MINUTES OF CONVOCATION

Thursday, 25th April, 2002
8:30 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Aaron, Arnup, Banack, Bindman, Boyd, Braithwaite, Campion, Carpenter-Gunn, Cass, Cherniak, Coffey, Copeland, Crowe, Diamond, Divinsky, E. Ducharme, T. Ducharme (by telephone), Epstein, Feinstein, Finkelstein, Go, Gottlieb, Hunter, Lamont, Laskin, Lawrence, Legge, MacKenzie, Marrocco, Millar, Minor, Mulligan, Murphy, Murray, Pilkington, Porter, Potter, Puccini, Robins, Ross, Ruby, St. Lewis, Simpson, Strosberg, Swaye, Topp, Wardlaw, White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer congratulated Mr. Patrick Furlong, Q.C., LSM, a life bencher who recently celebrated his 50th anniversary as a legal practitioner.

The Treasurer reported that he attended the funeral of the Queen Mother in London on April 9th, 2002.

The Treasurer read into the record the following styles and titles of Her Majesty Queen Elizabeth, The Queen Mother:

Most Excellent Princess Elizabeth, Queen Dowager and Queen Mother, Lady of the Most Noble Order of the Garter, Lady of the Most Ancient and Most Noble Order of the Thistle, Lady of the Imperial Order of the Crown of India, Grand Master and Dame Grand Cross of the Royal Victorian Order upon whom had been conferred the Royal Victorian Chain, Dame Grand Cross of the Most Excellent Order of the British Empire, Dame Grand Cross of the Most Venerable Order of the Hospital of St John, Relict of His Majesty King George the Sixth and Mother of Her Most Excellent Majesty Elizabeth The Second by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith, Sovereign of the Most Noble Order of the Garter including Honorary Bencher of the Law Society of Upper Canada.

The Treasurer noted with sadness the passing of Justice Richard Holland on March 27th. Justice Holland was called to the bar in 1950 and was a leading defence counsel. He was appointed to the Supreme Court of Ontario in 1972. Justice Holland was active in the creation of the Advocates' Society and was involved in mediation and arbitration at the date of his retirement in 1990.

The Treasurer reported that the Law Society and the Advocates' Society were organizing an appropriate function in his memory.

MOTION – DRAFT MINUTES OF CONVOCATION

It was moved by Ms. Potter, seconded by Mr. Feinstein that the Draft Minutes of Convocation of March 21st, 2002 and the Draft Minutes of the Call to the Bar Ceremonies in February, 2002 be approved.

Carried

MOTION – APPOINTMENT TO REVIEW SUBCOMMITTEE OF THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

It was moved by Ms. Potter, seconded by Mr. Feinstein that Gillian Diamond be appointed as a member to the Review Subcommittee of the Lawyers Fund for Client Compensation Committee.

Carried

DIRECTORS, BAR ADMISSION REPORT

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Directors, Bar Admission ask leave to report:

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 25th, 2002:

Leora Beth Fay Aster-Freiheit	Bar Admission Course
Riccardo Francesco Bozzo	Bar Admission Course
Patricia Ann Carson	Bar Admission Course
Cameron Robert Croxall	Bar Admission Course
Bryce Denin Davie	Bar Admission Course
Marcus John Davies	Bar Admission Course
Anser Umar Farooq	Bar Admission Course
Joanna Kathleen Hogan	Bar Admission Course
Khatira Jalal-Jalali	Bar Admission Course
Nimanthika Irushinie Kaneira	Bar Admission Course
Sun Young Kim	Bar Admission Course
Robert Gregory Lamot	Bar Admission Course
Désirée Darlene Elaine Lessard	Bar Admission Course
Nicola Mazze	Bar Admission Course
Dion Radcliffe McClean	Bar Admission Course
Joseph John McHattie	Bar Admission Course
Michael Robert Rosen	Bar Admission Course

Dunstan Dan Senjule	Bar Admission Course
Dijana Simonovic	Bar Admission Course
Giuseppe Roberto Tommaso Tarantino	Bar Admission Course
Bobbie Ann Walker	Bar Admission Course
Robert Paul Williams	Bar Admission Course
William Anthony Nicholas Wilson	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 25th, 2002:

Tracey Leigh Braithwaite	Province of British Columbia
Marjolaine Dugas	Province of New Brunswick
Alfred Baptiste Duprey	Province of Nova Scotia
Dyana Elaine Janes	Province of Alberta
Jeffrey Robert Lindsay	Province of British Columbia
Kimberly Jane Mackay	Province of Newfoundland
John Kingman Phillips	Province of Alberta
Celeste Barbara Poltak	Province of Alberta
Jefferson Jay Rappell	Province of Alberta
Matthew Christopher Scott	Province of British Columbia
Patti Lynne Shedden	Province of Alberta
Michael Spanier	Province of Quebec
Catherine Stewart	Province of North West Territories
Peter Garth Williams	Province of Manitoba

ALL OF WHICH is respectfully submitted

DATED this the 25th day of April, 2002

It was moved by Mr. E. Ducharme, seconded by Ms. Ross that the Report of the Directors, Bar Admission be adopted.

Carried

BENCHER COMMENTS ON MATTER OF PERSONAL PRIVILEGE

Mr. Topp rose on a matter of personal privilege to advise that many members were upset by the Globe and Mail's story that a deal had been struck about the Law Society governing paralegals.

Mr. Marrocco responded that no deal had been made and apologized to the Benchers who were put in a difficult position with members.

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IN CAMERA

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IN PUBLIC

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CALL TO THE BAR

The following candidates listed in the Directors, Bar Admission Report were presented to the Treasurer and called to the Bar. They were then presented by Mr. Swaye to Madam Justice Jean L. MacFarland to sign the Rolls and take the necessary oaths:

Leora Beth Fay Aster-Freiheit	Bar Admission Course
Riccardo Francesco Bozzo	Bar Admission Course
Patricia Ann Carson	Bar Admission Course
Cameron Robert Croxall	Bar Admission Course
Bryce Denin Davie	Bar Admission Course
Marcus John Davies	Bar Admission Course
Anser Umar Farooq	Bar Admission Course
Joanna Kathleen Hogan	Bar Admission Course
Khatira Jalal-Jalali	Bar Admission Course
Nimanthika Irushinie Kaneira	Bar Admission Course
Sun Young Kim	Bar Admission Course
Robert Gregory Lamot	Bar Admission Course
Dəsirəe Darlene Elaine Lessard	Bar Admission Course
Nicola Mazze	Bar Admission Course
Dion Radcliffe McClean	Bar Admission Course
Joseph John McHattie	Bar Admission Course
Michael Robert Rosen	Bar Admission Course
Dunstan Dan Senjule	Bar Admission Course
Dijana Simonovic	Bar Admission Course
Giuseppe Roberto Tommaso Tarantino	Bar Admission Course
Bobbie Ann Walker	Bar Admission Course
Robert Paul Williams	Bar Admission Course
William Anthony Nicholas Wilson	Bar Admission Course
Tracey Leigh Braithwaite	Transfer, Province of British Columbia
Marjolaine Dugas	Transfer, Province of New Brunswick
Alfred Baptiste Duprey	Transfer, Province of Nova Scotia
Dyana Elaine Janes	Transfer, Province of Alberta
Jeffrey Robert Lindsay	Transfer, Province of British Columbia
Kimberly Jane Mackay	Transfer, Province of Newfoundland
John Kingman Phillips	Transfer, Province of Alberta
Celeste Barbara Poltak	Transfer, Province of Alberta
Jefferson Jay Rappell	Transfer, Province of Alberta
Matthew Christopher Scott	Transfer, Province of British Columbia
Patti Lynne Shedden	Transfer, Province of Alberta
Michael Spanier	Transfer, Province of Quebec
Catherine Stewart	Transfer, Province of North West Territories
Peter Garth Williams	Transfer, Province of Manitoba

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BENCHER COMMENTS ON APPOINTMENT TO JUDICIAL ADVISORY COMMITTEE FOR ONTARIO

Mr. Campion, on behalf of Convocation expressed gratitude to Mr. Porter on his appointment to the Judicial Advisory Committee for Ontario.

GOVERNMENT RELATIONS COMMITTEE REPORT

Mr. Marrocco introduced the Government Relations Committee Report on the regulation of paralegals as a consultation document only and advised that it would come back to Convocation in June for debate.

Mr. Simpson presented an overview of the Report.

Government Relations Committee
April 25, 2002

Report To Convocation

Purpose of Report: Information

*For discussion at June 28, 2002 Convocation

Prepared by Government Relations

TABLE OF CONTENTS

1. Members and former members of the Government Relations Committee have represented the Law Society of Upper Canada in a working group of legal organizations (the Working Group) formed to develop certain principles for paralegal regulation.

2. The Working Group held a series of meetings from July 2001 to April 2002. From February to April 2002, members of the Working Group also met representatives of the Professional Paralegal Association of Ontario (PPAO) to discuss the concerns of paralegals with respect to regulation.

3. Through these meetings, a consultation document has been developed which proposes a framework for the regulation of paralegals. It is entitled *A Consultation Document on a Proposed Regulatory Framework* (the Consultation Document) and is attached as Appendix A.

4. This report includes:
   - an outline of the process leading to the development of the Consultation Document and processes to be taken in the near future
   - the Consultation Document
   - comment on the Consultation Document, including a list of questions for consideration during the consultation process.

5. The Government Relations Committee is currently presenting this report and the Consultation Document to Convocation for information. The Consultation Document has also been released for consideration to the decision-making bodies of the legal organizations comprising the Working Group. At the Convocation of June 28, 2002, the Government Relations Committee will request Convocation's approval of the principles in the Consultation Document as a compromise solution to the paralegal question. Should the other legal organizations approve these principles, they will then be presented to the Attorney General. If the other legal organizations do not approve these principles, Convocation's advice will be sought before the Government Relations Committee proceeds further.

THE PROCESS

6. The Working Group is composed of representatives of the following legal organizations: Advocates' Society, County and District Law Presidents' Association (CDLPA), the Law Society of Upper Canada (the Law Society), Metropolitan Toronto Lawyers Association (MTLA) and the Ontario Bar Association (OBA).

   The members of the Working Group are benchers Bill Simpson, Frank Marrocco, and George Hunter as well as Alexandra Chyczij, Michael Eizenga and Jeffrey Manishen representing the Advocates' Society, Lawrence Eustace, Richard Gates and Johanne Morissette, representing CDLPA, James O'Brien, Virginia MacLean, Steven Rosenhek, Selma Colvin and Stephen Cameron, representing the OBA and Lucia Favret, representing MTLA.

7. The PPAO is an association which represents several paralegal organizations, the Paralegal Society of Ontario, the Institute of Agents at Court and the Ontario Searchers of Record. Paul Dray, Margaret Louter and Stephen Parker represented the PPAO.

8. The Working Group was formed in July 2001, following a meeting with Attorney General David Young, who indicated an interest in developing a regulatory framework based on co-operation between the legal and paralegal communities.

9. From July 2001 to April 2002, the Working Group developed certain principles of regulation and has considered whether these principles might find acceptance within the broader legal community.

   The Working Group also initiated a series of meetings with representatives of the PPAO, to hear the paralegals' perspective on regulation and to attempt to reach some consensus on principles of regulation.

10. Ultimately, consensus was reached on many of the principles contained in the Consultation Document.

11. The Consultation Document will be distributed to the following decision-making bodies within the legal organizations:

- the Council of the OBA;
- the 46 presidents of CDLPA;
- the board of directors of the Advocates' Society;
- the board of trustees of MTLA.

12. It is anticipated that the Consultation Document will be discussed at the meetings of these bodies in the near future. This issue is scheduled to be discussed at CDLPA's plenary session on May 9, 2002. It will likely be debated at the meeting of the board of the Advocates' Society on May 9, 2002 and at the OBA Council meeting of May 24, 2002. The purpose of these meetings is to gauge the level of support for the principles outlined in the Consultation Document.

COMMENTARY ON THE CONSULTATION DOCUMENT

13. The proposed framework was developed against the backdrop of the report of The Honourable Peter deC. Cory, *A Framework for Regulating Paralegal Practice in Ontario*, which was released on May 31, 2000 (the Cory Report).

14. The primary recommendations of the Cory Report are briefly summarized below.

a. Paralegals should be regulated by an independent agency similar to the Law Society but funded by the government.

b. Paralegals must be licensed to work in permissible areas of practice and must either meet certain educational requirements or be grandfathered under certain requirements.

c. Paralegal governance includes: adoption of a code of conduct, a discipline procedure; mandatory errors and omissions insurance; a compensation fund.

d. In the field of advocacy, permissible areas of practice are: representation in Small Claims Court and appeals from decisions of that Court; prosecution and defence of provincial offences in the Ontario Court of Justice; representation before provincial boards and tribunals where the empowering statute provides that parties may appear by agent, including appearances before the Dispute Resolution Group of the Financial Services Commission of Ontario (FSCO).

e. In fields other than advocacy, permissible areas of practice are: simple wills; powers of attorney; simple incorporations; residential real estate sales where the property is clear of any mortgage encumbrances or subject to only one mortgage; uncontested divorces.

15. The Cory Report and the Consultation Document have many similarities and a few fundamental differences. The most significant difference is that the Consultation Document provides that the Law Society will regulate paralegals. Paralegals would be represented on a Standing Committee composed of elected benchers, lay benchers and paralegals.

16. Both documents establish educational and licensing requirements and provide for adoption of a code of conduct, a discipline procedure, mandatory errors and omissions insurance and a compensation fund. However, all these aspects of governance would be administered by the Law Society.

17. For the most part, the Consultation Document recommends that paralegals be allowed to have the same advocacy roles as those outlined in the Cory Report. However, the Consultation Document makes no

recommendations regarding appeals from decisions in Small Claims Court and appearances before FSCO, since the Working Group and the paralegals could not reach any consensus with respect to these matters.

18. The Consultation Document and the Cory Report differ fundamentally with respect to the treatment of paralegals' roles outside the advocacy areas. While the Consultation Document proposes that paralegals be permitted to perform functions similar to those outlined in the Cory Report, those functions must be performed under lawyer supervision.

19. With respect to paralegal non-advocacy roles, the Standing Committee will refine the definitions of the areas in which paralegals will be allowed to function and establish the appropriate rules for lawyer supervision. In addition, the Standing Committee will refine a protocol which will encourage paralegals to refer work to lawyers if the work is outside their "allowed area" by allowing referral arrangements between lawyers and paralegals.

20. The Consultation Document also proposes that the *Law Society Act* be amended to provide for a new definition of the "practice of law" and for enhanced remedies to available in prosecutions of the unauthorized practice of law.

21. Finally, the Consultation Document makes it clear that the entire proposal is predicated on the receipt of funding from the provincial government for implementation of the regulatory framework, including the costs of prosecution for the unauthorized practice of law.

22. To assist Convocation in its consideration of the principles of the Consultation Document, the following questions are enumerated.

E. Governance

23. Should one body regulate the provision of all legal services, in the interests of efficiency and cost-effectiveness?

24. Should the governance model be based on the principles set out in section IV(B) to (E) in the Consultation Document?

F. Funding

25. Should the provincial government be required to provide funding for the implementation of the proposed regulatory framework, including the costs of infrastructure, education, communications and prosecutions for the unauthorized practice of law?

C. Qualifications

26. Should the proposed regulatory framework provide for the accreditation, grandparenting and licensing requirements (as described in sections IV, (F) (1) to (3) of the Consultation Document), in order to ensure that the Ontario public is served by properly educated and trained paralegals?

D. Particulars of regulation

27. Given that regulation must both protect the public and foster adherence to the highest standards of conduct, should regulation of paralegals include the matters set out below?
- Code of conduct
- Regulatory fees
- Rules of incorporation
- Trust accounts
- Discipline and appeal processes
- Insurance

- Compensation fund
- Continuing education

E. Prosecution for the unauthorized practice of law

28. Should enhanced government funding be available for a period of time to address those individuals who choose not to comply with the regulatory framework?

29. In dealing with unlicensed individuals, should effective remedies and processes be developed, in the manner described in section V(B) of the Consultation Document?

F. Scope of work for Accredited Licensed Paralegals (Advocacy)

30. Since the current legislation allows agents/paralegals to appear in the following venues, and assuming that the paralegal is regulated and qualified as described in the Consultation Document, should the proposed regulatory framework allow an Accredited Licensed Paralegal (Advocacy) to handle all matters pertaining to litigation in the following venues:

- Small Claims Court
- Ontario Court of Justice, in respect of matters under the *Provincial Offences Act*, including appeals
- Tribunals which allow for appearances by agents/paralegals, where the specific requirements of any tribunal are incorporated into the appropriate licensing examination?

G. Scope of Work for Accredited Licensed Paralegals (Non-Advocacy)

31. The proposed regulatory framework provides that an Accredited Licensed Paralegal (Non-Advocacy) will be permitted to provide certain non-advocacy services to the Ontario public on condition that:

- the paralegal is regulated and qualified as described in the Consultation Document; and
- the services are provided under an affiliation agreement and a joint retainer (as described in section VI(B)(1) of the Consultation Document.)

These conditions will protect the public choosing paralegal services by ensuring that the paralegal is qualified and regulated and by requiring lawyer involvement in the provision of services.

32. Where the foregoing conditions apply, should an Accredited Licensed Paralegal (Non-Advocacy) be permitted to provide services in the area of basic wills (as described in section VI(B)(2) of the Consultation Document)?

33. Where the foregoing conditions apply, should an Accredited Licensed Paralegal (Non-Advocacy) be permitted to provide services in the area of basic incorporations (as described in section VI(B)(2) of the Consultation Document)?

34. Where the foregoing conditions apply, should an Accredited Licensed Paralegal (Non-Advocacy) be permitted to provide services in the area of powers of attorney?

35. Where the foregoing conditions apply, should an Accredited Licensed Paralegal (Non-Advocacy) be permitted to provide services in the area of residential real estate (as described in section VI(B)(2) of the Consultation Document)?

36. Where the foregoing conditions apply, should an Accredited Licensed Paralegal (Non-Advocacy) be permitted to provide services in the area of change of name applications?

37. Where the foregoing conditions apply, should an Accredited Paralegal (Non-Advocacy) be permitted to provide services in the area of uncontested divorces (as described in section VI(B)(2) of the Consultation Document)?

38. Other activities:
The proposed regulatory framework requires a protocol to be developed to deal with requests made by the public to Accredited Licensed Paralegals (Non-Advocacy) to provide other services. The protocol will:

- prohibit an Accredited Licensed Paralegal (Non-Advocacy) from advertising such services;
- require an Accredited Licensed Paralegal (Non-Advocacy) to advise any person requesting such services that he or she is not authorized to provide the services independently of a lawyer; and
- permit the Accredited Licensed Paralegal (Non-Advocacy) to refer any person requesting such services to a lawyer.

39. Where such a protocol is in place, should an Accredited Licensed Paralegal (Non-Advocacy) be permitted to perform other services, as determined by a lawyer and under the direct supervision of a lawyer?

NEXT STEPS

40. The Government Relations Committee is currently presenting this report and the Consultation Document to Convocation for information. The Consultation Document has also been released for consideration to the decision-making bodies of the legal organizations comprising the Working Group. At the Convocation of June 28, 2002, the Government Relations Committee will request Convocation's approval of the principles in the Consultation Document as a compromise solution to the paralegal question. Should the other legal organizations approve these principles, they will then be presented to the Attorney General. If the other legal organizations do not approve these principles, Convocation's advice will be sought before the Government Relations Committee proceeds further.

APPENDIX A

A CONSULTATION DOCUMENT ON A PROPOSED REGULATORY FRAMEWORK

April 23, 2002

Background

Over the past 15 years, paralegal groups and legal organizations have sought to obtain a regulatory framework for paralegals. Despite two reports and a number of judicial decisions, no such framework exists.

The most recent attempt at regulation was initiated in the fall of 1999, when the then Attorney General James Flaherty appointed The Honourable Peter deC. Cory to study paralegal activities and recommend a form of regulation. In May 2000, Justice Cory released his report (the Cory Report). It was anticipated that the Cory Report would find its way into the legislative agenda of the provincial government. However, this did not occur.

In the spring of 2001, David Young succeeded James Flaherty as the Attorney General and indicated an interest in developing a regulatory framework based on cooperation between the legal and paralegal communities. In a letter dated October 31, 2001, the Attorney General said that “the government remains committed to protecting consumers who use the services of paralegals and … consumers deserve access to a range of high quality legal services.” Mediation was proposed but deferred in favour of a process designed to develop consensus among the legal stakeholders.

In July 2001, the representatives of the following legal organizations met to consider responding to the Attorney General on this issue: Advocates' Society, County and District Law Presidents' Association, the Law Society of Upper Canada, Metropolitan Toronto Lawyers Association and the Ontario Bar Association. At that meeting, the representatives agreed to work towards the development of certain principles for paralegal regulation and to determine if these principles might find acceptance within the broader legal and paralegal communities. To that end, the legal organizations formed a Working Group, composed of a representative from each organization.

In October 2001, the Working Group made initial contact with a paralegal organization, the Professional Paralegal Association of Ontario (the PPAO). The PPAO is an association which represents several paralegal organizations: The Paralegal Society of Ontario, the Institute of Agents at Court and the Ontario Searchers of Record. The PPAO showed an interest in meeting with the Working Group to discuss paralegal regulation in general and the concerns of paralegals in particular.

Subsequently, certain members of the Working Group and representatives of the PPAO agreed to participate in a series of meetings which were held from February to April 2002. The meetings were designed to find some consensus respecting the regulation of paralegal activities in the Province of Ontario.

The two groups achieved consensus on many principles underlying a proposed framework. This framework is set out below to engage the stakeholder organizations in a broad-based consultation on a new approach to paralegal regulation. It is hoped that all affected organizations will give the framework due consideration and agree on the principles for paralegal regulation.

Proposed Framework

I. Statement of Principle

Historically, the Law Society has governed the practice of law in the public interest. The proposed regulatory model envisions the Law Society as regulating the spectrum of legal services in the public interest, including those provided by paralegals.

II. Funding

It is recognized that funding for paralegal regulation will be required from the provincial government for implementation, including the costs of infrastructure, education, communications and prosecutions for the unauthorized practice of law. It is anticipated that paralegal regulation would ultimately become self-funding, that is, fees from paralegals would pay for the costs of regulation.

III. Scope of Regulation

The proposed framework applies to paralegals working independently. For the purpose of regulation, paralegals will fall into two categories as set out below and more fully described in section VI of this paper:

- Accredited Licensed Paralegals (Advocacy)
- Accredited Licensed Paralegals (Non-Advocacy)

Law Clerks employed by lawyers are currently supervised and trained by those lawyers. Law Society regulation would be optional for employed law clerks, provided they met the qualifications described in Section IV(F) below.

IV. Governance

A. There should be one body responsible for regulating the provision of all legal services and the Law Society should be the appropriate body.

B. There should be a Standing Committee of the Law Society with the mandate to deal with issues respecting governing and regulating paralegals.

C. The Standing Committee should be composed of an equal number of paralegals and elected benchers, plus two or more lay benchers, e.g. 5 paralegals, 5 elected benchers and 3 lay benchers. The Attorney General would appoint the first 5 paralegals to the Standing Committee, with recommendations from the paralegals.

D. At all times, a paralegal would either be the chair or the vice-chair of the Standing Committee. An elected bencher would also either be the chair or the vice-chair of the Standing Committee. Both the chair and vice-chair have the right to attend Convocation and address Convocation on Standing Committee matters.

E. Decisions made by the Standing Committee would be ratified by Convocation. Convocation would not be authorized to substitute its decision for a decision of the Standing Committee but could send a matter back to the Standing Committee for reconsideration on the first hearing of the matter. On the subsequent hearing of the matter, Convocation may substitute its decision for that of the Standing Committee.

F. The general criteria for becoming an accredited licensed paralegal are:

1. Accreditation
2. Grandparenting
3. Licensing and Appeal Processes

The Standing Committee will establish the process to determine if the applicants meet the criteria for accreditation, grandparenting and licensing, which are outlined below.

1. Accreditation

Individuals would be eligible for accreditation and licensing upon meeting each of the following criteria:

a. Completing, at a minimum, a two-year accredited community college paralegal diploma or degree program or equivalent; and

b. Completing six months mentoring under a lawyer or Accredited Licensed Paralegal, each having a minimum of 5 years experience. If mentoring is not possible for an individual seeking a license as an Accredited Licensed Paralegal (Advocacy), then 6 months of observing procedures and matters before an appropriate court, agency, board or tribunal, with its consent; and

c. Passing specialized exams in the areas of preferred practice and accreditation. (Individual tribunals should have input into the content of the examination process); and

d. Meeting good character requirements.

2. Grandparenting

The Standing Committee will establish the process to determine if applicants meet the qualifications for grandparenting described below.

Applicants for grandparenting must meet all of the following qualifications:

a. All applicants for accreditation must pass the specialized certification examinations for their preferred area or areas of work regardless of their prior education or experience.

b. All applicants for grandparenting must meet the good character requirements.

c. Only individuals are eligible for grandparenting and not corporations or franchised entities.

d. Any application for grandparenting must be made by applicants within two years of the legislation coming into force, or such other time as may be set by the Standing Committee.

In addition to meeting all of the foregoing qualifications, the applicant must meet the qualifications described in one of the following paragraphs (e), (f) or (g):

e. Any applicant for grandparenting as an Accredited Licensed Paralegal (Advocacy) must meet the following minimum conditions:

   i. the individual has appeared before the particular court or board for which accreditation is sought on a regular basis for a minimum of 5 of the last 7 years from the date of legislation coming into force; and

   ii. the individual provides an affidavit proving same.

f. Any applicant for accreditation pursuant to section VI(B) below may apply for grandparenting upon providing proof of completion of the four segments of the "associate level law clerk" course under ILCO or the equivalent.

g. Any applicant for accreditation pursuant to section VI(B) below may apply for grandparenting in that particular area on satisfaction of the following conditions:

   i. the applicant was employed by and worked under the supervision of a lawyer for a minimum of 5 of the last 7 years from the date of legislation coming into force; or

   ii. the applicant was an independent contractor (e.g. corporate law clerk or conveyancer) and worked under the supervision of a lawyer for a minimum of 5 of the last 7 years from the date of legislation coming into force; and

   iii. the applicant provides an affidavit from the supervising lawyer or lawyers establishing that the applicant has the requisite knowledge and has achieved the requisite level of competence to permit the applicant to work as an Accredited Licensed Paralegal (Non-Advocacy) without further experience or education.

3. Licensing and Appeals Processes

a. Accredited Licensed Paralegals would be described as licensed "pursuant to the laws of the Province of Ontario" and the Law Society, under the mandate of the Standing Committee, would deter if paralegals met the licensing qualifications.

b. Accredited Licensed Paralegals would become Commissioners of Oaths within their designated areas.

c. Since Accredited Licensed Paralegals will be privy to confidential client information, the *Law Society Act* should be amended to ensure that an Accredited Licensed Paralegal cannot be required to divulge confidential information, unless a judge of the Ontario Court of Justice or Superior Court of Justice finds that, in the interest of the due administration of justice, it must be disclosed.

d. The requirements of good character for Accredited Licensed Paralegals should be the same as those established for lawyers under the *Law Society Act*.

e. A paralegal license can only be granted to an individual, e.g. a license cannot be franchised.

f. Sections 27 and 49.32 of the *Law Society Act* would apply with necessary modifications to applications for grandparenting and licensing and to decisions on the sufficiency of fulfilling the requirements for accreditation.

G. The mandate of the Standing Committee would also include, among other matters, policy decisions on the following:

1. Code of conduct
2. Regulatory fees
3. Rules of incorporation
4. Trust accounts
5. Discipline and Appeal Processes
6. Insurance
7. Compensation fund
8. Continuing education

1. Code of Conduct

The Law Society's *Rules of Professional Conduct* would apply to Accredited Licensed Paralegals, with necessary modifications.

2. Regulatory Fees

The proposed regulatory framework is predicated on a commitment of funding from the government to cover the costs of implementation, including the initial costs of infrastructure, education, communications and prosecutions for the unauthorized practice of law. Following the implementation of the regulatory regime, fees will be sufficient to cover the cost of paralegal governance.

3. Rules of Incorporation

Accredited Licensed Paralegals could incorporate as long as the accredited individual paralegal remains personally liable, in a manner similar to lawyers.

4. Trust Accounts

Accredited Licensed Paralegals would be required to maintain trust accounts restricted to retainers. Monies received for any other purpose must be subject to a joint retainer and deposited into the trust account of the affiliated lawyer (see section VI(B)(1) below).

5. Discipline and Appeal Processes

a. The committee hearing cases of paralegal misconduct at the first instance (Hearing Panel) will be composed of a lawyer bencher, an Accredited Licensed Paralegal and a lay bencher. There will be an appeal process for paralegals similar to that for lawyers. Representation before a Hearing Panel may be by counsel or by Accredited Licensed Paralegals (Advocacy).

b. Accredited Licensed Paralegals would be governed by a code of conduct and subject to the same disciplinary processes and penalties as those applying to lawyers, with necessary modifications.

6. Insurance

Accredited Licensed Paralegals will have mandatory errors and omissions insurance.

7. Compensation Fund

There will be a compensation fund similar to the one provided by lawyers.

8. Continuing Education

The requirements for continuing education should be within the mandate of the Standing Committee.

V. Prosecutions

A. There must be enhanced government funding for prosecutions for a period of time to address those individuals who choose not to comply with the regulatory framework.

B. In dealing with unlicensed individuals, effective remedies and processes must be developed, including:

- A new and refined definition of "the practice of law" which will both expedite prosecutions and reflect the principles of the proposed framework concerning paralegals. Both the paralegal and the legal community will be consulted on the new definition of the practice of law to ensure that it conforms with the principles of this proposed framework;
- Enhanced capacity to obtain injunctive relief;
- The capacity to obtain an order prohibiting the continuation or repetition of the offence when a conviction is entered for unauthorized practice;
- The creation of a new provincial offence, operating without a license.

C. Accredited Licensed Paralegals who engage in practice outside their area of accreditation will be subject to:

- Discipline; and/or
- Prosecution for the unauthorized practice of law; and/or
- Prosecution for an offence to be created, i.e. operating without a license.

VI. Areas and Scope of Work

The following is based on the assumption that a paralegal is accredited and licensed pursuant to the requirements outlined above. Licensing and accreditation will be mandatory and provincial legislation referring to representation by agents will be amended as necessary.

Accredited Licensed Paralegals must be specifically accredited and licensed in each specified area in which the paralegal wishes to work as set out in sections VI (A) and (B)(2) below.

A. Accredited Licensed Paralegals (Advocacy)

Accredited Licensed Paralegals (Advocacy) would be authorized to handle all matters pertaining to litigation, prosecution and defence work for disposition in:

1. Small Claims Court – An Accredited Licensed Paralegal (Advocacy) would be authorized to handle all matters in Small Claims Court and be recognized by the Court for the purposes of costs. [Paralegals would like to see a process created whereby Accredited Licensed Paralegals (Advocacy) could continue to appear on behalf of their clients on the appeal of a Small Claims Court matter. The legal organizations do not share this view.]

2. The Ontario Court of Justice with respect to all matters under the *Provincial Offences Act*.

3. Tribunals [other than the Financial Services Commission of Ontario (FSCO)] – An Accredited Licensed Paralegal (Advocacy) could appear in all matters before provincial boards, agencies and tribunals that allow for appearances by agents/paralegals. If a board has specific requirements, those should be incorporated into the licensing exam. It is anticipated that certain boards will require additional levels of education, training and

expertise. Regarding FSCO, there was no consensus between the lawyers and the paralegals with respect to whether paralegals could appear, with or without the involvement of a lawyer, on matters before FSCO. It is understood by lawyers and paralegals that this matter is currently under review by the Ministry of Finance.

4. Appeals under the *Provincial Offences Act* – Currently, section 109 of the *Provincial Offences Act* authorizes agents to appear on appeals.

B. Areas of Work for Accredited Licensed Paralegals (Non-Advocacy)

1. General Provisions

a. Any work conducted by an Accredited Licensed Paralegal (Non-Advocacy) will be performed pursuant to an affiliation agreement between a lawyer and the Accredited Licensed Paralegal (Non-Advocacy). The affiliation agreement will be registered with the Law Society and must meet the criteria of the Standing Committee before being accepted for registration.

b. The Standing Committee will define the nature of the business arrangements between lawyers and Accredited Licensed Paralegals (Non-Advocacy) and determine the content of the affiliation agreement, including the level of supervision required to ensure that the work performed by the Accredited Licensed Paralegal (Non-Advocacy) falls within the criteria set out in section VI(B)(2) below and that the work accomplishes the purpose of the joint retainer (see paragraph (c) below).

c. Where an Accredited Licensed Paralegal (Non-Advocacy) performs work described in section VI(B)(2) below, the Accredited Licensed Paralegal (Non-Advocacy) and affiliated lawyer must enter into a written joint retainer agreement as among the lawyer, the Accredited Licensed Paralegal (Non-Advocacy) and the client. This joint retainer will set out the respective roles and responsibilities of the lawyer and the Accredited Licensed Paralegal (Non-Advocacy) and the fees to be charged by each. The Standing Committee will determine the criteria required for the content of the joint retainer agreement.

2. Functions

The functions performed by the Accredited Licensed Paralegals (Non-Advocacy) will be confined to the following areas and the definitions of these areas will be refined by the Standing Committee:

a. Basic wills;

b. Basic incorporations;

c. Powers of Attorney;

d. Residential real estate sales on behalf of a vendor where a residential property is either clear of any mortgage encumbrances or subject to only one mortgage;

e. Change of name applications;

f. Uncontested divorces where the parties have a separation agreement resolving all corollary issues with a certificate of independent legal advice executed within one year of the commencement of the divorce action or where there is a court order resolving all of the corollary issues granted within one year of commencement of the divorce action.

The Standing Committee will establish a protocol for dealing with requests to provide services which fall outside the areas outlined in section VI(B)(2) above. The protocol should address the following:

- Accredited Licensed Paralegals (Non-Advocacy) would not be permitted to advertise for work outside the defined areas.

- If such work were offered to an Accredited Licensed Paralegal (Non-Advocacy), he/she would be required to state that he or she is not authorized to do the work directly for the client.

- An Accredited Licensed Paralegal (Non-Advocacy) could refer work to a lawyer and have a referral arrangement with the lawyer. However, the joint retainer would not apply in this situation.

VII. Further Development of Regulatory Scheme

The proposed framework must be implemented by legislative amendment to the *Law Society Act.* Such legislation will embody the general concepts of the proposed framework described in this Consultation Document.

The detailed rules pertaining to day-to-day regulation will be developed by the Standing Committee, following a consultation process to obtain input from all interested legal and paralegal organizations and individual members of the legal and paralegal communities. In particular, the Committee will develop rules to:

- Ensure the affiliations between lawyers and paralegals function effectively in the public interest and in compliance with the *Rules of Professional Conduct* governing lawyers and paralegals;

- Ensure that lawyer supervision meets the criteria described in section VI(B)(1)(b) and functions effectively in the public interest;

- Clarify the defined areas outlined in section VI(B)(2) ;

- Ensure that the joint retainer appropriately outlines the respective roles and responsibilities of the lawyer and the Accredited Licensed Paralegal (Non-Advocacy).

VIII. Federal Jurisdiction and Shared Federal-Provincial Jurisdiction

Currently, paralegals act in certain matters which fall, at least partially, within the jurisdiction of the federal government. These matters are:

- Summary conviction matters – *The Criminal Code* permits agents to appear on summary conviction matters. The courts, through case law, have interpreted the extent of the role of an agent. The province's jurisdiction to deal with this matter is unclear. Under *The Constitution Act, 1867*, the province has jurisdiction over the administration of justice but the federal government has jurisdiction over criminal law.

- Federal boards and tribunals – The status of agents/paralegals appearing before federal boards and tribunals is currently left to the rules of the individual board or to the federal government.

  Since regulation of paralegals in the foregoing areas would likely require the involvement of the federal government, these areas have not been addressed at this time. However, it is strongly recommended that the federal government address these matters with input from those involved in the drafting of this document.

IX. Next Steps

There are no doubt issues flowing from the proposed governance structure affecting both lawyers and paralegals which will need to be addressed.

Over the next few weeks, individual legal and paralegal associations will be consulting with their members regarding the proposed framework. In the event that the associations gain the support of their members, a final report will be presented to the Attorney General with the hope that it will form the basis for legislation regulating paralegals.

BENCHER REPORT ON MONEY LAUNDERING ACT

Mr. Bindman rose and reported that the Supreme Court of Canada today granted the Federal Government leave to appeal the British Columbia ruling in the money laundering case but denied an interim stay.

Convocation took its morning recess at 11:00 a.m. and resumed at 11:20 a.m.

TASK FORCE ON THE CONTINUUM OF LEGAL EDUCATION

INTERIM REPORT

Mr. E. Ducharme presented the Task Force's Interim Report and moved that continued development of the direction set out in the Report be approved.

Task Force on the Continuum of Legal Education
April 25, 2002

Interim Report to Convocation

Purpose of Report: Policy - Information
Interim Decision

Task Force Members

Edward Ducharme, Chair
George Hunter
Barbara Laskin
Gregory Mulligan
Niels Ortved

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EXECUTIVE SUMMARY AND REQUEST TO CONVOCATION

1. In July 2001, the Task Force on the Continuum of Legal Education received Convocation's approval to focus its initial efforts on that part of the continuum within the direct jurisdiction of the Law Society, namely, the period between law school graduation and the Call to the Bar. Our inquiry was not confined, however, to the Bar Admission Course and articling process. We understood that any thoughtful consideration of the post-law school, pre-call phase would require an understanding of what precedes and follows it. We thus took the King's advice to the White Rabbit to "begin at the beginning and go on till you come to the end: then stop." So we began by looking into the history of legal education in Ontario, and along the way we observed as well the many different approaches to licensing in other jurisdictions.

2. Although we have not yet "come to the end," we wish to present for Convocation's consideration an interim report that proposes a fundamental change in the way we currently ready candidates for their Call to the Bar. Our recommendations are based on two premises:

   a. that the licensing process currently in place at the Law Society of Upper Canada reflects a reality that dates back to (and, in some respects, pre-dates) the model of legal education instituted forty-five years ago; and

   b. that, since then, changes in the teaching and practice of law, as well as changes in society at large, have been so profound that it is not possible to render our system truly contemporary by continuing to tinker with it. Major reform is indicated.

3. The principal features of the reformed system we recommend are as follows:

a. The Law Society will no longer teach substantive law in the BAC. Instead, it will focus on its regulatory obligation to establish a licensing process that ensures candidates demonstrate pre-determined standards of competence and an understanding of professionalism, including ethics, in the practice of law.

b. Although the Law Society will no longer teach substantive law, it will continue to prepare and provide the Reference Materials for the subjects on which the candidates will be examined. The Reference Materials have a long tradition of excellence and are useful both for the purposes of the licensing examinations and, subsequently, in practice. These invaluable materials are developed with the cooperation of the bar and address important issues relevant to the practice of law. The current nexus between the Reference Materials and the examinations will continue so that candidates for admission will know what is expected of them in the examinations.

c. Licensing examinations, developed for the Law Society by professional educators, will test legal knowledge and analytical capabilities.

d. The Law Society will continue to teach professional responsibility as part of its many-pronged approach to nurturing the ethical values upon which the honour of the profession depends.

e. There will be greater flexibility built into the system, with licensing examinations and the professional responsibility course offered three times a year.

f. The Law Society will renew its commitment to the articling process and will seek ways to foster creative innovation, reinforce the mentorship aspect of articling and encourage collaboration among small or rural law firms to provide students with the opportunity for a meaningful articling experience.

g. The redesigned licensing process will continue to reflect the Society's firm commitment to the goal of improved access to, as well as equity and diversity within, the legal profession.

4. These are the essential elements of the proposed reform. The sections that follow elaborate on the rationale for each and offer an initial outline of how the new system will work. We have consulted in a preliminary fashion with the Law School Deans who support the direction and have expressed their willingness to assist as required in its development.

Request to Convocation

5. In Part VI of the report we ask that Convocation:

a. approve the Task Force's continued development of the direction set out in this report; and

b. permit the Task Force to seek input from lawyers, legal organizations, law schools, BAC section heads and faculty and students on the direction set out in the report.

6. If Convocation approves this continued work by the Task Force, the Task Force proposes to return with its final report in September 2002.

