MINUTES OF CONVOCATION

Thursday, 27th March, 2003
8:45 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Aaron, Arnup, Banack, Bindman (by telephone), Bobesich, Braithwaite, Carey, Carpenter-Gunn, Cass, Chahbar, Cherniak, Coffey, Copeland, Crowe, Curtis, Diamond, Ducharme, Epstein, Feinstein, Finkelstein, Finlayson, Furlong, Go, Gottlieb, Harris, Hunter, Jarvis, Laskin, Lawrence, Legge, MacKenzie, Marrocco, Martin, Millar, Minor, Mulligan, Murphy, Murray, O'Brien, Ortved, Pilkington, Porter, Potter, Puccini, Robins, Ross, Ruby, St. Lewis, Simpson, Swaye, Topp, Wardlaw, White, Wilson and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

TREASURER'S REMARKS

The Treasurer and Benchers congratulated Ab Chahbar on receiving a Queen's Golden Jubilee Medal for his significant contribution to Canada and his community.

The Treasurer thanked all the staff who were involved in the organization of the visit of the Governor General of Canada last month when Her Excellency the Right Honourable Adrienne Clarkson was presented an Honorary Doctor of Laws degree. Special thanks were extended to GeneviПve Proulx who sang the National Anthem, Jim Varro who played the Vice-Regal Salute, Lucy Rybka-Becker, and the Communications, Catering, Security and Facilities Departments.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

Re: Candidates for Call to the Bar
Re: Section 28.1 of the *Law Society Act* – Temporary Membership

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Professional Development and Competence asks 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, March 27th, 2003:

Adjoa Konadu Adjei	Bar Admission Course
Idorenyin Edet Amana	Bar Admission Course
Eric Shane Block	Bar Admission Course
Stanley Chau	Bar Admission Course
Sue Kim Chen	Bar Admission Course
Anaar Zulfikar Premji Dhanji	Bar Admission Course
Malook Singh Dhillon	Bar Admission Course
Jonathan Harris Epstein	Bar Admission Course
Gabriel Roger Fahel	Bar Admission Course
Mirit Gevantschniter	Bar Admission Course
Alison Joyce Gray	Bar Admission Course
Natalie Henein	Bar Admission Course
Selwyn John Hicks	Bar Admission Course
Andrew Dixon House	Bar Admission Course
Demetrius Kotsakis	Bar Admission Course
Jeffrey Alan Kreibich	Bar Admission Course
Wayne Fitzroy Leacock	Bar Admission Course
James Alexander Livingston	Bar Admission Course
Elizabeth Karen Long	Bar Admission Course
Melinda Martin	Bar Admission Course
Jacqueline Kristie Mc Comb	Bar Admission Course
Erin Kathleen Melnyck	Bar Admission Course
Nicole Dawn Strachan Miller	Bar Admission Course
Rula Butros Morcos	Bar Admission Course
William John Oldman	Bar Admission Course
Bhagaban Panigrahi	Bar Admission Course
Tamara Ann Ramsey	Bar Admission Course
Anat Schreiber	Bar Admission Course
Felix Nathaniel Weekes	Bar Admission Course
Janaki Manorani Wijesundera	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, March 27th, 2003:

Jessica Mary Connell	Province of British Columbia
Saskia Margot de Morée	Province of Nova Scotia
Johanna Leigh Dusolt	Province of Alberta
Charlene Jane Lawson-Stephen	Province of New Brunswick
Stephen Andrew Leach	Province of Alberta
Alejandro Manevich	Province of Quebec
Gwena Leah Ozem	Province of Alberta
Kecia Joy Podetz	Province of Nova Scotia
Pamela Jane Quesnel	Province of British Columbia
Kenton Gerald Christian Rein	Province of Alberta

Amy Lee Ruff	Province of British Columbia
Christine Barbara Kathleen Wright	Province of Alberta

B.1.5. (c) Full-Time Member of Faculty of Approved Ontario Law School

B.1.6. The following members of an approved law faculty ask to be called to the Bar and admitted as a solicitor on Thursday, March 27th, 2003, without examination, under sec. 5 of By-Law 11 made under the *Law Society Act*:

Ian Carl Holloway	Dean, University of Western Ontario, Faculty of Law
Mark Perry	University of Western Ontario, Faculty of Law

B.1.7. The candidates have filed the necessary documents and complied with the requirements of the Society.

B.2. APPLICATION FOR TEMPORARY MEMBERSHIP UNDER SECTION 28.1

B.2.1. The Attorney General of Ontario has requested that the following person be admitted as a temporary member pursuant to section 28.1 of the *Law Society Act* to serve in the employ of the Attorney General of Ontario commencing on the date of his deemed Call to the Bar as a barrister and enrolment as a solicitor under that section and ending four months from that date.

Terence Henry MacKean	Province of Manitoba

ALL OF WHICH is respectfully submitted

DATED this the 27th day of March, 2003

It was moved by Mr. Hunter, seconded by Mr. Wright that the Report of the Director of Professional Development & Competence be adopted.

Carried

MOTION – DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Hunter, seconded by Mr. Topp that the Draft Minutes of February 27th, 2003 be confirmed.

Carried

DRAFT RULES OF PROCEDURE

Mr. MacKenzie informed Convocation that he will be distributing proposed Rules of Procedure for debate at Convocation in April.

TOPP/SWAYE MOTION

MOVED BY: Robert C. Topp

SECONDED BY: Gerald Swaye

RESOLVED that the grants from LibraryCo. to the County and District libraries be restored to the 2002 levels.

Withdrawn

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar. Ms. Ross then presented them to Mr. Justice Robert P. Armstrong to sign the Rolls and take the necessary oaths.

Adjoa Konadu Adjei	Bar Admission Course
Idorenyin Edet Amana	Bar Admission Course
Eric Shane Block	Bar Admission Course
Stanley Chau	Bar Admission Course
Sue Kim Chen	Bar Admission Course
Anaar Zulfikar Premji Dhanji	Bar Admission Course
Malook Singh Dhillon	Bar Admission Course
Jonathan Harris Epstein	Bar Admission Course
Gabriel Roger Fahel	Bar Admission Course
Mirit Gevantschniter	Bar Admission Course
Alison Joyce Gray	Bar Admission Course
Natalie Henein	Bar Admission Course
Selwyn John Hicks	Bar Admission Course
Andrew Dixon House	Bar Admission Course
Jeffrey Alan Kreibich	Bar Admission Course
Demetrius Kotsakis	Bar Admission Course
Wayne Fitzroy Leacock	Bar Admission Course
James Alexander Livingston	Bar Admission Course
Elizabeth Karen Long	Bar Admission Course
Melinda Martin	Bar Admission Course
Jacqueline Kristie McComb	Bar Admission Course
Erin Kathleen Melnyck	Bar Admission Course
Nicole Down Strachan Miller	Bar Admission Course
Rula Butros Morcos	Bar Admission Course
William John Oldman	Bar Admission Course
Bhagaban Panigrahi	Bar Admission Course
Tamara Ann Ramsey	Bar Admission Course
Anat Schreiber	Bar Admission Course
Felix Nathaniel Weekes	Bar Admission Course
Janaki Manorani Wijesundera	Bar Admission Course
Jessica Mary Connell	Transfer, Province of British Columbia
Saskia Margot de Morꝺe	Transfer, Province of Nova Scotia
Johanna Leigh Dusolt	Transfer, Province of Alberta
Charlene Jane Lawson-Stephen	Transfer, Province of New Brunswick
Stephen Andrew Leach	Transfer, Province of Alberta
Alejandro Manevich	Transfer, Province of Quebec
Gwena Leah Ozem	Transfer, Province of Alberta

Kecia Joy Podetz	Transfer, Province of Nova Scotia
Pamela Jane Quesnel	Transfer, Province of British Columbia
Kenton Gerald Christian Rein	Transfer, Province of Alberta
Amy Lee Ruff	Transfer, Province of British Columbia
Christine Barbara Kathleen Wright	Transfer, Province of Alberta
Ian Carl Holloway	Faculty of Law, University of Western Ontario
Mark Perry	Faculty of Law, University of Western Ontario

REPORT OF THE INTER-JURISDICTIONAL MOBILITY COMMITTEE

Re: By-Laws Respecting Inter-Jurisdictional Mobility

Mr. Millar presented the Report of the Inter-Jurisdictional Mobility Committee for approval by Convocation.

Report to Convocation
March 27, 2003

Inter-Jurisdictional Mobility Committee

Purpose of the Report: Decision

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

OVERVIEW OF POLICY ISSUE

BY-LAWS AND OTHER MATTERS RESPECTING INTER-JURISDICTIONAL MOBILITY

Request to Convocation

1. That Convocation approve
   a. the proposed Motion set out at Appendix 4 and, if appropriate approve the amendments contained therein to By-laws 11 and 13, and the replacement contained therein to By-law 33;
   b. the recommendation regarding the mobility reading requirement; and
   c. the recommendation regarding the applicability of the National Mobility Agreement to lawyers employed by the Department of Justice and the Office of the Judge Advocate General.

Summary of the Issue

2. In August 2002, the Federation of Law Societies of Canada accepted the National Mobility Task Force's National Mobility Agreement (the Agreement). It was then up to each law society to determine whether it would approve the Agreement and implement its provisions.

3. In September 2002 the Committee recommended approval of the Agreement to Convocation, which accepted the recommendation and authorized the Law Society to become a signatory.

4. In December 2002 eight Canadian jurisdictions signed the Agreement. They are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland. New Brunswick, the Northwest Territories, Nunavut, Prince Edward Island and the Yukon have voted not to sign the Agreement at this time.

5. The National Mobility Task Force has been working on a number of issues to facilitate implementation of the Agreement. These include, among other issues, drafting Model Rules to assist each signatory in drafting its own rules or by-laws; considering what the reading requirement set out in the Agreement should entail; and considering submissions from the Department of Justice and the Office of the Judge Advocate General concerning the applicability of the Agreement to them.

6. Draft By-laws have now been prepared for Convocation's consideration and, if appropriate, approval. The Committee has also reviewed the Task Force's recommendations regarding the mobility reading requirement and regarding the applicability of the Agreement to lawyers employed by the Department of Justice and the Office of the Judge Advocate General and recommends their approval.

THE REPORT

Terms of Reference

7. The Committee met on March 13, 2003. Members in attendance were Derry Miller (Chair), Abe Feinstein, and George Hunter, as well as the Treasurer. As well two of the members who unable to attend (John Campion and Gavin MacKenzie (co-Chair)) advised of their agreement with the Committee's recommendations.

8. The Committee is reporting on the following matter:

Policy – For Decision

- By-laws and other matters respecting Inter-Jurisdictional Mobility.

BY-LAWS AND OTHER MATTERS RESPECTING INTER-JURISDICTIONAL MOBILITY

Background

9. In August 2002, the Federation of Law Societies of Canada accepted the National Mobility Task Force's National Mobility Agreement (the Agreement). It was then up to each law society to determine whether it would approve the Agreement and implement its provisions.

10. In September 2002 the Committee recommended approval of the Agreement to Convocation, which accepted the recommendation and authorized the Law Society to become a signatory. Appendix 1 contains a copy of the Agreement.

11. In December 2002 eight jurisdictions signed the Agreement. They are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, and Newfoundland. New Brunswick, the Northwest Territories, Nunavut, Prince Edward Island and the Yukon have voted not to sign the Agreement at this time.

12. The National Mobility Task Force has been working on a number of issues to facilitate implementation of the Agreement for each jurisdiction. These include, among other issues,
    a. drafting Model Rules that each signatory can use to assist the drafting of its own rules or by-laws;
    b. considering what the reading requirement set out in the Agreement should entail; and
    c. considering submissions from the Department of Justice and the Office of the Judge Advocate General concerning the applicability of the Agreement to them.

(a) The Model Rules and Law Society of Upper Canada By-laws

13. The National Mobility Task Force has been working on Model Rules that individual law societies could adapt to their specific circumstances. The Task Force is of the view that an important step in ensuring that the mobility scheme is implemented in a consistent and logical manner across the country is for law societies to integrate the content of the Model Rules into their rules or by-laws so that all signatories interpret the Agreement consistently. Appendices 2 and 3 contain the Model Rules and accompanying Commentary. These are provided to Convocation for its information.

14. The Law Society's structure is somewhat different from that of other law societies. Most jurisdictions use rules to implement their legislative authority. The Model Rules reflect this drafting style. In addition, most other jurisdictions regulate "the practice of law" whereas the Law Society of Upper Canada regulates "members". This has an impact on the language that is used in the Law Society's By-laws.

15. The Law Society's By-laws already address a number of mobility-related issues such as occasional practice under the Inter-Jurisdictional Practice Protocol (IJPP) (By-law 33) and transfer provisions (By-law 11). These By-laws must now be amended to integrate the provisions of the Agreement, which Convocation approved in September 2002.

16. It is important to note that because five jurisdictions will not be signing the Agreement, the By-laws must also continue to reflect the provisions already in place under the IJPP and the transfer rules for those who are not signatories to the Agreement.

17. The provisions of the Model Rules appear in amendments/replacements to (3) of the By-laws, as follows:

a. By-law 11 addresses Call to the Bar and Admission and Enrolment as a Solicitor. This includes a section on transfer from a jurisdiction outside of Ontario, within Canada. The proposed amendments add the provisions for permanent mobility as defined in the Agreement. Sections 4.01 – 4.2(5) address proposed changes, although the most significant amendments are to sections 4 (1) and 4(2).

b. By-law 13 addresses "members" and creates categories of members for the purposes of, among other things, the Private Practice Refresher Program. The proposed amendments integrate the provisions in the Agreement that provide that a person transferring from one jurisdiction to another cannot gain greater rights in the new jurisdiction than he or she had in the one from which he or she is transferring.

c. By-law 33 currently addresses "occasional practice" (called temporary mobility in the Agreement), as expressed in the IJPP. By-law 33 is to be replaced to,

i. add provisions for occasional practice as defined in the Agreement (Part II of the By-law);

ii. revise some of the provisions under the IJPP so that the language is parallel to that in Part II. By-law 33 must continue to address occasional practice under the IJPP because there are five jurisdictions that are not signatories to the National Mobility Agreement (Part III and IV of the By-law);

iii. create a general section that applies to both Parts II and III (Part I of the By-law); and

iv. specify a commencement date for the provisions in the By-law that deal with mobility under the Agreement (Part V of the By-law).

18. Appendix 4 contains the proposed Motion to amend By-laws 11 and 13 and replace By-law 33. While the structure and language do not mirror that of the Model Rules, all the provisions/content of the Model Rules are in fact reflected in the proposed by-law amendments/replacement. Appendix 5 contains a Table of Concordance between the model rule and the by-law amendments.

(b) Reading Requirement

19. The Agreement provides that those seeking to take advantage of the provisions for permanent mobility be required to certify that they have read whatever materials the jurisdiction requires. The Model Rules (in the case of Ontario By-law 11) add to this slightly by stating that the lawyer must certify that he or she has *reviewed and understood* the materials.

20. The Agreement does not specify of what the materials should consist, but the Task Force was clear that the materials were not to be a barrier to admission. The Task Force has prepared a recommendation for the approach that jurisdictions should take to developing materials. The recommendation is set out at Appendix 6.

21. The Committee is of the view that this recommendation should be approved for use in Ontario.

(c) Department of Justice and Office of the Judge Advocate General

22. The National Mobility Agreement contains a provision that a visiting lawyer who provides legal services respecting law of federal jurisdiction in a host jurisdiction, does so within the meaning of the Agreement.

23. Both the Department of Justice (DOJ) and the Office of the Judge Advocate General (JAG) made submissions to the Task Force as to why lawyers employed in those areas should be exempted from the terms of the Agreement.

24. In its submissions the Department of Justice relied in part on a provision in the IJPP on temporary mobility, which appears to exempt employees of the Federal Crown from having to comply with the 10-20-12 limits for temporary mobility.

25. As the various jurisdictions implemented the IJPP they adopted different approaches to this provision, including, in some cases, not keeping any track of Department of Justice lawyers in their jurisdictions, whether they were there on a temporary or permanent basis. Nor did lawyers in the Department, or the Department itself, advise law societies of the presence of lawyers in a province or territory.

26. The Task Force has stated that in its view the relevant IJPP provision was not intended to provide a blanket exemption for lawyers in the employ of the Federal Crown for the purposes of temporary and permanent mobility. Further, the Agreement clearly articulates a view of universal applicability of its provisions for those who "provide legal services" within the meaning of the Agreement.

27. With respect to the Department of Justice submissions the Task Force has confirmed the general applicability of the Agreement to lawyers in the Department's employ, with one recommended exception. The Task Force's position is set out in the Commentary to the Model Rules as follows:

> *Although the Department of Justice made submissions that its employees should not be subject to the Agreement because, among other reasons, they practise federal law the Task Force is of the view that the Agreement clearly articulates the premises behind mobility with a view to universal applicability of its provisions for those who provide legal services within the meaning of the Agreement.*
>
> *With respect to permanent mobility issues, in the Task Force's view, a lawyer called to the bar in Ontario, who provides legal services other than on a temporary basis (as defined by the NMA) in Alberta should not be entitled to rely on his or her Ontario membership as the regulatory authority over him or her. An analogy to a driver's licence is appropriate. Anyone who moves from Ontario to Alberta is entitled to continue to rely on his or her Ontario driver's licence only until he or she establishes residence in Alberta. Similarly, an Ontario lawyer, employed by the Department of Justice, who is providing legal services on other than a temporary basis in Alberta should be obliged to become a member of the Alberta bar. That lawyer interacts in the Alberta community and his or her provision of legal services has consequences in that community. That lawyer should be part of the legal profession in Alberta.*
>
> *While it is true that federal law operates nationally, it is affected by the local context in which it is applied, both in the courts and with respect to interpretation and application of statutes at an administrative level. Federal law does not operate outside the provincial realm simply because it has national application. It is arguable that, in fact, federal law is*

the law of each province. Those lawyers practicing it for the Federal Crown do so by relating to institutions and lawyers and other sectors in a province.

In the course of its submission the DOJ brought to the Task Force's attention the particular difficulty engendered by the mobility agreement with respect to DOJ lawyers who work in the National Capital Region. There are approximately 1200 such lawyers, about 1/3 located in Québec, the balance in Ontario. These lawyers will have offices physically located in Ottawa, Ontario or Hull, Québec, but may be called to the bar in the other province or indeed another province in Canada. Although the National Capital Region spans two provinces it is a physical entity unlike any other in the country.

The Task Force agrees that the unusual physical reality of the National Capital Region makes it appropriate to develop special rules for lawyers affected by it. It suggests that where the lawyers are members of either the Barreau or the Law Society of Upper Canada, the most appropriate way to handle this issue is for the Law Society of Upper Canada and the Barreau du Québec to enter into an agreement that lawyers who provide legal services in the region may have membership in either the Law Society or the Barreau.

Lawyers working in the National Capital Region, on other than a temporary basis, who are not members of either the Barreau or the Law Society of Upper Canada would, however, be required to become members of one of those bars.

28. The Committee agrees with the Task Force's reasoning and recommends that the Law Society explore with the Barreau the possibility of special provisions to deal with Department of Justice lawyers working in the National Capital Region along the lines recommended by the Task Force.

29. With respect to the Office of the Judge Advocate General, the Task Force has recommended that lawyers in its employ be exempted from the Agreement. The Task Force's position is set out in the Commentary to the Model Rules as follows:

Finally, section 2(3)[of the Model Rules] notes that a member of the Canadian Forces who is entitled to practise law in a home jurisdiction in which he or she is a member of the governing body may deliver legal services for or on behalf of the Office of the Judge Advocate General without a permit and without being considered to have established an economic nexus in a jurisdiction, provided he or she delivers such services exclusively on behalf of the JAG.

In Canada, as in many countries, the military justice system has been kept distinct from the civilian justice system. The Charter recognizes this distinction. The JAG provides legal advice on military law and administers the military justice system. It has 169 legal officers, 106 of whom are regular force and the balance of whom are reserve force. There are 18 JAG offices in Canada, one in Germany and individual officers are deployed in a handful of locations in Europe and the United States. The JAG's services are offered exclusively to military personnel, with respect to military law. On rare occasions, when a member of the DND is about to be or is deployed outside of Canada and requires emergency advice on provincial law, JAG lawyers may provide it, but this is done as an adjunct to the responsibilities under the National Defence Act. So, for example, if a member of the armed forces is overseas and a family law issue arises, a JAG lawyer may provide him or her with some summary assistance because there is no one else to do so.

The Task Force has been persuaded that as regulators, the law societies should create an exemption for JAG lawyers because they operate in a legal sphere that is circumscribed and finite and designed to be separate and apart from the civilian justice system. The courts before which they appear are not part of the provincial administration of justice, but are designed specifically to deal with military issues. The work JAG lawyers

undertake relates exclusively to military personnel. Military justice will usually be dealt with in the jurisdiction in which the alleged offence occurred, but does not otherwise have any connection to that jurisdiction. A Department of Justice Legal Services unit provides advice to JAG in areas not directly related to military law (e.g. civil litigation, legislative development, real property, human rights, public and labour law).

30. The Committee agrees with this reasoning and recommends that JAG lawyers be exempted from the application of the Agreement in accordance with the Task Force's recommendation.

31. In Ontario's case, because the Law Society of Upper Canada regulates members, rather than the practice of law, this issue will require a memorandum of understanding with respect to Department of Justice lawyers in the National Capital Region and Office of the Judge Advocate General lawyers in Ontario, rather than provision in the By-laws. This is because of the wording of section 50(1)(a) of the *Law Society Act*, which precludes anyone who is not a member from practising.

> Prohibition as to practice, etc.
>
> 50. (1) Except where otherwise provided by law,
>
> (a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themself out as or represent themself to be a barrister or solicitor or practise as a barrister or solicitor; and
>
> (b) no temporary member shall act as a barrister or solicitor or practise as a barrister or solicitor except to the extent permitted by subsection 28.1 (3). 1991, c. 41, s. 4; 1993, c. 27, s. 5.

32. The memorandum of understanding would make it clear that the exemption applies only so long as the lawyer is employed exclusively by the Department of Justice or the Office of the Judge Advocate General and in the case of the Department of Justice is employed in the National Capital Region.

Request to Convocation

33. That Convocation approve

a. the proposed Motion set out at Appendix 4 and, if appropriate approve the amendments contained therein to By-laws 11 and 13, and the replacement therein to By-law 33;

b. the recommendation regarding the mobility reading requirement; and

c. the recommendation regarding the applicability of the National Mobility Agreement to lawyers employed by the Department of Justice and the Office of the Judge Advocate General.

Appendix 4

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTION 62 (0.1) OF THE *LAW SOCIETY ACT*

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 27, 2003

MOVED BY

SECONDED BY

THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act*, in force on March 27, 2003, be amended as follows:

BY-LAW 11
[CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR]

1. Subsection 3 (2) of By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor] is amended by striking out "the director of the Bar Admission Course" and substituting "a Society official".

2. Section 4 of the By-Law is struck out and the following substituted:

Interpretation: active practice of law

4.01 (1) In subsections 4 (2) and 4.1 (2), active practice of law includes service in a legal capacity with a department or agency of the Government of Canada or with the Canadian Military Prosecution Service under the Director of Military Prosecutions of the Canadian Forces.

Interpretation: pre-call education program

(2) In subsections 4 (2) and 4.1 (2), a person is engaged in the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario when the person,

(a) is enrolled and participates in a teaching or education program prescribed by that governing body of the legal profession that is not a law course offered in a university; or

(b) serves under articles of clerkship to a member of that governing body of the legal profession in accordance with its rules, regulations or by-laws.

Application of section

4. (1) This section applies to a person if,

(a) the person is authorized to practise law in a province or territory of Canada outside Ontario; and

(b) the governing body of the legal profession in the province or territory of Canada outside Ontario in which the person is authorized to practise law would not require a member to pass an examination in order to transfer to that province or territory.

Qualifying for call to bar and admission and enrolment as solicitor

(2) A person may be called to the bar and admitted and enrolled as a solicitor if the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership;

(c) is a graduate of a law course that is offered by a university in Canada and is approved by Convocation, or has a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;

(d) has certified, in a form provided by the Society, that the person has reviewed and understands the materials reasonably required by a Society official; and

(e) for a period or periods totalling at least fourteen months within the three year period immediately before the day on which the person applies under section 4.2 for a determination as to whether the person qualifies to be called to the bar and admitted and enrolled as a solicitor under this section, was engaged in one of the following activities or any combination of them:

(i) the active practice of law as a member of a governing body of the legal profession of any province or territory of Canada outside Ontario,

(ii) the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario,

(iii) service under articles of clerkship in Ontario.

Application of section

4.1 (1) This section applies to a person if section 4 does not apply to the person.

Qualifying for call to bar and admission and enrolment as solicitor

(2) A person may be called to the bar and admitted and enrolled as a solicitor if the person,

(a) is qualified to practise law in a province or territory of Canada outside Ontario;

(b) has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership;

(c) is a graduate of a law course that is offered by a university in Canada and is approved by Convocation, or has a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;

(d) has passed the transfer examinations prescribed by Convocation and, unless otherwise permitted by a Society official, has passed each transfer examination within the three year period immediately before the day on which the person applies under section 4.2 for a determination as to whether the person qualifies to be called to the bar and admitted and enrolled as a solicitor under this section; and

(e) for a period or periods totalling at least fourteen months within the three year period immediately before the person passed the final transfer examination of the transfer examinations mentioned in clause (d), was engaged in one of the following activities or any combination of them:

(i) the active practice of law as a member of a governing body of the legal profession of any province or territory of Canada outside Ontario,

(ii) the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario,

(iii) service under articles of clerkship in Ontario.

Application

4.2 (1) A person who wishes to qualify under section 4 or 4.1 for call to the bar and admission and enrolment as a solicitor shall apply to a Society official for a determination as to whether the person meets the requirements mentioned in section 4 or 4.1, as the case may be.

