. Although a deficit is typically expected at this point of the year, the amount is higher due to the increases in publishing costs, severance and other payroll related costs associated with the closure of the LibraryCo office and the administration fee being charged by the Law Society. Based on expected revenues and expenses for the remainder of the year, it is projected that a deficit of approximately \$232,000 will be the net result for the year. The board approved the financing of the deficit for the 2007 year from the reserve fund at a prior meeting.

#### Balance Sheet - LibraryCo only

- Cash and short-term investment balances (line 1) of \$947,000 are comparable to the prior year in spite of the additional costs being incurred as a result of changes in operations that have resulted from the amended Shareholders Agreement and the corresponding Administrative Services Agreement with Law Society. This is primarily due to the timing of some payments as indicated by the higher accounts payable and accrued liabilities balances as well as the additional funding received from the LFO as indicated by the deferred revenue balance at September 30, 2007.
- Prepaid expenses (line 3) include a portion of the property and liability insurance annual premiums paid in April not yet expensed. The total premiums charged for this year were approximately \$6,000 less than in the prior year.
- LFO funding receivable – (line 4) prior year's balances reflected VRS/advoCHAT actual expenditures being greater than the funding received. In the current year expenditures are slightly less than the funding received, thereby resulting in a deferred revenue balance of approximately \$700.
- Accounts payable and accrued liabilities (line 8) – this year's balance includes approximately \$68,000 due for the administration fees for the months of August and September. Since the related Administrative Services Agreement has only come into effect for this year, there are no such comparable amounts in last year's balances.
- Deferred revenue - LFO funding – (line 9) balance includes VRS / advoCHAT actual expenditures to date being less than the funding received (the \$700 noted above) as well as approximately \$39,400 of the advanced funding received related to a new project (*Supporting County & District Infrastructure Requirements* – i.e. computer upgrades) where expenses have not yet been incurred.

#### Statement of Changes in Fund Balances – LibraryCo

- The 2007 Budget for LibraryCo did not forecast using the Reserve to supplement funding from the Law Society and the Law Foundation. Based on expected revenues

and expenses for the remainder of the year, it is believed that a deficit of approximately \$232,000 will result at year-end due to the increases in publishing costs, severance and other payroll related costs associated with the closure of the LibraryCo office and the administration fees being charged by the Law Society. The board approved the financing of the deficit for the 2007 year from the reserve fund at a prior meeting. For purposes of the third quarter statements, the deficit for the period of \$314,000 has been financed from the reserve fund.

#### Schedule of Revenues and Expenses - LibraryCo and County Law Libraries

- Law Society grant (line 1) of \$5.4 million shows an increase over the prior year of approximately 5% due to additional members as well as the reinstatement of \$105,000 in funding for Library collections that was removed in 2006 and replaced for the 2007 year.
- Other income (line 5) noted under the LibraryCo column represents interest income earned on the Reserve fund balances. The amounts noted under the Law Libraries columns represents local recoveries. These may include: local members' dues, photocopying, faxing and printing charges, and fees charged for specific research services.
- Salaries and benefits (line 7) at the LibraryCo level are higher than the prior year due to the payout of accumulated vacation pay that occurred upon the departure of the Executive Director as well as severance paid to the Roving Librarian. Salaries at the Law Library level are expected to reflect annual increases of approximately 3%.
- Office and occupancy (line 8) expenses in 2007 include the administrative fee as previously noted.
- Professional fees (line 9) can fluctuate from one period to the next depending on the timing of the use of the services. In the first 9 months of this year, legal fees of approximately \$6,000 were incurred, at the LibraryCo level, related to the departure of the Executive Director. In 2006 additional fees of approximately \$14,000 were paid for the members' survey that was undertaken by LibraryCo's Integration Task Force.
- Collections (line 11) costs at the Law Library level are expected to be higher this year due to approximately \$105,000 of funding that was removed from the Law Libraries grant allocations in 2006 but was replaced for the 2007 year.
- Electronic products and services (line 12) expenditures have been fully incurred in the first quarter of the year. As budgeted, costs are higher this year due to an increase in publisher costs.
- Other (line 14) reflect lower costs to date (as compared to the prior year) in the area of staff travel costs which are down by approximately \$20,000 and the fact that the COLAL meeting, held in October this year, was held in September last year at a cost of approximately \$15,000.
- As is typical at this time of the year, LibraryCo is in a deficit position. The current deficit of revenues over expenses (line 22) is much higher than the prior year due to increases in publishing costs, severance and other payroll related costs associated with the

closure of the LibraryCo office and the Law Society administration fees (as explained previously).

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

- (1) Copy of LAWPRO Financial Statements for the nine months ended September 30, 2007.  
(pages 5 –23)
- (2) Copy of LibraryCo Inc. Financial Statements for the nine months ended September 30, 2007.  
(pages 32 – 35)

CONVOCATION ROSE AT 1:00 P.M.

Confirmed in Convocation this 21<sup>st</sup> day of February, 2008

Treasurer