INTRODUCTION

7. Forty-five years ago, in the winter of 1957, the benchers of the Law Society of Upper Canada approved an historic arrangement with the universities, the effect of which was to inaugurate a boldly new and different system of legal education in Ontario. Much of that system, once so fresh, remains with us still. A key feature of the agreement was that each participating university would provide a three-year Bachelor of

Laws program containing twenty-three compulsory subjects.

8. By 1969, the number of law schools in Ontario had grown to its present total, six. In the same year, a Committee of Law Deans renegotiated with the Law Society the list of subjects enumerated as compulsory and reduced it from twenty-three to seven. The remaining subjects, augmented by conflict of laws and labour, were to be made available to the students within the three-year LL.B. program but students were no longer compelled to study them.

9. The seven compulsory subjects were these:

a. Civil Procedure;
b. Constitutional Law of Canada;
c. Contracts;
d. Criminal Law and Procedure;
e. Personal Property;
f. Real Property; and
g. Torts.

10. In 2002, the universities continue to provide three-year law degree programs, the students seeking entry to them must still complete a minimum two years of university undergraduate education, and the same seven courses remain compulsory.

11. Although much of the old system endures, much has changed, too. Over time, the law schools have provided more and more courses, usually as options, within which the emphasis is upon advocacy and the acquisition of practical skills, rather than upon substantive legal knowledge alone. The law schools have long maintained, of course, that their primary purpose is not to be a technical training school, but to educate students in the law and to demonstrate law's immutable connections to the basic problems confronting society. Still, as the information set out in Appendix 1 (skills taught in law schools) discloses, the law schools now provide numerous opportunities for students to learn the skills essential to the tasks performed by lawyers, skills such as interviewing, negotiating, legal research and writing, and trial advocacy.

12. It is trite to say, in 2002, that the profession is different, larger, and more diverse than it was in 1957. In all that time, however, the BAC has changed little in its essential character despite many reviews and reforms. For example, in June 1988, a sub-committee of the Legal Education Committee, chaired by James M. Spence, Q.C.,[1] delivered a report to Convocation entitled, "The Teaching Term of the Bar Admission Course: A Critical Assessment and Proposals for Change". One of the proposals for change was to shift the focus from the teaching of substantive concepts in the core areas of law to the teaching of skills and transactional learning. The BAC was later revised to provide for more skills-based instruction, but the teaching of substantive law continued much as in the past. Convocation later authorized several additional reviews, all of which are briefly summarized in Appendix 2 to this report.

13. Convocation set us to our task nearly a year ago. During that time, we have studied and reflected upon the many modifications to the BAC in recent years, and the reasons for them. During that time, too, we have come to see that other forces are emerging, the long-term implications of which may well be life-altering for many in the profession, including those about to enter it.

14. These new developments are many and varied. Computer and information technology have already transformed the way many lawyers practice. They have had and will continue to have an equal effect on how students study and learn. Indeed, technology-enhanced learning has progressed with such spectacular speed that medical students, for example, can now simulate surgical procedures interactively in courses delivered wholly on-line. At Queen's University a highly acclaimed M.B.A. program uses video-conferencing combined with residential classes and customized Intranet programs.

[1] now the Honourable Mr. Justice Spence of the Superior Court of Justice.

15. In our own profession, building upon initiatives undertaken first in the Inter-Jurisdictional Practice Protocol and then by the western provinces, a National Task Force on Mobility is poised to recommend seamless, full, and permanent mobility for all lawyers in the common law provinces, and perhaps also in Quebec. If this happens, and in the Task Force's view such change is inevitable, there will also be pressure to remove all remaining unnecessary barriers to a lawyer's Call to the Bar, irrespective of the province in which the individual achieved the law degree. Underlying the drive to increased mobility of lawyers is the developing consensus across Canada that it is in the public interest to remove all artificial or unnecessary barriers to practice and to affirm, as a matter of trust and faith, that each province's regulatory process is as good as any other.

16. In October, 1999, as part of the Law Society's Hockley Valley Retreat, Madam Justice Rosalie Abella of the Court of Appeal for Ontario shared with benchers her perspective on the state of the profession. She said that, in her view, there exists today "a professional environment where the consensus about what it means to be a professional has broken down... ." She also asked whether or not the present BAC was the most reasonable and efficacious way to gauge the competency of a newly educated lawyer. She noted:

> In his masterful 1991 diagnostic study on how we teach lawyers to be professionals, Professor Brent Cotter reactivated the haunting and persistent refrain sung by decades of young lawyers -- why do we have articling and bar admission courses? Whose interests does this pedagogical gauntlet really serve? It has for too long survived the establishment of the university law schools whose absence was the original rationale for its existence. Is there really an evidentiary foundation for concluding that this is the most reasonable way for the Law Society to ensure that people entering the profession have the requisite educational arsenal of knowledge and skill?[2]

17. The Task Force posed these same questions, and in this interim report has outlined the framework of an answer.

PART I: THE LICENSING PROCESS

18. A defining feature of self-regulation in the legal and other professions is the licensing process, the process by and through which candidates for admission to the profession demonstrate that they have met pre-determined standards of competence. The licensing function is at the core of the Law Society's mandate to regulate the profession in the public interest.

19. Lawyers are called to the bar with an unrestricted right to practise in any area of law they choose, on the basis that they:

    a. are of good character;

    b. have demonstrated the knowledge, skills, and attitudes necessary to provide legal services; and

    c. understand and will apply their professional responsibility to provide services only in those areas in which they are competent.

20. The Law Society addresses post-call competence in several ways, including:

[2]From an address delivered to a bencher planning session on October 14, 1999 and reprinted in the *Ontario Lawyers Gazette*, November/December, 1999.

a. the promulgation to the profession of a definition of the competent lawyer, now encoded in the Rules of Professional Conduct (Appendix 3);

b. the creation and dissemination of professional development programs and materials to help lawyers maintain and enhance their competence and a recently introduced minimum expectation for professional development;

c. the maintenance of a Specialist Certification program;

d. the provision of Advisory Services to guide and assist lawyers with respect to the Rules of Professional Conduct and issues of practice management; and

e. the enforcement of remedial or disciplinary provisions for those who do not provide competent service.

21. The question of competence in a profession is best understood contextually. No one reasonably expects a law school graduate or a person who has had a few weeks' study at a bar admission course to be a specialist. The lawyer's competence ought to be presumed to increase with time and experience. And the reality is that almost immediately upon their Call to the Bar, many lawyers begin to focus their practices upon a limited number of areas of law. Few hold themselves out as competent in all or even many areas.

22. In the life journey of the practising lawyer, the Call to the Bar is a single step. The Law Society's role at this moment is to ensure that the lawyer is competent to take that step. But an entire career lies ahead, and the lawyer is obliged to be competent all along the way. The definition of the "competent lawyer" in Rule 2 of the Rules of Professional Conduct requires focus on the lawyer at various points in his or her evolution as a professional.

23. The Law Society's regulatory objective with respect to the lawyer's competence at the time of the Call to the Bar can rightly be premised on the understanding that competence is not static, and that the lawyer's competence on the day of call will change and grow from the moment the lawyer begins to practice. The assessment of competence at call is a snapshot only, to be enhanced by post-call supports and regulatory structures and by the lawyer fulfilling the obligation to continue to update his or her skills and knowledge.

24. When the Law Society calls candidates for admission to the bar it should be satisfied that the candidates:

a. are of good character;

b. are educated in specified areas of substantive law and skills, as a result of law-school education;

c. are appropriately experienced in explicitly defined skill areas by virtue of their law school and articling experiences;

d. are knowledgeable, as demonstrated by examination, about the ethical rules they must follow and the standards of professionalism they are expected to uphold;

e. have demonstrated, by examination, requisite levels of comprehension of substantive law, as well as analytical and other professional skills;

f. are capable of serving the public within self-acknowledged skill limitations in accordance with the Rules of Professional Conduct;

g. have demonstrated, through examination, the requisite skills to manage a law office so as to properly serve the public and meet their obligations under the *Law Society Act*, By-laws and the appropriate provisions of the Rules of Professional Conduct with respect to financial and other responsibilities;

and

h. are prepared and committed to undertake post-call education and study to maintain and enhance competence over time within their areas of practice.

25. The Law Society has traditionally assumed that it must teach knowledge and skills, then test the candidates in substantive law particularly to ensure that they possess the requisite competence levels for their Call to the Bar. Pre-call learning was once viewed as virtually the last opportunity for instilling knowledge and attitudes in a formal setting. Teaching at the bar admission level seemed to be essential to ensure that the captive audience represented by bar admission students "learned" what the profession considered essential for them to know. The Task Force believes that if this approach was once necessary, it no longer is so.

26. The framework of legal education and the profile of the legal profession and its needs have changed a great deal since the BAC was developed and implemented. Even today, the BAC continues to reflect the Law Society's longstanding determination to inculcate students, before their Call to the Bar, with the substantive law knowledge, skills and values they will need to practice law. But this approach is restrictive in the sense that the teaching is offered to the students once only, within a period of a few months, and under the pressure of having to write and pass eight examinations.

27. We believe that a better, broader approach to legal education is one founded on the notion, so central to the Law Society's competence mandate, that lawyers are first and foremost professionals and must commit themselves to career-long professional development and learning. Our proposal, far from abandoning the importance of legal education, seeks only to shift and widen the focus from pre-call competence to ongoing post-call competence and learning.

PART II: THE CHANGING LANDSCAPE OF LEGAL EDUCATION

28. The time has come for major reform of the BAC consistent with the Law Society's core mandate as regulator and licensor. In arriving at this perspective, we considered carefully the long history of legal education in the province (summarized in Appendix 4) and the many reforms of the bar admission course, especially since 1988 (Appendix 2).

29. As can be seen from Appendix 4, the Law Society's commitment to legal education arose out of the mandate it was given at its creation, when there was no other body to pass on legal knowledge and skills to new members of the profession. But the remarkable "New Deal" of 1957 meant that the old system, an apprenticeship system focused primarily upon articles, was about to give way to the new one that placed its emphasis upon formal education in a university setting. The BAC was born of this transition. But while the university-based legal education system has grown and changed significantly over decades, the Law Society has continued to make assumptions about what law schools teach (or do not teach) and about its own capacity to bridge the perceived gap in legal education in the two concentrated teaching phases of the BAC.

30. As the Task Force considered the issues raised in Appendix 2 (BAC reforms) we made the following observations, all relevant to the BAC's future:

a. For the Law Society, the 1957 arrangement signalled an end to the primacy of the apprenticeship system. It gave the universities primary responsibility for the students' formal legal education. In 1957, the arrangement was new and untested. Although the Law Society has reformed the BAC since then, particularly in 1990 in response to many of the recommendations in the Spence report, the fundamental rationale for the program has not changed.

b. When the BAC model was introduced, CLE was almost non-existent. A tradition of teaching substantive law grew out of a need to provide as much information as possible at the pre-call stage, because post-call learning was not so pervasive, specialized, and accessible as it is today.

c. By virtue of the particular evolution of formal legal education in Ontario, there exists in the profession an imperfect understanding of the legal education and training Canadian law schools provide and are capable of providing.

d. The substantive law portion of the BAC is premised upon a pedagogical approach of dubious value: the rapid-fire offering of specific subjects and examinations within a very short time. Despite many reforms to the BAC since 1988, students are still required to "cram". The learning skill or technique they are thus most likely to rely upon is memory more than, say, understanding and synthesis.

e. LPIC and Law Society complaints statistics show that the problems lawyers encounter do not stem primarily from substantive law deficiencies, but from practice management and client relationships issues. The necessity to re-teach substantive law at the BAC is not proven.

f. Law schools have greatly expanded the teaching of practical skills and have done so more thoroughly or intensively than is possible in the BAC. In many cases the skills taught in the law schools form part of the mandatory curriculum. Appendix 1 shows examples of the skills components of the curricula of the six Ontario law schools.

g. Adult learning principles of self-motivation and willingness to learn, upon which skills training is based, may be difficult to apply in a BAC setting where the Call to the Bar rather than learning for its own sake is the primary motivator.

h. The articling process, which candidates for Call to the Bar continue to regard as valuable, can be enriched by the Law Society being imaginatively open-minded to innovative or non-traditional approaches and by working to promote greater consistency and relevance of articles.

i. The overall legal education process (beginning with law school and continuing through the Call to the Bar) is still longer and more expensive than necessary.

j. The range of approaches to licensing that now exist make it unrealistic to suggest there is only one correct way to prepare candidates for the Call to the Bar and that it is necessary to "teach" at the licensing stage to ensure competence in practice.

k. Countless reforms to the BAC over the past dozen years, all designed to "get it right", may point to the impossibility of doing so when the Law Society is also the licensor and regulator. Running a "school" and presiding over a licensing process may not be compatible goals.

31. These observations lead us to conclude that further tinkering with the current BAC model should stop and that a new model, one in keeping with the Law Society's core function as licensor and regulator, should take its place.

PART III: A NEW APPROACH

32. Law schools teach; the Law Society licenses. The Law Society is not well-suited to perform a primary teaching function, nor should it continue to try, given the sophisticated and internationally-recognized quality of legal education in our Ontario (and other Canadian) law schools.

33. For the most part, other provinces do not re-engage candidates, during the bar admission process, in the learning of general principles and substantive law. Much greater reliance is placed upon their law school experience in the achievement of knowledge and skills. Nova Scotia, for example, teaches no substantive law. It gives the candidates for admission the materials upon which they will be tested and sets and administers licensing examinations based upon these materials. The American bar admission process consists entirely of licensing examinations. Appendix 5 illustrates in summary fashion the American approach.

Post-Call Competence

34. The Task Force's views have to some extent been shaped and guided by the Law Society's new, increased commitment to supporting members in their efforts to maintain and enhance their competence, *post-call*. The Law Society is currently developing a number of initiatives that focus on the importance of lawyers' commitment to lifelong learning. The Competence Model approved by Convocation in March 2001 is a professional development model, the essential component of which is the professional's commitment to maintaining and enhancing competence throughout his or her career. Continuing legal education, practice tools and guidelines, focused practice reviews, and the specialist certification program all rest upon the same premise: that lawyers must never stop learning and must design or tailor that learning to their specific work or practice.

35. So, as we have noted earlier, the competence of a lawyer at the moment of call is like a snapshot, an arbitrary freezing in time, almost immediately replaced by a greater level of competence as the new lawyer gains experience and takes part in post-call education and learning. Bar admission is by no means the last, or even the best, opportunity to educate the profession. The Task Force believes that the Law Society's post-call approach to enhancing member competence is a much more effective stage at which to focus its efforts, particularly because members can customize their professional development efforts to those areas most relevant to their needs.

36. In pursuit of its efforts to enhance career-long learning and to make it as affordable and accessible as possible, the Law Society has begun to provide more electronic learning and to build partnerships for enhancing delivery of CLE throughout the province.

37. Still, the Task Force believes that the Law Society has a critical role to play in pre-call education in two areas:

    a. the acquisition and application of skills in the articling experience; and

    b. the inculcation of professional responsibility and practice management principles.

Articling

38. Articling provides a critical opportunity for candidates for admission to the bar to observe and participate in the practical application of skills, ethics and professional values, in a relatively low-risk environment. Because the candidate is under supervision, the public interest is protected while the learning process is advanced. This is superior to the American model in which no such apprenticeship exists, and in which many lawyers are admitted to the bar without ever having worked in a legal environment.

39. Law schools, as we have noted, have expanded their repertoire of skills courses and programs. Especially in the areas of legal writing, drafting and research, legal reasoning and analysis, problem-solving and advocacy, they provide critical education to virtually all students. This instruction provides a valuable introduction to students of the practice skills that will, in most cases, be the underpinning of the articling experience.

40. In articling there is a direct, practical and perceivable relationship between skills and their application. A well-run and supervised articling experience will effectively guide the candidate from theory to practice. Articling students build upon and begin to apply the substantive law knowledge and skills to which they are

introduced in law school.

41. Despite admitted problems with the quality of some articles, articling students reveal time and again in surveys an appreciation of this feature of their pre-call experience. Appendix 6 contains the 2001 articling student survey. The acquisition and application of skills are essential components of a legal education and, in our view, should continue to be part of students' education prior to call. Once called to the Bar, lawyers are then expected to build upon this foundation, honing and expanding their knowledge and skills over time.

42. Having noted the importance of articling, we nonetheless believe there are ways in which the process can be improved and made more flexible, to better reflect the changing legal landscape and the increasingly varied nature of legal practice, including the following:

    a. *the pre-approval of joint articles*. Currently, although there is authority to approve a student changing articles in mid-stream, a process has not been developed to encourage and promote such an approach in appropriate circumstances. Pre-approval of joint articles would allow for the creative matching of different experiences. Moreover, in smaller centres where firms cannot take on the full-term commitment of a student they may be able to "share" students, making it possible for more students to work outside the large urban centres. Such an approach could also enhance the viability of mentoring across the province. Lawyers who specialize, or who practise in smaller or rural firms, could be encouraged to work conjointly so that their articling students are assured sufficient resources and variety of tasks to prepare them for the general practice of law;

    b. *the increased development of co-operative law degree programs, the same as or similar to those in existence at Queen's University*. There is a need to develop a policy governing approval of co-operative placements during law school as part of the articling requirement, but we are impressed with the value and relevance of such programs;

    c. *the development of optional CLE programs directed at articling students*. Even now there is an annual program, Excelling at Articles, offered by the Ontario Bar Association. We think that consideration should be given to expanding programs of this kind to provide students with additional supports and a wide range of reference tools they can apply both in their articling term and after. The Law Society could play an important role in the design and creation of such programs. The excellent example of the practitioners who devote so much of their time to the current teaching component of the BAC could be followed in the recruitment of teachers/mentors to help provide this service. Such programs will be particularly helpful for students working in smaller communities or for sole practitioners, where there may not be as much opportunity for hands-on supervision by their principal;

    d. *the provision of training for principals and mentors should they wish to avail themselves of the opportunity*. There are expectations placed on those who become principals, yet very little organized opportunity to develop the particular skills to be a successful mentor. More training in what is involved in being a mentor or a principal could enhance the articling process.

43. There are undoubtedly many other ways in which the articling experience can be made richer, for students and principals alike. The suggestions we have set out here are illustrative only and are intended to underscore our view that the practical apprenticeship phase of the licensing process can and should evolve to meet the changing reality of legal practice and experience. By introducing greater flexibility into the articling program, we believe that a greater number of students will benefit from the practical opportunities and experiences only articling can provide in the licensing process.

Professional Responsibility

44. The commitment to ethical action and professional responsibility in the public interest is the very foundation from which the legal profession draws its authority and strength. Without the constant nurturing of these values it would not be possible to continue to affirm the principles that justify self-regulation.

45. The Law Society's Role Statement provides, in part, as follows:

> *The Law Society of Upper Canada exists to govern the legal profession in the public interest by,*
>
> > *ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence, and professional conduct; and*
> >
> > *upholding the independence, integrity and honour of the legal profession....*

46. The commentary to the Role Statement points out that many provisions of the *Law Society Act* arise from the Society's obligation to uphold integrity and honour, for example:

a. the requirement that candidates for admission be of good character;

b. the power to prepare and publish a code of professional conduct and ethics; and

c. the duty to investigate complaints regarding conduct and competence and, where necessary, to impose sanctions on members who fail to honour their obligations.

47. It is a core function of the Law Society to develop, approve and enforce Rules of Professional Conduct. As the profession's regulator, the Law Society's constant challenge is to ensure that its members uphold the integrity of the profession. When lawyers fail to adhere to the Rules, the Law Society is obligated to respond resolutely and decisively to protect the public.

48. The values of professionalism, ethics and integrity must begin to be taught immediately upon the student's entry into law school. Law schools have the first opportunity to engage the future lawyer in an analysis of the profession's ethical responsibilities and have long recognized the importance of their role in developing this aspect of professional values. Their involvement in the teaching of professional responsibility over the three years of law school is a critical phase in the development of ethical lawyers.

49. The issue of how best to deliver this aspect of legal education has been the subject of many internal law school discussions, internal Law Society discussions and discussions between the laws schools and the Law Society, and, indeed, it was the subject of a 1991 report by W. Brent Cotter entitled *Professional Responsibility Instruction in Canada: A Coordinated Curriculum for Legal Education*. The debate centres mostly around the question of whether professional responsibility ought to be taught as a "stand-alone", obligatory course in law school or integrated into all the substantive law courses and studied within the context of particular substantive law areas.

50. The Task Force believes that little will be accomplished in continuing this debate. It matters less to us how the law schools teach the subject of professional responsibility than that they do teach it. The teaching of professionalism and ethics should continue to be an important component within the three-year law degree program. Regardless, however, of how the law schools approach the teaching of professional responsibility, it remains essential for the Law Society to provide its own additional instruction as part of the post-law school licensing process. This is so because professionalism and ethics are the soul and centre of our profession, because every lawyer is accountable for and responsible to abide by the Rules of Professional Conduct, and because a breach of this obligation may result in the imposition of sanctions.

51. The Law Society's instruction should continue to emphasize those features of professional responsibility and practice management that are of particular concern to the Society, including:

a. principles of self-governance;

b. a lawyer's duty to the public;

c. civility and professionalism;

d. identification and application of the Rules of Professional Conduct, with particular emphasis upon conflicts, confidentiality, ethical advocacy, and avoidance of discrimination and harassment; and

e. service to clients, including practice management.

A New Direction

52. Having regard to the considerations discussed in this report, the Task Force has developed a proposed general framework for the Law Society's admission requirements, the main components of which are examinations and Reference Materials.

Examinations

53. For the reasons discussed above, the Law Society would no longer teach substantive law. The Law Society would teach one course in professional responsibility, ethics and practice management.

54. Candidates for admission to the bar would be required to write licensing examinations. The objective of the licensing examinations would be to assess legal knowledge and analytical capabilities.

55. The current approach of assessing separately eight substantive areas would be discontinued and replaced with the following:

a. a barrister's examination focusing on advocacy-related areas;
b. a solicitor's examination focusing on solicitor-related areas; and
c. a professional responsibility and practice management examination.

56. The Law Society would offer the professional responsibility and practice management course and the licensing examinations at three prescribed times during the year, so that candidates could sit for them before, during, or after articling. Licensing examinations would be developed and designed by professional educators either on staff at the Law Society or retained specifically for that purpose. The examination sitting preceding articling would be scheduled to permit a study period following completion of the three-year law degree program.

Reference Materials

57. Although the Law Society would no longer teach substantive law, it would continue to prepare and provide the Reference Materials for the subjects on which the candidates will be examined. The Reference Materials have a long tradition of excellence and are useful not only for the purposes of the licensing examinations but also for practice. These invaluable materials are developed with the cooperation and substantial assistance of members of the bar and address important issues relevant to the practice of law.

58. Currently, in the BAC, attendance is not mandatory. A significant proportion of the students already do not attend lectures or seminars and yet are able to successfully complete the current examinations. In our view, the success of students on the examinations, despite their non-attendance at lectures, is due in part to the fact that there is a direct link between the Reference Material content and the examination content, so that candidates for admission are not faced with unknown subject matter. In addition, students are provided with sample questions and answers as guides to their study.

59. In the current BAC, the eight examinations are closely connected to the Reference Materials. The licensing examinations should continue to be based upon these materials. It is possible, of course, that if the Law Society stops teaching substantive law in the BAC, private corporations or schools similar to those in the United States may try to step in. We consider this unlikely so long as the Law Society continues to provide excellent Reference Materials and continues to test based upon those materials.

60. To further assist candidates in accessing Ontario-specific law and key statutes the Law Society would maintain an electronically accessible library. This resource could be enhanced by the inclusion of other

materials addressing substantive law and skills, some of which could be authored and maintained with the assistance of organizations such as the Advocates Society and the Ontario Bar Association.

61. If the general framework described here is adopted as the Law Society's model for licensing, the bar admission process would consist of the following components:

a. graduation from an approved Canadian common law school, or approved equivalent;

b. successful completion of the articling requirement;

c. successful completion of the Law Society course on professional responsibility and practice management; and

d. successful completion of the Law Society licensing examinations.

PART IV: EQUITY IMPLICATIONS OF THE NEW APPROACH

62. In developing its approach to the licensing process the Task Force has paid particular attention to the Law Society's commitment to a legal profession that is representative of the diverse Ontario population. As the licensing authority for the province's lawyers, the Law Society must be committed to an admission process that is both reliable as a measure of entry-level competence and free of unreasonable barriers to admission for all groups in the profession, especially those candidates for admission from groups currently under-represented in the legal profession. In other words, the Law Society must demonstrate and be seen to demonstrate commitment to a reliable, fair, open, and equitable accreditation process.

63. The extent to which an accreditation process is open and accessible depends upon a number of factors, among the most important of which are:

a. the cost and duration of the admission process; and
b. the nature of the course content and examination system.

Cost and Duration of the Current Program

64. In our view, the cost and the duration of the current bar admission course can only be seen as an impediment to admission for a significant proportion of candidates, particularly those from groups under-represented in the legal profession. The costs to students of the BAC are substantial. Traditionally and currently, students who have secured jobs at large and even mid-size firms have their BAC tuition paid and are often paid a salary while taking the course.[3] For these students, the length of the course and its cost are irrelevant. The opposite is true, however, for those who are employed by small firms or who have not yet secured employment. In the Law Society's experience, candidates from groups traditionally under-represented in the profession tend to make up a disproportionately high percentage of this group. Moreover, the cost burden to candidates for admission is exacerbated by the spiraling costs of undergraduate and law school tuition.

65. Although the number of locations in which the BAC is offered has increased, there are still students who must take jobs away from their homes and families, finding or maintaining accommodations away from their permanent residences. For those with family responsibilities and debt loads from law school this geographic reality adds a further burden. In addition, given that most students now take the BAC during the summer months, there are further implications for those with children who are out of school during this

[3]Whereas in the past the BAC took place after articling and students had often been asked to return for permanent employment with their firms upon Call to the Bar, most students now take the BAC before articling.

period.

66. The length of the process also creates lost opportunity costs that cannot be precisely calculated. For each month that a self-supporting candidate is not called to the bar and not working, the burden increases. As well, economic burdens create additional personal and family pressures that may have an impact on candidates' ability to complete the licensing requirements successfully.

67. The Law Society has recognized the economic pressures that some students face and has had a long history of bursaries and loans to assist. In 2001, Convocation created a fund of approximately $615,000 and paid $171,000 in grants to students. For the fiscal year 2002, Convocation approved the addition of $100,000 to the balance remaining in the fund. While it is to the Law Society's credit that it assists as it does, the degree of need has persuaded us of how important it is to assess whether the cost implications and duration of the course are necessary to ensure that those called to the bar demonstrate entry-level competence. It is our view that the gains afforded by the BAC are exceeded by the financial burdens the BAC imposes. Possible budget implications of the proposed model are discussed in Part V, below.

Nature of Course Content and Examination System

68. In 1997, the Law Society considered the steps it could take to address a disproportionately high failure rate among those candidates from groups traditionally under-represented in the legal profession. As a result of the analysis it introduced a whole host of support mechanisms to assist candidates in overcoming unreasonable barriers to their Call to the Bar. The Task Force considers that this is a proper and reasonable role for the regulator to have assumed and to continue to assume in the proposed system. The current infra-structure is valuable, well-developed and beneficial to those who have used it; it should continue to exist. Services under the system include the following:
    a. Tutoring;
    b. Tutorials on examination writing;
    c. Mentoring, where available, by lawyers recently called to the bar;
    d. Extended time to complete examinations;
    e. Use of special equipment such as a personal computer;
    f. Use of private rooms;
    g. Examinations in alternative forms such as audiotape, Braille, text to speech; and
    h. Use of readers or scribes in the examination setting.

69. Examination development should likewise reflect the same commitment to an open and accessible process.

70. In considering the bar admission process and the efficacy of changes to it, the Task Force has borne in mind the goal of increased access to and diversity in the legal profession and has developed its recommendations in the belief that these goals are by no means peripheral. They must play an integral part in the development of the approach if the legal profession in Ontario is to be representative of the citizenry who rely upon the profession's services.

PART V: BUDGET IMPLICATIONS

71. The Task Force has not yet completed a detailed analysis of what the proposed new approach would be likely to cost. Until such time as Convocation approves a direction, it is difficult to develop a meaningful analysis of new costs.

72. Nevertheless, at our request, staff in the Education and Finance Departments have done some preliminary analysis of the probable budget implications of a model similar to that described in this report. This work covers four topics:
    a. Operational savings;
    b. Changes in the attribution of indirect costs;

c. Possible savings in lease costs arising from the reduced need for space; and
d. Possible revenue implications of the program changes.

Operational savings

73. Staff of the Education Department have made a preliminary estimate of how much it would cost to run the model envisaged in this report; a summary is provided at Appendix 7. It does not assume any initial reduction in the cost of examinations. This is because while there would be three licensing examinations rather than eight, those three would be offered three times yearly. The Student Success Centre is also assumed to remain at the current level. The total implications of these operational changes are a budget reduction of approximately $1.32 million, or about 24% of the current operations cost. This does not reflect additional savings or revenue implications discussed below.

Indirect Costs

74. All Law Society programs also bear a proportion of Law Society 'overhead' costs. This covers items such as bencher expenses, human resources (allocated in proportion to the number of staff), finance and communications (allocated in proportion to budgeted expenses), facilities (allocated in proportion to the square footage of the department), and other smaller items such as insurance.

75. In the short term, the reallocation of these costs from a particular program will result in those costs being allocated to other existing programs. Over time, there could be reduction in actual indirect costs. However, costs could increase in some other areas. For example, the electronic delivery of materials and creation of a virtual library may result in cost increases to areas such as information systems.

Leasehold Savings

76. A detailed space analysis has not been conducted. However, it is possible that the reduction in space required for teaching purposes would remove the need for leasehold space at 393 University Avenue and 1 Dundas Street West. This could represent a saving of up to $270,000 per year if the University Avenue premises can be subleased (the lease runs to April 2005).

Ottawa Savings

77. Under the new model, the Ottawa building owned by the Law Society would probably no longer be required, resulting in investment income of about $67,000 per year from the proceeds of sale. In addition, building operating expenses of $195,000 would be saved. Limited office and class space would have to be rented at an estimated cost of $100,000 resulting in a net operating benefit of about $162,000.

Revenue Implications

78. At present, the BAC is funded by the tuition fees of $4,400 per student, a contribution from the membership of approximately $49 per full-fee paying member, and a grant from the Law Foundation of Ontario of about $1.3 million. No predictions of possible student or member fee changes have been undertaken.

79. The year 2001 saw the financial impact of what is known as the "double cohort". Because the revenues of a BAC cohort precede the expenses, significant changes in the BAC model may initiate an impact analogous to a "half cohort" where costs are incurred at the back end of a particular BAC model without sufficient revenues coming in from the new model.

80. The Law Foundation has already notified the Law Society that existing funding may decrease by as much as $300,000 per year as a result of diminishing investment returns. A change in the BAC model may mean that the grant from the Law Foundation would be reviewed in its entirety. Any change in Law Foundation funding would require a policy decision from Convocation as to whether members or students should make up the shortfall.

81. It is also possible that Law Foundation funding might be available for some of the technological advances proposed in the provision of materials. The Law Society has substantially completed Phase 1 of the three-

phase Technology Enhanced Learning project which has the objective of improving computer and video-assisted learning. The Law Foundation provided $1.3 million funding for Phase 1. The future direction of this project is uncertain.

Conclusion

82. The net financial impact of contemplated changes to the BAC depends on whether cost savings are passed onto students or members. In the past, Convocation adopted a policy that students should pay the full cost of the "non-discretionary" parts of the BAC, which would mean most savings would be passed on to the students. In contrast,"discretionary" parts of the BAC such as the French program, the Student Success Centre and tutoring have been seen as part of the Law Society's equity initiative and thus not funded by the students. These areas may see an increase in activity under the proposed model.

PART VI: REQUEST TO CONVOCATION

83. This interim report provides Convocation with a framework for a new direction in the Law Society's approach to the licensing process. In the Task Force's view, it focuses on the features with which the Law Society should concern itself and leaves other essential components of the legal education process where they more appropriately belong. It tells candidates, the law schools and the profession where each level of responsibility lies and it does so without blurring lines.

84. Convocation is requested to:
   a. approve the Task Force's continued development of the direction set out in this report; and
   b. permit the Task Force to seek input from lawyers, legal organizations, law schools, BAC section heads and instructors, and students on the direction set out in the report.

85. If Convocation approves this continued work by the Task Force, the Task Force proposes to return with its final report in September 2002.

APPENDIX 1: EXAMPLES OF PRACTICAL LEGAL SKILLS TAUGHT AT ONTARIO LAW SCHOOLS, IN RELATION TO CURRENT BAC COURSES (*information provided by law schools; **information taken from law school calendar)

APPENDIX 2: REFORMS TO THE BAC SINCE 1988 (Summary Table Follows)

1. From its inception, the Law Society has concentrated much of its energy and resources on legal education. To some degree, that focus shifted to the law schools after 1957, but wrestling with the difficult issue of how best to prepare lawyers for practice has been no less a significant component of the Law Society's attention since that date.

2. Both the former Legal Education Committee and the current Admissions Committee have expended enormous time and energy, over decades:
   a. reviewing the goals of the BAC;
   b. proposing reforms;
   c. implementing reforms;
   d. reconsidering earlier decisions;
   e. determining appropriate methods of evaluation;
   f. determining appropriate pass rates and evaluating implications of failure rates;
   g. evaluating the efficacy of articling;
   h. considering cost issues;
   i. considering equity issues;
   j. implementing different modes of delivery for the program; and

k. assessing appropriate course content.

3. The Chart at the end of this Appendix illustrates the major shifts and "reforms" that have occurred to the teaching term of the program since the early 1980s.

4. In the period between its inception in 1957 and the late 1980s when the Spence Sub-committee proposed major change the BAC remained essentially unchanged.

5. In 1988 when the Bar Ad Reform Subcommittee reviewed the BAC, the teaching term was approximately four months, following twelve months of articles. This was a reduction from the six month course that ran earlier in the decade. A summary of the content of the BAC in 1987-88 is attached at the end of this Appendix.

6. It is worth setting out the concerns about the program that were highlighted in the Executive Summary of the Spence report:

1. The design of the Course does not reflect an agreed upon definition of what equips beginning lawyers to practise law competently, nor does it build upon a clear understanding of the knowledge and abilities students have acquired prior to entry into the Course.

2. There is insufficient emphasis upon the lawyering and other skills needed for the competent practice of law.

3. The overall length of the Course has a detrimental effect upon the educational environment.

4. The knowledge students require is still taught in the teaching term through methods that are not always effective and consume too much of the available time for instruction.

5. Students are not well prepared for the articling experience.

6. Insufficient attention has been given to how the Continuing Legal Education Program can assist new lawyers to acquire the knowledge needed for practice.

7. The Spence model was predicated on the view that the Bar Admission Course's emphasis on teaching substantive law was unnecessary and should be substantially reduced, giving way instead to skills training, the teaching of professional responsibility and practice management, and transactional learning. Efforts to reduce the substantive components of the course were not entirely successful. For this and other reasons Convocation authorized another review of the BAC in December 1993 that considered issues and presented a report in April 1995, which Convocation approved for consultation.

8. The report affirmed the importance of the teaching of professional responsibility and practice management, and skills and transactions, but reiterated that although the students must pass licensing examinations to demonstrate entry-level competence the Course should not focus on teaching substantive law. To some degree it anticipated passage of a mandatory continuing education program and included proposals for post-call learning for the newly-called lawyer in such a regime. The 1995 proposals were not adopted.

9. Another review of the BAC followed, this time to address the issues raised in the 1993 review and 1995 report as well as additional issues arising from concern with equity issues, the impact that a new definition of competence should have on the course, and funding. This review resulted in a discussion document for consultation in February 1998. It proposed a skills teaching program followed articling, followed by a licensing examination self-study period and examinations. In December 1998, a further consultation document was prepared with three options for discussion:

the status quo;
the 12-week summer school model (from the February 1998 discussion paper);

a skills-focused model.

10. In February and March 1999, Convocation considered and approved further proposals for change to the BAC, flowing from the consultations on the December 1998 report. The model approved is the basis of the current program, which was implemented for the spring 2001 BAC class. The first substantive law session, for those who elected to split the teaching portion, will run in the summer of 2002. The current program integrates skills with transactional learning, but continues to have the attendant weaknesses of a "cram" course identified in the program since the 1990s with respect to the substantive law portions.

11. In addition to the detailed "reform" proposals that Convocation has considered since 1990, there have been numerous changes to specific policies within the BAC to address areas of concern, or complaint or to ameliorate policies that have been determined not to advance the goals intended.

12. So, for example, bar admission examinations have undergone many changes since the1980s in terms of format and passing grade. The passing standard has included:
    a. a percentage grade;
    b. pass/fail/honours;
    c. percentage pass of 60%;
    d. norm-referencing;
    e. a separate marking scheme for French language examinations to address problems engendered by applying norm-referencing to such a small group;
    f. a capped norm-referencing pass standard;
    g. aegrotat standing; and
    h. "borderline group methodology" and Angoff methodology.

13. The format of the examinations has been relatively stable since 1996, but underwent changes before that time from open-book, to closed-book to essay questions, to drafting questions, to short-answer and multiple choice.

14. Similarly, the appeal process within the BAC has varied as follows:

    1993-95 written appeal based on review of failed paper and marking guide;

    1995 no appeal, but re-grade based on reviewing examination without notes, in supervised room;

    1996 a re-grade possible if exam received a grade within 10 marks of the pass; there was no further appeal;

    1998 students permitted to review failed exams and marking guide. Students could request re-grade if received grade equal to or greater than 80% of the pass. In fact all failed exams were routinely re-graded;

    1999 re-introduction of right to appeal.

15. In addition there have been numerous changes made over a number of years to policies related to the following:

    a. accommodation of special needs;
    b. mandatory versus voluntary attendance;
    c. location of teaching centres; and
    d. course delivery.

    These reviews have been engendered by changing educational approaches. They have also reflected the growing expectation that the licensing process should not be "one-size-fits-all", but should address differing learning needs and requirements.

APPENDIX 3: DEFINITION OF THE COMPETENT LAWYER (RULE 2.01(1)

In this rule

"Competent lawyer" means a lawyer who has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client including

(a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises,

(b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client on appropriate course of action,

(c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including,

(i) legal research
(ii) analysis
(iii) application of the law to the relevant facts,
(iv) writing and drafting,
(v) negotiation,
(vi) alternative dispute resolution,
(vii) advocacy, and
(viii) problem-solving ability,

(d) communicating at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client,

(e) performing all functions conscientiously, diligently, and in a timely and cost-effective manner,

(f) applying intellectual capacity, judgment, and deliberation to all functions,

(g) complying in letter and spirit with the *Rules of Professional Conduct*,

(h) recognizing limitations in one's ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served,

(i) managing one's practice effectively,

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills, and

(k) adapting to changing professional requirements, standards, techniques, and practices.

APPENDIX 4: A BRIEF HISTORY OF LEGAL EDUCATION IN ONTARIO

1. The current Bar Admission Course has its roots in the complex history of legal education in the province of Ontario. The long and sometimes difficult transition from a preparatory system focused primarily on reading law and articling in law offices to one that placed emphasis on professional education in a university setting continues to have repercussions today. The BAC evolved out of that transition and the fundamental assumptions underpinning it remain largely the same today.

2. Since its establishment in 1797 the Law Society of Upper Canada has been involved in the qualification process for those wanting to become lawyers. Although initially the sole elements of training were reading law and apprenticeship, examinations were soon added. After examinations were introduced as an element

of the training regime, some lectures followed, but for many years they were provided intermittently and without any settled curriculum or coherent approach. Whereas other provinces in Canada had, by the 1880s, established a legal education system through their universities, the Law Society declined to follow that path.

3. In 1889, the Law Society founded a law school at Osgoode Hall under the direction of Convocation. Those holding a university degree attended a three-year program at Osgoode Hall involving a few hours of classes, with most of the day spent reading law and apprenticing in a law office. Those without a university degree were required to apprentice for two years before attending the three-year program at Osgoode. This approach remained unchanged for many years despite the emergence of innovative approaches to legal education in the United States, including, for example, the "case" method of instruction and despite the endorsement of this approach by the Canadian Bar Association and western Canadian Law Societies. Although the University of Toronto established a law school, the Law Society did not give credit toward the admission process to graduates of that program.

4. The first serious challenges to Convocation's authority over education occurred in the 1920s and 1930s. These challenges were based on the increasingly-held view that the education of the professions should be done in universities. Critics charged that the notion of law as a "trade" that could best be taught by those already in it was limited and limiting. Legal education, they insisted, must not be simply about learning existing rules of practice, but about the principles, context, and science of the law. Over time, these views gained increasing favour, not only outside the Law Society, but also within it where, for example, Cecil (Caesar) Wright, Dean of Osgoode Hall Law School, became a strong proponent of reform.