Application form

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

Application fees

(3) A person who makes an application under subsection (1) shall pay,

(a) an application fee, if any, in an amount determined by Convocation, when the person submits the form; and

(b) any other fees required to be paid by the Society in relation to the assessment of the person's application, including examination fees, preparatory course fees and materials fees.

Certificate of standing

(4) A person who makes an application under subsection (1) shall provide to the Society a certificate of standing from the governing body of the legal profession in each province and territory of Canada outside Ontario and in each jurisdiction outside Canada of which the person is or was a member,

(a) in the case of a person who makes an application for a determination as to whether the person meets the requirements in section 4, that was issued during the three month period immediately before the day on which the person makes the application; and

(b) in the case of a person who makes an application for a determination as to whether the person meets the requirements in section 4.1, that was issued during the three month period immediately before the person passed the final transfer examination of the transfer examinations mentioned in clause 4.1 (2) (d).

Documents, explanations, release, *etc.*

(5) For the purposes of assisting the Society official to consider an application, a person who makes an application under subsection (1) shall provide,

(a) to the Society official, such documents and explanations as may be required; and

(b) to a person named by the Society official, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

3. By-Law 11 is further amended by adding the following:

Interpretation: "Society official"

0.1 In this By-Law, "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing all or part of this By-Law.

BY-LAW 13
[MEMBERS]

4. Section 2.1 of By-Law 13 [Members] is amended by adding the following:

Member by transfer

(5) A person who becomes a member by transferring from a jurisdiction outside Ontario under section 4 of By-Law 11 is, immediately the person becomes a member, a category A, category B or category C member, as the case may be, if immediately before the person became a member, the person had in the jurisdiction from which the person transferred to Ontario the rights and privileges of that category of member.

5. Section 2.3 of the By-Law is amended by adding the following:

Member by transfer

(4.1) For the purposes of determining the entitlement to a change of status under subsection (4) of a person who became a member by transferring from a jurisdiction outside Ontario under section 4 of By-Law 11, the Society official shall consider the period of time that the member was a category B or category C member and the period of time that the person had the rights and privileges of that category of member in the jurisdiction from which the person transferred to Ontario.

BY-LAW 33
[INTERPROVINCIAL PRACTICE OF LAW]

6. By-Law 33 [Interprovincial Practice of Law] is revoked and the following substituted:

INTER-PROVINCIAL PRACTICE OF LAW

PART I
GENERAL

Definitions
1. In this By-Law,

"Inter-Jurisdictional Practice Protocol" means the agreement, as amended from time to time, entered into in and between 1994 and 1996 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, the Barreau du Québec, the Chambre des Notaires du Québec, The Law Society of New Brunswick, the Law Society of Prince Edward Island, the Nova Scotia Barristers= Society and the Law Society of Newfoundland in respect of the inter-provincial practice of law;

"National Excess Plan" means the plan established under the Inter-Jurisdictional Practice Protocol for the purpose of compensating any person who sustains a financial loss arising from the misappropriation of money or other property by a person qualified to practise law in any province or territory of Canada while the person is engaged in the inter-provincial practice of law;

"Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Prohibition against occasional practice of law
2. A person who is not a member shall not practise law in Ontario except in accordance with this By-Law or By-Law 22.

Insurance and defalcation coverage
3. (1) No person shall practise law in Ontario under this By-Law unless the person,

(a) has professional liability insurance for the person's practice of law in Ontario which is reasonably comparable in coverage and limits to professional liability insurance that is required of a member; and

(b) has coverage for defalcations, other than the National Excess Plan, which specifically extends to the person's practice of law in Ontario and is at least equivalent to the coverage available to a member.

Insurance: exemption
(2) A person who is entitled to practise law in Ontario under section 10 is exempt from the requirement contained in clause (1) (a) if the person meets any of the requirements for exemption from payment of insurance premium levies specified for members in By-Law 16.

Application of Act, *etc.*
4. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the Rules of Professional Conduct apply, with necessary modifications, to a person who practises law in Ontario under this By-Law.

Conflict
(2) In the event of a conflict between the provisions of this By-Law and the provisions of any other by-law, the provisions of this By-Law prevail.

Proof of Compliance
5. (1) A person who is not a member and who is practising law in Ontario shall, upon the request of a Society official and by not later than the day specified by the official, provide proof to the satisfaction of the official that he or she is in compliance with this By-Law or By-Law 22.

Deemed failure to comply

(2) If a person fails to provide proof to the Society official by the day specified by the official, the person shall be deemed not to be in compliance with this By-Law or By-Law 22.

Application of section

6. (1) This section applies to a person if the prior permission of the Society is required for the person to practise law in Ontario on an occasional basis.

Application for permission

(2) A person who wishes permission to practise law in Ontario on an occasional basis shall apply to the Society.

Application form

(3) An application under subsection (2) shall be contained in a form provided by the Society.

Documents, explanations, releases, *etc.*

(4) For the purposes of assisting the Society to consider an application under subsection (2), the person shall provide,

(a) to the Society, such documents and explanations as may be required; and

(b) to a person named by a Society official, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

Application to be considered by Society official

(5) Every application under subsection (2) shall be considered by a Society official and,

(a) the Society official shall notify the person in writing that the person may practise law in Ontario on an occasional basis if the Society official is satisfied that the person has met the requirements, if any, for permission to practise law in Ontario on an occasional basis or that it would not be contrary to the public interest to permit the person to practise law in Ontario on an occasional basis; or

(b) the Society official shall notify the person in writing that the person may not practise law in Ontario on an occasional basis if the Society official is not satisfied that the person has met the requirements, if any, for permission to practise law in Ontario on an occasional basis and that it would not be contrary to the public interest to permit the person to practise law in Ontario on an occasional basis.

Terms and conditions

(6) Permission to practise law in Ontario on an occasional basis granted to a person by a Society official may include such terms and conditions as the official considers appropriate.

Application to committee of benchers

(7) If a Society official refuses to permit a person to practise law in Ontario on an occasional basis or includes terms and conditions in the permission, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the person may practise law in Ontario on an occasional basis or of whether the terms and conditions are appropriate.

Time for application

(8) An application under subsection (7) shall be commenced by the person notifying a Society official in writing of the application within thirty days after the day the person receives notice of the Society official's refusal to permit the person to practise law in Ontario on an occasional basis.

Parties

(9) The parties to an application under subsection (7) are the person and the Society.

Quorum

(10) An application under subsection (7) shall be considered and determined by at least three members of the committee of benchers.

Procedure

(11) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (7) as if the consideration of the application were the hearing of an application for admission under section 27 of the Act.

Same

(12) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee of benchers of an application under subsection (7).

Decision on application

(13) After considering an application under subsection (7), the committee of benchers shall determine that the person may practise law in Ontario on an occasional basis or may not practise law in Ontario on an occasional basis.

Terms and conditions

(14) Permission to practise law in Ontario on an occasional basis granted to a person by the committee of benchers may include such terms and conditions as the committee of benchers considers appropriate.

Decision final

(15) The decision of the committee of benchers on an application under subsection (7) is final.

Duration of permission

(16) Permission to practise law in Ontario on an occasional basis granted to a person remains in effect for one year after the day on which it comes into effect.

Permission withdrawn

(17) Permission to practise law in Ontario on an occasional basis granted to a person is automatically withdrawn immediately the person,

(a) does not meet the requirements, if any, for permission to practise law in Ontario on an occasional basis;

(b) ceases to have authority to practise law in a province or territory of Canada outside Ontario on the basis of which authority the person was granted permission to practise law in Ontario on an occasional basis;

(c) does not comply with clause 3 (1) (a);

(d) is the subject of an order made against the person by any tribunal of the governing body of the legal profession in any province and territory of Canada of which the person is a member,

(i) revoking the person's membership in the governing body, disbarring the person as a barrister and striking the person's name off the governing body's roll of solicitors, or

(ii) suspending the person's rights and privileges; or

(e) practises law in Ontario on more than an occasional basis, unless permitted to do so under this By-Law.

Permit fee

(18) A person permitted to practise law in Ontario on an occasional basis shall pay a permit fee in an amount determined by Convocation from time to time.

Disclosure of information

7. (1) If a member is the subject of an investigation or a proceeding at the instance of the governing body of the legal profession in a province or territory of Canada outside Ontario arising from the member's inter-provincial practice of law in the province or territory, the Society may, at the request of the governing body, provide to it such information in respect of the member as is reasonable for the Society to provide in the circumstances.

Same

(2) The Society may provide to the governing body of the legal profession in a province or territory of Canada outside Ontario information in respect of a member necessary to permit the governing body to determine if the member qualifies to practise law on an occasional basis, or on more than an occasional but less than a regular basis, in the province or territory.

PART II
OCCASIONAL PRACTICE OF LAW: 100 DAYS

Application of Part

8. This Part applies to a person if,

(a) the person is authorized to practise law in a province or territory of Canada outside Ontario; and

(b) the governing body of the legal profession in the province or territory of Canada outside Ontario in which the person is authorized to practise law has provisions respecting the practice of law on an occasional basis, or on more than an occasional but less than a regular basis, in that province or territory by a member that correspond to the provisions contained in this Part.

Definition: "day"

9. (1) In this Part, "day" means a calendar day or part of a calendar day.

Interpretation: practice of law

(2) In this Part, a person practises law in Ontario if the person,

(a) performs professional services for others in the capacity of a barrister or solicitor relying on, or with respect to, the laws of Ontario or the laws of Canada applicable in Ontario, or

(b) gives legal advice to others with respect to the laws of Ontario or the laws of Canada applicable in Ontario.

Occasional practice of law: excluded activities

(3) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada shall not be included in calculating the maximum number of days a person is entitled or permitted to practise law in Ontario under this Part.

Interpretation: economic nexus

(4) In this Part, a person establishes an economic nexus with Ontario if the person,

(a) practises law in Ontario for more than the maximum number of days the person is entitled or permitted to practise law in Ontario under this Part;

(b) opens an office in Ontario from which to practise law;

(c) opens or operates a trust account at a financial institution located in Ontario;

(d) receives money in trust for a client other than as permitted under this Part;

(e) holds himself or herself out as willing to accept new clients in Ontario;

(f) becomes a resident in Ontario; or

(g) acts in any other manner inconsistent with practising law in Ontario only on an occasional basis.

Same

(5) Despite subsection (4), a person does not establish an economic nexus with Ontario only if the person practises law in Ontario from an office in Ontario that is affiliated with a law office in a province or territory of Canada outside Ontario in which the member is authorized to practise law.

Interpretation: occasional practice of law

10. (1) In this section, a person practises law on an occasional basis if, during a calendar year, the person practises law in Ontario for not more than 100 days.

Prior permission not required

(2) A person who is not a member may, without the prior permission of the Society, practise law in Ontario on an occasional basis if, and so long as, the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) is not the subject of a criminal proceeding in a province or territory of Canada;

(c) is not the subject of a conduct, capacity or competence proceeding in a province or territory of Canada;

(d) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is or was a member,

(i) revoking the person's membership in the governing body, disbarring the person as a barrister and striking the person's name off the governing body's roll of solicitors, or

(ii) permitting the person to resign the person's membership in the governing body;

(e) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is a member suspending or limiting the rights and privileges of the person, other than for failure to pay fees or levies to the governing body, for insolvency or bankruptcy or for any administrative matter;

(f) has and has had no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is entitled to practice law; and

(g) does not establish an economic nexus with Ontario.

Practising on more than an occasional basis

(3) A person who is entitled under subsection (2) to practise law in Ontario on an occasional basis may practise law in Ontario on more than an occasional basis, as permitted by a Society official, if, and so long as, the person meets the requirements mentioned in subsection (2).

Interpretation: occasional practice of law

11. (1) In this section, a person practises law on an occasional basis if, during the year during which the person is permitted to practise law in Ontario on an occasional basis, the person practises law in Ontario for not more than 100 days.

Permission to practise law on an occasional basis

(2) A person who is not a member and is not entitled to practise law in Ontario under section (10) may, with the prior permission of the Society, practise law in Ontario on an occasional basis.

Handling of money

12. A person who is entitled or permitted under this Part to practise law in Ontario may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

(a) the person pays the money into a trust account at a financial institution located in a province or territory of Canada outside Ontario in which the person is authorized to practise law; or

(b) the person pays the money into a trust account that is kept in the name of and operated by a member in accordance with By-Law 19 and the money is handled only by the member in accordance with By-Law 19.

PART III
OCCASIONAL PRACTICE OF LAW: 12 – 10 – 20

Application of Part

13. This Part applies to a person if Part II does not apply to the person.

Interpretation: practice of law

14. (1) In this Part, a person practises law if the person performs professional services for others in the capacity of a barrister or solicitor or if the person gives legal advice to others with respect to the laws of Ontario or Canada.

Interpretation: occasional practice of law

(2) In this Part, a person practises law on an occasional basis if, during any period of twelve consecutive months, the person,

(a) practises law in respect of not more than ten matters; and

(b) practises law for not more than twenty days in total.

Occasional practice of law: excluded activities

(3) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada or a tribunal established under an Act of Parliament or the Legislature in Ontario shall not be included in calculating the ten matters or twenty days mentioned in subsection (2).

Interpretation: "law specific to Ontario"

(4) In this Part, "law specific to Ontario" means any substantive or procedural law that applies specifically to Ontario.

Prior permission not required

15. (1) A person who is not a member may, without the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) is not the subject of a criminal proceeding in a province or territory of Canada;

(c) has no criminal record;

(d) is not the subject of a conduct, capacity or competence proceeding in a province or territory of Canada;

(e) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is or was a member; and

(f) has and has had no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is or was authorized to practise law.

Permission to practise on an occasional basis

(2) A person who is not a member and is not entitled to practise law in Ontario on an occasional basis under subsection (1) may, with the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) is not the subject of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada outside Ontario of which the person is a member; and

(c) has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is authorized to practise law.

Law specific to Ontario: competence

16. A person who is entitled or permitted under section 15 to practise law in Ontario on an occasional basis shall not practise law specific to Ontario unless the person is competent to practise law specific to Ontario.

Practising on more than an occasional basis

17. (1) On written application by a person who is entitled or permitted under section 15 to practise law in Ontario on an occasional basis, a Society official may permit the person to practise law in Ontario on more than an occasional basis if, in the opinion of the Society official, such permission is not contrary to the public interest.

Practising on regular basis not permitted

(2) Permission to practise law in Ontario on more than an occasional basis granted to a person shall not include permission to practise law in Ontario on a regular basis.

Law specific to Ontario

(3) Permission to practise law in Ontario on more than an occasional basis granted to a person shall not include permission to practise law specific to Ontario on more than an occasional basis.

Handling of money

18. A person who is entitled or permitted under this Part to practise law in Ontario may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

(a) any money received is only on account of fees for services not yet rendered for the client and the person immediately pays the money into a trust account at a financial institution located in a province or territory of Canada outside Ontario in which the person is authorized to practise law; or

(b) the person pays the money into a trust account that is kept in the name of and operated by a member in accordance with By-Law 19 and the money is handled only by the member in accordance with By-Law 19.

Holding out

19. A person who is entitled or permitted under this Part to practise law in Ontario shall not hold himself or herself out as or represent himself or herself to be willing or qualified to practise law in Ontario other than as entitled or permitted to under this Part.

PART IV
NATIONAL EXCESS PLAN

Society's contribution

20. (1) Not later than December 31 in each year, the Society shall pay to the Federation of Law Societies of Canada for the National Excess Plan an amount agreed to by the Society and the Federation.

Same

(2) Despite subsection (1), the Society is not required to pay any amount to the Federation of Law Societies of Canada for the National Excess Plan if the amount in the National Excess Plan is $1 million or more.

PART V
COMMENCEMENT

Commencement

21. (1) This By-Law comes into force on the day on which it is made.

Same

(2) Despite subsection (1), Part II and section 13 of this By-Law come into force on July 1, 2003.

Appendix 5

TABLE OF CONCORDANCE

Model Rule	By-law 33
Definitions	incorporated including s.9 (1), (2) & 10(2)
2(3)	memorandum of understanding
3(1) & (2)	11(1) & (2)
3(3)(a)	10(2)(a)
3(3)(b)	3(1)(a)
3(3)(c)	3(1)(b)
3(3)(d)	10(2)(f)
3(3)(e)	10(2)(b) & (c)
3(3)(f)	10(2)(d) & (e)
3(3)(g)	10(2)(g)
3(4)	3(2)
4(1)	4(1)
4(2)	part of 5(1)
5	9(3)
6	12
7	6
8	9, 10(2)(g)
9	7(2)

10	5
11(1) – (3)	By-law 11
11(4)	By-law 13
12 & 13	Discipline is incorporated operationally. Insurance will be dealt with as needed in By-law 16.

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

(1) Copy of the National Mobility Agreement.
(Appendix 1, pages 11 – 28)

(2) Copy of the National Mobility Model By-Law Rules.
(Appendix 2, pages 29 – 36)

(3) Copy of the Commentary to National Mobility Model Rules.
(Appendix 3, pages 37 – 48)

(4) Copy of the Recommended Principles to Underlie the Development of Provincial Reading Requirements for Permanent Mobility.
(Appendix 6, pages 66 – 68)

Mr. Millar moved an amendment to the proposed amendments to By-Law 11 by deleting the words "a department or agency of the Government of Canada or with" set out in section 2, 4.01 (1) on page 49 of the Report.

It was moved by Mr. Millar, seconded by Mr. Hunter that Convocation approve the amendments (English and French versions) to By-Laws 11 and 13 and revoke By-Law 33 and substitute it with By-Law 33 as set out in Appendix 4 to the Report.

Carried

BY-LAW AMENDMENTS

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTION 62 (0.1) OF THE *LAW SOCIETY ACT*

THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act*, in force on March 27, 2003, be amended as follows:

BY-LAW 11
[CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR]

1. Subsection 3 (2) of By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor] is amended by striking out "the director of the Bar Admission Course"/"que le directeur ou la directrice du Cours de formation professionnelle" and substituting "a Society official"/"qu'un ou une responsable du Barreau".

2. Section 4 of the By-Law is struck out and the following substituted:

Interpretation: active practice of law

4.01 (1) In subsections 4 (2) and 4.1 (2), active practice of law includes service in a legal capacity with ~~a department or agency of the Government of Canada or with~~ the Canadian Military Prosecution Service under the Director of Military Prosecutions of the Canadian Forces.

Interpretation: pre-call education program

(2) In subsections 4 (2) and 4.1 (2), a person is engaged in the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario when the person,

(a) is enrolled and participates in a teaching or education program prescribed by that governing body of the legal profession that is not a law course offered in a university; or

(b) serves under articles of clerkship to a member of that governing body of the legal profession in accordance with its rules, regulations or by-laws.

Application of section

4. (1) This section applies to a person if,

(a) the person is authorized to practise law in a province or territory of Canada outside Ontario; and

(b) the governing body of the legal profession in the province or territory of Canada outside Ontario in which the person is authorized to practise law would not require a member to pass an examination in order to transfer to that province or territory.

Qualifying for call to bar and admission and enrolment as solicitor

(2) A person may be called to the bar and admitted and enrolled as a solicitor if the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership;

(c) is a graduate of a law course that is offered by a university in Canada and is approved by Convocation, or has a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;

(d) has certified, in a form provided by the Society, that the person has reviewed and understands the materials reasonably required by a Society official; and

(e) for a period or periods totalling at least fourteen months within the three year period immediately before the day on which the person applies under section 4.2 for a determination as to whether the person qualifies to be called to the bar and admitted and enrolled as a solicitor under this section, was engaged in one of the following activities or any combination of them:

(i) the active practice of law as a member of a governing body of the legal profession of any province or territory of Canada outside Ontario,

(ii) the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario,

(iii) service under articles of clerkship in Ontario.

Application of section

4.1 (1) This section applies to a person if section 4 does not apply to the person.

Qualifying for call to bar and admission and enrolment as solicitor

(2) A person may be called to the bar and admitted and enrolled as a solicitor if the person,

(a) is qualified to practise law in a province or territory of Canada outside Ontario;

(b) has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership;

(c) is a graduate of a law course that is offered by a university in Canada and is approved by Convocation, or has a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;

(d) has passed the transfer examinations prescribed by Convocation and, unless otherwise permitted by a Society official, has passed each transfer examination within the three year period immediately before the day on which the person applies under section 4.2 for a determination as to whether the person qualifies to be called to the bar and admitted and enrolled as a solicitor under this section; and

(e) for a period or periods totalling at least fourteen months within the three year period immediately before the person passed the final transfer examination of the transfer examinations mentioned in clause (d), was engaged in one of the following activities or any combination of them:

(i) the active practice of law as a member of a governing body of the legal profession of any province or territory of Canada outside Ontario,

(ii) the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario,

(iii) service under articles of clerkship in Ontario.

Application

4.2 (1) A person who wishes to qualify under section 4 or 4.1 for call to the bar and admission and enrolment as a solicitor shall apply to a Society official for a determination as to whether the person meets the requirements mentioned in section 4 or 4.1, as the case may be.

Application form

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

Application fees

(3) A person who makes an application under subsection (1) shall pay,

(a) an application fee, if any, in an amount determined by Convocation, when the person submits the form; and

(b) any other fees required to be paid by the Society in relation to the assessment of the person's application, including examination fees, preparatory course fees and materials fees.

Certificate of standing

(4) A person who makes an application under subsection (1) shall provide to the Society a certificate of standing from the governing body of the legal profession in each province and territory of Canada outside Ontario and in each jurisdiction outside Canada of which the person is or was a member,

(a) in the case of a person who makes an application for a determination as to whether the person meets the requirements in section 4, that was issued during the three month period immediately before the day on which the person makes the application; and

(b) in the case of a person who makes an application for a determination as to whether the person meets the requirements in section 4.1, that was issued during the three month period immediately before the person passed the final transfer examination of the transfer examinations mentioned in clause 4.1 (2) (d).

Documents, explanations, release, *etc.*

(5) For the purposes of assisting the Society official to consider an application, a person who makes an application under subsection (1) shall provide,

(a) to the Society official, such documents and explanations as may be required; and

(b) to a person named by the Society official, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

Interprétation : exercice actif de la profession d'avocat

4.01 (1) Aux paragraphes 4 (2) et 4.1 (2), «exercice actif de la profession d'avocat» s'entend en outre de la prestation de services juridiques au sein d'un ministère ou d'un organisme du gouvernement du Canada ou du Service canadien des poursuites militaires sous le Directeur - poursuites militaires des Forces canadiennes.

Champ d'application de l'article

4. (1) Le présent article s'applique aux personnes qui :

a) d'une part, sont autorisées à exercer la profession d'avocat dans une province ou un territoire du Canada autre que l'Ontario;

b) d'autre part, sont autorisées à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario dont l'organisme de réglementation de la profession juridique n'exigerait pas de ses membres qu'ils subissent une examen avant de les admettre par voie de transfert.

Conditions de réception au barreau et d'admission comme procureur

(2) Peut être reçu au barreau et admis comme procureur quiconque remplit les conditions suivantes :

a) il est autorisé à exercer la profession d'avocat dans une province ou un territoire du canada autre que l'Ontario;

b) il satisfait aux exigences de la Loi en ce qui a trait à l'admission au Barreau, autrement qu'à titre de membre étudiant ou de membre provisoire;

c) il est diplômé d'un cours de droit offert par une université canadienne et approuvé par le Conseil ou titulaire d'un certificat de compétence délivré par le Comité national sur les équivalences des diplômes de droit constitué par la Fédération des ordres professionnels de juristes du Canada et le Conseil des doyens et des doyennes des facultés de droit du Canada;

d) il atteste, sur un formulaire fourni par le Barreau, avoir étudié et comprendre les documents requis raisonnablement par un ou une responsable du Barreau;

e) pendant une période totale, continue ou non, d'au moins quatorze mois au cours des trois ans qui précèdent la date à laquelle il présente, en vertu de l'article 4.2, une demande de confirmation du fait qu'il remplit les conditions de réception au barreau et d'admission comme procureur prévues au présent article, il a exercé une ou plusieurs des activités suivantes :

(i) l'exercice actif de la profession d'avocat à titre de membre de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,

(ii) la participation au programme de formation professionnelle de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,

(iii) un stage en Ontario.

Champ d'application de l'article

4.1 (1) Le présent article s'applique aux personnes auxquelles ne s'applique pas l'article 4.

Conditions de réception au barreau et d'admission comme procureur

(2) Peut être reçu au barreau et admis comme procureur quiconque remplit les conditions suivantes :

a) il est autorisé à exercer la profession d'avocat dans une province ou un territoire du canada autre que l'Ontario;

b) il satisfait aux exigences de la Loi en ce qui a trait à l'admission au Barreau, autrement qu'à titre de membre étudiant ou de membre provisoire;

c) il est diplômé d'un cours de droit offert par une université canadienne et approuvé par le Conseil ou titulaire d'un certificat de compétence délivré par le Comité national sur les équivalences des diplômes de droit constitué par la Fédération des ordres professionnels de juristes du Canada et le Conseil des doyens et des doyennes des facultés de droit du Canada;

d) il a réussi les examens de transfert prescrits par le Conseil et, à moins d'autorisation contraire d'un ou d'une responsable du Barreau, il les a tous réussis au cours des trois ans qui précèdent la date à laquelle il présente, en vertu de l'article 4.2, une demande de confirmation du fait qu'il remplit les conditions de réception au barreau et d'admission comme procureur prévues au présent article;

e) pendant une période totale, continue ou non, d'au moins quatorze mois au cours des trois ans qui précèdent la date à laquelle il a réussi le dernier de tous les examens de transfert visés à l'alinéa d), il a exercé une ou plusieurs des activités suivantes :

(i) l'exercice actif de la profession d'avocat à titre de membre de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,

(ii) la participation au programme de formation professionnelle de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,

(iii) un stage en Ontario.

Demande

4.2 (1) Quiconque souhaite être reçu au barreau et admis comme procureur en vertu de l'article 4 ou 4.1 présente à un ou à une responsable du Barreau une demande de confirmation du fait qu'il remplit les conditions prévues à l'article 4 ou 4.1, selon le cas.

Formulaire de demande

(2) Toute demande présentée en application du paragraphe (1) est faite sur le formulaire fourni par le Barreau.

Frais de demande

(3) Quiconque présente une demande en application du paragraphe (1) verse les frais suivants :

a) les frais de demande fixés par le Conseil, le cas échéant, lors de la présentation de la demande;

b) les autres frais exigés par le Barreau en ce qui a trait à l'évaluation de la demande, notamment les frais d'examen, de cours préparatoires et de documentation.

Certificat de membre en règle

(4) Quiconque présente une demande en application du paragraphe (1) fournit au Barreau un certificat de membre que chaque organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario ou d'un ressort étranger dont il est ou était membre a délivré :

a) au cours des trois mois qui précèdent la date de présentation de la demande, dans le cas d'une demande de confirmation du fait qu'il remplit les conditions prévues à l'article 4;

b) au cours des trois mois qui précèdent la date de réussite du dernier de tous les examens de transfert visés à l'alinéa 4.1 (2) d), dans le cas d'une demande de confirmation du fait qu'il remplit les conditions prévues à l'article 4.1.

Documents, explications et renonciations

(5) Pour faciliter l'examen par le ou la responsable du Barreau d'une demande présentée en application du paragraphe (1), son auteur fait ce qui suit :

a) il ou elle fournit au ou à la responsable les documents et les explications qu'exige ce dernier ou cette dernière;

b) il ou elle fournit, à la personne désignée nommément par le ou la responsable, les renonciations, directives et consentements nécessaires pour lui permettre de communiquer au Barreau les renseignements qu'exige celui-ci.

3. By-Law 11 is further amended by adding the following:

Interpretation: "Society official"

0.1 In this By-Law, "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing all or part of this By-Law.

Interprétation : « responsable du Barreau »

0.1 « responsable du Barreau » Dirigeant, dirigeante, employé ou employée du Barreau que le directeur général ou la directrice générale charge d'appliquer tout ou partie du présent règlement administratif.

BY-LAW 13
[MEMBERS]

4. Section 2.1 of By-Law 13 [Members] is amended by adding the following:

Member by transfer

(5) A person who becomes a member by transferring from a jurisdiction outside Ontario under section 4 of By-Law 11 is, immediately the person becomes a member, a category A, category B or category C member, as the case may be, if immediately before the person became a member, the person had in the jurisdiction from which the person transferred to Ontario the rights and privileges of that category of member.

Membre par voie de transfert

(5) Quiconque devient membre par voie de transfert en provenance d'un ressort autre que l'Ontario en application de l'article 4 du règlement administratif n° 11 est, dès qu'il le devient, membre de la catégorie A, de la catégorie B ou de la catégorie C, selon le cas, si, immédiatement avant de le devenir, il avait, dans ce ressort, les droits et privilèges de cette catégorie de membre.

5. Section 2.3 of the By-Law is amended by adding the following:

Member by transfer

(4.1) For the purposes of determining the entitlement to a change of status under subsection (4) of a person who became a member by transferring from a jurisdiction outside Ontario under section 4 of By-Law 11, the Society official shall consider the period of time that the member was a category B or category C member and the period of time that the person had the rights and privileges of that category of member in the jurisdiction from which the person transferred to Ontario.

Membre par voie de transfert

(4.1) Pour établir si la personne qui est devenue membre par voie de transfert en provenance d'un ressort autre que l'Ontario en application de l'article 4 du règlement administratif n° 11 a droit au changement de catégorie prévu au paragraphe (4), le ou la responsable du Barreau tient compte de la durée de la période pendant laquelle elle a été membre de la catégorie B ou de la catégorie C et celle de la période pendant laquelle elle avait, dans ce ressort, les droits et privilèges de cette catégorie de membre.

BY-LAW 33
[INTERPROVINCIAL PRACTICE OF LAW]

6. By-Law 33 [Interprovincial Practice of Law] is revoked and the following substituted:

INTER-PROVINCIAL PRACTICE OF LAW

PART I
GENERAL

Definitions

1. In this By-Law,

"Inter-Jurisdictional Practice Protocol" means the agreement, as amended from time to time, entered into in and between 1994 and 1996 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, the Barreau du Québec, the Chambre des Notaires du Québec, The Law Society of New Brunswick, the Law Society of Prince Edward Island, the Nova Scotia Barristers' Society and the Law Society of Newfoundland in respect of the inter-provincial practice of law;

"National Excess Plan" means the plan established under the Inter-Jurisdictional Practice Protocol for the purpose of compensating any person who sustains a financial loss arising from the misappropriation of money or other property by a person qualified to practise law in any province or territory of Canada while the person is engaged in the inter-provincial practice of law;

"Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Prohibition against occasional practice of law

2. A person who is not a member shall not practise law in Ontario except in accordance with this By-Law or By-Law 22.

Insurance and defalcation coverage

3. (1) No person shall practise law in Ontario under this By-Law unless the person,

(a) has professional liability insurance for the person's practice of law in Ontario which is reasonably comparable in coverage and limits to professional liability insurance that is required of a member; and

(b) has coverage for defalcations, other than the National Excess Plan, which specifically extends to the person's practice of law in Ontario and is at least equivalent to the coverage available to a member.

Insurance: exemption

(2) A person who is entitled to practise law in Ontario under section 10 is exempt from the requirement contained in clause (1) (a) if the person meets any of the requirements for exemption from payment of insurance premium levies specified for members in By-Law 16.

Application of Act, *etc.*

4. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the Rules of Professional Conduct apply, with necessary modifications, to a person who practises law in Ontario under this By-Law.

Conflict

(2) In the event of a conflict between the provisions of this By-Law and the provisions of any other by-law, the provisions of this By-Law prevail.

Proof of Compliance

5. (1) A person who is not a member and who is practising law in Ontario shall, upon the request of a Society official and by not later than the day specified by the official, provide proof to the satisfaction of the official that he or she is in compliance with this By-Law or By-Law 22.

Deemed failure to comply

(2) If a person fails to provide proof to the Society official by the day specified by the official, the person shall be deemed not to be in compliance with this By-Law or By-Law 22.

Application of section

6. (1) This section applies to a person if the prior permission of the Society is required for the person to practise law in Ontario on an occasional basis.

Application for permission

(2) A person who wishes permission to practise law in Ontario on an occasional basis shall apply to the Society.

Application form

(3) An application under subsection (2) shall be contained in a form provided by the Society.

Documents, explanations, releases, *etc.*

(4) For the purposes of assisting the Society to consider an application under subsection (2), the person shall provide,

(a) to the Society, such documents and explanations as may be required; and

(b) to a person named by a Society official, such releases, directions and consent as may be required to permit the person to make available to the Society such information as may be required.

Application to be considered by Society official

(5) Every application under subsection (2) shall be considered by a Society official and,

(a) the Society official shall notify the person in writing that the person may practise law in Ontario on an occasional basis if the Society official is satisfied that the person has met the requirements, if any, for permission to practise law in Ontario on an occasional basis or that it would not be contrary to the public interest to permit the person to practise law in Ontario on an occasional basis; or

(b) the Society official shall notify the person in writing that the person may not practise law in Ontario on an occasional basis if the Society official is not satisfied that the person has met the requirements, if any, for permission to practise law in Ontario on an occasional basis and that it would not be contrary to the public interest to permit the person to practise law in Ontario on an occasional basis.

Terms and conditions

(6) Permission to practise law in Ontario on an occasional basis granted to a person by a Society official may include such terms and conditions as the official considers appropriate.

Application to committee of benchers

(7) If a Society official refuses to permit a person to practise law in Ontario on an occasional basis or includes terms and conditions in the permission, the person may apply to a committee of benchers appointed for the purpose by Convocation for a determination of whether the person may practise law in Ontario on an occasional basis or of whether the terms and conditions are appropriate.

Time for application

(8) An application under subsection (7) shall be commenced by the person notifying a Society official in writing of the application within thirty days after the day the person receives notice of the Society official's refusal to permit the person to practise law in Ontario on an occasional basis.

Parties

(9) The parties to an application under subsection (7) are the person and the Society.

Quorum

(10) An application under subsection (7) shall be considered and determined by at least three members of the committee of benchers.

Procedure

(11) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (7) as if the consideration of the application were the hearing of an application for admission under section 27 of the Act.

Same

(12) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee of benchers of an application under subsection (7).

Decision on application

(13) After considering an application under subsection (7), the committee of benchers shall determine that the person may practise law in Ontario on an occasional basis or may not practise law in Ontario on an occasional basis.

Terms and conditions

(14) Permission to practise law in Ontario on an occasional basis granted to a person by the committee of benchers may include such terms and conditions as the committee of benchers considers appropriate.

Decision final

(15) The decision of the committee of benchers on an application under subsection (7) is final.

Duration of permission

(16) Permission to practise law in Ontario on an occasional basis granted to a person remains in effect for one year after the day on which it comes into effect.

Permission withdrawn

(17) Permission to practise law in Ontario on an occasional basis granted to a person is automatically withdrawn immediately the person,

(a) does not meet the requirements, if any, for permission to practise law in Ontario on an occasional basis;

(b) ceases to have authority to practise law in a province or territory of Canada outside Ontario on the basis of which authority the person was granted permission to practise law in Ontario on an occasional basis;

(c) does not comply with clause 3 (1) (a);

(d) is the subject of an order made against the person by any tribunal of the governing body of the legal profession in any province and territory of Canada of which the person is a member,

(i) revoking the person's membership in the governing body, disbarring the person as a barrister and striking the person's name off the governing body's roll of solicitors, or

(ii) suspending the person's rights and privileges; or

(e) practises law in Ontario on more than an occasional basis, unless permitted to do so under this By-Law.

Permit fee

(18) A person permitted to practise law in Ontario on an occasional basis shall pay a permit fee in an amount determined by Convocation from time to time.

Disclosure of information

7. (1) If a member is the subject of an investigation or a proceeding at the instance of the governing body of the legal profession in a province or territory of Canada outside Ontario arising from the member's inter-provincial practice of law in the province or territory, the Society may, at the request of the governing body, provide to it such information in respect of the member as is reasonable for the Society to provide in the circumstances.

Same

(2) The Society may provide to the governing body of the legal profession in a province or territory of Canada outside Ontario information in respect of a member necessary to permit the governing body to determine if the member qualifies to practise law on an occasional basis, or on more than an occasional but less than a regular basis, in the province or territory.

PART II
OCCASIONAL PRACTICE OF LAW: 100 DAYS

Application of Part

8. This Part applies to a person if,

(a) the person is authorized to practise law in a province or territory of Canada outside Ontario; and

(b) the governing body of the legal profession in the province or territory of Canada outside Ontario in which the person is authorized to practise law has provisions respecting the practice of law on an occasional basis, or on more than an occasional but less than a regular basis, in that province or territory by a member that correspond to the provisions contained in this Part.

Definition: "day"

9. (1) In this Part, "day" means a calendar day or part of a calendar day.

Interpretation: practice of law

(2) In this Part, a person practises law in Ontario if the person,

(a) performs professional services for others in the capacity of a barrister or solicitor relying on, or with respect to, the laws of Ontario or the laws of Canada applicable in Ontario, or

(b) gives legal advice to others with respect to the laws of Ontario or the laws of Canada applicable in Ontario.

Occasional practice of law: excluded activities

(3) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the *National Defence Act* (Canada) or the Court Martial Appeal Court of Canada shall not be included in calculating the maximum number of days a person is entitled or permitted to practise law in Ontario under this Part.

Interpretation: economic nexus

(4) In this Part, a person establishes an economic nexus with Ontario if the person,

(a) practises law in Ontario for more than the maximum number of days the person is entitled or permitted to practise law in Ontario under this Part;

(b) opens an office in Ontario from which to practise law;

(c) opens or operates a trust account at a financial institution located in Ontario;

(d) receives money in trust for a client other than as permitted under this Part;

(e) holds himself or herself out as willing to accept new clients in Ontario;

(f) becomes a resident in Ontario; or

(g) acts in any other manner inconsistent with practising law in Ontario only on an occasional basis.

Same

(5) Despite subsection (4), a person does not establish an economic nexus with Ontario only if the person practises law in Ontario from an office in Ontario that is affiliated with a law office in a province or territory of Canada outside Ontario in which the member is authorized to practise law.

Interpretation: occasional practice of law

10. (1) In this section, a person practises law on an occasional basis if, during a calendar year, the person practises law in Ontario for not more than 100 days.

Prior permission not required

(2) A person who is not a member may, without the prior permission of the Society, practise law in Ontario on an occasional basis if, and so long as, the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) is not the subject of a criminal proceeding in a province or territory of Canada;

(c) is not the subject of a conduct, capacity or competence proceeding in a province or territory of Canada;

(d) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is or was a member,

(i) revoking the person's membership in the governing body, disbarring the person as a barrister and striking the person's name off the governing body's roll of solicitors, or

(ii) permitting the person to resign the person's membership in the governing body;

(e) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is a member suspending or limiting the rights and privileges of the person, other than for failure to pay fees or levies to the governing body, for insolvency or bankruptcy or for any administrative matter;

(f) has and has had no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is entitled to practice law; and

(g) does not establish an economic nexus with Ontario.

Practising on more than an occasional basis

(3) A person who is entitled under subsection (2) to practise law in Ontario on an occasional basis may practise law in Ontario on more than an occasional basis, as permitted by a Society official, if, and so long as, the person meets the requirements mentioned in subsection (2).

Interpretation: occasional practice of law

11. (1) In this section, a person practises law on an occasional basis if, during the year during which the person is permitted to practise law in Ontario on an occasional basis, the person practises law in Ontario for not more than 100 days.

Permission to practise law on an occasional basis

(2) A person who is not a member and is not entitled to practise law in Ontario under section (10) may, with the prior permission of the Society, practise law in Ontario on an occasional basis.

Handling of money

12. A person who is entitled or permitted under this Part to practise law in Ontario may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

(a) the person pays the money into a trust account at a financial institution located in a province or territory of Canada outside Ontario in which the person is authorized to practise law; or

(b) the person pays the money into a trust account that is kept in the name of and operated by a member in accordance with By-Law 19 and the money is handled only by the member in accordance with By-Law 19.

PART III
OCCASIONAL PRACTICE OF LAW: 12 – 10 – 20

Application of Part

13. This Part applies to a person if Part II does not apply to the person.

Interpretation: practice of law

14. (1) In this Part, a person practises law if the person performs professional services for others in the capacity of a barrister or solicitor or if the person gives legal advice to others with respect to the laws of Ontario or Canada.

Interpretation: occasional practice of law

(2) In this Part, a person practises law on an occasional basis if, during any period of twelve consecutive months, the person,

(a) practises law in respect of not more than ten matters; and

(b) practises law for not more than twenty days in total.

Occasional practice of law: excluded activities

(3) Any time spent practising law as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada or a tribunal established under an Act of Parliament or the Legislature in Ontario shall not be included in calculating the ten matters or twenty days mentioned in subsection (2).

Interpretation: "law specific to Ontario"

(4) In this Part, "law specific to Ontario" means any substantive or procedural law that applies specifically to Ontario.

Prior permission not required

15. (1) A person who is not a member may, without the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) is not the subject of a criminal proceeding in a province or territory of Canada;

(c) has no criminal record;

(d) is not the subject of a conduct, capacity or competence proceeding in a province or territory of Canada;

(e) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is or was a member; and

(f) has and has had no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is or was authorized to practise law.

Permission to practise on an occasional basis

(2) A person who is not a member and is not entitled to practise law in Ontario on an occasional basis under subsection (1) may, with the prior permission of the Society, practise law in Ontario on an occasional basis if the person,

(a) is authorized to practise law in a province or territory of Canada outside Ontario;

(b) is not the subject of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada outside Ontario of which the person is a member; and

(c) has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is authorized to practise law.

Law specific to Ontario: competence

16. A person who is entitled or permitted under section 15 to practise law in Ontario on an occasional basis shall not practise law specific to Ontario unless the person is competent to practise law specific to Ontario.

Practising on more than an occasional basis

17. (1) On written application by a person who is entitled or permitted under section 15 to practise law in Ontario on an occasional basis, a Society official may permit the person to practise law in Ontario on more than an occasional basis if, in the opinion of the Society official, such permission is not contrary to the public interest.

Practising on regular basis not permitted

(2) Permission to practise law in Ontario on more than an occasional basis granted to a person shall not include permission to practise law in Ontario on a regular basis.

Law specific to Ontario

(3) Permission to practise law in Ontario on more than an occasional basis granted to a person shall not include permission to practise law specific to Ontario on more than an occasional basis.

Handling of money

18. A person who is entitled or permitted under this Part to practise law in Ontario may, in relation to the person's practice of law in Ontario, receive money in trust for a client provided that,

(a) any money received is only on account of fees for services not yet rendered for the client and the person immediately pays the money into a trust account at a financial institution located in a province or territory of Canada outside Ontario in which the person is authorized to practise law; or

(b) the person pays the money into a trust account that is kept in the name of and operated by a member in accordance with By-Law 19 and the money is handled only by the member in accordance with By-Law 19.

Holding out

19. A person who is entitled or permitted under this Part to practise law in Ontario shall not hold himself or herself out as or represent himself or herself to be willing or qualified to practise law in Ontario other than as entitled or permitted to under this Part.

PART IV
NATIONAL EXCESS PLAN

Society's contribution

20. (1) Not later than December 31 in each year, the Society shall pay to the Federation of Law Societies of Canada for the National Excess Plan an amount agreed to by the Society and the Federation.

Same

(2) Despite subsection (1), the Society is not required to pay any amount to the Federation of Law Societies of Canada for the National Excess Plan if the amount in the National Excess Plan is $1 million or more.

PART V
COMMENCEMENT

Commencement

21. (1) This By-Law comes into force on the day on which it is made.

Same

(2) Despite subsection (1), Part II and section 13 of this By-Law come into force on July 1, 2003.

EXERCICE INTERPROVINCIAL DU DROIT

PARTIE 1
DISPOSITIONS GÉNÉRALES

Définitions

1. Les définitions qui suivent s'appliquent au présent règlement administratif.

« Plan national d'indemnisation » Le régime établi aux termes du Protocole sur l'exercice interjuridictionnel du droit pour l'indemnisation de toute personne qui subit une perte financière par suite d'un détournement de fonds ou d'autres biens par une personne apte à exercer le droit dans une province ou un territoire du Canada pendant que cette personne se livre à l'exercice interprovincial du droit.

« Protocole sur l'exercice interjuridictionnel du droit » L'entente, dans ses modifications successives, conclue par le Barreau, la Law Society of British Columbia, la Law Society of Alberta, la Law Society of Saskatchewan, la Société du Barreau du Manitoba, le Barreau du Québec, la Chambre des Notaires du Québec, le Barreau du Nouveau-Brunswick, la Law Society of Prince Edward Island, The Nova Scotia Barristers' Society et la Law Society of Newfoundland à l'égard de l'exercice interprovincial du droit.

« responsable du Barreau » Dirigeant, dirigeante, employé ou employée du Barreau que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent règlement administratif.

Interdiction de l'exercice occasionnel du droit

2. Quiconque n'est pas un membre ne doit pas exercer le droit en Ontario, si ce n'est conformément au présent règlement administratif ou au règlement administratif n° 22.

Assurance et garantie contre les détournements

3. (1) Nul ne doit exercer le droit en Ontario en application du présent règlement administratif à moins de remplir les conditions suivantes :

a) avoir une assurance-responsabilité professionnelle couvrant son exercice du droit en Ontario qui est raisonnablement comparable, pour ce qui est de la garantie et des sommes assurées, à celle exigée des membres;

b) avoir une garantie contre les détournements de fonds, autre que celle prévue par le Plan national d'indemnisation, qui couvre expressément son exercice du droit en Ontario et est au moins équivalente à la garantie offerte aux membres.

Assurance : exonération

(2) Quiconque est habilité à exercer le droit en Ontario en application de l'article 10 est exonéré de l'obligation prévue à l'alinéa (1) a) s'il satisfait aux exigences relatives à l'exonération du paiement des cotisations d'assurance précisées à l'égard des membres au règlement administratif n° 16.

Application de la Loi

4. (1) La Loi, les règlements, les règlements administratifs, les règles de pratique et de procédure et le Code de déontologie s'appliquent, avec les adaptations nécessaires, à quiconque exerce le droit en Ontario en application du présent règlement administratif.

Incompatibilité

(2) Les dispositions du présent règlement administratif l'emportent sur les dispositions incompatibles de n'importe quel autre règlement administratif.

Preuve de conformité

5. (1) Quiconque exerce le droit en Ontario sans être un membre fournit, à la demande d'un ou d'une responsable du Barreau et au plus tard à la date qu'il ou elle précise, une preuve de nature à le ou à la convaincre que le membre se conforme au présent règlement administratif ou au règlement administratif n° 22.

Présomption

(2) Quiconque ne fournit pas la preuve au ou à la responsable du Barreau au plus tard à la date qu'il ou elle précise est réputé ne pas se conformer au présent règlement administratif ou au règlement administratif n° 22.

Champ d'application de l'article

6. (1) Le présent article s'applique aux personnes qui sont tenues d'obtenir l'autorisation préalable du Barreau pour exercer le droit en Ontario à titre occasionnel.

Demande d'autorisation

(2) Quiconque souhaite obtenir l'autorisation d'exercer le droit en Ontario à titre occasionnel présente une demande en ce sens au Barreau.

Formulaire de demande

(3) La demande prévue au paragraphe (2) est présentée sur le formulaire fourni par le Barreau.

Documents, explications et renonciations

(4) Pour faciliter l'examen par le Barreau d'une demande présentée en application du paragraphe (2), son auteur fait ce qui suit :

a) il ou elle fournit au Barreau les documents et les explications qu'exige celui-ci;

b) il ou elle fournit, à la personne désignée nommément par un ou une responsable du Barreau, les renonciations, directives et consentements nécessaires pour lui permettre de communiquer au Barreau les renseignements qu'exige celui-ci.

Examen de la demande par un responsable du Barreau

(5) Le ou la responsable du Barreau examine chaque demande présentée en application du paragraphe (2) et :

a) avise par écrit l'auteur de la demande qu'il ou elle peut exercer le droit en Ontario à titre occasionnel s'il ou si elle est convaincue que ce dernier ou cette dernière satisfait aux exigences éventuelles relatives à l'autorisation d'exercer le droit en Ontario à titre occasionnel ou qu'il ne serait pas contraire à l'intérêt public de l'autoriser à ce faire;

b) avise par écrit l'auteur de la demande qu'il ou elle ne peut pas exercer le droit en Ontario à titre occasionnel s'il ou si elle n'est pas convaincu que ce dernier ou cette dernière satisfait aux exigences éventuelles relatives à l'autorisation d'exercer le droit en Ontario à titre occasionnel ou qu'il ne serait pas contraire à l'intérêt public de l'autoriser à ce faire.

Conditions

(6) L'autorisation d'exercer le droit en Ontario à titre occasionnel qu'accorde un ou une responsable du Barreau peut être assortie des conditions qu'il ou elle estime appropriées.

Demande présentée à un comité de conseillers

(7) Si le ou la responsable du Barreau refuse d'autoriser une personne à exercer le droit en Ontario à titre occasionnel ou assortit l'autorisation de conditions, cette personne peut demander, par voie de requête, à un comité de conseillers et de conseillères nommé à cet effet par le Conseil de décider si elle peut exercer le droit en Ontario à titre occasionnel ou si les conditions sont appropriées.

Délai de présentation de la requête

(8) La personne présente la requête prévue au paragraphe (7) en en avisant par écrit un ou une responsable du Barreau dans les 30 jours suivant le jour où elle reçoit l'avis du refus du ou de la responsable du Barreau de l'autoriser à exercer le droit en Ontario à titre occasionnel.

Parties

(9) Sont parties à la requête présentée en vertu du paragraphe (7) la personne et le Barreau.

Quorum

(10) Au moins trois membres du comité de conseillers et de conseillères examinent la requête présentée en vertu du paragraphe (7) et rendent une décision à son égard.

Procédure

(11) Les règles de pratique et de procédure s'appliquent, avec les adaptations nécessaires, à l'examen, par le comité de conseillers et de conseillères, d'une requête présentée en vertu du paragraphe (7) comme si l'examen de la requête était une audience portant sur une demande d'admission présentée en application de l'article 27 de la Loi.

Idem

(12) Si les règles de pratique et de procédure n'abordent pas un point de procédure, la *Loi sur l'exercice des compétences légales* s'applique à l'examen, par le comité de conseillers et de conseillères, d'une requête présentée en vertu du paragraphe (7).

Décision

(13) Après avoir examiné la requête présentée en vertu du paragraphe (7), le comité de conseillers et de conseillères décide que la personne peut exercer le droit en Ontario à titre occasionnel ou qu'elle ne peut pas le faire.

Conditions

(14) L'autorisation d'exercer le droit en Ontario à titre occasionnel qu'accorde le comité de conseillers et de conseillères peut être assortie des conditions qu'il estime appropriées.

Décision définitive

(15) La décision du comité de conseillers et de conseillères à l'égard d'une requête présentée en vertu du paragraphe (7) est définitive.

Durée de l'autorisation

(16) L'autorisation d'exercer le droit en Ontario à titre occasionnel accordée à une personne reste en vigueur pendant un an après le jour où elle entre en vigueur.