5. Still, a majority of benchers continued to believe that university education would be too theoretical and research-oriented to be of use to most candidates seeking to practise law. During this period, however, the increasingly uneven nature of students' articles weakened the argument that practical education made for the best lawyers. The Law Society's response was to cut back on the class lecture component of the program so as to enhance articling, rather than opt to approve university-based legal education. Nonetheless, the push for fundamental reform, including the abolition of articling, continued unabated.

6. Following the Second World War, the issue of who should control legal education and what that education should involve came to crisis, intensified by the significant increase in numbers of those seeking admission to the bar and the attendant pressures on the capacity of the Law Society to accommodate them.

7. In 1949, a Law Society Committee examining legal education acknowledged that the system was troubled, but controversy arose out of the nature of the Committee's recommendations. In response to recommendations with which the faculty of Osgoode disagreed, Dean Wright and most of the faculty resigned. Wright became the Dean of the law school at the University of Toronto and sought to have the provincial government remove authority for legal education from the Law Society.

8. The legal education issue had become a serious problem for the Law Society and the profession. After the faculty resigned, Convocation approved a new approach by introducing a four-year program consisting of two years of full-time study, followed by one year of office work, and one year combining lectures and articling.

9. When the University of Toronto asked that its three-year degree be counted as the equivalent of the two-year study program at Osgoode, the Law Society accepted. The resulting shorter route to call through Osgoode (four years instead of five) worked against the University of Toronto program, because candidates wanted to be called to the bar as quickly as possible. The University's subsequent requests for its graduates to be exempted from three of the four required years were rejected, reflecting the Law Society's continuing concern that the university's degree did not adequately prepare candidates to practise law.

10. By the mid 1950s, however, the Law Society's rationale for exercising control over legal education and its will to do so in the face of over-burdened resources had dissipated. Over several years, discussions took

place with the universities. In 1957, the Law Society and the universities negotiated a "New Deal" in legal education.

11. Pursuant to the agreement, any university could develop a three-year LL.B. program. The pre-requisite for admission to the LL.B. program would be two years of undergraduate education. The Law Society would recognize these degrees, provided the LL.B. program followed certain criteria for curriculum, staff and libraries. Graduates wishing to practice law would serve a twelve-month period of articles. To supplement articles there would be a post-LL.B. training program in substantive law, at Osgoode Hall, supervised by law school faculty and practising members of the profession.

APPENDIX 5: UNITED STATES LICENSING REQUIREMENTS

Generally

1. In the United States, law students usually complete a three-year law degree, then are required to pass licensing examinations in the state or states in which they wish to be called to the bar. There is no articling requirement and no further mandatory pre-call legal education. Licensing examination preparation courses exist in many states, but their primary goal is to facilitate the candidates' passage of the licensing examinations, not educate those about to be called to the bar.

2. Legal education in the United States has had a long history of being taught in a university setting. The legal profession is not governed by self-regulating regulatory bodies, but by the courts. Thus the bar has never "directed" legal education as has been the case in Ontario. Articling and bar admission programs have not played a role in the education of American lawyers and there is no suggestion that they will in the future.

3. Generally speaking, candidates for admission to the various state bars write examinations that consist of some or all of the following[4]: the multi-state bar examination (MBE), the multi-state essay examination (MEE), the multi-state professional responsibility examination (MPRE) and the multi-state performance test (MPT):[5]

    1. The MBE consists of 200 objective multiple choice questions to be answered over a six hour period. The areas tested include constitutional law, contracts, criminal law and procedure, evidence, real property and torts. All states and jurisdictions use the MBE, except Louisiana, Washington and Puerto Rico.

    2. The MEE consists of three one hour essay questions. The questions are designed to measure the applicant's ability to analyze legal issues arising from fact situations. The areas of law covered are agency and partnership, commercial paper, conflict of laws, corporations, decedents' estates, family law, federal civil procedure, sales, secured transactions and trusts and future estates. Fifteen states use the MEE. A number of states, such as California, have their own essay examinations.

    3. The MPRE consists of 50 multiple choice test items covering a wide range of professional responsibility principles, often relying on the ABA Model Rules of Professional Conduct. All states and districts except Maryland, Puerto Rico, and Washington state use the MPRE.

    4. MPT questions are designed to test an applicant's ability to understand and apply a select number of

[4]Washington state is one of the few jurisdictions that does not use any of the multi-state examinations, but administers its own tests and covers more substantive law, local to Washington state. For more information see www.wsba.org

[5]A number of states have developed their own essay and performance test examinations. Passing scores vary with each state.

legal authorities in the context of a factual problem. Each question consists of a file and library, with instructions advising the applicant what task(s) should be performed. Twenty-nine states use the MPT. Others have developed their own tests.

California

4. Eligibility to take the bar examination in California is not limited to J.D. or LLB graduates of American Bar Association-approved law schools, but is open as well to those whose legal study is through:
   1. non-ABA approved in-state schools approved by the state authority;
   2. unapproved in-state schools;
   3. law office study; and
   4. correspondence course.

5. Applicants who obtain their legal education by attending unaccredited schools, correspondence courses or law office study must take an examination after their first year.

6. The California Bar Examination consists of the General Bar Examination (GBE) and the Attorneys' Examination (AE). The GBE has three parts: six essay questions, the MBE and two performance tests (PTs), written over three days. The AE consists of six essay questions and two PTs from the GBE. California also administers the MPRE.

7. The subjects covered in the MBE are: Constitutional Law, Contracts/Sales, Criminal Law/Procedure, Evidence, Real Property, and Torts. The subjects covered in the essay examination are: Civil Procedure, Corporations, California Community Property, California Professional Responsibility, Remedies, Trusts, California Wills & Succession, plus all MBE subjects.

8. The examinations typically result in a relatively high failure rate for those writing for the first and even subsequent times. The pass/fail statistics for the February 2001 sitting, indicating an overall pass rate on the GBE for first-time takers of 52.5 %, 29.4 % for repeaters, and 37.3% overall. The total number writing the February 2001 GBE was 4,488.

9. California is a mandatory CLE state. Lawyers are required to take 25 hours per 3-year period including 4 hours ethics, 1 hour substance abuse/emotional distress, and 1 hour of elimination of bias.

Illinois

10. Eligibility to take the bar examination in Illinois is limited to J.D. or LL.B graduates of American Bar Association-approved law schools.

11. The Illinois Bar Examination consists of a 12-hour two-day examination. Day One covers the Illinois Essay Exam (three 30-minute essay questions, one 90-minute MPT and the MEE. Day Two is the 6-hour 200 question MBE. Candidates must also pass the MPRE, which can be taken during law school.

12. Subjects covered on the MBE examination are constitutional, contracts/sales, criminal law and procedure, evidence, real property, and torts. Subjects covered on the essay exam are agency, commercial paper, conflicts, corporations, equity, family, federal jurisdiction and procedure, civil procedure, partnerships, personal property, sales, secured transactions, suretyship, trusts and future interests, and wills.

13. In 2001 the pass rate for first time takers of the Examination was 83% and all takers 79%. The higher first and second time high pass rate may reflect the fact that Illinois only permits graduates from ABA accredited schools to take the examination.

14. Illinois is not an MCLE state.

Massachusetts

15. Eligibility to take the bar examination in Massachusetts is not limited to J.D. or LL.B graduates of American Bar Association-approved law schools. Graduates from non-ABA approved in-state schools are eligible.

16. The Massachusetts Bar Exam is a two-day exam. Day 1: Multi-state Bar Exam (MBE). Day 2: ten essay questions. Candidates are also required to take the MPRE.

17. Subjects covered on the MBE are: Constitutional Law, Contracts/Sales, Criminal Law/Procedure, Evidence, Real Property, and Torts.

18. Subjects covered on the essay examination are : Agency, Commercial Paper, Consumer Protection, Corporations, Domestic Relations, Federal Jurisdiction, Mortgages, Massachusetts Practice & Procedure, Partnerships, Professional Responsibility, Secured Transactions, Trusts, Wills, plus all MBE subjects.

19. In winter, 2001 the pass rate for first time takers was 68% and for all takers was 52%.

20. In summer, 2000 the pass rate for first time takers was 79% and for all takers 73%.

21. In summer,1999 the pass rate for first time takers was 80% and for all takers was 74%.

New York

22. Eligibility to take the bar examination in New York is not limited to J.D. or LL.B graduates of American Bar Association-approved law schools. Law office study is permitted after successful completion of one year at an ABA-approved law school. Graduates of non-ABA approved law schools can write the examination if they have at least five years active and continuous practice within the last seven years in some other state or states.

23. The New York Bar Exam is a 2 day exam. Day 1: One MPT question (worth 10%), five New York essay questions (worth 40%) and 50 New York multiple-choice questions (worth 10%). Day 2: MBE (worth 40%). Candidates must also pass the MPRE.

24. The MBE covers the following subjects: Constitutional Law, Contracts/Sales, Criminal Law/Procedure, Evidence, Real Property, Torts. New York portions of the examination cover Agency, Commercial Paper, Conflict of Laws, Corporations, Domestic Relations, Equity, Estate Taxation, Federal Jurisdiction, Future Interests, Insurance (No Fault), Mortgages, New York Practice & Procedure, New York Professional Responsibility, Partnership, Personal Property, Secured Transactions, Trusts, Wills, Workers' Compensation, plus New York distinctions for all MBE subjects.

25. In the July 2001 sitting of the examination, of the 9194 applicants examined, 6475 or 70.4% passed the examination. Of the 5136 applicants taking the examination for the first time, 4089 or 79.6% passed.

26. In the July 2000 sitting of the examination, of the 8,896 applicants examined, 6,006 or 67.5% passed the examination. Of the 7,356 applicants taking the examination for the first time, 5,516 or 74.9% passed.

27. New York has recently become a mandatory CLE state. During each of the first two years after call, newly admitted attorneys must complete 16 CLE hours including three in ethics, six in skills, and seven in practice management. Thereafter, all New York attorneys must complete 24 CLE hours every two years.

Bar Admission Department
Law Society of Upper Canada
December 10, 2001

Articling Student Feedback Report

Report Highlights

- Survey 2001 provides a positive snapshot of the articling experience. 94% of respondents rated the articling experience favorably, indicating that the articling program prepared them "well enough" or "very well" for the practice of law. In Survey 2000, only 80.7% of respondents gave this rating.

- 63.7% of students articling in the 2000-2001 articling term (Survey 2000 – 18.6%) responded to this survey, representing a significant increase over the response rate of the previous year's survey.

- 70% of respondents (Survey 2000 – 48%) indicated that they had been provided with an education plan. Preliminary review of final evaluations for the articling term 2000 – 2001 indicates that over 90% of students received education plans by the time they completed their final evaluations, suggesting that changes made pursuant to comments received from respondents to the Survey 2000 were effective.

- 64% of respondents (Survey 2000 - 51%) consider that the current evaluation process is adequate, indicating that changes made pursuant to comments received from respondents to the survey administered in 2000 were effective.

- The majority of students-at-law perceive themselves as receiving practical training (66.4%), in relevant legal skills (63.5%), from a helpful principal (53.1%). 52.8% of respondents rated the broad experience of their articling placements positively.

- Significant decreases were noted in the percentage of students identifying areas of weakness in their articling placements. 20.8% (Survey 2000 – 29.4%) of respondents were concerned about the amount of routine tasks at their articling placement and 19.3% (Survey 2000 – 28.9%) about their lack of exposure to business.

- The percentage of respondents reporting incidents of discriminatory incidents decreased by over 50% (Survey 2001 - 14.2%; Survey 2000 - 29.4%), suggesting that efforts by the APO and Equity Initiatives Department to ensure equity in the experiences in articling students have been effective. (Survey 2001 – 56.5% indicated no discrimination and 29.3% did not respond; Survey 2000 – 45.6% indicated no discrimination and 25.0% did not respond.)

- Non-traditional placements (joint, part-time, international, national, abridged, split) continue to provide valuable options and flexibility for Bar Admission Course students. Approximately 5% of students took advantage of these options in the 2000-2001 articling term.

Articling Student Feedback Report

Report Highlights

I. Introduction:
   Purpose
   Background

II. Demographic Information
   Background
   Gender

Appendix 2: List of Tables

I. Introduction:

1. Purpose

a. Each year the Articling & Placement Office ("APO") conducts an anonymous survey of Bar Admission Course ("BAC") students to solicit information about their articling experiences. The survey questions and response data have been assembled into this, the Articling Student Feedback Report[1], with discussion and recommendations. The APO administers surveys, such as this one, to ensure that articling processes remain relevant, to assess student satisfaction and to identify areas for improvement.

2. Background

a. The survey upon which this report ("Survey 2001") is based was distributed to students of the 43rd BAC during the latter half of their articles (Spring 2001) with the end-of-term documents. The previous year's survey of the 42nd BAC ("Survey 2000") was given to students during Phase 3, after articling had been completed. The change was made for two reasons. The first was that by including the survey as part of the final articling documents it was hoped that more students would complete it. Secondly, it was thought that the information being solicited would be fresher in the students' minds.

b. The fact that the APO received a response rate of 63.7%, a very high response to any APO administered survey, would seem to bear out the first reason for the timing change mentioned above. The APO received 735 responses from 1153 students enrolled in the 43rd BAC. By comparison, the response rate for Survey 2000 was 18.6%.

c. Because of the Survey 2000 low response rate, the data in Survey 2000 has been further analysed for validity. Distributions of gender, age, self-identification with membership groups, and type of articling placement indicate that the data is reasonably valid as compared to the whole population of the 42nd BAC. The exceptions are that higher percentages of females and Francophones responded to the survey than appeared to be representative of the 42nd BAC.

d. The articling phase is the longest of the BAC's three phases. In September 2000 Convocation reduced the length of the articling term from 12 months to 10 months, effective January 1, 2001. The respondents to this survey were the final BAC class required to complete the 'old' 12 month requirement.

e. The quality of training that students receive varies greatly and depends largely on the student's relationship with his/her articling principal. By requiring the approval of principals and education plans, which outline the training that a principal will provide, it is hoped that an acceptable level of both quality and exposure to skills will be achieved. In addition, students complete midterm and final evaluations comparing the actual experience to that anticipated in the education plan. The midterm evaluation is intended to refocus both the student's and principal's attention on accomplishing the education plan's goals[2].

II. Demographic Information

3. Background

[1] The previous year's report, based on the 42nd BAC, was titled 'Employment Survey Report'.

[2] A report (the "OISE Report") entitled 'Options in the Evaluation of Articling Experiences', commissioned by the APO, was completed in September 2001 by Doug Hart, Ph.D., from University of Toronto's Ontario Institute for Studies in Education. The report studied the current articling evaluation forms and presented options for ensuring an efficient and valuable evaluation process in the future.

a. Demographic indicators, discussed below, are collected for various reasons. The first is to ensure that the demographic makeup of the survey respondents is similar to that of the BAC class as a whole, which in turn validates the response data. Second, having demographic information can help to identify trends or experiences that have developed within the articling program as a whole that may correlate to specific groups of the BAC class. Third, cross-tabulation of this information provides additional and important insights into the data.

b. Three questions were included in the survey relating to demographic information about the 43rd BAC class in general and the survey respondents specifically.
   a. What is your gender?
   b. What is your age?
   c. Denote any of the following groups of which you consider yourself a member: Francophone, Disabled, Visible Minority, Gay/Lesbian, Aboriginal, Mature, Other

4. Gender: Response Data
   a. Of the 735 survey respondents, 397 indicated that they are female, 335 indicated male and 3 chose not to respond. The percentage of females exceeds that of males.

   b. Table 1: Gender Distribution

Gender	Survey 2001 #	Survey 2001 %	43rd BAC (%)	42nd BAC (%)	41st BAC (%)
Female	397	54.2	51.5	51.3	49.6
Male	335	45.8	48.5	48.7	50.4
Total[1]	732	100.0	100.0	100.0	100.0

[1] 'No responses' (3) were not included.

5. Gender: Discussion
   a. This question is useful in validating the survey responses. The new database that is in use for the 44th BAC class, those students entering the BAC in 2001, does not record or track gender information. In future, this survey may be the only source for this information.

   b. The survey response data represents a slightly larger gender gap than that within the class as a whole. This suggests a somewhat greater response rate or inclination to respond to this survey among females.

   c. This data was cross-tabulated with the Treatment of Articling Students data in Section V following.

6. Self-identified Group Membership: Response Data
   a. Table 2: Age Distribution

Age Groups	Survey 2001 #	Survey 2001 %	Survey 2000 %
20 - 25 years	101	13.8	8.4
26 - 30	493	67.3	67.5
31 – 35	77	10.5	9.4
36 – 40	28	3.8	7.4
Over 40	34	4.6	7.4
Total[1]	733	100.0	100.0

[1] 'No responses' (2001 – 2; 2000 - 1) not included.

b. Table 3: Self-identified Group Membership Distribution

Demographic Group[1]	Survey 2001 #	Survey 2001 %	43rd BAC %	42nd BAC %
Francophone	39	5.3	-[2]	-[2]
Disabled	7	1.0	2.0	1.1
Visible Minority	134	18.2	16.1	14.5
Gay/Lesbian	10	1.4	1.2	0.7
Aboriginal	11	1.5	1.8	1.2
Mature	59	8.0	4.9	-[1]
Other	25	3.4	-[1]	-[1]

[1] Survey respondents could choose more than one response.
[2] These groups were not available choices on the applicable application.

7. Self-identified Group Membership: Discussion – General

a. Age data collected through this survey is available empirically from the BAC applications. Unfortunately, the database is difficult to manipulate for such information and the resources that would be required were not justifiable within the context of this report.

b. The number of respondents who indicated 'Francophone' (39) compares favorably with enrollment in the 2000 French BAC Phase 1 Course (34).

c. 'Disabled', 'Gay/Lesbian' and 'Aboriginal' groups, taken individually, have historically constituted a small percentage of the BAC class. Consequently, a small change in the absolute number of students within these groups each year can cause large relative fluctuations when comparing one year to the next on a percentage basis.

d. To verify and evaluate the data from this survey, the data has been compared to that which was collected on the BAC application. The percentage of respondents who self- identified on the survey is reasonably reflective of the BAC application data, except where otherwise noted below.

8. Self-identified Group Membership: Discussion - Disabled

a. Twenty-four students identified as a 'person with a disability' on the BAC application. However, only 7 survey respondents have identified as 'Disabled', which is lower than would be expected with such a high response rate to the survey. This discrepancy may be explained by the slightly different but possibly significant difference in phrasing between the survey and the BAC application. The BAC application used the phrase 'Persons with a disability' whereas the survey used the term 'Disabled'. Respondents may have interpreted 'Disabled' more restrictively (i.e. physical disability) whereas the BAC application phrasing may have been considered more expansively to include learning or mental disabilities. Future articling surveys will use the term "persons with a disability".

9. Self-identified Group Membership: Discussion – Age Distribution and Mature Group data

a. In the voluntary disclosure category dealing with age (Mature), there were more 'mature' respondents in the survey (59) than in the entire 43rd BAC class (57). This discrepancy likely occurred because the BAC application further defined the Mature label to be 'over 40' whereas the survey did not include this 'over 40' specification. Survey respondents made a subjective decision on the meaning of 'Mature' that included ages below 40 and cross-tabulation of the age data with the 'mature' disclosure confirms this. Of the 59 students who identified themselves as 'mature', only 24 (41%) were 'over 40'. Sixteen of the 'mature' respondents were 36-40, 18 were 31-35 and

one was 26-30. Therefore, high percentages of the students who are either 31-35 or 36-40 considered themselves 'mature' but did not indicate such on the BAC application due to the 'over 40' definition that accompanied the designation.

b. The application for the 45th BAC has been amended to remove the "over 40" qualification and it is that an increased number of 'mature' students will self-identify on their BAC applications in 2002.

10. Self-identified Group Membership: Discussion – Comments

a. Twenty-five respondents indicated that they are members of the group 'other'. Nineteen of those 25 provided a comment/definition with their response, many of which had a similar basis and can be grouped or categorized according to the following table.

Table 4: Self-identified Membership Groups Categorization of Comments.

Category	Survey 2001 #
Religious	4
Gender	2
Parental status	3
Ethnic minority	8
Distinct comments[1]	2
Total	19

[1] These two comments did not fall within any of the other categories. One comment was 'foreign trained lawyer' while the other was expanding on an existing question response choice (gay/lesbian to gay/lesbian/bisexual)

b. A number of respondents feel strongly about identifying specific cultural or ethnic characteristics of themselves. Future surveys might include additional categories to capture this information. No 'other' choice was available on the previous year's survey.

c. Future surveys should ensure consistency in phrasing between the BAC application and the survey if the survey data is to be compared in any way to the BAC application data. Otherwise a conscious decision has to be made to evaluate and examine the survey data independent of other sources.

III. Articling Placement Information

11. Background

a. Options are available to students to modify their articling term to enable alternate scheduling and/or varied practical experience. Collectively, the possible articling modifications are referred to as 'non-traditional' placements, where a 'traditional' placement would refer to consecutive months of full-time service with one employer/principal.

b. Firms/Principals must submit and receive approval by the APO of an education plan that outlines the experience that a student can expect to receive. It is expected that the Firm/Principal will in turn provide the student with the education plan. In response to Survey 2000 which indicated that about one half of articling students were not receiving a copy of their education plan, the APO has been emphasizing the importance of the education plan, in communications and publications, since that survey result was compiled.

c. Students complete articling evaluations at the midpoint and end of the articling term. These evaluations provide an opportunity for students to compare their articling experience with what was anticipated in the education plan, and are intended to be submitted independently by the student without being seen by the principal. As anecdotal evidence suggested that some principals

were pressuring students to prepare the evaluations together prior to submission, questions about ratings were included in this anonymous survey.

d. This year's survey posed five questions that related to the specific articling experience that the students undertook and their evaluations of the experience. The five questions asked were:

i. In what type of traditional (12 month consecutive full time) or non-traditional articling experience did you participate (Traditional, Joint, Part-time, International, National, Abridged, Split)?
ii. Have you been provided with your education plan?
iii. How would you rate your articling experience as compared to the experience anticipated in your education plan?
iv. Overall, how would you rate your articling experience?
v. Do the current forms provide an adequate system for review during the articling experience?

12. Traditional/Non-traditional Articling - Response Data

a. Table 5: Types of Articling Placements

Placement Type	Survey 2001 #	%	43rd BAC
Traditional[1]	695	94.6	-
Joint	4	0.5	0.8
Part-time	0	0.0	0.4
International	5	0.7	1.3
National	6	0.8	0.6
Abridged	11	1.5	2.8
Split	17	2.3	1.9

[1] Traditional' placements are not tracked.

13. Traditional/Non-traditional Articling - Discussion:

a. The APO approves non-traditional arrangements that provide a student with sufficient training and supervision within the same skill areas as required by traditional placements. In the spirit of enabling flexibility and alternate options to today's BAC students, the APO is proactive in developing acceptable education plans for non-traditional placements.

b. Overall, there are 90 students, from a total class of approximately 1150, using the available non-traditional options. This represents a significant proportion (7.8%) of the class who may have otherwise been unduly delayed in receiving their call and/or missed a valuable learning experience, and/or been unable to find a 'traditional' placement with which to fulfill the articling requirement.

14. Education Plan: Response Data

a. Table 6: Provision of Education Plan

Provision of Education Plan	Survey 2001 #	%	Survey 2000 %
Yes	517	70.3	47.2
No	204	27.8	52.8
Totals[1]	721	100.0	100.0

[1] 'No-responses' were excluded (2001 – 14; 2000 - 11)

15. Education Plan: Discussion

a. Survey 2000 suggested that more than half of articling students were not receiving education plans. Anecdotal evidence had suggested such a problem, which prompted the APO to include the question in the survey.

b. The results of Survey 2000 caused the APO to undertake numerous initiatives and implement changes to improve the distribution of education plans to students. Following is an outline of the initiatives and changes undertaken:

- physical review of all APO articling firm and principal files to identify if there was an approved education plan in place
- informing all approved articling principals (2000/01) without education plans on file with the APO that their renewal as a principal (2001/02) was contingent upon the submission of an acceptable education plan
- inclusion, in the letter of confirmation of approval/renewal as a principal, of a paragraph outlining the importance of the education plan, the need to provide the student with a copy, and the necessity to submit any new or revised plans to the APO for approval
- expanded explanations/descriptions relating to education plans in the revised Articling Handbook 2001, and increased emphasis on their importance
- sample education plans posted on the APO's web site
- commencement of initiative to develop relevant education plans for clerkships at various levels of provincial and federal courts
- APO materials distributed to students included suggestions/encouragements that they should be asking for copies of the education plan

c. The response outlined in Table 6 indicates that the APO initiatives have had a significant positive impact on the number of students who have received a copy of the education plan. The number of students reporting that they were not provided with the education plan has dropped from 52.8% to 27.8%. Preliminary review of final evaluations for the articling term 2000 – 2001 indicates that over 90% of students received education plans by the time they completed their final evaluations, suggesting that changes made pursuant to comments received from respondents to the Survey 2000 were effective.

d. In 2001, the APO's physical review of its principal and firm files identified 218 principals without education plans. Only those principals who submitted new plans were approved as principals, resulting in an additional 100 principals who submitted plans. It is expected that the number of students who are not provided with an education plan will decrease further, as a direct result of this APO initiative.

16. Rating of Articling Experience as Compared to Experience Anticipated in Education Plan: Response Data

a. Table 7: Rating of Articling Experience, as Compared to Education Plan

Rating, as Compared to Education Plan	Survey 2001 %	43rd BAC Mid-term Evaluation %	43rd BAC Final Evaluation %	Survey 2000 %
Very Good/Excellent	56.6	54.7	59.1	48.2
Good	34.0	34.0	30.6	28.7
Satisfactory	7.8	10.0	8.6	18.2
Poor/Unsatisfactory[1]	1.6	1.3	1.7	4.9
Totals[2]	100.0	100.0	100.0	100.0

[1] The surveys' lowest rating was labeled 'poor' whereas the evaluations used the label 'unsatisfactory'. For the purposes of this report it is assumed that the two categories are equivalent.

[2] The total for the surveys are based on those respondents who indicated that they had received their education plan, with Survey 2001 adjusted for 33 respondents who indicated that they had no education plan but gave a rating, despite the question's phrasing. The totals for the evaluations are based on all evaluations that have been submitted by the 43rd BAC students.

17. Rating of Articling Experience as Compared to Experience Anticipated in Education Plan: Discussion

a. Encouragingly, articling students have consistently indicated high levels of satisfaction with the articling experience, as compared to their education plans. On each of Survey 2001 and the two articling evaluations for the 43rd BAC, approximately 90% of respondents indicated ratings of 'good' or better.

b. As stated earlier, during the articling term students are required to complete a midterm and a final evaluation, which include an overall rating scale that is very similar to the response choices on the survey. Table 7 shows that there is little variation in the numbers when each category is compared, except for the higher number of students who indicate a poor/unsatisfactory experience in Survey 2000, which may be connected to the lower response rate of that survey.

18. Overall Rating of Articling Experience: Response Data

a. Table 8: Overall Rating of Articling Experience

Overall Rating	Survey 2001 #	Survey 2001 %	Survey 2000 %
Very Good/Excellent	429	58.6	47.5
Good/Satisfactory	282	38.5	47.5
Poor	21	2.9	5
Totals[1]	732	100.0	100.0

[1] 'No Responses' not included (2001 – 3; 2000 – 7)

19. Overall Rating of Articling Experience: Discussion

a. Survey 2001 included a typographical error, which resulted in the categories 'good' and 'satisfactory' being transposed. Therefore, the data in Table 8 is presented as a combined 'Good/Satisfactory' rating.

b. 97% of respondents (2000 – 95%) provided a positive rating for their articling experience.

20. Adequacy of Articling Evaluation: Response Data

Table 9: Adequacy of Articling Evaluation Process

Adequacy of Evaluation Process	Survey 2001 #	Survey 2001 %	Survey 2000 %
Yes	468	63.7	50.5
No	246	33.5	40.7
No Response	21	2.8	8.8
Totals	735	100.0	100.0

21. Adequacy of Articling Evaluation: Discussion – General

a. 63.7% of respondents (2000 – 50.5%) were satisfied with the evaluation process.

b. In 2001, the APO undertook a major inquiry relating to the evaluation process. Doug Hart, Ph.D., a consultant from the University of Toronto's Ontario Institute for Studies in Education was retained to research and prepare a report, entitled *Options in the Evaluation of Articling Experiences*, to examine evaluations in the context of models for professional training. It is intended that the APO's evaluation forms and processes will now be examined for possible revision in light of the report's findings.

c. Articling Handbook 2001 was revised to include more information about evaluations. The APO's web site was also updated in 2001, which increased awareness of the evaluation process and afforded additional access to the evaluation forms. Several of these changes/initiatives took place since the distribution of Survey 2001 and it is hoped that they will improve the effectiveness of the evaluation process for subsequent BAC students.

d. The APO has also been working with the various Provincial and Federal Courts to develop evaluation forms that are specific and relevant to the clerkship experience. Previous evaluations were largely inapplicable to court clerkships. These new evaluations will also be in use by the 44th BAC students.

22. Adequacy of Articling Evaluation: Discussion of Comments

a. Overall, 200 comments were received from students in relation to this question on the evaluation process. The challenges faced in trying to revise the evaluation process are illustrated in these comments. For every comment criticizing one aspect of the process, there is another comment expressing the opposite opinion. There seems to be little consensus among students themselves concerning the best process/method for evaluating the articling experience.

b. Several comments touched on more than one topic. The comments were categorized into the following groups, with the number of comments for each category in brackets:

- Form design criticisms (57)
- Evaluations considered helpful as a communications tool (48)
- Criticisms of the evaluation process (22)
- Merits of qualitative evaluation vs. quantitative evaluation (18)
- Confidentiality, or lack of it, in completing evaluations (13)
- Timing of the process (12)
- Comments related to education plans (8)
- Unconstructive or off-topic comments (22)

c. Survey 2000 recorded a number of comments from court clerks complaining that the evaluation forms were not relevant to their experience. As noted above, the APO has undertaken to develop relevant forms for courts. As a result, there was a decrease in comments on this topic.

d. Considering that the comments criticizing the forms' design are largely contradictory and the second largest comment category relates to positive comments, the outstanding issues do not appear to be viewed as problems by large portions of the BAC class.

e. Confidentiality concerns are being addressed as part of the privacy review being undertaken by the Law Society.

f. Many of the process criticisms relate to the students' lack of knowledge about the results or follow-up procedure that occurs after the evaluations are submitted. The Articling Handbook 2001 was revised to explain the process. A similar explanation may be added to the evaluation form itself to increase awareness.

IV. Relevance of Articling to Career/Practice

23. Background

a. The Articling Program is intended to provide BAC students with practical skills training in areas that are considered essential to the practice of a lawyer. Therefore, it is important that the APO determine whether or not articling students feel that the training they received was valuable and will assist them in performing the duties and responsibilities of a lawyer.

b. Students were asked the following three questions:

i. How do you feel articling prepared you for the area of law you intend to practice?
ii. What, if anything, was it about the articling component of the BAC that did not prepare you for the area of law you intend to practice?
iii. What aspects of articling did you find the most helpful?

24. Preparation Strengths: Response Data

a. Table 10: Rating of Articles as Preparation for Practice of Law

Rating as Preparation for Practice of Law	Survey 2001 #	Survey 2001 %	Survey 2000 %
Not at all	7	1.0	2.5
Not very well	36	5.0	16.8
Well enough	356	49.0	51.3
Very well	328	45.0	29.4
Totals[1]	727	100.0	100.0

[1] No Responses (2001 – 8; 2000 – 7) were not included.

b. Table 11: Most Helpful Aspects of the Articling Experience

Most Helpful Aspect (s)	Survey 2001 #	Survey 2001 %	Survey 2000 %
Good practical training	488	66.4	61.3
Principal helpful	390	53.1	55.9
Learned relevant skills	467	63.5	61.8
Broad experience	388	52.8	Not listed
Other	50	6.8	14.7

25. Rating of Articles as Preparation for Practice of Law: Discussion of Table 10

a. 94% of respondents (2000 – 80.7%) felt that articling has prepared them either ‘well enough’ or ‘very well’ for the area of law that they intend to practice. This indicates that the articling program is fulfilling its mandate of providing practical legal training to students-at-law.

b. Cross-tabulation of respondents who participated in a ‘non-traditional’ articling placement and this data indicated that 42 of 43 respondents felt that they were prepared ‘well enough’ or ‘very well’. This indicates that, far from compromising a student’s practical training/preparation, non-traditional options result in a high level of satisfaction with legal preparedness, in the students’ opinion.

c. Cross-tabulation of respondents without an education plan and this data indicated 71% of respondents who indicated that they were ‘not at all’ prepared and 47.2% of respondents who indicated that they were not well prepared were not provided with an education plan, compared to 30% overall who did not receive their plans. The APO is continuing efforts to ensure that students are provided with their education plans.

26. Most Helpful Aspects of the Articling Experience: Discussion of Table 11

a. The high response rate on this question further confirms that the goals of the articling program are being met. The majority of students-at-law perceive themselves as receiving practical training (66.4%) in relevant legal skills (63.5%) from a helpful principal (53.1%). 52.8% of respondents rated the broad experience of their articling placements positively.

b. Although just over half of the respondents (2001 - 53.1%; 2000 – 55.9%) indicated that their principal's help was one of the most helpful aspects of their articling experience, given the significant role that the principal is intended to fulfill, this percentage raises concerns. The articling program has followed an apprenticeship type model of training. However, if almost one half of respondents (in 2001 and 2000) have not ranked their principals' helpfulness as a strength of the articling experience, this issue should be reviewed in greater depth. Future surveys may include additional questions to further explore this matter. Other professional training models, as identified in the OISE Report, might also be further examined in the articling context (see Paragraph 21.b. above).

c. 'Other' comments provided generally elaborated on responses already chosen and thus were not useful. It would be reasonable to eliminate the 'other' response in future surveys.

27. Preparation Weaknesses: Response Data

a. Table 12: Weaknesses of Articling in Preparation for Practice of Law

Area of Weakness[1]	Survey 2001 #	Survey 2001 %	Survey 2000 %
Too many routine tasks	153	20.8	29.4
Not learning business aspect	142	19.3	28.9
Too much time on research	104	14.1	18.1
Plan to practice in another area	89	12.1	14.2
Experience not broad enough	82	11.3	Not listed
Lack of communication w/ principal	72	9.8	Not listed
Experience not practical enough	72	9.8	15.2
Other	59	8.0	15.7

[1] 'No responses' were not included (2001 – 265). Respondents were able to choose more than one response.

28. Preparation Weaknesses: Discussion

a. Survey 2001 response distribution was relatively even across the seven specific categories, with 'too many routine tasks' and 'not learning business aspects' receiving the highest responses. 470 respondents account for 773 responses, with many of the respondents choosing more than one category.

b. The data in Table 10 indicates that 43 respondents (7 'not at all' + 36 'not very well') felt they were not adequately prepared for practice by articling. Therefore, of the 470 respondents who indicated weaknesses in this question, over 90% did not feel that the weaknesses were significant enough to have compromised their overall preparation for practice.

c. 'Too many routine tasks', chosen by 20.8% of the respondents was the most frequent response to this question, as it was on last year's survey. However, last year the percentage of respondents choosing this category was significantly higher at 29%. Routine tasks are specifically addressed by most education plans, which generally specify that a student will only be expected to perform

such tasks ‘on occasion’. The phrase ‘routine tasks’ as stated on the survey without context or definition is open to interpretation.

d. The APO revised 2000 - 2001 articling evaluation forms to incorporate additional questions and ask for more detail with respect to ‘routine tasks’ as a result of the high percentage of respondents who indicated too many routine tasks on Survey 2000. Those revisions may account for some of the decrease from last year to this year as students may now have a better understanding of what constitutes a ‘routine task’.

e. 19.3% of respondents indicated that they were ‘not learning business aspects’. This group includes students who work for government ministries, agencies, corporate legal departments and large firms. Typically, these students receive less training in business aspects than those in small to mid-size legal firms.

f. All categories have shown decreases since Survey 2000 was administered.

g. ‘Other’ comments provided generally elaborated on responses already chosen and thus not useful. It would be reasonable to eliminate the ‘other’ response in future surveys.

h. Through revisions of the Articling Handbook, web-site material and other documents and forms, the APO encourages better communication between students and principals. Clarification of routine task expectations is continuing.

i. The APO is also considering the development of a web-based learning module to address business aspects.

V. Treatment of Articling Students

29. Background

a. While it is hoped that all articling students will receive an experience that is free from harassment and/or discrimination, the APO is aware that some students are subjected to unacceptable behavior during their placements. The APO uses this survey to try to quantify and qualify the treatment that students receive, from their principals or any other people that they come in contact with during their articling term.

b. With an anonymous survey, such as this one, it is hoped that disclosure of this information is maximized. Students might not feel the same apprehension that accompanies a survey with identifying information.

30. Treatment of Articling Students: Response Data

a. Table 13: Treatment of Articling Students: Distribution

Treatment	Survey 2001 #	Survey 2001 %	Survey 2000 %
Insensitivity, prejudice, discrimination	46	6.3	14.7
Slurs, demeaning remarks	31	4.2	8.3
Favoritism	52	7.1	11.3
Channeling	35	4.8	6.4
No discrimination	415	56.5	45.6
No response	215	29.3	25.0
Totals[1]	794	108.0	111.3

[1] Students could select more than one response

b. Table 14: Treatment of Articling Students: Categorization of Comments

Category	# of Comments
Favouritism or unfair distribution of work	20
Channeling into undesired area of law	9
Prejudicial remarks (ethnic or race related)	24
Rude or demeaning treatment and remarks	32
Sexist remarks and jokes	15
No discrimination	51
Comments not related to the question	15
Total comments[1]	166

[1] The categorized comments do not equal the number of comments received as some comments raised more than one point and were categorized in more than one group.

31. Treatment of Articling Students: Discussion

a. It is difficult to interpret 'no responses' in survey results and to know if the respondents did not want to answer, missed the question, had nothing to say on the topic or did not understand the question. To improve this question's response rate, the APO will restructure some questions for next year's survey.

b. The percentage of respondents reporting incidents of discriminatory incidents decreased by over 50% (Survey 2001 - 14.2%; Survey 2000 - 29.4%).

c. The response data from the discrimination question was cross-tabulated with the gender question data. Female respondents experienced a disproportionate amount of discriminatory treatment. Three times more female respondents than male respondents chose the following categories: Insensitivity, prejudice, discrimination; Slurs, demeaning remarks; Favoritism. Also, a number of comments related to sexist remarks or behavior.

d. Treatment during articles was also cross-tabulated with the age question data. Generally, responses in each of the treatment response categories were approximately equally distributed across the various age ranges, except for a disproportionate percentage of insensitivity/prejudice noted by the 'over 40' respondents.

e. Articling Handbook 2001 includes a revised section entitled "Identifying and Responding to Harassment and Discrimination" prepared by the Law Society's Equity Department. This material is currently being revised for posting on the APO web-site as a stand-alone memorandum, which will also include summer students. Joint efforts of the APO and Equity Department continue to address issues of discrimination and harassment.

VI. Conclusion

32. Survey 2001 provides a positive snapshot of the articling experience. 94% of respondents rated the articling experience favorably, indicating that the articling program prepared them "well enough" or "very well" for the practice of law. In Survey 2000, only 80.7% of respondents gave this rating.

33. The survey's response rate of 63.7% (Survey 2000 – 18.6%) of students articling in the 2000-2001 articling term and demographic comparisons to the profile of registrants in the BAC support a high degree of validity of the data.

34. 70% of respondents (Survey 2000 – 48%) indicated that they had been provided with an education plan. Preliminary review of final evaluations for the articling term 2000 – 2001 indicates that over 90% of students received education plans by the time they completed their final evaluations, suggesting that changes made pursuant to comments received from respondents to the Survey 2000 were effective.

35. 64% of respondents (Survey 2000 - 51%) consider that the current evaluation process is adequate, indicating that changes made pursuant to the comments received from respondents to Survey 2000 were effective.

36. The majority of students-at-law perceive themselves as receiving practical training (66.4%), in relevant legal skills (63.5%), from a helpful principal (53.1%). 52.8% of respondents rated the broad experience of their articling placements positively.

37. Significant decreases were noted in the percentage of students identifying areas of weakness in their articling placements. 20.8% (Survey 2000 – 29.4%) of respondents were concerned about the amount of routine tasks at their articling placement and 19.3% (Survey 2000 – 28.9%) about their lack of exposure to business.