Retrait de l'autorisation

(17) L'autorisation d'exercer le droit en Ontario à titre occasionnel accordée à une personne est automatiquement retirée dès que, selon le cas :

a) elle ne satisfait pas aux exigences éventuelles relatives à l'autorisation d'exercer le droit en Ontario à titre occasionnel;

b) elle cesse d'avoir le pouvoir d'exercer le droit dans une province ou un territoire du Canada autre que l'Ontario, pouvoir en vertu duquel elle a reçu l'autorisation d'exercer le droit en Ontario à titre occasionnel;

c) elle ne se conforme pas à l'alinéa 3 (1) a);

d) elle est visée par une ordonnance qu'un tribunal de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada dont elle est membre a rendue à son encontre et qui porte :

(i) soit la révocation de son statut de membre de l'organisme, sa radiation comme avocat plaidant et le retranchement de son nom du tableau des procureurs de l'organisme,

(ii) soit la suspension de ses droits et privilèges;

e) elle exerce le droit en Ontario plus souvent qu'à titre occasionnel, sauf si elle est autorisée à ce faire en application du présent règlement.

Droits de permis

(18) Quiconque est autorisé à exercer le droit en Ontario à titre occasionnel paie les droits de permis fixés par le Conseil.

Divulgation de renseignements

7. (1) Si l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario mène une enquête sur un membre ou introduit une instance contre lui en raison de son exercice interprovincial du droit dans la province ou le territoire, le Barreau peut, à la demande de l'organisme, lui fournir les renseignements sur le membre qu'il est raisonnable de fournir dans les circonstances.

Idem

(2) Le Barreau peut fournir à l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario les renseignements sur un membre dont l'organisme a besoin pour établir si le membre est habilité à exercer le droit à titre occasionnel ou plus souvent qu'à ce titre dans la province ou le territoire.

PARTIE II
EXERCICE OCCASIONNEL DU DROIT : RÈGLE DES 100 JOURS

Champ d'application de la partie

8. La présente partie s'appliquent aux personnes qui :

a) d'une part, ont le pouvoir d'exercer le droit dans une province ou un territoire du Canada autre que l'Ontario;

b) d'autre part, ont le pouvoir d'exercer le droit dans une province ou un territoire du Canada autre que l'Ontario dont l'organisme de réglementation de la profession juridique a des dispositions traitant de l'exercice du droit par un membre à titre occasionnel ou plus souvent qu'à ce titre, mais moins souvent que de façon régulière, qui correspondent aux dispositions de la présente partie.

Définition : « jour »

9. (1) Dans la présente partie, « jour » s'entend de tout ou partie d'un jour civil.

Interprétation : exercice du droit

(2) Dans la présente partie, exerce le droit en Ontario quiconque, selon le cas :

a) rend des services professionnels en qualité d'avocat ou d'avocate en s'appuyant sur le droit ontarien ou sur le droit canadien, dans la mesure où il est applicable en Ontario, ou à l'égard de l'un ou de l'autre;

b) offre des conseils juridiques sur le droit ontarien ou sur le droit canadien, dans la mesure où il est applicable en Ontario.

Exercice occasionnel du droit : activités exclues

(3) N'entre pas dans le calcul du nombre maximal de jours pendant lesquels une personne est habilitée ou est autorisée à exercer le droit en Ontario en application de la présente partie toute période consacrée à l'exercice du droit en qualité d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour suprême du Canada, la

Cour fédérale du Canada, la Cour canadienne de l'impôt, un tribunal militaire au sens de la *Loi sur la défense nationale* (Canada) ou la Cour d'appel de la cour martiale du Canada.

Interprétation : présence économique

(4) Dans la présente partie, établit une présence économique en Ontario quiconque, selon le cas :

a) exerce le droit en Ontario pendant plus longtemps que le nombre maximal de jours pendant lesquels il est habilité ou autorisé à ce faire en application de la présente partie;

b) ouvre, en Ontario, un bureau où il exerce le droit;

c) ouvre et gère un compte en fiducie dans une institution financière établie en Ontario;

d) reçoit des sommes d'argent en fiducie pour un client ou une cliente d'une manière autre que celle permise par la présente partie;

e) se présente comme étant prêt à accepter de nouveaux clients en Ontario;

f) devient un résident de l'Ontario;

g) agit de toute autre manière qui ne cadre pas avec l'exercice du droit en Ontario à titre occasionnel seulement.

Idem

(5) Malgré le paragraphe (4), n'établit pas une présence économique en Ontario quiconque ne fait qu'exercer le droit en Ontario à partir d'un bureau situé en Ontario qui est affilié à un cabinet d'avocats d'une province ou d'un territoire du Canada autre que l'Ontario où le membre a le pouvoir d'exercer le droit.

Interprétation : exercice occasionnel du droit

10. (1) Dans le présent article, exerce le droit à titre occasionnel quiconque n'exerce pas le droit en Ontario pendant plus de 100 jours au cours de l'année civile.

Autorisation préalable non requise

(2) Quiconque n'est pas un membre peut, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel tant qu'il remplit les conditions suivantes :

a) il est autorisé à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario;

b) il ne fait l'objet d'une instance criminelle dans aucune province ni aucun territoire du Canada;

c) il ne fait l'objet d'une instance en matière de conduite, de capacité ou de compétence dans aucune province ni aucun territoire du Canada;

d) il n'est pas ni n'a jamais été, selon son dossier, visé par une ordonnance qu'un tribunal de chaque organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada dont il est ou était un membre a rendue à son encontre et qui:

(i) soit porte la révocation de son statut de membre de l'organisme, sa radiation comme avocat plaidant et le retranchement de son nom du tableau des procureurs de l'organisme,

(ii) soit lui permet de démissionner de l'organisme;

e) il n'est pas ni n'a jamais été, selon son dossier, visé par une ordonnance qu'un tribunal de chaque organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada dont il est un membre a rendue à son encontre et qui suspend ou restreint ses droits et

privilèges, si ce n'est pour non-paiement de cotisations à l'organisme, pour insolvabilité ou faillite ou pour un motif administratif;

f) son autorisation d'exercer le droit dans chaque province ou territoire du Canada où il est habilité à exercer le droit n'est ni n'a été assortie d'aucune condition ni restriction;

g) il n'établit pas de présence économique en Ontario.

Exercice du droit plus souvent qu'à titre occasionnel

(3) Quiconque est habilité en vertu du paragraphe (2) à exercer le droit en Ontario à titre occasionnel peut le faire plus souvent qu'à ce titre, de la manière dont l'autorise un ou une responsable du Barreau, tant qu'il satisfait aux exigences énoncées au même paragraphe.

Interprétation : exercice du droit à titre occasionnel

11. (1) Dans le présent article, exerce le droit à titre occasionnel quiconque n'exerce pas le droit en Ontario pendant plus de 100 jours au cours de l'année pendant laquelle il est autorisé à exercer le droit en Ontario à titre occasionnel.

Autorisation d'exercer le droit à titre occasionnel

(2) Quiconque n'est pas un membre et n'est pas habilité à exercer le droit en Ontario en application de l'article 10 peut, avec l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel.

Opérations touchant des fonds

12. Quiconque est habilité ou autorisé, en application de la présent partie, à exercer le droit en Ontario peut, dans le cadre de son exercice du droit en Ontario, recevoir des fonds en fiducie pour un client ou une cliente si, selon le cas :

a) il les dépose dans un compte en fiducie ouvert auprès d'une institution financière située dans une province ou un territoire du Canada autre que l'Ontario où elle a le pouvoir d'exercer le droit;

b) il les dépose dans un compte en fiducie ouvert au nom d'un membre et géré par lui conformément au règlement administratif n° 19 et que seul ce membre puisse effectuer des opérations les concernant conformément au même règlement administratif.

PARTIE III
EXERCICE DU DROIT À TITRE OCCASIONNEL : RÈGLE DES 12 – 10 – 20

Champ d'application de la partie

13. La présente partie s'applique aux personnes à qui ne s'applique pas la partie II.

Interprétation : exercice du droit

14. (1) Dans la présente partie, une personne exerce le droit si elle rend des services professionnels en qualité d'avocat ou d'avocate ou si elle offre des conseils juridiques sur le droit ontarien ou sur le droit canadien.

Interprétation : exercice du droit à titre occasionnel

(2) Dans la présente partie, exerce le droit à titre occasionnel quiconque, au cours d'une période de 12 mois consécutifs :

a) d'une part, exerce le droit à l'égard de 10 affaires ou moins;

b) d'autre part, exerce le droit pendant au plus 20 jours.

Exercice du droit à titre occasionnel : activités exclues

(3) N'entre pas dans le calcul des 10 affaires ou des 20 jours visés au paragraphe (2) toute période consacrée à l'exercice du droit en qualité d'avocat ou d'avocate dans le cadre d'une instance tenue devant la Cour

suprême du Canada, la Cour fédérale du Canada, la Cour canadienne de l'impôt ou un tribunal administratif établi en application d'une loi du Parlement ou de l'Assemblée législative de l'Ontario.

Interprétation : « droit propre à l'Ontario »

(4) Dans la présente partie, « droit propre à l'Ontario » s'entend des règles juridiques de fond ou des règles de procédure qui s'appliquent spécifiquement à l'Ontario.

Autorisation préalable non requise

15. (1) Quiconque n'est pas un membre peut, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel s'il remplit les conditions suivantes :

a) il a le pouvoir d'exercer le droit dans une province ou un territoire du Canada autre que l'Ontario;

b) il ne fait l'objet d'une instance criminelle dans aucune province ni aucun territoire du Canada;

c) il n'a pas de casier judiciaire;

d) il ne fait l'objet d'une instance en matière de conduite, de capacité ou de compétence dans aucune province ni aucun territoire du Canada;

e) il n'est pas ni n'a jamais été, selon son dossier, visé par une ordonnance qu'un tribunal de chaque organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada dont il est ou était un membre a rendue à son encontre;

f) son autorisation d'exercer le droit dans chaque province ou territoire du Canada où il a ou a eu le pouvoir d'exercer le droit n'est ni n'a été assortie d'aucune condition ni restriction.

Autorisation d'exercer le droit à titre occasionnel

(2) Quiconque n'est pas un membre et n'est pas habilité à exercer le droit en Ontario à titre occasionnel en vertu du paragraphe (1) peut, avec l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel s'il remplit les conditions suivantes :

a) il a le pouvoir d'exercer le droit dans une province ou un territoire du Canada autre que l'Ontario;

b) il n'est pas visé par une ordonnance qu'un tribunal de chaque organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada dont il est un membre a rendue à son encontre;

c) son autorisation d'exercer le droit dans chaque province ou territoire du Canada où il a le pouvoir d'exercer le droit n'est assortie d'aucune condition ni restriction.

Droit propre à l'Ontario : compétence

16. Aucune personne habilitée ou autorisée, en application de l'article 15, à exercer le droit en Ontario à titre occasionnel ne doit exercer le droit propre à l'Ontario à moins d'avoir les compétences nécessaires pour ce faire.

Exercice du droit plus souvent qu'à titre occasionnel

17. (1) Sur demande écrite d'une personne habilitée ou autorisée, en application de l'article 15, à exercer le droit en Ontario à titre occasionnel, un ou une responsable du Barreau peut l'autoriser à exercer le droit en Ontario plus souvent qu'à titre occasionnel si, à son avis, cette autorisation n'est pas contraire à l'intérêt public.

Interdiction d'exercer le droit de façon régulière

(2) L'autorisation d'exercer le droit en Ontario plus souvent qu'à titre occasionnel n'emporte pas celle de le faire de façon régulière.

Droit propre à l'Ontario

(3) L'autorisation d'exercer le droit en Ontario plus souvent qu'à titre occasionnel n'emporte pas celle d'exercer le droit propre à l'Ontario plus souvent qu'à titre occasionnel.

Opérations touchant des fonds

18. Quiconque est habilité ou autorisé, en application de la présente partie, à exercer le droit en Ontario peut, dans le cadre de son exercice du droit en Ontario, recevoir des fonds en fiducie pour un client ou une cliente si, selon le cas :

a) il ne les reçoit qu'à titre d'honoraires pour des services qui n'ont pas été encore rendus au client ou à la cliente et les dépose dans un compte en fiducie ouvert auprès d'une institution financière située dans une province ou un territoire du Canada autre que l'Ontario où il a le pouvoir d'exercer le droit;

b) il les dépose dans un compte en fiducie ouvert au nom d'un membre et géré par lui conformément au règlement administratif n° 19 et que seul ce membre puisse effectuer des opérations les concernant conformément au même règlement administratif.

Représentation

19. Quiconque est habilité ou autorisé, en application de la présente partie, à exercer le droit en Ontario ne doit pas se présenter comme étant prêt ou apte à ce faire autrement que de la manière dont il est habilité ou autorisé à le faire en application de la présente partie, ni se faire passer pour tel.

PARTIE IV
PLAN NATIONAL D'INDEMNISATION

Cotisation du Barreau

20. (1) Au plus tard le 31 décembre de chaque année, le Barreau verse à la Fédération des ordres professionnels de juristes du Canada la somme dont ils ont tous deux convenu au titre du Plan national d'indemnisation.

Idem

(2) Malgré le paragraphe (1), le Barreau n'est pas tenu de verser d'argent à la Fédération des ordres professionnels de juristes du Canada au titre du Plan national d'indemnisation si le solde de ce dernier est d'au moins 1 million de dollars.

PARTIE V
ENTRÉE EN VIGUEUR

Entrée en vigueur

21. (1) Le présent règlement administratif entre en vigueur le jour de son adoption.

Idem

(2) Malgré le paragraphe (1), la partie II et l'article 13 entrent en vigueur le 1er juillet 2003.

.....

It was moved by Mr. Millar, seconded by Mr. Hunter that the recommendation regarding the reading requirement for the mobility regime set out in Appendix 6 be approved.

Carried

It was moved by Mr. Millar, seconded by Mr. Hunter that the recommendation regarding the applicability of the National Mobility Agreement to lawyers employed by the Department of Justice and the Office of the Judge Advocate General be approved.

Carried

The Treasurer advised that the date for the Treasurer candidates' speeches will take place on June 12th from 9:00 a.m. 12:00 noon, followed by lunch.

REPORT OF THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Mr. Topp presented the following items in the Report for information only:

Reinsurance for 2003
Year-end Financial and Claims Information as at December 31, 2002
Report on Spot Audit Program
Grants Paid.

Lawyers Fund for Client Compensation Committee
March 27, 2003

Report to Convocation

Purpose of Report: Decision Making
Information

Prepared by the Lawyers Fund for Client Compensation Department

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Lawyers Fund for Client Compensation Committee ("the Committee") met on February 26, 2003. Committee members in attendance were Robert Topp (Chair), Abdul Chahbar (Vice-Chair), Andrew Coffey, Helene Puccini, Gerald Swaye, Q.C., Richmond Wilson, Q.C. Also in attendance were Malcolm Heins (CEO), Zeynep Onen (Director of Professional Regulation), Maria Loukidelis, Paul McCormick, Heather Werry, Fred Grady, Leslie Greenfield, Michelle Strom (President & CEO, LawPRO) and Craig Allen (VP & Actuary, LawPRO).

2. The Committee is reporting on the following matters:

   Administration – For Decision
   - Appointment of a new Referee – attached, in camera

   Information
   - Insurance for 2003
   - Year-end financial and claims information as at December 31, 2002
   - Report on the Spot Audit Program - attached
   - Referee Reports and Staff Memoranda - attached

SECTION A – ADMINISTRATION – FOR DECISION

APPLICATION FOR THE POSITION OF REFEREE–(Appendix A attached) (in camera)

Decision for Convocation

3. Convocation is asked to approve the appointment of the candidate for Referee to the Lawyers Fund for Client Compensation pursuant to section 51 of the *Law Society Act*.

SECTION B– INFORMATION

FUND INSURANCE FOR 2003

Background

4. The Fund has obtained insurance coverage for extraordinary high claims since the 2001 financial year, to help provide a measure of stability to the Fund and to avoid catastrophic loss and consequent substantial levy increases which might result from a large scale defalcation. At the Committee meeting on October 9, 2002, the Committee recommended that insurance for 2003 be purchased for $10 million in coverage in excess of $15 million. It was anticipated (and budgeted accordingly) that the premium would be in the area of $500,000. On October 31, 2002, Convocation approved the recommendation to purchase insurance of $10 million excess of $15 million as proposed by the Lawyers Fund for Client Compensation Committee.

Report to the Committee

5. Michelle Strom reported to the Committee that LawPRO will be issuing an insurance policy for coverage of $10 million excess of $15 million, protecting the Fund from an aggregation of claims over $15 million for claims made in the year 2003. The premium is $458,190.00, which is slightly less than anticipated. While LawPRO issues the policy itself, LawPRO will retain only 5% and the balance of 95% has been placed with a number of LawPRO's reinsurers.

6. The Chair expressed the satisfaction and thanks of the Committee with Ms Strom's negotiations which resulted in a premium approximately $50,000 less than expected.

FINANCIAL SITUATION OF THE FUND

Report to the Committee

7. Fred Grady from the Law Society's Finance Department advised that the annual audited financial statements are not yet available, but reported to the Committee on some financial highlights for 2002. The Committee was advised that the Fund enjoyed a second consecutive year of moderate claims, which contributed to an increase of $1.3 million in the Fund's year-end balance from $13.6 million to $14.9 million. The Fund's operating expenses for 2002 are in line with 2001 operating expenses, with the exception of insurance for excess claims coverage. As the insurance coverage obtained for 2002 was reduced to $10 million excess of $10 million (down from $14 million excess of $6 million), there was a corresponding reduction in premium from approximately $1.1 million in 2001 to $535,000 for 2002.

8. Mr. Grady reported that one of the issues facing the Fund is declining investment income. The Fund's investment income for 2002 was negatively impacted by continued weakness in equity markets and relatively low rates of return on fixed income investments. Investment income declined to $542,000 from $1.3 million in 2001 as a result of these lower fixed income yields as well as a provision of $320,000 for a decline in the value of the Fund's equity investments.

9. At the Committee meeting on October 9, 2002, Craig Allen reported that the Fund balance was estimated, as at September 30, 2002, at $15.6 million. At the February 26, 2003 meeting, Mr. Allen reported that the Fund balance as at December 31, 2002, is estimated at $14.9 million, as compared with a Fund balance of $13.6 million as at December 31, 2001. Mr. Allen advised that the decrease from $15.6 million at the end of September was due in large part to the provision taken for the decline in investments reported on by Mr. Grady. While the 2002 Member Levy was set to meet the costs of the Fund on a break-even basis, favourable results were realized in the area of claims incurred in 2002 as well as claims reported before 2002, resulting in the increase in the Fund balance from 2001.

10. It was also reported that the unpaid claims liability for the Lawyers Fund, as at December 31, 2002, is estimated to be $10.6 million, a slight increase from the amount as at December 31, 2001, which was set at $9.2 million. The Committee was advised by Mr. Allen that the increase was due primarily to the lower level of grants being paid in 2002 and the carrying forward of nominal claims liability through to December 31, 2002.

11. The Committee was advised that the number of claims pending at December 31, 2002 was 181, compared with 187 as at December 31, 2001.

SPOT AUDIT DEPARTMENT

Background

12. At the meeting on October 9, 2002, the Committee was advised that a report on the Spot Audit program, which is funded by the Lawyers Fund for Client Compensation levy, would be presented at the next Committee meeting.

Report to the Committee

13. Malcolm Heins introduced Leslie Greenfield, Manager, Spot Audit, who reports to Diana Miles, Director of Professional Development and Competence. Mr. Greenfield presented a report from the Spot Audit department providing a status report and outlining initiatives of the program. The complete report is attached as Appendix "B" (pages 14-27).

14. Mr. Greenfield reported that the focus of the Spot Audit program has shifted to a more focused audit approach. While the program retains a random audit component, more focused/risk-based audits are being conducted. The change to a more focused audit approach has resulted in a higher number of complex audits and the program has seen an increase of 70% in the number of files escalated to Investigations.

Under the focused audit approach where more complex audits are conducted, it will take approximately 7.5 years to undertake an audit on every law firm in the province, up from the original target of 5 years.

15. Mr. Greenfield also discussed some initiatives of the Spot Audit Department with respect to the remedial aspect of the program, including products and services designed to assist members with the proper maintenance of books and records.

16. The Chair thanked Mr. Greenfield for the comprehensive and knowledgeable presentation and indicated the Committee would like to have him back in future to report on the program and in particular the results of the audits being conducted.

REFEREE REPORTS AND STAFF MEMORANDA

17. The Committee wishes to report that the Referee Reports and Staff Memoranda found in Appendix "C" (pages 28-29) have been approved and the amounts shown have been paid out or are in the process of being paid out.

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

(1) Copy of the application for the position of referee. (in camera)
(Appendix A, pages 8 – 13)

(2) Copy of the Report on Program Initiatives and Status, Spot Audit Division.
(Appendix B, pages 14 – 27)

(3) Copy of Grants approved by the Lawyers Fund for Client Compensation Committee, October l, 2002 to February 14, 2003.
(Appendix C, pages 28 – 29)

The Treasurer recognized Mr. Frederick M. Catzman, Q.C., LSM, Order of Ontario who died two weeks ago at the age of 97. Mr. Catzman was Chair of the Commission that lead to the adoption of the Personal Property Securities Act and was influential in the adoption of the Anti Discrimination legislation that preceded the Human Rights Code. Mr. Catzman was the father of The Honourable Marvin Catzman of the Ontario Court of Appeal. The Treasurer remarked that Mr. Catzman was an excellent lawyer and a fine person.

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SWAYE/HUNTER MOTION

The Treasurer repeated the Swaye/Hunter motion, which was originally in camera, that Convocation support a statement to be sent to the Financial Action Task Force stating that any legislation enacted to combat money laundering must not infringe the independence of the bar or the confidential nature of the solicitor-client relationship.

EMERGING ISSUES COMMITTEE

Mr. Ortved reported on the committee's examination of Bill C-17, the Public Safety Act, for information only.

REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Ruby presented the Report of the Finance & Audit Committee for approval by Convocation.

Finance and Audit Committee
March 13, 2003

Report to Convocation

Purpose of Report: Decision
Information

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on March 13, 2003. Committee members in attendance were: Ruby C. (c), Epstein S. (vc), Cass R., Chahbar A., Coffey A., Porter J., Swaye G., White D., Wright B.. Other benchers in attendance were Krishna V. (Treasurer), Feinstein A., Potter J., Hall C. and Sapounzi P. from the Ventin Group, Architects attended. Staff attending were Heins M., Tysall W., Corrick K., Sorenson E., Grady F., Andonov J., Cawse A..

2. The Committee is reporting on the following matters:

Decision
X Osgoode Hall North Wing Approval

Information
X Information Systems Update
X Role of the Audit Committee
X Small Firm and Sole Practitioner Task Force Budget

FOR DECISION

OSGOODE HALL NORTH WING APPROVAL

3. As part of the 2003 budget debate, Convocation approved the Committee's recommendation to allocate $4 million from the Unrestricted Fund to the Capital Fund for renovations to the North Wing. The objective of the renovation is to reconfigure office space on the second, third and fourth floors. This will allow the return of Law Society staff from 393 University Ave. and 1 Dundas Street West.

4. Mr. Heins undertook that further information on what we would do and how much it would cost would be provided to Benchers. The renovation project has now advanced by:
   - The retention of architects for the renovation. The Ventin Group, Architects made a presentation to the Committee summarizing floor space available, construction budgets and preliminary space concepts.
   - More detailed analysis of useable space, required space and the costs of making useable space fit requirements. The analysis confirms that our construction objectives can be accomplished within the $4 million budget. Because of the nature of the renovations and the complexity of the building there will be a 15% construction contingency. Transition and furniture costs will be part of the 2004 budget.
   - The completion of a project timetable showing renovations commencing in September 2003 and being completed in January 2005.

5. A memorandum providing more detail on the motivations, background, progress and costs of the renovation project accompanies this Report.

6. Improvements to the Lecture Hall and surrounding areas on the first floor will be investigated as it would be cost effective to carry out these improvements at the same time as the renovations to the other floors.

   The Finance and Audit Committee recommends that Convocation approves the renovation of the second, third and fourth floors of the North Wing with a construction budget of $4 million and a contingency of 15%.

FOR INFORMATION

INFORMATION SYSTEMS UPDATE

7. Mr. Erik Sorenson, Director of Information Systems provided the Committee with a report on the status of the Law Society's Information Systems.

SMALL FIRM AND SOLE PRACTIONER TASK FORCE BUDGET

8. The Emerging Issues Committee has set up a working group to examine and report on the future of small firms and sole practices. The Committee provided input on the financial implications of preliminary survey work contemplated in the Report to Convocation to be submitted by the Small Firm and Sole Practitioner Task Force.

ROLE OF THE AUDIT COMMITTEE

9. The Finance and Audit Committee concluded their review of the attached final report from the Audit Committee addressing the role of the Audit Committee including four issues:
   - an assessment of the Law Society's financial control mechanisms
   - an assessment of the Law Society's financial reporting mechanisms
   - an assessment of whistleblowing mechanisms
   - an assessment of the independence requirement of Committee members.

10. Financial Control Mechanisms
The Audit Committee met with the auditors, Deloitte & Touche LLP on the auditor's application review of various Law Society business processes. This application review was more extensive than the work required for the auditors to provide an opinion on the financial statements. Results of the application review are satisfactory and with the five levels of existing controls (staff, auditor, two Committees and Convocation) the Finance and Audit Committee concurred with the conclusion of the Audit Committee that the size, scale and complexity of the Law Society did not justify the added expense of an internal audit function.

11. Financial Reporting Mechanisms
The Finance and Audit Committee agreed with the Audit Committee's conclusion that the frequency and content of the current quarterly financial statements was appropriate. It was noted that communication mechanisms between the Chief Financial Officer and the Audit Committee and Convocation should be formalised in a By-law when the governance By-laws are next revised. The Chief Executive Officer has indicated that this will be incorporated in recommendations to be presented to Convocation.

12. Whistleblowing Mechanisms
The Finance and Audit Committee agreed with the Audit Committee's assessment of whistleblowing mechanisms and how they might apply to the Law Society. It was noted that the Law Society's existing Business Conduct Policy contains some reporting requirements for staff but that formal whistleblowing policies and procedures should be reviewed and developed with an orientation to ensure exposure of criminal and significant financial misdoings including malfeasance, misfeasance and fraud. These policies will be integrated into future governance changes being developed by the Chief Executive Officer.

13. Audit Committee Member Independence and Financial Expertise
The Finance and Audit Committee discussed the independence and financial expertise of Audit Committee members. The Finance and Audit Committee agreed with the Audit Committee's conclusion that benchers fall within the independence definitions of the S.E.C. and other regulatory organizations in that they are independent of management. This conclusion is supported by a letter from Mr. Doug Barrington, Vice Chair of Deloitte & Touche LLP to the Audit Committee (attached). Given the corporate structure of Convocation and the responsibilities of Benchers there are also problems associated with having non-Benchers assuming Bencher responsibilities, and with their accountability as non-bencher Committee members.

14. There was concurrence with the Audit Committee that the Audit Committee and bencher pool each possesses the appropriate level of expertise as defined by the new S.E.C. "Sarbanes-Oxley" rule on Audit Committee financial expertise which addresses qualifications, experience and other attributes. Additional

resources such as the external auditors and consultants are also available to the Audit Committee if required.

LAW SOCIETY OF UPPER CANADA

MEMORANDUM

To: The Finance and Audit Committee

From: Wendy Tysall

Date: March 13, 2003

Re: NORTH WING (OSGOODE HALL) RENOVATION

This memorandum supplemented a presentation to the Finance and Audit Committee by The Ventin Group, Architects. The Committee recommended Convocation's approval of the $4 million construction budget for the North Wing renovation.

Executive Summary

The objective of the renovation is to reconfigure office space on the second, third and fourth floors allowing the return of Law Society staff from 393 University Ave. and 1 Dundas Ave West.

The Committee has previously reviewed preliminary plans and projections for the renovation and the transfer of $4 million to the Capital Fund as financing for the project was approved by Convocation as part of the 2003 budget.

The renovation project has now advanced by:

- The retention of architects for the renovation.
- More detailed analysis of useable space, required space and the costs of making useable space fit requirements. The analysis confirms that our construction objectives can be accomplished within the $4 million budget. We also anticipate a 15% contingency for construction and funding for furniture as part of the 2004 budget.
- The completion of a project timetable showing renovations commencing in September 2003 and being completed in January 2005.

Background Detail

As part of the 2003 budget debate, Convocation approved the Committee's recommendation to allocate $4 million from the Unrestricted Fund to the Capital Fund for renovations to the North Wing. During the budget debate Mr. Heins indicated that more details would be provided as renovation plans progressed.

Factors in the North Wing renovation are:

- Demand for office and related space within the Law Society.
- The decreased duration of the BAC and decreased requirements for student attendance.
- A one time right without penalties to terminate our lease at 393 University Ave. which otherwise has a ten year term.
- The inappropriate nature and quality of the existing class room space in the North Wing.
- The benefits of centralizing Law Society operations and eliminating Toronto satellite locations.
- As set out below, the estimated capital cost of $4 million for the project can be recovered through operational savings, with ongoing savings and efficiencies making the project financially beneficial in the long term.
- The relocation of the BAC students offsite. With changes in the nature and delivery of the BAC, student attendance at classes has already decreased significantly. For instance Toronto attendance for any course in

the Substantive /Procedural Phase in 2002 did not exceed 51% with some course attendance as low as 19%. The BAC administrative operations will continue to be located at Osgoode Hall. It is difficult to operate Osgoode Hall with the mixed use of business offices and students attending classes, so there will be further operational benefits in this respect.

These renovations will convert and reconfigure approximately 43,000 sq. ft to office use. The renovation would include the upgrade and replacement of inadequate mechanical and electrical systems. The renovation would also include additional multi-purpose space, better meeting spaces, as well as temporary office space for Benchers at Osgoode Hall.

A significant part of the Law Society Toronto operations and affiliated activities are currently located away from Osgoode Hall. This includes the Compensation Fund, Trustee Services, Spot and Focused Audit, parts of Information Systems and Pro Bono. Most of these activities are not autonomous and it would assist operations and organizational cohesion if these departments were on site. This would be accomplished by the North Wing renovation as well as improvements to departmental layouts.

Developments to Date

This section summarises what has already been brought to the Committee for information and approval.

The development of a comprehensive strategy to deal with our long-range capital requirements over the next ten years has been part of our reserve management policy and long term planning. An operating versus capital cost assessment of moving off site locations into current classroom space was discussed with the Committee in October. We concluded that it makes business sense to rent short term space off-site (currently Ryerson University) for the delivery of BAC instruction and to take advantage of the one time ability to vacate the rented premises at 393 University, at the expiration window of the lease. In April 2005, there is a one time right without penalties to terminate the lease, which otherwise has a ten year term ending in April 2010. The renovation plan will allow staff from other Toronto sites to be housed at Osgoode Hall resulting in savings of approximately $390,000 in annual rental costs at 393 University and 1 Dundas escalating to over $500,000 by the year 2010. Analysis of the renovation costs, applicable rental savings and increased revenues resulting from the renovation shows that the project will deliver almost immediate operational savings, accumulated positive benefits within four years and savings sufficient to recover the initial investment of $4.0 million within 12 years.

In addition to actual cash savings, administrative efficiencies would accrue from the consolidation of all Toronto staff and operations in a single facility.

We then undertook a review of our physical space at Osgoode Hall so that we could take a rational approach to upgrading and restoring the north wing. We enlisted the services of an architectural firm and consulting engineers to help us determine the feasibility of making optimum use of our space while preserving the historical integrity of the building. In October 2002 the resulting Options Analysis by Taylor Hazell Architects was provided to the Committee and Convocation as part of bencher endorsement of the process. The Options Analysis provided design proposals, mechanical and electrical opinions, and cost estimates from quantity surveyors.

The Taylor Hazell Options Analysis confirmed the feasibility of the project. They reported on renovations to the whole of the North Wing, including the Basement and First Floor. Without sacrificing our primary objectives the scope of the project has been narrowed to primarily renovate the second, third and fourth floors to meet our immediate objectives and maintain our budget of $4 million.

New Developments

After Convocation approved the concept of the North Wing renovation, a Request for Proposal for renovation architectural services was completed. Bids were requested from three architectural firms. The Ventin Group were successful bidders based on their services, technical proposal, hourly rates and maximum fees as a percentage of construction costs.

The Law Society's Project Steering Committee is primarily composed of senior management members. Meetings with the Ventin Group have been held at least bi-weekly since the beginning of January 2003. Major accomplishments to date have been:

- the determination of a project timetable,
- an analysis of available space,
- an analysis of potential space allocations
- confirmation that construction costs to achieve our objectives will approximate $4 million at around $100 / square foot. This includes fees for architectural and specialist services. We are also anticipating a 15% contingency for construction. The contingency is particularly valid as renovations are being made to existing structures rather than additions to a blank floor plate. The contingency and funding for furniture will be financed as part of the 2004 budget.

Mckinnon Design provided a preliminary space assessment. Rice Brydone Ltd have been retained by the Ventin Group to confirm the preliminary space assessments and to provide more detailed and ongoing assessments and allocations of space. They have met with users, analysed the existing space and are working with the architects to ensure optimum utilisation of space while meeting appropriate density, flexibility and quality standards.

Time Table

Upon Convocation's approval, the project will proceed on the following schedule:

DATE	EVENT
October 24, 2002	Convocation approves allocation of $4 million to the Capital Fund for financing of contemplated project.
January 17, 2003	Architects, The Ventin Group retained.
March 3, 2003	Predesign phase completed with Space Analysis report.
March 27, 2003	Schematic design phase completed by reviewing engineering considerations and budget estimates. Convocation approves North Wing renovation project.
April 28, 2003	Design development phase completed resulting in approved layout.
July 14, 2003	Working drawings completed and construction contract documents prepared.
August 25, 2003	Construction tender period ends, bids evaluated, building permits obtained.
September 8, 2003	Renovation commences. This is the earliest date to accommodate BAC students who are on site until the end of August.
January 2005	Construction completed.
February 2005	393 University vacated with adequate time for any required rehabilitation prior to hand back to lessor.
May 1, 2005	End of lease at 393 University Ave.

Audit Committee
February 14, 2003

Report to Finance and Audit Committee

Purpose of Report: Information

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Audit Committee ("the Committee") met on February 13, 2003. Committee members in attendance were: Wright B.(c), Chahbar A., Lawrence A., White D.. Barrington D. from Deloitte & Touche LLP also attended. Staff attending were Heins M., Tysall W., Grady F., Cawse A.

2. The Committee is reporting on the following matters:

   Information

   X Role of the Audit Committee

FOR INFORMATION

ROLE OF THE AUDIT COMMITTEE

3. A Convocation motion "that an independent Audit Committee consisting of non-bencher experts be established to advise Convocation as required and to report to Convocation annually" was referred to the Finance and Audit Committee. The Finance and Audit Committee meeting in January 2003 referred the following three issues to the Audit Committee:

   a. An assessment of the adequacy of existing financial control mechanisms.

      As part of the Law Society's review of financial control and reporting mechanisms, Deloitte and Touche LLP have already commenced an application review of various Law Society business processes starting with the Human Resource and payroll processes. This application review is more extensive than the work required for Deloitte to provide an opinion on the financial statements. Deloitte will discuss the review process with the Committee at the meeting on March 13, 2003.

      The Committee noted the five levels of existing controls – at the staff level, the external auditors, the Audit Committee, the Finance and Audit Committee, and ultimately Convocation. The Committee discussed the need for an internal audit function as an additional level of control and decided that the size, scale and complexity of the Law Society did not justify the added expense.

   b. An assessment of the adequacy of existing financial reporting mechanisms, including the ability of the Chief Financial Officer to communicate independently with the Audit Committee and Convocation.

      The frequency and content of the current quarterly financial statements provided to the Committee complies with reporting norms and was appropriate. Additional information to supplement the financial reports is always available.

      A copy of a letter to Ms. Wendy Tysall, Chief Financial Officer from the CEO and the Chair of the Finance and Audit Committee, setting out her existing reporting relationships and responsibilities was reviewed by the Committee. Ms. Tysall, the CEO, the Treasurer and the Chair of the Finance and Audit Committee are satisfied with these arrangements. The Committee recommends that the CFO's relationships and responsibilities as set out in the letter should be incorporated into the By-laws as part of any future governance review.

Ms. Tysall, a Chartered Accountant, brought to the Committee's attention additional, very specific Rules of Professional Conduct (#206) are being codified by the Ontario Institute of Chartered Accountants to ensure that any Chartered Accountant within any organisation has a duty to report issues to the appropriate internal and external authorities.

c. An assessment of whether a whistleblowing mechanism is required.

A discussion on whistleblowing was held by the Committee. In the post-Enron era, whistleblowing has attained an increased profile. For instance, a proposed S.E.C. rule will require all listed company Audit Committees to implement procedures for handling complaints regarding accounting practices. At the Law Society, it is contemplated that any whistleblowing procedures would be in addition to the reporting sequences set out in the existing Business Conduct Policy which states:

"Inside information is any information concerning the Law Society that a person obtains during the course of employment with the Law Society. Examples would include information as to specific complaints or discipline charges against a member and details of the member's Errors and Omissions record. Information relating to the financial affairs or condition of the Law Society that has not been made available generally to the public is another example of inside information.

All such information is confidential and Law Society employees may neither use inside information for financial gain nor in any way or for any reason make it available to others.

Because of the nature of the Law Society's role, employees should be especially sensitive to the need for this rule. It would be unethical and in some instances illegal to use information regarding a member for any purpose whatsoever, other than the purpose for which it was made available to the Law Society."

Also:

"Law Society employees having knowledge of any matter which in their judgement might affect adversely the Law Society's reputation or operations shall bring such knowledge promptly to the attention of senior management. There shall be no concealment of such knowledge even in circumstances where it might be felt by the employee that concealment or less than complete candour would be in the best interests of the Law Society or its management.

Similarly, there shall be no concealment of information from any auditors of the Law Society."

Formal whistleblowing policies and procedures appropriate to the Law Society's size, nature and complexity will continue to be reviewed and developed with an orientation to ensure exposure of criminal and significant financial misdoings including malfeasance, misfeasance and fraud.

4. The Committee discussed whether the pool of potential members of the Committee should be expanded beyond benchers to take advantage of the attributes of independence and expertise that non-benchers may have. It was noted that all benchers are independent of management and fall with the independence definitions of the S.E.C. and other regulatory organizations. This conclusion is supported in the attached letter from Mr. Doug Barrington, Vice Chair of Deloitte and Touche LLP. There are also problems associated with having non-Benchers appropriately represented in Convocation, and with the accountability of non-bencher Committee members. There was consensus that the Committee and bencher pool each possesses the appropriate level of expertise as defined by the new S.E.C. "Sarbanes-Oxley" rule on Audit

Committee financial expertise. Additional resources such as the external auditors and consultants are also available to the Committee if required.

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

A copy of a letter from Deloitte & Touche to Ms. Wendy Tysall dated March 4, 2003 re: Audit Committee. (pages 15 – 16)

Re: Osgoode Hall North Wing Renovations

Convocation was asked to approve the renovation of the second, third and fourth floors of the North Wing.

Mr. Heins rose to correct the recommendation set out in the Report that the renovations would be to the North Wing in general.

It was moved by Mr. Ruby, seconded by Mr. Epstein that Convocation approve the renovation of the North Wing with a construction budget of $4 million and a contingency of 15%.

Carried

Items for Information

Role of Audit Committee
Information Systems Update

LAWPRO's FINANCIAL STATEMENTS FOR 2002

Mr. Marrocco presented LAWPRO's Financial Statements for 2002 for information only.

(Copy of LAWPRO's Financial Statements for 2002 in Convocation file)

Mr. Marrocco and Ms. Strom, President of LAWPRO, took questions from the Bench.

WORKING GROUP ON SOLE PRACTITIONER AND SMALL FIRM TASK FORCE REPORT

Ms. Potter presented the Report of the Working Group on Sole Practitioner and Small Firm Task Force for approval by Convocation.

Report to Convocation
March 27, 2003

Report of the Working Group on the
Sole Practitioner and Small Firm Task Force

Purpose of the Report: Decision

Prepared by the Policy Secretariat

(Katherine Corrick (416) 947-5210)

OVERVIEW OF POLICY ISSUE

SMALL FIRM AND SOLE PRACTITIONER TASK FORCE

Request to Convocation

1. Convocation is requested to appoint a task force to examine the ongoing survival of small law firms and sole practices, and specifically to study and recommend to Convocation by April 2004 the means,
    a. to assure future access to legal services in smaller communities that are at risk of losing these services, and
    b. to address the financial viability of small firms and sole practices.

2. Convocation is also requested to allocate a budget of $200,000 to the task force to enable it to conduct customized research and hire full-time staff support for research and writing.

Summary of the Issue

3. On September 19, 2002, Convocation approved a motion that the Emerging Issues Committee set up a working group, including sole practitioners and lawyers from small firms, to examine and report to Convocation on the ongoing survival of small firms and sole practices. At that time, the Treasurer indicated that the group should develop and recommend to Convocation a mandate, work plan and budget for the study and report.

4. Benchers, Judith Potter, Carole Curtis and Abe Feinstein met with Michelle Strom on three occasions to discuss the issues the task force should address, the required research, a tentative workplan and proposed budget. Marcie Anderson facilitated an all-day meeting of the group and produced a report, which is attached as Appendix 1.

5. This report provides Convocation with the highlights of the group's discussion, the different issues considered by the group, the group's recommendation, and the recommendation of the Finance and Audit Committee.

THE REPORT

The Background

6. On September 19, 2002, Convocation approved a motion that the Emerging Issues Committee set up a working group, including sole practitioners and lawyers from small firms, to examine and report to Convocation on the ongoing survival of small firms and sole practices. At that time, the Treasurer indicated that the group should develop and recommend to Convocation a mandate, work plan and budget for the study and report.

7. Benchers Carole Curtis, Abe Feinstein and Judith Potter are the working group members. Judith Potter chaired the group. Michelle Strom, the President of LAWPRO, attended the group's meeting to provide advice and information. Katherine Corrick acted as secretary to the group.

8. The group met on three occasions – November 25, December 6 and December 20, 2002. The initial meeting on November 25 lasted an entire day. It was facilitated by Marcie Anderson, a consultant from the Marketplace Capabilities Group Inc., who has worked with a number of Law Society of Upper Canada groups in the past.

9. Following the three meetings, Marcie Anderson produced a report setting out a preliminary framework for a study of the issues related to small firm and sole practice. The report includes the issues to be addressed, the research required to address them, a tentative work plan, and proposed budget. Ms. Anderson's report is attached as Appendix 1.

10. The purpose of this report is to provide Convocation with some background to the group's discussion, the major issues considered by the group, the group's recommendation to Convocation, and the recommendation of the Finance and Audit Committee.

The Discussion

11. The purpose of the initial meeting was to develop and recommend the mandate and scope of the study to enable the group to develop a detailed work plan for the project, together with a timetable and budget.

12. At the outset, the group defined a small firm as a firm of five or fewer lawyers.

13. The group reviewed some preliminary statistical data on the demographic trends in the profession between 1995 and 2002. Although the number of sole practitioners and small firms has remained constant over those seven years, there has been a striking decline in the number of young (aged 25 – 35) sole practitioners. In 1995, lawyers aged 25 to 35 made up 20% of all sole practitioners. In 2002, they made up only 9%. It appears that younger lawyers are either not entering sole practice, or are leaving it very quickly.

14. Of equal significance to the group was the geographical distribution of sole practitioners and small firms. Larger urban centres support law firms of all sizes, while rural areas only support small firms or sole practitioners. If there is an issue related to the aging of sole practitioners, it is likely to impact hardest on rural and small town communities.

15. An examination of the data, correlating age of practitioner and geographical location, indicates that there are some communities in Ontario at risk of losing access to legal services in the next ten to fifteen years. These are communities where there are only one or two practising lawyers, and these lawyers are 55 years of age or older.

16. In addition to reviewing the data, the group identified and discussed the trends impacting small firms and sole practitioners. These included,
    a. increased competition for the delivery of legal services from outside of the profession;
    b. the pervasive effect and enormous expense of technology;
    c. increased client demand for better and faster service from lawyers;
    d. increased price competition among lawyers; and
    e. the higher cost of studying law, resulting in an increased debt load for students upon graduation, which increases the attractiveness of practice in large firms .

17. Based on a review of the data and further discussion, the group decided that it was vital that the Law Society address issues related to the small law firm and sole practitioner for the following reasons:
    a. Sole practitioners and small law firms are more likely than large law firms to provide legal services to individuals as opposed to corporations. A decline in the number of sole practitioners and small law firms will thus have a deleterious effect on a citizen's access to legal services, which will impede access to justice.

    b. Smaller and rural communities depend entirely on small firms and sole practitioners for the provision of legal services. A decline in numbers of these lawyers will affect entire communities.

    c. There has been a dramatic reduction in the number of articling positions available outside of major metropolitan areas, and in fields of law typically practised by sole practitioners and small firms, such as criminal and family law. This makes it more difficult to attract new lawyers to these fields of law and to underserviced communities.

    d. Small firm lawyers and sole practitioners handle the vast majority of legally-aided cases in the fields of criminal, family and immigration law. A reduction in the number of sole practitioners and small firm lawyers may put Ontario's most vulnerable citizens as risk of being unable to find a lawyer to assist them.

e. Small firm lawyers and sole practitioners account for a disproportionate number of claims to LAWPRO, and a disproportionate number of complaints made to the Law Society.

f. Policy decisions made by the Law Society often have a greater impact on the small firm lawyer and sole practitioner than on other practitioners. A full examination of the issues related to sole practitioners and small firm lawyers would assist policy makers to better understand the impact of their decisions.

g. Small firm lawyers and sole practitioners comprise 54% of all lawyers in private practice. Identifying and addressing their issues will improve the profession overall, allowing it to better serve the public.

h. Small firm lawyers and sole practitioners are facing a reduced demand for their services as a result of competition from others outside the legal profession, such as banks, paralegals and self-help alternatives.

18. The group determined that any study of small firms and sole practices must address the following two major issues:
    a. the future access to legal services in smaller communities that are at risk of losing these services; and

    b. the financial viability of small firms and sole practitioners, who are increasingly facing adverse conditions.

19. The two issues are inextricably linked. Unless the financial viability of small firms and sole practitioners is addressed, access to legal services, and thus to justice, for those citizens of Ontario who reside outside of major metropolitan areas is at risk. For this reason, the group is recommending that the mandate of the Task Force be twofold:
    a. to study and make recommendations to assure future access to legal services in smaller communities that are at risk of losing these services; and

    b. to study and make recommendations addressing the financial viability of small firms and sole practices.

Resources Required

20. A thorough examination of the issues identified will involve three stages:
    a. situation analysis – identifying what is really happening in the profession, determining why it is happening, and whether the Law Society can or should do anything about it;

    b. solution identification – identifying what the Law Society can do about what is happening; and

    c. solution recommendation – making recommendations to Convocation to address the problems identified.

21. The group identified some of the specific questions to be addressed by the study. These questions are set out in some detail in Ms. Anderson's report at Appendix 1. The group also identified a variety of resources, including studies, reports, statistical data, contacts in other organizations and researchers to review and contact.

22. Although much of the information can be gleaned from pre-existing data and reports, the group is recommending that some customized research be undertaken to identify those communities at risk of losing access to legal services and the reasons, so that appropriate solutions are devised based on data rather than assumption. The nature and extent of the customized research being suggested is set out in detail in Appendix 1.

Budget

23. The estimated cost of each of the proposed customized research projects is set out in Appendix 1. Although the cost estimates are preliminary, advice was sought from an opinion research firm that the Law Society has previously employed.

24. The scope of this project is large and will require a dedicated support person to assist the Task Force if the project is to be completed within a reasonable period of time. The budget prepared by the group contemplates hiring someone on a contract basis to fulfil that role. There are insufficient internal resources in the Policy Secretariat to dedicate a policy advisor full-time to this project.

25. The group is recommending that Convocation allocate a budget of $200,000 for this study, which will enable the Task Force to conduct the necessary customized research and have full-time support for research and writing.

Timelines

26. The estimated time for completion of this study is 28 weeks. If Convocation approves the creation of the Task Force in March 2003, and its members are appointed in April 2003, the study may be completed in the late fall of 2003. However, interruptions due to the bencher and Treasurer election are likely to occur, and a more reasonable timeline for the completion of the Task Force's work is the beginning of 2004.

27. A detailed work plan, complete with a time schedule, is set out for each issue the Task Force will address at pages 6 and 12 of Appendix 1.

Recommendation of the Finance and Audit Committee

28. The Finance and Audit Committee considered the group's request for funding at its meeting on March 13, 2003. The Committee considered the financial efficacy of the proposal and recommended that prior to the contemplated research, a preliminary step be undertaken. This preliminary step involves exploiting data that is immediately available by gathering information from benchers and CDLPA members to the extent that these sources reply in a timely manner. The group could then reformulate its proposals based on its analysis of this information.

29. The Finance and Audit Committee proposed a budget of $50,000 for this preliminary step sourced from the Contingency Account in the 2003 budget.

APPENDIX 1

Sole PRACTITIONER/Small FIRM Task Force - Project outline

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Purpose of this document *Page 2*

Issue #1: Pages 2 to 7
How to assure future access to legal services in smaller communities at risk of loss of services?

- Background
- Analytical questions/flow
- Data sources for "access issue"
- Summary of the customized research required
- Project work plan
- Summary of estimated project costs

Issue #2: *Pages 8 to 12*

How to address the financial viability of small/sole practitioners who are increasingly facing adverse conditions?

- Background
- Analytical questions/flow
- Data sources for "financial viability issue"
- Summary of the customized research required
- Project work plan
- Summary of estimated project costs

Purpose of this document

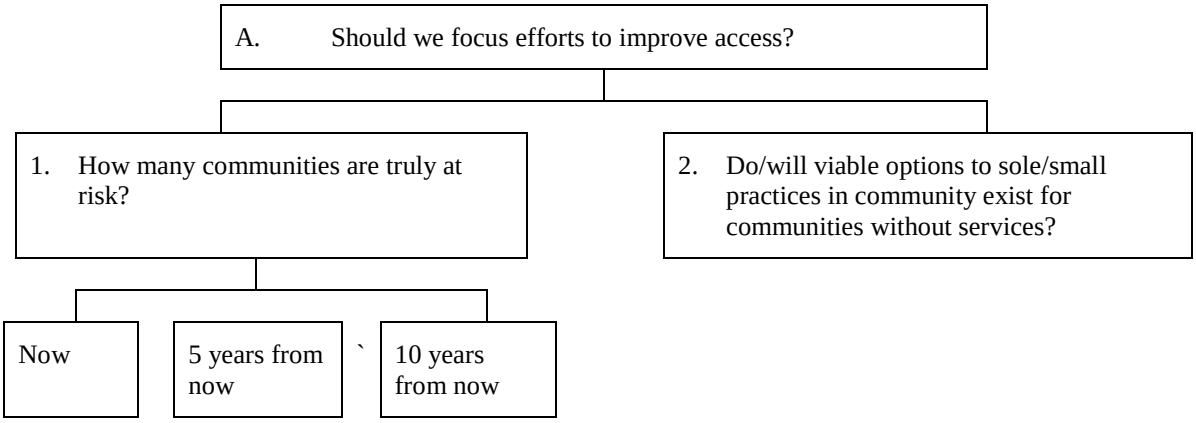
The purpose of this document is to scope out a project to address two key issues that have been identified as priority issues relating to lawyers in sole and small practices.