38. The percentage of respondents reporting incidents of discriminatory incidents decreased by over 50% (Survey 2001 - 14.2%; Survey 2000 - 29.4%), suggesting that efforts by the APO and Equity Initiatives Department to ensure equity in the experiences in articling students have been effective. (Survey 2001 – 56.5% indicated no discrimination and 29.3% did not respond; Survey 2000 – 45.6% indicated no discrimination and 25.0% did not respond.)

39. Significant decreases were noted in the percentage of students identifying areas of weakness in their articling placements. 20.8% (Survey 2000 – 29.4%) of respondents were concerned about the amount of routine tasks at their articling placement and 19.3% (Survey 2000 – 28.9%) about their lack of exposure to business.

40. Non-traditional placements (joint, part-time, international, national, abridged, split) continue to provide valuable options and flexibility for Bar Admission Course students. Approximately 5% of students took advantage of these options in the 2000-2001 articling term.

41. Future surveys will be revised to improve the quality of responses in certain of the questions. In November 2001, the APO participated in a survey design and development seminar to learn to better structure and design surveys and questions.

42. Looking forward, the APO will undertake the following initiatives to address the issues raised by this survey:
    - Review the OISE Report, *Options in the Evaluation of Articling Experiences*, in the context of the professional training of future lawyers,
    - Revise certain aspects of the survey on which this report is based,
    - Continue to revise, create and clarify articling related information for inclusion in the Articling Handbook 2002, APO web-site, other documents, forms and communications, and
    - Continue to work with the Equity Department to identify and address issues of harassment and discrimination.

Appendix I
2000-2001 Articling Term: Employment Survey

The Articling and Placement Office is interested in collecting data on the quality of the articling experience. The following survey has been developed for this purpose. We ask that each student complete the survey and return it to the Articling and Placement Office with the end of term articling documentation (surveys will be separated upon receipt to maintain student's anonymity).

The Law Society's Admission Committee is committed to ensuring that legal services are provided by and for members of minority groups under-represented in the profession. In addition, the Ontario Human Rights Code prohibits discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, gender, sexual orientation, age, marital status, family status, or handicap. Further, the Law Society's Accommodation policy for the Bar Admission Course reflects the spirit and intent of the Human Rights Code. To

support these objectives, the Admissions Committee is interested in gathering statistics on the composition of the Bar Admission Course class.

1. What is your gender?

☐ Male ☐ Female

2. What is your age?

☐ 20-25 ☐ 26-30 ☐ 31-35 ☐ 36-40 ☐ Over 40

3. Denote any of the following groups of which you consider yourself a member.

☐ Francophone ☐ Aboriginal
☐ Disabled ☐ Mature
☐ Visible Minority ☐ Other _____
☐ Gay/Lesbian

4. In what type of traditional (12 consecutive, full-time months) or 'non-traditional' articling experience did you participate? (You may choose more than one option.)

☐ Traditional ☐ International ☐ Abridged
☐ Joint ☐ National ☐ Split
☐ Part-time

5. Have you seen or been provided with your Education Plan?

☐ Yes No

6. How would you rate your articling experience as compared to the experience anticipated in the Education Plan?

☐ No Education Plan ☐ Very good/Excellent ☐ Satisfactory
☐ Good ☐ Poor

7. How do you feel articling prepared you for the area of law you intend to practice?

☐ Not at all ☐ Well enough
☐ Not very well ☐ Very well

See over

8. What, if anything, was it about the articling component of the Bar Admission Course that did not prepare you for the area of law you intend to practice? (You may choose more than one option.)

☐ Plan to practice in another area ☐ Not learning business aspects
☐ Too much time on research ☐ Experience not practical enough
☐ Too many routine tasks ☐ Experience not broad enough
☐ Lack of communication with principal
☐ Other_____

9. What aspects of articling did you find most helpful? (You may choose more than one option.)

☐ Good practical training
☐ Principal(s)/supervising lawyer(s) was/were helpful
☐ Learned relevant skills
☐ Broad experience
☐ Other _____

10. Do you think the current articling evaluations (mid-term and final) provide an adequate system for review during the articling experience? (Please comment.)

☐ Yes ☐ No

_____
_____

11. During your articling placement did you experience any of the following? (You may choose more than one option.)

☐ Insensitivity, prejudice or discrimination by staff or other articled students based on matters not related to competence
☐ Discriminatory or prejudicial slurs and demeaning remarks
☐ Discrimination or favouritism in work assigned by employer
☐ Channelling into area of law that was not of interest
☐ No discrimination

12. If you selected any of the above (in Question 11), please describe your experience.

_____
_____
_____

13. Overall, how would you describe the quality of your articles?

☐ Poor ☐Good ☐Satisfactory ☐Very good/Excellent

Thank you for completing this questionnaire

Please return to: Articling and Placement Office, The Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M4P 1S9, Fax: (416) 947-3403.

Appendix 2
List of Tables

Table 11	Most Helpful Aspects of the Articling Experience
Table 12	Weaknesses of Articling in Preparation for Practice of Law
Table 13	Treatment of Articling Students: Distribution
Table 14	Treatment of Articling Students: Categorization of Comments

APPENDIX 7: BUDGETARY IMPLICATIONS OF PROPOSED APPROACH

Attached to the original Report in Convocation file:

(1) Examples of Practical Legal Skills Taught at Ontario Law Schools in Relation to Current BAC Courses.

(Appendix 1, pages 33 - 38)

(2) Chart Summarizing BAC Changes.

(Appendix 2, pages 42 – 47)

(3) Budgetary Implications of the Changes.

(Appendix 7, page 80)

A debate followed.

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that the motion be amended as follows:

Be it resolved that the Task Force's recommendations be premised as follows:

1(a) That before the Bar Admission Course is eliminated, the Law Society and the law schools enter into an agreement wherein the law schools agree to teach nuts and bolts law practice courses (e.g. law office management, client psychology, client relations, bookkeeping) as mandated and approved by the Law Society and make them available to all students who wish to take them (these courses should be mandatory for all students who wish at some time to go into private practice), and

(b) The law schools agree to provide Law Society mandated clinics (e.g. legal aid, landlord and tenant, poverty law) and practical experience courses (e.g. mediation and arbitration) and make them available to all students who wish to take them (these courses should also be mandatory for all students who wish at some time to go into private practice)

(2) That a high standard for passing be set for the Law Society's licensing examinations.

The Treasurer ruled the Gottlieb/Aaron motion out of order.

Mr. Gottlieb challenged the ruling of the Treasurer.

The Treasurer's ruling was upheld following a roll-call vote.

ROLL-CALL VOTE

Aaron	Against
Arnup	For
Banack	For
Bindman	For
Braithwaite	Against
Campion	Against
Carpenter-Gunn	For
Cherniak	For

Coffey	For
Copeland	Against
Crowe	For
Diamond	For
E. Ducharme	For
T. Ducharme	For
Epstein	For
Feinstein	For
Finkelstein	For
Go	For
Gottlieb	Against
Hunter	For
Laskin	For
Legge	For
MacKenzie	For
Marrocco	For
Millar	For
Minor	For
Mulligan	For
Murray	For
Pilkington	For
Porter	For
Potter	For
Puccini	For
Robins	For
Ross	For
Ruby	For
St. Lewis	For
Simpson	For
Strosberg	For
Swaye	Against
Topp	For
White	For
Wilson	Against
Wright	For

Vote: For – 36; Against – 7

It was moved by Mr. Wright, seconded by Mr. Simpson that the main motion be amended by deleting paragraph 5a. on page 4 of the Report so that the motion would be to permit the Task Force to seek input from other organizations.

Carried

The motion to adopt paragraph 5b. on page 4 of the Report was voted on and adopted.

The Treasurer expressed his gratitude to Mr. E. Ducharme and the Working Group for all their hard work.

FINANCE & AUDIT COMMITTEE REPORT

Mr. Ruby presented the Law Society's Financial Statements for approval by Convocation.

Report to Convocation

Purpose of Report: Decision
Information

Prepared by the Finance Department
Andrew Cawse (947-3982)

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on April 11, 2002. Committee members in attendance were: Ruby C. (c), Epstein S. (vc), Crowe M. (vc), Cass R., Chahbar A., Coffey A., Diamond G., Divinsky P., Ducharme T., Lamont D., Legge L., Lawrence A., Pilkington M., Swaye G., Topp R., White D., Wright B.. Krishna V. (Treasurer), Mulligan G. and Wilson R. also attended. Staff attending were Heins M., Tysall W., Grady F., Miller J., Cawse A.. Mr. John Hughes from Arthur Andersen also attended.

The Committee is reporting on the following matters:

Decision

X General Fund Audited Annual Financial Statements
X Lawyers Fund for Client Compensation Audited Annual Financial Statements
X Errors and Omissions Fund Audited Annual Financial Statements

Information

X LibraryCo Inc. Audited Annual Financial Statements
X Administration Correspondence (in camera)
X Investment Compliance Reports

FOR DECISION

GENERAL FUND
AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2001

1. The draft, audited annual financial statements for the General Fund with accompanying management discussion and analysis are attached (page 4).

   Convocation is requested to approve the audited annual financial statements for the General Fund for the year ended December 31, 2001.

LAWYERS FUND FOR CLIENT COMPENSATION
AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2001

2. The draft, audited annual financial statements for the Lawyers Fund for Client Compensation with accompanying management discussion and analysis are attached (page 19).

Convocation is requested to approve the audited annual financial statements for the Lawyers Fund for Client Compensation for the year ended December 31, 2001.

ERRORS AND OMISSIONS INSURANCE FUND
AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2001

3. The draft, audited annual financial statements for the Errors and Omissions Insurance Fund with accompanying management discussion and analysis are attached (page 26).

Convocation is requested to approve the audited annual financial statements for the Errors and Omissions Insurance Fund for the year ended December 31, 2001.

FOR INFORMATION

LIBRARYCO INC.
AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2001

4. The audited annual financial statements for LibraryCo Inc. with accompanying management discussion and analysis are attached (page 38). The financial statements have been approved by the Board of LibraryCo Inc.

ADMINISTRATION CORRESPONDENCE (In Camera)

5. A copy of correspondence on administration is attached (page 49).

INVESTMENT COMPLIANCE REPORTS

6. Investment Compliance Reports for the quarter ended March 31, 2002 for the General Fund and the Lawyers Fund for Client Compensation are attached at page 57. The Reports confirm there are no breaches in compliance.

G E N E R A L F U N D

The Society's General Fund comprises its unrestricted fund, funds restricted by Convocation for specific purposes and endowment funds held in trust. Transactions of a capital nature are recorded in the Invested in Capital Assets Fund. The Society's annual membership fee is based on the financial requirements of the restricted and unrestricted funds.

STATEMENTS OF REVENUES AND EXPENSES

In 2001, the General Fund generated an operating surplus of $5.4 million compared to a deficit of $1.9 million in 2000. As detailed below, the Society's total revenues increased by $12.1 million to $57.7 million in 2001, and total expenses increased by $4.6 million to $52.2 million.

Membership Fees
Membership fee revenues increased by $6.5 million to $36.4 million in 2001, as a result of membership growth and the increase of $223 per member in the General Fund levy.

Bar Admission Course Revenues and Expenses
Bar Admission Course revenues and expenses increased by 51% and 31% respectively from 2000. These are one-off increases resulting from the transition to the new Bar Admission Course model and the "double cohort" brought about by overlapping enrolments.
Other Revenues
The increase of $1.9 million in Other Revenues from 2000 is primarily attributable to increased royalties from the Ontario Reports and the increase in the grants from the Law Foundation of Ontario for county and district law libraries.

Professional Regulation Expenses
Regulatory expenses were up $1.7 million over 2000 to $7.7 million with additional funds allocated to most regulatory areas, particularly discipline which had been identified as under resourced.

Restricted Fund Expenses
Amounts expended for the operation of County Libraries increased to $8.4 million in 2001 (2000: $6.1 million) including $1.8 million which represented the opening balance in the County Libraries Fund transferred to LibraryCo Inc. during the year. Expenditures on capital and technology declined by $2 million from 2000.

Amortization-Invested in Capital Assets
The cost for the amortization of the Society's assets was $2.1 million in 2001 (2000: $2 million) Amortization is a non-cash expense of the Society and does not contribute to the calculation of the annual membership fee. The Society raises, as part of its general levy, funds for the acquisition of capital assets and retains them in the Capital and Technology Fund. The unamortized balance of the Society's assets is equal to the Invested in Capital Assets Fund balance.

B A L A N C E S H E E T S

Cash and Short-Term Investments
The Society's investments increased by $5.3 million to $17.7 million as a result of the 2001 operating surplus generating increased cash for investment.

Fund Balances
The accumulated fund balances increased by $5.5 million to $28.5 million in 2001 in line with the operating surplus. Included in fund balances for the first time is the Repayable Allowances Fund established for Bar Admission Course students in need of financial assistance.

L A W Y E R S F U N D F O R C L I E N T C O M P E N S A T I O N

The Lawyers Fund for Client Compensation experienced an excellent year in 2001 with a surplus of $4.3 million (2000: deficit of $3.1 million). The total number of claims outstanding at the end of 2001 declined to 187 from 209 in 2000. To strengthen the Fund, the Society increased 2001 membership fees and entered into an insurance program to reduce the risk posed by large defalcations. Insurance premiums totalled $1.2 million.

STATEMENTS OF REVENUES AND EXPENSES

Membership Fees

Membership fees increased by $4.7 million to $10 million as a result of the increase in the annual levy per member from $210 in 2000 to $379 in 2001.

Provision for Unpaid Grants

With improving claims experience, the provision for unpaid grants decreased by $4.3 million to $1.4 million. Both the number of claims and the average grant per claim decreased from 2000. With the exception of a single large defalcation in 2000 of approximately $4.6 million, the claims experience over the last three years has continued to improve.

B A L A N C E S H E E T S

C a s h a n d S h o r t - T e r m I n v e s t m e n t s

Portfolio Investments

Cash and short-term investments at $9.1 million (2000: $5.2 million) and portfolio investments at $13.7 million (2000: $13.5 million) have increased from the previous year as a result of the improved claims experience. The market value of investments is marginally higher than book value. For the first time equities now comprise a small part of Portfolio Investments.

Reserve for Unpaid Grants

Based upon the actuary's valuation of the grant reserve, the reserve for unpaid grants has decreased by $500,000 to $9.2 million. The estimation of the reserve for unpaid grants introduces measurement uncertainty and is subject to variation. The estimations are intended to be prudently conservative.

Lawyers Fund for Client Compensation
Notes to Financial Statements
For the year ended December 31, 2001

(Stated in whole dollars except where indicated)

1. Description of Fund

The Lawyers Fund for Client Compensation (the "Fund") is maintained by The Law Society of Upper Canada (the "Society") pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. The Fund is financed by members' annual fees and investment income.

The Fund is not subject to income or capital taxes because it is a fund of the Society, a not-for-profit corporation.

Certain services are provided by the General Fund of the Society to the Fund. The Lawyers Fund for Client Compensation reimburses the Society for certain administrative expenses, spot audit expense and a portion of the costs of operating the investigations and discipline functions of the Society. The charges for the year amount to $3,585,000 (2000 - $3,005,000).

2. Significant Accounting Policies

Fund accounting

The Fund follows the restricted fund method of accounting. The Fund accounts for the programme delivery, administration and payment of grants from the Fund. The Fund is restricted in use by the Law Society Act.

Cash and short-term investments

Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy. Short-term investments are stated at the lower of cost and market value.

Portfolio investments

Portfolio investments are recorded at cost, net of amortization of premiums and discounts. Investments consist of a diversified portfolio of government bonds, corporate bonds and Canadian and U.S. equities, according to the Society's investment policy. Only if a loss in the value of an investment is other than a temporary decline is the investment written down to recognize the loss.

Grants

Pursuant to section 51(5) of the Law Society Act, the payment of grants from the Fund is at the discretion of Convocation, the governing body of the Society. Grants paid are subject to a $100,000 limit per applicant. A reserve for unpaid grants is recorded as a liability on the balance sheet. This reserve represents an estimate of the present value of grants to be paid for unprocessed claims and the associated administrative costs, as determined by an actuary. The related grant expense represents grant payments during the year plus the current year experience gain/loss of the reserve for unpaid grants, net of recoveries. During 2001 the Fund acquired insurance for cumulative claims in excess of $6,000,000 to a maximum of $20,000,000. On an annual basis, actuarial valuations are used to determine the appropriate levels of insurance that the Fund purchases.

Financial instruments

The estimated fair values of cash and short-term investments, interest and other receivables and accounts payable and accrued liabilities approximate their carrying amounts in the financial statements due to the relatively short period to maturity of these instruments.

3. Measurement Uncertainty

The valuation of unpaid grants anticipates the combined outcomes of events that are yet to occur. There is uncertainty inherent in any such estimations and therefore a limitation upon the accuracy of these valuations. Future loss emergence may deviate from these estimates. No provision has been made for otherwise unforeseen changes to the legal or economic environment in which claims are settled, nor for causes of loss which are not already reflected in the historical data. Management believes that the techniques employed and assumptions made are appropriate and the conclusions reached are reasonable given the information currently available. Estimates of unpaid grants are reviewed at least annually by an actuary and, as adjustments become necessary, they are reflected in current operations.

LIBRARYCO INC.

LibraryCo Inc. began operations at the beginning of 2001. It is a not-for-profit corporation created for the purpose of carrying on the central management of the Ontario county law library system.

LibraryCo Inc.'s role is to develop policies, procedures, guidelines and standards for the delivery of county and district law library services across Ontario. In previous years, the transactions related to the county and district law libraries were reflected in the financial statements of the Society's General Fund.

STATEMENT OF REVENUES AND EXPENSES

With total revenues approximating $6.6 million, LibraryCo Inc. had a slight surplus of $5,572 in 2001.

Revenues
LibraryCo Inc.'s total revenues in 2001 of $6.6 million consist primarily of $5.25 million from membership levies and grants from the Law Foundation of Ontario approximating $1.3 million. The difference in total levies collected from members and the actual funds transferred to LibraryCo Inc of $330,000 in 2001 is held in the General Fund's restricted County Library Fund.

Expenses
Expenses required for the operation of the forty-eight county and district law libraries make up $6.24 million of the total $6.6 million. These expenses are primarily for collections – traditional and electronic, staffing, and facilities operating costs. The balance of $334,000 for head office operations includes the corporation's start up costs.

BALANCE SHEET

After the first year of operation, LibraryCo has a General Fund balance of $5,572. It also has a Reserve Fund of $1.8 million restricted for county and district law library purposes as approved by the Board of Directors. Cash and Short Term Investments of $1.8 million provides the assets for the Reserve Fund.

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

(1) General Fund Audited Financial Statements. (pages 6 – 18)

(2) Lawyers Fund for Client Compensation Audited Financial Statements. (pages 20 – 27)

(3) Errors and Omissions Fund Combined Audited Financial Statements. (pages 28 – 37)

(4) LibraryCo Inc. Audited Financial Statements. (pages 39 – 48)

(5) Investment Compliance Reports. (pages 57 – 63)

Re: General Fund Audited Annual Financial Statements

It was moved by Mr. Ruby, seconded by Mr. Crowe that the audited annual financial statements for the General Fund for the year ended December 31st, 2001 be approved.

Carried

Re: Lawyers Fund for Client Compensation Audited Annual Financial Statements

It was moved by Mr. Ruby, seconded by Mr. Crowe that the audited annual financial statements for the Lawyers Fund for Client Compensation for the year ended December 31st, 2001 be approved.

Carried

Re: Errors and Omissions und Combined Audited Annual Financial Statements

It was moved by Mr. Ruby, seconded by Mr. Crowe that the combined audited annual financial statements for the Errors and Omissions Insurance Fund for the year ended December 31st, 2001 be approved.

Carried

Items for Information Only

LibraryCo Inc. Audited Annual Financial Statements
Investment Compliance Reports

Ms. Strom, President of LPIC answered questions on LPIC's Annual Report for 2001.

ADMISSIONS COMMITTEE REPORT

Mr. E. Ducharme presented the Admissions Committee Report for Convocation's approval.

Admissions Committee
April 25th 2002

Report to Convocation

Purpose of Report: Decision Making

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions Committee ("the Committee") met on April 11th, 2002. Committee members in attendance were: Edward Ducharme (Chair), George Hunter (Vice-Chair), Larry Banack, John Campion, Gillian Diamond, Pamela Divinsky and Alison Harvison Young. Staff in attendance were Julia Bass, Ian Lebane, Dulce Mitchell, Cindy Pinkus, Elliot Spears and Roman Woloszczuk.

2. The Committee is reporting on the following matters:

Policy - For Decision:

Amendments to By-Law 12

For Information:

Placement Report, 2002

POLICY - FOR DECISION

AMENDMENTS TO BY-LAW 12

Issue

3. In May and October 2001, Convocation approved in principle a number of changes to by-law 12, to bring the by-law into conformity with current policies and procedures. The explanatory notes which were prepared for Convocation in May and October 2001 are attached at Appendix 1.

4. The motion to amend by-law 12 to implement these changes is attached for Convocation's review at Appendix 2.

5. An annotated version of the motion is attached at Appendix 3, showing when the changes were approved by Convocation.

Financial Implications

6. The changes are generally of a house-keeping nature and will not have any financial implications.

Recommendation to Convocation

7. The Committee recommends to Convocation the adoption of the attached motion.

INFORMATION ITEM

PLACEMENT REPORT 2002

8. This report is attached at Appendix 4.

APPENDIX 2

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER

SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2002

MOVED BY

SECONDED BY

THAT By-Law 12 [Bar Admission Course], made by Convocation on January 28, 1999 and amended by Convocation on March 26, 1999, December 10, 1999 and June 22, 2000, be further amended as follows:

BY-LAW 12

[BAR ADMISSION COURSE]

1. Subsections 1 (4) and (5) of By-Law 12 [Bar Admission Course] are deleted and the following substituted:

Director, registrar

(4) There shall be a director and a registrar of the Bar Admission Course.

2. Subsection 2 (1) of the By-Law is amended by,

(a) deleting "one month" in clause (a) and substituting "two months";

(b) deleting "twelve" in clause (b) and substituting "ten";

(c) deleting "before entry into the teaching term referred to in clause (c)" in clause (b); and

(d) deleting "three" in clause (c) and substituting "two".

3. Section 2 of the By-Law is amended by adding the following:

Interpretation: "academic year"

(4) For the purpose of subsection (5), "academic year" means a period running from May 1 in a year to April 30 of the following year.

Expiration of Bar Admission Course credits

(5) Unless otherwise permitted by the director, all credits obtained in an academic year of the Bar Admission Course are valid for a period of three years from the end of the academic year in which the credits were completed.

4. Subsection 4 (5) of the By-Law is amended by deleting "on or before the last business day in August" and substituting "at a time specified by the director".

5. Section 5 of the By-Law is amended by,

(a) deleting "before the student-at-law commences the teaching term for which the tuition fee is required" in subsection (1) and substituting "on or before a day specified by the registrar"; and

(b) adding the following:

Failure to pay tuition fee

(3) If a student-at-law has successfully completed the Bar Admission Course but fails to pay a tuition fee required to be paid under this section 5, the director may withhold the issue to the student of a certificate of successful completion of the Course.

6. Section 6 of the By-Law is amended by adding the following:

Failure to complete Bar Admission Course within two years

(3) A person ceases to be a student-at-law in the Bar Admission Course if the student does not complete the phases of the Course within two years from the date the student began participating in any of the phases of the Course.

Withdrawal from Bar Admission Course

(4) If a student-at-law in the Bar Admission Course wishes to withdraw from the Course, the student shall submit a request to withdraw in writing to the registrar and the registrar shall approve the withdrawal.

Same

(5) A person ceases to be a student-at-law in the Bar Admission Course immediately upon approval of withdrawal from the Course by the registrar under subsection (4).

APPENDIX 3

BY-LAW 12
[BAR ADMISSION COURSE]

1. Subsections 1 (4) and (5) of By-Law 12 [Bar Admission Course] are deleted and the following substituted:

Director, registrar

(4) There shall be a director and a registrar of the Bar Admission Course.

APPROVED BY CONVOCATION OCTOBER 2001

2. Subsection 2 (1) of the By-Law is amended by,

a. deleting “one month” in clause (a) and substituting “two months”;

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d. deleting “three” in clause (c) and substituting “two”.

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4. Subsection 4 (5) of the By-Law is amended by deleting “on or before the last business day in August” and substituting “at a time specified by the director”.

APPROVED BY CONVOCATION, OCTOBER 2001

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(a) deleting "before the student-at-law commences the teaching term for which the tuition fee is required" in subsection (1) and substituting "on or before a day specified by the registrar"; and

APPROVED BY CONVOCATION, OCTOBER 2001

(b) adding the following:

Failure to pay tuition fee

(3) If a student-at-law has successfully completed the Bar Admission Course but fails to pay a tuition fee required to be paid under this section 5, the director may withhold the issue to the student of a certificate of successful completion of the Course.

APPROVED BY CONVOCATION, MAY 2001.

6. Section 6 of the By-Law is amended by adding the following:

Failure to complete Bar Admission Course within two years

(3) A person ceases to be a student-at-law in the Bar Admission Course if the student does not complete the phases of the Course within two years from the date the student began participating in any of the phases of the Course.

Withdrawal from Bar Admission Course

(4) If a student-at-law in the Bar Admission Course wishes to withdraw from the Course, the student shall submit a request to withdraw in writing to the registrar and the registrar shall approve the withdrawal.

Same

(5) A person ceases to be a student-at-law in the Bar Admission Course immediately upon approval of withdrawal from the Course by the registrar under subsection (4).

APPROVED BY CONVOCATION, OCTOBER 2001

APPENDIX 4

PLACEMENT REPORT 2002

Articling & Placement Office
Bar Admission Department
Law Society of Upper Canada
April 1, 2002

Placement Report 2002

Report Highlights

- 98.9% of students who entered the 44th Bar Admission Course in 2001 and who were actively looking for an articling position were placed within six months of the usual start of articling, compared with a similar figure of 99.2% for the previous year.

- The placement rates for self-identified groups of students (Aboriginal, Francophone, Gay/Lesbian, Mature, Disability, Visible Minority) continue to be somewhat lower, however all of these groups experienced greater than 90% placement within six months of the usual start of articling.

- A variety of options offer students a high degree of flexibility in completing the Bar Admission Course, and the Articling Phase in particular. The Articling & Placement Office continues to emphasize the availability of such 'non-traditional' placements as International Articles, National Articles, Joint Articles, Part-time Articles and rescheduling.

- The Articling & Placement Office's communications, particularly the current, comprehensive and heavily used web site, have improved service delivery to both students and employers.

Placement Report 2002

Table of Contents

I. Introduction

Purpose

1. This report of the Articling & Placement Office ("APO") provides a summary of placement statistics for students of the 44th Bar Admission Course ("BAC") as at February 15, 2002, in addition to an overview of the programs and initiatives that are in place to assist students with their articling job search.

2. This report also provides information about employment of those students of the 43rd BAC who were called to the bar in February 2002.

New Model of the Bar Admission Course

3. The new model of the BAC was implemented in 2001. Under the previous model, placement statistics were compiled in December, approximately six months after most students began articling. Under the new model, however, most students did not begin articling until September 2001. Thus, it was considered appropriate to compile statistics for a period approximately six months after this time, in February 2002.

New Database Implementation

4. In 2001 the Bar Admission Department changed database software to facilitate tracking of the new model BAC. The gradual implementation of this new database ("PET") necessitated changes in the APO's processes, both for tracking students' placement status and, consequently, for the preparation and compilation of this report. Further notes relating to the PET database implementation and statistical differences due to the change in database are available in Appendix 3.

II. Articling Placement Data

5. Despite the volatile economic climate of the latter part of 2001, including an increase in Canada's Unemployment Rate[1], as compared to the same period of 2000, the overall articling placement rate of Bar

[1] Following are the monthly unemployment rates for the Sept. – December periods of 2000 and 2001, according to the Stats Canada web site's monthly "Labour Force Survey" reports:

Admission Course students compares favourably to the excellent results that were achieved in 2000. As Table 1 below illustrates, 96.7% of all 44th BAC students, compared to 97.5% in 2000, secured articling placements within six months of the usual articling start.

6. The 0.8% difference in placement between the BAC classes of 2000 and 2001 (97.5% in Year 2000 and 96.7% in Year 2001) represents approximately 9 students (assuming an annual average class size of approximately 1100 students). Throughout the fall of 2000, an offering of the 'old' Phase 3 portion of the BAC took place. In the absence of securing an articling placement, 12 students chose to attend Phase 3 and were not considered to be unplaced within the context of this report as they were continuing their studies and precluded from working on a full-time basis. If the 12 students were included in the unplaced statistic in 2000, the resulting placement rate would be quite similar to the final 2001 placement rate.

7. All of the unplaced students received one or more phone calls and one or more email messages from the APO. These contacts were made to confirm placement status and to communicate details about available placement assistance and initiatives. Consistent with prior years, students who did not respond to APO communications were considered to be "not actively looking".

8. As indicated in Tables 2(a) and 2(b), 12 students in Year 2001, representing 1.1% of total students, confirmed that they were unplaced and actively looking for placements in February, 2002 (9 in Year 2000, representing 0.8% of total students in that year).

9. Tables 2(a) and 2(b) also trace placement rates of self-identified members of six specific demographic groups throughout the May – February period. As can be seen from these tables, all groups achieved placement rates higher than 90%.

10. Table 1: Percentage of BAC Students Placed Within Six Months of Usual Articling Commencement Point, 1991 – 2002

Year	% Students Placed by Year-end	% Actively Looking Students Placed by Year-end[1]
2002[2] (44th BAC)	96.7 (Feb. 15)	98.9
2000 (43rd BAC)	97.5 (Dec. 12)	99.2
1999 (42nd BAC)	92.9 (Dec. 14)	97.9
1998[3]	97.0 (Dec. 31)	n/a
1997	97.7 (Dec. 31)	n/a
1996	98.4 (Dec. 31)	n/a
1995	98.4 (Dec. 31)	n/a
1994	99.0 (Dec. 31)	n/a
1993	99.5 (Dec. 31)	n/a
1992	99.7 (Dec. 31)	n/a
1991	99.8 (Dec. 31)	n/a

[1] Adjusted for students who are no longer looking for positions, have not responded to telephone and/or e-mail enquiries or could not be contacted. Some students pursue other careers or continue their legal studies.

2000: December, 6.8%; November, 6.9%; October, 6.9%; September, 6.8%
2001: December, 8.0%; November, 7.5%; October, 7.3%; September, 7.2%

[2] Since the usual start date of articling changed to September (from June/July) because of implementation of the new model BAC, the date shifted to 2002 from 2001.

[3] The basis for statistics prior to 1999 is unavailable. Thus, the previous years' data may or may not be comparable to that of 1999 - 2001.

11. Table 2(a): Percentage of Unplaced 44th BAC Articling Students by Self-identified Groups[1], Year 2002

	Percentage of Group Unplaced at Date					Year 2000 Comparison
	May 11	July 19	Oct. 12[2]	Feb.15	Feb. 15[3] Actively Looking	Dec. 19, 2000
All Students	17.2	11.1	8.3	3.3	1.1	0.8
Aboriginal	44.4	22.2	11.1	9.1	0.0	4.8
Francophone	18.2	9.5	14.3	8.0	2.0	n/a[4]
Gay/Lesbian	10.0	10.0	0.0	0.0	0.0	0.0
Mature (>=40)	38.1	20.0	22.7	6.9	0.0	0.0
Person with Disability	33.3	12.5	14.3	9.1	9.1	0.0
Visible Minority	28.0	17.4	7.8	6.5	3.5	0.5

Table 2(b): Number of Unplaced 44th BAC Articling Students by Self-identified Groups[1], Year 2002

	Total Students in Group	Number of Students in Group Unplaced at Date					Year 2000 Comparison
		May 11	July 19	Oct. 12[2]	Feb.15	Feb.15[3] Actively Looking	Dec. 19, 2000
All Students	1133	128	128	94	37	12	9
Aboriginal	11	4	2	1	1	0	1
Francophone	50	8	4	4	4	1	n/a[4]
Gay/Lesbian	14	1	1	0	0	0	0
Mature (>=40)	29	8	4	5	2	0	0
Person with Disability	11	3	1	1	1	1	0
Visible Minority	199	52	32	16	13	7	1

[1] Groups are not mutually exclusive and are based on voluntary self-disclosure. Statistics are obtained from the PET database, based on the information supplied by students on their BAC application. (See Appendix 3 for more on the implications of PET.) Otherwise the students must have had a finalized 2001 schedule and were status 'applied' (as of February 15: 1133 students).

[2] In September/October, the Articling & Placement Office attempted to contact all unplaced students, many of whom had secured articling positions but who had not notified the Bar Admission Course.

[3] These numbers have been adjusted to exclude students who have not responded to telephone and/or e-mail enquiries, could not be contacted, or who have indicated that they are no longer looking for an articling position.

[4] Prior to the 44th BAC application (2001), Francophone students were not tracked.

12. Table 3: Percentage of Total Students who Self-identified as Members of Groups in 1999, 2000 and 2002[1]

Group	2002	2000	1999
Male	n/a[2]	48.4	48.5
Female	n/a[2]	51.6	51.5
Visible Minority	17.8	16.1	14.8
Mature	2.6[3]	4.9	5.7
Person with Disability	1.0	2.1	1.0
Aboriginal	1.0	1.8	1.1
Francophone	4.4	n/a[4]	n/a[4]
Gay/Lesbian	1.2	1.2	0.6

[1] Groups of students are not mutually exclusive. Students are given the option of voluntarily identifying themselves as a member of one or more of the above groups on the Bar Admission Course application. Since the usual start date of articling changed to September (from June/July) because of implementation of the new model BAC, the date shifted to 2002 from 2001.

[2] Gender is no longer being tracked by the BAC Office in the new PET database.

[3] The 2001 BAC application defined the Mature label to be 'over 40' whereas applications from 2000 and 1999 did not include this 'over 40' specification. This change likely accounts for the decrease in Mature students in the 2001 date, as the category was more narrowly defined. The application for the 45th BAC has been amended to remove the "over 40" qualification.

[4] Prior to the 44th BAC application (2001), the category of Francophones was not an option for self-identification.

13. Table 4: Breakdown of the 44th BAC Class by Law School Affiliation

School	# of students	% of BAC class	# actively looking	% of class actively looking
Ottawa	173	15.4	5	2.9
Queen's	131	11.6	0	0.0
Toronto	108	9.6	0	0.0
Western	135	12.0	0	0.0
Windsor	147	13.0	1	0.7
York	217	19.3	3	1.4
NCA	37	3.3	2	5.4
Dalhousie	47	4.2	0	0.0
McGill	46	4.1	1	2.2
Other out-of-province	85	7.5	0	0.0
Totals[1]	1128	100.0	12	1.1

[1] This data was compiled on March 11, 2002. Between February 15th and March 11th, five (5) student records changed. Therefore, the total class is 1128 rather than 1133. The difference (0.4%) is not considered material to the analysis.

III. Placement Initiatives

14. *Web Site:*

a. *Job postings:* Since August 2000, the Articling & Placement Office has posted articling and professional positions on the Law Society's job web site (www.lsuc.on.ca/jobs). This site is attracting approximately 3200 hits per month[2] since October 2001.

b. *Articling positions:* Only firms who have an approved articling principal may post articling positions through this free service. There is no requirement that positions be paid positions. Placements from recruitment agencies are not posted. Placement Service Request Forms are available on the Articling & Placement Office information web site (www.lsuc.on.ca/articling). 163 articling positions were posted on the articling job web site in 2001, representing approximately 15% of articling positions in that year.

c. *Professional Positions:* On May 15th, 2001 the Articling and Placement Office changed its approach to professional positions by referring interested parties to the BAR-eX web site instead of posting these positions on the Law Society web site. The BAR-eX web site initiative is supported by the joint efforts of Teranet, The Law Society of Upper Canada and Lawyer's Professional Indemnity Company. BAR-eX offers employers a free service to upload their positions on the BAR-eX web site.

d. *Web Site Information:* During 2001, the Articling & Placement Office focused on its goal of making its information available to all interested parties by creating a major web presence of policies, forms, information and reports on the Articling web site for viewing and downloading (www.lsuc.on.ca/articling). The web site received approximately 1200 hits per month, based on the three month period ended December 31, 2001.

15. *Paper-based Initiatives:*

a. *Postcard:* A two-sided Articling & Placement postcard, in French and English, some with Braille overlay, provides contact information for the Articling & Placement Office: address, phone number, and web information. This card was distributed to all Canadian law schools.

b. *NCA Letters:* Letters were provided to NCA students, through the Ontario law schools, with information for potential employers explaining the National Committee on Accreditation certification.

16. *Telephone Hot-lines:* The Articling & Placement Office maintains two voice mail boxes. One is a general information line (1-800-668-7380 ext 4888 or 416-644-4888), which provides general placement information. The other is a Job Hotline with 24-hour direct dial access. Information is updated weekly to provide information about new articling and professional vacancies. (1-800-668-7380 ext 3980 and 416-947-3980).

17. *Biographical Summaries:* As done for the previous year, students who were not yet placed were sent Biography Submission information. They were asked to sign a waiver and send the Articling & Placement Office a short biography that would succinctly describe their backgrounds, interests and qualifications. Fifty-three (53) students submitted biographical paragraphs in 2001. After editing these biographical paragraphs, the APO provided either the entire list or a custom list to potential employers. Lists could be

[2]One reason for such a high number is that a hit is recorded each time a job position is reviewed. Someone entering the site might review several job positions, resulting in several hits. The average of 3200 is based on October, November and December 2001. It is considered likely that the average use earlier in the year was much higher since there would have been more students then available for articling.

customized according to geographical regions and/or specific areas of law. In the last quarter of the year, about 8 firms requested a biographical summary list. Anecdotal evidence continues to support the continuance of this initiative. Both firms and students appear to have benefited from and enjoyed having this initiative in place.

18. *Mentor program:* The Articling Placement Mentor Program (Mentor Program) was created to assist students who are still seeking articles after having registered in the Bar Admission Course. The objective of the mentor program is to provide unplaced students with a support link by pairing them with a member of the profession who will provide advice, support and encouragement in the search for an articling position. Mentors meet with their assigned student periodically for approximately one hour from time to time to discuss issues of concern to the student and to provide advice on strategies the student might employ in their job search. The mentor is expected to encourage the student to maintain a positive, constructive attitude and approach to securing an articling position. In Year 2001, 26 students requested and received mentors.

19. *Job search skills workshop and counseling:*

a. *Strategic Career Planning Consultants:*

i. *Articling:*

Two job search skills workshops geared to students seeking articling positions were offered in Toronto, one during each of May and June. These workshops were videotaped and the tapes were sent to the Ottawa, London, Kingston and Windsor locations. Materials were created to accompany the workshop and videos. All students were eligible for individual follow-up job search skills counseling with the career counselor (Toronto students in person; other students by telephone). Of the 17 students who were counselled, all but one has subsequently been placed. It appears that fewer students are taking advantage of these workshops and the individual counselling than in the past, likely because law schools are providing stronger career development support through their Career Development Offices.

ii. *New Calls:*

In order to anticipate and respond to a potential decrease in positions resulting from the economic downturn experienced in the latter part of 2001, a differently focussed job search skills workshop and accompanying materials were developed. The presentation was geared to finding jobs for students who successfully completed the Bar Admission Course. Over 70 students attended the workshop, presented in Toronto. Videotapes were made available to London and Ottawa. This presentation was also web-cast and available on the BAC web-cast site. In order to provide support to all students requesting individual consultations, an abbreviated telephone-delivered consultation initiative was developed. To January 18, 2001, 17 students had participated in this follow-up.

b. *Other Support:* Office hours set aside by the Head of Articling & Placement each week (usually Tuesday afternoons) were often used to meet or telephone conference with individual students to discuss career and search skill issues. The Head of Articling & Placement reviewed resumes, covering letters, job search skill strategies and interview skills, presented options, conducted mock interviews and made suggestions. Positive feedback was received about the benefit of these sessions.

20. *Initiative for Mature Students:* A new program to help mature students was initiated in 2000. This coaching program was designed to broaden participants' job search skills through confidential discussions of their personal strengths. This initiative was supported by the use of personality profiling questionnaires and sessions that included rehearsals of interview strategies showcasing the individual's personal strengths. Because of poor response, this program was discontinued in 2001.