Issue #1 How to assure future access to legal services in smaller communities at risk of loss of service?

BACKGROUND:

- At first glance, some Ontario communities could be at risk in the medium term of losing legal services, that is, there are few practitioners in the areas and the practitioners are over 55 years of age.
- Fewer new lawyers are choosing sole practice than in the past
- Articling students are not going to small towns

ANALYTICAL QUESTIONS/FLOW



i. "Define "at risk":

- Number of practitioners
- Age profile of practitioners
- Profile of practice
- Geographic proximity of community to centres with service

ii. Profile communities at risk, now and in the future

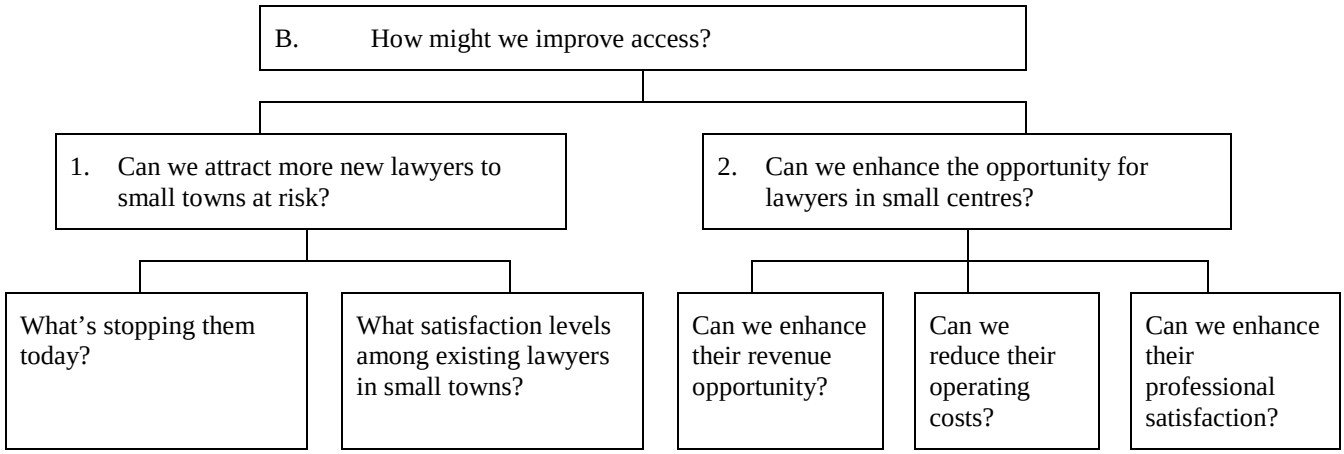
iii. Do we have articling positions, which will feed future needs in these communities? Do we have

i. Do lawyers in large firms tend to migrate to small communities mid career?

ii. In communities without sole/small services today, what alternatives do users of legal services use? What degree of satisfaction?

iii. Are new service offerings emerging, which will meet the needs in these communities in the future?

students in law school who will return to these communities?



i. Attitude research among students and new lawyers in urban areas

ii. Profile of "home" address of students and new lawyers (are we attracting "ex urban" students?)

iii. Profile articling position locations and tendency to pursue career where articled

i. How satisfied are they with their incomes and their professional lives/contribution?

ii. What key dissatisfiers?

What are other professions/ jurisdictions doing?

- doctors Ontario
- lawyers US, UK

Data sources for "access" issue

Questions we need answers to	*Data sources*
What communities are at risk now and in the future?	❑ *Law Society*: identify the number of communities which have 2 or fewer practitioners in key practice areas and who are over 55, 45. Project future service offering if no new lawyers enter market ❑ *Stats Can*: population size and trend in these communities; geographic proximity to communities which are better served
How likely are we to see new lawyers enter these communities to fill gaps, which emerge as existing practitioners retire?	❑ *Articling positions distribution*: how many positions in small communities, especially those at risk? ❑ *Law schools*: do we have a reasonable proportion of students in law school from small towns, especially those in areas at risk? Has the mix of students shifted over time ❑ *Research among practicing lawyers in small towns*: what has been their career profile? Are we likely to see that the new lawyers in large firms migrate to small practice/small community in mid career? ❑ *Law Society: Cohort analysis.* How has the mix of the "class of '89" changed over 12 years in terms of practice size mix, practice type mix

	and location mix (e.g. % in small communities vs. large urban)?
How satisfied are people in small communities who currently have low level of services?	❑ *Consumer research*: among people who have used legal services or who have tried to access and failed ❑ *Research among practicing lawyers* in small towns: what competitive services are emerging to fill the need that is created by a gap in lawyers?
How might we attract more new lawyers to small towns at risk? Which practice areas are most required for the future?	❑ *Research among students and new lawyers:* what attitudes do they have about small community, sole practice? What would enhance their likelihood of pursuing small community practice? ❑ *Law Society*: in the "at risk" communities, which of the practice areas show a gap vs. current/future demand?
Can we enhance the opportunity for existing lawyers in small centres?	❑ *Research among practicing lawyers*: what is their current level of satisfaction with income, professional life? What are the key dissatisfiers? What have they done in the past to enhance their capabilities (e.g. training, technology, multi disciplinary practice etc?)? What components of their cost structures are the key problems*?* ❑ *Studies/decisions by other professions/jurisdictions:* doctors, lawyers U.S. and U.K.

Summary of the customized research required for the "access issue" as outlined above

To complete the above exercise, in addition to conducting desktop analysis of data available in Law Society data base and of publicly available research (e.g. Stats Can., reports by other professions etc), it appears that we will need to design and field customized opinion research as follows. *Note that cost estimates are very preliminary and need to be revised through discussions with research suppliers.*

❑ A research study among practicing lawyers in small communities, especially those designated "at risk" currently or for the future. The survey could be written (mail/web) or telephone (the latter is preferable given the qualitative nature of the research). Rough cost assumptions:

Assumptions	*Rough cut costs for fieldwork*	*Rough costs for design and summary*	*Total*
20 communities at risk, 2 lawyers per community, telephone survey	$100 per interview, excluding design and analysis, $4000.	$10,000	$14,000
40 communities in total (some currently at risk, some future potential), on average 3 lawyers per community	$12,000	$12,000	$24,000

❑ a research study among users of legal services in towns "at risk" or with low level of services to determine alternatives used, levels of satisfaction. Assume split ½ business and ½ individuals. Assume relatively low incidence of use of legal services (i.e. relatively costly to find users)

Assumptions	*Rough costs for fieldwork*	*Rough costs for design and summary*	*Total*
20 communities at risk. Complete survey with some 20 businesses (telephone) and 100	❑ $75 per interview ❑ $30 per completed mail	$10,000	$14,500

individual users (mail)	survey ❑ total $4500		

- ❑ research among students and new lawyers in larger firms regarding attitudes/intent re smaller community practice

Assumptions	*Rough costs for fieldwork*	*Rough costs for design, tabulation and summary*	*Total*
Mail survey, seeking 300 completions, among students, articling lawyers and lawyers in the first 10 years of their career	Cost will vary based on "difficulty" of sourcing contact names. If names can be developed from databases (e.g. law schools, articling data base, Law Society membership), then cost per completed questionnaire might be in the $30 range. If not, costs will be significantly higher. Assume costs could be in the range of $10,000 to $20,000	$15,000	$25,000 to $35,000

Project work plan for the "Access Issue"

This outlines the project steps and estimated time for the consultant/contractor hired to conduct the project. Again, as with the research, this work plan is a rough cut and would need to be validated through contracting discussions.

Step	*Approximate hours*	*Timing (weeks from start of project*
1. Kick off the project: meeting with Law Society staff for handover, interviews with task force members to secure further background, amass data collected to date on information sources	10	Week 1 - 2
2. Conduct initial background analysis: review all desktop information collected, prepare initial conclusions and hypotheses, identify focused research requirements. Meet with task force to secure agreement to detailed research requirements.	15 – 20	Week 3-4
3. Design and manage research projects: work with designated Law Society supplier to scope out research projects, create detailed budgets and work plan. (assume elapsed time for research studies is 6 weeks)	60	Weeks 5 - 11
4. Pursue and analyze other information as identified: Law Society data base, public studies from other jurisdictions	50	Weeks 5 - 11
5. Summarize conclusions from research and desktop analysis and prepare preliminary report for taskforce	20	Week 12

6. Task force meeting	5	Week 13
7. Revise and finalize recommendations. Review with task force	10	Week 14

Summary of estimated project costs

This summarizes the costs associated with the "access" issue, assuming that the Law Society hires an outside contractor to complete the study and that you do initiate the research studies identified above.

Cost element	*Rough cost estimate*
Project contractor (manager, analyst)	$44,000
Research surveys	$77,500 to $87,500
Total	$121,500 to $131,500

Issue #2 How to address the financial viability of small/sole practitioners who are increasingly facing adverse conditions?

BACKGROUND:

Sole/small practices may be at risk in future:

- ❑ aging more quickly than total bar
- ❑ not attracting appropriate share of new lawyers
- ❑ per capita incomes not keeping pace with large firms
- ❑ total demand for services in key practice areas in decline due to competition
- ❑ changes in technology and high "fixed" costs increase cost disadvantage

Analytical questions/flow

A. Should we address the financial viability of small/sole practitioners?

1. Is the existing complement the "right" number, matching supply with demand?

- ❑ How does current 'supply' practitioners providing family, criminal, real estate law compare (per capita):
  - Versus history
  - Versus other major jurisdictions

  (number of lawyers relative to population; share of individual services provided by small versus medium/large)
- ❑ Are the part-time lawyers part

2. Will the demand/revenue for services by 1 – 5 practitioner firms
   - grow
   - hold
   - decline?

- ❑ Will overall demand for legal services change per capita?
- ❑ Will alternatives/ substitutes grow/hold/ reduce?
- ❑ Will larger firms (6+) pursue business currently served by small if small practices continue to reduce in numbers?
- ❑ What are the per capita billings and earnings trends of sole/small practitioners?

3. Will the future complement of 1 – 5 practitioner firms be the "right" number?

- ❑ What's the outlook for numbers, if current trends continue? (eg. Aging, low entry)
- ❑ Does the outlook indicate a need to intervene? Is the consumer better served by sole/small?

time by choice or necessity?

- ❑ Does current information suggest:

- ❑ any particular practice areas or legal aid particularly in shortage or surplus?

Shortage?	In balance?	Surplus?
- growing consumer complaints over access? - rising fees? - growth in		- falling fees - intra lawyer competition - declining rate of entry to practice

B. How might we address the financial viability of small/sole practitioners?

1. Could we help enhance potential revenue/practitioner?

- ❑ Rebuild broad market demand for services provided by small/sole practitioner?
- ❑ Build capability of practitioner to compete for 'share' of revenue availability (marketing, quality of "customer" service, professional service, technology?)
- ❑ Encourage reduction in numbers of practitioners – now, future; encourage retirement, discourage new entrants

2. Could we help reduce practitioner costs?

- ❑ Which elements of small practitioner costs put them at significant disadvantage?
- ❑ Profile of small versus large office on different revenue scenarios
- ❑ What aspects of technology represent a real barrier? (lawyer research)
- ❑ Which elements can be addressed?

What can we learn from elsewhere?

- what alternative models of practice exist?
- What are organizations in other jurisdictions doing?
- What training/support is available today? How well used?

Data Sources to support the "financial viability" issue

Questions we need answers to	*Data sources*
How many lawyers, by service area, by practice size compared to population, trended over 10 years, and compared to other jurisdictions.	Law Society data base Stats Can Reports from other provinces/U.S. states
Are the part-time lawyers "part time" by choice or necessity	LawPRO can ask part-time lawyers if would consent to participate in a survey Custom research if necessary (although difficulty of accessing names may inhibit)
Do we have a shortage or a surplus of lawyers in	TBD: do average billings show a decline for lawyers in

particular practice areas?	any given practice area? Are there consumer complaints over access and are they growing? Is there more competition among lawyers in certain practice areas than there used to be (opinion research among lawyers?)
Will the demand for services grow/hold/reduce and how will that vary by practice? Will larger firms "step in" and do "real law for real people" in key practice areas, if the small/sole decline in numbers?	Opinion research among lawyers, both small and mid size: trends in client demand, billings, income etc. Review of any publicly available studies which look at the key drivers of the need for legal services (e.g. economy, divorce rates etc) and projections about these drivers.
Will the future complement of 1-5 firms be the right number? Is the consumer better served by small?	Law Society complaints data base: share of complaints by practice size Law Society data base: forecast sole/small in the future, given current profile and trend of lawyers to pursue small/large
Could we help enhance demand for lawyers' services?	Review of the effectiveness of advertising/public relations campaigns to build consumer awareness of the need for/benefits of services by other professional groups.
Could we build the capability of sole/small to compete for share?	Research among lawyers to understand their perceptions of barriers to competing (skill, marketing, customer service, technology?) and their behaviours around accessing what is currently available to them.

Could we accelerate retirements or discourage entrants to sole practice or small firms?	Research among older lawyers regarding barriers to retirement Research among students, articling lawyers and new lawyers regarding perceptions of small/sole
Could we help them reduce costs?	Business model profile of "standard" small vs. medium vs. large practice to identify key competitive cost disadvantages and solution areas. Access "models" of alternative practices (e.g. multi disciplinary, shared services) to compare
What can we learn from other areas?	Access studies from U.S. on sole/small

Summary of the customized research required for the "financial viability" issue as outlined above

To complete the above exercise, in addition to conducting desktop analysis of data available in Law Society data base and of publicly available research, it appears that we will need to design and field customized opinion research among existing lawyers as follows. *Note that cost estimates are very preliminary and need to be revised through discussions with research suppliers.*

- A research study among practicing lawyers. The survey could be written (mail/web) or telephone (the latter is preferable for at least part of the research base given the qualitative nature of the research). The survey would probe their actual financial trends, their perceptions on outlook, the key drivers for their revenue trends and their costs compared to larger practices, their perception of needs to improve their competitive position and their current practices regarding accessing training, technology etc. Survey would ensure an adequate sample of part-time practitioners to understand the question re part time by choice or need . Rough cost assumptions:

Assumptions	*Rough costs for fieldwork*	*Rough costs for design and summary*	*Total*
Telephone interviews completed with 350 lawyers.	$15,000 to $20,000	$10,000	$25,000 to $30,000

Project work plan for the Financial viability issue

Step	*Approximate hours*	*Timing (weeks from start of project*
1. Kick off the project: meeting with Law Society staff for handover, interviews with task force members to secure further background, amass data collected to date on information sources	10	Week 1 - 2
2. Conduct initial background analysis: review all desktop information collected, prepare initial conclusions and hypotheses, identify focused research requirements. Meet with task force to secure agreement to detailed research requirements.	30	Week 3-4
3. Design and manage research projects: work with designated Law Society supplier to scope out research projects, create detailed budgets and work plan. (assume elapsed time for research study is 6 weeks)	25	Weeks 5 - 11
4. Pursue and analyze other information as identified: Law Society data base, public studies from other jurisdiction	80	Weeks 5 - 11
5. Summarize conclusions from research and desktop analysis and prepare preliminary report for taskforce	20	Week 12
6. Task force meeting	5	Week 13
7. Revise and finalize recommendations. Review with task force	10	Week 14

Summary of estimated project costs

This summarizes the costs associated with the "financial viability" issue, assuming that the Law Society hires an outside contractor to complete the study and that you do initiate the research studies identified above.

Cost element	*Rough cost estimate*
Project contractor (manager, analyst)	$45,000
Research surveys	$25,000 to $30,000
Total	$70,000 to $75,000

It was moved by Ms. Potter, seconded by Ms. Curtis that a task force be appointed to examine the ongoing survival of small law firms and sole practices and specifically to study and recommend to Convocation by April 2004 the means

a. to assure future access to legal services in smaller communities that are at risk of losing these services; and

b. to address the financial viability of small firms and sole practices.

Further, that Convocation be requested to allocate a budget of $200,000 to the task force.

It was moved by Ms. St. Lewis, seconded by Ms. Ross that the motion be amended that the task force include within its methodology and report specific attention to the experience of lawyers from equality-seeking communities who are in small firms.

The amendment was accepted by the mover and seconder.

The main motion as amended was approved and carried unanimously.

ROLL-CALL VOTE

Aaron	For
Arnup	For
Banack	For
Bobesich	For
Braithwaite	For
Carpenter-Gunn	For
Chahbar	For
Cherniak	For
Coffey	For
Crowe	For
Curtis	For
Diamond	For
Ducharme	For
Epstein	For
Feinstein	For
Go	For
Gottlieb	For
Harris	For
Hunter	For
Laskin	For
Marrocco	For
Martin	For
Millar	For
Minor	For
Mulligan	For
Murray	For
O'Brien	For
Pilkington	For
Porter	For
Potter	For
Puccini	For
Robins	For
Ross	For
Ruby	For
St. Lewis	For
Simpson	For
Swaye	For
White	For
Wilson	For
Wright	For

REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE

The Report of the Professional Development, Competence & Admissions Committee was deferred to April Convocation.

Professional Development, Competence & Admissions Committee
March 27, 2003

Report to Convocation
Purpose of Report: Decision

Prepared by the Policy Secretariat
(Julia Bass 416-947-5228
Sophia Sperdakos 416-947-5209)

OVERVIEW OF POLICY ISSUES

PROPOSED BY-LAW AND RULE AMENDMENTS REGARDING CONFIDENTIALITY OF PRACTICE REVIEWS/COMPETENCE HEARINGS

Request to Convocation

1. That Convocation approves the proposed amendments to By-law 24 and Rule 3.04.1 of the Rules of Practice and Procedure in accordance with the Motions set out at Appendices 2 and 3.

Summary of the Issue

1. In April 2002 Convocation approved the Committee's recommendations regarding changes to the policy on confidentiality of practice reviews and competence hearings. While most of the changes Convocation approved do not need to be included in By-laws or Rules of Practice and Procedure, two provisions do.

2. The first proposed amendment is to By-law 24 (Professional Competence), which deals with, among other issues, the practice review process. The proposed amendment embodies Convocation's decision that a review of a member's practice and the fact that a review is being, or has been conducted will not be made public. The proposed amendment also reflects Convocation's decision that, in general, a proposal order made under By-law 24 will not be public, unless it results in a suspension or limitation of a member's rights and privileges.

3. The second proposed amendment is to the Rules of Practice and Procedure. One of the decisions Convocation made provides that where a tribunal presiding over a professional competence proceeding, *limits* or *suspends* a member's rights and privileges, the *order* and the *decision* should be made public. This necessitates changes to subsections 3.04.1(5), (6), and (7).

4. The proposed amendments are contained in the Motions set out at Appendices 2 and 3.

THE REPORT

Terms Of Reference/Committee Process

5. The Committee met on March 13, 2003. Committee members in attendance were Earl Cherniak (Chair), Kim Carpenter-Gunn (Vice-Chair), Bill Simpson (Vice-Chair), Carol Curtis, Todd Ducharme, Abe Feinstein, Janet Minor, and Rich Wilson. Staff members in attendance were Julia Bass, Ian Lebane, Diana Miles, Janine Miller and Sophia Sperdakos. Justice Colin Campbell also attended the meeting.

6. The Committee is reporting on the following matter:

Policy – For Decision

- Proposed By-law and Rules Amendments regarding Confidentiality of Practice Reviews/Competence Hearings

PROPOSED BY-LAW AND RULE AMENDMENTS REGARDING CONFIDENTIALITY OF PRACTICE REVIEWS/COMPETENCE HEARINGS

Background

7. In April 2002 Convocation approved the Committee's recommendations regarding changes to the policy on confidentiality of practice reviews and competence hearings. The Executive Summary from the Report to Convocation is set out at Appendix 1.

8. While most of the changes Convocation approved do not need to be included in By-laws or Rules of Practice and Procedure, two provisions do.

9. The first proposed amendment is to By-law 24 (Professional Competence), which deals with, among other issues, the practice review process. The proposed amendment embodies Convocation's decision that a review of a member's practice and the fact that a review is being, or has been conducted will not be made public. As the proposed amendment is worded, the information about a practice review would not be disclosed except to the extent that, for example, it was part of a conduct proceeding, open to the public, under the Act.

10. The proposed amendment also reflects Convocation's decision that, in general, a proposal order made under By-law 24 will not be public, unless it results in a suspension or limitation of a member's rights and privileges.

11. Appendix 2 contains
    a. the proposed Motion amending By-law 24; and

    b. the relevant excerpt from the Committee's April 2002 Report to Convocation.

12. The second proposed amendment is to the Rules of Practice and Procedure. One of the decisions Convocation made provides that where a tribunal presiding over a professional competence proceeding *limits* or *suspends* a member's rights and privileges, the *order* and the *decision* should be made public. This necessitates changes to subsections 3.04.1(5), (6), and (7). Currently they are worded as follows:

> (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.

13. Appendix 3 contains

a. the proposed motion amending Rule 3.04.1; and

b. the relevant excerpt from the Committee's April 2002 Report to Convocation.

Request to Convocation

14. That Convocation approves the proposed amendments to By-law 24 and Rule 3.04.1 of the Rules of Practice and Procedure in accordance with the Motions at Appendices 2 and 3.

APPENDIX 1

EXECUTIVE SUMMARY (REPORT TO CONVOCATION-APRIL 2002)

CONFIDENTIALITY OF PRACTICE REVIEWS AND COMPETENCE PROCEEDINGS

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.

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.

APPENDIX 2

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT*

BY-LAW 24
[PROFESSIONAL COMPETENCE]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 27, 2003

MOVED BY

SECONDED BY

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

1. Section 6 of By-Law 24 [Professional Competence] is amended by adding the following:

Review of practice is not public information

(4) A direction under subsection 49.4 (1) of the Act that a review of a member's or bencher's practice be conducted and the fact that a review of a member's or bencher's practice is being or has been conducted shall not be made public, except as required in connection with a proceeding under the Act.

2. Section 15 of the By-Law is amended by adding the following:

Order is not public information

(6.1) An order made under subsection 42 (7) of the Act shall not be made public.

Order limiting member's rights and privileges is public information

(6.2) Despite subsection (6.1), an order made under subsection 42 (7) of the Act that suspends or limits a member's rights and privileges is a matter of public record.

Excerpt from April 2002 PD&C Committee Report to Convocation

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]

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.[1]

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. [Approved]

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.

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[1] 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.

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;
    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; [Approved]

    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; [Approved]

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. [Approved]

APPENDIX 3

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE
MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*

RULE 3 ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 27, 2003

MOVED BY

SECONDED BY

THAT Rule 3 [Access to Hearings and Non-Publication Orders] of the Rules of Practice and Procedure made under section 61.2 of the *Law Society Act* be amended as follows:

1. Subrule 3.04.1 (1) of Rule 3 [Access to Hearings and Non-Publication Orders] is amended by deleting ", (6) and (7)" and substituting "and (6)".

2. Subrules 3.04.1 (5), (6) and (7) of the Rule are deleted and the following substituted:

(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 or limiting the member's rights and privileges, the decision and the order of the tribunal are a matter of public record.

(6) Where the hearing of an application for a determination of professional competence has been closed to the public and where the decision and order of the tribunal are not otherwise a matter of public record, the Society shall, where practicable, disclose to a complainant the decision of the tribunal and the parts of the order permitted to be disclosed by the tribunal.

Excerpt from April 2002 PD&C Committee Report to Convocation

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,[Convocation did agree with this] 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.

[Convocation approved all three Committee recommendations. Only (a) requires a Rule amendment.]

REPORTS FOR INFORMATION ONLY

Professional Regulation Committee

- Criteria for Referees for Processes Related to Law Office Search Warrants and Solicitor and Client Privilege
- Call for Input on Review of Firm Name/Letterhead Rules
- Report from the Professional Regulation Department

Professional Regulation Committee
March 27, 2003

Report to Convocation

Purposes of Report: Information

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

THE REPORT

Terms of Reference/Committee Process

1. The Committee met on March 13, 2003. Committee members in attendance were Todd Ducharme (Chair), Carole Curtis, Judith Potter and Heather Ross (Vice-Chairs), Stephen Bindman, Tom Carey, Patrick Furlong, Avvy Go, Holly Harris, Ross Murray and Joanne St. Lewis. Staff in attendance were Dan Abrahams, Naomi Bussin, Malcolm Heins, Terry Knott, Zeynep Onen, Bethany Simons, Elliot Spears, Jim Varro, Andrea Waltman and Sheena Weir.

2. The Committee is reporting on the following matters:

Information

- Criteria for Referees for Processes Related to Law Office Search Warrants and Solicitor and Client Privilege
- Call for Input on Review of Firm Name/Letterhead Rules
- Report from the Professional Regulation Department

CRITERIA FOR REFEREES FOR PROCESSES RELATED TO LAW OFFICE SEARCH WARRANTS AND SOLICITOR AND CLIENT PRIVILEGE

3. The Committee approved criteria for staff selection of individuals who will be court-appointed referees in circumstances in which a lawyer's office is the subject of the search warrant under the *Criminal Code*.

4. The referees are to identify the lawyer's clients and provide them with notice of a hearing to determine the documents relevant to the clients' retainers on which solicitor and client privilege must be claimed.

5. The criteria appear at paragraph 13.

A. BACKGROUND TO THE ISSUE

6. In September 2002, the Supreme Court of Canada released its reasons in *R. v. Lavallee*, in which the Court struck down as unconstitutional s. 488.1 of the *Criminal Code*. This section detailed the procedure police officers must follow in the execution of a search warrant on a lawyer's office.

7. Pending new federal legislation on the subject, the Court articulated the general principles that will govern the legality of searches of law offices, as follows:

   a. No search warrant can be issued with regards to documents that are known to be protected by solicitor-client privilege.

   b. Before searching a law office, the investigative authorities must satisfy the issuing justice that there exists no other reasonable alternative to the search.

   c. When allowing a law office to be searched, the issuing justice must be rigorously demanding so to afford maximum protection of solicitor-client confidentiality.

   d. Except when the warrant specifically authorizes the immediate examination, copying and seizure of an identified document, all documents in possession of a lawyer must be sealed before being examined or removed from the lawyer's possession.

   e. Every effort must be made to contact the lawyer and the client at the time of the execution of the search warrant. *Where the lawyer or the client cannot be contacted, a representative of the Bar should be allowed to oversee the sealing and seizure of documents.*

   f. The investigative officer executing the warrant should report to the Justice of the Peace the efforts made to contact all potential privilege holders, who should then be given a reasonable opportunity to assert a claim of privilege and, if that claim is contested, to have the issue judicially decided.

g. *If notification of potential privilege holders is not possible, the lawyer who had custody of the documents seized, or another lawyer appointed either by the Law Society or by the court, should examine the documents to determine whether a claim of privilege should be asserted, and should be given a reasonable opportunity to do so.*

h. The Attorney General may make submissions on the issue of privilege, but should not be permitted to inspect the documents beforehand. The prosecuting authority can only inspect the documents if and when it is determined by a judge that the documents are not privileged.

i. Where sealed documents are found not to be privileged, they may be used in the normal course of the investigation.

j. Where documents are found to be privileged, they are to be returned immediately to the holder of the privilege, or to a person designated by the court.

(Emphasis added)

8. On January 21, 2003, the Ontario Superior Court of Justice issued its decision in *R. v. Rosenfeld*, the circumstances in which involved a search of the office of the accused, a lawyer. The Law Society intervened in the case, addressing the issue of its involvement in the process. The court made the following order in respect of the process in the first instance to notify potential clients regarding the issue of privilege:

a. The court will appoint a referee who will review the seized documents and, in conjunction with the affidavit to be produced by the respondent [lawyer], identify the clients who are to receive notice of a hearing to establish the process for determining the issue of solicitor and client privilege respecting the documents;
b. The lawyer will provide an affidavit detailing, to the best of his information, knowledge and belief, the names and last known addresses of the clients whose documents are, or may be, involved in this seizure;
c. The referee will recommend to the court the proper process for notifying all such clients which may include a recommendation that advertisements be placed in the relevant media if the referee is of the view that such a step in necessary;
d. The costs of the referee and the costs of the notification program shall be borne by the Crown;
e. If the Crown refuses to bear these costs, then the seized documents shall forthwith be returned to the respondent.

9. The court also said:

> If the parties, with the involvement of the Law Society, cannot agree on a person to be recommended to the court to act as the referee within fifteen days of the date of these reasons, then *the Law Society shall propose the names of three appropriate individuals for the court's consideration.*
>
> (Emphasis added)

B. THE CRITERIA

10. The particular issue in the *Rosenfeld* case on the choice of the referee has been resolved. But on the assumption that the courts will follow the same or a similar procedure in cases that follow *Rosenfeld*, there was a need to develop criteria for the Law Society's selection of appropriate individuals to act as referees, for the purposes of the court's appointment.

11. The Committee agreed that staff should select the appropriate individual based on the criteria, and create a roster of individuals from which an individual can be selected on a case by case basis.

12. The *Rosenfeld* decision suggested that a retired judge would be an appropriate person to act as referee. Beyond that, little guidance is provided in the case on who should serve as a referee in these circumstances. The court makes reference to rule 54.02 of the *Rules of Civil Procedure* as an analogous process. Rule 54.03 discusses to whom a reference under the Rules may be made.[1]

13. The Committee determined that the following should be the criteria:
    a. The referee should be familiar with criminal procedure.
    b. The referee should understand the essence of solicitor and client privilege.
    c. The referee should be a person respected by the courts, the profession and the public.
    d. The referee should be in a position to act impartially and independently in the subject case.
    e. The referee should have access to administrative support personnel to assist in the referee's work (e.g. mailings, advertising).
    f. The referee should have liability coverage for his or her duties as a referee.

14. With respect to f. above, LawPRO confirmed that based on the duties described by the court, the Society's insurance program policy would respond to errors and omissions claims arising out of a lawyer's services as referee, as the lawyer's appointment relates to his or her knowledge, experience and skill in the law. Retired judges acting as referees could purchase the practice coverage if they wished to obtain coverage.

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[1] The rules read:

54.02 (1) Subject to any right to have an issue tried by a jury, a judge may at any time in a proceeding direct a reference of the whole proceeding or a reference to determine an issue where,

(a) all affected parties consent;

(b) a prolonged examination of documents or an investigation is required that, in the opinion of the judge, cannot conveniently be made at trial; or

(c) a substantial issue in dispute requires the taking of accounts. R.R.O. 1990, Reg. 194, r. 54.02 (1).

TO WHOM REFERENCE MAY BE DIRECTED

Judge or Officer

54.03 (1) A reference may be directed to the referring judge, to another judge with that judge's consent, to a registrar or other officer of the court or to a person agreed on by the parties. O. Reg. 570/98, s. 4.

Person Agreed on by Parties

(2) Where a reference is directed to a person agreed on by the parties, the person is, for the purposes of the reference, an officer of the court directing the reference. R.R.O. 1990, Reg. 194, r. 54.03 (2).

(3) The judge directing a reference to a person agreed on by the parties may,

(a) determine his or her remuneration and the liability of the parties for its payment;

(b) refer that issue to the person to whom the reference is directed; or

(c) reserve that issue until the report on the reference is confirmed. R.R.O. 1990, Reg. 194, r. 54.03 (3).

15. If appointees are not Society members, LawPRO would not be in a position to offer them coverage. If the appointees wished to have coverage, they would have to approach commercial markets.

CALL FOR INPUT ON REVIEW OF THE FIRM NAME AND LETTERHEAD RULES

16. The Committee approved a document, appearing at Appendix 1, as the basis for a call for input connected with a review of the firm name and letterhead rules.

BACKGROUND

17. At its June 2002 meeting, the Committee agreed to strike a working group to review the firm name and letterhead rules in the Society's *Rules of Professional Conduct*.

18. The working group[2] determined that as part of its review, input from the membership should be sought. To that end, the working group produced a document that informs the profession on the purpose of the review and some considerations around firm name/letterhead regulation, and that requests responses on a series of questions. The questions appear at the end of the document. The Committee agreed with this approach.

19. The call for input will be publicized through the Society's web site and in a notice in the *Ontario Reports*. The document will be available to interested members through the web site or in hard copy (through Membership Services or by calling the Call Centre).

REPORT FROM THE PROFESSIONAL REGULATION DEPARTMENT

20. The monthly report provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears at Appendix 2. The report consists of information on file management and monitoring for processes in Complaints Resolution, Complaints Review, Investigations, Discipline and Trustee Services for the period ending February 2003.

APPENDIX 1

INFORMATION DOCUMENT FOR CALL FOR INPUT ON REVIEW OF THE FIRM NAME AND LETTERHEAD RULES

Professional Regulation Committee
Working Group on Firm Name and Letterhead
Rules of Professional Conduct
March 2003

Information for Call for Input

Prepared by the Policy Secretariat

[2] Marilyn Pilkington (chair), Stephen Bindman, Avvy Go and Heather Ross.

I. INTRODUCTION

The Law Society's Professional Regulation Committee, through a working group, is reviewing the *Rules of Professional Conduct* governing law firm names and letterhead to determine if they should be made less restrictive and if so, what form the revised rules should take. The Committee is seeking input from the profession through a series of questions that appear at the end of this paper.

Subrules 3.02(1) and (4) confine the firm name to the name of a person (i.e. lawyer, deceased lawyer, etc). Other parts of rule 3.02 deal with the form of the firm name. The rule in its entirety appears at Appendix 1. Rule 3.03, at Appendix 2, contains an exclusive but extensive list of what may appear on a lawyer's letterhead. Some items (e.g. "LLP" and "Professional Corporation") are required by the relevant legislation.

In effort to compare the Society's firm name rule with other Canadian regulators, excerpts from five other law society's rules are presented in Appendix 3. All are less restrictive than Ontario's rule and some permit trade names.

Appendix 4 contains information on current issues that may bear on rules such as those on firms names or letterhead. They include national and international developments on transborder practice within and outside of Canada. Brief comment is also provided on constitutional issues relating to advertising regulation.

II. THE LAW SOCIETY'S REGULATORY CONTEXT

The Firm Name Rule

The current rule is premised on the need for transparency around who is providing legal services. It may also promote the notion, through the use of the professionals' names, that the lawyers are independent practitioners of law. The specific prohibition on trade names appears to have been driven by the need to distinguish lawyers as professionals from those engaged in a business or trade. The primary purpose of a firm name is to identify a practice of law to the public. It also relates to a firm's marketing of its services. Indeed, the Society's current regulation of firm names in the Rules falls within the general subject of "making legal services available". The Law Society has accepted that advertising, of which a firm name is a component, has a promotional aspect and is used to increase the business of the law firm (i.e. the provision of professional legal services to the public).

The name of a law firm, however, must be distinguished from how a law practice is identified to the public. By-Law 34 on Professional Corporations illustrates this point. The By-Law incorporates the features of the firm name rule for regulation of registered names of law practices incorporated under the *Business Corporations Act*. These names, in keeping with the firm name rule, do not include phrases such as "Barristers & Solicitors", "Law Office of…", or "…, Lawyers", although these have historically formed part of the identification of a law firm. Technically, these descriptive phrases are advertising features that lawyers use on letterhead (discussed below) and in signs and advertisements, and are not part of the law firm name.

One of the risks – perhaps the primary risk - in liberalizing firm name regulation is that some names may be misleading or offensive, which is, in essence, the concern with lawyer advertising generally. The current rule addresses the risk but is restrictive. A number of assumptions about the need for such regulation can be drawn from the current rule. They include the following:

a. The public should not be misled as to who is practicing law.

   As noted above, a name permitted under the firm name rule would not, of itself, identify a partnership of lawyers as a law practice. The issue of who practices law relates more directly to knowledge that a non-lawyer entity separate from the lawyers is not controlling the practice i.e. the independence of the lawyers is maintained.

b. The public should not be misled about the type of legal services offered by the firm.

c. The public should not be confused or misled about where the law firm practices.

d. The public should not be misled about the number of lawyers practising in the firm.

e. The name should not be offensive or negatively impact on the administration of justice.

Apart from the Society's rules, the regulations under the *Business Names Act*, relevant to partnerships, prescribe what may appear in a registered name. For example, the name cannot include language that is contrary to public policy, including scandalous, obscene or immoral words or expressions.

The Letterhead Rule

Because the list of permissible inclusions on letterhead in rule 3.03 is so extensive, changes that may be made to the firm name rule may not impact significantly on the letterhead rule. However, cross-border practice situations may create some issues. For example, if the firm name relates to a practice that is carried on in a Canadian and American jurisdiction, some members of the firm may wish to identify themselves exclusively by their designation in the foreign bar (e.g. "attorney-at-law" in United States jurisdictions).

Consider the circumstance where a member, who, for example, is called in Ontario, British Columbia and New York, and states so on the letterhead, wishes to use the phrase "Attorney and Counsellor at Law" exclusively (i.e. without indicating "barrister and solicitor"), even though the principal practice is in Ontario. The issue is whether this would confuse or mislead the public in the Canadian jurisdictions as to the status of the lawyer in Canada. The current rule permits an Ontario lawyer to indicate on his or her letterhead membership in another bar other than Ontario, but the issue is whether this should be done without also indicating a designation commonly used by a member of the Ontario bar.

IV. QUESTIONS AROUND MORE LIBERAL RULES

While the Law Society must approach its regulatory mandate from the perspective of the public interest, that perspective should be informed by current developments and by careful consideration of what is in fact in the public interest. To that end, the following questions are posed:

1. Should the Society amend the rule to make it less restrictive and permit a range of forms for firm names?

2. What factors, apart from those noted above, should inform a less restrictive rule to ensure that names are not misleading or confusing? For example,
    a. Should trade names generally be permitted?
    b. Should the Society be concerned with
        i. terms that impart a qualitative assessment (e.g. Top Flight Legal Offices)
        ii. terms that are used primarily to gain prominence (e.g. AAAAA Law Office)
        iii. terms that suggest control by or close connection with non-lawyers (e.g. Global Multinational Business Corporation Law Offices)
        iv. terms that suggest an entity connected with a particular community (e.g. Anglo Lawyers, LLP)
        v. terms that denote a particular geographic location (Central Toronto Lawyers, Professional Corporation)?
    c. Should there be any restriction on the use of a foreign lawyer's name in the firm name if the firm carries on business, for example, in the United States and Canada?

3. What items in addition to those listed in rule 3.03 should be permitted on letterhead?

The Committee welcomes your written comments on these questions and any additional views that you may have on the subject. Please send your comments to the Society on or before May 30, 2003 by e-mail to jvarro@lsuc.on.ca, by fax to 416-947-7623 or by mail to:

Secretary, Professional Regulation Committee

Policy and Legal Affairs
Law Society of Upper Canada
Osgoode Hall
130 Queen Street West
Toronto, Ontario
M5H 2N6

APPENDIX 1

LAW SOCIETY OF UPPER CANADA *RULES OF PROFESSIONAL CONDUCT*

RULE 3.02

Permissible Names

3.02 (1) A law firm name may include only the names of persons who are qualified to practise law in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or who, if retired or deceased, were qualified to practise law in Ontario or in any other province or territory of Canada where the firm carries on its practice.

(2) A law firm name may consist of or include the names of lawyers who were members of the firm but who are deceased or retired from the practice of law.

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

Restrictions

(4) The name of a law firm shall not include a trade name, a commercial name, or a figure of speech.

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

(6) When a lawyer retires from a law firm to take up an appointment as a judge or master or to fill any office incompatible with the practice of law, the lawyer's name shall be deleted from the firm name.

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

Limited Liability Partnership

(8) If a law firm practices as a limited liability partnership, the phrase "limited liability partnership" or the letters "LLP" shall be included as the last words or letters in the firm name.

(9) If a lawyer practices law through a professional corporation, the name of the corporation shall include the words "Professional Corporation".

APPENDIX 2

LAW SOCIETY OF UPPER CANADA *RULES OF PROFESSIONAL CONDUCT*

RULES 3.03 AND 3.05

Letterhead

3.03 (1) Subject to subrules (2) and (3), a lawyer's letterhead and the signs identifying the office may only include

(a) the name of the lawyer or law firm,

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

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

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

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

(f) a statement that a member of the law firm is qualified to practise law in another jurisdiction,

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

(h) the phrase "limited liability partnership" or the letters "LLP," where applicable,

(i) the words "Professional Corporation", where applicable,

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

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

(l) a logo,

(m) reference to an affiliation, and

(n) advertising permitted under rule 3.05.

(2) A lawyer or law firm that practises in the industrial property field may show the names of patent and trade-mark agents who are identified as such but who are not lawyers.

(3) A lawyer or law firm may place after the names on its letterhead degrees from *bona fide* universities and post secondary institutions including honorary degrees, professional qualifications such as the designations of P.Eng., C.A., and M.D., and recognized civil and military decorations and awards, and, where the firm is a multi-discipline practice, a list of partners and associates who are non-lawyers identified as such and their designations, if any.

…

General Practice

3.05 (1) A lawyer or law firm may state that the lawyer or law firm is in general practice if such is the case.

Restricted Practice

(2) A lawyer may state that the lawyer is a specialist in a particular area of the law only if the lawyer has been so certified by the Society.

(3) A lawyer may state that the lawyer's practice is restricted to a particular area or areas of the law or may state that the lawyer practises in a certain area or areas of the law if such is the case.

(4) A law firm may state that it practises in certain areas of the law or that it has a restricted practice if such is the case.

(5) A law firm may specify the area or areas of law in which particular members practise or to which they restrict their practice.

Multi-discipline Practice

(6) A lawyer of a multi-discipline practice may state the services or the nature of the services provided by non-lawyer partners or associates in the practice.

APPENDIX 3

RULES OF OTHER LAW SOCIETIES IN CANADA

British Columbia

British Columbia's firm name rule is cast in general principles that relate to a prohibition on misleading or unprofessional advertising. Its rule is found in Chapter 14 on marketing of legal services.

> Content and format of marketing activities
>
> 4. Any marketing activity undertaken or authorized by a lawyer must not be:
>
> (a) false,
>
> (b) inaccurate,
>
> (c) unverifiable,
>
> (d) reasonably capable of misleading the recipient or intended recipient, or
>
> (e) contrary to the best interests of the public or to the maintenance of a high standard of professionalism.
>
> ...
>
> Firm name
>
> 9. A lawyer shall not use a firm name which violates Rule 4(e) of this Chapter.

The following are examples of some Ethics Committee Opinions on firms names based on the considerations in the rules.

> Ethics Committee Opinion - October 1, 1998
>
> 7. CHAPTER 14: WHETHER FIRM MAY TAKE ITS NAME FROM AN AREA OF LAW
>
> The Committee considered whether a firm may take its name from an area of law The Committee noted that there are currently lawyer referral offices, operated by lawyers, using the names "Impaired Driving Office" and "Criminal Defence Office." There has been interest expressed by other lawyers about calling their law firms after an area of law.
>
> In the Committee's opinion it would be contrary to Rule 4(d) and Rule 4(e) of Chapter 14 of the *Professional Conduct Handbook* for a lawyer to operate a firm named after a particular area of law and bearing no other distinguishing features. The use of such names has the potential to mislead the public into believing that the office has some official accreditation not shared by other offices providing similar services. The

Committee was of the view that it is not material whether such an office is operating as a traditional law firm or is only providing referrals to other lawyers.

Ethics Committee Opinion B March 28, 2001

9. CHAPTER 14, RULE 4: WHETHER FIRM MAY TAKE ITS NAME FROM SOMETHING THAT OCCURS IN THE AREA OF LAW IN WHICH THE FIRM PRACTISES

The Committee considered whether it is proper for a firm to use a name taken from the area of law in which the firm practices and that includes a statement of the firm's preferred area of practice. Examples of the use of such a name would be "Legacy Tax and Trust Lawyers," "Indictment Criminal Lawyers," or "Bylaw Municipal Lawyers."

The Committee noted that one of its previous opinions concluded that a firm may not use a firm name taken from a particular area of law and bearing no other distinguishing features. Examples of such names would be "Environmental Law Firm" or "Criminal Law Firm." The Committee was of the view that this new question is a different question than the one addressed by the Committee previously, and declined to consider it at this time.

Ethics Committee Opinion- March 7, 2002

7. CHAPTER 14, RULE 4: WHETHER FIRM MAY TAKE ITS NAME FROM SOMETHING THAT OCCURS IN THE AREA OF LAW IN WHICH THE FIRM PRACTICES

The Committee was asked whether it is proper to use the name "Legacy Advisors Law Corporation." The Committee did not have an objection to the use of this name.

Alberta

Alberta's rule focusses on a name that is not misleading. The guidance is found in the commentary on proper firm names (relevant portions are shown below). Trade names are permitted.

CHAPTER 5

Accessibility and Advertisement of Legal Services

STATEMENT OF PRINCIPLE

The profession has a duty to ensure that the public has information regarding the nature and availability of legal services and access to the legal system.

RULES

2. A lawyer must not make a representation to the public, through advertisement or otherwise, that is false, inaccurate or misleading in any respect.

COMMENTARY
2.2

Rule #2 -- Firm names, trade names and letterhead: The status of a person or entity practising law or associated with a firm must not be misrepresented in a firm name or on letterhead. For example, the use by a sole practitioner of the phrase "and Company" or "and Associates" after the lawyer's surname is misleading.

...

While the use of the names of persons no longer practising with a firm is ethically permissible in accordance with the foregoing, the firm must also consider any applicable legal requirements (such as those relating to consent) before proceeding.

The letterhead of a firm may list the names of extraprovincial lawyers associated with the firm who have not been admitted to practise law in Alberta so long as this fact, together with the jurisdiction in which such lawyers are authorized to practise, are indicated on the letterhead. Similarly, a firm's letterhead may list persons who are not lawyers (such as office managers, in-house accountants, students-at-law and patent and trademark agents) provided that they are employed by the firm. Again, however, the position or status of these persons must be clearly stated.

While the use of a trade name is not improper, it must be carefully selected to avoid any misconception on the part of the public. For example, "University Legal Clinic" would be unacceptable because it implies a connection with another institution. A geographical trade name is improper if it leads a reasonable person to erroneously conclude that the law office is a public agency, or is the only law office available in that area or locality, or if the name misleads the public in another respect.

(Emphasis added)

Saskatchewan

Saskatchewan's rules around firm names are not rules of conduct but are rules (similar to the Law Society of Upper Canada's by-laws) made under the governing statute. They are similar to British Columbia's conduct rules.

Part 19

Marketing of Legal Services

1601. (1) Subject to these Rules, a member may initiate contact with a potential client.

(2) Any marketing activity undertaken or authorized by a member must not be:
- (a) false,
- (b) inaccurate,
- (c) reasonably capable of misleading the recipient or intended recipient, or
- (d) undignified, in bad taste, offensive or otherwise inimical to the best interests of the public or the members, or tending to harm the standing of the legal profession.

...

Firm name

1606. A member shall not use a firm name which violates subrule 1601(2)(c) or (d).

Manitoba

Firm names are dealt with in Chapter 14 on Advertising, Solicitation and Making Legal Services Available in commentary to the rule on making legal services available, and include reference to rules made under the governing statute on firm names and letterhead (rules 147 and 149). Rules 147 and 149 mirror what appears in Chapter 14. Like Alberta, Manitoba specifically discusses trade names.

> Firm Names and Letterhead
> 9. The lawyer shall not use a firm name or letterhead that could mislead the public.
> ...
> 11. The lawyer shall carry on the practice of law only under:
> (a) the lawyer's name;
> (b) the names of existing or former partners or associates;
> (c) the name of the original or founding partner or partners or associates;
> (d) any combination of the foregoing; or
> (e) a descriptive or trade name, provided:
> (i) the name or a similar descriptive or trade name is not in use elsewhere in Canada;
> (ii) that by use of the name, the lawyer or firm could not mislead members of the public into believing erroneously that the lawyer or firm is associated or affiliated elsewhere in Canada with other firms or the members thereof; and
> (iii) the name is authorized by the federal or provincial government by statute or regulation, or the lawyer is the sole member of, a partner in, or an associate or employee of, the firm carrying on the practice of law under that name.

Nova Scotia

Nova Scotia, like Saskatchewan, has covered this topic in regulations under the governing act. Nova Scotia permits business names.

> Part 9 - Advertising
>
> Firm Names
> 51C(1) A lawyer may practice under the firm name of the lawyer, present or former members of the firm, or a business name so long as the name is in good taste, dignified and professional.

APPENDIX 4

INFORMATION ON INTERNAL TRADE, WORLD TRADE ORGANIZATION DEVELOPMENTS AND CONSTITUTIONAL LAW ISSUES

A. Agreement on Internal Trade

All Canadian provinces signed the Agreement on Internal Trade, effective July 1, 1995, which is designed to reduce barriers to the movement of persons, goods, services and investments within Canada. Relevant parts for this discussion appear in Chapters 1 and 7 (Operating Principles and Labour Mobility respectively). Relevant excerpts appear below.

> Article 100: Objective
> It is the objective of the Parties to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. All Parties recognize and agree that enhancing trade and mobility within Canada would contribute to the attainment of this goal.
>
> Article 101: Mutually Agreed Principles
> 1. This Agreement applies to trade within Canada in accordance with the chapters of this Agreement.

2. This Agreement represents a reciprocally and mutually agreed balance of rights and obligations of the Parties.
3. In the application of this Agreement, the Parties shall be guided by the following principles:

a) Parties will not establish new barriers to internal trade and will facilitate the cross-boundary movement within Canada;

b) Parties will treat persons, goods, services and investments equally, irrespective of where they originate in Canada;

c) Parties will reconcile relevant standards and regulatory measures to provide for the free movement of persons, goods, services and investments within Canada; and

d) Parties will ensure that their administrative policies operate to provide for the free movement of persons, goods, services and investments within Canada.

4. In applying the principles set out in paragraph 3, the Parties recognize:

a) the need for full disclosure of information, legislation, regulations, policies and practices that have the potential to impede an open, efficient and stable domestic market;

b) the need for exceptions and transition periods;

c) the need for exceptions required to meet regional development objectives in Canada;

d) the need for supporting administrative, dispute settlement and compliance mechanisms that are accessible, timely, credible and effective; and

e) the need to take into account the importance of environmental objectives, consumer protection and labour standards.

Article 102: Extent of Obligations

1. Each Party is responsible for compliance with this Agreement:

a) by its departments, ministries and similar agencies of government;

b) by its regional, local, district or other forms of municipal government, where provided by this Agreement; and

c) *by its other governmental bodies and by non-governmental bodies that exercise authority delegated by law, where provided by this Agreement.*

For greater certainty, "other governmental bodies" includes Crown corporations.

2. Each Party shall adopt and maintain measures to ensure the compliance referred to in paragraph 1.

703 Extent of Obligations

1. For the purposes of Article 102(1)(b) and (c) (Extent of Obligations), each Party shall, through appropriate measures, seek compliance with this Chapter by:

(a) its regional, local, district and other forms of municipal government; and

(b) *its other governmental bodies and by non-governmental bodies that exercise authority delegated by law, as described in Annex 703.1.*

Annex 703.1

Non-Governmental Bodies that Exercise Authority Delegated by Law

For the purposes of Article 703(1)(b), *"non-governmental bodies that exercise authority delegated by law" means any organization, institution, corporation or association to whom authority has been delegated by provincial or federal statute to set or implement measures related to:*

(a) the establishment of occupational standards or requirements for licensing, certification or registration;

(b) the assessment of the qualifications of workers against established occupational standards or requirements for licensing, certification or registration; or

(c) *the official recognition that an individual meets established occupational standards or requirements for licensing, certification or registration.*

(Emphasis added)

It would appear that provincial law societies are "non-governmental bodies that exercise authority delegated by law" described above.