21. *Law School Visits:* The Head of Articling & Placement visited Ontario law schools, McGill, University of Victoria and University of British Columbia law schools, spoke with students and provided information

about Ontario's articling program. Visits generally included time set aside to meet with individual third year students who had questions and concerns. Also, one of the Articling & Placement Administrators participated in an Alternate Career Day 2001 at an Ontario law school.

22. *NALP:* In May, the Head of Articling & Placement spoke at a National Association of Law Placement Conference, in a joint presentation with Danielle Raymond, Career Development Officer of University of British Columbia Law School. The focus of the presentation was globalization and information sharing with details provided about qualification as a lawyer in Canada.

23. *Equity Initiative:* The Articling & Placement Office collaborated with the Equity department, organizing two discussion forums on *Non-Discrimination and Equity in Articling* with articling co-ordinators of large Toronto law firms and developing a publication *Model Equity and Diversity Process for Recruitment/Selection of Articling Students*.

24. *Other:* Other activities undertaken by the Articling & Placement Office in 2001 to assist unplaced articling students, particularly those belonging to self-identified group(s) included:
    a. Publishing notices about available articling students in the Ontario Reports and on the Law Society web site;
    b. Letter included in the matching program mail-out to principals asking the principals/firms to keep in mind the Law Society's commitment to equity and diversity in their selection of articling candidates;
    c. Preparation of memorandum with testimonial to help NCA students with their transition to qualification as lawyers in Ontario;
    d. Materials obtained from the National Association for Law Placement to aid in the counseling of equity-seeking candidates;
    e. E-mailing information to all Phase Three students about the need for legal-aid lawyers though-out Ontario, particularly in Northern Ontario.

25. APO communications with unplaced students indicated that several of the actively looking students did not submit materials necessary to participate in two of the APO's most significant placement initiatives, *Biographical Summaries* and *Mentor Program*. Follow-up is in process to better understand the reasons for this lack of participation.

IV. Post-Call Employment

26. *Rate of Employment Following Call to the Bar*: This data is obtained at the time of the ceremonial calls to the bar.

27. The percentage of students employed at the time of signing the rolls for Call to the Bar has remained steady over the last two years (2002: 80.3%, 2001: 81.9%), as indicated in Table 5, following.

28. The response rate in 2002 (48.5%) was less than that of the previous year (2001: 63.3%), although comparable to the average response rate (49.3%). In order to verify the validity of the responses, a comparison was made of survey data concerning articling location of the respondents with similar information received in the previous year. The geographical articling distribution of respondents reasonably matched the geographical distribution of the previous class, thus supporting validity of the responses received.

29. Table 5: Rate of Employment following the Call to the Bar (1988-2002)

Call Year	% Response to survey[1]	# Hired Back	% Hired Back	# Employ Other[2]	% Employ Other[2]	% Employed by February of Call Year
2002	48.5%	269	52.5%	142	27.7%	80.3%
2001	63.3%	345	51.3%	206	30.6%	81.9%

2000	59.9%	342	46.7%	169	23.1%	69.7%
1999	55.5%	286	44.5%	125	19.4%	63.9%
1998	56.5%	256	38.7%	188	28.4%	67.2%
1997	60.1%	282	37.5%	198	26.3%	63.7%
1996	77.0%	340	35.3%	296	30.7%	66.0%
1995	54.6%	262	38.4%	197	28.8%	67.2%
1994	40.5%	203	41.6%	90	18.4%	60.0%
1993	28.5%	146	41.2%	61	17.2%	58.5%
1992	42.5%	204	40.0%	85	16.7%	56.7%
1990[3]	31.0%	178	50.1%	90	25.4%	75.5%
1989	34.8%	192	48.5%	78	19.7%	68.2%
1988	37.2%	167	41.1%	96	23.6%	64.8%
Average	49.3%		43.4%		24.0%	67.4%

[1] Survey was given to students at time of signing the rolls for Call to the Bar (Years 2000 - 2002)

[2] 'Employ Other' category includes those who have accepted an offer from an employer other than the articling employer (2002: 142, 2001: 164), those who are starting their own practice (2002: 9, 2001: 17), and those who are pursuing other plans (e.g. further legal studies;
2002: 12, 2001: 25).

[3] Data for 1991 omitted due to poor response rate.

V. Conclusion

30. 98.9% of the 44th Bar Admission Course class who were actively looking for a position was placed within six months of the usual articling start, compared with a similar figure of 99.2% for the previous year (2000) despite an increase in the Canadian Unemployment Rate over the same period.

31. The placement rates for self-identified groups of students (Aboriginal, Francophone, Gay/Lesbian, Mature, Disability, Visible Minority) continue to be somewhat lower, however all of them experienced greater than 90% placement within six months of the usual articling start.

32. A variety of options offer students a high degree of flexibility in completing the Bar Admission Course, and the Articling Phase in particular. The Articling & Placement Office continues to emphasize the availability of such 'non-traditional' placements as International Articles, National Articles, Joint Articles, Part-time Articles and rescheduling.

33. The Articling & Placement Office's communications, particularly the current, comprehensive and heavily used web site, have improved service delivery to both students and employers.

Appendix 1: List of Tables

Table 4 Breakdown of the 44th BAC Class by Law School Affiliation

Table 5 Rate of Employment following the Call to the Bar (1988-2002)

Appendix 2: Telephone Scripts for Unplaced Students

Unplaced Students Script

Date #1_____

Student Name_____Date #2_____

Good morning/afternoon my name is _____ and I am calling from the Law Society Articling & Placement office, our records indicate that you have not yet secured an articling position. Have you secured an articling position? ☐ Yes* ☐No#

*If Yes: Have you filed your Articles of Clerkship Form within ten business days of commencing your articles?

#If No: May I ask you a few questions that will assist us in helping you find an articling placement?

If you have not yet acquired an articling position:

1) Are you still actively looking for an articling position?_____ ☐Yes ☐No

2) Are you currently employed in a non articling situation?_____ ☐Yes ☐No

3) Are you attending an educational program (LL.M., MBA etc.)?_____ ☐Yes ☐No

4) Would you be willing to work as an articling student on a voluntary basis?_____ ☐Yes ☐No

5) Have you been checking our web-site for currently available articling positions?_____ ☐Yes ☐No*

*If not please ensure that you go to www.lsuc.on.ca/jobs at regular intervals, as there are new positions posted each week for both the 2001-2002 and 2002-2003 articling term.

5) What is the best way to contact you with updated information for unplaced students?

Phone Mail Email Address: _____

Have you submitted a biographical paragraph and/or enrolled in the mentor program?*

☐Yes* ☐No

1) Have you received any interviews as a result of your biographical paragraph? ☐No ☐Yes # _____

2) Do you have a mentor? ☐Yes ☐No How are things working with your mentor? _____

For students who have not yet submitted a biographical paragraph or enrolled in the mentor program:

1) Are you interested in submitting a biographical paragraph that will be handed out to potential employers?

☐Yes* ☐No# _____ ☐Will think about it

2) Will you be enrolling in our mentor program where you will be matched with a lawyer who can assist you in your search for an articling position?

☐Yes* ☐No# _____ ☐Will think about it

* If yes, the forms required (Biographical Paragraph Submission Form and Student Mentor Enrollment Form) and more information is available online at www.lsuc.on.ca/articling

Comments_____
_____
_____

Appendix 3: Notes on the Statistical Differences due to New Database

In 2001 the Bar Admission Department changed database software to facilitate tracking of the new model BAC. The new database ("PET") was not brought on line as a complete system; rather, portions of the system are being built as they are needed. The database component necessary for recording articling documentation was not functionally completed until February 2002.

As a result of the PET development, recording/inputting the receipt of Articles of Clerkship forms was delayed until early February. It was not until that point that the APO could begin extracting and verifying placement data for this report.

Until Articles of Clerkship information was input in early February, the APO relied on placement information from BAC applications, as updated, to derive monthly unplaced student statistics. Although the APO previously relied on BAC application information for the first few months in compiling placement statistics, this data was subsequently updated and verified against the receipt of Articles of Clerkship documents in early fall. However, with the switch to PET, the reported monthly statistics were based on the BAC application information through January. This difference should be noted when comparing current year statistics to those of previous years.

APO staff was trained in the query language of the previous database and were able to independently compile and test placement statistics. Under the new PET database administration, APO staff must rely on a third party to develop and validate queries. This process, and inexperience with the new database, has resulted in additional delays and validating difficulties.

Attached to the original Report in Convocation file, copies of:
(1) Excerpt from Convocation Agenda – October 2001 and May 2001.

(Appendix 1, pages 4 – 9)

Re: Amendments to By-Law 12 (English and French Versions)

It was moved by Mr. E. Ducharme, seconded by Mr. Hunter that:

By-Law 12 [Bar Admission Course], made by Convocation on January 28, 1999 and amended by Convocation on March 26, 1999, December 10, 1999 and June 22, 2000, be further amended as follows:

BY-LAW 12

[BAR ADMISSION COURSE]

2. Subsections 1 (4) and (5) of By-Law 12 [Bar Admission Course] are deleted and the following substituted:

Director, registrar

(4) There shall be a director and a registrar of the Bar Admission Course.

Directeur, directrice, registraire

(4) Le Cours de formation professionnelle compte un directeur ou une directrice et une ou un registraire.

2. Subsection 2 (1) of the By-Law is amended by,

(a) deleting “one month/ d’environ un mois” in clause (a) and substituting “two months/ de deux mois”;

(b) deleting “twelve/ douze mois” in clause (b) and substituting “ten/ dix mois”;

(c) deleting “before entry into the teaching term referred to in clause (c)/ avant l’inscription à la session d’enseignement visée à l’alinéa c)” in clause (b); and

(d) deleting “three/ trois” in clause (c) and substituting “two/ deux”.

3. Section 2 of the By-Law is amended by adding the following:

Interpretation: “academic year”

(4) For the purpose of subsection (5), “academic year” means a period running from May 1 in a year to April 30 of the following year.

Définition de « année académique »

(4) Aux fins du paragraphe (5), « année académique » désigne une période allant du 1er mai d’une année au 30 avril de l’année suivante.

Expiration of Bar Admission Course credits

(5) Unless otherwise permitted by the director, all credits obtained in an academic year of the Bar Admission Course are valid for a period of three years from the end of the academic year in which the credits were completed.

Expiration des crédits du Cours de formation professionnelle

(5) à moins que la directrice ou le directeur n’en décide autrement, tous les crédits obtenus au cours d’une année académique du Cours de formation professionnelle sont valides pour une période de trois ans à compter de la fin de cette année académique.

4. Subsection 4 (5) of the By-Law is amended by deleting “on or before the last business day in August/ au plus tard le dernier jour ouvrable du mois d’août précédant” and substituting “at a time specified by the director/ au moment convenu par celui-ci ou celle-ci avant”.

5. Section 5 of the By-Law is amended by,

(c) deleting “before the student-at-law commences the teaching term for which the tuition fee is required/ avant le début de chaque session d’enseignement” in subsection (1) and substituting “on or before a day specified by the registrar/ à la date convenue, ou avant cette date, par le ou la registraire”; and

(d) adding the following:

Failure to pay tuition fee

(3) If a student-at-law has successfully completed the Bar Admission Course but fails to pay a tuition fee required to be paid under this section 5, the director may withhold the issue to the student of a certificate of successful completion of the Course.

Défaut de payer les frais de scolarité

(3) Si un étudiant ou une étudiante au barreau a réussi le Cours de formation professionnelle mais n’acquitte pas les frais de scolarité visés à l’article 5, le directeur ou la directrice peut refuser de lui remettre un certificat de réussite.

6. Section 6 of the By-Law is amended by adding the following:

Failure to complete Bar Admission Course within two years

(3) A person ceases to be a student-at-law in the Bar Admission Course if the student does not complete the phases of the Course within two years from the date the student began participating in any of the phases of the Course.

Défaut de terminer le Cours de formation professionnelle en deux ans

(3) Cesse d'être étudiante ou étudiant au barreau la personne qui ne termine pas les phases du Cours de formation professionnelle en deux ans à compter de la date du début de sa participation à toute phase du cours.

Withdrawal from Bar Admission Course

(4) If a student-at-law in the Bar Admission Course wishes to withdraw from the Course, the student shall submit a request to withdraw in writing to the registrar and the registrar shall approve the withdrawal.

Retrait du Cours de formation professionnelle

(4) Si un étudiant ou une étudiante au barreau désire se retirer du Cours de formation professionnelle, celui-ci ou celle-ci doit soumettre une demande à cette fin par écrit au ou à la registraire qui doit approuver le retrait.

Same

(5) A person ceases to be a student-at-law in the Bar Admission Course immediately upon approval of withdrawal from the Course by the registrar under subsection (4).

Idem

(5) Une personne cesse d'être étudiante ou étudiant au barreau immédiatement après l'approbation de son retrait du Cours de formation professionnelle par le ou la registraire conformément au paragraphe (4).

Carried

Item for Information Only

Placement Report 2002

EQUITY & ABORIGINAL ISSUES COMMITTEE REPORT

Mr. Copeland presented the Equity & Aboriginal Issues Committee Report for approval by Convocation.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES
April 25, 2002

Report to Convocation

Purpose of Report: Policy - For Decision
Information

Prepared by the Equity Initiatives Department

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee /Comité sur l'équité et les affaires autochtones (EAIC) met on April 11, 2002. In attendance were:

Paul Copeland	(Chair)
Derry Millar	(Vice Chair)
Helene Puccini	(Vice Chair)
Stephen Bindman	
Tom Carey	
Gary Gottlieb	
Malcolm Heins (CEO)	
Janet Minor	
Andrew Pinto	(Chair, Equity Advisory Group)
Judith Potter	
Brad Wright	

Staff: Josée Bouchard, Rachel Osborne, Geneva Yee

2. The Committee is reporting on the following matters:
Policy - For Decision

- amendments to the Equity Advisory Group's Terms of Reference

Information

- AJEFO June 2002 conference information

POLICY - FOR DECISION

AMENDMENTS TO THE EQUITY ADVISORY GROUP'S TERMS OF REFERENCE

Request of Convocation

Convocation is requested to consider and, if appropriate, approve the following amendments to sections of the Equity Advisory Group's Terms of Reference as follows:

a. Section 1 of EAG's Terms of Reference be amended to include the French title "Comité sur l'équité et les affaires autochtones" preceded by the English title "Equity and Aboriginal Issues Committee".

b. Section 2.1 of EAG's Terms of Reference be amended to read "The Advisory Group has no fewer than 15 members and no more than 19 members, with at least one member who may be a member of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones".

c. Section 3 of EAG's Terms of Reference be amended to read "The Advisory Group has a Chair and a Vice-Chair, who are named by the Advisory Group members".

d. Section 4.2 of EAG's Terms of Reference be amended to read "Special meetings may be convened by the chair."

e. Section 6.1 of EAG's Terms of Reference be amended to read "The term of membership is three years, for a maximum of two consecutive terms."

The terms of reference with proposed amendments (as well as the original terms of reference) is attached as Appendix A.

Background

1. The Equity Advisory Group (EAG), an advisory group to the Equity and Aboriginal Issues Committee /Comité sur l'équité et les affaires autochtones ("EAIC"), brought forward proposed amendments to its Terms of Reference at the April 11th meeting of EAIC.

2. The proposed amendments relate to the inclusion of the French title of the Equity and Aboriginal Issues Committee, the maximum number of EAG members, bencher membership on EAG, bencher involvement in co-chairing EAG meetings, the convening of special meetings, and the term of membership.

3. The Committee has considered EAG's requested amendments, is in agreement with them, and recommends them to Convocation.

4. Regarding the inclusion of the French title of the Equity and Aboriginal Issues Committee to read "Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones", this amendment ensures that the translated title of the committee, as used by the Law Society of Upper Canada, be present in EAG's Terms of Reference.

5. Regarding the number of its members, EAG has requested to increase its maximum number of members to 19 from the current maximum of 17. This amendment has been proposed in order to allow EAG to ensure geographic diversity and representation from persons with disabilities, currently gaps in the existing composition of EAG's presently appointed 16 members. There will be virtually no financial implications if this amendment is approved and the budget will not be increased. EAG members are not financially compensated for their work and members outside of Toronto participate via teleconference. Accordingly, the only financial implication would be some minor additional phone charges, only if any of the additional members are from outside Toronto.

6. Regarding Bencher membership, the current Terms of Reference state that EAG have no fewer than two Benchers members who are members of EAIC. Over the past two years, members of EAIC have not regularly attended EAG or formally participated in EAG meetings. While EAG believes that it is beneficial to have one Bencher member of EAIC attend regular monthly meeting of EAG, they nonetheless recognize

that it may not be realistic to mandate an EAIC member's participation. EAG has requested that the Terms of Reference be amended to reflect the actual practices of the group by removing the reference to mandated bencher membership.

7. Regarding the convening of special meetings, the amendment proposes that the word "co-chair" be replaced by the word "chair". The amendment has been proposed to reflect EAG's current practice whereby the chair of EAG convenes special meetings.

8. Regarding the length of terms of membership, EAG has requested that the current two- year term be changed to a three-year term. The amendment has been proposed in order to allow members to make a meaningful contribution and to see important policies and projects through to completion.

9. The existing Terms of Reference also envisage that EAG have two co-chairs, one of whom is a bencher. In practice, over the past two years EAG has operated with one non-bencher chair. EAG has requested that the Terms of Reference be amended to reflect the actual practice of the group as well as its wish to have a Vice-Chair, who may not necessarily be a bencher member, be appointed by EAG.

FOR INFORMATION

AJEFO JUNE 2002 CONFERENCE

1. The Association des juristes d'expression francaise de l'Ontario (AJEFO) is holding their annual conference at the Law Society of Upper Canada on June 20 - June 22, 2002. Treasurer Vern Krishna will be participating in the conference as a guest speaker at the June 21 lunch, and CEO Malcolm Heins will co-chair, with Peter Annis, President of AJEFO, a round table discussion on the topic of developing a provincial strategy on the promotion of French legal services.

2. The conference agenda and registration form are included in Appendix B for Convocation's information.

APPENDIX A

TERMS OF REFERENCE OF EQUITY ADVISORY GROUP/GROUPE CONSULTATIF EN MATIÈRE D'ÉQUITÉ WITH AMENDMENTS
(the changes are highlighted)

1. Mandate

To assist the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones, in the development of policy options for the promotion of equity and diversity in the legal profession by:

- identifying and advising the Committee on issues affecting equity seeking communities, both within the legal profession and relevant to those seeking access to the profession;
- providing input to the Committee on the planning and development of policies and practices related to equity, both within the Law Society and the profession;
- commenting to the Committee on Law Society reports and studies relating to equity issues within the profession; and

Organization and Structure

2. Membership

2.1 The Advisory Group has no fewer than 15 members and no more than 19 members, with at least one member who may be a member of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones.

2.2 Members have direct experience or commitment to access and equity for equity seeking communities, including but not limited to communities of ethno-racial people, people of colour, immigrants and refugees, people with disabilities, gays, lesbians, bisexuals, transgenders, and women. Such experience is in areas of employment equity, access to the legal system, human rights; anti-racism, anti-oppression training; managing access and equity plans, or social justice issues

2.3 The membership reflects gender parity and balance among the various equity seeking communities.

3. The Advisory Group has a chair and a vice-chair, who are named by the Advisory Group members.

4. Meetings

4.1 The Advisory Group meets once a month, [except in the months of July and August], with schedules and agendas being established by the co-chairs in consultation with staff and the members of the Advisory Group.

4.2 Special meetings may be convened by the chair.

4.3 Members must attend meetings regularly either in person or by electronic means such as teleconference.

4.4 Failure to attend more than three consecutive meetings without explanation constitutes resignation from the Advisory Group.

5. Quorum

5.1 Four members of the Advisory Group constitute a quorum for the purposes of the transaction of business.

6. Term of Membership

6.1 The term of membership is three years, for a maximum of two consecutive terms.

6.2 To maintain continuity, not more than half the membership is changed in any year.

7. Staff

7.1 Research and administrative support is provided by the Law Society's Equity Advisor.

TERMS OF REFERENCE OF EQUITY ADVISORY GROUP/GROUPE CONSULTATIF EN MATIÈRE D'ÉQUITÉ *BEFORE* AMENDMENTS

1. Mandate

To assist the Equity and Aboriginal Issues Committee/Comit9 sur l'equit9 et les affaires autochtones, in the development of policy options for the promotion of equity and diversity in the legal profession by:

- identifying and advising the Committee on issues affecting equity seeking communities, both within the legal profession and relevant to those seeking access to the profession;
- providing input to the Committee on the planning and development of policies and practices related to equity, both within the Law Society and the profession;
- commenting to the Committee on Law Society reports and studies relating to equity issues within the profession; and

Organization and Structure

2. Membership

2.1 The Advisory Group has no fewer than 15 members and no more than 19 members, with at least one member who may be a member of the Equity and Aboriginal Issues Committee/Comit9 sur l'equit9 et les affaires autochtones.

2.2 Members have direct experience or commitment to access and equity for equity seeking communities, including but not limited to communities of ethno-racial people, people of colour, immigrants and refugees, people with disabilities, gays, lesbians, bisexuals, transgenders, and women. Such experience is in areas of employment equity, access to the legal system, human rights; anti-racism, anti-oppression training; managing access and equity plans, or social justice issues

2.3 The membership reflects gender parity and balance among the various equity seeking communities.

3. The Advisory Group has a chair and a vice-chair, who are named by the Advisory Group members.

4. Meetings

4.1 The Advisory Group meets once a month, [except in the months of July and August], with schedules and agendas being established by the co-chairs in consultation with staff and the members of the Advisory Group.

4.2 Special meetings may be convened by the chair.

4.3 Members must attend meetings regularly either in person or by electronic means such as Teleconference.

4.4 Failure to attend more than three consecutive meetings without explanation constitutes resignation from the Advisory Group.

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6.2 To maintain continuity, not more than half the membership is changed in any year.

7. Staff

7.1 Research and administrative support is provided by the Law Society's Equity Advisor.

APPENDIX B

AJEFO CONFERENCE 2002 AGENDA AND REGISTRATION FORM

The following is the English summary of the agenda (appearing at page 11).

Les complices de la justice
Osgoode Hall, Toronto

Date : 20 – 22 June 2002

You are invited to attend the annual conference of the Association des juristes d'expression française de l'Ontario. The theme of this year's conference is « Les complices de la justice». Please register before May 15, 2002, in order to take advantage of the early registration discount.

Guest Speakers :

The Honourable Louise Arbour, Supreme Court of Canada
The Honourable Roy McMurtry, Chief Justice of Ontario
Treasurer Vern Krishna, Law Society of Upper Canada
Mark Freiman, Deputy Attorney General of Ontario
Roger Bilodeau, Deputy Minister of Justice and Deputy Attorney General for New-Brunswick
Dyane Adam, Commissioner of Official Languages

A Round Table On The Development Of A Provincial Strategy To Promote French Legal Services Will Be Presided By :

Peter Annis, President of AJEFO
Malcolm Heins, Chief Executive Officer, Law Society of Upper Canada

Professional Development Workshops :
Examination and Cross-examination of Witnesses : Daniel Boivin and Paul Rouleau.
French Legal Services in Community Legal Clinics : Karen Chambers; Louise Toone; Phyllis Gordon.
Family Law : Céline Allard; Lorraine Pelot; Josée Forest-Niesing.
The Canadian Charter of Rights and Freedoms : Josée Bouchard; Ronal Caza; Martha Jackman; David Leitch.
Linguistic Rights before Administrative Tribunals : Marcel Castongay; Gaétan Cousineau.
Power Relations in Mediation : Rita Czarny; John Manwaring.
Anti-Terrorism Measures : Gérard Normand; Mark Freeman.
Commercial Law : Guylaine Charles; David Laliberté; Nathalie Mercure.
Criminal Law : The Honourable Gilles Renaud; Michel Giroux; Luc LeClair.
Employment Law : Louise Hurteau; Lise Leduc; Georges Vuicic.
E-Commerce : May Cheng; Daniel Gervais; Parna Sabet.

CONGRÈS 2002

LES COMPLICES DE LA JUSTICE

À OSGOODE HALL
TORONTO

LE JEUDI 20 JUIN 2002

17 h 00 à 21 h 00 — RÉCEPTION FIERTÉ GAIE
Grande salle — *Offerte par le Barreau du Haut-Canada*

20 h 30 à 23 h 00 — RÉCEPTION DE BIENVENUE
Suite du Président

LE VENDREDI 21 JUIN 2002

8 h 00 à 8 h 45 — PETIT DÉJEUNER

Barreau du Haut-Canada - Grande salle *Offert par Gowlings*

8 h 45 à 9 h 00 ALLOCUTIONS DE BIENVENUE
Barreau du Haut-Canada - Grande salle

Maître Malcolm Heins - Directeur général du Barreau du Haut-Canada
Maître Peter Annis – Président de l'AJEFO
Maître Josée Bouchard – Présidente du comité organisateur

9 h 00 à 10 h 15 ATELIERS

Choix A	Choix B	Choix C
Petite salle à manger	*Salle des membres*	*Salle du musée*
Les complices de la justice	*Les complices de la justice*	*Développements récents en droit*
Session de formation sur les techniques de plaidoirie en français Partie I	L'avenir des services en français dans les cliniques communautaires	DROIT DE LA FAMILLE
Partenaire:The Advocates' Society	Maître Karen Chambers : Aide juridique Ontario	Maître Céline Allard : Steinberg, Allard, Thompson, D'Artois, Rockman, George
Maître Daniel Boivin : Gowling Lafleur Henderson s.r.l.	Maître Phyllis Gordon: ARCH (Advocacy Resource Center for Persons with Disabilities)	MaîtreLorraine Pelot: chercheure, Commission du droit du Canada
Maître Paul Rouleau : Heenan Blaikie s.r.l.	Maître Louise Toone : Clinique juridique Prescott-Russell Inc.	Maître Josée Forest-Niesing : Lacroix Forest s.r.l.

10 h 15 à 10 h 30 PAUSE SANTÉ
Grande salle *Offerte par la Commission de l'immigration et du statut de réfugié*

10 h 30 à 12 h 00 ATELIERS

Choix A	Choix B	Choix C
Petite salle à manger	*Salle des membres*	*Salle du musée*
Les complices de la justice	*Les complices de la justice*	*Développements récents en droit*
Session de formation sur les techniques de plaidoirie en français Partie II	La Charte: 20 ans d'expérience	Les droits linguistiques devant les tribunaux administratifs
Partenaire: The Advocates' Society	Maître Josée Bouchard: Barreau du Haut-Canada (Les droits à l'égalité en vertu de l'article 15 de la *Charte des droits et libertés*)	Monsieur Marcel Castongay : Services en français, ministère du Procureur général
Maître Daniel Boivin: Gowling Lafleur Henderson s.r.l.	Maître Ronald Caza : Nelligan O'Brien Payne s.r.l. (Les principes non écrits et l'affaire Montfort)	Maître Gaétan Cousineau : Vice-président de la Commission de l'immigration et du statut de réfugié
Maître Paul Rouleau : Heenan Blaikie s.r.l.	Vice-doyenne Martha Jackman : Université d'Ottawa, Faculté de droit, common law (L'évolution/la reconnaissance des droits socio-économiques en vertu de la *Charte des droits et libertés)*	
	Maître David Leitch : Commission des services financiers de l'Ontario (Les droits à l'éducation en vertu de l'article 23 de la *Charte des droits et libertés)*	

12 h 00 à 14 h 00 DÉJEUNER-CONFÉRENCE
La Grande salle *Offert par le Barreau du Haut-Canada*

Allocution: Le trésorier Vern Krishna : Barreau du Haut-Canada

14 h 00 à 15 h 15 PLÉNIÈRE

Perspectives d'avenir sur la dualité linguistique

Madame Dyane Adam, Commissaire aux langues officielles

Maître Roger Bilodeau, Sous-ministre de la justice et Sous-procureur général du Nouveau-Brunswick

Maître Mark Freiman, Sous-procureur général de l'Ontario

15 h 15 à 15 h 30 PAUSE SANTÉ
La Grande salle

15 h 30 à 17 h 00 PLÉNIÈRE

Entre juristes et médias

Animateur: Maître Daniel Bourque , Cassels Brock & Blackwell s.l.r.

Madame Claudette Paquin, directrice en chef de TFO-TVOntario

Monsieur Jean Mongenais, éditeur, Le Rempart de Windsor

17 h 00 à 19 h 00 PLÉNIÈRE
La Grande salle

Soirée des juges offerte par l'ABO

Allocution: L'Honorable juge McMurtry : Juge en chef, Cour d'appel de l'Ontario

Vente aux enchères

20 h 00 à 23 h 00 Island Yacht Club

Les complices en chansons

Voix: Geneviève Proulx
Piano: Monique Proulx

Le samedi 22 juin 2002

8 h 30 à 9 h 00 PETIT DÉJEUNER
Grande salle *Offert par Heenan Blaikie*

9 h 00 à 10 h 15 ATELIERS

Choix A	Choix B	Choix C
Petite salle à manger	*Salle des membres*	*Salle du musée*
Développements récents en droit	*Développements récents en droit*	*Développements récents en droit*
Les relations de pouvoir en médiation	Les mesures anti-terroristes	Droit commercial
Madame Rita Czarny, médiatrice	Maître Patrice Cousineau, Direction du droit économique, des océans et de l'environnement, Ministère des Affaires étrangères	Modérateur: Maître Jean Bédard
Monsieur François Guérin, médiateur	Maître Mark Freeman, International Center for Transitional Justice	Maître Guylaine Charles, Torys s.r.l. (La titrisation)
Professeur John Manwaring, Université d'Ottawa, Faculté de droit, Programme de common law en français	Maître Simon Potter, Premier vice-président, ABC	Maître David Laliberté, Baker & McKenzie (Droit de la concurrence dans le contexte du libre échange entre le Canada et les États-Unis)
		Maître Nathalie Mercure, Stikeman Elliott (Les nouvelles règles de distribution de valeurs mobilières)

10 h 15 à 10 h 30 PAUSE SANTI
G*rande salle*

10 h 30 à 12 h 00 Ateliers

Choix A	Choix B	Choix C
Petite salle à manger	*Salle des membres*	*Salle du musée*
Développements récents en droit	*Développements récents en droit*	*Développements récents en droit*
Droit pénal	Droit de l'emploi	Le commerce électronique
L'Honorable Gilles Renaud, Cour de justice de l'Ontario	Maître Louise Hurteau	Modératrice: Maître Monique Lafontaine
Professeur Michel Giroux, Département de droit et justice, Université Laurentienne	Maître Lise Leduc, Caroline Engelmann Gottheil	Maître May Cheng, Fasken Martineau DuMoulin s.r.l. (Atteintes au droit à la propriété intellectuelle sur l'internet)
Maître Luc LeClair	Maître Georges Vuicic	Professeur Daniel Gervais, Université d'Ottawa, Faculté de droit, programme de common law en français
		Maître Parna Sabet, Blake, Cassels and Graydon s.r.l. (Survol de la législation récente sur le commerce électronique)

12 h 00 à 14 h 00 DÉJEUNER-CONFÉRENCE
La Grande salle

Allocution: À confirmer

14 h 00 à 15 h 00 PLÈNIORE

TABLE RONDE
LES COMPLICES DE LA JUSTICE

(Partie I)

ÉLABORATION D'UNE STRATÉGIE PROVINCIALE

Présidée par Maître Peter Annis: président de l'AJEFO

Organismes invités:

The Advocates' Society: Maître Carr-Harris, président
Aide juridique Ontario: Madame Angela Longo, présidente-directrice générale
Association du Barreau de l'Ontario: Maître Josée Forest-Niesing, présidente du comité des langues officielles
Association canadienne-française de l'Ontario: M. Jean-Marc Aubin, président
Association française des municipalités de l'Ontario: Monsieur Gaston Patenaude, président
Barreau du Haut-Canada: Maître Malcolm Heins, directeur général
CDLPA: Maître Eustace, président
Centre de traduction et de documentation juridiques: Maître François Blais, directeur
Commissariat aux langues officielles: M. Karsten Kaemling, représentant, région de l'Ontario
Commission du droit du Canada: Maître Nathalie DesRosiers, présidente
Faculté de droit, common law, programme français: Vice-doyenne Martha Jackman
FAJEFCL: Maître Tory Colvin, président
Institut national de la magistrature: Maître George Thomson, directeur général
Office des affaires francophones: Madame Jacqueline Frank, directrice générale
Programme d'administration de la justice dans les deux langues officielles: Maître Mario Dion, président
Programme de contestation judiciaire du Canada, Maître Richard Goulet, directeur du programme des droits linguistiques
Pro Bono Law Ontario: Maître Ronald Manes, président du conseil d'administration
Fédération des aînés francophones de l'Ontario, Monsieur Jean Comtois, président
Barreau du Haut-Canada, Cours de formation professionelle, Maître Greg McCashin
Services en français, Ministère du Procureur général, Monsieur Marcel Castongay

15 h 00 à 15 h 15 PAUSE SANTÉ
Grande salle

15 h 15 à 16 h 00 ATELIERS

TABLE RONDE
LES COMPLICES DE LA JUSTICE

(Partie II)

ÉLABORATION D'UNE STRATÉGIE PROVINCIALE

Présidée par Maître Peter Annis: Président de l'AJEFO

16 h 00 à17 h 00 ASSEMBLÉE ANNUELLE DES MEMBRES DE L'AJEFO
Salle des membres

19 h 00 à 20 h 00 RÉCEPTION
Grande salle

20 h 00 Banquet
Grande salle

Invitée d'honneur: L'honorable Louise Arbour
L'évolution du dossier de la création d'un tribunal pénal international

Remise de l'Ordre du mérite de l'AJEFO

Danse: En vedette Maître Olyde Nester Munihiri

LE DIMANCHE 23 JUIN 2002

La journée du dimanche est libre.

CARTE DU BARREAU DU HAUT-CANADA

(SEE MAP IN CONVOCATION FILE)

HÉBERGEMENT

L'AJEFO vous offre deux options en matière d'hébergement. Chacune est située à proximité de Osgoode Hall. Les participants et participantes au Congrès doivent faire leurs propres réservations. Il est recommandé de faire vos réservations dès que possible. *Lorsque vous faites vos réservations au Métropolitain ou au Days Inn, prière de mentionner que vous réservez du bloc de chambres « AJEFO ».*

L'Hôtel Métropolitain	*Days Inn and Conference Centre*
L'Hôtel Métropolitain est situé à quelques pas de Osgoode Hall et à proximité du Musée des Beaux Arts, du Eaton Centre, de Campbell House, des cinémas et de nombreux restaurants. Adresse: 108 rue Chestnut Prix $ 175 par soir Date limite: Le 21 mai 2002 Réservations 1-800-668-6600 Courriel: reservations@tor.metropolitan.com Site Web: www.metropolitan.com	Le Days Inn est à dix minutes de marche de Osgoode Hall, de la rue Bloor pour les passionnés du magasinage, du Musée Royal de l'Ontario et de Yorkville. Adresse: 30 rue Carlton (Yonge et Carlton) Prix $ 149 par soir Date limite: Le 21 mai 2002 Réservations 1-800-544-8313 Site Web: www.the.daysinn.com

Autres Hôtels à proximité de Osgoode Hall (aucunes chambres n'ont été réservées à ces hôtels):

Cambridge Suites:
15 rue Richmond est
Toronto, M5C 1N2
Réservations: 1-888-417-8483
Courriel: reservations@tor.cambridgesuites.ns.ca

Le Colony:
89 rue Chestnut
Toronto, M5G 1R1
Réservations 1-800-777-1700

Le Delta:
100 rue Wellington ouest
Toronto, M5K 1J3
Réservations: 1-800-268-1133

Le Fairmont Royal York:
100 rue Front ouest
Toronto, M5J 1E3
Réservations: 1-800-441-1414
Courriel: royalyorkhotel@fairmont.com

Le Hilton:
145 rue Richmond ouest
Toronto, M5H 2L2
Réservations: 1-800-774-1500
Site Web : www.hilton.com

Le Marriott:
525 rue Bay
Toronto, M5G 2L2
Réservations: 1-800-905-0667
Site Web: www.marriotthotels.com

Le Sheraton:
123 rue Queen ouest
Toronto, M5H 2M9
Réservations: 1-800-325-3535
Courriel: reservations@sheratoncentretoronto.com

It was moved by Mr. Copeland that the following amendments to sections of the Equity Advisory Group's Terms of Reference as follows be approved:

a. Section 1 of EAG's Terms of Reference be amended to include the French title "Comit9 sur l'9quit9 et les affaires autochtones" preceded by the English title "Equity and Aboriginal Issues Committee".

b. Section 2.1 of EAG's Terms of Reference be amended to read "The Advisory Group has no fewer than 15 members and no more than 19 members, with at least one member who may be a member of the Equity and Aboriginal Issues Committee/Comit9 sur l'9quit9 et les affaires autochtones".

c. Section 3 of EAG's Terms of Reference be amended to read "The Advisory Group has a Chair and a Vice-Chair, who are named by the Advisory Group members".

d. Section 4.2 of EAG's Terms of Reference be amended to read "Special meetings may be convened by the chair".

e. Section 6.1 of EAG's Terms of Reference be amended to read "The term of membership is three years, for a maximum of two consecutive terms".

Carried

Item for Information Only

AJEFO June 2002 Conference

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M. AND RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Arnup, Banack, Bindman, Boyd, Campion, Cass, Cherniak, Copeland, Crowe, Diamond, E. Ducharme, T. Ducharme (by telephone), Feinstein, Finkelstein, Gottlieb, Hunter, Laskin, MacKenzie, Minor, Mulligan, Murphy, Pilkington, Porter, Potter, Puccini, Ross, Ruby, St. Lewis, Simpson, Swaye, Wardlaw, White, Wilson and Wright.

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IN PUBLIC

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NOTICE OF MOTION

MOVED BY: Helene Puccini, Judith Potter, Heather Ross

SECONDED BY: Gillian Diamond, Edward Ducharme, George Hunter, Joanne St. Lewis, Barbara Laskin

1. That the time for service of this Notice of Motion be abridged nunc pro tunc,

2. That a Committee be established, called the Appointments Committee to be chaired by the Treasurer and consisting of the Chairs and/or Vice-Chairs of the Professional Development and Competence Committee, the Professional Regulation Committee, and the Equity and Aboriginal Issues Committee/Comit9 Sur L'9quit9 et les Affaires Autochtones, and at least one lay Bencher whose mandate it shall be to consider all applications and/or recommendations for such appointments and shall make recommendations for such appointments to Convocation.

3. That the Law Society shall annually publish the list of all external committees, and groups to which it has a right of appointment pursuant to the list attached as may be amended from time to time.

4. That when appointment vacancies arise, the Law Society shall notify all elected Benchers and lay Benchers of such vacancy and invite their nomination recommendations.

Ms. Puccini spoke to the Motion.

It was moved by Mr. Campion, seconded by Mr. Bindman that the motion be tabled.

Carried

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT

Mr. Cherniak presented the Professional Development & Competence Committee Report for approval by Convocation.

Professional Development & Competence Committee
April 25, 2002

Report to Convocation

Purpose of Report: Policy - For Decision
Information

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Committee met on March 7, 2002 and April 11, 2002. Committee members in attendance on March 7, 2002 were Earl Cherniak (Chair), Kim Carpenter-Gunn (Vice-Chair), Barbara Laskin, Janet Minor, Greg Mulligan, and Helene Puccini. Bill Simpson (Vice-Chair) attended part of the meeting. Staff in attendance were Diana Miles, Dulce Mitchell, Elliot Spears, Sophia Sperdakos and Ursula Stojanowicz. Committee members in attendance on April 11, 2002 were Earl Cherniak (Chair), Kim Carpenter-Gunn (Vice-Chair), Bill Simpson (Vice-Chair), Carole Curtis, Abe Feinstein, Barbara Laskin, and Helene Puccini. Greg Mulligan and Janet Minor attended a portion of the meeting. Staff in attendance were Diana Miles and Sophia Sperdakos.