B. NAFTA

Chapter 12 of the North American Free Trade Agreement (NAFTA) deals with cross-border trade in services. Article 1210 reads:

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing or certification of nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:
(a) is based on objective and transparent criteria, such as competence and the ability to provide a service;
(b) is not more burdensome than necessary to ensure the quality of a service; and
(c) does not constitute a disguised restriction on the cross-border provision of a service.

…

5. Annex 1210.5 applies to measures adopted or maintained by a Party relating to the licensing or certification of professional service providers.

Annex 1210.5 includes the following provisions:

Development of Professional Standards

2. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.

3. The standards and criteria referred to in paragraph 2 may be developed with regard to the following matters:
(a) education - accreditation of schools or academic programs;

(b) examinations - qualifying examinations for licensing, including alternative methods of assessment such as oral examinations and interviews;
(c) experience - length and nature of experience required for licensing;
(d) conduct and ethics - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards;
(e) professional development and re-certification - continuing education and ongoing requirements to maintain professional certification;
(f) scope of practice - extent of, or limitations on, permissible activities;
(g) local knowledge - requirements for knowledge of such matters as local laws, regulations, language, geography or climate; and
(h) consumer protection - alternatives to residency requirements, including bonding, professional liability insurance and client restitution funds, to provide for the protection of consumers.

NAFTA also deals with foreign legal consultants (FLCs). Beginning in 1993, Canada, the United States and Mexico sent representatives from their professional bodies/representative legal organizations to negotiate an international agreement on FLCs. In June 1998, the parties signed a joint recommendation, including a model rule, but their respective governments have not yet ratified the recommendations and there are no indications when, if at all, this might occur.

The Law Society recently adopted a regulatory scheme which will appear in a by-law, codifying a number of features of the process currently in place for registration of FLCs in Ontario.

C. GATS

Under the auspices of the WTO, the GATS (General Agreement on Trade in Services) came into force on January 1, 1995. It is described as an integrated framework for addressing issues related to cross-border trade, investment and movement of services providers.

The GATS talks through the WTO include discussion on trade in legal services, part of which will deal with restrictions on trade and related domestic rules. The "Working Party on Domestic Regulation" has already drafted rules (also called "disciplines") for the accounting profession. The accounting disciplines, which have been discussed as the basis for those for the legal profession, include licensing requirements, one of which covers firms names. The requirement is that use of firm names must not be restricted, except in fulfilment of a “legitimate objective". The legitimate objectives are defined as the protection of consumers (which includes all users of legal services and the public generally), the quality of the service, professional competence and the integrity of the profession.

A March 2001 GATS paper outlines the results of consultations held to date with Canadian national professional organizations, including the Federation of Law Societies and the Canadian Bar Association, on the relevance and applicability of the accounting disciplines.

The organizations were asked to assess the relevance and applicability of each of the disciplines; whether the requirements are currently applied; whether they could be adopted if not currently applied; and, to explain the reasons why they were not deemed relevant or applicable. No specific elements of the accountancy disciplines were found to be irrelevant to their current practices or non-applicable in general to their respective profession. One issue raised was that “consumer protection and the integrity of the profession must be recognized as paramount considerations in regulating the profession.”

D. Constitutional Law Issues

Under section 2(b) of the Charter, freedom of expression is guaranteed, subject only the provisions of section 1 of the Charter.[3] In *Royal College of Dental Surgeons of Ontario v. Rocket*[4], the Supreme Court of Canada found that

[3] “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.”

Section 2(b) includes commercial speech such as advertising (on the basis that advertising aims to convey a meaning and involves more than economic interests, which were not intended to be protected). In *Rocket*, the Court said that professional bodies have a heavy duty to adopt appropriate regulations which do not unduly restrict the freedom of expression of their members.

The Supreme Court of Canada has not considered a case where the *Rules of Professional Conduct* of the Law Society on lawyer advertising have been considered. Some years ago, two Ontario lawyers brought an action challenging the Society's firm name rule, which included an argument under s. 2(b) of the Charter. At both the trial and appeal levels in Ontario, the courts found no merit to the Charter argument based on section 2(b) and the lawyers' application for leave to appeal to the Supreme Court of Canada was dismissed. This case was disposed of at the Court of Appeal before the Supreme Court's consideration of *Rocket* in 1990. If a firm name is considered an adjunct to advertising, a question is how *Rocket* might be applied in the context of the Society's rules.

APPENDIX 2

REPORTS FROM THE PROFESSIONAL REGULATION DIVISION

(See Report in Convocation file, pages 27 – 40)

Equity & Aboriginal Issues Committee/Comit9 sur l'9quit9 et les affaires autochtones
- Law School Tuition Fee Increases
- Appointment of Equity Advisory Group Members

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones
March 27, 2003

Report to Convocation

Purpose of Report: Information

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

THE REPORT

Terms Of Reference/Committee Process

1. The Committee met on March 17, 2003. Committee members in attendance were Derry Millar (Vice-Chair), Helene Puccini (Vice-Chair), Stephen Bindman and Janet Minor. Others in attendance were Senka Dukovich (representative of the Equity Advisory Group) and staff Josée Bouchard, Katherine Corrick, Margaret Froh, Giang Nguyen and Anne D'Souza.

2. The Committee is reporting on the following matter:

[4] [1990] 2 S.C.R. 232.

Information

- Law school tuition fee increases
- Appointment of Equity Advisory Group members

TUITION FEE INCREASES

Background

3. In 2002, the Faculty of Law at the University of Toronto proposed to increase its tuition fees to $22,000 per year by 2005. Other law schools in the province have indicated that their tuition fees will also rise significantly.

4. At its May 9, 2002 meeting, the Committee received a motion approved at the May 2, 2002 meeting of the Governing Council of the University of Toronto stating that there would be no further substantial increase in tuition fees for the JD Program in the Faculty of Law until governing Council is satisfied that there has been no reduction in accessibility due to the 2002-2003 tuition increase and no career distortion due to previous substantial increases based upon a comprehensive Accessibility and Career Choice Review to be conducted through the Provost's office.

5. The motion called for a study to be conducted through the Provost Office to determine whether there are any adverse impacts due to a tuition fee increase.

6. Given its concerns regarding potential impacts of increasing tuition fees on the accessibility of legal education, the Committee recommended that the Law Society offer its support of, and participation in, the Accessibility and Career Choice Review to be conducted by the Provost Office of the University of Toronto.

7. The Treasurer announced, at the meeting of Convocation in June 2002, that he would offer the Law Society's support of, and participation in, the study conducted by the University of Toronto and by the other five law schools.

8. The Provost Office responded to the letter of letter of support and welcomed the assistance of the Law Society. In November 2002, the Office of the Treasurer provided an update memorandum to the Chair of the Committee regarding the Law Society's participation in the University of Toronto's Accessibility and Career Choice Review. The memorandum states that the Treasurer has been in discussions with the Provost Office at the University of Toronto regarding the Law Society's participation in their study. As a result of these discussions, the Provost Office requested that the Law Society provide the following data:

    a. Data for each graduating cohort since 1995, i.e. where University of Toronto graduates articled, and where they worked each year after they were admitted to the bar.
    b. Continuation of this collection of data for every year for the next ten years, each year adding data from that year's articling class.
    c. Data regarding the number of articling positions available in each area of the law and how many positions for lawyers were available.
    d. The data provided is to be tracked against changes in law school tuition fees and against changes in financial aid to make law schools widely accessible. The results of this tracking would be made available to the Law Society.

The Provost's Study

9. On February 24, 2003, the University of Toronto (U of T) released the Provost's Study of Accessibility and Career Choice in the Faculty of Law. The results are presented in three main sections. The first section presents the results of a literature review on accessibility and career choice. The second section presents

data reflecting accessibility, based primarily on admission statistics for the Faculty of Law. The third section deals with career choice patterns of University of Toronto law graduates as compared to those from other Ontario law schools, based on data from the Law Society of Upper Canada.

Study by other Ontario law schools

10. In 2002, Dean Elman of the University of Windsor, Dean Holloway of the University of Western Ontario, Dean Hogg of Osgoode Hall Law School, Dean Harvison Young of Queen's University and Dean Felthusen of the University of Ottawa decided to commission an independent professional study on the question of the impact of tuition increases on access to legal education. On November 12, 2002, the five law deans invited the Treasurer to represent the Law Society on the Steering Committee of the independent study. The Treasurer accepted the invitation. The five law schools have obtained substantial funding to proceed with the study.

Consideration of tuition fee increases by the Committee

11. The Committee recognizes that the Law Society does not have jurisdiction over the issue of law school tuition fees. However, the Committee is concerned about the potential effects on the composition of the profession and career distortion in the profession if there are further substantial increases in law school tuition fees.

12. As a result of the release of the U of T Provost's Study of Accessibility and Career Choice in the Faculty of Law, the decision of the other law schools to undertake their own study and the Law Society's cooperation in that study, the Committee will continue to consider the impact of law school tuition fee increases on the composition of the profession and career distortion in the profession and report back to Convocation on this important issue.

APPOINTMENT OF EQUITY ADVISORY GROUP MEMBERS

13. The Terms of Reference of the Equity Advisory Group/Groupe consultatif en matiere d'équité (EAG) outlines an appointment process of members of EAG. Section 2 of the Terms of Reference states that a selection committee appointed by EAG will recommend candidates for appointment to EAG. EAG will consider the selection committee's recommendations and approve the recommendation of candidates by consensus. EAG will recommend the candidates to the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) for approval. The Committee will forward approved names of new EAG members to Convocation along with brief biographical information.

14. The Committee has approved the following four candidates for appointment to EAG : Mojisola E. M. Akpata, Nikki Gershbain, Milé Komlen and Sudabeh Mashkuri. The Committee provides brief biographical information of new EAG members at Appendix 1.

APPENDIX 1

NEW MEMBERS OF EQUITY ADVISORY GROUP

MOJISOLA E. M. AKPATA

- Based in Ottawa.
- A member of an equity-seeking community within the legal profession (self-identified as an African Canadian woman).
- Has direct experience, commitment and involvement in the cause of foreign trained lawyers and their admission into the legal profession in Canada.
- A member of a racialized and immigrant community.
- A student-of-law, LL.B (Hons) English Common Law, University of Ottawa (2002).

- LL.B (Hons) English Common Law, University of Benin, Nigeria (1989).
- Member of Black Law Students Association of Canada.
- Deals with issues related to the status of women.
- Co-ordinator/creator of the National Committee of Accreditation Students Forum, a platform that identified the problems encountered by foreign trained graduate students within the structure of the law school.
- Executive Director of African Partnership Against Aids (APAA). Works with immigrants affected by the HIV virus and is a Palliative Care volunteer.

NIKKI GERSHBAIN

- A family law associate who devotes a significant part of her practice to *pro bono* files. Represents clients in child welfare and custody and access applications. Recently worked as part of a team of lawyers who defended the judicial practice of granting spousal support (mostly women) in the face of final law.
- Was a student at York University. Spent a term as President of the student union, where she lobbied the University administration, as well as the provincial and federal governments, for increased accessibility to post-secondary education for disadvantaged and under represented groups.
- Master's degree in Feminist Theory at the New School for Social Research in New York City. As a Fulbright Scholar, developed a theoretical analysis of equity issues. Her thesis considered the legal status of same-sex partnerships. Further explores this issue by organizing panel discussions and writing articles for both the popular and gay press.
- Has worked as a caseworker at Parkdale Community Legal Services
- Publications include: "For the Sake of the Fathers? Child Custody Reform and the Perils of Maximum Contact".

MILÉ KOMLEN

- A human rights lawyer involved with inclusivity initiatives.
- Self-identifies as a gay man from a mixed ethno-cultural heritage, who has overcome social and economic disadvantage after being raised by an immigrant single parent in a government-subsidized housing project.
- A track record in advancing employment equity and anti-discrimination measures in a institutional, workplace and community setting.
- Academic background in human rights and equity theory. Undergraduate research was devoted to equality rights issues and became the first man in Canada to be awarded a degree in Women's Studies. Currently writing a Master's thesis on legal discourses of equality.
- An Employment Equity and Diversity Consultant at CIBC where he is responsible for the implementation of employment equity policies and the advancement of diversity initiatives throughout the bank's national operations. The focus of his work has been to promote access to employment through the hiring and retention of individuals from four designated groups under the federal *Employment Equity Act*. Responsible for the administration of various human rights policies, including accommodation, non-harassment, workplace diversity, and work/life balance policies.
- Previous employment experience includes a specialization in employment equity, human rights, and labour law at Hicks Morley.
- Worked with the Correctional Service of Canada, where he participated in the drafting and publication of human rights training modules, mandated through the recommendations made by the Arbour Commission Report on the Prison Riots at Kingston's Prison for women. The modules were meant to educate correctional workers and front-line managers on their human rights and Charter obligations toward inmates, including creating awareness of the racial/cultural, linguistic and socio-economic diversity among inmate populations.
- Freelance writer on articles relating to human rights, employment equity, labour and employment, and employment insurance.

SUDABEH MASHKURI

- Immigration and Refugee Staff lawyer at the Barbra Schlifer Commemorative Clinic, where she represents and is an advocate on behalf of women who are survivors of violence in immigration, family and poverty law.
- Participates in community development projects, conducts public education on rights of woman who are survivors of violence in immigration and refugee law and participates in law reform through legislative analysis of new laws affecting women and children; and administrative and supervisory duties in context of feminist organization.
- Member of Coalition for Just Immigration and Refugee Policy.
- Member of the steering committee of Connecting Communities with Counsel Project.
- Lived and worked in Iran.
- Member of University of Ottawa Student Legal Aid Society: Woman's Advocacy and Information Services.
- LL.B., University of Ottawa, Faculty of English Common Law (1993).
- Working knowledge of French and Farsi.

Heritage Committee
- Conservation and Preservation of Heritage Assets
- Outreach to all Current and Potential Stakeholders Regarding Heritage-Related Matters

Heritage Committee
March 27, 2003

Report to Convocation

Purpose of Report: Information
Prepared by the Heritage Committee

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Information Report to Heritage Committee

Committee Mandate

1. The Heritage Committee's mandate is to advise, formulate and recommend policies to Convocation on heritage matters within the Law Society and the legal profession in Ontario. The broad policy goals are to focus on both encouraging awareness of and supporting heritage activities and initiatives.

2. The Committee's mandate also articulates a policy framework for a number of operational priorities that pre-dated the Committee's reconstitution in July 2001.

Operational Foundation

3. The Archives department and the curatorial services of the Facilities department are responsible for operations related to heritage activities and initiatives. These activities are supported from the following internal budgets:
   a. Great Library
   b. Facilities department

4. These activities sometimes receive external funding in the form of Law Foundation grants[1]; other external grants[2] and private donations, usually in-kind.

5. The funding allocation and available staff resources play a significant role in the activities prioritized and undertaken.

Committee's Articulated Policy Direction

6. In the Committee's information report to Convocation in October 2002, the Committee reported that its policy development focus and strategic direction would concentrate in two areas:
   a. Conservation and preservation of heritage assets of the Law Society of Upper Canada; and

   b. Outreach to all current and potential stakeholders regarding heritage-related matters.

7. The Committee has asked staff to prepare a report that identifies possible options for fulfilling this strategic direction. It is important to note that a number of operational activities were already in the planning stage or underway at the time the Committee was reconstituted in 2001.

8. The Committee's articulated policy directive is important because it formalizes the coherent and systematic development of these and future operational activities.

CONSERVATION AND PRESERVATION OF HERITAGE ASSETS

[1] Funds granted for 2003.
[2] Corporate records and Archives have applied for Canadian council of archives grant

9. In choosing conservation and preservation of heritage assets as a strategic direction the Committee has defined its strategic policy direction under four headings:
   a. Historical Asset Management Policy for the Law Society
   b. Documentation of Historical Assets
   c. Provision of appropriate storage space for historical assets
   d. Conservation and long-term maintenance of Law Society Collections

   Each heading is set out below with activities and options for possible activities set out.

Historical Asset Management Policy for the Law Society

10. Artifacts, art, and archival materials are already covered by collections procedures that follow accepted museum and archives standards, with the goal of professionally managing those assets.

11. A modification and disposal policy for all other historical assets is in place. The policy will be updated and clarified as needed to ensure that it remains relevant and achieves the purpose for which it was designed.

12. The curatorial service of the facilities department has planned an historical furniture inventory for 2003/2004, which should help in identifying the assets that need to be protected. This has already been included in the 2003 budget. (See below for more discussion.)

Documentation of Historical Assets

13. This is an important component in the implementation of the Committee's focus and strategic direction. Several initiatives budgeted and prioritized for 2003 will contribute significantly to the documentation of the Law Society's historical collections. Other initiatives will overlap a number of budget years or unfold in the near future as budgets permit. These include:
   a. The Corporate Records and Archives Department and the Facilities Department are now working on the transfer of the existing archives and museum database to new software. The joint database will allow all those caring for the Society's historical assets to share information. The new software has advanced features that will increase the ease of use and usefulness of the database;
   b. A furniture inventory - There is no general inventory of historical movable assets at Osgoode Hall. Items that have been designated as art or artifacts have been inventoried, but items that remain in use by the Law Society have not. Because these items (silver, furniture, etc.) are in use, are scattered throughout the building and considered utilitarian, the value of these items is often overlooked. The curatorial services of the Facilities Department is working on an inventory over 2003-2004 that will allow the Law Society to identify and document historical movable assets and to protect them if necessary; and
   c. Record description backlog reduction -The Law Society was awarded an additional $55,000 from the Law Foundation of Ontario for 2003 for heritage purposes. The funds are being put towards the reduction of the record description backlog. This project, which will organize records and describe the contents of files, will significantly improve access to the information they contain.

Provision of Appropriate Storage Space for Historical Assets

14. There will likely be significant changes to the floor plan of the Law Society within the next few years in the wake of the shift in the use of the north wing. It will be important to identify and communicate space needs for heritage purposes, with a view to including them in the space allocation process.

Conservation and long-term maintenance of Law Society Collections

15. The conservation and preservation of the collections of the Law Society is an ongoing process. Some funds are available for the conservation of archival materials in the budget of the Corporate Records and Archives Department and for art conservation in the budget of the Facilities Department, where funds were also recently allocated for furniture restoration. The cost of maintaining and conserving the historical

portions of the building are budgeted in the Capital Fund and is the responsibility of the Facilities Department.

16. Several projects planned for the next few years (described above), will have an impact on the conservation and preservation of historical assets, as follows:

a. Furniture inventory - The 2003 inventory will provide the Law Society with a valuable tool for planning conservation and preservation interventions. Such an inventory will identify items that require conservation treatments, need special care or that would benefit from measures to mitigate the effects of regular use and in some cases that should be protected by being removed from circulation.

b. Record description backlog reduction - The record description project described above will include a conservation component. Files will be re-housed in acid-free folders and boxes and materials that can cause preservations problems such a paperclips, elastics and staples, will be replaced with safer fasteners. Materials of special historical value or with special conservation needs can be identified and housed in environmentally controlled storage.

c. Art collection conservation - A new conservation assessment of the portrait collection of the Law Society was commissioned in 2001. Most of the portraits that required immediate attention have been attended to or will be in the near future. The CEO has asked that the Fine Art Collection Management Plan adopted by Convocation (November 26, 1993), but not implemented due to lack of funds, be reviewed and updated by the Curator of the Law Society.

OUTREACH TO ALL CURRENT AND POTENTIAL STAKEHOLDERS REGARDING HERITAGE-RELATED MATTERS.

17. The second policy direction articulated by the Committee is an outreach policy designed to raise the profile of the heritage activities and provide potential additional sources for funding activities and priorities.

18. It is important to note that outreach is already an important component of the Archives and curatorial services activities and that the discussion is focused on what additional outreach initiatives should be considered.

19. Any discussion of potential additional outreach projects must bear in mind a number of factors that will always limit the Law Society's ability to (a) develop partnerships with other organizations in the heritage field and (b) broaden external access to the material, as follows:

a. The Law Society is not primarily a heritage organization and Osgoode Hall is first and foremost a business facility. Our ability to commit to regular tours or structured joint public programming is limited (e.g. use of space and resources);

b. Most of the archival records of the Law Society are either confidential or access to them is controlled; and

c. Legal history is a relatively narrow topic with limited public appeal.

20. Furthermore, the scope of outreach initiatives is dependent, in part, as is the case with conservation and preservation, on the resources (both financial and staff) still available once resources have been allocated to core activities.

21. Possible options for this strategic direction might include:

a. Continued enhancement of web resources

b. Marketing plan to raise awareness of historical components of the Law Society
c. Pursuit of potential funding sources
d. Additional outreach programs
e. Ongoing development of display and exhibition possibilities

Continued Enhancement of Web Resources

22. There are plans for some initiatives intended to make Law Society resources more accessible to the public via the web. These include a database of past members, a photo database and various public-programming initiatives such as the virtual museum (see below).

23. It is important to note, however, that except for selected items from the collections, it is unlikely that Law Society archival records will ever be widely publicized or made available to the public. Many of the records are of a confidential nature and access to them has to be strictly controlled.

24. As well, in the upcoming year, the focus of the Corporate Records and Archives Department and the Curatorial Services of the Facilities Department will be on the transfer of the collections management database to a new platform. New initiatives for the web will have to be evaluated in light of the priorities when this project is completed.

Promotional Plan to Raise Awareness of Historical Components of the Law Society

25. The Communications Department of the Law Society has asked Susan Lewthwaite, Research Coordinator of the Corporate Records and Archives Department to prepare historical "time capsules" to be featured on the Law Society's website on a regular basis.

26. The Communications Department has also been promoting heritage events on an as-needed basis.

27. A promotional plan involving both the Corporate Records and Archives Department and the Curator of the Law Society should be developed with the assistance of the Communications Department.

Pursuit of Potential Funding Sources

28. Fundraising on a meaningful scale is a complex exercise that requires careful planning. It may be important to have a feasibility assessment and plan prepared to consider whether the scope of any activities would result in a significant enough return to make the process advisable.

29. Development of partnerships with other agencies, organizations and community groups that have an interest in the use and display of legal historical assets of the Law Society of Upper Canada could be discussed, but some relevant ones are already in place between the Law Society and various agencies, organizations and community groups. As far as Heritage is concerned, these links include the Society's participation in Doors Open Toronto, participation in the Ontario Justice Education Network, our relationship with the Osgoode Society, contributions to the virtual museum of Canada and ARCHEION, and the professional networks of heritage staff at the Law Society, which cover the archival, museum and academic fields. Many heritage-related services of the Law Society, including tours and research services, are now well known and well used.

Additional Outreach Programs

30. These might include sponsorship of,

a. selected Osgoode Society publications;

b. a prize for legal-historical essay competition;

c. a legal-historical lecture series.

31. Most law schools already offer a broad range of scholarships and awards. The Law Society awards Osgoode Society prizes to Bar Admission Course students and sponsors the Osgoode Society Book Prize in Legal History for Ontario law schools for the best essays on legal history. A new award is not likely to raise significantly the profile of legal heritage or the profile of the Law Society. The Law Society could

consider publishing the winning essays of the Osgoode Society Book Prize in Legal History, in part or in their entirety, in the Gazette or on its web site, thereby enhancing the existing grant program and featuring heritage prominently at a relatively low cost.

32. The sponsorship of a lecture or lecture series is also an option. If the lectures are held at Osgoode Hall, the main costs involved would be the speaker fee (range $250 - $5000 for historical speakers (+ expenses), staff salaries (organization and after-hour staff), fees for promotion (pamphlet, posters, paid advertisement, etc.). During the bicentennial celebrations of the Law Society in 1997, Christopher Moore, the author of the Law Society's history, did a four-lecture series across the province that was very well attended.

Ongoing Development of Display and Exhibition Possibilities

33. A number of exhibition and display projects are planned and budgeted for 2003-2004 as follows:

a. The new Exhibition Hall and adjoining display spaces are scheduled to open in March 2003.

b. The Communications Department has asked Susan Lewthwaite of the Corporate Records and Archives to prepare small "time capsules," short articles Law Society historical records, for the Law Society website.

c. New exhibitions are planned for the virtual museum for 2003-2004: the French version of *Crossing the Bar* on the history of women in the legal profession and a virtual tour of Osgoode Hall in which the courts have agreed to participate. An exhibition on the First World War Memorial is in preparation for likely release in 2004, time permitting. New products for the virtual museum will be considered, based on organizational priorities and resources, when these projects are further along.

d. Access to the virtual museum will be available through two stations in the new Exhibition Hall.

Other

34. Helene Puccini has submitted to the Committee a proposal for the creation of a video archives of the legal profession. The purpose of this archives would be to preserve a visual record of prominent members of the profession and important events for archival, educational, and inspirational purposes. The proposal suggests that such footage could be used for the creation of a film or series on the legal profession and that co-sponsors could be sought for the project. Ms. Puccini has obtained a cost estimate.

The Committee supports the initiative in principle and recommends that Ms. Puccini contact the Osgoode Society with the view to suggest a widening of their oral interview program to include a video component. Ms. Puccini will also contact other potential stakeholders and partners.

Conclusion

35. The Archives and curatorial services departments are currently engaged in a number of intensive projects in furtherance of the focus and strategic policy direction articulated by the Committee. As discussed in this report, additional outreach options exist, but need to be developed carefully keeping in mind the specific context within which the Archives and curatorial services operate at the Law Society. Funding needs will be identified in the budget process.

CONVOCATION ROSE AT 1:15 P.M.

The Treasurer and Benchers had as their guests for luncheon The Hon. Robert P. Armstrong, Mr. Jack Batten and his spouse Marjorie Harris.

Confirmed in Convocation this 25th day of April, 2003.

Treasurer