2. The Committee is reporting on the following matters:
Policy - For Decision

- Reconsideration of Policies Respecting Confidentiality of Practice Reviews and of Certain Rules Relating to Competence Hearings (tabled from February 20, 2002) pages 2-75

Information

- Report on Specialist Certification Matters Finalized by the Certification Working Group on February 19, 2002 and Approved by the Committee on April 11, 2002 - page 76
- Status of Work on Practice Management Guidelines - pages 77-78

POLICY - FOR DECISION (Tabled from February 20, 2002)

RECONSIDERATION OF POLICIES RESPECTING CONFIDENTIALITY OF PRACTICE REVIEWS AND OF CERTAIN RULES RELATING TO COMPETENCE HEARINGS

Executive Summary

In accordance with Convocation's direction in February 2002, the Committee has again reviewed the 1999 policy on confidentiality of practice reviews. The Committee, with the exception of one of those members who participated in the meeting, recommends that the Law Society adopt the following approach:

- The fact that a member is in practice review will not be disclosed outside the Law Society.
- The terms of a proposal order made in a practice review will only be disclosed outside the Law Society if the terms limit a member's rights and privileges.
- The fact that a competence proceeding has been authorized by the Proceedings Authorization Committee ("PAC") against a member will continue to be disclosed only to the complainant(s) in the proceeding.
- Where a tribunal in a competence proceeding suspends or limits a member's rights and privileges the terms of the order and the decision will be public and disclosed upon request.
- The Complaints Review Commissioners will be entitled to advise a complainant that they intend to request that a member be directed into practice review, but not to disclose that a member is in practice review.
- Communications between the practice review department and other departments within the Law Society will be permitted, allowing for the flow of information and where, appropriate, its use in proceedings or resolution of matters affecting members.

REQUESTS TO CONVOCATION

Issue	Request to Convocation
a. Should the confidentiality policy with respect to practice reviews cease to apply to internal communications within the Law Society?	Convocation is requested to consider whether, to accept the Committee's recommendation and reverse its September 1999 policy so that confidentiality of practice reviews would cease to apply with respect to internal Law Society communications, permitting the free flow and use of information among regulatory departments and in proceedings; or continue the policy. Convocation is further requested to consider whether, in the event it decides to revoke the policy of confidentiality with respect to internal communications, the decision will apply to, practice reviews currently ongoing; or those commenced after the policy is changed, as the Committee recommends.
b(i) What should the policy be with respect to external communications and specifically, should the fact that a member is in practice review be confidential or public?	Convocation is requested to consider whether the fact that a member is in practice review should, be made public; or not be made public, as the Committee recommends.
b(ii) Should the terms of a proposal order be confidential or public?	Convocation is requested to consider whether, only a proposal order that limits a member's right and privileges should be made public, as the Committee recommends; or all proposal orders should be made public. Convocation is further requested to consider whether, in the event it decides that a proposal order that limits a member's rights and privileges should be public, such information should be released only on request, as the Committee recommends; or the Law Society should publish such information. Convocation is further requested to consider whether, if such information should be made public only on request, this decision should be reviewed in September 2003, as the Committee recommends.
c. Should the fact that a competence hearing has been authorized be made public generally or to the complainant(s) only, as is currently the case?	Convocation is requested to consider whether the fact that a competence proceeding has been authorized, should continue to be made known to the complainant(s) only, as the Committee recommends; or should be made available to members of the general public and the profession. If the information should be made public, which is not the Committee's recommendation, Convocation is further requested to consider whether it should be made available, on request only; or through the Law Society publishing such information.

d. Under what circumstances should the order in a competence proceeding be public?	Convocation is requested to consider, whether in professional competence proceedings where a tribunal suspends *or limits* the member's rights and privileges, the order and the decision should be public, as the Committee recommends. If the answer is yes, whether the Law Society should, publish the information, as the Committee recommends, or simply make it available to those members of the public who inquire about members' status. If the Law Society should publish the information, whether it should do so, before the expiry of the period for filing an appeal from the decision, as the Committee recommends, or after.
e. Should Complaints Review Commissioners (CRCs), in appropriate circumstances, inform a complainant whose complaint is not being proceeded with that a member is in practice review or that the CRCs are requesting that the member enter practice review?	Convocation is requested to consider whether, as the Committee recommends, the CRCs should, in appropriate circumstances, be free to indicate to a complainant that they will be requesting that a member be ordered into practice review, provided that, at the same time, they advise the complainant of, a) the confidential nature of practice reviews; b) the reasons for such confidentiality; and c) that as a result of the policy the complainant will not be entitled to know if the review has been directed.

Background

1. On September 24, 1999 Convocation approved a recommendation of the Professional Development and Competence Committee with respect to practice reviews as follows:

> *...under no circumstances, save and except where Rule 13, Commentary 1 is applicable [now Rule 6.01 (3) revised],or where an order to participate in practice review is made against a member or an undertaking to participate in practice review is given by the member,*[1] *will any information obtained solely in the course of, or as a result of, a practice review be disclosed, accessed, or used, either directly or indirectly, to initiate or further a conduct proceeding or be admissible as evidence in a conduct proceeding.*

2. At the same time, Convocation approved the following steps to provide organizational support for the remedial approach of the practice review process:

There should be,

a. a separate structure and separate staff resources dedicated to practice review;

b. a physical location that promotes the separateness of practice reviews from investigative approaches;

c. appropriate staff training throughout the organization to ensure understanding of the remedial nature of practice reviews; and

d. *an effective communications strategy, embodied in the Law Society's overall strategy on competence issues, that will enhance members' belief in and trust of practice reviews.*

3. The effect of the Committee's September 1999 recommendation is to continue to limit what information can flow from the practice review process to other regulatory departments that deal with *conduct*. The original policy was introduced at a time when there was no legislative authority to compel members to participate in the practice review program. The policy does not preclude communication of information learned in a practice review that is relevant to a capacity proceeding or an audit. From a practical perspective, however, since the same staff handle conduct and capacity investigations and interact with audit staff, it is difficult to separate the approach to information. The Committee is of the view that from a regulatory perspective this cannot be justified.

4. The recommendation had potential implications for the public interest, as will be described later in this report. It also had staffing and financial implications for the conduct of competence hearings, including whether it would be appropriate for the staff of the discipline department who prosecute conduct and capacity hearings to handle competence hearings.

5. In 1999 the Committee was concerned about the possible impact of continuing the practice review confidentiality policy. Accordingly, it recommended that Convocation review the recommendation in two years.[2] Convocation did not debate the merits of the policy in detail, as the matter would be returning for further discussion.

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[1]The orders and undertakings referred to relate to those obtained in the context of a discipline hearing (See paragraph 27 - 29 of the Committee's report to Convocation, September 24, 1999 (Appendix 1)). At the time the original policy was introduced practice reviews were only mandatory if they were ordered or agreed to as part of a discipline proceeding. The language of the current legislative provisions regarding practice review is that a review is "directed" by the Chair or Vice-Chair of the Professional Development and Competence Committee. The direction to participate is not an order within the meaning of the current policy.

[2]Transcript, September 24, 1999, pages136 and 137. See Appendix 1.

6. The Committee returned to Convocation in February 2002 with a report setting out the issues for consideration in reviewing the policy on confidentiality of practice reviews. The Committee was of the view that the confidentiality policy with respect to internal communications within the Law Society should be reversed. It recommended, as well, a number of changes regarding the external communication of information related to proposal orders and competence proceedings.[3]

7. Convocation tabled the report until March 2002 and requested additional information, including,
   a. an overview to the various regulatory streams authorized in the *Law Society Act*;

   b. how practice reviews currently operate and the practical implications of the policy;

   c. copies of the transcript of the Convocation debate on the confidentiality policy on September 24, 1999, as well as the Committee's September 24, 1999 Report to Convocation (provided at Appendix 1); and

   d. how other regulatory bodies address the issues of confidentiality of practice reviews (provided at Appendix 2).

8. This revised Report to Convocation provides the information requested, as well as a further consideration and analysis of the issues before Convocation in February 2002. The issues Convocation is being requested to consider are:

a.	Should the confidential policy with respect to practice reviews cease to apply with respect to internal communications within the Law Society?
b.	What should the policy be with respect to external communications and specifically,
	i. should the fact that a member is in practice review be confidential or public?
	ii. should the terms of a proposal order be confidential or public?
c.	Should the fact that a competence hearing has been authorized be made public, generally, or to the complainant(s) only, as is currently the case?
d.	Under what circumstances should the order in a competence proceeding be public?
e.	Should Complaints Review Commissioners (CRCs), in appropriate circumstances, inform a complainant whose complaint is not being proceeded with that a member is in practice review or that the CRCs are requesting that the member enter practice review?

The Regulatory Streams of Competence, Conduct, Capacity and Audit

9. Before addressing each of the issues, and to place the discussion in context, it is useful to outline the framework of the regulatory streams of competence, conduct, capacity, and audit.

10. Pursuant to the *Law Society Act*, the Law Society has the authority and the obligation to:

[3]The lay bencher on the Committee, speaking from the perspective of the Complaints Review Commissioners was of the view that such information should be public and that Complaints Review Commissioners(CRCs) should be able to tell a complainant that the member is in practice review or that the CRCs are requesting that the member be directed to participate in a practice review. Since the report was tabled the Committee has again considered this issue and has amended its proposal somewhat. See the discussion at paragraphs 84-96.

audit the financial records of a member or group of members for the purpose of determining whether they comply with the requirements of the by-laws. Section 49.2	investigate a member's or student member's conduct where information has been received "suggesting that the member may have engaged in professional misconduct or conduct unbecoming a barrister and solicitor". Section 49.3 (1)	investigate a member or student member's capacity where there are "reasonable grounds for believing that the member or student member may be or may have been incapacitated". Section 49.3(5)	review a member's practice where there are reasons to believe that a member is failing or has failed to meet standards of professional competence. Section 49.4

11. In all four circumstances the member *is required* to:

    a. permit the Law Society to enter the member's business premises during business hours;

    b. produce and permit examination of the documents that relate to the matters under audit, investigation or review; and

    c. provide information that relates to the audit, investigation, or review (those who work with the member must also provide information).[4]

    A member's failure to co-operate could, itself, amount to professional misconduct.

12. With respect to conduct, capacity, and practice review matters the Law Society has authority to apply to the courts for an order of search and seizure, where urgency requires such an order or because use of the authority described in paragraph 11, above, is not possible, is not likely to be effective, or has been ineffective.[5]

13. Law Society staff, benchers, or agents who obtain information in the course of investigations, audits and practice reviews, whether from documents, from those who work for or with the member, or from the member, can disclose such information only in specified circumstances, most notably in connection with the administration of the *Law Society Act*, regulations, by-laws or Rules of Practice and Procedure or in connection with a proceeding under the Act.[6] This means that, for the purposes of Law Society proceedings,

    a. documents and information the member is required to provide in a practice review can be disclosed and relied upon for a proposal order or in a competence hearing;

    b. documents and information the member is required to provide in a conduct investigation or an audit can be disclosed and relied upon in a conduct hearing; and

    c. documents and information the member is required to provide in a capacity investigation can be disclosed and relied upon in a capacity hearing.

14. The fact that members are statutorily required to provide information that can ultimately be used in a regulatory proceeding against them is a central feature of the self-regulatory regime. Decisions to authorize proceedings against members are not staff decisions. No matter advances to a proceeding without the authorization of the Proceedings Authorization Committee ("PAC"), of which there are four members (the Chair or Vice-Chair of the Professional Regulation Committee, the Chair or Vice-Chair of the Professional Development and Competence Committee, and two other benchers).

[4]Sections, 49.2(2), 49.3(2) and (6), and 49.4(2).
[5]Section 49.10
[6]Section 49.12(2), subject to 49.8.

15. With respect to investigations and audits, information learned during the course of one type of investigation, that may be relevant to a different type of regulatory matter, may be disclosed internally and where appropriate, put in evidence before a Hearing Panel. So, for example,

    a. if, in the course of a conduct investigation, there are reasonable grounds for believing that the member (or student member) may be or may have been incapacitated, an incapacity investigation can ensue, and the incapacity issue addressed, including, if necessary commencing an incapacity proceeding if PAC so authorizes; and

    b. if, in the course of a spot audit, information suggesting a member may have engaged in professional misconduct or conduct unbecoming a barrister or solicitor, as contemplated by section 49.3 (1), emerges, a conduct investigation can ensue and the conduct issue addressed including, if necessary commencing a conduct proceeding if PAC so authorizes.

       Keeping in mind the remedial focus of spot audits, when, in the context of an audit, information emerges that raises conduct issues of which investigations staff are told, they undertake a new investigation rather than relying upon the information obtained from the spot audit.

16. Staff involved in conduct investigations, capacity investigations and audits are free to raise issues with one another where relevant. Pursuant to the current confidentiality policy affecting practice reviews, however, there are limitations on the exchange of information possible among practice review staff and other regulatory staff. These limitations and the Committee's discussion of the difficulties they create are set out below.

The Practice Review Process

17. Prior to 1999 the Law Society had no authority to compel a member to participate in practice review. All practice reviews were voluntary. Amendments to the *Law Society Act* in February 1999 gave the Law Society the authority to conduct a review of a member's practice for the purpose of determining if the member is meeting standards of professional competence as defined in section 41 of the Act. Such a review occurs only where directed by the Chair or Vice-Chair of the Professional Development and Competence Committee. If the Chair or Vice-Chair is satisfied that there are reasonable grounds for believing that the member has failed or is failing to meet standards of professional competence he or she must direct the review. Practice reviews are, therefore, only conducted on the practices of members who have demonstrated competence-related deficiencies, and for all practical purposes are not voluntary.

18. The Law Society conducts "focused" not "random" practice reviews. In essence the reviews are "for cause". As such, the Law Society's scheme differs significantly from professions such as accountancy, medicine and dentistry that conduct random reviews of the entire profession. (a certain percentage per year)

19. The focused practice review program was initiated in 1986 to address a gap in the Law Society's approach to members' service-related deficiencies. Prior to the introduction of the program there was no process to deal with members against whom numerous competence-related or service-related complaints were made that ultimately did not pass the threshold test for the commencement of a conduct (formerly discipline) proceeding. Lay benchers, in their role as Complaints Review Commissioners, frequently expressed concern that the Law Society could not address what, individually, might be minor complaints, but which taken cumulatively suggested incompetence that was harmful to the public interest.

20. The Law Society's decision to seek, as part of the legislative amendment package, legislative authority to conduct practice reviews so as to be able *to require* certain members to participate was part of its goal to enhance its competence mandate and better protect the public and the profession-at-large from practitioners who demonstrate serious competence-related deficiencies.

21. Practice review is resorted to when a member's behaviour demonstrates service-related deficiencies that put into question the member's ability to serve the public. In most instances conduct or capacity investigations in relation to complaints have already been done, and revealed that incompetence is the problem, either

instead of, or in addition to, conduct or capacity issues. In fact, there are occasions in conduct proceedings when it becomes clear that the member should be in practice review and the Hearing Panel so orders.

22. Typically, practice reviews are directed against a member who has accumulated a large number of complaints over a number of years. For example,

a. Between late fall 2001 and February 2002, 17 practice reviews have been directed by the Chair of the Professional Development and Competence Committee. The members' complaints histories range from 1 complaint (referred from spot audit program) to 117 complaints, with the average number of complaints against these members being 25.

b. Of 33 lawyers who accumulated 15 or more complaints against them between 1999 and 2001 the average was 22 complaints. Twenty-one of those members were, or continue to be, in practice review.

23. In April 2001, the Committee provided Convocation with a chart outlining the practice review process, the authority for the steps in the process, and the time guidelines to be followed. The chart is set out at Appendix 3 and illustrates the following:

a. Once the practice review is directed staff determines the most appropriate approach based on the type and severity of complaints and the member's Law Society profile and interviews the member, providing him or her with the practice checklist that will be used by the practice reviewer. The purpose is to develop an approach most likely to address and correct the member's specific deficiencies. The member is encouraged to take steps to begin to make practice improvements before the reviewer comes to the office.

b. The reviewer will visit the member's office and meet with the member to discuss the issues. As part of the remedial focus, the practice reviewer selected does not come from the same geographic area as the member, but does practice the same type of law.

c. Following the reviewer's visit or visits the reviewer prepares a report that will set out whether, in the reviewer's opinion the member has failed or is failing to meet standards of professional competence, and the recommendations with respect to the member's practice. As set out in paragraph 35 if, in the course of the review, information is learned that comes within Rules 6.01(3) of the Rules of Professional Conduct or within other exceptions to the confidentiality policy, it must be disclosed. The practice reviewer's recommendations are directed at practice improvements the member can make to enhance service to clients and the effectiveness of the practice. Appendix 4 contains an excerpt from a practice reviewer report as an example of the types of recommendations for improvement that are seen in such reports.

d. The Director of Professional Development and Competence may choose to include the recommendations in a proposal order. The member is sent the order and asked whether he or she is in agreement with the terms. Where the member agrees, the proposal order is sent to a bencher for consideration. The bencher may refuse to make the order, modify or sign it.

e. If the member does not agree with the proposal order, the Law Society must determine whether to seek authorization from PAC for a competence hearing or do nothing further. If the matter proceeds to a competence hearing, the information learned in the practice review is admissible in evidence.

24. If PAC authorizes a competence proceeding against a member a wide range of orders can be made against the member, most of which are intended to improve the member's practice. There is also authority to intervene to restrict a member's practice or even to suspend a member. These possible orders are set out in section 44 (1) of the Act as follows:

1. An order suspending the rights and privileges of the member,

i. for a definite period,

ii. until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Secretary, or

iii. for a definite period and thereafter until terms and conditions specified by the Hearing Panel are met to the satisfaction of the Secretary.

2. An order that the member institute new records, systems or procedures in his or her practice.

3. An order that the member obtain professional advice with respect to the management of his or her practice.

4. An order that the member retain the services of a person qualified to assist in the administration of his or her practice.

5. An order that the member obtain or continue treatment or counselling, including testing and treatment for addiction to or excessive use of alcohol or drugs, or participate in other programs to improve his or her health.

6. An order that the member participate in specified programs of legal education or professional training or other programs to improve his or her professional competence.

7. An order that the member restrict his or her practice to specified areas of law.

8. An order that the member practise only,

i. as an employee of a member or other person approved by the Secretary,

ii. in partnership with and under the supervision of a member approved by the Secretary, or

iii. under the supervision of a member approved by the Secretary.

9. An order that the member report on his or her compliance with any order made under this section and authorize others involved with his or her treatment or supervision to report thereon.

10. Any other order that the Hearing Panel considers appropriate.

25. The recommendations made by practice reviewers and incorporated in proposal orders will often mirror the type of orders that may be made in a competence hearing. Once entered, a proposal order is enforceable in the same way as any other Law Society order, including the provisions that a Hearing Panel may suspend a member where there is a breach of the terms.

The Issues for Convocation's Consideration

a. Should the confidentiality policy cease to apply with respect to internal communications within the Law Society?

26. The Committee's 1999 Report to Convocation contains a discussion of the Committee's analysis of the reasons for and against maintaining the policy of confidentiality.

Remedial Nature of the Program

27. One of the reasons given in September 1999 for continuing the policy of confidentiality under the mandatory program was the remedial nature of the competence components of the legislation and a belief that members would co-operate better if the remedial nature of the program were emphasized and demonstrated through the confidentiality provision.

28. In keeping with Convocation's direction to consider the practical implications of the policy and return to Convocation following August 2001, the Committee has considered the reasoning underlying the original

policy. The competence provisions of the legislation are different from the conduct provisions in that, whenever possible, they seek to encourage a member to improve the manner in which he or she practises and correct deficiencies, rather than punishing a member for conduct unbecoming a barrister and solicitor or for professional misconduct.

29. In the Committee's view, the structure of the program and its philosophy, the training of practice reviewers, the staff approach to members, the physical separation of the department from other regulatory departments, and the focus of reviews on improving practice management all clearly point to the remedial nature of the program. Given that the Law Society is not required to conduct a practice review before it seeks authority to commence a competence hearing, the fact that its emphasis is on practice reviews, not hearings, demonstrates its commitment to the remedial approach. *Nothing in the Committee's recommendations with respect to the confidentiality policy would alter this emphasis and approach*. Practice review staff would continue to operate the program from the perspective of identifying practice weaknesses and providing recommendations and assistance to the member to correct the deficiencies.

30. In the Committee's view, then, the remedial components of the program are demonstrated by,

    a. the manner in which practice reviewers and Law Society staff interact with the member, by providing suggestions and guidance for improvement. This is demonstrated in the practice review process set out in Appendix 3;

    b. the extent to which members are given the opportunity to improve their practices and, to some degree, have a say in the plan for improvement;

    c. the member's ability to refuse a proposal order; and

    d. the wide range of recommendations available to address the member's deficiencies.

31. Moreover, in this report the Committee is requesting that Convocation enhance the remedial focus of practice reviews further by approving recommendations,

    a. not to disclose in external communications the fact that a practice review is being conducted (section b(i) below); and

    b. not to disclose terms of a proposal order or competence finding unless they limit the member's right to practice (section b(ii) below).

32. As well the Committee is recommending that the fact that a competence hearing has been authorized should continue to be disclosed only to complainants. (section c below)

Regulatory Nature

33. Although the remedial nature of practice reviews is clear and is demonstrated by the way that the program operates, it is also true that the competence provisions, of which practice review is a component, exist as part of the regulatory structure and, as such, cannot be said to exist outside the Law Society's mandate to regulate in the public interest.

34. The regulatory features of the practice review program are illustrated by the fact that,

    a. there is legislative authority to direct a member to participate in a practice review;

    b. practice reviews are treated as part of the regulatory structure, in the same manner as investigations and audits with respect to such features as,

        i. the obligation on the member to provide documents and information; and
        ii. the Law Society's ability to seek an order for search and seizure.

c. a formal procedure is set out in the legislation, which must be followed;

d. once entered, a proposal order is enforceable in the same way as any other Law Society order, including the provisions that a Hearing Panel may suspend a member where there is a breach of the terms; and

e. where a member refuses to consent to a proposal order it is open to the Law Society to seek the authorization of PAC to commence a competence proceeding.

These regulatory provisions exist to ensure that the process is transparent and the results can be used to further the Law Society's regulatory mandate in the public interest.

Implications of Policy

35. A close analysis of the confidentiality policy reveals that there are a number of instances in which information learned in a practice review could or must be disclosed for purposes of a conduct investigation or a proceeding against a member. Table 1 sets out the information that can and, in some cases, must be disclosed.

Table 1: Practice Review Information that can (or must) be disclosed
1. Information coming within Rule 6.01(3) of the Rules of Professional Conduct, which reads as follows, must be disclosed: (3) A lawyer shall report to the Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege, (a) the misappropriation or misapplication of trust monies, (b) the abandonment of a law practice, (c) participation in serious criminal activity related to a lawyer's practice, (d) the mental instability of a lawyer of such a serious nature that the lawyer's clients are likely to be severely prejudiced, (e) any other situation where a lawyer's clients are likely to be severely prejudiced. An exception to the confidentiality policy - could be used to initiate or further a conduct proceeding
2. Information that suggests that there may be reasonable grounds for believing the member may have been incapacitated. An exception to the confidentiality policy - could be used in a capacity proceeding pursuant to the Act.
3. Information learned in a practice review where the review has been ordered by the Hearing Panel in a conduct proceeding or where the member has signed an undertaking to participate. An exception to the confidentiality policy - could be used to initiate or further a conduct proceeding
4. Information learned in a practice review may be used in a competence proceeding against a member, with a wide range of orders possible, including restrictions on practice and suspension. Could be used to initiate or further a competence hearing pursuant to the Act.
5. Information the member consents to be disclosed to another regulatory department. Could be used to settle the matter.

36. Based on these exceptions to the policy, it is the Committee's view that the reversal of the confidentiality policy would not undermine or alter the remedial nature of the program. In fact, the remedial nature of the program is confirmed by the fact that despite these already existing exceptions to the confidentiality policy practice review staff have rarely had to resort to former Rule 13 or Rule 6.01(3). This is because the overwhelming nature of issues they and practice reviewers encounter are competence-related, not conduct-related. As is apparent from an examination of Appendix 2 the experience of other law societies, where there is no internal confidentiality policy, is similar.

37. The Committee believes that the more common negative implication of the current confidentiality policy with respect to internal communications is that in circumstances in which a member in practice review is faced with new complaints or proceedings, the Law Society may be unable to develop a regulatory solution that addresses all the relevant circumstances. In the Committee's view internal communications among Law Society departments is essential.

38. If there continues to be a prohibition against exchanges of information within the Law Society, unnecessary proceedings or investigations against members and potentially flawed resolutions cannot be avoided. For example:

a. There will continue to be situations in which information obtained in a practice review, which could shed light on the underlying causes of a new complaint against the member, cannot be revealed to help fashion an appropriate remedy for both the new complaint and the member's regulatory dealings overall. Given that lawyers in practice review have multiple complaints (often more than 20) it is not unreasonable to expect that during the course of a practice review new complaints may arise. Under the current policy there is no ability to determine if the practice review is addressing the underlying cause(s) of such complaint.

So, for example, the investigation of a new complaint about inappropriate use of trust funds may be undertaken, when the practice review might already have revealed that the problem is not dishonesty but a lack of proper staff and systems in place to ensure compliance with the Law Society Act and By-laws. The result is that the member is further embroiled in Law Society proceedings, the Law Society is investigating for indicia of dishonesty and the remedial goal of the practice review may be undermined because a separate stream is operating despite the member's co-operation with the practice review.

PAC recently authorized a conduct proceeding against a member who is in practice review. PAC was not entitled to know the status of the practice review, the nature of the member's participation, whether the member was making efforts to improve, or the relevance of the new complaint to issues being addressed in the review. Had PAC been aware of this information, the conduct proceeding might not have been authorized.

b. The opposite scenario is also possible. A member may have been in practice review for some time as a result of many, many complaints and made certain assurances in the course of the practice review about changed practices and behaviour. In fact, the member may not be co-operating or may knowingly fail to reveal that new problems have arisen with which he or she is not dealing. A new complaint may be received that in and of itself may not be sufficient to warrant a PAC authorization for a conduct hearing, but PAC considers issuing an invitation to attend and proposing that the member co-operate and correct the inappropriate behaviour. If PAC were entitled to know about the lengthy nature of the practice review, the member's lack of cooperation or the failure to reveal new problems to the practice reviewer PAC might well take a course different from an invitation to attend.

c. Hearing Panels in conduct proceedings may make decisions regarding a member based on incomplete information, because discipline counsel are unable to gain information about the practice review and share it, as needed, with the Hearing Panel.

d. Discipline counsel negotiate agreed statements of fact and undertakings without knowing whether knowledge of factors in the practice review would change the result.

39. To some degree the Act, and by-laws already in place, blur the policy's underpinnings. This is because, pursuant to the Act, the Chair of the PD&C Committee directs practice reviews and also sits as a member of the PAC. In the latter capacity he or she is not entitled to be advised of any information about a member with respect to a practice review. Yet, he or she may have authorized that member's practice review.

40. In the Committee's view the impact of maintaining the confidentiality provisions so that information about practice reviews cannot be shared with other regulatory departments within the Law Society is antithetical to the inclusion of the program in the mandatory regulatory framework of the1999 legislative amendments.

41. Looking at the issue from the public's perspective, it is difficult to justify a regulatory structure in which one department cannot obtain information about a member from another department and Hearing Panels may not have all relevant information.

42. Moreover, the impact of the confidentiality policy on resources should not be under-estimated. One of the implications of the confidentiality policy may be that outside counsel will have to be hired to conduct competence hearings arising out of practice reviews. This is because,

    a. counsel in the discipline department would not be permitted to handle practice review files in which information might be learned that could be used to initiate or further a conduct proceeding; and

    b. it is unlikely there will be sufficient numbers of competence hearings to justify hiring staff counsel specifically to do such hearings.

43. Hiring outside counsel has serious cost implications for the Society and, by extension, for the membership at large, and should only be done when other alternatives are not available or appropriate. Clearly, since staff in the discipline department handle capacity hearings, they would be capable of handling competence hearings if the confidentiality policy were reversed. It is estimated that it would not be unusual for outside counsel fees to average about $25,000 per file. If the Law Society conducts six proceedings a year, this would amount to $150,000 per year in outside counsel costs.

44. As indicated elsewhere in this report, nothing in the Committee's recommendations with respect to the confidentiality policy would alter the remedial focus of the program. Practice review staff are not part of the Investigations or Discipline Departments. They are part of the Professional Development and Competence Department. They operate the program from the perspective of identifying practice weaknesses and providing recommendations and assistance to the member to correct the deficiencies. They are not seeking to shift members from practice review into the conduct stream. Their purpose is to enhance members' competence so as to lessen or eliminate their involvement with regulatory processes.

Other Jurisdictions

45. Convocation requested information concerning the practices of other jurisdictions. Inquiries were made of seven other Canadian law societies all of which permit the internal sharing of practice review information and the use of such information in discipline proceedings, where necessary (See Appendix 2). Alberta sends a confidentiality statement to all members involved in practice review. While emphasizing the remedial focus of the program and that information should not be disclosed outside the Law Society the statement provides:

> Information acquired in the course of Practice Review proceedings is accessible to all departments of the Law Society and may be referred to other departments. The information is to be used only in relation to Law Society proceedings where the lawyer in question is the subject of the proceedings, and for no other purpose. (full statement set out at the end of Appendix 2)

46. In British Columbia a member is ordered into practice review by the Practice Standards Committee. Information learned in practice reviews may be shared within the Law Society. Where there are recommendations to restrict the member's practice rights the matter proceeds to discipline. In practice, few referrals to discipline are made because the remedial focus of the program results in alternate routes being taken. As seen on the chart, this appears to be the experience in most jurisdictions where the fact that such information can be shared has not resulted in the practice review process being used as a discovery process for the conduct stream.

47. The experience of these other law societies further persuades the Committee that open communication among departments within a law society does not undermine the remedial goals of practice review, does not undermine member willingness to cooperate with efforts to improve their competence, and is important to effective self-regulation in the public interest.

48. The College of Physicians and Surgeons, the Royal College of Dental Surgeons of Ontario and the Institute of Chartered Accountants of Ontario all have random peer assessment or practice inspection programs. These are not "for cause" reviews as is the case in the Law Society's practice review program. Through these programs members of the profession are randomly chosen to have their practices assessed. There is no disclosure of information from the inspection or assessment to the discipline branch. Yet, even in these "random" programs, if the inspection or assessment reveals a failure to maintain professional standards that is serious enough, the matter is to be reported to the disciplinary branch for an investigation. Although not informed of the particular issue, the discipline stream is alerted to the fact that the member's conduct is being questioned so that it can conduct an investigation if it chooses.[7]

Committee's Recommendation

49. Having considered the implications of the continued application of the practice review confidentiality policy with respect to internal Law Society communications, the Committee remains of the view that the policy should be reversed to permit the free flow and use of information within the Law Society and in proceedings. In this way, Ursula Stojanowicz, and the most effective results can be obtained both in the members' and the public's interest.

50. The Committee is of the view, however, that such change in policy should apply on a "going-forward" basis, so as not to affect those practice reviews currently underway where the members were advised of the existence of a confidentiality policy.

51. The Committee also recommends that the Law Society provide members with a confidentiality policy document along the lines of that provided by the Law Society of Alberta.

Request to Convocation

52. Convocation is requested to consider whether,

a. to accept the Committee's recommendation and reverse its September 1999 policy so that confidentiality of practice reviews would cease to apply with respect to internal Law Society communications, permitting the free flow and use of information among regulatory departments and in proceedings; or

b. continue the policy.

53. Convocation is further requested to consider whether, in the event it decides to revoke the policy of confidentiality with respect to internal communications, the decision will apply to,

a. practice reviews currently ongoing; or

b. those commenced after the policy is changed, as the Committee recommends.

b(i). What should the policy be with respect to external communications and specifically, should the fact that a member is in practice review be confidential or public?

54. Pursuant to section 49.12(1) in Part II of the Act,

> A bencher, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, *review*, search, seizure or proceeding under this Part. [emphasis added]

[7]The approach used by the Law Society's investigations department to "re-investigate" information revealed during a spot audit has some similarity to the approach used by these professions.

55. The Law Society does not disclose to the general public *the fact* of an investigation. This is in part because many possible results may flow from such an investigation, including a determination that no further action should be taken against the member. A practice review is also considered to be an investigation into a member's practice and is included under the provisions of section 49.12. As such, if the fact that an investigation is taking place is not disclosed it is arguable that the fact that a practice review is underway should also remain confidential from the general public.

56. The Committee accepts this analysis and is of the view that the fact that a member is in practice review should not be disclosed to the public. The practice review process involves an analysis of the member's practice and results in recommendations to improve competence-related deficiencies, all in the public interest. As such, the member is under some scrutiny during this period, even if the public is not notified of the fact of the practice review. Moreover, the results of a practice review may be that no recommendations or only minor recommendations for improvement are suggested, yet the consequences to the member may be far more serious if the fact of the investigation is made public.8

Request to Convocation

57. Convocation is requested to consider whether the fact that a member is in practice review should,

a. be made public; or

b. not be made public, as the Committee recommends.

b(ii). Should the terms of a proposal order be confidential or public?

58. As described above, following the completion of a practice review, recommendations may be made to the member and may be included in a proposal order. If the member accepts the terms of the proposal order it is then presented to a single bencher, appointed by the Chair of the PD&C Committee, to be reviewed and finalized. Once made the order is enforceable in the same manner as any other Law Society order. In the event of a breach of the order a Hearing Panel may suspend the member.

59. Currently, there is no policy as to whether the fact of the proposal order, or its terms, should be public.

60. Proposal orders may contain a wide range of provisions for improvement of a member's practice, ranging from suggestions for better filing and tickler systems, or attendance at CLE, for example, to much more significant provisions that, for example, restrict a member from practising in certain substantive areas, or require a member to practise only in association with others.

61. In considering whether information concerning the proposal order should be public it is important to balance the remedial component of the program with the need to ensure the public is protected. In the Committee's view, if the recommendations are directed at improving the management of the practice or the nature of the members' approach to clients, without limiting the member's right to practise, such information can properly remain confidential. The public interest is protected by,

a. the fact that a proposal order has been agreed to in order to address deficiencies;

b. the efficient and appropriate time line provided to the member by the end of which the member is to have addressed the deficiencies;

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[8]In its February report the Committee indicated that the lay bencher on the Committee raised a concern about this issue on behalf of the CRCs. She indicated that if a practice review cannot be disclosed for the reasons set out above, then the CRC would not be able to advise a complainant, whose complaint is not being pursued by the Law Society, that steps are being taken to address the quality of legal services provided by the member, through a practice review. As will be seen in the discussion in section (e) the lay bencher's concerns have now been somewhat addressed so that she does not oppose the proposal to not disclose to the public the fact that a member is in practice review.

c. the ongoing monitoring of the member's progress under the terms of the order; and

d. the remedies available to the Law Society if the member is unwilling or unable to improve.

Because no limitations have been placed on the member's right to practise, it must be assumed that the deficiencies are not so severe as to endanger the public.

62. If, on the other hand, the members' rights and privileges are limited by virtue of the order, it is the Committee's view that it would be contrary to the public interest not to reveal that fact to a member of the public or another lawyer inquiring about the member's standing with the Law Society. Such limitation or restriction goes fundamentally to the member's competence to provide legal services. If there is disclosure of such limitations or restrictions, if members of the public in need of a family lawyer, for example, contact the Law Society to inquire about a particular lawyer they can be told that he or she is restricted from practising family law.

63. In practice, such a "balancing approach" would mean that in response to inquiries about a member's practice, where the proposal order does not limit the member's rights, the Law Society would simply indicate that there are no limitations on the member's rights and privileges. Where such limitations exist they would be disclosed.

64. The final issue in this regard is whether the Law Society should publish the fact that there are limitations on the member's right to practise, as is done where there is a finding of professional misconduct or conduct unbecoming a barrister and solicitor. The alternative is to take a more passive approach, simply responding to inquiries should they be made.

65. There is a distinction between a conduct hearing (or even a competence hearing) and a proposal order, in that at the conclusion of a hearing a finding is made against the member, whereas this is not the case with the proposal order, which is a consensual process. The member is co-operating with a process designed to ameliorate practice deficiencies and, as such, the more passive approach may be in the public interest, to encourage that co-operation. Moreover, since the member is under scrutiny during the term of the proposal order there is less likelihood, in any event, that the member will breach the restrictions.

66. The Committee is of the view that where limitations are placed on the member's right to practise, that information should be public. As to whether the Law Society should publish the names of such members or simply provide the information to a member of the public or the profession who contacts the Law Society, the Committee is of the view that for a period of 18 months the Society should take the more passive approach, reviewing the decision at the end of that time. In this way, there is an opportunity to assess the implications of the passive approach.

Request to Convocation

67. Convocation is requested to consider whether,

a. only a proposal order that limits a member's right and privileges should be made public, as the Committee recommends; or

b. all proposal orders should be made public.

68. Convocation is further requested to consider whether, in the event it decides that a proposal order that limits a member's rights and privileges should be public,

a. such information should be released only on request, as the Committee recommends; or

b. the Law Society should publish such information.

69. Convocation is further requested to consider whether, if such information should be made public only on request, this decision should be reviewed in September 2003, as the Committee recommends.

c. Should the fact that a competence hearing has been authorized be made public generally, or to the complainant(s) only, as is currently the case?

70. With the authorization of PAC the Law Society may apply to the Hearing Panel for a determination of whether a member is failing or has failed to meet standards of professional competence. A request for authorization could occur either where a member has refused to co-operate with the practice review or consent to a proposal order following a practice review, or in circumstances where there has been no practice review. The Rules of Practice and Procedure make provision for how competence proceedings should proceed. Appendix 5 contains section 3.04.1 of the Rules of Practice and Procedure.

71. Given that practice reviews and competence hearings will in most instances arise out of a series of complaints or competence-related problems, a complainant may not be readily identifiable. To the extent that there is a complainant or complainants, however, the Rules of Practice and Procedure require that after the member is served with the application, the Society shall, where practicable, inform a complainant of the fact of the application.

72. Convocation elected to treat professional competence and capacity proceedings differently from conduct proceedings in the Rules of Practice and Procedure. Unlike conduct hearings where, in the normal course, the proceedings are public, competence and capacity proceedings are to be held in the absence of the public. One of the reasons for the approach as it relates to competence is that the goals of the competence provisions are remedial rather than punitive and as such the content of the proceeding should not be open to the public.

73. Perhaps even more importantly, information relied upon in a competence hearing may arise not just from individual complaints, but from the revelations made in the course of a practice review that reveal competence-related deficiencies in a number of areas and with respect to a wide range of client files. As such there may be issues of protecting solicitor-client privilege that make the *in camera* nature of the proceedings critical.

74. It is not clear, however, whether this confidentiality should extend to *the fact* of a proceeding having been authorized.

75. In assessing whether or not to make public the fact that a competence hearing has been authorized the following factors are relevant:

    a. Unlike a practice review, the competence hearing is not an investigation. Rather, it is the consequence of an investigation and has only come about because PAC, whose members are all benchers, is satisfied that there is sufficient evidence to go forward.

    b. By and large competence proceedings are engendered not by single incidents, but by a course of continuing conduct that demonstrates serious and ongoing competence-related deficiencies and an inability or unwillingness to rectify the problems.

    c. It may be argued that the remedial character of competence proceedings is illustrated by pre and post-hearing features, not by the hearing *per se*. The practice review process has important remedial features, designed to assist a member to improve his or her practice and thereby avoid a competence hearing. If a member is found to have failed to meet standards of professional competence after a hearing the remedies available to Hearing Panels are broad and largely remedial in nature. Thus, making public the fact of a competence hearing may not interfere with the remedial nature of the process.

d. In and of itself it cannot be argued that a member's reputation is potentially less harmed by the fact of a conduct proceeding being made public as opposed to a competence proceeding. No finding against the member has yet been made in the conduct hearing, yet the fact of the proceeding is nonetheless revealed to a member of the public who asks. Moreover, the Law Society regularly forwards information about upcoming conduct hearings and the conduct allegations against members to approximately 70 media outlets.

e. Despite all these factors, however, Convocation must have perceived a difference in the nature of competence proceedings, that resulted in a decision that they be held *in camera*. Arguably, in keeping with that approach the extent to which information about the process is made available generally should be less than that done in conduct proceedings. This could mean that either no information is given to the public (as is the case with capacity proceedings) or information is provided if a member of the public or the professions seeks it out, but is not generally published for the public's or the profession's information.

76. The Committee is of the view that so long as competence hearings are to be held *in camera*, information about the fact that a competence hearing has been ordered against a member should continue to be made known to the complainant(s) only. It would make little sense, in any event, to publish the fact of the competence hearing, but then not allow anyone to observe it, as must be the result under the current rules.

Request to Convocation

77. Convocation is requested to consider whether the fact that a competence proceeding has been authorized,

a. should continue to be made known to the complainant(s) only, as the Committee recommends; or

b. should be made available to members of the general public and the profession.

78. If the information should be made public, which is not the Committee's recommendation, Convocation is further requested to consider whether it should be made available,

a. on request only; or

b. through the Law Society publishing such information.

d. Under what circumstances should the order in a competence proceeding be public?

79. If Convocation agrees with the view that where a proposal order limits a member's rights and privileges that fact should be made public, then it is inconsistent to continue to have Rule 3.04.1(6) of the Rules of Practice and Procedure, which leaves it in the discretion of the tribunal to determine which aspects of the order should be made public and which aspects should be revealed to the complainant(s). It is arguable that there is an even greater responsibility to make known to the public limits on a member's rights after an adjudicated decision in a competence hearing than there is with respect to a proposal order, which is a consensual document.

80. Even capacity proceedings do not follow the approach used for competence hearings. Instead, where the Hearing Panel makes an order suspending *or limiting* the members' rights, the order is a matter of public record, but the reasons are not to be made public.

81. If Convocation agrees that these types of orders should be public, another issue is whether the orders should be published, or whether the information should simply be made available upon request. Given that a finding against a member will now have been made it is difficult to contemplate how the public interest is served unless the order is published, as is the case with conduct orders.

82. Further, given Convocation's decision in January 2002 that orders in conduct proceedings should be published in the *Ontario Lawyers Gazette*, without waiting for the disposition of any appeal, the Committee is of the view that the procedure for competence orders should follow the same approach.

Request to Convocation

83. Convocation is requested to consider,

a. whether in professional competence proceedings where a tribunal suspends *or limits* the member's rights and privileges, the order and the decision should be public, as the Committee recommends;

b. if the answer is yes, whether the Law Society should publish the information, as the Committee recommends, or simply make it available to those members of the public who inquire about members' status; and

c. if the Law Society should publish the information, whether it should do so before the expiry of the period for filing an appeal from the decision, as the Committee recommends, or after.

e. Should Complaints Review Commissioners (CRCs), in appropriate circumstances, inform a complainant whose complaint is not being proceeded with that a member is in practice review or that the CRCs are requesting that the member enter practice review?

84. As mentioned in section b(i) above, the Complaints Review Commissioners have raised the issue of whether they should be able to indicate to complainants whose complaints are not being proceeded with that,

a. the member against whom they have complained is in practice review; or

b. that the CRCs will be requesting that the member be directed into practice review.

85. The original practice review process was developed, in part, as a result of concerns expressed by lay benchers that there was a gap between the threshold necessary to authorize a discipline proceeding against a member and situations in which the competence-related deficiencies of a lawyer were interfering with his or her ability to provide proper service to the public.

86. The complaints review process is designed to provide an additional examination of the way in which a complaint has been addressed by the Law Society. Among the steps the CRCs can take is to request that, even where the individual complaint is not founded, the member be directed into a practice review to address competence-related deficiencies.

87. The Committee's January 2000 policy, reported to Convocation for information, respecting the process that should be followed when CRCs wish to request that a member be considered for practice review, is as follows:

a. The CRCs will be provided with information on how the process for mandatory practice review operates;

b. Where a CRC is considering a request for a practice review, the CRC will notify staff and a member profile will be prepared with a staff recommendation on whether the request should go forward to the Chair or Vice-Chair of the PD&C Committee.

c. On the basis of the profile and staff recommendation the CRC would determine whether he or she wishes the request for a practice review to go forward. If the CRC and the staff agree that it should not go forward, the matter is at an end.

d. If the CRC considers that the request should go forward, but the staff disagrees, the Secretary will make the request to the Chair or Vice-Chair of the PD&C Committee, with the reasons for and against the request being set out in the material, and indicating that the request comes from the CRC.

e. *The Chair or Vice-Chair will then determine whether he or she is required to direct a practice review in accordance with the Act and by-laws.*

88. A member is most commonly directed into practice review when the Chair or Vice-Chair of the Professional Development and Competence Committee is satisfied that there are reasonable grounds for believing that the member has failed or is failing to meet standards of professional competence, within the meaning of the Act. The Chair's decision is based upon a profile of the member setting out the reasons for which the review is sought. If the information satisfies the test the Chair *must* direct the review.

89. Currently, because of the confidentiality policy, the CRCs are not able to tell the complainant either that they will be making a request that the member be directed into practice review, or that the member is already in the program.

90. As expressed by the lay bencher on the Committee on behalf of the CRCs, the complaints process is designed to protect the public and must be meaningful. Members of the public must have confidence in the self-regulatory process. Since practice review is an integral part of the Law Society's regulatory framework there should be some mechanism for informing complainants of it.

91. If Convocation agrees with the view set out in section b(i), above, that the fact that a practice review has been directed should not be public, then it would be inconsistent for CRCs to reveal to complainants that the member is in a practice review. If Convocation agrees with the Committee's view set out in section b(ii) above that where a proposal order limits a member's rights and privileges it should be made public, the CRCs could reveal this to the complainant.

92. Initially, the lay bencher on the Committee was of the view that the fact of a practice review should be public at least to the extent that lay benchers could inform complainants that a member is in practice review. The majority of the Committee was of the view that the CRCs should not disclose either the fact that a member is in practice review or the fact that the CRCs are requesting that a member enter practice review. The Committee has re-considered this issue and is in agreement that a middle ground can be found to provide some information to the complainant.

93. The Committee, including the lay bencher, recommend to Convocation that where the CRCs intend to request that a member be directed into a practice review they be entitled to inform the complainant of that fact. It is true that the fact of a "request" from the CRCs for a member to enter practice review does not necessarily mean the review will be directed. The CRCs would, in appropriate circumstances, inform a complainant,

a. of the existence of the practice review program;

b. that they intend to request that the member be directed into the practice review program;

c. that practice review is a confidential process and the reasons for the confidentiality; and

d. that as a result of confidentiality, if the member is directed into practice review that fact will not be disclosed to the complainant or anyone else outside the Law Society.

This information could be included in the correspondence the CRCs send to the complainant.

94. Although complainants may continue to have concerns about the results regarding their particular complaint, it will be important to be able to reveal an additional process that may be invoked to improve the member's overall service to the public.

95. It is hoped that as the practice review process continues to improve, becomes more stream-lined, is activated at an earlier stage of complaints about a member, and is concluded more expeditiously, it will have a trickle down effect that will result in fewer members demonstrating serious competence-related deficiencies over a lengthy period of time.

Request to Convocation

96. Convocation is requested to consider whether, as the Committee recommends, the CRCs should, in appropriate circumstances, be free to indicate to a complainant that they will be requesting that a member be ordered into practice review, provided that, at the same time, they advise the complainant of,

a. the confidential nature of practice reviews;

b. the reasons for such confidentiality; and

c. that as a result of the policy the complainant will not be entitled to know if the review has been directed.

APPENDIX 1: TRANSCRIPT FROM CONVOCATION DEBATE ON PRACTICE REVIEW (September 24,1999) AND PD&C COMMITTEE REPORT TO CONVOCATION (September 24, 1999)

APPENDIX 2: USE OF PRACTICE REVIEW INFORMATION IN OTHER JURISDICTIONS

APPENDIX 3: TIME GUIDELINES FOR PRACTICE REVIEW

Steps in the Process	Activities in Each Step	Legislative Reference	Time Frame (Guidelines only)
Entry into Practice Review	Where member enters by consent or undertaking or where authorization to be sought from Chair of PD&C, staff prepare authorizing documents. Where member is ordered into PR by conduct or capacity hearing panel or by having provided an undertaking to enter PR as a result of another regulatory investigation, staff considers nature of the review. Where CRC makes recommendation for PR, staff considers / prepares opinion. Staff considers special requirements.	Sec.42 LSA Sec. 35, 40 PD&C (Jan.2000)	up to 30 days from receipt
Authorization	Chair of PD&C considers request for authorization and makes determination. Member receives and signs consent or undertaking to enter PR.	Sec 49.4 (1) By-Law 24, sec.5	Up to 30 days from receipt of request
Initial Contact with Member	Staff reviews file, considers severity and level of issues; assesses member LSUC profile, referral source information and concerns, pattern of poor practices, special requirements; determines basic approach. Member receives PR information and basic management checklist for review. Initial interview between staff and member - explain process, role of reviewer, member encouraged to utilize self-assessment tools and begin to implement practice improvements; efforts to build consensus. Staff develops terms of reference (where appropriate with input of member).	Practice Review Reference Manual	30 -60 days (allow member time to begin making improvements)
Matching	Staff select reviewer through matching process, consider practice size/type/region, check for conflicts. Information package to reviewer and member. Special concerns/requirements noted (e.g., systems advisor, OBAP/LINK, wellness) Reviewer to schedule 1st attendance with member. Staff does follow-up call to member to encourage member to utilize this time period to begin/continue making changes and improvements.	By-Law 24, secs. 4, 6	Up to 30 days (Special needs may extend this time line) cancellation of appointments - policy issues to be considered

Review	Generally a full day attendance at member's office. PR may be completed in with 1 attendance, but may also continue with further attendances. For complex cases staff may consider requiring reviewer to submit a progress report, and attend further before submitting a Final Report.	Sec. 49.4 (2)	Range from 30 -120 days depending upon complexity, cooperation, special concerns
Final Report	Reviewer to prepare and submit the Final Report. Report includes (1) the opinion of whether the member is failing or has failed to meet standards of professional competence; and (2) the recommendations with regard to the member's practice.	By-Law 24, sec.7	Up to 30 days from final attendance

Secretary/ Proposal	Disposition Phase
	Final Report and Recommendations to Secretary - determination of whether
	a) to make recommendations but not include in Proposal for an Order; or
	b) to make recommendations and include in Proposal for an Order.
	
	Copy of report to member.
	
	Notification to member of Secretary's chosen approach.
		Secs. 42 (3), (4), (5)
		Sec. 44
		By-Law 24, secs. 8, 9
		Form 24A
			If (a) within 30 days of receipt of Report.
			
			If (b) notice of decision and Proposal for an Order within 30 days of receipt of report

Proposal /Reply	Member is sent Proposal for an Order and notifies whether in agreement. Where member does not consent Secretary must determine next steps (eg. seek authorization for competence hearing)	Sec. 42(6) By-Law 24, sec. 9 (4), (5), (6), (7), (8) Sec. 43	not later than 30 days after the date specified on the notice to the member unless extension granted

Order	Secretary shall provide to the elected bencher the Final Report and member's reply; the Proposal and member's reply to Proposal Bencher may, - refuse to make an Order, only upon meeting with member and Secretary - make an Order with modification, only upon meeting with member and Secretary - sign the Order as is without any meeting. - Secretary must provide reasonable notice of any meeting.	Sec. 42 (6), (7), (8) By-Law 24, secs. 10-15	within 30 days

APPENDIX 4: PRACTICE REVIEWER RECOMMENDATIONS

APPENDIX 5: RULE 3.04.1 OF THE RULES OF PRACTICE AND PROCEDURE
Professional Competence Proceedings

3.04.1 (1) A proceeding shall, subject to subrules (2), (5), (6) and (7), be held in the absence of the public if it is a proceeding in respect of a determination of whether a member is failing or has failed to meet standards of professional competence.

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

(3) Unless the proceeding before the tribunal is open to the public as provided by subrule (2), an application for a determination of professional competence shall not be made public by the Society except as required in connection with a proceeding except as provided for in the Act, and except as provided for in subrule (3.1).

(3.1) After the member is served with the application, the Society shall, where practicable, inform a complainant of the fact of the application.

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

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

(6) Subject to subrule (7), where the hearing of an application for a determination of professional competence has been closed to the public, and where the tribunal has made an order limiting the member's rights and privileges, the tribunal shall determine what aspects of the order shall be made public in order to protect the public interest.

(7) Where the hearing of an application for a determination of professional competence has been closed to the public, the Society shall, where practicable, inform a complainant of the tribunal’s decision as to whether the application was established and the tribunal shall determine which aspects of the order shall be made available to a complainant.

INFORMATION
(MATTERS CONSIDERED IN COMMITTEE ON APRIL 11, 2002)

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON FEBRUARY 19, 2002 AND APPROVED BY THE COMMITTEE ON APRIL 11, 2002.

1. The Committee is pleased to report final approval of the following lawyers’ applications for certification, on the basis of the review and recommendations of the Certification Working Group.

Civil Litigation:	Joanna M. Chadwick (Toronto) Richard F. Horak (Toronto) Steven K. Kenney (Kitchener) Connie Reeve (Toronto) Katherine M. van Rensburg
Construction Law:	Charles J. Caza (Oakville) Ian Barclay McBride (Ottawa) Kenneth W. Movat (Toronto)
Criminal Law:	Heather A. McArthur (Toronto)
Environmental Law:	Sarah Powell (Toronto) Katherine M. van Rensburg (Toronto)

Intellectual Property Law:	J. Guy Potvin (Ottawa)
Workplace Safety & Insurance Law:	Richard A. Fink (Toronto)

2. The Committee is pleased to report final approval of the following lawyers' applications for recertification**,** on the basis of the review and recommendations of the Certification Working Group.

Civil Litigation:	Michael F. Boland (Whitby) J. Brian Casey (Toronto) Peter R. Greene (Toronto) R. Scott Jolliffe (Toronto) John Scott Kelly (Toronto) Larry J. Levine (Toronto) Donald H. MacOdrum (Toronto) John W. Makins (London) Thomas A. McDougall (Ottawa) Rod B. Thibodeau (Toronto)
Criminal Law:	Peter F. Kemp (Kingston)
Environmental Law:	Jack D. Coop (Toronto) Stephen Russell Garrod (Guelph)
Family Law:	Robert Craig Snyder (Kitchener)
Intellectual Property Law:	R. Scott Jolliffe (Toronto) Donald H. MacOdrum (Toronto)

STATUS OF WORK ON PRACTICE MANAGEMENT GUIDELINES

1. In October 2001, the Committee provided Convocation with a status report on the development of practice management guidelines that Convocation approved in March 2001 as part of the competence model.

2. The Committee confirmed, at that time, that the guideline development process will be a consultative one and that a preliminary draft of the practice management guidelines would be circulated to an initial small number of groups and individuals throughout the province who would provide comments and suggestions for changes to the draft. Comments received from this group will be incorporated into a second draft, which will then, with Convocation's approval, be provided to legal organizations and to the profession at large for comment. A final draft will then be provided to Convocation for approval.

3. The Committee has reviewed the first draft of the guidelines to be sent to the initial small group of individuals and organizations for their comment. The individuals to whom the draft will be sent for input are all in private practice, located throughout the province and in a wide variety of practices and firm sizes. Their names have been suggested by a variety of people, including members of the PD&C Committee and CDLPA. The Director of Professional Development and Competence is contacting the suggested individuals in person to request their involvement. To date those contacted have expressed interest in the project and a desire to participate in it.

4. It is anticipated that the initial group will receive the draft guidelines within the next few weeks and will be asked to provide their comments by mid-May, 2002.

5. Convocation will continue to be provided with ongoing status reports in the coming months.

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

(1) Transcript from Convocation Debate on Practice Review (September 24, 1999) and PD&C Committee Report to Convocation (September 24, 1999).

(Appendix 1, pages 38 – 59)

(2) Copy of Use of Practice Review Information in Other Jurisdictions.

(Appendix 2, pages 60 – 64)

(3) Copy of Practice Reviewer Recommendations.

(Appendix 4, pages 69 – 74)

Re: Confidentiality Policies of Practice Reviews and Rules Relating to Competence Hearings

It was moved by Mr. Cherniak, seconded by Mr. Hunter that Convocation reverse its September 1999 policy so that confidentiality of practice reviews would cease to apply with respect to internal Law Society communications permitting the free flow and use of information among regulatory departments and in proceedings. (paragraph 52a. on page 25 of the Report)

Carried

ROLL-CALL VOTE

Arnup	For
Banack	For
Bindman	For
Campion	For
Cherniak	For
Crowe	For
Diamond	For
E. Ducharme	For
T. Ducharme	For
Feinstein	For
Finkelstein	For
Gottlieb	Against
Hunter	For
Laskin	For
MacKenzie	For
Minor	For
Mulligan	For
Pilkington	For
Porter	For
Potter	For
Puccini	Against
St. Lewis	For
Simpson	For
Swaye	For
White	For
Wilson	For
Wright	For

Vote: For – 25; Against - 2

It was moved by Mr. Cherniak, seconded by Mr. Simpson that the decision will apply to those practice reviews commencing with the change in policy. (paragraph 53b. on page 25 of the Report)

Carried

It was moved by Mr. Cherniak, seconded by Mr. Simpson that the fact that a member is in practice review should not be made public. (paragraph 57b. on page 27 of the Report)

Carried

It was moved by Mr. Cherniak, seconded by Mr. Hunter that only a proposal order that limits a member's rights and privileges should be made public. (paragraph 67a. on page 29 of the Report)

Carried

It was moved by Mr. Cherniak, seconded by Mr. Feinstein that information of a proposal order limiting a member's rights and privileges be released only on request. (paragraph 68a. on page 29 of the Report)

Mr. Bindman dissented.

Carried

It was moved by Mr. Cherniak, seconded by Mr. Feinstein that the decision that such information be made public only on request be reviewed in September 2003. (paragraph 69. on page 30 of the Report)

Carried

It was moved by Mr. Cherniak, seconded by Mr. Simpson that the fact that a competence proceeding has been authorized should continue to be made known to the complainant(s) only. (paragraph 77a. on page 32 of the Report)

Carried

It was moved by Mr. Cherniak, seconded by Mr. Swaye that in professional competence proceedings where a tribunal suspends *or limits* the member's rights and privileges, the order and the decision should be public. (paragraph 83a. on page 33 of the Report)

Carried

It was moved by Mr. Cherniak, seconded by Mr. Swaye that in professional competence proceedings where a tribunal suspends *or limits* the member's rights and privileges that the order and decision be published. (paragraph 83b. on page 33 of the Report)

Carried

It was moved by Mr. Cherniak, seconded by Mr. Swaye that the order and decision be published before the expiry of the period for filing an appeal from the decision. (paragraph 83c. on page 33 of the Report)

Carried

It was moved by Mr. Cherniak, seconded by Mr. Swaye that the Complaints Review Commissioners should, in appropriate circumstances, be free to indicate to a complainant that they will be requesting that a member be ordered into practice review, provided that, at the same time, they advise the complainant of,

a. the confidential nature of practice reviews;
b. the reasons for such confidentiality; and
c. that as a result of the policy the complainant will not be entitled to know if the review has been directed.

(paragraph 96 on page 37 of the Report)

Carried

Items for Information Only

Report on Specialist Certification Matters Finalized by the Certification Working Group on February 19, 2002 and Approved by the Committee on April 11, 2002

Status of Work on Practice Management Guidelines

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. MacKenzie presented the Professional Regulation Committee Report for approval by Convocation.

Professional Regulation Committee
April 11, 2002

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on April 11, 2002. In attendance were:
Gavin MacKenzie (Chair)

Carole Curtis (Vice-Chairs)
Heather Ross

Todd Ducharme (by telephone)
Patrick Furlong
Avvy Go
Gary Gottlieb
Ross Murray
Marilyn Pilkington
Judith Potter

Staff: Lesley Cameron, Katherine Corrick, Malcolm Heins, David McKillop, Felecia Smith, Andrea Waltman, Jim Varro, Jim Yakimovich.

2. This report contains
- a policy report on a proposed new commentary to the *Rules of Professional Conduct* with respect to joint retainers in the context of mutual wills for spouses/partners[1], and
- an information report on file and caseload management and staffing information in the complaints resolution, investigations and discipline departments.

I. POLICY

PROPOSED NEW COMMENTARY TO RULE 2.04(6) OF THE *RULES OF PROFESSIONAL CONDUCT* ON JOINT RETAINERS FOR MUTUAL SPOUSAL/PARTNER WILLS

A. ISSUE

3. The Committee is presenting two options for a proposed new commentary to rule 2.04(6) of the *Rules of Professional Conduct* on conflicts of interest and joint retainers. The commentary clarifies a lawyer's obligations when retained to prepare wills for spouses or partners based on their shared understanding of what is to be in each will.

B. BACKGROUND

How the Issue Arose

4. An issue was raised by members of the estates bar with Advisory Services on the application of rule 2.04(6) on conflicts of interest and joint retainers to retainers for the preparation of wills for spouses or partners.

5. Rule 2.04(6) reads:

[1]A second estates practice issue, relating to payment of the Law Society's annual fee by retired lawyers acting as estate trustees, will be reported to Convocation in May 2002.

Before a lawyer accepts employment from more than one client in a matter or transaction, the lawyer shall advise the clients that:

(a) the lawyer has been asked to act for both or all of them,
(b) no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned, and
(c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

6. The question is whether the words "a matter or transaction" in the rule are intended to include the preparation of wills for spouses or partners that reflect the parties' shared understanding of what is to be contained in each will. Some members of the estates bar are of the view that preparation of these types of wills for a husband and wife are separate retainers, or that if the preparation of the wills is a joint retainer, the parties should be entitled to waive the requirement that information respecting each will not be treated as confidential.

7. With the November 2000 amendments and change in format to the Rules[2], this issue, which has had some history with the Society's Advisory Services, has been referred to the Society again. As the issue has important implications for the application of rule 2.04(6), it was referred to the Committee.

Specific Issues Relating to Preparation of Wills For Spouses or Partners

8. The Committee was assisted in its review of this issue by an informative memorandum prepared by Felecia Smith, Senior Counsel, Advisory Services and Advisory Services counsel, Andrea Waltman.[3] The memorandum identified the questions relayed to the Law Society by members of the estates bar, discussed related legal issues, and provided options for the Committee's consideration on how the issue might be addressed.

9. The following summarizes the primary issues:
   a. Rodney Hull, Q.C., in an article prepared in July of 1992 for the Errors and Omissions Bulletin of the Law Society took the position that the preparation of spousal wills constitutes a joint retainer. He suggested that a lawyer should not prepare any subsequent will or codicil for either spouse without disclosure of this request to the other spouse. In that situation, Mr. Hull suggested advising the clients at the outset that if one of them later chooses to change his or her will, and approaches the lawyer to do so, the lawyer will be obliged to inform the other spouse of this intention. If the parties agree, then the lawyer may act for both, and if the parties do not so agree, the lawyer should decline to act for either.
   b. In determining whether a joint retainer exists, arguably, if the parties attend at the lawyer's office with common estate planning goals, which may necessitate the transfer of property between spouses, or into new entities, such as spousal or family trusts, the legal interests of the parties are being affected by the retainer. Accordingly, the definition of "matter or transaction" may be construed broadly, to encompass the expectations of the clients that each of their rights are being protected. As such, estate planning for spouses culminating in the preparation of wills for each of the spouses constitutes "a matter or transaction".
   c. Opinion varies on whether a lawyer must advise one spouse when the other spouse approaches the lawyer to change the will, even if the lawyer advises that he or she cannot act for the other spouse. One view is that although the preparation of spousal wills is a joint retainer, proposed changes to either of the spouse's wills is a new and separate retainer requiring no disclosure to the other spouse, but creating a conflict of interest with respect to the other spouse (who would be considered a former client), barring the lawyer from acting without the consent of the other spouse, but requiring no disclosure if the lawyer declines to act. The other view is that the sharing

[2]This issue, prior to the 2000 revisions to the Rules, was dealt with in a commentary to Rule 5 on conflicts of interest. As noted above, it has now been incorporated in a rule.

[3]The memorandum appears at Appendix 1.

of information survives the execution of the wills. As such, the lawyer would be required to inform the other spouse in the event he or she is approached to make changes to the wills arising out of the initial joint retainer, to obtain the consent of both parties to act, but also to inform the other spouse. But the lawyer would be required to advise the other spouse even if the lawyer refuses to act.

A Proposed New Commentary and Call for Input

10. In November 2001, the Committee reported to Convocation on its initial review of rule 2.04(6) as related to the preparation of spousal or partner wills. The Committee's preliminary conclusion was that spouses or partners who together retain a lawyer to prepare wills for both of them, on a shared understanding of what is to appear in each will, jointly retain the lawyer. In such circumstances, the lawyer must make the appropriate disclosure, including advice to the clients that if one of the clients returns to discuss the will, or has an intention to vary it, the lawyer must inform the other party to the retainer and cannot act unless both parties consent.

11. The Committee considered that the following would indicate a joint retainer:
- the parties attend at the lawyer's office at the same time;
- the parties meet with the lawyer together;
- the parties appear to have a common goal, and instruct the lawyer together on achieving that goal;
- the wills are executed at the same time;
- one account is rendered to both clients;
- a single reporting letter is usually prepared for both clients.

12. The Committee did not consider it appropriate that a waiver by the clients of the requirement to share information be an option. The Rules as presently drafted do not include an ability to grant such a waiver. The Committee determined that, practically, not sharing information between the spouses or partners in an estate planning matter would defeat the efficacy of the service the lawyer is required to provide in advising the clients and fulfilling their instructions. Sharing of information about each spouses' assets, for example, would almost certainly be required to achieve an effective estate plan for both. Further, if a waiver were contemplated, the Committee acknowledged that the spouses may have to incur additional expense to obtain independent legal advice on the issue of the waiver before agreeing to such an arrangement.

13. The Committee determined that to provide additional guidance to members in these situations, a commentary should be added to rule 2.04(6) explaining the obligations of the lawyer. The Committee approved a proposed draft commentary prepared by staff, which included input from lawyer Paul Perell, the principal drafter of the current Rules. The proposed commentary reads as follows:

> A lawyer who receives instructions from spouses or partners as defined in the *Substitute Decisions Act, 1992* S.O. 1992 c. 30 to prepare one or more wills for them based on their shared understa3`nding of what is to be in each will should treat the matter as a joint retainer and comply with subrule (6). At the outset of this retainer, the lawyer should advise the spouses or partners that if one of them were later to contact the lawyer with different instructions, for example with instructions to change or revoke a will without informing the other spouse or partner, the lawyer has a duty to inform forthwith the other spouse or partner of the contact and to decline to act unless both spouses or partners agree.
>
> After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with subrule (8).[4]

[4]Subrules 2.04(7) and (8) read:

> (7) Where a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts joint employment for that client and another client in a matter or transaction, the lawyer shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

14. The Committee acknowledged that some lawyers in estates practices may have views that differ from the conclusion reflected in the proposed commentary, or views on how the rule on joint retainers might be interpreted in the context of spousal or partner wills. Accordingly, the Committee thought it appropriate to seek the views of members of the profession, particularly those in the estates bar, on the proposed commentary before a final version is presented to Convocation for discussion.

15. The Committee published the commentary in the *Ontario Lawyers Gazette*, the *Ontario Reports*, and on the Law Society's web site in December 2001 and January 2002, requesting comments on the proposed commentary. The Committee also sought comment from the Ontario Bar Association's Trusts and Estates Section.

Results of the Call for Input

16. Thirty six members or member groups commented on this issue. The responses in general were thoughtful assessments of the commentary and the issues that prompted it.[5]

17. Although a number of respondents disagreed with the draft commentary or questioned the need for it, others agreed with the proposal to the extent that the joint retainer rule applies. But some respondents had some difficulty with certain aspects of the proposal. For example,
    - some respondents said that the lawyer should not have to contact a spouse when the other spouse returns to change the will in situations in which the marriage has broken down or in which the spouse is suffering abuse
    - others said that the lawyer should not have to inform the other spouse if the lawyer refuses to act for the returning spouse.

C. *THE COMMITTEE'S DISCUSSION AND CONCLUSIONS*

18. While the Committee acknowledged that a number of respondents disagreed with the approach taken in the commentary, it felt that none of the responses offered a compelling argument against the view that in these circumstances a joint retainer exists.

19. The Committee noted, however, that the primary concern among those who generally favoured the commentary was with the lawyer's obligation to advise a spouse that the other spouse had contacted the lawyer to change the will, in circumstances in which the lawyer chooses not to act.

20. The Committee considered two ways of looking at the circumstances in which one spouse contacts the lawyer after execution of the wills, which are reflected in the options discussed below.

The First Option

21. A joint retainer for preparation of wills for the spouses or partners ends when the wills are executed. The only continuing obligation of the lawyer is not to act against a former client in the same matter or transaction without consent (rule 2.04(4) [6]). If one of the spouses later contacts the lawyer to make a

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(8) Where a lawyer has advised the clients as provided under subrules (6) and (7) and the parties are content that the lawyer act, the lawyer shall obtain their consent.

[5] A summary of the responses, without attribution, appears at Appendix 2.

[6] (4) A lawyer who has acted for a client in a matter shall not thereafter act against the client or against persons who were involved in or associated with the client in that matter

(a) in the same matter,

(b) in any related matter, or

change to the will, that contact is a new matter. The lawyer would be prevented from acting on the matter because it may adversely affect the interests of a former client. In the absence of the other spouse's consent, the lawyer cannot act, but if he or she decides not to act, the lawyer is not obliged under the rule to contact the other spouse to advise of the contact.

22. This approach is consistent with the current rules and affirms the intent of rule 2.04(4) for joint retainers for preparation of wills for spouses or partners. The proposed commentary, however, would require the following amendment to implement this approach:

> A lawyer who receives instructions from spouses or partners as defined in the *Substitute Decisions Act, 1992* S.O. 1992 c. 30 to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint retainer and comply with subrule (6). At the outset of this retainer, the lawyer should advise the spouses or partners that if one of them were later to contact the lawyer with different instructions, for example with instructions to change or revoke a will without informing the other spouse or partner, the lawyer has a duty ~~to inform forthwith the other spouse or partner of the contact and~~ to decline to act unless both spouses or partners agree.
>
> After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with subrule (8).

The Second Option

23. This option mirrors the first option to the point where the lawyer has been contacted by a spouse to change a will. In such situations, as above, the lawyer cannot act without disclosure and consent, but in circumstances in which the lawyer decides not to act, the lawyer must still contact the other spouse to advise of the spouses's contact, but that the lawyer is not acting. Thus, the difference between this option and the first is an obligation in addition to that in rule 2.04(4) to contact the other spouse, even if the lawyer does not act.

24. Although the proposed commentary as originally drafted would not require amendment for this option (subject to a minor change noted below), it is *not* consistent with the rules, as it adds an obligation as described above. Currently, if a lawyer does not act against a former client in the context of rule 2.04(4), no disclosure of that fact is required to be given to that client. If the second option were adopted, an amendment to rule 2.04(4) would be required.

25. This approach, while adding an obligation to the rule, would serve to notify a spouse of developments that may adversely affect that spouse's interests, which the proponents of the approach see as part of the lawyer's role in these circumstances. They acknowledged that a spouse, knowing the lawyer's obligation in this respect, may simply choose to engage a different lawyer for this purpose. It was felt, however, that that fact should not determine the obligations of the lawyer who prepared the wills.

26. As a matter of clarifying the duty to contact the other spouse, the Committee determined that the lawyer should use reasonable efforts to make the contact. The commentary with this change would read:

> A lawyer who receives instructions from spouses or partners as defined in the *Substitute Decisions Act, 1992* S.O. 1992 c. 30 to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint

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(c) save as provided by subrule (5), in any new matter, if the lawyer has obtained from the other retainer relevant confidential information

unless the client and those involved in or associated with the client consent.

retainer and comply with subrule (6). At the outset of this retainer, the lawyer should advise the spouses or partners that if one of them were later to contact the lawyer with different instructions, for example with instructions to change or revoke a will without informing the other spouse or partner, the lawyer has a duty <u>to make reasonable efforts</u> to inform forthwith the other spouse or partner of the contact and to decline to act unless both spouses or partners agree.

After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with subrule (8).

The Committee's Conclusion

27. The Committee was almost evenly split on which option should be recommended, though a slight majority preferred the first option. Accordingly, the Committee is providing both options to Convocation for its decision.

Other Issues

28. The Committee also discussed the scope of the advice that a lawyer should provide to spouses or partners who retain the lawyer to prepare their wills, beyond the disclosure discussed in the proposed commentary.

29. As this matter bears on issues separate from the ethical guidance appearing in the Rules and commentary[7], the Committee thought it more appropriate to have these matters dealt with outside of the Rules and commentary. For example, it may be useful to include discussion of this topic in advisory material to the profession or in practice guidelines that may be developed.

D. DECISION FOR CONVOCATION

30. Convocation is requested to adopt one of the following versions of the proposed new commentary to rule 2.04(6):

<u>Version 1:</u>
A lawyer who receives instructions from spouses or partners as defined in the *Substitute Decisions Act, 1992* S.O. 1992 c. 30 to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint retainer and comply with subrule (6). At the outset of this retainer, the lawyer should advise the spouses or partners that if one of them were later to contact the lawyer with different instructions, for example with instructions to change or revoke a will without informing the other spouse or partner, the lawyer has a duty ~~to inform forthwith the other spouse or partner of the contact and~~ to decline to act unless both spouses or partners agree.

After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with subrule (8).

<u>Version 2 (</u>which would require an amendment to rule 2.04(4) (not yet drafted):
A lawyer who receives instructions from spouses or partners as defined in the *Substitute Decisions Act, 1992* S.O. 1992 c. 30 to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint retainer and comply with subrule (6). At the outset of this retainer, the lawyer should advise the spouses or partners that if one of them were later to contact the lawyer with different instructions, for example with instructions to change or revoke a will without informing the other spouse or partner, the lawyer

[7]E.g. the substantive law related to domestic contracts and the competence of the lawyer's advice to permit the clients to properly instruct the lawyer.

has a duty to make reasonable efforts to inform forthwith the other spouse or partner of the contact and to decline to act unless both spouses or partners agree.

After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with subrule (8).

II. INFORMATION

FILE AND CASELOAD MANAGEMENT AND STAFFING INFORMATION IN THE COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE DEPARTMENTS

31. Senior regulatory staff reported to the Committee on caseload management in the Complaints Resolution, Investigations and Discipline Departments. The reports appear at Appendix 3. These reports are prepared monthly for review by the Committee as part of its monitoring function respecting file management. The Committee receives general information and statistics on file management and caseloads in the departments noted above.[8] The reports in this report cover the period to the end of March 2002.

APPENDIX 1
ADVISORY SERVICES
MEMORANDUM

TO: Professional Regulation Committee

FROM: Andrea Waltman, Advisory Counsel
Felecia Smith, Senior Counsel

DATE: September 6, 2001

SUBJECT: Joint Retainers

INTRODUCTION

Advisory Services receives many inquiries about joint retainers in the context of the preparation of spousal wills. There have long been divergent views about this within the estates bar. Recently the Society has received two formal requests for the interpretation of the new joint retainer rule, and its applicability in the spousal will context.

ISSUES

1) Does estate planning for spouses that culminates in the preparation of wills for each of them constitute "a matter or transaction" within the meaning of rule 2.04(6)?

2) If the answer to #1 is yes, would it be appropriate for the spouses to execute a waiver of the requirement to share information?

[8]The chair, as a member of the Proceedings Authorization Committee, is not a member of the Hearing Panel and accordingly does not and cannot have adjudicative responsibilities. Information received by the Committee, as reflected in the reports appended to this report, does not itemize specific cases.

3) If the answer to #2 is no, what obligations does a member have with respect to advising one of the spouses that the other spouse has approached the member to change his or her will, either before or after its execution?

BACKGROUND

These matters have been at issue for many years and remain the subject of debate among estates practitioners. The debate was brought to the forefront as a result of an article prepared in July of 1992, by Rodney Hull, Q.C. for the Errors and Omissions Bulletin of the Law Society of Upper Canada ("the Society"). In his article, Mr. Hull takes the position that the preparation of spousal wills constitutes a joint retainer. Accordingly, Mr. Hull suggests that a member should not prepare any subsequent wills, nor codicils for either of the spouses without disclosure of this request to the other spouse. In order to avoid being placed in that situation, Mr. Hull suggests advising the clients at the outset that if one of them later chooses to change their will, and approaches the member to do so, he or she will be obliged to inform the other spouse of this intention. If the parties agree, then the member may act for both, and if the parties do not so agree, the member should consider declining to act for both[9].

In January of 1993, following Mr. Hull's article, correspondence was received by the Society from the then Executive of the Trusts and Estates section of the Canadian Bar Association -Ontario [now the OBA] ("the Executive"). The Executive indicated that some of the members of the section took issue with Mr. Hull's position, and inquired as to whether Mr. Hull represented the position of the Society on this matter. In response to this inquiry, it was decided that a policy should be established for dealing with this situation. Although the issue was subsequently raised for discussion at the Professional Conduct Committee, no formal decision was ever made, nor was any external policy ultimately formulated. An informal policy for dealing with inquiries to the Practice Advisory Service from members was adopted, to the effect that if at the outset of the retainer it was agreed that there could be no confidential information between the spouses, and this was acknowledged in writing by the spouses, then the spouse must be informed of any changes proposed by the other spouse. In the event that this has not been done, the member should simply refuse to draw the new will, but should *not* tell the other spouse. Stephen Traviss, then Senior Counsel, Professional Conduct revisited the issues in an October 27, 1994 paper for a continuing legal education seminar. Once again, Mr. Traviss simply sets out the issues and reinforces the fact that "this is just one area where there is a lack of unanimity amongst estate lawyers", but does not come to a formal conclusion as to the position of the Society[10].

With the November 2000 amendments and change in format to the Rules, these issues have been resurrected. Mr. Donald Carr, Q.C. has written to the Society requesting a formal interpretation of the joint retainer rule and its applicability to the preparation of spousal wills. Mr. Glenn Davis, editor of *Deadbeat*, the newsletter for the Trusts and Estates section of the OBA has made a similar inquiry. Appended to this memo is correspondence from both Mr. Carr (Appendix "A") and Mr. Davis (Appendix "B").

RULES

Rule 2.04 (6) derives from paragraph 5 of the Commentary to former Rule 5, which provided, in part:

> Before the lawyer accepts employment for more than one client in *a matter or transaction* (emphasis added), the lawyer must advise the clients concerned that the lawyer has been asked to act for both or all of them, that no information received in connection with the matter can be treated as confidential so far as any of the others are concerned and that, if a conflict develops which cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely...If following such disclosure, all parties are content that the lawyer act, the latter should obtain their written consent, or record their consent in a separate letter to each....

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[9]Rodney Hull, Errors and Omissions Bulletin, Number 5, July 1992, Law Society of Upper Canada

[10]Stephen Traviss, Law Society Rules of Professional Conduct: Avoiding the Pitfalls in an Estate Practice, October 27, 1994, p. 8-13

Although the wording of rule 2.04(6) is quite similar, the above commentary has now become a rule. Rule 2.04(6) provides:

> Before a lawyer accepts employment from more than one client in *a matter or transaction* (emphasis added), the lawyer shall advise the clients that:
>
> (a) the lawyer has been asked to act for both or all of them,
> (b) no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned, and
> (c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

DISCUSSION

Issue #1 Does estate planning for spouses that culminates in the preparation of wills for each of the spouses constitute "a matter or transaction" within the meaning of rule 2.04(6)?

In order to answer this question, it is essential to resolve the definition of "a matter or transaction", as these are not defined terms under the Rules. In his letter, Mr. Carr inquires whether the preparation of two separate wills for two separate clients, can be considered *a* [single] matter or transaction, since a technical reading of the Rule seems to connote the singular.

Definition

In its *Solicitor's Rules*, the Law Society of New South Wales has similar provisions dealing with joint retainers. Rule 9.2 provides in part that "a practitioner who intends to accept instructions from more than one party to *any proceedings or transaction* must be satisfied, before accepting a retainer to act, that each of the parties" is aware of certain facts. "For the purposes of [this rule], 'proceedings or transaction' mean any action or claim at law or in equity, or any dealing between parties, which may affect, create, or be related to, any legal or equitable right or entitlement or interest in property of any kind"[11].

Accordingly, if this definition were to be applied to the Ontario rule, the change in beneficiary status of a client could be construed as something which would affect the legal or equitable rights of a party.

In American Bar Association Formal Opinion 342 (Nov.24, 1975), the word "matter" refers to "a discrete and isolatable transaction or set of transactions between identifiable parties".

Black's Law Dictionary (seventh edition) defines "matter" as "a subject under consideration", and "transaction" as: "1. The act or an instance of conducting business or other dealings. 2. Something performed or carried out; a business agreement or exchange. 3. Any activity involving two or more persons".

The *Concise Oxford Dictionary* (ninth edition) defines matter as "an affair or situation being considered", and transaction as "a piece of business done; a deal".

To further assist in defining the terms "matter or transaction", resort may be had to some of the indicia of a joint retainer:

1. the parties attend at the lawyer's office at the same time;
2. the parties meet with the lawyer together;
3. the parties appear to have a common goal, and instruct the lawyer together on achieving that goal;
4. the wills are executed together;
5. one account is rendered to both parties; and
6. one reporting letter is usually prepared for both parties.

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[11] Solicitors' Rules, Law Society of New South Wales, Rules 9.1 and 9.2

Case law

The conclusion as to whether the retainer is a joint one must be viewed from the perspective of the clients. What are their expectations? The case law is scant, and the one reported case on point indicates that the above indicia may not be conclusive as to the existence of a joint retainer. In the English case of *Hall v. Meyrick*[12], a widow and her common law husband visited a lawyer with a view to preparing their wills. The lawyer carried out the clients' instructions, and prepared a will for each. However, neither at the time of preparation, nor at the time of the execution of the wills, did the lawyer discuss with the clients the effect of marriage on their wills. The clients subsequently married, which had the effect of revoking the wills, and the husband then died. The wife commenced an action against the lawyer for failure to properly advise the parties. In her statement of claim, the wife alleged the existence of a joint retainer. The trial judge determined that there was no joint retainer, but rather that there were separate retainers. He made the following comment:

> It is not disputed that as a result of the interview two wills were drafted by the defendant, one for Mr. Hall and one for the plaintiff. The result would appear to involve a finding that instructions to draft wills were given by Mr. Hall and the plaintiff, an it was not seriously suggested that only one of them gave instructions. The real problem is whether instructions were given to the defendant jointly or severally. While it is true that Mr. Hall and the plaintiff arrived at the defendant's office together, and were both in his room when the instructions were given, I am satisfied that the instructions were given severally. Each of them, Mr. Hall and the plaintiff, wished to make a will, an each wished to confer benefits on the other, but in my view these were separate wishes and involved separate instructions[13].

This decision was upheld on appeal. This case, however, must be read in light of the fact that at the time it was decided the only cause of action lay in contract (not yet in tort). Given the previous state of the law coupled with some odd procedural circumstances in that case, a finding of a joint retainer would have forced the court to confront some novel and difficult liability and damage issues. If decided today, the outcome may well have been different, both in England and in Canada.

Other Jurisdictions

In the *Restatement of the Law Governing Lawyers*, the Committee on Professional and Judicial Ethics of the New York Bar Association took the position that "clients of the same lawyer who share a common interest are necessarily co-clients. Whether individuals have jointly consulted a lawyer or have merely entered concurrent but separate representations is determined by the understanding of the parties"[14].

The Law Society of Alberta would answer issue #1 in the affirmative, provided that the appropriate disclosure was made to the clients at the outset[15]. Similarly, the Law Society of British Columbia takes the same position[16]. The Law Society of Manitoba has recently grappled with this issue as well, and has also come to the conclusion that "...the lawyer who takes joint instructions from a couple for the preparation of their wills should be guided by the

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[12] Hall v. Meyrick, [1957] 2 All E.R. 722 (C.A.)

[13] Ibid, p. 727

[14] Restatement of the Law Governing Lawyers, 125 amt.c, Proposed Final Draft No. 1 (March 29, 1996), Committee of Professional and Judicial Ethics, New York Bar Association

[15] Benchers Bulletin, Law Society of Alberta, 1995

[16] "From the Ethics Committee", Benchers Bulletin, Law Society of British Columbia

provisions ... of the Code of Professional Conduct as they pertain to joint retainers."[17] The Code defines a joint retainer as "one in which a lawyer is employed by more than one client in a matter or transaction"[18].

Conclusion

In applying the above definitions and cases to spousal estate planning and will preparation, a position could be taken that if the parties attend at the lawyer's office with common estate planning goals, which may necessitate the transfer of property between spouses, and /or into new entities, such as spousal or family trusts, the legal interests of the parties are being affected by the retainer. Accordingly the definition of matter or transaction must be construed broadly, to encompass the expectations of the clients that each of their rights are being protected. Further support for this position can be found in rule1.03(1)(f) which provides that ... "a lawyer should observe the rules in the spirit as well as the letter." Finally, rule1.03(2) provides that "words importing the singular number include more than one person, party , or thing of the same kind, and a word interpreted in the singular number has a corresponding meaning when used in the plural." Accordingly, estate planning for spouses, that culminates in the preparation of wills for each of the spouses constitutes "a matter or transaction".

Issue #2 If the answer to #1 is yes, would it be appropriate for the spouses to execute a waiver of the requirement to share information?

The Rules, as they are presently drafted, do not contemplate the ability to grant such a waiver. If the Committee wishes to consider including such a right, the Rules would require amendment.

Other Jurisdictions

A review of the various provincial codes of professional conduct revealed that only the Alberta *Code of Professional Conduct* contains provisions permitting the representation of multiple parties without the sharing of information. Chapter 6, Rule 2, commentary 2.3 of the Alberta rules provides:

> In certain circumstances, knowledgeable clients in a conflict or potential conflict situation may desire representation by the same firm without the mutual sharing of material information referred to in Commentary 2.2. It may be acceptable for a firm to agree to act in such a situation provided that an effective screening device can be erected and the clients are fully apprised of, and understand, the risks associated with the arrangement. Such advice must be given by counsel that is independent of the firm involved.
>
> This kind of arrangement remains an exception to the general rule, however, and should be undertaken only when the justification is clear. In particular, multiple representation with or without sharing of information is unacceptable in a dispute or when the risk of divergence of interests is high. Responsibility remains with the lawyers to consider the factors outlined in Commentary 2.1 and to independently judge the advisability of the representation. Furthermore, the lawyers and clients involved must consider beforehand the risk that the screening device may be breached, intentionally, or otherwise, or that the lawyer acting for one of the clients will obtain information confidential to the other client through a legitimate outside source. In such a circumstance, it would be necessary for the firm to cease acting for all clients in the matter.

Even this fairly broad rule does not seem to contemplate one lawyer acting for multiple clients while maintaining their individual confidences, but contemplates different members of a firm acting in these circumstances. Accordingly, in the spousal wills situation, it does not appear as if one lawyer could act for both husband and wife, while keeping their individual confidences. However, another member of the firm could act for the other spouse in the preparation of his or her will. This may not, from a practical point of view, result in the best service to the clients. Oftentimes, to maximize a couple's estate planning, the sharing of information with respect to the spouses'

[17] Draft Notice to the Profession, Law Society of Manitoba, 2001

[18] Ibid

respective assets may be required, or the transfer of property from one spouse to the other, or to another entity may be necessary. The above commentary also requires that before agreeing to such an arrangement, the parties should obtain independent legal advice on the retainer, a requirement which is expensive and time consuming. Therefore, it would be inappropriate to allow the spouses to waive the requirement to share information.

Issue #3 What obligations does the member have with respect to advising one of the spouses that the other spouse has approached the member to change his or her will?

When one spouse seeks to amend his or her instructions with respect to the preparation of his or her will, what are the lawyer's obligations? Can the lawyer act for the spouse seeking to make the change? Must the lawyer disclose the spouse's plan to change his or her will? Would the answers be different if the wills had not yet been executed?

There appear to be two schools of thought on these issues. There are some members of the estates bar who take the position that despite the fact that the wills have been executed, the sharing of information in respect of that joint retainer continues, and accordingly, the lawyer may not act on the subsequent will, and further, has a fiduciary obligation to advise the other spouse of the change in circumstances(Position #1). Michael Silver, in his article *Solicitor's Conflict of Interest and Breach of Duty Acting for Spouses in the Preparation of a Will* states:

> As soon as the lawyer received instructions from the husband adverse to the wife, he should have disclosed to the wife that he was receiving such instructions, or encouraged her to retain her own counsel or at least to exert legitimate moral suasion on the husband. By failing to advise the wife of the new instructions, which instructions conflicted with the wife's expectations arising from the joint meeting, the lawyer deprived the wife of her opportunity to influence her husband legitimately with respect to his testamentary dispositions[19].

Failure to inform the other spouse deprives him or her of the ability to also change his or her will, which they may have done had they been privy to the intentions of the other spouse.

This seems to be an echo of the position taken by Mr. Hull in his earlier paper, and although his position seems to be coupled with the requirement that the clients be informed of the lawyer's obligation at the outset of the retainer. His position has been adopted by the Law Society of Alberta[20].

The other school of thought holds that once the wills have been executed, the retainer is at an end, and consequently, the exchange of information in respect of that retainer is also at an end. The consultation by one of the spouses to change his or her will should be viewed as a new and separate retainer, with its own duties with respect to confidentiality and disclosure (Position #2). Proponents of this position maintain that it is inappropriate for the lawyer to act in making the requested changes without the other spouse's consent, since this would breach the prohibition against acting against a former client in the same, or a related matter (rule 2.04(4)). Under this analysis, however, disclosure would be inappropriate, as it would breach the duty of confidentiality owed to the spouse in the new retainer.

Other Jurisdictions

The Law Society of Alberta has adopted this position in situations where the clients have not been informed of the ongoing obligation to share information relevant to the joint retainer even after it arguably has ended[21]. This situation may not bar the drafting lawyer's partner or associate from acting in this regard, even without the consent of the other spouse if the

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[19]Michael Silver, "Solicitors Conflict of Interest and Breach of Duty Acting for Spouses in the Preparation of a Will", (1994), 13 E.& T.J. 111 at p. 127

[20]Supra note 9

[21]Supra note 9

> "law firm establishes that it is in the interest of justice that it act in the new matter, having regard to all relevant circumstances, including
> (i) the adequacy and timing of the measures taken to ensure that no disclosure of the former client's confidential information to the partner or associate having carriage of the new matter will occur,
> (ii) the extent of prejudice to any party,
> (iii) the good faith of the parties,
> (iv) the availability of suitable alternative counsel, and
> (v) issues affecting the public interest.

The Law Society of Manitoba has adopted position #2[22], although its *Code of Professional Conduct* does not include a provision similar to Ontario's Rule 2.04(5), that permits representation of the other spouse by another member of the firm in certain circumstances.

Hypothetical Situation

> A member in a small town is approached by husband and wife for the purpose of preparing their mirror wills. The member takes instructions from both and prepares and sees to the execution of their wills accordingly. Several weeks later the wife returns to the member's office and advises that she has been battered by her husband, and has left with her children, and is presently living in a shelter. She further advises the member that she wishes to change her will to leave everything in trust for her children, and delete her estranged husband as executor and beneficiary. She requests that her intentions not be communicated to her estranged husband. She has had a long- standing relationship with this member, feels comfortable dealing with the member, and doesn't know any other estates lawyers. Can the member act? Can her associate or partner act? Is the consent of the husband required?

If one adopts the approach taken by the Manitoba Law Society given the existence of our Rule 2.04(5), it appears that while the member could not act, his or her partner or associate could carry out the wife's instructions , without the consent of the husband, on the basis that to do so would be in the interests of justice having regard to the factors enumerated in the above-noted rule.

To summarize, there are two differing opinions with respect to the answer to issue #3. The committee is requested to consider these divergent opinions, one requiring the ongoing sharing of information between the spouses, and the other treating this obligation as at an end, once the wills have been executed.

Options

Two options emerge:

A. Adopt a position similar to the one suggested by the Law Society of Manitoba in its draft Notice to the Profession (attached as Appendix "C") which views the preparation of spousal wills as a joint retainer, but which views proposed changes to either of the spouse's wills as a new and separate retainer requiring no disclosure to the other spouse, but creating a conflict of interest with respect to the other spouse (who would be considered a former client) which would bar the member from acting.

B. Adopt the position advanced by Mr. Hull, making it an additional requirement in the context of the preparation of spousal wills, that the member advise the clients at the outset that the sharing of information survives the execution of the wills, and that the member will be required to advise the other spouse in the event he or she is approached to make changes to the wills arising out of the initial joint retainer.

CONCLUSION

Advisory Services concludes as follows:

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[22]Supra. note 11

1) Spousal estate planning, which culminates in the preparation of will for each of the spouses, falls within the meaning of joint retainer in rule 2.04(6) and constitutes "a matter or transaction" within that rule; and

2) Spouses not be allowed to waive the requirement that all information may be shared in a joint retainer situation - therefore, no amendment to the rule is necessary; and

3) A member shall be required to advise the other spouse if he or she is approached to make changes to the wills which arise out of the initial joint retainer, irrespective of whether the wills have been executed.

APPENDIX

A Letter to Law Society of Upper Canada from Donald Carr, Goodman and Carr, dated April 12, 2001

B Letter to Law Society of Upper Canada from Glenn Davis, Sun Life Financial, dated May 3, 2001

C Draft Notice to Profession, Law Society of Manitoba

APPENDIX 2
SUMMARY OF RESPONSES TO CALL FOR INPUT ON
PROPOSED NEW COMMENTARY UNDER RULE 2.04(6)

1. The duty to contact a spouse if the other spouse comes to the lawyer with different instructions should only exist during the period anticipated in the rule and commentary, that is, "throughout the joint retainer" (e.g. after taking instructions and before execution of the wills, where one party asks for a change that is adverse to the interest of and unknown to the other party). If a client returns anytime after execution of the wills with new instructions, it is dangerous to imply that a retainer in the original form continues and that the lawyer's duty to a former client remains intact. Will preparation should be kept simple and inexpensive, and clients neither need nor expect it to be tortured with formal consents, ILA recommendations and perpetual obligations by the lawyer.

2. The bureaucratic framework proposed would be disconcerting to both clients and lawyers. Preparation of conflict letters and consents may make spouses or partners suspicious of one another and uncomfortable with the lawyer. It may also prevent spouses and partners from preparing or amending their wills with the help of a solicitor. The cost will increase, damaging the profession which must now compete with will kits, advertised as an inexpensive alternative to using a lawyer. The requirement to advise the other party is not necessary as any reputable lawyer simply would not prepare the new will. Advising the other party is a breach of confidentiality and puts the lawyer in a position of taking a moralistic and pious position of unilaterally interfering between spouses.

3. I fully endorse this initiative. The informal practice [i.e. not to inform the other spouse when a spouse returns to change a will] does not provide adequate protection to the spouse or partner relying on what is to appear in a will. In addition, the rules should set out procedures governing situations where one spouse pays for both his or her will and that of the other spouse.

4. The proposal could cause difficulty for clients. Example 1: one of the parties becomes incapacitated and the other wishes to make changes to the will to reflect the circumstances (set up a trust); the incapacitated spouse would not likely be able to consent unless the holder of a continuing power of attorney for the property, who may be the other spouse, can consent. Example 2: spouses separate or divorce and one wishes to make a new will; consent from the other spouse in the joint retainer to the lawyer acting is not likely to be obtained.

5. The proposed rule may provide less protection than is thought - when one partner wants to change a will without the other knowing, he or she will simply go to another lawyer.

6. The proposal would extend the lawyer's conflict position under the joint retainer *ad infinitum.* If one of the clients dies, what would the lawyer's position be?

7. The commentary should be revised to indicate that a lawyer has a duty to inform forthwith the other spouse or partner only in the event that the lawyer intends to act for the party who initiated the contact.

8. The commentary is fine up to the last three lines ("the lawyer has a duty to inform forthwith the other spouse or partner of the contact and to decline to act unless both spouses or partners agree"). This should be clarified to provide that after contact, the lawyer should inform the contacting spouse that if he or she chooses to proceed, the lawyer will be obliged to contact the other spouse and that the lawyer will decline to act unless both spouses or partners agree. So that if the contacting spouse decides not to proceed, the lawyer has no duty to inform the other spouse. This course of action should be disclosed to the spouses at the outset of the retainer. Informing the other spouse of simple contact is unnecessarily complex and divisive.

9. A lawyer should have the option to make a decision not to inform a spouse of a subsequent request for change in the will of the other spouse in the event that the life/physical well-being of the other spouse would be endangered by such contact with the spouse (e.g. where the other spouse is being abused by the spouse and the other spouse wants to change his/her will in favour of the children).

10. If the lawyer who prepared the will acts for one spouse in a marriage breakdown, the lawyer will be placed in the untenable position of having to advise the other spouse that the spouse has changed her will (a reasonable precaution in marriage breakdown situations), where normally the lawyer could not disclose this without the spouse's consent. Effectively, the lawyer preparing the wills could not act in the family law matter, or would have to tell the other spouse that the spouse has sought the lawyer's advice because of the marriage breakdown. This runs counter to our practice. The commentary will mean that in small centres, access to legal services will become more difficult and more expensive, and there will be a further centralization of legal services in larger firms in larger communities.

11. The problem with getting clients to sign a consent is that clients will be fed up with the protective theme of the exercise. If we go to that point, why wouldn't the lawyer ask one or both of them to get independent legal advice? We should inform our clients as the commentary says, but choose whether to obtain the consent in writing.

12. The lawyer should refuse to accept the retainer from the party wishing to change a will when the other party has not been advised of the changes. It may be acceptable to accept the retainer if the parties have subsequently divorced or where it could not be reasonably intended that the other party expects the will to remain unchanged. Where the lawyer decides not to accept the retainer, it is unreasonable to expect the lawyer to advise the other party, as it would cause more problems for the parties and imposes an unreasonable burden on the lawyer.

13. If one of the parties comes to change a will, it may be appropriate to advise that client that the other party is still considered to be a client and the lawyer can do nothing that adversely affects that other client without disclosure..

14. It is erroneous to consider wills prepared together a joint retainer. Each spouse retains the lawyer to do the individual will. If the spouses came into the office at different times, presumably there would be no argument of joint retainer. Provided the lawyer explains to clients that wills can be revoked at any time by the party making them, there can surely be no possibility of anyone being misled.

15. The following would fall afoul of the proposed commentary:
    - preparing a new will where one spouse has died, without requiring a death certificate
    - preparing a new will for a spouse who has divorced his/her spouse (with personal knowledge of the divorce)
    - preparing a new will for a spouse who spouse has become mentally incapacitated

The public should have the right to specify the level of legal services required from the lawyer. This includes the direction to the lawyer that the relationship is a one-time thing and releasing the lawyer from any future obligation. You need only refuse to act for a client because you perceive that doing so would be against the interests of another client, but if you inform the other client, you have breached your obligations to the first client.

16. Raising the issue with both clients about one client making a subsequent will change would unduly upset the clients and possibly set into motion the seeds of distrust not only between the clients but between them and the lawyers. The written acknowledgement proposed is problematic - clients may see it associated with some situation where the lawyer wants to be exonerated or where the lawyer is receiving a perpetual release of a financial obligation to the client. The issue that the commentary responds to is more imaginary than real. The joint retainer rule wasn't intended to apply to marriage spouses who are really a single client.

17. The issue of undue influence is of concern. Sharing information of a will change with the other spouse is unfair to women who are in traditional marriages or who are restrained culturally, and who will sign what their husbands tell them to and thus are restrained in expressing their testamentary wishes. They cannot risk proposing a change that would immediately be conveyed to their husbands. Their husbands, and even the lawyers who follow this type of procedure, can be perceived as exerting undue influence on them.

18. Rule 2.04(6) should not apply to the preparation of wills for spouses. Routinely, spouses are told that they can change their wills without advising the other spouse. There is no obligation in these circumstances to tell the other spouse if one spouse attends to change their will. One would wonder why the Society is intent on making it more difficult to practice law.

19. The circumstances where two spouses make wills together imply an expectation that the wills will not be changed without the knowledge of the other, but this is between the testators and not a compact made with the lawyer. In marriage breakdown situations, a new will would not be unexpected by either spouse and preparing a new will for one but not the other is not a conflict and does not necessitate informing the other. Each spouse would have independent legal representation, with an obligation to exchange full financial information. In other situations, it seems sufficient to refuse to act on the request but it is not incumbent on the lawyer to inform the other spouse of the denied request. Would this not unnecessarily widen the duty of care and lay the foundation for further judicial restrictions on the freedom of a person to make a will, and raise the complexity, expense and anxiety surrounding the making of a will?

20. If one party comes back to change the will, the lawyer should refuse to act. A mandatory obligation to inform could cause the lawyer to be embroiled in issues between the parties which would be completely unnecessary. The lawyer would have to point out when receiving instructions for the wills retainer the fact that he or she would have to inform, and suggest that on party seek a separate lawyer to make the change. This would increase cost, cause frustration, delay and confuse clients.

21. The spouses have the protection of the *Family Law Act* and the Dependent's Relief sections of the *Succession Law Reform Act*. It would be better to handle the matter on a conflict basis, if one exists, and where there is a conflict, the lawyer should decline to act but would not necessarily be under an obligation to advise the other spouse of the contact.

22. Where wills are prepared jointly for spouses as a small part of the work the lawyer does for one spouse who has an ongoing relationship with the lawyer, or is personal friend or relative of one spouse, it would be reasonable for that spouse to deal with the lawyer even after a marriage breakdown or where the interests of the spouses diverge. Otherwise, going to another lawyer places an unnecessary financial burden on the clients. The lawyer should carefully advise the clients about conflicts and obtain their informed consent to acting, and should contact the other spouse if one spouse requests changes to a will which the lawyer considers prejudicial to the other spouse. But the other spouse should consent in writing to the lawyer continuing to act for the one spouse if a conflict arises.

23. A distinction should be drawn when parties have entered into a separation agreement, most of which deal

with financial issues between the parties and often provide releases to each other's estate and provide the freedom for each party to make a new will. In these circumstances, it shouldn't be necessary for the lawyer to inform and seek consent from the other party.

24. The commentary fails to appropriately address the issues involved, and is likely to put clients to unnecessary expense without corresponding benefit. The fact that people present may be spouses preparing reciprocal wills does not convert what are, in essence, two separate retainers into a joint retainer. The lawyer should decline to act where the spouses are still in a conjugal relationship and suggest that the party seek other counsel, but the fact of the contact should not be disclosed to the other or ongoing client. Where the parties are separated, it would be reasonable for the lawyer to act on behalf of a continuing client, with the issue of whether notice must be given to be resolved based on the particular circumstance.

25. The retainer should end when the wills are prepared and executed. If shortly thereafter, one party intimated some intention to mislead the other and change his or her will, there would be a duty on the lawyer to bring this to the attention of both spouses, or withdraw from the retainer. The proposal seems to extend the retainer to infinity. If people want to change their minds and be sneaky, lawyers can advise against it, but we should not have overlapping duties, in particular, the duty to squeal on them.

26. As the proposed commentary is too strict, two changes are suggested:
    i. if a client approaches a lawyer to change a will, the lawyer must give the client a choice to continue with the lawyer, and the lawyer will inform the other client, or go elsewhere, in which case the lawyer is not obliged to inform the other client
    ii. If the client agrees to notification, the other client's consent should not be necessary, and the notification should not occur until after the will is changed (the first client may have a change of heart)

27. The commentary appears to be reasonable.

28. If parties are separated following execution of the wills, and one returns to the lawyer to change a will, contacting the other spouse does not seem appropriate. The other spouse may not agree to the representation for reasons that are totally without merit.

29. The amendment would force all lawyers to address conflict issues on will files. It will not add substantially to time or costs except in rare circumstances where clients want to get into a philosophical debate over it.

30. In the cases that cry out for relief, the proposal will result in the deceiving party going to another lawyer or another source to carry out the deception. The commentary is too broad and is likely to thwart instances where will revisions ought to be undertaken (for example, incapacitated spouses, deserted partners/spouses, separated spouses/partners). The effect should not be to bar a client from using the lawyer of their choice. This will undermine solicitor and client privilege, and will open up other areas where privilege should be abandoned. Denying the lawyer the ability to act further should be the extent of any limitation.

    If the mischief the commentary addresses is truly prevalent, encourage an amendment to the *Succession Law Reform Act* making a new will made in such circumstances voidable at the instance of the wronged party on establishing that the rights of that party had been infringed.

    Or existing trust law or contractual rights can offer redress. If implemented, the commentary should be narrowly applied to defined abusive situations.

31. Although in general agreement with the commentary, the following are suggested amendments. When the marriage bond has been broken or betrayed, the joint retainer has come to an end and the lawyer is free to draw a second will contradicting the mutual wills without disclosing the fact to the other spouse. (These events include death, divorce, separation, abuse, incompetence)

32. While in agreement that the preparation of spousal wills constituted a joint retainer, lawyers should not have to "rat" on their clients if they came back and wish to change their will. The obligation for sharing

information ends once the wills have been executed, but it would be inappropriate to act for the returning spouse in making the proposed changes, as to do so places the lawyer in conflict with the former client. It would be distasteful to have to discuss with their happily married, or attached clients on what their continuing obligations would be if things turned bad and one of the clients wanted to cut the other one out, for example.

The commentary seems to be geared to more complex estate planning, where property is actually being transferred either between the parties, or into other trust vehicles, and not to the simple mirror wills situation. In these situations it "might" be appropriate to have the continuing obligations to the clients, but what would be preferable, would be to treat the planning as a separate retainer from the actual will drafting.

33. As preparation of estate planning documents is extremely fee-sensitive, rule 2.04(6) should not apply in the usual case in such retainers, as its application will add to the time required in preparing the plan. However, there may be special circumstances that require the rule's application. The following revisions to the draft commentary are suggested:

- treat spouses or partners defined in the *Substitute Decisions Act* who prepare mutually agreeable estate plans as within a single retainer, to which the rule and commentary apply, where the lawyer must advise the spouses that until the retainer is completed no information provided to the lawyer can be kept confidential. Distinguish between mutually agreeable estate plans and joint or mutual wills in which one party is bound not to change his or her will without the other's consent.
- once the estate documents are executed, the lawyer's retainer is at an end
- contact by one party with the lawyer thereafter should be considered a new matter, and rule 2.04(4) applies; that is, if a conflict exists, and the other party does not consent (the only disclosure would be that contact has been made), the lawyer cannot act; if the lawyer refuses the retainer, the lawyer is not required to advise the other party
- the rule may apply in special circumstances, e.g. where one spouse has been a long standing client; in this case, the lawyer may wish to obtain the consent of the other spouse that if the current client contacts the lawyer respecting the wills the lawyer may accept the retainer and not advise the other spouse

34. Spouses retaining a firm to prepare wills or estate planning documents should not be considered a joint retainer simply because they give instructions at the same time for efficiency. Further, estate planning documents are not effective until death or incapacity, meaning that spouses must be allowed to make changes without the knowledge or consent of the other spouse. Otherwise,

- new counsel must be consulted, undermining the original solicitor/client relationship and affecting choice of counsel
- it gives the retainer an unending life
- one spouse will be committed to the contents of the documents unless the other spouse consents
- Each spouse should be considered a separate retainer, and if contentious issues arise, and the issue of consent then arises, it should be not on the basis that the retainer was joint, but because both are clients of the firm, in which case rule 2.02(4) applies. If the Committee considers the retainer as joint,
- the commentary should make it clear that the retainer is at an end when the documents are completed, and any further contact thereafter is a new matter, and
- the spouses should be able to consent at the outset of the retainer under rule 2.04(10) that the lawyer will not be precluded from acting for one or the other spouse, and the lawyer need not advise the other spouse of future contact by the spouse.

APPENDIX 3

FILE AND CASELOAD MANAGEMENT AND STAFFING INFORMATION IN THE COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE DEPARTMENTS

THE LAW SOCIETY OF UPPER CANADA
COMPLAINTS RESOLUTION, COMPLAINTS REVIEW AND TRUSTEE SERVICES

MEMORANDUM

TO: Professional Regulation Committee

FROM: David McKillop
Manager, Compensation Fund, Resolution and Trustee Services

DATE: 31 March 2002

RE: Management Report - Complaints Resolution, Complaints Review and Trustee Services

The purpose of this memorandum is to provide information about matters in the Complaints Resolution, Complaints Review and Trustee Services (Unclaimed Trust Fund) departments for the month of March 2002.

COMPLAINTS RESOLUTION

Summary of Results for March 2002

Complaints in Unit as at 28 February 2002	1646
Complaints Reopened During Month	29
Complaints Resolved/Closed During Month	263
Complaints Transferred to CSC & Investigations During Month	40
New Complaints Received During Month	240
Complaints in Unit as at 31 March 2002	1612
Average Age of Active Complaints (in days)	268

Comparative Results

The following graphs reveal comparative results for a) Complaints Opened and Closed in Period, and b) Number of Open Files in Unit; for the months August 2001 to March 2002 inclusive.

Complaints Resolution – Complaints Opened & Closed in Period

(see graph in Convocation file)

Number of Open Complaint Files

(see graph in Convocation file)

Number of Active Files as at 31 March 2002 by File Type

Type of File	Number of Active Files

Complaint	1490
Bankruptcy	74
Discipline Costs, Panel Orders & Undertakings	47
Practice Windup	1
TOTAL ACTIVE	1612

Discipline Costs

As at 31 March 2002 outstanding costs awarded totalled $143,913.10. Of that amount, payment of $112,176.73 is being actively pursued. The remainder of $31,736.37 is not currently being pursued as the Members concerned are under suspension. Suspended Members are monitored bi-annually to determine whether there has been a change in their status to that of practising Member and, if so, the cost award is pursued.

The total amount received in March 2002 was $4,600.00. Year to date $17,950.00.

Comments

Commencing 1 April and continuing for a period of two months, complaint handling staff in Complaints Resolution are undertaking a time docketing project. This time on task exercise is designed to assist management in assessing how long it takes to perform the various functions that lead to file closure. This information will assist in determining optimal file loads and staff resource requirements.

COMPLAINTS REVIEW

As at 31 March 2002, there were 53 files in the Complaints Review process. Further information on these 53 files is found in the following chart.

Request for Hearing Received	7
Hearings Pending	23
Hearing Held, Further Investigation Ordered	13
Hearing Held, Awaiting Decision	4
Files To Be Closed	6
TOTAL	53

The 53 files relate to complaints originally received by the Law Society in the following years:

1996	2
1997	2

1998	5
1999	8
2000	9
2001	22
2002	5
TOTAL	53

TRUSTEE SERVICES (THE UNCLAIMED TRUST FUND)

The Trustee Services department is responsible for the administration of the Unclaimed Trust Fund. The following details the operation of the program since inception.

Applications For Payment Of Unclaimed Trust Funds To Law Society Received From Members

March 2002	Cumulative
67	232

Applications From Members Pending Determination (additional information required)

March 2002	Cumulative
16	68

Applications From Members To Transfer Trust Funds To The Law Society Approved

March 2002	Cumulative
46	147

Applications From Members Rejected

March 2002	Cumulative
5	17

Amount of funds received:

March 2002	Cumulative Amount
$219,572.38	$256,188.94

Comments:

The following article on the Unclaimed Trust Fund appeared in the Winter 2002 (Vol. 6, No. 1) edition of the Ontario Lawyers Gazette:

"Unclaimed Trust Funds Program a Success

The Law Society's Unclaimed Trust Fund Program, launched in the Fall of 2001, is a definite success according to Pam Morgan the program's administrator. The response from the membership has been very good with a large number of applications having already been received.

Through the Unclaimed Trust Funds Program, members may apply and upon approval submit to the Law Society unclaimed funds that they have held for at least two years - if after a reasonable effort they have been unable to locate the person entitled to the money. The names of those persons entitled to the funds will be published in the *Ontario Gazette.*

The application form and additional information about the program are available on the Law Society web site at *http://www.lsuc.on.ca/unclaimed_funds_en.jsp* or by calling the Unclaimed Trust Funds voice mailbox at (416) 947-3312."

Investigations Department Management Report

TO: Gavin MacKenzie, Chair, Professional Regulation Committee

FROM: James Yakimovich, Manager, Investigations

DATE: April 3, 2002

RE: Management Report - Investigations Department -March 2002

Summary of Results for the Month:

Change in Total Case Numbers (More than one investigation may be open against a member)	Net Increase of 19 member cases
Number of Members Under Investigation	186 (Jan = 198, Feb = 188)
Cases Completed/Closed in February	35 * (Jan = 46, Feb = 52)
Cases Older Than One Year Outstanding	30

At March 31, 2002, the department carries an investigation inventory of 310 member cases and 30 Unauthorized Practice cases, for a total of 340 investigation cases. (February = 313 cases.) The significant increase in cases is because several February matters were not authorized for investigation until March.

Member Case Inventory

(see graph in Convocation file)

* The 35 member investigation cases completed/closed in February reflect an average case age of six and three quarter (6.75) months from inception of the investigation to the date the investigation stage is completed or the file was closed without a referral to PAC. (In February, the average age was 7 months.)

Cases Older Than One Year

The number of cases older than one year is thirty (30) (February = 29 cases). The case inventory in this category is dynamic in that each month files are completed and additional ones are added to the list. In March, 8 files

reported in the February report were completed. The completion of 8 files demonstrates a "turnover" rate of about 30% the February files.

Because of the recent requirement that Discipline Counsel review the substantive investigation case findings and evidence prior to the matter being forwarded to the Proceeding Authorization Committee, I am unable to provide a reliable projection with respect to when these cases might be advanced to the discipline process. It is expected that once Discipline Counsel are in a position to absorb these new process demands and normalize the workflow, meaningful data can be provided with respect to planning around this group of cases.

Complaints Files Associated With Investigation Cases

At March 31, 2002, five hundred forty three (543) complaints files are associated with the investigation cases reported on page one of this report. The chart tracks the volume of complaints and their age in "days outstanding". The days outstanding calculation includes time associated with the file while it was in departments other than the Investigations Department.

Month	Number of Complaints Files	Average Age of Complaints Files
December 2001	694	357 Days Outstanding
January 2002	688	345 Days Outstanding
February	623	364 Days Outstanding
March	543*	307 Days Outstanding

* Adjusted to reflect the numerous complaints associated with one member's case, recently authorized by PAC.

Unauthorized Practice Investigations

The non-member case investigations for unauthorized practice are in addition to the member investigations reported above. The chart that follows depicts the number of cases open.

Unauthorized Practice Investigations

(see graph in Convocation file)

Outstanding Discipline Department Requests

A monitoring system is in place with respect to requests made of investigators for disclosure materials and for additional investigation work.

Requests Outstanding at End of March = 5

DISCIPLINE DEPARTMENT
MEMORANDUM

TO: Professional Regulation Committee

FROM: Lesley Cameron
Senior Counsel - Discipline

DATE: April 4, 2002

RE: *Discipline Department Information*

The purpose of this memorandum is to provide information about matters in the discipline process for the month of March, 2002.

Total Matters in Discipline Process

Attached as Chart 1 is a list of the number of each type of file carried by the Discipline Department at March 31, 2002. As can be seen from Chart 1:

(a) 159 matters are pending hearing or appeal;

(b) 34 conduct applications have been authorised for prosecution by the Proceedings Authorisation Committee, but have not yet been issued;

(a) 87 conduct applications have been issued and are in the discipline process: 46 are before the Hearings Management Tribunal with no hearing date set; 37 have hearing dates set or the hearing is underway; 4 are adjourned sine die;

(d) 5 appeals are pending before the Law Society Appeal Panel;

(e) 2 judicial reviews are pending before the Divisional Court.

Aging of Matters Authorised but not Issued

Of the 34 files authorised for prosecution but in which the conduct application had not yet been issued as of March 31, 2002, 7 were authorised more than 3 months ago.

Attached as Chart 2 is a summary of the age and carriage of these 7 files. As can be seen from Chart 2, of these 7 files:

i) 4 are between 3 and 6 months old, meaning that between 3 and 6 months has elapsed since authorisation;

ii) 1 is between 6 and 12 months old; and

iii) 2 are over 1 year old.

Of the 2 files over 1 year old, the first required the Law Society to bring an application for search and seizure under section 49.10 and the Law Society is waiting for a third party (a bank) to produce records. The second file has been authorised for non disciplinary resolution but remains on the list pending the successful completion of this resolution.

The Chair of the Professional Regulation Committee and the Acting Secretary have been provided with the names of the files, a description of the nature of the allegations in each file and a brief status report on each file in this category.

Historical Comparison

Attached as Chart 3 is a summary of the age and carriage of matters which were authorised for prosecution by the Proceedings Authorisation Committee, but in which the conduct application had not yet been issued as of the end of

various months beginning in August of 2000. Chart 3 includes the information summarised in Chart 2, but adds figures from previous months for comparison purposes.

Other Matters

Interviewing for the 3 discipline counsel vacancies has been completed and it is anticipated that the vacancies will be filled by the middle of May.

Chart 1

Matters in Discipline Process as of March 31, 2002	
Discipline Providing Assistance to Investigations	18
Conduct Applications Authorized But Not Issued	34
Conduct Applications Issued Hearing Date Not Set	46
Conduct Applications Issued Hearing Date Set or Hearing Started	37
Conduct Applications Issued Adjourned Sine Die	4
Non-Compliance Applications Issued Hearing Date Not Set	0
Non-Compliance Applications Issued Hearing Date Set or Hearing Started	0
Capacity Applications Authorized But Not Issued	0
Capacity Applications Issued Hearing Date Not Set	1
Admission Hearings	8
Readmission Hearings	1
Reinstatement Hearings	3
Appeals to Law Society Appeal Panel	5
Appeals/Judicial Reviews Divisional Court	2
Total Matters	159

Chart 2

Conduct Applications Authorized For Prosecution but not Issued as Conduct Applications as of March 31, 2002			
	3 to 6 Months Old	6 to 12 Months Old	Over 1 Year Old
Law Society Counsel	4	1	1
Outside Counsel	0	0	1

Total	4	1	2

Chart 3

CONDUCT APPLICATIONS AUTHORISED FOR PROSECUTION
BUT NOT ISSUED AS CONDUCT APPLICATIONS

Month	Carriage	3 to 6 Months Old	6 to 12 Months Old	Over 1 Year Old
August 31, 2000	Law Society Counsel	14	5	15
	Outside Counsel	0	0	1
	Total	14	5	16
October 31, 2000	Law Society Counsel	14	3	5
	Outside Counsel	9	1	5
	Total	23	4	10
November 30, 2000	Law Society Counsel	12	2	2
	Outside Counsel	9	1	5
	Total	21	3	7
December 15, 2000	Law Society Counsel	9	2	2
	Outside Counsel	4	3	4
	Total	13	5	6
January 31, 2001	Law Society Counsel	11	4	1
	Outside Counsel	2	6	4
	Total	13	10	5
February 28, 2001	Law Society Counsel	7	2	1
	Outside Counsel	0	5	4
	Total	7	7	5
March 30, 2001	Law Society Counsel	6	1	0
	Outside Counsel	0	4	3
	Total	6	5	3
April 24, 2001	Law Society Counsel	6	2	0
	Outside Counsel	0	3	3
	Total	6	5	3
May 31, 2001	Law Society Counsel	6	3	0

	Outside Counsel	0	1	5
	Total	6	4	5
June 30, 2001	Law Society Counsel	5	3	1
	Outside Counsel	0	0	5
	Total	5	3	6
July 31, 2001	Law Society Counsel	5	5	1
	Outside Counsel	0	0	3
	Total	5	5	4
August 30, 2001	Law Society Counsel	4	5	0
	Outside Counsel	0	0	2
	Total	4	5	2
September 30, 2001	Law Society Counsel	6	4	0
	Outside Counsel	0	0	2
	Total	6	4	2
October 26, 2001	Law Society Counsel	2	3	1
	Outside Counsel	0	0	2
	Total	2	3	3
November 30, 2001	Law Society Counsel	5	0	1
	Outside Counsel	0	0	1
	Total	5	0	2
December 31, 2001	Law Society Counsel	4	0	1
	Outside Counsel	0	0	1
	Total	4	0	2
January 31, 2002	Law Society Counsel	6	0	1
	Outside Counsel	0	0	1
	Total	6	0	2
February 28, 2002	Law Society Counsel	7	3	1
	Outside Counsel	0	0	1
	Total	7	3	2
March 31, 2002	Law Society Counsel	4	1	1

	Outside Counsel	0	0	1
	Total	4	1	2

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

(1) Letter to the Law Society of Upper Canada from Donald Carr, Goodman and Carr dated April 12, 2002.

(Appendix A, pages 23 – 24)

(2) Letter to the Law Society of Upper Canada from Glenn Davis, Sun Life Financial dated May3, 2001.

(Appendix B, pages 25 – 26)

(3) Notice to the Profession.

(Appendix C, page 27)

Re: Proposed New Commentary to Rule 2.04(6) of the Rules of Professional Conduct on Joint Retainers for Mutual Spousal/Partner Wills

It was moved by Mr. MacKenzie, seconded by Mr. Gottlieb that Version 1 of the proposed new commentary to rule 2.04(6) on page 11 be adopted.

An amendment was proposed by Mr. Cherniak that the words “and is not permitted to inform the other spouse or partner of the contact” be added at the end of Version 1.

A debate followed.

It was moved by Mr. Wilson, seconded by Mr. Swaye that a commentary be developed that sets out the problem that outlines that the profession is deeply divided on the issue and that it has been for years and that the Law Society will not take a definitive position but will leave it to the courts to determine.

The matter was referred back to the committee for further consideration.

Items for Information Only

File and Caseload Management and Staffing Information in the Complaints Resolution, Investigations and Discipline Departments

LIBRARYCO INC.

Mr. Mulligan presented the Annual Report of LibraryCo Inc. for information only.

CONVOCATION ROSE AT 4:50 P.M.

Confirmed in Convocation this 23rd day of May, 2002.

Treasurer